

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA, JUDICIAL MEMBER

ITA Nos.2801 to 2803, 169 & 2804/Del/2018
Assessment Years: 2008-09 to 2012-13

AMQ Agro India Pvt. Ltd.,
C-134, Ground Floor,
Defence Colony,
New Delhi.
PAN: AAECA0929M

Vs ACIT,
Central Circle-19,
New Delhi.

ITA Nos.4287 to 4289, 1499, 4290/Del/2018
Assessment Years: 2008-09 to 2012-13

ACIT,
Central Circle-19,
New Delhi.

Vs. AMQ Agro India Pvt. Ltd.,
C-134, Ground Floor,
Defence Colony,
New Delhi.
PAN: AAECA0929M

(Appellant)

(Respondent)

Assessee by	:	Shri Hiren Mehta, CA, Shri Ashwani Gupta, CA
Revenue by	:	Ms Pramita M. Biswas, CIT, DR
Date of Hearing	:	05.03.2020
Date of Pronouncement	:	29.05.2020

ORDER

PER R.K. PANDA, AM:

ITA Nos.2801 to 2803, & 2804 /Del/2018 filed by the assessee and ITA Nos.
4287 to 4289 &, 4290/Del/2018 filed by the Revenue are cross appeals and are

directed against the order dated 28th March, 2018 of the CIT(A)-27 for A.Y. 2008-09 to 2010-11 and 2012-13 respectively. ITA No.169/Del/2018 filed by the assessee and ITA No.1499/Del/2018 filed by the Revenue are cross appeals and are directed against the order dated 26th December, 2017 of the CIT(A)-27 for A.Y.2011-12. Since common issues are involved in all these appeals therefore, these were heard together and are being disposed of by this common order.

2. First we take up ITA No.2801/Del/2018 and 4287/Del/2018 for A.Y. 2008-09 as the lead case.

3. Facts of the case in brief, are that the assessee is a private limited company having 12% shares of Shri Moin Akhtar Qureshi, and 73% shares of Mrs. Nasreen Moin Qureshi. It claimed to be a 100% export oriented unit engaged in the business of exports of buffalo meat primarily called Omasum and Offal primarily for consumption in China, Vietnam and Hong Kong and claimed deduction u/s 10A of the Act. It had filed its original return on 17th August, 2009 declaring nil income. For the impugned assessment year, the assessee had also claimed deduction u/s 10A of the Act amounting to Rs.3,63,42,299/-. A search and seizure operation u/s 132(1) of the Act was conducted on 15th February, 2014 in the case of the assessee along with other cases of the AMQ group at various residential and business premises. A notice u/s 153A was issued to the assessee on 14th October, 2014 requiring the assessee to file the return for the relevant assessment year within 30 days which was served on the assessee on the same day. The assessee

filed the return in response to notice u/s 153A declaring the total income of Rs.1,84,50,000/- on 18th June, 2016 and offered additional income of Rs.1,85,00,000/-. It was explained that an application offering additional income of Rs.1,85,00,000/- was filed by the assessee before the Income-tax Settlement Commission stating that the assessee/applicant had derived this additional income of Rs.1,85,00,000/- for A.Y. 2008-09 from the business of meat. The assessee through its submissions stated that the assessee had already offered income of Rs.6.07 crores in the nature of income earned from meat business under Omasum-Delhi before the Settlement Commission vide application dated 26th December, 2014. It was further explained that the assessee has fully explained the source and utilization of above mentioned additional income in the said application. However, the application of the assessee was rejected u/s 245D(4) dated 3rd March, 2016 on the ground that the disclosure was not true and full and has not explained the manner in which it was derived. Since the application filed by the assessee was rejected by the Settlement Commission, the same was included in the return of income for the year under consideration in response to notice u/s 153A.

4. The AO analysed the nature of business of the assessee and noted that the raw material of the assessee company is the raw meat which is procured by the assessee company from open market through various persons who procure such raw material directly from various slaughter houses where buffaloes are slaughtered and their meat parts i.e., Omasum, trachea and offal are broadly

segregated from the dead body of the buffalo in raw form. The assessee company also stated, to purchase such products from the farmers for whom their cattle does not have any commercial value and are unproductive. The AO noted that the assessee company does not have its own slaughter houses. Once the raw meat is delivered at the Rampur factory, the assessee company segregates various parts i.e., Omasum and offal, it was then cleaned and then applied salt on the cleaned meat which act as a preservative. He noted that the main business of the AMQ group is export of byproducts i.e., Omasum, offal, etc. In order to make its raw material requirements, a two pronged strategy was adopted by the group. On the one hand, the group had entered into a long-term contract/agreement of one to two years duration with established suppliers in the field like M/s Allanasons Ltd. and its associate companies, etc. Such contracts were at mutually agreed rate for supply of Omasum, trachea, offal, etc. Apart from that, in order to meet its shortfall of raw material the group companies were engaged in purchasing raw material from slaughter houses and abattoirs in and around Delhi region. Such purchases were made on ad-hoc basis as and when need arose. The main processing plant/factory of the group is at Nainital Road, Rampur. During the course of assessment proceedings, the AO observed that there was complexity in accounts due to volume and multiplicity of transactions and specialized nature of business which created doubt towards the correctness and trueness of account and financial results declared by the assessee. Therefore, after obtaining approval of the PCIT, Central-2, New Delhi, directions for special audit u/s 142(2A) of the Act

were issued on 19th December, 2016 to the assessee to get its accounts audited from special auditors. The special auditors furnished its special audit report on 5th May, 2017. After receiving the audit report from the special auditor and the reply of the assessee to the questionnaire issued by the AO from time to time, the AO completed the assessment.

5. During the course of assessment proceedings, the AO observed that the assessee company has shown total purchase of raw material of Buffalo (Omasum and offal) at Rs.26,63,66,112/-. He noted that all these purchases are largely from the slaughter houses or their peripheral areas but for large part of such purchases no purchase invoices or vouchers were issued by the third party and also payments have been made in cash without establishing the identity of the seller. He prepared an year-wise chart depicting the total purchases made during the year, purchases for which invoices are not made available and cash purchases included in the purchases for which invoices are not available the details of which are:-

A.Y.	Total purchases made during the year	Purchases for which invoices are not available	Purchases for which invoices are not found and payment made in cash
2008-09	26,63,66,112/-	23,53,53,913/-	13,03,59,824/-
2009-10	23,19,35,801/-	19,14,20,864/-	15,28,83,085/-
2010-11	28,97,33,15/-	28,21,46,148/-	19,60,83,215/-
2011-12	78,27,77,592/-	74,18,25,388/-	41,29,34,907/-
2012-13	49,48,02,468/-	34,67,78,496/-	30,80,49,586/-
2013-14	62,49,33,372/-	21,94,53,432/-	20,83,90,270/-

2014-15	77,31,82,290/-	37,52,45,574/-	32,35,43,094/-
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6. According to the AO, majority of the purchases recorded in the books of account of the assessee company are not supported by the third party invoices/vouchers. The payments against majority of the purchases are made only in cash where each payment is made for an amount equal to or less than Rs.20,000/- Even in respect of these no primary vouchers/bills/other evidences were available. He noted that the qualitative records in respect of purchases are not maintained in terms of actual inward quantities as per invoices and the quantities are stated to have been recorded net off wastage without any corresponding record of the same. He noted that no evidences are available in respect of such payment either in the form of payment vouchers or in the form of acknowledgement of such payments by the recipients. Further, the parties to whom the payments are stated to have been made are not identifiable due to lack of any evidence to prove their identity or existence of such parties. The AO further noted that the rates for purchases as recorded in the books of account of the assessee company are very high as compared to the average export rates for buffalo meat, more particularly when the nature of procurement by the assessee is waste product and buffalo meat is the main useful product. Considering the manner in which the payments are recorded at amounts equal to or less than Rs.20,000/- on a day spread over various days even when the purchase value from the respective parties are very high. The AO opined that the payments are recorded in the books of account

in such a way that limit prescribed u/s 40A(3) is not violated. According to the AO, the payments made by the assessee are not covered under exclusions given in Rule 6DD for the reason that the purchases made by the assessee are through various persons and not directly from the cultivators/growers or producer of such products the payments to whom is excluded from the applicability of provisions of section 40A(3). Further, the assessee has not maintained any records to prove that the payments made by it fall within the exclusions prescribed in Rule 6DD. On the basis of the above, the AO disallowed the purchases made by the assessee during the respective years from the A.Y. 2008-09 to 2014-15. The AO, therefore, made an addition of Rs.23,53,53,913/- to the total income of the assessee for the A.Y. 2008-09 for which purchase invoices are not available.

7. The AO during the course of assessment proceedings observed that the assessee has indulged in under-invoicing the export bills/export proceeds. According to him, the under-invoiced proceeds are arranged to be received abroad to maintain various personal expenses of the directors of the company and their family members. From the e-mail conversations of the export manager of the assessee company and its trade associate Mr. Lucky Yuan, the AO noted that one container was agreed to be dispatched in the last week of March, 2009 and instructions were given to Mr. Lucky Yuan to transfer 1 lakh USD against such dispatched order and out of this amount, USD 60,000/- was to be transferred to Mr. Jean Louis Deniot and USD 40,000/- to be deposited in HSBC account of the

assessee in India. Taking cue from this e-mail conversion, the AO further observed that there was difference in rates and value of the meat items exported by the assessee company as per the chart given at page 39 and 40 of the assessment order. This difference according to the AO is out of suppressed sales and resultant proceeds have been received by the assessee abroad through settlement/hawala transactions to meet out the expenses of directors/shareholders and their family members and various foreign entities created by the directors. The AO, therefore, made addition of Rs.2,56,42,430/- on account of such suppressed sales for A.Y. 2008-09 and added back the same to the total income of the assessee.

8. On the basis of the incriminating documents/records found and seized from the premises of the representative of the assessee company, namely, Shri Mohd. Shahnawaz, resident of 4618, Second Floor, Basti Harphool Singh, Delhi-06, the AO observed that the assessee company was engaged in domestic sale of raw meat, Omasum and offal and byproducts of buffalo meat. According to the AO, the seized material as per Annexure-A39, Party D-11 reflects that the total sales to the aggregate amount of Rs.38,98,90,677/- has been made from financial year 2007-08 to 2013-14 which included the sales for Rs.8,08,59,217/- pertaining to the year under consideration. It was further observed by the AO that the sales belonged to two concerns of the group, namely, M/s AMQ Agro India Pvt. Ltd. and M/s Abdul Majeed Qureshi. In absence of any satisfactory reply, the AO apportioned the amount of domestic sales in the ratio of turnovers for both the concerns and

accordingly attributed the sales of Rs.5,66,01,452/- to the account of the assessee and added back to its total income.

9. The AO further noted from the books of account maintained in computer, seized as per annexure A-39 that Shri Mohd. Shahnawaz had received the cash amounts aggregating to Rs.1,46,66,79,302/- pertaining to F.Y. 2006-07 to 2013-14 and out of this amount Rs.8,95,00,000/- pertained to the year under consideration. According to the AO, this cash was received by Mohd. Shahnawaz from Moin Akhtar Qureshi/AMQ Group from undisclosed sources. However, as per him, since the funds received by Mohd. Shahnawaz is actually the undisclosed income of Moin Akhtar Qureshi, the substantive addition was made in his account and the same was added in the case of the assessee on protective basis.

10. During the course of assessment proceedings, the AO noted that the assessee company has shown sundry creditors of Rs.1,29,77,984/- from various parties for which no particulars was given in the balance sheet. He, therefore, asked the assessee to substantiate with evidence regarding the trade creditors by furnishing the confirmation for showing the outstanding balance, etc. Since the assessee failed to provide the confirmation of the creditors, therefore, the AO made addition of Rs.1,29,77,985/- to the total income of the assessee.

11. The AO further noted that the assessee company claimed to be engaged in the manufacturing and export of omasum and offal to Europe, China, Vietnam for

which it claimed deduction u/s 10B of the Act. According to the AO, the assessee company is not engaged in manufacturing activity as defined under the provisions of section 10B of the Act, but, is engaged in the process of sorting of raw/waste buffalo meat to the Omasum and offal part of buffalo meat by cutting and throwing unwanted inedible part, cleaning the shit (gobar) from the Omasum which is rudimentary part of buffalo. After cleaning the same, they apply salt to the finished product and pack the same in the designated size and make them freeze so as to ready for export. Therefore, this process does not qualify to be adjudged as manufacturing activity qualifying for claiming deduction u/s 10B of the Act. He, therefore, asked the assessee to explain as to why the exemption claimed u/s 10B should not be disallowed. In absence of any explanation from the side of the assessee to substantiate its claim, the AO rejected the claim of deduction u/s 10B and made an addition of Rs.3,63,43,299/- to the total income.

12. The AO noted that during the year under consideration, the assessee company has shown travelling and conveyance of Rs.50,77,021/-, membership fee and subscription expenses of Rs.66,180/-, director's foreign travel expenses of Rs.56,95,212/- and export and development expenses of Rs.4,41,084/-. He observed that more than Rs.1 crore have been claimed as expenses under the head ~~travelling and conveyance.~~ Since the assessee failed to substantiate by producing supporting evidence/vouchers in respect of the expenses incurred through credit cards as well as in respect of foreign travelling expenses to substantiate that these

expenses are incurred wholly and exclusively for the purpose of business, the AO disallowed an amount of Rs.21,17,829/- being 50% of the total foreign travel expenses of Rs.42,55,658/-. Similarly, for want of detailed vouchers to substantiate the necessity of other expenditure, wholly and exclusively for the purpose of business, the AO made disallowance of Rs.23,66,967/- being 50% of Rs.47,33,934/- under the head ~~other expenses~~ ~~export development expenses~~ ~~motor cycle expenses~~ etc.

13. The AO observed that the assessee has claimed salary expenses of Rs.21,66,000/-, but failed to respond to the questionnaire raised during the course of assessment proceedings to substantiate such salary expenses. Subsequently, from the reply so furnished by the assessee that the necessary cash receipts in respect of salary paid in cash amounting to Rs.18,64,000/- are in record of the assessee company and same were also made available to the special auditors for their verification at the time of special audit was not accepted by the AO. Since these payments from salary was made in cash to employees who do not have any bank accounts and the salary register was recently created and the handwriting of the persons was same in most part of the register, the AO disallowed salary expenses of Rs.18,64,000/- debited by the assessee in the books of account.

14. The AO, during the course of assessment proceedings, noted that the assessee has claimed rent expenses of Rs.3,64,000/- paid to Ms Alka Pandey. In absence of production of any rent agreement and in the absence of any satisfactory

explanation to substantiate the claim, the AO disallowed rent expenses of Rs.3,64,000/- and added to the total income of the assessee.

15. The AO, during the course of assessment proceedings, noted that the assessee has made interest free advances to various parties to the tune of Rs.2,75,20,000/-. He, therefore, computed such interest @ 12% at Rs.33,02,400/- and added the same to the total income of the assessee.

16. Similarly, in the absence of production of details to substantiate the claim of deduction u/s 80G at Rs.1 lakh, the AO made addition of Rs.1 lakh to the total income.

17. Similarly, the AO made addition of Rs.2,26,923/- u/s 2(22)(e) of the Act on the ground that it has violated the provisions of section 2(22)(e) of the Act by giving loans and advances to Moin Akhtar Qureshi who held substantial interest in the assessee company. The AO accordingly determined the total income of the assessee for the year under consideration at Rs.48,52,30,200/- as against the returned income of Rs.1,84,50,000/-.

17.1 During the course of assessment proceedings, it was submitted by the assessee that in view of the decision of the Honøble Delhi High Court in the case of *CIT vs. Kabul Chawla*, 61 taxmann.com 412, the normal income already assessed cannot be disturbed in the absence of any incriminating material found during the course of search was rejected by the AO on the ground that the said decision was

not accepted by the Department and the appeal is pending before the Honøble Supreme Court and the decision is still awaited.

18. Before the Ld.CIT(A), it was pleaded that most of the additions made by the AO are on the basis of the book results declared by the assessee in the Profit & Loss Account and the balance sheet in accordance with the regular books of account maintained by it. Only two additions ó unaccounted domestic sale and cash amount received by Mr. Mohd. Shahnawaz have been made on the basis of the incriminating material found during the course of search. Accordingly, it was claimed that the additions made by the AO on the basis of book results for which no incriminating evidence was found during the course of search proceedings are liable to be deleted in view of the decision of the Honøble Delhi High Court in the case of *CIT vs. Kabul Chawla*, 380 ITR 573 and in the case of *PCIT vs. Lata Jain* 384 ITR 543.

18.1. On the basis of the arguments advanced by the assessee and on the basis of the decisions cited before him, the Id.CIT(A) deleted the additions which are not on the basis of any incriminating material found during the course of search by observing as under:-

õ7.1 . I have considered the contentions of the appellant. In such situation, the issue, when no incriminating material/evidence is found and assessments in those years are completed assessments, can any addition/disallowance be made, has been dealt with and answered by Hon'ble Jurisdiction High Court in the case *CIT vs. Kabul Chawla*, as mentioned by appellant in its submission. Hon'ble Court has taken a view in such cases that although section 153A 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 Assessing Officer 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. As per Hon'ble Court, such assessment has to be made under the section only on the basis of the seized material. It is further opined by Hon'ble Court that completed assessment can be interfered with by the Assessing Officer while making the assessment in the section 153A only on the basis of some incriminating material found 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. In the subsequent decisions also, Hon'ble court has substantiated their aforesaid views. In the case Pr. CIT vs Ram Avtar Verma 395 ITR 252, Hon'ble Court has supported the aforesaid view that if the assessments are completed on the date of search and no incriminating material is found during the search, assessment u/s 153A of the Act is invalid. Similar view has been taken by Hon'ble Court in the case of Pr. CIT vs Meeta Gutgutia 395 ITR 526 also wherein assessments were completed on the date of search but no incriminating material pertaining to those completed assessment years were found during search. Hon'ble Court at invocation of section 153A for those years was invalid.

7.1.1. Now the facts of the appellant are to be examined in view of this legal position. It is clear from the assessment order as well as submissions of the appellant that search and seizure action 132(1) of the Act was undertaken by the Department in the case of appellant as on 15.2.2014 and on that date, assessments for A.Y. 2009-10 to A.Y. 2012-13 were completed assessments as the time period to issue notices u/s 143(2) for aforesaid years had already expired. In these years, additions could have been made by AO only on the basis of incriminating material/evidence found during the search proceedings. However, as can be seen from the present assessment order, some of the additions are made on the basis of incriminating material found during the search proceedings and remaining on the basis of scrutiny of book results and entries of profit and loss account and balance sheet filed along with return of income in regular course. As discussed in earlier paragraphs, the following additions have been made by AO in regular course of assessment proceedings, without the basis of any incriminating material/evidence found during the search.

i) Addition of Rs. 23,53,53,913/- on account of unexplained purchases - As referred above and as discussed in details by AO in the assessment order, these purchases were shown by appellant in its books of account and correspondingly in the profit and loss account; and after making enquiry in the regular course of scrutiny, AO has treated substantial part of these purchases as bogus on account of cash payments made and non-maintenance of bills/vouchers. However, no incriminating material/evidence was found during the search proceedings in respect of these purchases.

ii) A disallowance of Rs.3,63,42,299/- has been made u/s 10B of I. T. Act by observing that the assessee failed to establish that its activities of dealing in raw meat comes in the category of manufacturing activity as per the provisions of section 10B of I. T. Act.

iii) Addition of Rs. 1,29,77,985/- on account of outstanding creditors - These additions also have been made by AO in the course of regular scrutiny of books of account and balance sheet of appellant wherein the creditors of the aforesaid amounts were shown as outstanding by appellant itself. The addition has been made due to the reasons that the appellant failed to file the confirmations of these creditors and details of ageing of the amounts outstanding, not on the basis of any incriminating material found during the search proceedings.

iv) Addition of Rs.21,27,829/- on account of expenditure through credit cards and foreign travelling - This addition also has been made on ad-hoc basis on the ground that the appellant failed to produce bills/vouchers and relevant details of aforesaid expenses, not on the basis of any incriminating material found during course of the search proceedings.

v) Addition of Rs.23,66,967/- on account of other expenses ó This addition also has been made on ad-hoc basis on the ground that the appellant failed to produce bills/vouchers and relevant details of car expenses, travelling and conveyance expenses, directors' foreign travel expenses etc., not on the basis of any incriminating material found during the search proceedings.

vi) Addition of Rs.18,64,000/- on account of salary expenses ó This addition also has been made on the ground that the payments have been made in cash to its employees who do not have bank accounts, not on the basis of any incriminating material found during the search proceedings.

vii) Addition of Rs.3,64,000/- on account-of rent expenses - This addition has been made on the ground that the assessee failed to provide any rent agreement/rent receipts to verify the same, not on the basis of any incriminating material found during the search proceedings.

viii) Addition of Rs.2,26,923/- on account of applicability of provisions of section 2(22)(e) of I. T. Act - Again this addition has been made in the regular course of assessment proceedings on the ground that there was maximum outstanding balance of Rs.2,26,923/~ in the nature of advance in the account of director of appellant company who is having substantial share holding, not on the basis of any incriminating material found during the search proceedings.

ix) One more addition has been made by AO amounting to Rs.33,02,400/- on account of loans of Rs.2,75,20,000/- advance by appellant to different parties but no interest has been charged. He therefore calculated the interest @12% on this loan amount and added back to the income of assessee.

x) The last addition of Rs.1,00,000/- made by AO is on account of disallowance of deduction u/s 80G of I. T, Act as the assessee failed to provide the receipts/evidence with regard to donation/charity, if any made by him,

7.1.2 In view of above, it can be seen that none of the above additions have been made by AO on the basis of incriminating material/evidence found during the search proceedings. Since the assessment year under consideration is a completed assessment year, any addition/disallowance ought to have been made by AO on the basis of such incriminating material/evidence as found during the search proceedings in view of various decisions, including CIT Vs. Kabul Chawla (supra), of Hon'ble Jurisdiction High Court. In view of this, the aforesaid additions made by AO are not sustainable and deserve to be deleted as made during the regular course of assessment proceedings, not on the basis of incriminating material/evidence found during the search proceedings. I, therefore, delete the aforesaid additions made by AO and allow the respective grounds taken by appellant.ö

19. So far as the addition of Rs.5,66,01,452/- on account of domestic sales is concerned, the Id.CIT(A) sustained the same by observing as under:-

ö7.4.3 I have considered the facts of issue, basis of addition made by AO and submissions of appellant. So far as the addition of Rs.5,66,01,452/- on account of undisclosed sales is concerned, incriminating details/evidence were found during the search proceedings as per annexure A-39, Party D-11 wherein the complete details of such undisclosed sales were recorded in the accounts maintained in the name of OMASUM DELHI. These details reflected the domestic sales made by Mr. Mohd. Shahnawaz on behalf of appellant company in different years i.e. from F.Y. 2006-07 to F.Y. 2013-14. These sales were made in cash and out of books of account. During the assessment proceedings as well as appellate proceedings, appellant has failed to give any submissions or file any details/evidence to demonstrate that these sales are recorded in the regular books of account and are from disclosed sources. It has even failed to identify and bifurcate these undisclosed sales that which sale transaction belonged to which entity of the group. It has also failed to establish that there were any additional purchases, outside regular books of account, against these undisclosed sales. Simply by saying that undisclosed profit was declared before the Income Tax Settlement Commission and only the peak amount

should be taken for the purpose of addition, does not explain the source of undisclosed sales as worked out by AO. In such situation, the AO has correctly held that the purchases of these domestic sales have already been recorded by the group in their books of account in normal course, therefore, the total undisclosed sales are to be treated as additional income of appellant. In view of this, I confirm the addition made by AO and dismiss the ground taken by appellant.ö

20. So far as the addition of Rs.8,95,00,000/- on account of cash received in Omasum-Delhi account is concerned, the Id.CIT(A) restored the issue to the file of the AO by observing as under:-

ö7.4.4 As regards the other addition of Rs.8,95,00,000/- on protective basis, the AO has mentioned that the actual source of this cash amount was Mr. Moin Akhtar Qureshi from his undisclosed activities of dealing in meat products and liasoning with higher authorities, who had given this cash to Mr.Mohd. Shahnawaz for the purpose of making purchases from focal market. In view of this, he has made the addition on substantive basis of the aforesaid amount in the hands of Mr. Moin Akhtar Qureshi and on protective basis in the hands of appellant company. Since the AO has already made the addition on substantive basis in the hands of Mr. Moin Akhtar Qureshi, the addition made on protective basis in the hands of the appellant company is being deleted subject to the decision of appellate authority in the case of Mr. Moin Akhtar Qureshi. The addition may get revived in case the findings are given by appellate authorities in the case of Mr. Moin Akhtar Qureshi that the said money belonged to the appellant company. In view of this, this ground is allowed for statistical purposes.ö

21. Before the CIT(A), the assessee had taken a ground stating that the income voluntarily disclosed before Settlement Commission for the year under consideration which was offered as additional income in the return filed u/s 153A of the Act should be given set off.

21.1. However, the Id. CIT(A) rejected the same by observing as under:-

ö8. The Last Ground taken by appellant pertains to the additional income included by appellant in the return of income. The ground has been taken that the additional income of Rs.1,85,00,000/- was voluntarily disclosed before

ITSC by the appellant for the year under consideration and this income was included in the computation of income filed with return in response to notice u/s 153A of the Act. As per appellant, the AO was not justified in not reducing this income while computing the assessed income during the assessment proceedings. However, though the appellant has taken this ground in the appeal Memo but nothing has been submitted in its support during the appellate proceedings. It is also difficult to understand why the disclosure made voluntarily and income included in the return of income by appellant itself, should be reduced by AO without any rhyme and reason. Moreover, the income of appellant has been assessed by AO at the amount much more than returned or voluntarily disclosed by appellant, therefore, there is no logic for reducing the amount disclosed by appellant in the return of income as claimed by it. I, therefore, reject the claim of appellant and dismiss the ground taken by it.ö

22. Aggrieved with such part relief granted by the CIT(A), the assessee as well as the Revenue are in appeal before us by raising the following grounds:-

Grounds of appeal by the assessee (A.Y. 2008-09)

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

2. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of AO in making an addition of Rs. 5,66,01,452/- by treating the entire sales as undisclosed income, by rejecting the contention of the appellant that all income emanating out of the incriminating seized documents on the basis of which the alleged addition on account of Domestic sales has been made has already been disclosed in the Income Tax Return filed in response to notice u/s 153A based upon the application filed before the Income Tax Settlement Commission (ITSC), which was rejected and hence not decided by ITSC in AMQ Group of entities.

2.1 That the CIT (A) was not justified in upholding the alleged addition by not considering and not adjudicating the submission of the appellant that during the course of assessment proceedings the appellant had requested for providing the recasted books of accounts on the basis of which alleged addition on account of undisclosed domestic sales has been computed but neither the books of accounts nor any basis for making alleged addition was provided by the AO to the appellant.

2.2 That the CIT (A) was not justified in upholding the alleged addition by rejecting the submission of the appellant that the entire sales cannot be added as undisclosed income, it is only the profits emanating from undisclosed sales after reducing corresponding purchase cost and overheads that could have been taxed.

2.3 That the CIT (A) was not justified in upholding the alleged addition by not considering the submission of the appellant that the AO has not provided credit for the income from undisclosed activity of meat sale/ purchase already included in the return of Income filed in response to notice u/s 153A based upon the application filed before the Income Tax Settlement Commission (ITSC), which was rejected and hence not decided by ITSC in AMQ Group of entities.

3. That the CIT(A) was not justified in holding, that the addition of Rs.8,95,00,000/- on account of alleged cash payments outside books of accounts for purchases of meat products protectively added in the hands of the appellant and substantively added in the hands of Moin Akhtar Qureshi, is deleted in the hands of the appellant subject to outcome of appeal in the case of Moin Akhtar Qureshi and further if the aforesaid addition is deleted in that case it would get revived in appellant's case.

3.1 That the CIT(A) erred in not adjudicating the issue regarding undisclosed sales (Rs. 5,66,01,452/-) and undisclosed cash payments (Rs. 8,95,00,000/-) together in a co-joint manner as both the issues are linked and of overlapping nature in as much as the undisclosed activity of sale/purchase of meat products outside books of accounts involved payments in cash, utilization of cash for purchases, subsequent sale, realization of cash from sales and reutilization of same cash for further purchases and therefore the same cash was rotated in the undisclosed business year after year for the entire block period from AY 2008-09 to AY 2014-15.

4. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the AO in not reducing from the assessed income the amount of additional income already included in the Return of Income filed in response to notice u/s 153A based upon the application filed before the Income Tax Settlement Commission (ITSC), which was rejected and hence not decided by ITSC in AMQ Group of entities.

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

Grounds of appeal by the Revenue (A.Y. 2008-09)

01) The Ld. CIT(A) has erred in law in relying on Kabul Chawla 61 taxman.com 412(Delhi) and in holding that completed assessment could not be interfered by the AO without incriminating material. On the contrary for making the assessment u/s 153A of the Act does not stipulates any such conditionality on A.O.

2) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.23,53,53,913/- made on account of unexplained purchases.

3) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs. 1,29,77,985/- made on account of outstanding creditors.

4) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.3,63,42,299/- made on account of deduction claimed u/s 10B of the IT Act, 1961.

5) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.21,27,829/- on account of expenditure through credit cards and foreign travelling

6) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.23,66,967/- on account of other expenses.

7) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs. 18,64,000/- on account of salary expenses.

8) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.3,64,000/- on account of rent expenses.

9) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs. 1,00,000/- on account of charity/donation receipts / evidences.

10) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.33,02,400/- on account of interest free advances.

11) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.2,56,52,430/- made on account of under invoicing of export sales.

12) The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts in deleting the addition of Rs.8,95,00,000/- on account of cash received in Omasum Delhi Account.

13) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

23. So far as the appeals filed by the Revenue are concerned, the Id.CIT-DR strongly challenged the order of the CIT(A) in deleting the various additions made by the AO in absence of any incriminating material. She submitted that the search took place in the instant case on 15th February 2014 consequent to which order u/s 153A have been passed for six assessment years from 2008-09 to 2013-14 besides assessment order for search year i.e., 2014-15. Just after the search, the assessee filed application u/s 255C(1) which was rejected by the Honøble Settlement Commission vide order of the Principal Bench, New Delhi, u/s 255D(4). After that, the assessee filed the return u/s 153A which included additional income declared before the Income-tax Settlement Commission of Rs.1.85 crore. Since the disclosure was not true and full and the manner of earning/deriving additional income was not disclosed, the Honøble Settlement Commission held that the disclosure was not true and accordingly rejected the application. She submitted that the various additions made by the AO are on the basis of the report of the

Special Auditor and further investigation carried out on the basis of the seized material found during the course of search.

23.1 So far as the deletion of Rs.23,53,53,913/- made on account of undisclosed purchases is concerned, she submitted that during the search, accounts related to purchases of Omasum and Offal by the assessee found and seized in the premises of Mr. Mohd. Shahnawaz whom the assessee had made cash payments for purchases were found. Further enquiry has been carried out by the AO on the basis of seized documents and made addition on account of bogus purchases. Under these circumstances, the Id.CIT(A) is not justified in deleting the addition by relying on the decision of the Honøble Delhi High Court in the case of Kabul Chawla. She submitted that the decision in the case of Kabul Chawla (supra) does not apply in the present case as in the case of Kabul Chawla, addition made had no connection with any material evidence/statement found/recorded.

23.2 Referring to the decision of the *Hon'ble Supreme Court in the case of Mukundray K. Shah, 290 ITR 433*, she submitted that the Honøble Supreme Court in the said decision has held that even if the addition arises out of enquiry related to source of investment, if details of such undisclosed investment is found during the course of search, addition has to be sustained.

23.3 Referring to the decision of the *Hon'ble Delhi High Court in the case of CIT vs. Arun Malhotra, 363 ITR 195*, she submitted that the Honøble High Court in the

said decision has held that where the AO having found that transaction of purchase and sale were bogus, made addition u/s 69A, the Tribunal was not justified in deleting the addition without going into evidence on record. Referring to the decision of the Honøble Delhi High Court in the case of *CIT vs. Kuwer Fibres Pvt. Ltd.*, 77 *taxmann.com* 345, she submitted that the Honøble High Court in the said decision has held that where statements recorded were corroborated by materials, there was no justification to reject the statements which merely explain the documents seized. Once the raw material quantity that did not appear in the regular books of account was discovered and should be covered as a result of search, the onus lay upon the assessee to furnish full particulars as to cost of that raw material or average cost.

23.4 Referring to the decision of the *Hon'ble Delhi High Court in the case of CIT vs. La Medica*, 250 *ITR* 575, she submitted that the Honøble High Court in the said decision has held that where the assessee failed to produce evidence to prove the benefits of seller for whom it had claimed to purchase raw material and the AO treated the value of raw material as assessee's income from undisclosed source, the AAC was of the view that though circumstances were unclear, fact remain that goods were pledged with bank after alleged purchase and, therefore, non-production of seller could not be a basis for doubting the genuineness of purchases and/or to infer that there was fictitious purchases. The Tribunal upheld the deletion of addition. The Honøble High Court held that once it is accepted that

supplies were made by such supplier to whom payments have been alleged to have been made, the question of purchases having been made from some other sources could not have been weighed with Tribunal as a factor in assessee's favour. Since the Tribunal has acted on partly relevant and partly irrelevant material and it was not possible to say as to what extent latter had influenced its mind, its order gave rise to a question of law. Accordingly, it was held that the order of the Tribunal was unsustainable. She also relied on the following decisions:-

- i) Vijay Proteins Ltd. vs. ACIT (1996) 58 ITD 428 (Ahmedabad);
- ii) N.K. Proteins Ltd. vs. CIT (2017-TIOL-23-SC-IT);
- iii) Dayawanti vs. CIT (2016) 75 taxmann.com 308 (Del).

24. So far as the deletion of various additions as per ground Nos.3 to 11 are concerned, she submitted that the additions are based on special audit report, seized documents and post search enquiries. Since it is a complicated case and transactions are unrelated and unverifiable, the matter was referred for special audit and it was found by the special auditors that the assessee is not maintaining proper accounts and failed to furnish information during special audit. Further, nothing was furnished during the assessment proceedings. Under these circumstances, the Id.CIT(A) was not justified in deleting the addition by relying on the decision of Kabul Chawla (supra). Referring to the decision of the Honøble Apex Court in the case of *Mukundray Shah*, 290 ITR 433 and the decision of the Honøble Delhi Bench of the Tribunal in the case of *Parag Dalmia*, ITA

No.5499/Del/2017, she submitted that the Id.CIT(A) is not justified in deleting the various additions made by the AO by simply relying on the decision of the Honøble Delhi High Court in the case of Kabul Chawla.

25. So far as Ground No.2 is concerned, she submitted that the protective addition of Rs.8.15 crore was deleted by the Id.CIT(A) with some directions. She submitted that the AO made the addition on the basis of evidence found during the search containing detail/record of cash claimed to have been received by Mr. Mohd. Shahnawaz from Mr. Moin Akhtar Qureshi. He could not tally the cash as per its books of account. Since the Id.CIT(A) has not given any reasoning in respect of merit of this issue, therefore, she submitted that this issue should be restored back to the file of the CIT(A).

26. So far as the proceedings for A.Y. 2012-13 are concerned, the Id. DR submitted that the assessment proceedings for the A.Y. 2012-13 were abated as notice u/s 143(2) was issued on 23rd September, 2013. The assessment proceedings were not completed as on the date of search i.e., 15th February, 2014, therefore, the ratio of decision in the case of Kabul Chawla is not applicable to the facts of the assessee for A.Y. 2012-13. She submitted that since the Id.CIT(A) has incorrectly applied the ratio of the above decision for A.Y. 2012-13 and has not decided the issue on merit, therefore, she submitted that the order of the CIT(A) being erroneous should be set aside and that of the order of the AO be restored.

27. So far as the addition made on account of under invoicing of export sales is concerned, she submitted that the addition was made on the basis of e-mail conversation between the export manager of the assessee and its trade associates seized during the course of search vide Annexure A-12, Party to D-1. She submitted that the CIT(A) held that the email related to A.Y. 2009-10 and, hence, could be used only for this assessment year and not to the other assessment years as per the decision of the Honøble Delhi High Court in the case of Kabul Chawla. So far as the merit of the case is concerned, the Id.CIT(A) for all the assessment years held that the conversation in the e-mail does not lead to the conclusion that the assessee is engaged in under-invoicing of export sales and Hawala transactions. He further held that the assessee has subsequently recorded transactions reflected in the e-mail in the regular books of account and, therefore, no case for settlement/hawala is established. This according to the Id.CIT-DR is not correct. She submitted that as per the e-mail dated 20th March, 2009, the export manager of the assessee instructed its trade associate to deposit 40,000 USD in the bank account of Mr. Jean Louis Deniot . As per other emails recovered as per Annexure A-12, Party D-1, it is clearly established that the amount of 40,000 USD was actually deposited in the bank account of Cabinet Jean Louis Deniot on 30th Mach, 2009 by the trade associate of the assessee. Thus, it leads to clear understanding that the assessee was involved in under invoicing of export sales and diverting of the proceeds to other account overseas but, so far as the finding of the Id.CIT(A) that the transaction referred in the e-mail dated 20th March, 2009

being disclosed in the books of account of the assessee is not borne out from any record, books of account or submissions that during the course of assessment proceedings or during the assessment proceedings before the CIT(A).

28. So far as the income reported before the Income-tax Settlement Commission is concerned she submitted that the income reported by AMQ Agro Pvt. Ltd. before the Settlement Commission are as follows:-

A.Y.	Income offered before ITSC (In Rs.)	Income Offered in return (In Rs.)
2008-09	18500000	18500000
2009-10	15000000	15000000
2010-11	1000000	1000000
2011-12	20000000	20000000
2012-13	1700000	1700000
2013-14	4000000	4000000
2014-15	2500000	2500000
Total	62700000	62700000

29. Similarly, the details of income reported by Moin Akhtar Qureshi before the Settlement Commission are as under:-

A.Y.	Income offered before ITSC (In Rs.)	Income offered in return (In Rs.)
2008-09	2680000	2680000
2009-10	1080000	1080000
2010-11	1200000	1200000
2011-12	11400000	11400000
2012-13	2800000	2800000
2013-14	5000000	5000000
2014-15	107500000	0
Total	131660000	24160000

30. She submitted that the additions were made protectively in the case of AMQ Agro Pvt. Ltd. and substantively in the case of Moin Akhtar Qureshi for various assessment years, the details of which are as under:-

Nature of Addition	A.Y. 2008-09	A.Y.2009-10	A.Y.2010-11	A.Y.2011-12	A.Y.2012-13	A.Y.2013-14	A.Y.2014-15
Cash received in Omasum account	8,95,00,000	17,73,84,049	28,68,36,793	55,95,50,573	13,21,11,994	13,98,33,256	5,00,53,067

31. However, no protective addition has been made in the case of Shri MAQ and substantively in the case of AMQ Agro Pvt. Ltd.

32. The Id. Counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). He, at the outset, filed the following chart giving the year-wise details of additions challenged by the Revenue as well as the assessee before the Tribunal from A.Y. 2008-09 to 2012-13 which is as under:-

AMQ AGRO INDIA PVT. LTD.

YEAR-WISE GROUNDS/DETAILS OF ADDITIONS CHALLENGED BY AMQ AGRO INDIA PVT LTD. BEFORE HON^{BLE} ITAT IN APPEAL FILED FOR AY 2008-09 TO 2014-15

S. No.	PARTICULARS OF INCOME	AY 2008-09 (ITA No.2801/Del/18)	AY2009-10 (ITA No. 2802/Del/18)	AY 2011-12 (ITA No. 2803/D/18)	AY 2011-12 (ITA No. 169/D/18)	AY 2012-13 (ITA No. 2804/D/18)
1.	Addition on account of undisclosed domestic sale (Additional income on a/c of profit declared in 153A return)	5,66,01,452.00 (1,85,00,000)	3,71,84,257.00 (1,50,00,000)	4,65,90,949.00 (10,00,000)	5,20,70,899.00 (2,00,00,000)	1,32,76,893.00 (17,00,000)
2.	Protective addition on account of cash	8,95,00,000.00	17,73,84,049.	28,68,36,793.00	55,95,50,573.00	13,21,11,994.00

	received in OMASUM DELHI Account					
3.	Addition on account of TDS Not deducted	-	-	5,50,669.00	-	-
4.	Addition on account of purchases by holding 25% of purchases as bogus/inflated	-	-	-	-	-
5.	Addition on account of disallowance of 20% of expenses incurred through credit cards	-	-	-	-	-
6.	Addition on account of disallowance of 20% of other expenses	-	-	-	-	-
7.	Addition on Account of Rent paid for Guest House	-	-	-	-	-
8.	Addition u/s 14A of the IT Act, 1961	-	-	-	-	-
9.	Addition on account of Rate Difference	-	-	-	-	-
10.	Addition on account of Rate Difference	1,84,50,000.00	1,61,27,545.00	2,42,44,168.00	7,03,43,456.00	3,54,13,197.00

AMQ AGRO INDIA PVT. LTD.

YEAR-WISE GROUNDS/DETAILS OF ADDITIONS CHALLENGED BY AMQ AGRO INDIA PVT LTD. BEFORE HONBLE ITAT IN APPEAL FILED FOR AY 2008-09 TO 2014-15

S. No.	PARTICULARS OF INCOME	AY 2008-09 (ITA No.4287/Del/18)	AY2009-10 (ITA No. 4288/Del/18)	AY 2011-12 (ITA No. 4289/D/18)	AY 2011-12 (ITA No. 1499/D/18)	AY 2012-13 (ITA No. 4290/D/18)
1.	Addition on account of purchases made during the year.	23,53,53,913.00	19,14,20,864.00	28,21,46,148.00	74,18,25,388.00	34,67,78,496.00
2.	Addition on account of under-invoicing of export sales	2,56,52,430.00	2,72,51,370.00	2,50,95,420.00	4,06,29,600.00	3,72,00,870.00

3.	Protective addition on account of cash received in OMASUM DELHI Account.	8,95,00,000.00	17,73,84,049.00	28,68,36,793.00	55,95,50,573.00	13,21,11,994.00
4.	Addition on account of outstanding sundry creditors.	1,29,77,985.00	8,46,909.00	11,13,865.00	1,65,70,800.00	5,62,05,556.00
5.	Addition on account of disallowance of deduction u/s 10B	3,63,42,299.00	2,96,52,421.00	-	-	-
6.	Addition on account of TDS not deducted	-	3,19,022.00	-	2,61,370.00	-
7.	Addition on Account of expenditure through credit cards.	21,27,829.00	21,27,829.00	6,96,307.00	5,49,662.00	22,49,066.00
8.	Addition on account of other expenses	23,66,967.00	3,48,380.00	16,582.00	2,65,804.00	39,42,914.00
9.	Addition on account of Salary expenses	18,64,000.00	20,87,400.00	17,50,800.00	27,00,000.00	21,00,000.00
10.	Addition on account of Rent expenses.	3,64,000.00	3,46,500.00	3,78,000.00	2,83,500.00	3,46,500.00
11.	Addition on account of interest free advances	33,02,400	31,34,297.00	33,91,117.00	-	-
12.	Addition of charity & donation	1,00,000.00	-	-	-	-
13.	Addition on account of applicability of provisions of section 2(22)(e)	-	1,36,78,517.00	6,00,000.00	65,00,000.00	10,00,000.00
14.	Addition on account of unexplained investment in shares	-	-	-	2,70,00,000.00	-
15.	Addition on account of disallowance u/s 14A					2,62,721.00
16.	Addition on account of unexplained investment u/s 69A of the IT					

	Act					
17.	Addition on account of sales of investment					
18.	TOTAL				1,39,61,36,697	58,21,98,117

33. So far as the deletions of additions made by the CIT(A) on account of purchases made during the respective assessment years holding them to be bogus by the AO is concerned, the Id. Counsel submitted that these additions by the AO on account of bogus purchases from A.Y. 2008-09 to 2012-13 are not related to any seized material found during the course of search action. Referring to the provisions of section 153A, he submitted that the assessment u/s 153A is specialised proceeding for the purpose of assessing the normal income of the assessee along with any undisclosed income pursuant to the search action. He submitted that the normal income already assessed cannot be disturbed in the absence of any incriminating material found during the search. For the above proposition, he relied on the decision of the Honøble Delhi High Court in the case of *CIT vs. Kabul Chawla*, 61 taxmann.com 412 wherein it has been held that completed assessment can be interfered by the AO while making assessment u/s 153A only on some incriminating material that was unearthed during the course of search which was not produced or not already disclosed or not made in the case of the original assessment. He submitted that the Honøble Delhi High Court while holding so has distinguished its earlier decision in the case of *CIT vs. Chetan Das Laxman Das*, 211 taxmann.com 61 and *Filatex India Ltd. vs. CIT*, 229 taxmann.com 555. Merely because the Department has not accepted the decision

of the Delhi High Court in the case of Kabul Chawla and an appeal is pending before the Honøble Supreme Court, the same would not be a ground to take a contrary decision than the view taken by the Honøble Delhi High Court. He accordingly submitted that since the decision of the CIT(A) is based on the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra), therefore, the same being in accordance with law should be upheld and the ground raised by the Revenue on this issue should be dismissed.

34. So far as the deletion of addition on account of under invoicing of export sales is concerned, the Id. Counsel for the assessee submitted that the addition made by the AO on account of under invoicing of export sales from A.Ys 2008-09 and 2010-11 to 2012-13 are not related to any seized material found during the course of search action. He submitted that the addition made by the AO on the ground that the assessee is engaged in under-invoicing of export sales is highly illogical, arbitrary and wrong assumption of fact on the basis of e-mail conversation in which there is nothing to suggest that the assessee company is engaged in under-invoicing of export sales. While making such addition, the AO has completely ignored the submissions made by the assessee, vide letter dated 3.11.2016 in which it has been elaborately explained that the alleged two page e-mail conversation on which the entire addition is based are parts of two different conversations and cannot be read as a single conversation. The first page of e-mail conversation in which request has been made to Mr. Lucky Yuan, a trade associate

of the assessee company for making payment against the supply of Omasum is not the part of the second part of e-mail conversation in which the bank account details of Cabinet Louis Deniot and Abdul Majeed Qureshi has been made. Without contradicting the factual position explained above, it was submitted that the addition made by the AO on the basis of alleged seized documents is also not sustainable as the alleged e-mail conversation on the basis of the addition has been made in respect of assessment years is not pertaining to the present assessment year. He submitted that during the post search enquiry, the directors of the assessee company were confronted with the alleged e-mail correspondence and it was directed to explain the same. In response to the same, the assessee company vide its reply dated 01.10.2014 had elaborately replied this fact of the e-mail correspondence done by the assessee company with Mr. Lucky Yuan along with other supporting documents. He submitted that the AO, on the one hand, in the same assessment order has made addition on account of bogus purchases by alleging that the average purchase cost of the assessee company is much higher than the average export price of buffalo meat and on the other hand, in the same assessment order, while making the alleged addition is claiming that the assessee company is indulged in under-invoicing of export sales which are self-contrary, therefore, deserves to be deleted. He submitted that the product in which the assessee is dealing is not a mechanical product in which the quality and size of the product remains the same at all the time. The product in which the assessee is dealing is an animal husbandry product, namely omasum which is part of buffalo

offal, the size and quantity of which varies from animal to animal and, therefore, there can be a different price at every stage of the product sale depending upon the size and quantity of the final product and which can only be ascertained at the time of sale of that particular consignment to the buyer. Different rates may be charged from different buyers depending upon the relationship with each individual buyer, volume of business done with the buyer, prospects of product order in future, etc. Therefore, the contention of the AO that different rates have been charged by the assessee from different suppliers on same day or nearby date is arbitrary, illegal and not based on the facts and circumstances of the present case and the peculiar nature of the business of the assessee company.

35. So far as the addition made on account of outstanding sundry creditors is concerned, he, relying on the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra) submitted that the CIT(A) was fully justified in deleting the addition. So far as the deletion of various other additions made by the CIT(A) is concerned, he submitted that in view of the decision of the Honøble Delhi High Court in the case of Kabul Chawla, the CIT(A) was fully justified in deleting the addition.

36. So far as the addition sustained by the CIT(A) is concerned, the Id. Counsel for the assessee strongly challenged the same. So far as the addition of Rs.5,66,01,452/- made by the AO and sustained by the CIT(A) is concerned, he submitted that there is no basis for addition of Rs.8.95 crore as made by the AO.

He submitted that the transaction related to cash payment to Mohd. Shahnawaz for making purchases and in turn domestic sales made by him are intrinsically related to each other. The search operation did not take into account the entire amount of undisclosed sales as the figures of undisclosed sale was Rs.38.98 crores whereas the figures of cash paid for purchase was Rs.143.52 crores. However, the fact remains that both these transactions are co-related to each other inasmuch as payment of cash resulted in making of purchases outside the books of account and, thereafter, sale of all the purchase was made outside the books of account giving rise to undisclosed sales which yielded utilization of cash which cash was again routed for making subsequent cash purchases. He submitted that there are a series of transactions taking place for a particular financial year whereby first the cash is given, goods are purchased and, thereafter, goods are sold and, in turn, cash is returned. The same cycle then sets repeated over and over, again and again. Therefore, under no circumstances, the entire amount of cash of Rs.143.53 crore can be added as it is the cash which is getting circulated year after year taking into consideration the entire block period. Relying on various decisions, he submitted that in such circumstances, it is the peak balance only which has to be taxed and not the entire cash payment. He submitted that the AO has wrongly added the entire undisclosed sales as income by holding that purchases are recorded in the regular books of account. However, contrary to the same, it is stated by him at a number of places in the assessment order that the assessee was engaged in the activity of making undisclosed purchases through Md. Shahnawaz. The Id.

Counsel drew the attention of the Bench to the following instances in the assessment order:-

Page 47 of Asst Order

"Further the above chart shows cash money to the tune of Rs.146.66 crores have been received by Mohd. Shahnawaz during the period FY 2007-08 to FY 2013-14, which Mohd shahnawaz stated to have receive from either you I.e Moin Akhtar Qureshi, Prop. Abdul Majeed qureshi or from M/s AMQ Agro Pvt Ltd and has been utilized by him for making purchase of Omasum Slaughter meat for both the concerns."

Page 54 of Asst order

"Thus it is dear that although M/s AMQ Agro India pvt ltd was purchasing animal byproducts from different suppliers through Mohd Shahnawaz but instead of integrating books of OMASUM DELHI with its own regular books of accounts maintained at Rampur, the group was indulging in out of books purchases by utilizing cash that was generated over a period of time through unaccounted sources by Moin Akhtar Qureshi"

Page 52 of Asst order

"9. B Details of cash given to Mohd Shahnawz for unaccounted purchases"
Page 54 of Asst order "Thus while Mohd Shahnawaz was engaged by the group for making purchases, there would have been no difficulty in recording so in the books of accounts, if the withdrawals for purchases had been only from meat business."

Page 54 of the Asst order

"Thus it is dear that although the group was purchasing animal by products from different suppliers through Mohd. Shahnawz but instead of integrating books of OMASUM DELHI with own regular books of accounts maintained at Rampur, the group was indulging in out of books purchase by utilizing cash that was generated over a period of time through unaccounted sources."

Page 55 of the Asst order

Please state whether the above cash payment to Mohd. Shah Nawaz are reflected in the books of accounts of afore mentioned proprietorship concern and company. If above payments are not accounted for in the books of accounts of M/s Abdul Majeed Qureshi and M/s AMQ Agro Pvt Ltd then why these should not be treated as unexplained cash purchase made by these two

concerns. Further, how these cash purchase are going to be segregated to the between the concern/ company."

37. He submitted that the Id.CIT(A) has overlooked the above reproduced contents of the assessment order and recorded an incorrect finding in the appellate order that the assessee failed to establish that there were any additional purchases outside the books of account against the undisclosed sales which is factually incorrect. He submitted that the entire amount of sale of Rs.38.98 crores (for the impugned assessment year Rs.5.66 crore) cannot be brought to tax. It is only the profit embedded which is the undisclosed income. The AO as well as the CIT(A) have contended that the entire sales is to be added since the purchases are recorded in the regular books of account. However, such contention is wholly unjustified and misplaced in view of the following:-

- a) No interference has been carried out by the AO in the declared results in the audited P&L Account.
- b) If the undisclosed sales are assumed to have been made out of purchases recorded in regular books of accounts then what is the source of regular sales recorded in books of accounts;
- c) Without prejudice to the above, even if the undisclosed sales are assumed to have emanated out of purchase recorded in regular books of accounts only the profit elements can be said to be the income of the assessee and under no circumstances the entire sales can be added.

38. For the proposition that entire unaccounted sales cannot be added to income but only the net profit, the Id. Counsel for the assessee relied on the following decisions:-

- (i) CIT v. President Industries 124Taxman.com 654;
- (ii) CIT v. Sameer Synthetics Mill 362 ITR 410;
- (iii) CIT v. Leo Formulation Pvt. Ltd. 48 Taxmann.com 328;
- (iv) CIT v. Bahubali Neminath Muttin 72 Taxmann.com 139
- (v) CIT v. Aggarwal Engg. Co. (Jal) 156 Taxmann.40.

39. So far as the observation of the CIT(A) that the assessee did not produce any material in support of its contention that undisclosed income of Rs.1.85 crore voluntarily declared in the return filed in response to section 153A notice is concerned, the Id. Counsel for the assessee submitted that in para 17 of its written submissions, it was clearly submitted that corresponding credit in respect of income already declared in the return should be allowed otherwise it would lead to double taxation of the same income. Copies of original return and return in response to 153A notice were filed before the CIT(A) which substantiates the fact that additional income of Rs.1.85 crore was declared from the undisclosed sale purchase activity.

40. So far as the contention of the Id.CIT-DR that the addition on account of bogus purchase are based on incriminating documents found during the course of search and for which she has produced a bunch of papers alleged to be

incriminating documents on the basis of which it was argued that the assessee had made various purchases, the Id. Counsel for the assessee submitted that the assessment order for the relevant assessment year does not speak about any incriminating documents on the basis of which the alleged addition on account of bogus purchase has been made. In the assessment order, the additions have been simply made on the ground that during the course of assessment and special audit exercises, the assessee was found indulging in large amount of cash purchases for which no documents/evidences have been produced either during the assessment proceedings or to the special auditors. The AO has prepared a chart for each assessment year containing the total purchases made by the assessee, purchases for which invoices are not made available and purchases out of that for which invoices are not available and payment is made in cash. There is no mention that any incriminating material/evidence to show that the purchases booked in the books of account are bogus except the books of accounts found to be maintained in the name of :-OMASUM DELHIØ during the course of search at Delhi in the premises of Mohd. Shahnawaz. He submitted that during the period the assessee has made both cash purchases and credit purchases. For credit purchases the assessee is maintaining all invoices, ledger accounts, bank statements, however, in respect of cash purchases the assessee is maintaining a purchase register containing the name of the supplier, address of the supplier, ledger account containing the particulars of purchases and payments made. So far as the bunch of papers produced by the CIT-DR before the Bench and alleged to be incriminating documents found during the

course of search in relation to bogus purchases are concerned, the Id. Counsel submitted that these documents pertained to the undisclosed sales/purchase activities of meat outside the books of account. He submitted that substantial addition on account of such undisclosed activity has been separately made in the assessment order under the nomenclature ó Domestic sales and cash payments made for purchases on the basis of entries found recorded in books of accounts found to be maintained in the name of õOMASUM DELHIö by the AO for A.Y. 2008-09 to 2012-13. He submitted that there exist incriminating material for undisclosed sale/purchase activity outside books of account for which separate additions have been made in the assessment order. The assessee is also contesting the quantum of such addition in its appeal before the Tribunal on the ground that the entire sale and purchase cannot be simultaneously added and the quantum of addition has to be restricted to the profit earned from such activity carried on outside the books of account. In addition to the same an altogether separate addition has been made by the AO by disallowing part of the purchases as bogus by holding that substantiating evidence in the form of bills and vouchers and invoices was not produced. There is no incriminating material found/seized for forming basis for such addition. Since the CIT(A) has deleted the addition for A.Y. 2008-09 to 2012-13 by holding that in the absence of any incriminating material no addition can be made for these assessment years which were non-abated years, therefore, there is no merit in altogether new argument now being made by the CIT-DR that bunch of papers produced during the course of hearing

are incriminating documents in relation to the bogus purchases made by the assessee. He accordingly submitted that the arguments advanced by the Id.CIT-DR that the addition is based on incriminating documents is not in accordance with the law.

41. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both the sides. We find, the assessee, in the instant case, is mainly engaged in the business of export of buffalo meat products called Omasum and offal primarily to China, Hong Kong and Vietnam. The assessee was claiming 100% deduction u/s 10A of the IT Act, 1961 being 100% export oriented unit. During the impugned assessment year, it filed its return of income declaring nil income after claiming deduction of Rs.3,63,42,299/- u/s 10A of the IT Act, 1961. A search and seizure action u/s 132(1) of the IT Act was conducted on 15th February, 2014 in the case of AMQ group of cases at various residential and business premises of the group during which the assessee's case was also covered. The AO issued notice u/s 153A of the Act on 14th October, 2014. The assessee had filed an application before the Income-tax Settlement Commission u/s 245C(1) of the Act for A.Y.s 2008-09 to 2014-15 on 5th December, 2014 which was rejected on 18th December, 2014 by the Hon'ble Settlement Commission by a combine order passed u/s 245D(1) of the Act. The assessee, again, filed application u/s 245C(1) on 26th

December, 2014 which was again rejected by the Settlement Commission on 3rd March, 2016 in a combined order passed u/s 245D(4) of the Act, 1961. The reason for such rejection was that the disclosure was not true and full and the assessee has not explained the manner in which it has derived the income. Subsequently, the assessee filed its return of income in response to notice u/s 153A on 18th June, 2016 offering additional income of Rs.1,85,00,000/- which was offered before the Settlement Commission by filing application u/s 245C(1) of the Act stating that this income was earned from the business of meat.

42. Since there was complexity in accounts due to volume and multiplicity of transactions and specialized nature of business which created doubt towards the correctness and truthfulness of accounts and financial results declared by the assessee, the AO, after obtaining approval of the PCIT, directed the assessee to get its accounts audited from the special auditor. After the special auditor's report was received, the AO examined the facts of the case in the light of the findings given by the auditors and questionnaire was issued to the assessee. After considering the submissions of the assessee, the AO completed the assessment determining the total income of the assessee at Rs.48,52,30,200/- as against Rs.1,84,50,000/- declared by the assessee in the return filed in response to notice u/s 153A wherein he made various additions, the details of which are as under:-

		(Amount in Rs.)
i)	Bogus purchase	23,53,53,913/-
ii)	Under-invoicing of export sales	2,56,52,430/-

iii)	Undisclosed domestic sales	5,66,01,452/-
iv)	Cash received in Omasum-Delhi account	8,95,00,000/-
v)	Outstanding creditors	1,29,77,985/-
vi)	Disallowance of deduction claimed u/s 10B	3,63,42,299/-
vii)	Disallowance of expenditure through credit cards and foreign travelling	21,27,829/-
viii)	Other expenses disallowed	23,66,967/-
ix)	Salary disallowed	18,64,000/-
x)	Rent disallowed	3,64,000/-
xi)	Addition on account of notional interest on interest free advances	33,02,400/-
xii)	Charity/donation disallowed	1,00,000/-
xiii)	Addition on account of deemed dividend u/s 2(22)(e)	2,26,923/-

43. The submission of the assessee that no addition can be made in absence of any incriminating material found during the course of search in case of a completed assessment in view of the decision of the Honøble Delhi High Court in the case of CIT vs. Kabul Chawla, 61 taxmann.com 412 was rejected by the AO on the ground that the same was not as per the provisions of 153A and further, the Department has not accepted the said decision and has challenged the same before the Honøble Supreme Court and the decision is still awaited.

44. We find, in appeal, the Id.CIT(A) sustained the addition made by the AO on account of undisclosed domestic sales at Rs.5,66,01,452/- and protective addition on account of cash received in òOMASUM-DELHIö account at Rs.895 lakhs. He also did not give set off of Rs.1,85,00,000/- offered by the assessee in the return filed u/s 153A as additional income from meat business. He, however, deleted the rest of the additions made by the AO on the ground that none of the additions have been made by the AO on the basis of any incriminating

material/evidence found during the search proceedings and, therefore, the decision of the Honøble Delhi High Court in the case of CIT vs. Kabul Chawla (supra) is applicable since the assessment year concerned is a completed assessment.

45. All grounds raised by the Revenue relate to the order of the CIT(A) in deleting the additions as per para 39 except Sl.No.3 and 4 by relying on the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra) wherein it is held that additions cannot be made in an order passed u/s 153A in absence of any incriminating material/evidence found during the course of search in a completed assessment. We do not find any infirmity in the order of the CIT(A) in deleting the above additions for A.Y. 2008-09 to 2011-12. It is an admitted fact that the search took place on 15th February, 2014 and on that date the assessments for 2008-09 to 2011-12 were completed. The additions which are deleted by the Id.CIT(A) are not based on any incriminating material/evidence found during the course of search. At the time of hearing, the Id.CIT-DR heavily argued that the addition made by the AO on account of bogus purchases are based on incriminating material found during the course of search. The addition on account of under invoicing was also made on the basis of the e-mail conversation between the assessee company and Mr. Lucky Yuan, a trade associate of the assessee company. Therefore, the Id.CIT(A) was not justified in deleting the addition in absence of any incriminating material found during the course of search.

46. So far as the argument of the ld.CIT-DR that the addition made on account of bogus purchases are based on incriminating documents found during the course of search is concerned, we find from the assessment order that the addition was made by the AO not on account of any incriminating material found during the course of search, but, on account of non-availability of supporting vouchers for purchases recorded in the books of account, payments made in cash for such purchase where each payment is less than Rs.20,000/-, non-maintenance of quantitative records for purchases, rate of purchases shown in the books appears to be on the higher side and that the parties are not identifiable, etc. The AO has prepared the chart for each assessment year containing the total purchases made by the assessee, purchases for which invoices are not available and payments made in cash, the details of which are already given in the preceding paragraph at para No.5 of this order. There is absolutely no mention of any incriminating material/evidence to show that the purchases booked in the books of account are bogus except the books of account found to be maintained in the name of 'OMASUM-DELHI' during the course of search operation at the premises of Mohd. Shahnawaz, 5618, Second Floor, Bast Harphool Singh, Above MCD School, Sadder Bazar, Delhi-110006 for which separate addition has been made by the AO on account of sales outside the books of account under the nomenclature 'Domestic Sale and Cash payment in the name of 'OMASUM-DELHI'.

47. We, therefore, do not find any merit in the argument of the ld. CIT-DR that the addition on account bogus purchases are based on any incriminating material/evidence found during the course of search.

48. Now, coming to the addition on account of under-invoicing of export sales, it is the argument of the ld. CIT-DR that the same is based on the e-mail between the assessee company and the Mr. Lucky Yuan, a trade associate of the assessee company according to which an amount of 1 lakh USD has been paid abroad for payment against supply of Omasum container to be dispatched from Rampur Factory in the next week. A perusal of the said e-mail shows that it is dated 20th March, 2009 which pertains to A.Y. 2009-10 and, therefore, the ratio of the decision in the case of Kabul Chawla (supra) is squarely applicable for A.Y. 2008-09, 2010-11 and 2011-12. We, therefore, hold that no addition can be made for these years. So far as the A.Y. 2009-10 is concerned, a perusal of the assessment order shows that the addition is basically made on account of difference in rates of sales which resulted under-invoicing. We find, the ld.CIT(A) while deleting the addition by relying on the decision in the case of Kabul Chawla (supra) has also decided the issue on merit. He has observed that an e-mail cannot lead to the conclusion that the assessee is engaged in the under-invoicing of export sales or hawala transactions. According to the ld.CIT(A), it is only a presumption drawn by the AO, but, there is no evidence on record to show that the difference in the rates of sales resulted in under-invoicing. Further, the ld.CIT-DR could not

controvert the findings of the Id.CIT(A) that the AO failed to co-relate the amount generated through under-invoicing of sales, if any and sending it abroad to be deposited in the bank accounts of the two entities or making payment to various parties as alleged. Further, the assessee has also explained satisfactorily that there can be various reasons for difference in the rates of goods exported such as size and quality of items, volume of transactions and relationship with buyers, etc. The relevant observation of the CIT(A) has already been reproduced in the preceding paragraph. In view of the above and in absence of any incriminating material found during the course of search on account of under-invoicing of export sales, the Id.CIT(A) in our opinion, was fully justified in deleting the additions.

49. So far as the addition on account of sundry creditors, ad-hoc disallowance of expenses on account of salary, rent, other expenses, expenditure through credit cards, additions on account of notional interest on interest free advances, disallowance of charity and donation, addition on account of deemed dividend u/s 2(22)(e) and disallowance of deduction claimed u/s 10B are concerned, we find the same are not based on any incriminating material/evidence found during the course of search but are based on entries already recorded in the books of account and on the basis of post search enquiries. Therefore, the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra) is squarely applicable on this issue and, therefore, there is no infirmity in the order of the CIT(A) in deleting the additions.

50. Similarly, the addition on account of unexplained investment in shares of Rs.2,70,00,000/- for A.Y. 2011-12 is also not based on any incriminating material, but, based on the details from the balance sheet filed by the assessee along with the return of income. According to the AO, the assessee failed to explain the source of investment in shares of M/s All Faheem Meatex Pvt. Ltd. during the assessment proceedings. Therefore, we do not find any infirmity in the order of the Id.CIT(A) in deleting the above addition made by the AO for A.Y. 2011-12 in absence of any incriminating material found during the course of search.

51. So far as the various decisions relied on by the Id.CIT-DR are concerned, we find all these decisions are distinguishable and not applicable to the facts of the present case in view of the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra). Merely because the Revenue has not accepted the said decision and has filed an appeal before the Honøble Supreme Court, the decision on which is awaited, cannot be a ground to take a contrary decision. In view of the above discussion, the grounds raised by the Revenue for A.Y. 2008-09 to 2011-12 are dismissed.

52. However, so far as A.Y. 2012-13 is concerned, the assessment proceedings for the said year were abated as notice u/s 143(2) was issued on 23rd September, 2013. The assessment proceedings were not completed on the date of search i.e., on 15th February, 2014. We, therefore, find merit in the arguments advanced by the Id.CIT-DR that the ratio of decision of the Honøble Delhi High Court in the

case of Kabul Chawla (supra) is not applicable for A.Y. 2012-13. However, since the Id.CIT(A) has deleted the additions made by the AO by relying on the decision of the Honøble Delhi High Court in the case of Kabul Chawla (supra) and has not decided the issues on merit, therefore, we deem it proper to restore the issue to the file of the Id.CIT(A) for deciding the issues on merit. Needless to say, the Id.CIT(A) shall give adequate opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the Revenue for A.Y. 2012-13 are accordingly allowed for statistical purposes.

53. So far as the grounds raised by the assessee are concerned, the assessee has basically challenged the addition on account of undisclosed domestic sales, protective addition on account of cash received in OMASUM-DELHI account and not giving set off of the additional income on account of the profit declared in 153A return. For A.Y. 2010-11, the assessee has taken another ground challenging the addition on account of TDS not deducted.

54. So far as the addition on account of undisclosed domestic sales and protective addition on account of cash received in OMASUM-DELHI account is concerned, we find, during the course of search, certain documents were found and seized inventorised as Annexure A-1 to A-45/Party D-11. The said seized material along with daily backed up data found to be maintained in Tally software was referred as OMASUM-DELHI account. On the basis of the seized material, the

AO made additions by holding undisclosed domestic sales and unexplained cash payments, the details of which are as under:-

(Amount in Rs.)

Assessment Year	Undisclosed domestic sales added in the hands of AMQ Agro India Pvt. Ltd.	Undisclosed domestic sales added in the hands of Moin Akhtar Qureshi	Protective addition on account of cash received in Omasum Delhi A/c in AMQ Agro and substantive addition in the hands of Moin Akhtar Qureshi
2008-09	5,66,01,452	2,42,57,765	8,95,00,000
2009-10	3,71,84,257	4,54,47,425	17,73,84,049
2010-11	4,65,90,949	8,28,28,354	28,68,36,793
2011-12	5,20,70,899	1,38,41,631	55,95,50,573
2012-13	1,32,76,893	19,83,904	13,21,11,994
2013-14	96,73,948	25,71,556	13,98,33,256
2014-15	31,69,863	3,91,781	5,00,53,067
Total	21,85,68,261	17,13,22,416	143,52,69,732

55. The grand total of the alleged undisclosed domestic sales in the hands of AMQ Agro Pvt. Ltd. of Rs. 21,85,68,261/- and alleged undisclosed domestic sales in the hands of Moin Akhtar Qureshi of Rs.17,13,22,416/- comes to Rs.38,98,90,677/-. The said gross amount of undisclosed domestic sales has been apportioned between AMQ Agro India Pvt. Ltd. and Moin Akhtar Qureshi on the basis of their respective turnover for the relevant assessment year. On the basis of the data tabulated above, addition of Rs.5,66,01,452/- has been made in the assessment order holding undisclosed sales. So far as the cash received on

OMASUM account aggregating to Rs.143.52 crores, the entire amount was protectively added in the hands of AMQ Agro India Pvt. Ltd. and substantively in the hands of Moin Akhtar Qureshi. For the A.Y. 2008-09, addition of Rs.8.95 crore has been made holding undisclosed cash payment for OMASUM account protectively in the hands of the assessee, i.e., AMQ Agro India (P) Ltd. and substantively in the hands of Moin Akhtar Qureshi for A.Y. 2008-09.

56. We find, in appeal, the Id.CIT(A) sustained both the additions, the reasons for which has already been reproduced in the preceding paragraphs. We find, the Id.CIT(A) confirmed the addition of Rs.5.66 crores by holding that the assessee failed to establish that there were any additional purchases outside the books of account against undisclosed sales. According to him, by simply submitting that undisclosed profit was declared before the Income-tax Settlement Commission and, therefore, only peak amount should be added does not explain the source of undisclosed sales. He accordingly, upheld the action of the AO in making the addition on account of undisclosed domestic sales.

57. So far as protective addition of Rs.8.95 crore is concerned, the Id.CIT(A) held that the AO has made corresponding addition on substantive basis in the hands of Moin Akhtar Qureshi and, therefore, the addition made on protective basis in the hands of the assessee was deleted subject to the decision of the appellate authority in the case of Moin Akhtar Qureshi. So far as the argument of the assessee that the additional income of Rs.1.85 crore voluntarily disclosed

before the Income-tax Settlement Commission and unclaimed in the return filed in response to section 153A should be reduced from the final undisclosed income was rejected by the CIT(A) on the ground that nothing was submitted in its support during the appellate proceedings.

58. It is the submission of the Id. Counsel for the assessee that no basis for computing the addition of Rs.5.66 crore and Rs.8.79 crore was provided by the AO and, therefore, the addition made by the AO and sustained by the CIT(A) is not correct. It is his submission that the transactions related to cash payment to Md. Shahnawaz for making purchase and in turn domestic sales made by him are intrinsically related to each other. According to him, the search operation did not detect the entire amount of undisclosed sales as the figures of undisclosed sales i.e., Rs.38.98 crore whereas the figures of cash paid for purchase is Rs.143.52 crore. According to him, both the transactions are co-related to each other inasmuch as payment of cash resulted in making of purchases outside the books of account and, thereafter, sale of cash purchases was made outside books of account giving rise to undisclosed sales. It is also his submission that the entire amount of sales of Rs.38.98 crore (for the assessment year under appeal ó Rs.5.66 crore) cannot be brought to tax as it is only the net profit embedded in it which is the undisclosed income. For the proposition that the entire unaccounted sales cannot be added to income, but, only the net profit is to be added, the Id. Counsel for the

assessee relied on various decisions which have been reproduced earlier in this order.

59. We find some force in the above argument of the ld. Counsel for the assessee. In our opinion, the AO has grossly erred in adding the entire undisclosed sales as income of the assessee by holding that purchases are recorded in the regular books of account. However, contrary to the same, it is stated at number of places in the assessment order that the assessee was engaged in the activity of making undisclosed purchases, through Shri Mohd. Shahnawas. These instances from the assessment order are again being reproduced for the sake of clarity:-

oPage 47 of Asst Order

"Further the above chart shows cash money to the tune of Rs.146.66 crores have been received by Mohd. Shahnawaz during the period FY 2007-08 to FY 2013-14, which Mohd shahnawaz stated to have receive from either you I.e Moin Akhtar Qureshi, Prop. Abdul Majeed qureshi or from M/s AMQ Agro Pvt Ltd and has been utilized by him for making purchase of Omasum Slaughter meat for both the concerns."

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"Thus it is dear that although M/s AMQ Agro India pvt ltd was purchasing animal byproducts from different suppliers through Mohd Shahnawaz but instead of integrating books of OMASUM DELHI with its own regular books of accounts maintained at Rampur, the group was indulging in out of books purchases by utilizing cash that was generated over a period of time through unaccounted sources by Moin Akhtar Qureshi"

Page 52 of Asst order

"9. B Details of cash given to Mohd Shahnawz for unaccounted purchases"
Page 54 of Asst order "Thus while Mohd Shahnawaz was engaged by the group for making purchases, there would have been no difficulty in recording so in the books of accounts, if the withdrawals for purchases had been only from meat business."

Page 54 of the Asst order

"Thus it is dear that although the group was purchasing animal by products from different suppliers through Mohd. Shahnawz but instead of integrating books of OMASUM DELHI with own regular books of accounts maintained at Rampur, the group was indulging in out of books purchase by utilizing cash that was generated over a period of time through unaccounted sources."

Page 55 of the Asst order

Please state whether the above cash payment to Mohd. Shah Nawaz are reflected in the books of accounts of afore mentioned proprietorship concern and company. If above payments are not accounted for in the books of accounts of M/s Abdul Majeed Qureshi and M/s AMQ Agro Pvt Ltd then why these should not be treated as unexplained cash purchase made by these two concerns. Further, how these cash purchase are going to be segregated to the between the concern/ company."

60. We find, the Id.CIT(A) has overlooked the above contents of the assessment order and recorded an incorrect finding that the assessee failed to establish that there were any additional purchases outside the books of account against the undisclosed sales.

61. Under these circumstances and from the various arguments made by both the sides, we are of the opinion that the following issues need to be decided i.e.,

- a) In a case where undisclosed sales outside books of account has been detected, whether the entire sales can be added as income or only the net profit can be brought to tax which is emanating out of such unaccounted sales,

- b) In a case where evidence/material has been found indicating undisclosed sales outside books of account and cash payments for making purchases outside books of account, whether separate additions are called for or the net profit emanating out of such undisclosed sales/purchase activity is to brought to tax.
- c) In a case where additional income on account of profit from undisclosed sales/purchase activity has already been offered to tax in the return filed in response to notice u/s 153A, whether the credit for such income has to be provided against undisclosed income computed from the activity of undisclosed sales/purchase outside books of account.

62. A perusal of the orders of the authorities below show that the search operation did not detect the entire amount of undisclosed sales since the figures of the undisclosed sales mentioned in the assessment order is Rs.38.98 crores whereas the figures of cash paid for purchase is Rs.143.52 crores for the entire block period for A.Y. 2008-09 to 2014-15.

63. We find merit in the argument of the Id. Counsel that the transaction related to cash payments to Mohd. Shahnawaz for making purchases and in turn domestic sales made by him outside the regular books of account are correlated to each other. Both these transactions are correlated to each other inasmuch as payment of cash resulted in making of purchases outside the books of account and, thereafter, sale of goods purchased in cash was made outside the books of account giving rise

to undisclosed sales which again yielded realization of cash which was again rotated for making subsequent cash purchases. Therefore, we are of the considered opinion that under no circumstances the entire amount of cash payments aggregating to Rs.143.53 crore can be added as it is the same cash which is getting circulated year after year during the course of entire block period. The various decisions relied on by the Id. Counsel for the assessee also support to the proposition that in such circumstances it is the peak balance only which are to be taxed and not the entire cash payment.

64. We also find some merit in the argument of the Id. Counsel for the assessee that the entire amount of sales aggregating to Rs.38.98 crore (for the year under appeal Rs.5.66 crore) cannot be brought to tax and only the net profit embedded in the same should be added as the undisclosed income of the assessee. It has been held in various decisions that even if undisclosed sales are assumed to have been emanated out of purchases recorded in the regular books of account, only the profit element can be considered to be the income of the assessee and under no circumstances the entire sales can be considered to be the income of the assessee. It has also been held in various decisions that in case where stock is found short during search operation only the GP is added on the presumption that such stock recorded in the books of account found short is presumed to have been sold outside books of account. The various decisions relied on by the Id. Counsel for the

assessee that the entire unaccounted sales cannot be added to the total income, but, only the net profit is to be added also support his case.

65. Therefore, we are of the considered opinion that the undisclosed income from the activity of domestic trading in meat products through Mohd. Shahnawaz by the AMQ Group including the assessee has to be computed in a consolidated manner by determining the profit from such undisclosed activity which would take care of the undisclosed sales as well as cash payments towards purchases. Under these circumstances, we deem it proper to restore the issue to the file of the AO for computing the undisclosed income from the activity of trading with the following specific directions:-

- i) In the present case, the undisclosed sales detected pursuant to the search action aggregates to Rs.38.93 crores as compared to undisclosed purchase aggregating to Rs.143.52 crores. Therefore, yearwise profit from undisclosed activity will be determined by the AO by applying the GP rate on the basis of the figure of the yearwise purchase rather than sales.
- ii) For working the net profit from undisclosed activity , the AO may take combined simple average of gross profit of all the years comprised in the block period (A.Y.s 2008-09 to 2014-15) as per audited balance sheet of the assessee for A.Y. 2008-09 to 2014-15. This would take care of any aberrations and distortions. The above

method of determination of profit from undisclosed trading in meat product, in our opinion, is fair and reasonable and would meet the ends of justice under the peculiar facts and circumstances of this case.

The average gross profit so determined shall be applied across all the assessment years to determine the profit from undisclosed activity.

Needless to say, the gross profit rate percentage will have to be appropriately modified upwardly to correspond the same to gross profit percentage on purchases.

- iii) The figure of purchases (Rs.143.52 crores in total) in respect of each assessment year will be apportioned between the assessee M/s AMQ Agro India Pvt. Ltd. and Moin Akhtar Qureshi in the same proportion as has been done in the assessment order in respect of undisclosed sales.
- iv) The amount of profit from undisclosed activity in meat trading determined in the above manner will be the undisclosed income of the assessee for each assessment year.
- v) The AO shall also determine the initial capital required for the undisclosed purchase in the first year i.e., A.Y. 2008-09 based on a working capital cycle of 15 days since the product is a perishable one. The above initial capital so computed by the AO shall be apportioned between the assessee i.e., AMQ Agro India (P) Ltd. and Moin Akhtar

Qureshi on the basis of their respective purchases and to be added to the income of the assessee as undisclosed investment.

66. Ground of appeal No.2 and 3 of the assessee's appeal are accordingly disposed in the terms indicated above and are treated as allowed for statistical purposes.

67. Before parting with this order, we may further mention that in the case of the assessee AMQ Agro India Pvt. Ltd., the addition on account of cash payments for purchases aggregating to Rs.143.57 crore has been made on protective basis and substantively the same has been added in the hands of the Moin Akhtar Qureshi. However, in the present case, the matter in dispute is not as to in which hands the addition is to be made, but, the dispute is with regard to correct determination of the undisclosed income from undisclosed activity of meat trading. By deciding the manner of computation of undisclosed income and its appropriation between the assessee and Moin Akhtar Qureshi, the issue regarding protective and substantive addition also gets resolved automatically.

68. So far as the non-set off of additional income on account of profit declared in 153A return is concerned, we find, the ld.CIT(A) rejected the ground raised before him by holding that nothing was submitted in support of the same during the appellate proceedings. According to him, it is difficult to understand why the disclosure made voluntarily and included by the assessee himself should be

reduced by the AO without any rhyme and reason. In our opinion, when addition has been made on the basis of sales outside the books of account and the assessee had declared additional income on that account in the return filed in response to notice u/s 153A, the same should be given set off from the undisclosed income computed by the AO. We, therefore, deem it proper to restore the issue to the file of the AO with a direction to grant appropriate relief to the assessee on the basis of such additional income declared in the return of income from undisclosed sales.

69. Since the entire profit from undisclosed activity has been brought to tax in AMQ Agro India Pvt. Ltd. and Moin Akhtar Qureshi, therefore, additional income declared in section 153 tax return of other entities such as Mrs. Nasreen Qureshi and Mohd. Shahnawaz was argued to be excluded from their income on the ground that it will amount to double taxation of the same. Since we are remitting the matter to the file of the AO for adjudication of the undisclosed income from meat business outside books and the appeals of above persons are not before us, the assessee may take up this matter before the AO at the time of the set aside proceedings. The AO shall ensure that there is no double addition of the amount of additional income declared in the hands of AMQ Agro and income declared in the 153 tax return of other entities stated above. Needless to say the AO shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds on this issue are accordingly allowed for statistical purposes.

70. So far as the addition of Rs.5,50,669/- on account of non-deduction of TDS for A.Y. 2010-11 is concerned, it is the grievance of the Id. Counsel that although a specific ground was taken before the CIT(A), however, he has not adjudicated the same. We find, the Id.CIT(A) at para 4 of his order at page 8, has reproduced the said ground as ground of appeal No.15 where the assessee has raised the following ground:-

õ15. That on the facts and circumstances of the case and in law, the AO was not justified in making an addition of Rs.5,50,669/- by disallowing the interest expenses paid on a car loan u/s 40(a)(ia) of the Income Tax Act.ö

71. However, a perusal of the order of the CIT(A) shows that he has not adjudicated this ground. We, therefore, deem it proper to restore this issue to the file of the CIT(A) for adjudication of the same. Needless to say, the Id.CIT(A) shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee is accordingly allowed for statistical purposes.

72. In the result, the appeals filed by the Revenue for A.Y. 2008-09 to 2011-12 are dismissed and appeal for A.Y. 2012-13 is allowed for statistical purposes. The appeals filed by the assessee for all years are allowed for statistical purposes.

The decision was pronounced in the open court on 29.05.2020.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 29th May, 2020

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi