

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 377/JP/2024
निर्धारण वर्ष / Assessment Year : 2015-16

The ACIT Central Circle Kota	बनाम Vs.	Nisha Jain E-15, Ballabh Bari Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABLPJ 8118L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT-DR
निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya Adv
Shri Hemang Gargieya, Adv.

सुनवाई की तारीख / Date of Hearing : 22/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 05 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the Revenue is directed against order of the ld. CIT(A),
Udaipur-2 dated 29-01-2024 for the assessment year 2013-14 raising therein
following grounds of appeal.

1 Whether on facts and in circumstances of the case the CIT (A) is justified in deleting the addition of Rs 1,71,72,858 (enhanced as 1,81,18,746) on account of excessive and bogus expenses without appreciating the facts that it was on the incriminating documents impounded during the survey which contains two-fold recording of transactions related to expenditure, one fold was related to what was shown in the audit report" under head as per audit report" which is enhanced expenditure and the

second was related to what was the actual expenditure incurred as per Income and expenditure

2 Whether on facts and in circumstances of the case. the CIT (A) is justified in not appreciating the statement of Naresh Jain (Main dealing person) recorded on oath under section 131, where he, himself explained the nature of transactions and admitted the increased expenditure of Rs 1,71,72.858/- during the filing of return and also that he did not have bill vouchers and when return was filed, all these enhanced expenses are entered on estimated basis.

3 Whether on facts and in circumstances of the case, the CIT(A) is justified in appreciating the plea of the assessee that, it was incomplete record, as the explanation of Naresh Jain recorded on path where he himself admitted the facts that the expenses are charged over and above the actual amount appearing in true transactions recorded in Income & Expenditure A/c.

4 Whether in facts and circumstances of the case, the CIT(A) is justified in applying decision of Hon'ble Kerala High Court in the case of K. Abdul Azeez vs Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) ignoring the fact that statement was recorded on oath u/s 131(1), as also mentioned by the assessee, and not recorded u/s 133A(3)(m) which was the main substance of the decision in above case law.

5. Whether in facts and circumstances of the case, the CIT(A) is justified in not appreciating the facts that the section 133A (6) empowered the Income Tax Authority to record the statement on oath, therefore the recording of statement u/s 131 in this case was not ultra-vires.

6 Whether facts and circumstances of the case, the CIT(A) is justified in not appreciating the in other important fact that during the assessment proceedings of the assessee for AY 2016-17 the assess had clamed/accepted that the undisclosed income

offered during survey at Rs. 1,71,72,858/- was related to AY 2015-16 and therefore, the same is considered for the AY 2015-16.

7 Whether facts and circumstances of the case, the CIT(A) is justified in not appreciating the in not appreciating the position that addition was determined, on the basis of recorded statement on oath u/s 131, on the basis of certain incriminating information; documents found during the proceedings, and, the statement recorded on oath has the evidentiary value which binding on the person making it recorded while the persons once admitted in the statement and offered the income for taxation and afterward retracted and failed to prove retraction with documentary evidences.

2.1 It may be noted that the present appeal is preferred by the Revenue against the order of CIT(A) dt. 29.01.2024. Since the ld. CIT(A) has already stated the relevant facts hence, the same are not being repeated here. During the course of hearing the parties were directed to file detailed written submissions in support of their oral arguments, if so desired. However, the ld.DR supported the order of the AO. To this effect, the ld. AR of the assessee has filed the following written submissions countering the grounds of appeal raised by the Revenue.

‘Submission:

1. At the outset we strongly place reliance upon our detailed submissions made before AO as also before the CIT(A).
2. We also place strong reliance upon the order of the CIT(A) to the extent (Pg.54, Para. 5.11) his findings and observations are given in the favour of assessee.
- 3.1 Appeal of the Revenue not maintainable:** At the outset, there is no hesitation to contend that the appeal filed by the Assessee is only with respect

to the deletion of the addition made by the AO of Rs. 1,71,72,858/-, which has been challenged on various grounds. Revenue however, has completely ignored the substantive and vital fact that in the Remand Report-II dated 19.12.2023, reproduced at pg. 52, pr. 5.10 of the CIT(A) order, the AO appears to have carried out extensive verification of the entire related record and noted his factual findings w.r.t. each and every expenditure, i.r.t. which the AO alleged inflated claim of expenditure made with Bank Charges, Bank Interest, Interest to other parties, Discount, Hoarding Rent, Electric Expenses, Repair & Maintenance expenses, salary and miscellaneous expenses, etc., aggregating to Rs. 2,07,65,446/-, to the effect that they were genuinely claimed expenditure, supported by evidences, bills, vouchers, bank statement and third-party information. There is absolutely no adverse comment made by him on this aspect, nor he claimed that such expenditure were bogus / inflated as initially alleged by the then AO in the impugned asst. order. He even stated that all these details supporting bills, vouchers, etc. were submitted during the course of the assessment proceeding itself. Such factual findings recorded in the Remand Report, when read in the light of the fact of audited accounts without any adverse finding, assumes special significance. Thus, entire claim made by the assessee of Rs. 4,11,94,715/- is genuine and beyond the scope of doubt. Hence, on the face of such an categorical admission made by the Revenue, it can't be said that the Revenue was aggrieved by the order of CIT(A) while granting relief and **therefore, the above appeal may kindly be held as non-maintainable.**

3.2. Facts verified by Id. AO in his Remand Report: It is submitted that the assessee has furnished detailed evidences (as discussed above), to establish that all the expenses are recorded in the regular books of accounts. Further, **the AO in his Remand Report-II dated 19/12/2023 has reported that the expenses are supported by bills and vouchers. Further, the payment is made mainly thorough banking channel which leaves no iota of doubt of manipulation in accounts.** Remand Report observations by the Assistant Commissioner of Income Tax, Central Circle, Kota vide reference No. DCIT/CC/Kota/2023-24/673 dated 19/12/2023 (CIT(A) Pg 52 Para 5.10) **reproduced** here under for reference:

*"4. On perusal of aforesaid reply, it is noticed that the expenses related to bank charges of Rs. 2,79,875/- are totally related to bank charges made by Syndicate Bank, which is verified from the bank statement of the assessee submitted during the course of assessment proceeding. Expenses related to bank interest of Rs. 75,30,019/- is related to Bank interest payment made by the assessee to the different Banks mentioned in the ledger of bank interest account. The same **interest payments are also verified from the concerned Bank account statements.** Further on perusal of ledger account of interest paid of Rs. 15,35,608/-, it is noticed that such interest was paid to M/s R. C. Jain Invest & Fin (P) Ltd. During the year under consideration & **TDS has been deducted** as per the provisions of Income Tax Act, which is also verified from the Form No. 26Q filed by the assessee.*

*5. Further, in respect of the other expenses related to discount, hording rent, electricity expenses, repair & maintenance, Salary & misc. expenses aggregate amounting to Rs.2,07,65,446/-, **the***

assessee has submitted the supporting bills/vouchers related to aforesaid expenses, which were re-examined with the ledger account of respective heads, as produced by the assessee during the course of re-verification proceedings. After verification, it is noticed that out of total expenses **most of the expenses are related to discount of Rs. 1,29,68,729/- mainly to their major clients namely (i) M/s Allen Career Institute, Kota, (ii) Career Point Ltd., Kota (iii) Vakrangi Ltd., (iv) Motion Education Pvt. Ltd., Kota. The assessee has submitted the copy of ledger of the respective concerns along with bills/vouchers for verification, which is found verified.** The assessee has also submitted the ledger of remaining expenses along with its bills/vouchers related to hording rent of Rs. 11,10,529/-, electricity expenses of Rs. 4,70,637/-, Repair & Maintenance expenses of Rs. 8,17,444/-, Salary Expenses of Rs. 49,60,000/- & Misc. expenses of Rs. 4,38,107/-. On perusal of such documentary evidences it is **noticed that most of expenses are made through banking channel and supported with bills/vouchers** except some self-made vouchers for which payment was made in cash.

6. Although it is noticed from the assessment record that the **assessee had already submitted** these supporting bills/vouchers related to aforesaid expenses **during the course of assessment proceedings** & examined by the then AO and these were not accepted by the AO with the remarks that the assessee had maintained two accounts to manipulate the expenses to reduce profit at the end of financial year which was itself revealed from the impounded documents and also admitted the facts by Shri Naresh Jain (Husband of the assessee an main person dealing with financial transaction) during survey proceedings. Hence, the contention of the assessee in respect of aforesaid expenses are duly recorded in her books of account in respective year i.e. A.Y. 2015-16, has not been accepted as the same is treated as afterthought adjustment just to evade the tax liability.”

4. We also respectfully submit that the Revenue's grounds lack merit for the following reasons:

4.1 The assessee during the assessment and appellate proceeding furnished following details as summary with regard to impounded documents Exhibit-8 Page 97 to 99(APB 32-35):

S No	Head Of Account	Amount Appearing in Income & Expenditure Account of Audit Report As on 31/03/2015	Amount Appearing In Income Expenditure- (impounded document) Page- 97, Annex- 8	Difference	Remarks
1	Discount & Rebate	1,29,68,729	50,64,851	79,03,878	Duly recorded in books of accounts.
2	Hoarding Rent	11,10,529	6,69,116	4,41,413	As above
3	Labour Exp	10,56,980	3,94,487	6,62,493	covered by A.O
4	Security Exp	5,36,019	3,13,195	2,22,824	covered by A.O
5	Bank charges	2,79,876	1,76,193	1,03,683	Recorded and Self explanatory

6	Business Promotion Exp	14,29,557	8,56,699	5,72,858	covered by A.O
7	Computer Exp	3,34,587	1,71,127	1,63,460	covered by A.O
8	Courrier Exp	3,24,607	1,34,747	1,89,860	covered by A.O
9	Desing & Graphics	15,99,288	8,01,126	7,98,162	covered by A.O
10	Bank Interest	75,30,019	62,22,902	13,07,117	Recorded and Self explanatory Self explanatory
11	Electricity Exp	4,70,637	3,55,837	1,14,800	Recorded in books of accounts
12	Flex Printing	14,33,311	7,55,569	6,77,742	covered by A.O
13	Interest charges	15,35,608	1,76,193	13,59,415	Recorded and Self explanatory Self explanatory
14	News Papers & periodicals	1,08,339	51,874	56,465	covered by A.O
15	Office Exp	8,39,122	4,76,717	3,62,405	covered by A.O
16	Printing & Stationery	7,14,633	5,90,693	1,23,940	covered by A.O
17	Repair & Maintenance	8,17,444	6,44,593	1,72,851	Recorded in books of accounts
18	Salary	49,60,000	36,15,060	13,45,000	Recorded in books of accounts
19	Staff Welfare	8,20,750	6,09,760	2,10,990	covered by A.O
20	Telephone	4,16,137	93,024	3,23,113	covered by A.O
21	Travelling Exp	7,96,312	4,82,562	3,13,750	covered by A.O
22	Vehicle Running Exp	5,99,946	3,69,726	2,30,220	covered by A.O
23	Water Exp	74,178	49,978	24,200	covered by A.O
24	Misc Exppenses	4,38,107	-	4,38,107	Recorded in books of accounts
	TOTAL	4,11,94,715	2,30,76,029	1,81,18,746	

4.2 It is submitted that the assessee has explained each and every entries found recorded in impound records being Exhibit 8 Page no. 97 and 99 (APB 32-35). Also being honest taxpayer, the assessee bona fide submitted that there was totaling mistake and the total of the expenses recorded in the impounded sheet is Rs. 1,81,18,746/- and not Rs.1,71,72,858/-. Had it been tax evasion intent of person, he would never disclose this error.

4.3 Explanation / Clarifications submitted in detail: It is submitted that with regard to difference Rs. 1,71,72,858/- as appearing in the chart above, detailed point-wise submission dt.18.07.2023 as made before CIT(A) (also at Pg.10 pr.5.2) are reproduced as under:

“(vii) Clarifications – with regard to Difference Rs. as appearing in the Chart above- our humble submission as under

*(i) Discount & Rebate extended to clients- service recipients **The actual being Rs. 129 68,729/- as per Books of Accounts under Audit Report** and Rs. 50,54,851/- in the impounded papers, having difference of Rs. 79,13,878/- . The transactions reflected in this account are about the rebate and discount extended to the cusomers as well as service recipients, and in the present day competition in the advertising market, have become Order of the Day. There had been **lesser cash transaction** in this account and therefore, the said amount of Rs. 1,29,68,729/ - sans much of ‘if’ and ‘but’ is fully justifiable. **(APB 62-181)***

*(ii) Hoarding Rent – The actual amount, as per Audited books of accounts being of Rs.11,10,529/- and as per Impounded papers being Rs.6,69,116/- and the difference being Rs.4,41,143/- . It is very humbly submitted that **out of total receipts of Rs. 11,10,529/-, cash receipts had been of Rs. 1,41,000/- only** and that works out to 12.69 % only i..e. within reasonable limit, snd the major amount of remaining **87.31 % had been through banking channel**, and as such, cannot be termed and taken as un-justified. There can hardly be any raising of an eye brow that the meagre sum of 12.69% has not been spent for the purpose other than smooth running of business activities. **(APB 181-183)***

*(iii) Bank charges - The Bank charges Rs. 2,79,876/-, levied by the Bank are **appearing in the relevant Bank Statement** of the appellant. However, such Bank charges are appearing at Rs. 1,76,193/- in the impounded loose sheets of paper and the difference being Rs.103683/- against the actual figures in the Bank Statement of the appellant, **by any stretch of imagination and inference, cannot be taken and treated as ‘Bogus Expenses**, booked on higher side’ and under provisions of Income Tax Act 1961 and on the side of justice does not require to be disallowed. Under the present day legal provisions, the business entities have to transact their business activities through Banking Channel at the maximum and consequent Bank charges are meant for business purpose only. **(APB 184-192)***

*(iv) Bank interest- As per Audited books of accounts of the appellant, the interest amount Rs. 75,30,019/-, levied by the concerned Bank is **appearing in the Bank Statement** of the appellant and against this factual position, the amount of Rs. 62,22,902/- appearing in the impounded loose sheets of paper the difference being Rs.1307117/- **by any stretch of imagination and inference, can be taken and treated as inflated and ‘bogus expenditure**, booked on higher side’ and under provisions of Income Tax Act 1961 and on the side of justice does not requir to be disallowed. Under the present day legal provisions, the business entities have to transact their business activities **through Banking Channel at the maximum and consequent Bank charges are meant for business purpose only**. Difference 13,07,117/- judiciously cannot be taken as Bogus/ inflated expenses and have been spent for business purpose only. **(APB 193-195)***

(v) *Electricity Expenses actual being Rs. 4,70,637/- as per Books of Accounts under Audit Report and Rs. 3,55,837/- in the Impounded papers, having difference of Rs.1,14,800/-. Electricity Expenses Rs. 4,70,637/- is well justifiable as major amount involves **Electricity bills from Service Agency and leaves no room for any manipulation** and have been spent for business purpose only. (APB 197-199)*

(vi) *Interest charges- other than to Bank (APB 196)*

(a) *It is very humbly submitted that on the self speaking quantum/size of loans and advances availed by the appellant **for business purposes**, the amount of Interest Charges in the books of accounts, being Rs.15,35,608/- is **well justifiable and can hardly be taken and treated as 'bogus expenses**, booked on higher side'. The amount under this head , appearing in the impounded loose sheets of papers is Rs. 13,59,415/- and accordingly the difference stands at Rs. 1,76,193/- .*

(b) *It is very humbly submitted that the interest on business purpose borrowings (other than Bank) and **TDS effected thereon** is under –on the supporting base of quantum/size of loans and advances and accordingly the figures of Rs. 1,76,193/- appearing in loose papers with a difference of Rs. 13,59,415/- does not appear to have strong enough footings to stand on and have been spent for business purpose only. It is submitted that TDS was also deducted on interest paid on loan / advances whereas as impounded documents it was not recorded complete transactions of interest charges*

(vii) *Repairs and maintenance - Actual amount appearing in Audited books of accounts is Rs. 8,17,444/- and in the impounded loose sheets of paper it is appearing at Rs. 6,44,593/- and as such the difference works out at Rs. 1,72,851/-*

It is very humbly submitted that all the expenses under this head been paid against self made vouchers for labour/mechanic operations and for the sole purpose of smooth running of business. The expenses cannot be taken and treated as 'bogus expenses, booked on higher side' and well justifiable. (APB 200-203)

(viii) *Salary Expenses of **Rs. 49,60,000/- are variable from salary sheets and other such records** and have been spent for business purpose only. Copy of Salary Sheet, having details of Workmen/ staff engaged by the appellant to look after various requirements and shoulder various responsibilities and the nature of duties/post held by staff do themselves justify the expenses under this head. The expenses of manpower employed by appellant cannot be taken and treated as 'bogus expenses booked on higher side' Copy of Salary Sheet is enclosed. (APB 204)*

(ix) *Misc Expenses Rs. 4,38, 107/- is very small amount as compared to the total expenses and interalia includes very and unthought of Urgent Services and may not have any substantiation. (APB 205-206)*

Copy of ledger/salary sheet of various heads of Expenses Accounts is enclosed at S No 9, page No 62 to 206 of Paper Book”

4.4 Issue already covered by Scrutiny Assessment and Appellate Order in the first round: It is an eye-opening fact that there are various expenses, (listed below in the chart), and found in the impounded papers amounting to Rs. 49,32,482/- which were already subjected to Scrutiny Assessment u/s 143(3) vide order dated 30.11.2017 (APB 207-213) whereby disallowance of Rs.26,60,897/- was made on account of Security Service expense, Business Promotion Expense, Traveling Expenses and various other expenses u/s 37(1) were made. In the first appeal the Id. CIT(A) vide its order dt. 12.02.2019 reduced these disallowances to Rs.5 Lakhs (APB 214-221). Thus, the expenses

to the extent of Rs. 49,32,482/-, were already subjected to the scrutiny and the appellate proceedings.

Notably, these disallowances were made by the AO, while examining the same very audited books of accounts, which contained the total expenditure of Rs. 4,11,94,715/-, shown in the table above in pr.4.1 (and alleged by the AO to have been inflated). Needless to say, that had there been bogus / inflated claim of expenditure made by the assessee, the AO himself would have made huge disallowances (which is now suspected to be Rs. 1.71 crore by the AO corrected at Rs.1.81 crore) and if AO failed, the Id. CIT(A) having the power of enhancement, could have done so. However, the **authorities below not having made any enhancement in the disallowance which was alleged to Rs. 30 lakh (approx.) and reduced to Rs. 5 lakhs** w.r.t the selected expenditures of Rs. 49 lakhs, out of the total claimed expenses of Rs. 4.12 crore, there is no scope of smacking something wrong like bogus / inflated, which is nothing but a result of pure suspicion, surmises and conjecture by the AO. These facts are not rebutted by the authorities below. The said chart is as under:

S No	Head Of Account	Amount Appearing in Income & Expenditure Account of Audit Report As on 31/03/2015	Amount Appearing In Income Expenditure- (impounded document) Page- 97, Annex- 8	Difference
3	Labour Exp	10,56,980	3,94,487	6,62,493
4	Security Exp	5,36,019	3,13,195	2,22,824
6	Business Promotion Exp	14,29,557	8,56,699	5,72,858
7	Computer Exp	3,34,587	1,71,127	1,63,460
8	Courrier Exp	3,24,607	1,34,747	1,89,860
9	Desing & Graphics	15,99,288	8,01,126	7,98,162
12	Flex Printing	14,33,311	7,55,569	6,77,742
14	News Papers &periodicals	1,08,339	51,874	56,465
15	Office Exp	8,39,122	4,76,717	3,62,405
16	Printing & Stationery	7,14,633	5,90,693	1,23,940
19	Staff Welfare	8,20,750	6,09,760	2,10,990
20	Telephone	4,16,137	93,024	3,23,113
21	Travelling Exp	7,96,312	4,82,562	3,13,750
22	Vehicle Running Exp	5,99,946	3,69,726	2,30,220
23	Water Exp	74,178	49,978	24,200
	TOTAL			49,32,482/-

4.5 Self-explanatory and self evident accounts: Entries at S No 5,10 and 13 in Chart below, working out to Rs. 27,70,215/- pertain to Bank Charges, Bank Interest and Interest charges, which are self explanatory and self evident from the Bank Accounts that are produced before lower authorities and payment of such Interest charges have been made through Banking Channel and TDS levied thereon was duly paid, do not need any further clarification and also not rebutted by lower authorities.

S No	Head Of Account	Amount Appearing in Income & Expenditure Account of Audit Report As on 31/03/2015	Amount Appearing In Income Expenditure- (impounded document) Page- 97, Annex- 8	Difference
5	Bank charges	2,79,876	1,76,193	1,03,683
10	Bank Interest	75,30,019	62,22,902	13,07,117
13	Interest charges	15,35,608	1,76,193	13,59,415
	TOTAL			27,70,215/-

4.6 Clarification already submitted: Entries at S No 1,2,11, 17, 18 and 24, appearing in the Chart with difference being of Rs. 1,04,16,049/- and in support of the same, detailed submission were made before lower authorities along with copy of relevant Ledger Accounts (APB 62 to 206).

S No	Head Of Account	Amount Appearing in Income & Expenditure Account of Audit Report As on 31/03/2015	Amount Appearing In Income Expenditure- (impounded document) Page- 97, Annex- 8	Difference
1	Discount & Rebate	1,29,68,729	50,64,851	79,03,878
2	Hoarding Rent	11,10,529	6,69,116	4,41,413
11	Electricity Exp	4,70,637	3,55,837	1,14,800
17	Repair & Maintenance	8,17,444	6,44,593	1,72,851
18	Salary	49,60,000	36,15,060	13,45,000
24	Misc Expenses	4,38,107	-	4,38,107
	TOTAL			1,04,16,049/-

4.7 The aggregate of above referred three categories works out to Rs. 49,32,482 + 27,70,215 + 1,04,16,049 totaling Rs. 1,81,18,746/-. Thus, detailed submission already submitted before the authorities below and already gone through detailed scrutiny assessment earlier leaves no scope for suspicion that assessee might have made any excessive claims of said expenses.

5.1 Contradictory approach of AO - not sustainable in the eyes of law:

Interestingly, on this aspect, it is pertinent that the finding of the AO at page 9 of order is worth noting being:

“Since the details as appearing in the loose papers is exactly matching with the expenses claimed in the P&L account; the relevance of the loose papers cannot be denied”

This finding directly supports the contention that these were the memorandum papers and nothing else. It is not the case of the AO that these expenses are something completely different and are over and above those claimed by the assessee at Rs.4.12 crore and the AO having found this sheet as relevant, the **contention of the assessee must be considered as accepted.**

5.2 The ld. CIT(A) also took note of this contradiction of AO at pg.60 of order in following words:

*“The reply of the appellant is considered. It is correct that the AO has taken contradictory stand in the assessment order. The AO recorded that amounts appearing under various heads of expenses in the ‘Audit Report’ and the ‘impounded loose papers’ are exactly same. **In such a situation, where the impounded papers and Audit Report contains same figures, then the addition could only be made by rejecting the books of accounts.** However, the AO has not rejected the books of accounts. The additions made by the AO in the absence of any other corroborative material assessment of tax are made solely on basis of such sworn statement made. As held by the Hon’ble Kerala High Court in the case of .K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) as discussed earlier the addition made is not found to be sustainable and deleted.”*

Thus, disallowances made by the ld. AO are rightly deleted by the ld. CIT(A) as the same were not sustainable in the eyes of law and facts discussed in details above. **Therefore, this ground taken by the revenue deserves to be dismissed.**

DGOA-3 : Claim of Assessee that impounded document are incomplete records is not justified:

Submission:

1. Memorandum records/incomplete accounts not a good basis for additions: It is submitted that impounded document, being Exhibits -8 and Pages 97 to 99 (APB 32-35) are memorandum recording which every assessee and its accountant used to note before making final entries in the books accounts and drawing the Annual Balance Sheet and P & L A/c, which is not an uncommon practice, being followed in the accounting world. **The increase in the expenditure, when compared with such rough notings, does not ipso facto result in undisclosed income** for the reason that, only the finally prepared annual accounts, which are based for computing total income and is relied upon by the assessee. In fact, **assessee never placed reliance on such**

rough notings for the purposes of declaring income and merely because it was found and impounded during the course of survey does not make it credible.

2. Complete Audited Accounts Maintained: Undisputedly, the Id. Tax Auditor **had already audited** these accounts (APB19-31), **long back on dated 29.09.2015, i.e. almost 2 years prior** to the date of the survey, and had tendered his Audit Report (APB 5-18), without any qualification or adverse remark as such. In other words, in his (Id. Tax Auditor's) view, the final accounts produced before him represented the true and correct state of affairs which fact is not rebutted by the lower authorities.

Admittedly, **no inquiry was made from the Id. Auditor** if there was something wrong found by the AO, **nor any complaint against him has been filed** before the Institute of Chartered Accountants of India (for short "ICAI"). Equally, he did not even, thought it fit **to refer the matter to, for the special audit**, provided u/s, 142(2A) of the Act even though, he was entitled to. Meaning thereby, he found the audited accounts, in perfect condition. Even the AO in the reassessment order u/s 143(3) r/w 147, has started with the total income as assessed after giving effect to the order of the CIT (A) u/s 250 dt. 09.04.2019 at Rs. 75,95,250/-. Therefore, the Id. AO cannot blow hot and cold in the same breath now.

3. It is submitted that S. 44AB of the Act has been inserted by the Finance Act, 1984 (21 of 1984), with effect from 01.04.1985, i.e., for and from assessment year 1985-86. The object **behind this is explained in circular no. 387, dated 06.07.1984 is reproduced below:**

"17.2 A proper audit for tax purposes would ensure that the books of account and other records are properly maintained, that they faithfully reflect the income of the taxpayer and claims for deduction are correctly made by him. Such audit would also help in checking fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications, like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the assessing officers thus saved could be utilized for attending to more important investigational aspects of a case."

Thus, importance and relevance of Audited Accounts cannot be ignored. **Interestingly, both the lower authorities have not pointed out any inherent defects in the books of accounts** nor have they rejected the books of accounts and rather they have accepted the books of accounts as correct and complete. Therefore, doubting the Audited Accounts duly supported by bills and vouchers and all possible evidences, merely because some rough memorandum papers were could be found, (which is a normal practice), AO must not have doubted as any claim of bogus / inflated expenditure.

4. No addition permissible merely on suspicion: It is well settled that suspicion, however strong, cannot take the place of reality. Thus, the impugned

additions have been made merely on suspicion, impugned addition deserves to be deleted here itself. Kindly refer **Dhakeshwari Cotton Mills v/s CIT (1954) 26 ITR 775 (SC)**, wherein it is held as under:

*“Assessment—Validity—ITO is not barred by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but in making the assessment under sub-s. (3) of s. 23 the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all—**There must be something more than bare suspicion to support the assessment** under s. 23(3)—ITO and the Tribunal in estimating the gross profit rate on sales **did not act on any material but acted on pure guess and suspicion**—In arriving at its estimate of gross profits and sales **Tribunal should give full opportunity to the assessee** to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the ITO if it is intended to make the estimate on the foot of those enquiries.”*

5. AO failed to discharge its onus-no inquiry made: It is pertinent to note that the AO, despite having found the impounded document based on which he alleged bogus / inflated expenditure, he did not make any inquiry at all, even though he was empowered u/s 133(6) and / or u/s 131 etc. calling for the payees of the different amounts claimed by the assessee as expenditure.

eg. the payee to whom Rebate & Discount was passed on, the person making payment of hoarding rents or the employees to whom salary was paid etc. In fact, it was a single piece of paper in the form of excel sheet showing the expenditure which has been based for disallowance. However, there apart **no other evidence** which could directly show that the assessee intendedly inflated / claimed bogus expenses with a view to suppress the profits was found.

Thus, the ld. CIT(A) has rightly considered the submission made and deleted the disallowances made by the AO as the same were not sustainable in the eyes of law and facts discussed in details above. **Therefore, these grounds taken by the revenue deserves to be dismissed.**

D-GOA 2 and 7: Deletion of addition based on admission - not justified:

Facts: The AO during the assessment proceeding had heavily relied upon the statement of the assessee recorded u/s 131 r/w S. 133A(3)(iii) [in DGOA-4] on dated 02.02.2017 and in particular Q & A No.23 (APB 36-39) in addition to the impounded documents being Annexure-8, Exhibit -8, Page No 97 to 99(APB 32-35). In these grounds also, the Revenue has heavily relied upon those statements and the deletion made by the ld. CIT (A) despite such admission, is under challenge.

Submissions:

1.1 Revenue's grounds lack on merit and legality both: It appears that the revenue has proceeded on serious misconception of fact and law while repeatedly alleging that the Id. CIT(A) has ignored the basic fact that the assessee had already admitted income on oath u/s 131, which contention appears totally contrary to the factual and legal finding recorded by the CIT(A):

"The evidentiary value of the statement recorded under oath cannot be denied. However, the explanation furnished by the assessee cannot be rejected only on the basis of statement recorded during the survey. It is true that the statement recorded during survey is an important piece of evidence but it is not conclusive."

Thus, the CIT(A) clearly held that the statement recorded on oath do have evidentiary value. However, thereafter the Id. CIT(A) also held that statement recorded during survey is not conclusive and also recorded categorical finding of fact that the corroborative material used by the AO wherein the assessee admitted, was fully explained and thereafter, in absence of any other corroborative evidence such admission alone could not be made a basis of the addition. Therefore, it is wrong to say that the CIT(A) completely ignored the admission made by the assessee.

1.2 Prayer u/r 27 of the ITAT Rules, 1963:

Though, assessee is not in appeal or co. against such findings of the CIT(A) on this legal aspect, however **assessee is entitled** to support his order on the issue decided against him u/r 27 of the Income-tax (Appellate Tribunal) Rules, 1963 **which provides that "The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him"**. Since the CIT(A) did not appreciate that these were survey statement recorded u/s 133A(3)(iii) but not u/s 131 having no evidentiary value at all, hence this prayer. The said rule clearly support the assessee, because such aspect is inherently related to the ground taken by the assessee before him wherein, on merits he deleted the addition but on this particular legal aspect held against the assessee. Reliance is placed on the cases of ITO Vs IME International ITA No. 1873/JP/2012 dated 08.01.2016 (Del Trib), BPL Systems & Projects Ltd., and Sun Pharmaceuticals Industries Ltd and **Sanjay Sawhney v. Principal Commissioner of Income-tax [2020] 116 taxmann.com 701 (Delhi)** wherein it was held that:

"Section 253, read with section 153C, of the Income-tax Act, 1961 and rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 - Appellate Tribunal - Appealable orders (Aggrieved person) - Assessment year 2008-09 - Whether rule 27 embodies a fundamental principal that a respondent who may not have been aggrieved by final order of lower authority or court, and therefore, has not filed an appeal against same, is entitled to defend such an order before Appellate forum on all grounds, including ground which has been held against him by lower authority, though final order is in its favour - Held, yes - Whether where assessee succeeded before Commissioner (Appeal) in ultimate analysis and was, thus, not an aggrieved party, in Revenue's appeal, Tribunal committed a mistake by not permitting assessee (respondent before it) to support final

order of Commissioner (Appeal) by assailing findings of Commissioner (Appeal) on issues that had been decided against him - Held, yes[Para 26] [In favour of assessee]

Words and phrases : Term 'thereon' as occurring in section 254(1) of the Income-tax Act, 1961/ Term "though he may not have appealed" as occurring in rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963"

2. No evidentiary value of Survey Statement:

2.1 Further as per section 133A, there is nothing which suggests that a statement can be recorded on oath before the commencement of Survey or during Survey. However, if recourse is taken to section 131(1), during the survey, a statement can be recorded on oath, as the powers to record a statement on oath are vested in the authority u/s. 131(1) read with section 133(6) and in the circumstances specified u/s. 133(6) only. Section 133A does not empower any ITO to examine any person on oath, so **statement recorded under section 133A has no evidentiary value and any admission made during such statement cannot be made basis of addition.**

2.2 Further, the statute has provided different provisions looking to the different factual situations as regard recording of the statement, somewhere on oath and somewhere without oath, u/s 132(4) (in such matters), u/s 133A(3)(iii) (in survey case) and u/s 131 (for general inquiry). These provisions operate independently in their respective fields and cannot be used interchangeably. S.133A(3)(iii) is separate and independent from S. 131, as evident from the further fact that S. 133A (6), refers to use of the powers u/s 131 only in a given fact situation (as stated above), which manifests the legislative intention that statement of the assessee can be recorded under any of these three provisions as the situation may demand. Further, S.132(4) provides that such statement recorded during search may be used as evidence against the assessee in any proceedings, which is not the situation with S. 133A(3)(iii) nor with S. 131. In other words, though statement may be recorded on oath u/s 131, yet the statute not having provided such statement to be used as evidence against the assessee in any proceedings, the statement recorded under these two provisions loses their evidentiary value on the strict interpretation of the fiscal statute. Ignoring this significant difference will render the use of these words intendedly u/s 132(4), purposeless or nugatory. Therefore, to say that statement recorded u/s 133A(3)(iii) is equivalent to statement recorded u/s 131 is a gross misinterpretation of the provisions.

2.3 Reliance placed on:

2.3.1 CIT v. Khader Khan Son (2008) 300 ITR 157 (Mad.) (HC). Affirmed by Apex Court in, **CIT v. S. Khader Khan Son (2012) 210 Taxman 248(2013) 352 ITR 480 (SC) / (2012) 25 taxmann.com 413 (SC).**

2.3.2 Moreover in a comparatively recent case of **Pr. CIT, Central -2, New Delhi v. Meeta Gutgutia [2017] 82 taxmann.com 287 (Delhi)** Hon'ble Delhi High Court referred to the decision of the Kerala High Court in Paul Mathews & Sons v. CIT [2003] 263 ITR 101/129 Taxman 416 and of the Madras High Court in S. Khader Khan while considering distinction between statements under Sections 132(4) and 133A held as under:

"40. The main plank of Mr. Manchanda's submission was that the disclosure made by Mr. Pawan Gadia in his statement under Section 133A was sufficient to be construed as incriminating material qua all the aforementioned AYs, the assessment for which could be re-opened by invoking Section 153A of the Act. It is significant that while in the written submission dated 26th April, 2017, Mr. Manchanda termed the statement of Mr. Pawan Gadia as "the statement dated 23rd December, 2005 recorded under Section 132(4) of the Act", he was careful to describe it as such in the subsequent written submission dated 2nd May, 2017. This was for a good reason. The statement was in fact not under Section 132(4) of the Act but under Section 133A of the Act. There is a difference between a statement made during a survey under Section 133A of the Act and that made during the course of search under Section 132 (4) of the Act. Section 132(4) of the Act states that the authorized officer may, during the course of search and seizure, "examine on oath any person who is found to be in possession or control of any books of account, documents, monies, bullion, jewellery..."and that any statement made during such examination may be used thereafter in evidence in any proceeding under the Act. On the other hand, Section 133A does not talk of the recording of any statement on oath. Under Section 133A (3) (iii), the Income Tax Authority acting under the said provision could "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act." Therefore, there is a considerable difference in the nature of the statement recorded under Section 132(4) and that recorded under Section 133A(3)(iii) of the Act.

41. This distinction was noticed by this Court in Dhingra Metal Works (supra). The Court there referred to the decision of the Kerala High Court in Paul Mathews & Sons v. CIT [2003] 263 ITR 101/129 Taxman 416 and of the Madras High Court in S. Khader Khan Son (supra) and observed that the word 'may' occurring in Section 133A(3)(iii) of the Act "clarifies beyond doubt that the material collected and the statement recorded during the survey is not a conclusive piece of evidence by itself." Incidentally, the decision of the Madras High Court in S. Khader Khan Son (supra) has been affirmed by the Supreme Court by the dismissal on 20th September, 2012 of SLP (Civil) No. 13224/2008 filed by the Revenue against the said decision after granting leave. To the same effect is the decision of this Court in Sunrise Tooling System (P.) Ltd. (supra) and of the Jharkhand High Court in Shree Ganesh Trading Co. (supra). The CBDT's instructions dated 10th March, 2003 and 18th December, 2014 have also emphasized that there should be no recording of statement during "search/seizure/other proceeding" under the Act under "undue pressure or coercion".

42. Therefore, in the present case, it would be wrong on the part of the Revenue to characterize the statement of Mr. Pawan Gadia as by itself an incriminating material that could be used for making additions in all the AYs in question apart from the year of search."

2.3.3 Covered issue: This Hon'ble ITAT in the case of **Unique Art Age v. AO [2014] 50 taxmann.com 194 (Jaipur - Trib.)**, has also taken similar view holding that:

"3.8 Effect of admission made in statements recorded during survey under section 133A of the Act

18. **The position of law regarding the evidentiary value of admissions made in such statements is now settled.** After considering the rival stands on this issue, we have already discussed the same in the earlier part of this order. **No admission made in a statement recorded under section 133A on oath during survey can be relied as evidence against the maker or the assessee.** Undeniably, the Assessing Officer has made impugned addition on the basis of the statement of Shri Manohar Lal Agarwal and specifically by relying on his reply to question No. 23 of his statement. As per the assessment order, the excess stock of Rs. 5,08,98,166 has been worked out after giving the benefit of discount and the gross profit rate but mainly relying on the statement of one of the partners of the assessee-firm. If the statement of Shri Manohar Lal Agarwal and others are excluded in view of the above legal position, the value of the alleged excess stock can be ascertained in the light of the facts of this case. The legal issue is decided in favour of the assessee”

3. Moreover, with regard to incriminating and impounded papers & documents Shri Naresh Jain, husband of assessee in his recorded statement has **very clearly said that “these are incomplete records”** therefore by any stretch of imagination allegation of admitted income is incorrect and cannot be taken as having any evidentiary value.

Thus, the Id. CIT(A) as rightly considered the admission made and deleted the disallowances made by the AO as the same were fully explained thereby not sustainable under the eyes of law and facts discussed in details above. **Therefore, grounds taken by the revenue deserves to be dismissed.**

DGOA-4 and 5: Statement recorded u/s 131(1) and not u/s 133A(3)(iii):

Facts: The Revenue has raised the issue that:

“4. Whether in facts and circumstances of the case, the CIT(A) is justified in applying decision of Hon'ble Kerala High Court in the case of *K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] | 11 taxmann.com 74 (Kerala)* ignoring the fact that statement was recorded on oath u/s 131(1), as also mentioned by the assessee and not recorded u/s 133(3)(iii) which was the main substance of the decision in above case law.

5. Whether in facts and Circumstances of the case, the CIT(A) is justified in not appreciating the facts that the section 133A(6) empowered the Income Tax Authority to record the statement on oath, therefore the recording of statement u/s 131 in this case was not ultra-vires.”

Submission:

1. **S.133(6)- Not applicable:** At the outset it is submitted that, such a contention, on a bare perusal of the related provision, is completely devoid of merit and rather a misreading and misinterpretation of the provision. For ready reference S. 133A(6) is being reproduced hereunder:

“(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under [sub-section (1) of section 131] for enforcing compliance with the requirement made :

[Provided that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.]”

A bare perusal of the said provision shows that it is **only because of the non-co-operative or evasive attitude**, if adopted by the concerned person, who is summoned or is being enquired, then and then only the IT Authority shall be having powers u/s 131(1) under which, he may be summoned and on every failure to comply with, penalties can be imposed under other provisions of the law. But otherwise also, no action under this section could be taken by the survey authorities or the AO **without having the prior approval** of the Superior Authorities. The said **provision nowhere empowers the IT Authorities to record** the statement on oath.

2. The Revenue has also alleged in its grounds that the CIT (A) did not appreciate that the statements were recorded only u/s 131 but not u/s 133A (3)(iii). The revenue however, has not appreciated that statement u/s 131 can be recorded **only during the course of some proceedings if it is pending** which is indicated by the use of words “*for the purposes of this Act*” and therefore, the Hon’ble Courts have been consistently holding that unless there is a pendency of any proceedings, no summon can be issued nor statement could be recorded u/s 131(1). It is only when there is a purpose before the Revenue in relation to which, statements may be recorded but not otherwise. Under this background only, sub-section (1A) to section 131 was inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 01.10.1975. Therefore, when survey has been carried out u/s 133(A), there is pendency of proceedings and hence the AO can record statement on oath u/s 131(1) r.w.s 133A(3)(iii) in as much as such statement may be useful for or relevant to the survey proceedings, wherein, documents as may be found, helping in determining the true and correct income of the assessee.

Therefore, in this case the statement were recorded only u/s 133A(3)(iii) r/w 131(1) and CIT(A) rightly appreciated the legal and factual position on this aspect.

3. In addition, also kindly refer our detailed submission on this legal aspect towards DGOA-2 &7.

Thus, under totality of the facts & circumstances detailed above, the CIT(A) deleted the disallowance of Rs. 1,71,72,858/-. **Therefore, grounds taken by the revenue as also entire appeal deserves to be dismissed.**

DGOA-6: Assessee accepted addition in AY 2016-17:

“6. Whether facts and circumstances of the case, the CIT(A) is justified in not appreciating the in other important fact that during the assessment proceedings of the assessee for AY 2016-17 , the assess had

claimed / accepted that the undisclosed income offered during survey at Rs. 1,71,72,858/- was related to AY 2015-16 and therefore, the same is considered for the AY 2015-16”

Submission: In fact, this ground is based on the finding recorded by the AO at page 9 and 10 of the impugned assessment order. The crux of the finding of the AO was that Shri Naresh Jain had admitted that expenses to the extent of Rs. 1,71,72,858/- were increased/inflated. In addition, it was also argued alternatively that they pertain to AY 2015-16. This is clear from the finding recorded by the AO and the very ground taken by the Revenue that these expenses were related to AY 2015-16 which was a claim made by the assessee in the assessment proceeding for AY2016-17.

The assessee right from the beginning has been consistently contending that the documents found were incomplete record which were of the nature of memorandum records and in the light of the Audited Account duly supported by all bills and vouchers, the Audited P&L Account shows true & correct expenditure claimed, as certified by the Tax Auditor also. Hence the admission part was denied right from the beginning. However, when this issue arose in AY 2016-17, the assessee claimed that they pertain to AY 2015-16. It is in this background, the AO has considered this issue in AY 2015-16 only but not in AY2016-17.

Thus, no specific controversy has been raised by the Revenue in this ground and the only issue was the year and the AO having accepted the claim of the assessee that these expenses pertain to AY2015-16, had considered the same in this year and made the addition of Rs.1.71 crore, which was under challenge before the CIT(A) and once deleted, such deletion is now under challenge by the Revenue through DGOA-1 and others grounds.

Hence this ground is to be read along with the other grounds of appeal. **Therefore, this ground taken by the revenue deserves to be dismissed.**

Common submission: The AO and Revenue in its GOA have repeatedly relied upon the Survey statement of Shri Naresh Jain alleging admission made by him w.r.t. different addition which, are wrongly relied upon being survey statement and further once stood retracted, which has been elaborately submitted in this WS and may be considered towards all such grounds.

Thus, the appeal of the Revenue be dismissed as submitted hereinabove and relief may be granted u/r 27 may be prayed for.

The above submissions have been made based on the instructions and the information provided of/by the client.”

3.1 In the ground of appeal no. 1, the Revenue has challenged the deletion of the addition made by the AO of Rs. 1,71,72,858/- which was made on account of

impounded loose papers, showing Income and Expenditure A/c being Exhibit 8 Pg 97 to 99 (copy placed at appellant's paper book at Pg 32 to 35), the income of which is admitted by the assessee in his statement recorded during the course of survey. Further, in ground number 3, the Revenue has alleged the finding that impounded documents are incomplete records. Since ground no. 1 and 3 taken by the Revenue are common in nature, hence the same are being dealt with jointly hereunder. The case of the AO is that what was found during the survey was the real and actual expenditure incurred, whereas the claim of expenditure made by the assessee now through the audited accounts at Rs. 4,11,94,715/- as against 2,30,76,029/- shown in the impounded documents, (which results into the alleged excessive and bogus expenses of Rs. 1,71,72,858/- but corrected by the assessee at Rs. 1,81,18,746/-). As against this, the case of the assessee is that all these expenses were genuinely incurred and claimed, properly supported by bills and vouchers, duly accounted for and even the same were audited, and were not even rejected by the AO. Some of these expenses had even faced scrutiny assessment u/s 143(3) and were subject to first appeal. More importantly, in the 2nd remand report dated 19.12.2023, the AO himself has verified the complete accounts and thereafter given his positive report. ***Hence, Revenue's appeal on this ground is not maintainable.***

3.2 We have carefully gone through the order of the first appellate authority and find that very elaborate discussion has been made considering each and every aspect raised by the AO in the assessment order and in the remand report, after consideration of the written submissions and the rejoinder filed by the assessee. We have also gone through the assessment order, the oral and written contentions raised by the parties and the judicial precedents cited at bar. Hence, for these reasons and also for the reasons stated hereinafter, we are in full agreement with the findings recorded by the Id CIT(A). The relevant observations of the Id. CIT(A) made in his order at page 54 , para 5.11 are reproduced in following words

"I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under: -

In this case, the AO noted that during the survey action, incriminating documents were impounded and duly confronted. Assessee/AR has tried to justify her claim by stating that incomplete records were found at the time of survey.

The assessee when asked about these papers has denied the details mentioned in these papers and stated that these papers are dump papers. The contention of the assessee is not acceptable since these figures are exactly appearing in the audit report file along with return of income.

Since the details as appearing in the loose papers is exactly matching with the expenses claimed in the P&L account, the relevance of the loose papers cannot be denied. Based on these, it is considered that the assessee has maintained two accounts to manipulate the expenses to reduce profit at the end of the financial year.

The assessee has fewer expenses as per I&E account and more expenses as per the P&L account filed with audit report. The assessee during the AY 2015-16 had increase expenses by Rs. 1,71,7,858/- as per loose paper mentioned above and this fact was also admitted by Shri Naresh Jain (Husband of the assessee and main person dealing with financial transactions) during survey proceedings and surrendered the same amount i.e. Rs. 1,71,72,858/-. During the assessment proceedings of the assessee for AY 2016-17, the assessee has claimed/accepted that the undisclosed income offered during survey at Rs. 1,71,72,858/ was related to AY 2015-16. Therefore, the same is considered for the AY 2015-16.

Accordingly, the amount of Rs. 1,71,72,858/- was added to the total income of the assessee on account of excessive and bogus expenses claimed.

Per contra the appellant argued that more emphasis has been given to the recorded statement of husband of appellant Shri Naresh Kumar Jain wherein, in reply to Q No 23 has interalia accepted that Page No 97 is a chart, showing expenses for F/Y 2015-16 and F/Y 2016-17 Rs.1,71,72,858/-.

The appellant explained that there was totalling mistake and the total of the expenses recorded in the impounded sheet is Rs. 1,81,18,746/- and not Rs.1,71,72,858/-. The appellant furnished following details as summary with regard to impounded documents exhibit 8 page 97 to 99:

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The appellant argued that the expenses- **S No 3, 4, 6, 7, 8, 9, 12, 14,15, 16, 19, 20, 21, 22 and 23** (total Expenses heads- No 15) of the Chart above, working out to **difference of Rs. 49,32,482/- have been duly covered in the previous Assessment Order** as well as the Order in Appeal, Copy of Chart showing difference of Rs. 49,32,482/- in the expenses was enclosed- Annexure-3 Page No -16 and L'd Assessing authority already verified the facts in the remand report.

On perusal of the details it is seen that out of these expenses of Rs. 1,10,83,766/, **Rs.26,60,897/- were already disallowed by AO in the original assessment order passed u/s 143(3) dated 30-11-2017 for AY 2015-16. The CIT (A) in appeal proceedings in order no. 10238/ 2017-18 dated 12-02-2019 reduced this addition to Rs. 5,00,000/- (APB 214-221).** These expenses were already considered by the AO in the original assessment proceedings. Therefore, disallowing these expenses again is not found to be justified on the basis of only statement recorded. **The evidentiary value of the statement recorded under oath cannot be denied.** However, the explanation furnished by the assessee cannot be rejected only on the basis of statement recorded during the survey. It is true that the statement recorded during survey is an important piece of evidence but it is not conclusive. **Hon'ble High Court Of Kerala in the case of C.K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) held as under –**

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In this case, the AO has used statement to corroborate other materials impounded during the survey. **However, the appellant is in a position to explain that the entries in the impounded documents are explainable from the books of accounts. In these circumstances, the corroborative material relied upon by the AO is treated as explained.** The corroborative evidence on the basis of which **admission was made is explained** by the appellant. In the absence of any other corroborative material assessment of tax cannot be made solely on basis of such sworn statement made by assessee as held by the Hon'ble High Court. The assessee has explained the contents of impounded document as far as addition of Rs. 49,32,482/- is concerned. Therefore, the addition made by the AO is not found to be sustainable and deleted.

It is argued that **S No 5, 10 and 13 of the Chart Above, working out to Rs. 27,70,215/- pertain to Bank Charges, Bank Interest and Interest charges, which are self-explanatory from the Bank**

Accounts and Interest charges that have been paid through Banking Channel and TDS effected thereon, do not need any further clarification. Copy of Chart showing difference of Rs. 27,70,215/- in the expenses was enclosed- Annexure-4 Page No 17.

*It is argued that the then AO, during assessment proceedings, has even dis -allowed the claim of appellant with regard to **Bank Interest, Bank Charges and Electricity expenses which has been paid as per the demand raised to such financial institutions and have been paid to the recipient through Banking channel only.** Even a lay man would not agree to such unethical and arbitrary dis-allowance to the Tax Payer. Likewise the standardized provisioning of depreciation on fixed assets, claimed and booked by the appellant as per accounting norms, have been disallowed to the appellant is against provisions under Income Tax Act 1961 and principles of Natural Justice and necessitates justice to the appellant.*

The appellant explained that these expenses are duly recorded in the books of accounts and are allowable business expenses. These expenses were verified by the AO in the remand proceedings and no adverse remarks were made except mentioning that the AO during the original assessment order held that the assessee manipulated the expenses and the clarification given is afterthought. The assessee has explained these expenses as bank charges, bank interest and interest paid to parties on which TDS is deducted. Therefore, the genuineness of these expenses cannot be doubted. The objections of the AO are not found to be on the basis of facts. In these circumstances, the corroborative material relied upon by the AO is treated as explained. The corroborative evidence on the basis of which admission was made is explained by the appellant. In the absence of any other corroborative material assessment of tax cannot be made solely on basis of such sworn statement made by assessee as held by the Hon'ble Kerala High Court in the case of K Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) as discussed earlier. The assessee has explained the contents of impounded document as far as addition of Rs.27,70,215/- is concerned. Therefore, the addition made by the AO is not found to be sustainable and deleted.

*It is argued that the expenses **S No 1, 2, 11, 17, 18 and 24**, appearing in the Chart above and the difference being of Rs. 1,04,16,049/- and in support of the same, detailed clarification has already been submitted in the foregoing paras. Copy of chart of various expenses amounting to Rs. 1,04,16,049/- was enclosed –Annexure-5, page No 18..*

The AO in the second remand report has reported that the expenses are supported by bills and vouchers. The payment is made mainly thorough banking channel. In view of these facts the expenses cannot be treated as non – genuine. In these circumstances, the corroborative material relied upon by the AO is treated as explained. The corroborative evidence on the basis of which admission was made is explained by the appellant. In the absence of any other corroborative material assessment of tax cannot be made solely on basis of such sworn statement made by assessee as held by the Hon'ble Kerala High Court in the case of .K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) as discussed earlier. The assessee has explained the contents of impounded document as far as addition of Rs. 1,04,16,049/- is concerned. Therefore, disallowance of this amount of Rs. 1,04,16,049/- is not found to be sustainable.

*In the appellate proceedings, the appellant stated that in the impounded sheet total expenses of Rs. 1,81,18,746/- were recorded as per detail furnished. However, the AO made totaling mistake and the addition of only Rs. 1,71,72,858/- was made. **The AO in the remand proceedings has verified the details with regard to expenses of Rs. 49,32,482/-, Rs. 27,70,215/- and Rs. 1,04,16,049/-.** Total of these expenses comes to Rs. 1,81,18,746/-. The AO stated in the remand report that enhancement of the difference may be made in the appellate order. However, the appellant has furnished evidences, to establish that all the expenses are recorded in the regular books of accounts. **The AO has reported that the expenses are supported by bills and vouchers.** The payment is made mainly thorough banking channel. Therefore, no adverse view is taken on the difference of Rs. 9,45,888/- pointed out by the appellant.*

The appellant further argued that the AO treated the explanation of the assessee as afterthought adjustment to evade tax liability. It is argued that the AO recorded that amounts appearing under various heads of expenses in the 'Audit Report' and the 'impounded loose papers' are exactly same and at the time of Survey Action, the Assessing Authority sans any logic and rationale and ignoring the facts and supporting documents, has made addition on the basis of 'impounded papers' but only the relevant vouchers alone appear to be an afterthought and not the amount appearing in the 'loose papers'.

It is argued that if the then AO had an opinion that the books of account for the year under consideration had not been maintained properly then apply provision u/s 145(3) of Income Tax Act 1961 before making an addition of Rs. 1,71,72,858/- which was made merely on the basis of incriminating documents impounded during the course of survey proceedings as well as statement recorded of Shri Naresh Jain husband of Smt Nisha Jain despite the facts that all the books of account for the year under consideration had duly been audited from chartered Accountant therefore, the Assessing Authority has wrongly observed that books of accounts and the documents are not true and correct.

*The reply of the appellant is considered. **It is correct that the AO has taken contradictory stand in the assessment order. The AO recorded that amounts appearing under various heads of expenses in the 'Audit Report' and the 'impounded loose papers' are exactly same. In such a situation, where the impounded papers and Audit Report contains same figures, then the addition could only be made by rejecting the books of accounts. However, the AO has not rejected the books of accounts. The additions made by the AO in the absence of any other corroborative material assessment of tax are made solely on basis of such sworn statement made. As held by the Hon'ble Kerala High Court in the case of .K. Abdul Azeez v. Commissioner of Income Tax, Central Circle, Calicut [2019] 111 taxmann.com 74 (Kerala) as discussed earlier the addition made is not found to be sustainable and deleted.** The ground number 2 is treated as allowed."*

3.3 It is noticed that during the survey a document being Exhibit 8 Pg 97 to 99 (copy placed at appellant's paper book at Pg 32 to 35), which is a sheet of paper showing various expenses under different heads, totalling to Rs.2,30,76,029/-

being page 97 of Exhibit 8, was found from a careful perusal and consideration of the facts, it cannot be denied that the impounded document are memorandum recording which every assessee and its accountant used to note before making final entries in the books accounts and drawing the Annual Balance Sheet and P & L A/c, which is not an uncommon practice, being followed in the accounting world. It is not denied that all these expenses were finally included in the regularly maintained books of accounts, and even the AO (at Pg 9.) himself has agreed that the details appearing in the loose papers are exactly matching with the expenses claimed in the P&L account, which support this inference.

3.4 The facts are not denied that the assessee has been maintaining regular books of accounts consisting of cash book, ledger, journal and all the expenses are fully supported by bills and vouchers and were subjected to audit.

3.5 It is not the case of the AO that the ld. Tax Auditor has made adverse remarks or has qualified the audit report. The accounts were audited long back on 29.09.2015 that is almost 2 years prior to the date of the survey and copy of the same is placed at Pg 5 to 18 of assessee's paper book, wherein the ld. Tax Auditor has certified the account showing the true and correct state of affairs. Admittedly no enquiry was made from the ld. Tax Auditor. We also find force in the contention of the ld. AR that Section 44AB of the Act was inserted with a definite

purpose, which is explained in CBDT Circular No. 387 dated 06.07.1984 to ensure that accounts are properly maintained and that they faithfully reflect the income of the taxpayer and deductions are correctly claimed.

3.6 Another pertinent aspect is that the Id. CIT(A) obtained remand reports, after verification on the factual aspects, more than once and AO in his 2nd remand report dated 19.12.2023 has reported that the expenses are supported by bills and vouchers. Further, the payment is made mainly through a banking channel hence it leaves no iota of doubt of manipulation in accounts. The same is reproduced at Pg 51 & 52 - Pr. 4 & 5 of the CIT(A) order and is also reproduced here under for a ready reference:

*“4. On perusal of aforesaid reply, it is noticed that the expenses related to bank charges of Rs. 2,79,875/- are totally related to bank charges made by Syndicate Bank, which is verified from the bank statement of the assessee submitted during the course of assessment proceeding. Expenses related to bank interest of Rs. 75,30,019/- is related to Bank interest payment made by the assessee to the different Banks mentioned in the ledger of bank interest account. The same **interest payments are also verified from the concerned Bank account statements**. Further on perusal of ledger account of interest paid of Rs. 15,35,608/-, it is noticed that such interest was paid to M/s R. C. Jain Invest & Fin (P) Ltd. During the year under consideration & **TDS has been deducted** as per the provisions of Income Tax Act, which is also verified from the Form No. 26Q filed by the assessee.*

*5. Further, in respect of the other expenses related to discount, hording rent, electricity expenses, repair & maintenance, Salary & misc. expenses aggregate amounting to Rs.2,07,65,446/-, **the assessee has submitted the supporting bills/vouchers related to aforesaid expenses, which were re-examined with the ledger account of respective heads, as produced by the assessee during the course of re-verification proceedings. After verification, it is noticed that out of total expenses most of the expenses are related to discount of Rs. 1,29,68,729/- mainly to their major clients namely (i) M/s Allen Career Institute, Kota, (ii) Career Point Ltd., Kota (iii) Vakrangi Ltd., (iv) Motion Education Pvt. Ltd., Kota. The assessee has submitted the copy of ledger of the***

respective concerns along with bills/vouchers for verification, which is found verified. The assessee has also submitted the ledger of remaining expenses along with its bills/vouchers related to hording rent of Rs. 11,10,529/-, electricity expenses of Rs. 4,70,637/-, Repair & Maintenance expenses of Rs. 8,17,444/-, Salary Expenses of Rs. 49,60,000/- & Misc. expenses of Rs. 4,38,107/-. On perusal of such documentary evidences it is noticed that most of expenses are made through banking channel and supported with bills/vouchers except some self-made vouchers for which payment was made in cash.

A careful perusal of the above remand report shows that the AO appears to have carried out extensive verification of the entire related record and noted his factual findings w.r.t. each and every expenditure, i.r.t. which the AO alleged inflated claim of expenditure made with Bank Charges, Bank Interest, Interest to other parties, Discount, Hoarding Rent, Electric Expenses, Repair & Maintenance expenses, salary and miscellaneous expenses, etc., aggregating to Rs. 2,07,65,446/-, to the effect that they were genuinely claimed expenditure, supported by evidences, bills, vouchers, bank statement and third party information. We find that there is absolutely no adverse comment made by him on this aspect, nor he claimed that such expenditure were bogus / inflated as initially alleged by the then AO in the impugned asst. order. He even stated that all these details supporting bills, vouchers, etc. were submitted during the course of the assessment proceeding itself. Such factual findings recorded in the Remand Report when read in the light of the fact of audited accounts without any adverse finding, assumes special significance. Consequently, the total claim of expenditure of Rs. 4.12 crore cannot be alleged to be excessive, bogus or in-genuine, merely based on the admission

made by the assessee during the course of survey, in absence of any other corroborative evidence, specifically showing that what the assessee claimed through the audited accounts, audited income P & L account, was not genuine or real expenditure incurred. No doubt, such a remand report operates as an estoppel, against the revenue. However, an independent examination of the record by us, also shows that expenses of Rs. 27,70,215/- related to bank charges, bank interest and interest charges which were all routed through banking channels and subjected to TDS. The major expenditure claimed related to discount and rebate at Rs. 1,29,68,729/- in support of which copies of ledger account of all the payees were submitted and available at Pg 62 to 181. However, no enquiry appears to have been made by the AO from these parties directly. The salary expenses of Rs. 49.60 lakh were verifiable from the salary sheet (copy placed at assessee's paper book Pg 204). It is noticed that copies of the ledger account and other supporting evidence were furnished (copy placed at assessee's paper book Pg 62 to 206). Thus, if in the final accounts, which are duly audited, there is an increase in the expenditure as compared to the sheet found during the course of survey, such increase itself cannot result in an income and the allegation of the Revenue of having claimed excessive and bogus expenses is nothing more than a suspicion. The ld. DR failed to rebut all these factual findings and evidence brought on record by the assessee during the course of hearing. Very pertinently, the accounts were neither rejected

directly by invoking section 145 nor indirectly in any manner and therefore, we find no substance in the grounds taken by the Revenue. **For these reasons, the Department's grounds of appeal No. 1 and 3 taken by the Revenue are hereby dismissed.**

4.1 In Grounds of Appeal No. 2 and 7, the Revenue has raised the grievance alleging that Id. CIT(A) has ignored the basic fact that the assessee had already admitted income in statement on oath u/s 131 dated 04.02.2017, and in particular Question & Answer No. 23 (copy of the statements are placed at assessee's paper book Pg 36 to 39). On the other hand, the assessee has also made a prayer under Rule 27 of the ITAT Rules, 1963 in as much as the Id. CIT(A) had rejected the contention of the assessee that survey statements do not have any evidential value and therefore cannot be taken into consideration. Similar grounds and contentions have already been dealt with by us in detail in the cases of Naresh Jain in A.Y. 16-17 in ITA no. 349/JPR/2024(D) and in ITA no. 358/JPR/2024(A) and in A.Y. 17-18 ITA no. 374/JPR/2024(D) and also similar prayer under Rule 27 of ITAT Rules, has been admitted therein. Therefore, the Department's grounds of appeal No. 1 and 3 taken by the Revenue are hereby dismissed.

5.1 In the grounds no. 4 & 5 taken by the Revenue, we find that, we have dealt with these issues in detail in the case of Naresh Jain for A.Y. 16-17 while deciding AGOA-2 of our order dated 05-08-2024 in ITA No. 349 (D) and 358

(A)/JPR/2024. At the same time, we are also in agreement with the finding of the Id. CIT(A) that the impounded document relied upon by the AO, has been fully explained by the assessee with the help of corroborate evidence to support the claim of the assessee and such relief has not been granted merely on the legal aspects and technicalities . **Therefore, the Department's grounds of appeal no. 4 and 5 taken by the Revenue are hereby dismissed.**

6.1 In Ground No. 6, the Revenue has claimed that the assessee in his statement had already claimed / admitted undisclosed income of Rs. 1,71,72,858 /- related to A.Y. 2015-16, during the course of assessment proceedings for A.Y. 2016-17, which fact was not appreciated by the CIT(A).

6.2 We have heard both the parties and perused the materials available on record. At the outset, we do not find any merit and force in the ground taken by the Revenue and the same appears factually incorrect on the face of it inasmuch as based on the admission of the Assessee that such expenditure related to A. 2015-16 and not to AY 2016-17 only, the AO considered this issue in A.Y. 2015-16 only but not in AY 1617. The Id. CIT(A) has nowhere said that such an issue was to be considered in A.Y. 2016-17 but not in A.Y. 2015-16, hence the ground of the Revenue fails on this count only. However, the other part of the ground wherein it is alleged that the assessee admitted such undisclosed income for A.Y. 2015-16 is

contrary to facts. The assessee right from the beginning has been agitating such addition, the merit of which we have already dealt with in response to Ground No. 1 and 3 taken by the Revenue and already stands dismissed and in fact, it was only an alternate argument raised that if at all additions are sustained, they pertain to A.Y. 2015-16 and not A.Y. 2016-17, which cannot be considered as an acceptance or admission of the Assessee. **Hence, this ground of the Revenue fails and is hereby dismissed.**

7.0 In the result, the appeal of the Revenue is dismissed with no orders as to cost.

Order pronounced in the open court on 05/08/2024.

Sd/-
(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 05/08/2024

*Mishra

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

1. The Appellant- The ACIT, Central Circle, Kota
2. प्रत्यर्था / The Respondent- Nisha Jain, Kota
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.377/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar