

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**  
**AND**  
**SHRI AMARJIT SINH, ACCOUNTANT MEMBER**

**ITA No.50, 51, 52 and 53/Ahd/2018**

निर्धारण वर्ष/ Asstt.Year : 2009-10, 2010-11, 2011-12 and 2013-14

Ratnesh Metal Industries P.Ltd. C/o. Mehta Lodha & Co. Chartered Accountants 105, Sakar-I, Ashram Road Ahmedabad 380 009. PAN : AAACR 9219 H	vs.	DCIT, Cir.3(1)(2) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri P.D. Shah, AR
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 25/01/2021

घोषणा की तारीख /Date of Pronouncement: 07/04/2021

**आदेश/ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER**

The above four appeals are by the Assessee against separate orders of the ld.CIT(A)-8, Ahmedabad of even dated i.e. 25.10.2017 passed for the above four assessment years. Since the assessee is same, we proceed to dispose of appeals by a consolidated order.

2. First we take the appeal of the assessee for the Asstt.Year 2009-10. In this appeal, the assessee has raised the following two grounds:

*“i) That the reassessment proceedings is bad in law and therefore the order passed by the ld.AO be quashed and the returned income be accepted in toto.*

*ii) That he Id.CIT(A) has erred in law and facts by confirming the addition of GP of Rs.17,20,563/- and therefore the learned AO should be directed to delete the said addition.”*

3. As regards first ground regarding validity of reassessment proceedings, and additional issue raised by the assessee for not supplying of reasons for reopening of the assessment, the Id.counsel for the assessee submitted that for passing an order under section 147 recording of reasons under section 148 and communicating the same to the party concern is mandatory. The assessee is entitled to be supplied with the reasons in case he wants to challenge the validity of notice issued under section 148 of the Act. In the present case, the assessee was not given a copy of reasons recorded for reopening of the assessment. During the hearing on 25.1.2021, the Id. Sr. DR had expressed doubt about the veracity of assessee's contentions that the assessee has not provided copy of reasons for reopening of the assessment under section 147 of the Income Tax Act, 1961. During the course of appellate hearing before us both the Id. representatives asked for obtaining report from Assessing Officer as a counter verification regarding supplying of reasons for reopening of the assessment in this case. In this regard, Office of Addl. Commissioner of Income-Tax (Sr.DR)(ITAT)-1(1), Ahmedabad vide letter dated 11.02.2021 intimated that the department has supplied reasons for reopening of the assessment to the assessee and also enclosed copies of DCIT Circle 3(1)(2) letters dated 28/04/2015 issued to the assessee vide which reasons for reopening the cases supplied for all three years under appeals, and therefore, the contention of the assessee that the reassessment is bad in law in the absence of supply of reasons for reopening assessment, is factually incorrect.

4. After going through the contentions of the both the parties and material placed on record by the ld. Sr. DR showing proof of having sent copies of reasons for reassessment proceedings to the assessee, we are of the view that there is no merit in the contention of the assessee that reason for reopening was not furnished to him. Since it is evident from the material placed on record from the assessment record that assessee has been supplied reasons for reopening the assessment therefore the judicial pronouncements referred by the assessee of Hon'ble Court of Bombay in the case of CIT Vs. IDBI Ltd. vide Tax Appeal No. 494 of 20014 and decision of ITAT Pune vide ITA No. 492/Pune/2018 are distinguishable from the facts of the case of the assessee and not applicable to the case of the assessee.

In the light of the above circumstances, we do not find any justification of the contention of the assessee that no reasons for reopening of the assessment under section 147 was furnished to the assessee, and therefore, we reject this ground of appeal.

5. As regards second ground of appeal, brief facts of the case are that the assessee company is engaged in manufacturing and trading of hot-rolled steel, ingot, bright bar, fasteners etc. It has filed its return of income on 30.9.2009 declaring total income at Rs.1,34,40,680/-, which was processed under section 143(1) of the Act. An information has been gathered by the Department from DGCEI vide letter dated 24.11.2014 that goods worth Rs.1,77,37,760/- were delivered through M/s.Shakti Freight Carriers, Ahmedabad to various dealers secretly without any invoices during the financial year 2008-09. The assessee has not reflected the same and not offered the same to tax in its return

for Asstt.Year 2009-10. Therefore, the case of the assessee was reopened under section 148 and reason to reopen the case u/s.147 was recorded on 6.4.2015. Notice under section 148 was also issued and served to the assessee. Assessee requested the Department that the original return filed under section 139 be treated as return filed in response to the notice under section 148 of the Act. During the assessment proceedings, the AO noticed that the assessee has not reflected the value of the goods of Rs.1,77,37,360/- supplied through M/s.Shakti Freight and Carriers, Ahmedabad without invoices in its books of accounts. Accordingly, the AO issued a show cause notice dated 18.1.2016 proposing as to why unaccounted value of goods delivered through the above carriers should not be added to the income of the assessee. The assessee in its reply dated 29.2.2016 contended that there was a difference between the value of goods shown by the AO and the DGCEI, and that the actual amount worked out for the Asstt. Year 2009-10 would be only Rs.1,33,70,948/-. Even the figures mentioned by the DGCEI was not correct and could not be believed because dispute in this regard was pending before the appropriate authority; that there was a dispute between value of book-stock and the actual stock; Department has not found any shortage in stock of the company and wastes/process loss so as to treat the same as unaccounted income of the assessee. It was further submitted that goods purchased and the opening stock tallied with goods issued for the process of closing of raw material, WIP and furnished goods taken together, and therefore, there was no question of making addition to the income, as proposed by the AO. It was further contended that even if the AO wanted to consider the said sales as outside the book, then the assessee should be given credit for the purchase of goods,

which would compensate the sales and accordingly only gross profit percentage of the difference in the sales would be added and not the entire amount of stock as unaccounted income of the assessee company. It was ultimately contended that merely on the basis of the show cause notice of the DGCEI, no cognizance can be taken for making addition on account of alleged suppressed sales in the case of assessee. However, the AO did not accept these contentions of the assessee. He observed that the assessee has not disputed selling of the goods out of books, and the only dispute is with regard to quantum of sales without invoice. The Assessing Officer has also considered that for unrecorded sale there must be unrecorded purchases also. Since the details of unrecorded purchases was not provided, therefore, the AO has applied the GP rate of 19.02% shown by the assessee on the unrecorded sales of Rs.1,77,37,760/- and addition of Rs. 33,73,722/- was made to the total income of the assessee.

6. Aggrieved assessee preferred appeal before the 1st appellate authority. Before the 1st CIT(A) the assessee reiterated its submissions, the assessee has paid excise on the basis of stock valuation arrived by the DGCEI to buy peace, and the issue was challenged before the adjudicated authority. However, it was observed by the 1st CIT(A), the assessee has not supplied any finding of the adjudicating authority in the Excise department. The 1st CIT(A) has also recorded a finding that the AO has rectified the mistake of quantum of taking the gross profit @19.02% and has passed an order under section 154 by taking the gross profit at 9.70% instead of 19.02%, and this rectification order resulted into reduction in addition of Rs.17,20,563/- instead of Rs.33,73,722/- as made by the AO in the original assessment order.

The assessee has himself requested for taking GP at the rate of 9.70% instead of 19.02% and made an application under section 154 in this behalf, and the ld.AO has rectified the same. This is evident from the Grounds of appeal filed along with form no.35 filed before the ld.CIT(A). Therefore, the ld.CIT(A) confirmed the addition to the extent of Rs.17,20,563/- after considering the fact as referred above that assessee has himself requested for taking the G.P. purchase @ 9.70%. Still aggrieved, the assessee is now before the Tribunal.

7. Before us, the ld. counsel for the assessee reiterated the submissions as were made before the Revenue authorities, while, the ld. DR supported orders of the Revenue authorities.

8. We have considered rival submissions and gone through the record carefully. We find that during the appellate proceedings before the CIT(A), the assessee has been given as many as eleven opportunities starting from 12.09.2016 to 6.9.2017, but no compliance has been made on the part of the assessee for disposal of its appellate proceedings. Therefore, the ld. CIT(A) found no option but to dispose of the appeal after considering material available on records. The dispute before us is against addition of Rs.33,73,722/- on account of alleged quantum of sales without invoices based on the information supplied by the DGCEI. This addition was challenged before the ld. first appellate authority. The ld. first appellate authority, in his final conclusion recorded a finding that during the appellate proceedings the appellant has submitted that the AO has rectified the mistake of quantum by taking gross profit @19.02% and has passed a rectification order under section 154 of the Act by taking the gross

profit at 9.70%, and accordingly, this has resulted into a reduced addition of Rs.17,20,563/- and not Rs.33,73,722/- as made by the AO in his assessment framed under section 143(3)/147 of the Act. This means, the assessee himself has agreed in principle to the addition at the rate of 9.70% of GP. Even during the assessment proceedings, the assessee has not disputed or denied selling of products out of books of accounts without invoices. Therefore, we do not find any infirmity in the conclusion of the Id.CIT(A) to confirm the addition to the extent of 9.70% of GP to the income of the assessee on account of sales without invoice. Accordingly, his order is confirmed, and this ground of appeal is dismissed.

9. In the result, appeal for the assessment year 2009-10 is dismissed.

10. Now we take the appeal for the Asstt.Year 2010-11. The grounds in this appeal read as under:

1. *That the reassessment proceedings is bad in law and therefore the order passed by the learned AO is be quashed and the returned income be accepted in toto.*
2. *That the learned Commissioner of Income Tax(Appeals) has erred in law and facts by confirming addition of Gross Profit of Rs.50,15,649/-and therefore the learned AO should be directed to delete the addition.*
3. *That the learned Commissioner of Income Tax(Appeals) has erred in law and facts by confirming the addition of Rs.26,25,000/- and therefore the learned AO should be directed to delete the said addition while computing the total income.*
4. *That the appellant craves liberty to add, amend, alter and delete any grounds of appeal before the final hearing.*

11. As regards first ground challenging validity of reopening of the assessment is concerned, the issue is similar to the issue raised in Asstt. Year 2009-10 in ground no.1. We have dealt with the same hereinabove and rejected contentions of the assessee and dismissed the ground. Therefore, since facts and circumstances are similar in this appeal of the Asstt. Year 2010-11 as well, for the reasons discussed by us in the Asstt. Year 2009-10 (supra), we reject this ground no.1 of the appeal also.

12. Similarly, as regards addition on account of suppressed sales in the form of sales without invoices are concerned, the facts and circumstances in this year also similar to the asstt. Year 2009-10 except variation in the amount of quantum of addition. Therefore, for the reasons discussed in ground no.2 of the appeal for the Asstt. Year 2009-10, the present ground no.2 in the appeal for the Asstt. Year 2010-11 also stands dismissed.

13. Now we take ground no.3 of the assessee's appeal. In the ground no.3, the assessee is aggrieved by the action of the CIT(A) in confirming addition of Rs.26,25,000/-.

14. Brief facts of the case are that during the course of assessment proceedings, an information was received from the office of DCIT, Cent.Cir.1(4), Ahmedabad dated 16.10.2015 wherein it was mentioned that a search under section 132 of the Act was conducted in the case of M/s.Vitale Bio Science Ltd., Ahmedabad. Director of the company, Shri Lalit Kantilal Rathod in his statement stated that the company is in the business of providing accommodation entries where cash or cheques received and cash or cheques were paid to other

parties. He admitted that Shri Pratik Rameshchandra Shah (“PRS”) is the key person who looks after the affairs of company. The said “PRS” admitted that all the companies controlled by him are paper companies engaged in providing accommodation entries. According to the report received by the Dy. Commissioner, the assessee company has received a sum of Rs.26,25,000/- from M/s.Vitale Bio Science Ltd. during the year under consideration. The AO, vide show cause notice, proposed as to why the credit amount of Rs.26,25,000/- given by a bogus entity should not be added to the income of the assessee. In response it was submitted by the assessee that the said Vitale Bio Science Ltd. was a genuine company, and therefore, the credit given by the said company was not bogus. In order to justify the same, the assessee has filed copy of the share application form received from Vitale Bio Science Ltd., extract of the resolution of the lender, PANCARD of Vitale Bio Science Ltd. , copy of ITR for the Asstt.Year 2008-09 and copy of bank statement showing that payment made by the said company was towards share capital. However, the reply of the assessee was not found to be tenable to the AO. He dismissed the claim of the assessee on the ground that both director of M/s.Sarang Chemicals Ltd., and director the assessee company, Shri PRS admitted that M/s.Vitale Bio Science Ltd. was engaged in providing accommodation entry i.e. cheques were issued in lieu of receipt of cash. Thus, on the basis of the statement of the directors and also analysis the books of accounts the Id.AO concluded that transaction between the assessee and the said M/s.Vitale Bio Science Ltd. was sham, and therefore, required to be taxed. Accordingly, the AO added the same to the income of the assessee.

15. Aggrieved assessee preferred first appeal. Before the Id.CIT(A) assessee reiterated the submissions made before the AO. It was further contended that the assessee had submitted that ITR of Vitale Bio Science Ltd for the Asstt.Year 2008-09, however, the same was not considered by the AO and no effort was made to enquire into the same. It was further contended that there was no categorical statement of the directors of the assessee company that the said Vitale Bio Science Ltd. was engaged in providing accommodation entries, and whatever statement made by them was general in nature and would not corroborate stand of the AO. There was no proof that the assessee company or its directors have given any cash to the said M/s.Vitale Bio Science Ltd. clandestinely, and therefore, the impugned transaction cannot be deemed to be a sham transaction. All the necessary supporting documents have been provided to the AO to support the claim of the assessee that transaction entered into between the assessee company and the said M/s.Vitale Bio Science Ltd. are genuine, and there was no room for doubting identity, genuineness, and credit-worthiness in respect of the transaction. However, the Id.CIT(A) did not accept the submissions of the assessee. The Id.CIT(A) based on the finding of the AO and also considering the statement made by the directors under section 131 of the Act on 1.5.2013, particularly question no.2, as also question no.5 & 6 wherein the directors of the company have admitted of providing accommodation entries to the parties, confirmed action of the AO in making addition of Rs.26,25,000/-. Aggrieved further, the assessee is now before the Tribunal.

16. Before us, the ld. counsel for the assessee reiterated the submissions made before the Revenue authorities, while ld. DR supported both the orders of the Revenue authorities.

17. We have considered rival submissions and gone through the material available on record. Dispute before us, whether addition of Rs.26,25,000/- made by the AO and confirmed by the ld.CIT(A) on account of alleged sham transaction between the assessee and the M/s.Vitale Bio Science Ltd. are justifiable or not. It is the case of the Revenue during the course of search proceedings conducted at premises of M/s.Sarang Chemicals Ltd., it revealed to the AO that M/s.Vitale Bio Science Ltd., was a paper company and engaged in providing accommodation entry. The assessee-company received a cheque of Rs.26,25,000/- in the garb of share capital from M/s.Vitale Bio Science Ltd. and directors of both the companies admitted in a statement given under section 131 that they were entry providers giving accommodation entries after receiving cash. Assessee furnished PAN of subscriber-company, share application forms, board resolutions, copy of bank statement, etc. However the explanation adduced by assessee with regard to the creditworthiness of lender company and genuineness of transactions was not acceptable for the reasons that there was a categorical statement by both the directors to the effect that they provided accommodation entries to the assessee company. For this, the ld.CIT(A) referred to statement recorded under section 131 on 1.5.2013 and answers given to question no.2, 5 and 6, in which they explained the *modus operandi* of the transaction and how the accommodation entries are given. Assessee has not disputed transaction between the assessee and the M/s. Vitale Bio Science Ltd.

Transaction was unearthed on the basis of information received from the office of Dy. Commissioner of Income Tax, Cent.Cir.1(4), Ahmedabad in which it was mentioned that a search under section 132 of the Act was conducted in the case of M/s. VITALE Bio Science Ltd. and during the search directors of the company admitted of providing accommodation entry, which statement was not denied by the assessee except by making a bald statement that the statement given by the directors are general in nature. The Id. CIT(A) has made detailed analysis of the material available on record and justified the action of the AO in making the impugned order. We do not find any infirmity in the order both the authorities below accordingly, we reject this ground appeal.

18. In the result, appeal of the assessee for 2010-11 is dismissed.

19. Now we take the appeal for assessment year 2011-12. In this appeal, the assessee has raised following grounds of appeal:-

*“1. That the reassessment proceedings is bad in law and therefore the order passed by the learned AO be quashed and the returned income be accepted in toto.*

*2. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the addition of Gross Profit of Rs. 30,20,466/- and therefore the learned AO should be directed to delete the said addition.*

*3. That the learned Commissioner of Income Tax(Appeals)has erred in law and facts by confirming the disallowance of foreign commission u/s 40(a)(i) of Rs.36,98,579/- and therefore the learned AO should be directed to allow the said expense.”*

20. As regards first ground challenging validity of reopening of the assessment is concerned, the issue is similar to the issue raised in Asstt. Year 2009-10 in ground no.1. We have dealt with the same hereinabove and rejected contentions of the assessee and dismissed the

ground. Therefore, since facts and circumstances are similar in this appeal of the Asstt.Yar 2011-12 as well, for the reasons discussed by us in the Asstt.Year 2009-10 (supra), we reject this ground no.1 of the appeal also.

21. Similarly, as regards addition on account of suppressed sales in the form of sales without invoices are concerned, the facts and circumstances in this year also similar to the asstt.Year 2009-10 except variation in the amount of quantum of addition. Therefore, for the reasons discussed in ground no.2 of the appeal for the Asstt.Year 2009-10, the present ground no.2 in the appeal for the Asstt.Year 2011-12 also stands dismissed.

22. Now, we take the ground no. 3 of the assessee's appeal. In the ground no. 3 the assessee is aggrieved by the action of Id. CIT(A) in confirming the addition of Rs. 36,98,579/-.

23. The brief facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that assessee has paid commission of Rs. 36,98,579/- to the following parties:-

<i>Sr. No.</i>	<i>Name</i>	<i>Amount Rs.</i>
1.	<i>Across Y Aluminus Repersentaction(Spain)</i>	<i>58,824/-</i>
1.	<i>Amrak Ltd.( British Virgin Island)</i>	<i>9,01,596/-</i>
3.	<i>Ana Patrica Milan LopezfColumbia)</i>	<i>2,91,278/-</i>
4.	<i>Esteem Intemational(U.A.E.)</i>	<i>2,46,90 1/-</i>
5.	<i>Euoropian Mold and Form (RIEGEL)</i>	<i>25,270/-</i>
6.	<i>Halm Raya Co. (Indonasia)</i>	<i>1 ,7 7,425/-</i>
7.	<i>Jamesley Consultants</i>	<i>38,744/-</i>

8	<i>Nabil Hussain</i>	18,224/-
9	<i>Nagoc Halilnox</i>	1,49,945/-
10.	<i>Ogen Miosenik (Frunxe)</i>	3,68,533/-
TT	<i>Siam MR. International Co. Ltd. (Thailand)</i>	1,26,545/-
12.	<i>Siam MR. International Co. Ltd.(Thailand)</i>	4,17, 977/-
13.	<i>Umer selik Sann Ve Tik Ltd. (Turkey)</i>	8,77, 317/-
	<i>Total</i>	36,98,5797/-

24. The Assessing Officer stated that assessee has not deducted any tax as per provisions of section 40(a)(i) on the amount of Rs. 36,98,579/-. On query, the assessee explained that all these foreign parties had operated in their country, no part of their income was accrued or arising in India and amount of commission was not received in India by them or on their behalf in India. It was also submitted that foreign parties were not having any business connection in India and provision of section 9(1) of the Income Tax Act were not applicable to this case. No income is deemed to accrue or arise in India. However, the Assessing Officer has not accepted the submission of the assessee on the ground that assessee had not furnished the form no. 15CA. Consequently, the Assessing Officer has disallowed the amount of Rs. 36,98,579/- as per provision of section 40(a)(i) of the act for not furnishing form no. 15CA and 15CB.

25. Aggrieved assessee has taken the matter before the Id. CIT(A). The Id. CIT(A) reiterating the facts reported by the Assessing Officer, the Id. CIT(A) has dismissed the appeal of the assessee.

26. Heard both the sides and perused the material on record. The Assessing Officer has made addition of Rs. 36,98,579/- u/s. 40(a)(i) of the Act on failure of the assessee to deduct tax at source on payment of commission to various persons outside India. During the course of assessment proceedings the assessee has explained that the foreign agents have operated in their own countries and they were not having business connection in India. No income was deemed to accrue or arise in India as per the provision of section 9(1) of the Income Tax Act, 1961. Without disproving the material facts about the nature of the transactions as stated above, the Assessing Officer has disallowed the amount of payment made to the foreign parties of Rs. 36,98,579/- u/s. 40(a)(i) of the Act on the grounds that assessee has not furnished form no. 15CA and 15CB. In this regard, we have noticed that Co-ordinate Bench of the ITAT in similar issue in the case of Dy. CIT, Puducherry vs. Integra Software Services Pvt. Ltd. (2020) 113 taxmann.com 9 (Chennai Trib.) wherein it is held that rule 37BB of the Income Tax Rule provides for furnishing such information in form no. 15CA and 15CB. Subsection (6) of section 195 of the Act does not require the assessee to deduct tax. What is required is furnishing information in specified form, namely form no. 15C and 15CB. However, sub-section (1) of section 195 of the act requires the assessee to deduct tax at the time of the credit of such income to the account of the payee. The Hon'ble Supreme Court in Transmission Corp. A.P. Ltd. Vs. CIT (1999) 105 Taxman 742 held that when the payment made to non-resident is not taxable in India, it is not necessary to deduct tax under section 195 of the Act. The assessee is required to deduct tax u/s. 195(1) of the Act provided the non-resident recipient is liable to pay tax. Further, we have also gone through the

decision of High Court of Madras in the case of CIT Chennai Vs. Farida Leather Company (2016) 66 taxmann.com 321 (Mad) wherein it is held that tax withholding liability u/s. 195 cannot be invoked, unless primary tax liability of resident/foreign agent is established. Hon'ble Supreme Court in the case of G.E. Technology Cen. (P.) Ltd. vs. CIT, Civil Appeal Nos. 7541-7778 of 2010 dated 9<sup>th</sup> Sep, 2010 has held as under:-

*“Section 195(2) is not a mere provision to provide information to ITO(TDS) so that department can keep track of remittances being made to non-residents outside India; rather it gets attracted to cases where payment made is a composite payment in which certain proportion of payment has an element of 'income' chargeable to tax in India and payer seeks a determination of appropriate proportion of sum chargeable -Held, yes”*

In the instant case, the Assessing Officer has not disproved the claim of the assessee that non-resident agents had procured order abroad and no services were rendered in India. The payments have been made directly to the non-resident abroad. The Assessing Officer has also failed to controvert the claim of the assessee that foreign agents were not having any business connection in India. In spite of scrutiny assessment, the Assessing Officer had merely referred non-submission of form no. 15C and 15CB but did not make any investigation/verification to disprove the material facts reported by the assessee as stated above in this order. The Assessing Officer has not brought any material on record to substantiate that income was accrued in India or deemed to accrue in India. Therefore, in the light of the above facts and finding of the judicial pronouncement as supra, we consider that Id. CIT(A) is not justified in confirming the action of the Assessing Officer. Therefore, this ground of appeal of the assessee is allowed.

27. Now we take the appeal for assessment year 2013-14. The grounds in this appeal read as follows:-

*“1. That the learned Commissioner of Income Tax(Appeals)has erred in law and facts by confirming the addition of Rs.2,79,660/-.being the difference of income declared in Profit & Loss Account and income shown in 26AS and therefore the learned AO should be directed to delete the said addition in full.*

*2- That the learned Commissioner of Income Tax(Appeals) has erred in law and facts by not deleting the addition of Rs.69,06,808/-,being the difference of income declared in Profit & Loss Account and income shown in 26AS and therefore the learned AO should be directed to delete the said addition in full.”*

28. Ground Nos. 1 and 2 in this appeal of the assessee are interconnected to the same issue pertaining to difference of income shown in the 26AS therefore for the sake of convenience, these two grounds of appeal of the assessee are adjudicated together as under:-

29. The fact in brief is that during the course of assessment proceedings, the Assessing Officer has noticed that third parties have deduced tax on various payments to the assessee. On verification of the detail, the Assessing Officer observed that assessee has shown less amount as its income than the amount on which TDS has been deduced by the parties. Consequently, the difference amount to the amount of Rs. 71,86,468/- was treated by the Assessing Officer as suppressed income and added to the total income of the assessee.

30. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has restricted the addition to the extent of Rs. 2,79,660/- only and remanded the addition of Rs. 69,06,808/- to the file of Assessing Officer for verification of the claim of the assessee that these incomes were already shown in the F.Y. 2011-12.

31. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer observed that assessee has received various payments on which the third parties have deducted tax at source. However, the assessee has not shown the complete receipt in its P & L Account therefore difference of Rs. 71,86,468/- was added to the total income of the assessee. During the course of appellate proceedings before the Id. CIT(A), the assessee company has claimed that it has received an amount of Rs. 69,06,808/- from Hindustan Dorr Oliver Ltd. on which the said company has deduced tax at source during F.Y. 2012-13. However, the assessee has already considered the said amount as its income in F.Y. 2011-12. After considering the submission of the assessee the Id. CIT(A) has restored the issue pertaining to the amount of Rs. 69,06,808/- to the file of the Assessing Officer with direction that if assessee has already offered the same amount in F.Y. 2011-12 then the same should be deleted. Therefore, the Id. CIT(A) has restricted the addition only to the extent of Rs. 2,79,660/- which was remained unexplained. After perusal of the aforesaid facts and findings of the Id. CIT(A) we consider that Id. CIT(A) has rightly restored the issue to the extent of Rs. 69,06,808/- to the file of Assessing Officer as per the claim made by the assessee for verification as the same was shown as income for F.Y. 2011-12 with direction to delete the same if it is found correctly reported by the assessee. In respect of remaining amount of Rs. 2,79,660/- the assessee has neither explained before the lower authorities nor furnished any explanation during the course of appellate proceedings before us, therefore, we do not find any infirmity in the decision of Id. CIT(A). Considering the above, we do

not find any merit in these grounds of appeal therefore these two grounds of appeal are dismissed.

32. In the result, the appeal of the assessee is partly allowed for statistical purpose.

33. In the combined result, appeal ITA 50/Ahd/2018 & 51/Ahd/2018 are dismissed and appeal ITA 52/Ahd/2018 & 53/Ahd/2018 are partly allowed for statistical purposes.

**Order pronounced in the Court on 07April, 2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 07/04/2021  
आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।