

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri N. V. Vasudevan, JM & Shri M. Balaganesh, AM]

**I.T.A No.2453/Kol/2013**  
**Assessment Year: 2010-11**

Income-tax Officer, Wd-36(3), Kolkata. Vs. M/s. Saha Agency  
(Appellant) (PAN: AAOFS4826L)  
(Respondent)

&

C.O. No. 139/Kol/2013  
In **I.T.A No.2453/Kol/2013**  
**Assessment Year: 2010-11**

M/s. Saha Agency Vs. Income-tax Officer, Wd-36(3), Kolkata  
(Cross Objector) (Respondent)

Date of hearing: 11.05.2016  
Date of pronouncement: 20.05.2016

For the Appellant/Revenue: Md. Ghayas Uddin Ansari, JCIT, Sr. DR  
For the Assessee/Cross Objector: Shri S. M. Surana, Advocate

**ORDER**

**Per Shri M. Balaganesh, AM:**

This appeal by revenue and Cross Objections by assessee are arising out of order of CIT(A)-XX, Kolkata vide Appeal No. 135/CIT(A)-XX/Wd-36(3)/12-13/Kol dated 15.07.2013. Assessment was framed by ITO, Wd-36(3), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2010-11 vide his order dated 19.03.2013. Since both the appeal and the cross objection are arising out of the same order of CIT(A), we dispose them off by this common order.

2. The first issue to be decided in this appeal of revenue is as to whether the disallowance u/s. 40(a)(ia) of the Act could be made in the sum of Rs.10,59,658/- in the facts and circumstances of the case.

3. Brief facts of this issue are that the assessee is a partnership firm engaged in the business of general order supplies and catering services. During the course of assessment proceedings, the Ld AO observed that the assessee had made payments to following parties:

- (i) Air Transport Corporation (Assam) Ltd. towards freight charges - Rs. 4,34,554/-
- (ii) Rayana Paper Board Ltd. towards freight charges - Rs. 1,95,000/-

(iii)	Samsuddin Pailan towards freight charges	- Rs. 1,59,509/-
(iv)	Das Enterprises towards interior decoration charges	- <u>Rs.2,70,595/-</u>
	Total	- Rs.10,59,658/-

The party wise details of payment are as below:-

3.1. Air Transport Corporation (Assam) Ltd. - Rs. 4,34,584/-

Freight charges were paid to M/s. Air Transport Corporation Ltd.(Assam). The copies of bills as well the documents showing the transportation of goods were filed before the AO. According to the AO the payment on account of transportation charges paid to the said party were contractual payment and accordingly the provisions of section 40(a)(ia) were applicable. It was submitted that there was no oral or written contract with any transport operators who were hired whenever the need arose without any pre requisition or order to the transporters. No disallowance u/s. 40(a)(ia) was called for, where there was no oral or written contract with the transporters or truck owners. The assessee had to hire lorries whenever the assessee wanted to send the goods in which the assessee was dealing. The transporter carried the goods to the destination on spot payment of the freight, some amount by way of advance and some amount at the time of delivery. When there was no contract either oral or written, there was no need to deduct the tax and the provisions of section 194C read with section 40(a)(ia) of the Act were not applicable.

3.2. Rayana Paper Board Ltd. – Rs. 1,95,000/-

As far as the payment to Rayana Paper Boards Ltd is concerned, the same was not a payment towards transport charges. The assessee purchased paper from Rayana Paper Board Ltd. The said company also took reimbursement of the transport charges paid by them on behalf of the assessee for delivery of the goods to assessee's place. They included this amount in their bill for goods. This is evident from the purchase bills issued by Rayana Paper Boards Ltd. The assessee produced the ledger copy of account of Rayana Paper Boards Ltd which showed that bill for the gross amount was raised which includes reimbursement of the freight. Accordingly it was claimed that no tax was required to be deducted in case of reimbursement of the expenses.

3.3. Samsuddin Pailan - Rs.1,59,509/-

The labour charges were paid to Sri Shamsuddin Pailan for painting work carried out through various labours. The party was a Labour Sardar who himself was engaged in doing the labour work. Accordingly it was claimed that no tax was required to be deducted in case the payment is made to labour sardar.

3.4. Das Enterprise - Rs. 2,70,595/-

The payment to M/s. Das Enterprise was for purchase of goods and debited to the purchase a/c. The copy of purchase bill was produced before the revenue. Needless to mention that for payment for purchase of material, the provisions of section 194C were not applicable and consequently no tax was required to be deducted. Hence it was claimed that the provisions of section 40(a)(ia) of the Act cannot be applied.

3.5. The Ld. AO not convinced with the aforesaid explanation disallowed the entire expenditure u/s. 40(a)(ia) of the Act in the assessment. On first appeal, the Ld. CIT(A) partly granted relief to the assessee. Aggrieved, revenue is in appeal before us on the following ground:

*“1. On the facts and circumstances of the case Ld. CIT(A) erred in deleting the disallowance made u/s. 40(a)(ia) whereas, all the relevant expenses were well within the purview of TDS.”*

And the assessee has raised cross objections before us on the following ground no. 1:

*“1.For that the Ld. CIT(A) erred in confirming the disallowance of Rs.159509/- out of disallowance u/s. 40(a)(ia), 6,14,711/- out of disallowance u/s. 40A(3), Rs.4,36,000/- disallowed as prior period expenses, without property considering the submissions of the appellant.”*

3.6. The Ld. AR reiterated the same submissions as made before Ld. CIT(A). He placed reliance on the following decisions in support of his contention in respect of payments made to Air Transport Corporation (Assam) Ltd.-

(i) Decision of Hon’ble Calcutta High court in the case CIT Vs. M/s. Stumm India, ITA No. 127 of 2009 dated 16.08.2010,

(ii) Decision of Ahmedabad ITAT “B” Bench in the case of M/s. Pragati Trading Co. Vs. ITO, ITA No. 3478/Ahd/2008 for AY 2005-06 dated 26.11.2010,

(iii) Decision of Visakhapatnam ITAT in the case of Mythri Transport Corporation Vs. ACIT reported in 124 TTJ 970

The Ld. DR vehemently supported the order of the AO.

3.7. We have heard rival submissions and perused the material available on record and case laws cited above. We find in respect of payments made to Air Transport Corporation (Assam) Ltd., the Ld. CIT(A) had recorded a categorical finding that there was no oral or written contract the assessee had with lorry operators as vehicles were hired whenever the need arose. This finding has not been controverted by the revenue before us. In this regard, the reliance placed by the Ld. AR on the decision of jurisdictional High Court in the case of M/s. Stumm India, supra, wherein it has been held as under:

*“It is urged before us that the learned Tribunal ought not to have accepted the judgment and order of the CIT (Appeal) who has quashed the disallowance of deduction of Rs.41,33,710/- and on account of tax deduction at source. The learned Tribunal has recorded the fact that the department has not been able to bring any material on record to show that the assessee has made the payment to the transporters in pursuance of contract for carriage of goods of the assessee and the question of deduction at source under section 194C does not and cannot arise. In the absence of evidence of payment made by the assessee to the transporters, the assessee cannot be saddled with the liability of deducting tax at source. Before us no other point has been urged nor it is said that the aforesaid fact finding is truthful without any basis whatsoever.”*

Hence, we hold that the provisions of section 194C of the Act cannot be made applicable to the payments made to Air Transport Corporation (Assam) Ltd.

3.8. In respect of payment made to Rayana Paper Board Ltd. towards freight charges, we find that the same are merely reimbursement of expenses incurred by the said party on behalf of the assessee. We have perused the contents in pages 10 to 70 of the paper book containing details of freight charges including bills and money receipt from various parties. In view of the same, we are convinced that the provisions of section 194C of the Act cannot be made applicable to the facts of the instant case.

3.9. In respect of payments made to Samsuddin Pailan, we find that no specific arguments were advanced by the Ld. DR by controverting the findings of Ld. CIT(A) and hence, we find no infirmity in his order in this regard.

3.10. In respect of payments made to Das Enterprise, it is established by the assessee that the payment is made towards purchase of material and not for any contract. Hence, the provisions of section 194C of the Act could not be made applicable to the facts of

this case. We find that the Learned DR was not able to advance any specific arguments before us against the order of Ld. CIT(A). Hence, the ground no. 1 of revenue appeal is dismissed. We also find that the assessee was not able to advance any specific arguments before us against the order of Ld. CIT(A) in respect of this addition and accordingly the assessee's Cross Objection is dismissed.

4. The second ground to be decided in this appeal of revenue is as to whether the disallowance u/s. 40A(3) of the Act could be made in the facts and circumstances of the case.

4.1. Brief facts of this issue is that the Ld. AO observed that the assessee had made payments in cash exceeding Rs.20,000/- otherwise than by way of an account payee cheque or account payee bank draft towards freight charges, purchase of material and purchase of betel nuts. The details of payments are listed by the AO at page 3 of his order. The Ld. AO observed that the assessee smartly recorded the payment of freight charges made to various transporters in its cash book with as many payments below Rs.20,000/- on different dates after splitting the figures. He observed that, however, from verification of bills and money receipt of the said payments, it was revealed that payments were actually made in cash exceeding Rs.20,000/- on a single payment basis on each day. The Ld. AO, therefore, held that the goods do not fall under the exception provided in Rule 6DD of the I. T. Rules, 1962 and hence, disallowed u/s. 40A(3) of the Act a sum of Rs.6,94,861/- in the assessment order.

4.2. Before the Ld. CIT(A), the assessee argued that the details were submitted to the Ld. AO in the course of assessment proceedings along with the ledger copy of the parties. It was explained that the payment was made to various transporters on various dates and no single payment was made to a particular transporter above Rs. 20,000/- in cash. However, on completion of the entire transaction which were generally slightly above Rs. 20,000/- the transporters used to give one single money receipt for the entire transaction on the basis of which the AO has made the disallowance U/s. 40A(3) of the I.T. Act, 1961. The books of accounts have been accepted by the AO and they were fully supported by bills and vouchers. As regards payments made to National Pipe and Sanitary Stores it is submitted that the same were paid on various dates but the said

amount was credited by the party on one single day and receipt was issued by them accordingly. There was no payment exceeding Rs. 20000/- as is evident from the ledger of the party in the books of the assessee. The said books have not been rejected. Therefore, no disallowance under sec. 40A(3) is called for. As regards payment made to Mr. Jony Thomvso, Mr. S. Durai, Mr. S. Dubey and Mr. Willfat for purchase of betel nut, it is submitted that Port Blair is the area where betelnut is grown in plenty. The assessee had deputed the traders who purchased on behalf of the assessee and in the consideration paid, added their commission and raised the bill. Any purchase of agricultural produce through agent is covered by the exemption provided under rule 6DD (k) of the I. T. Rules.

4.3. The Ld. CIT(A) gave relief to the extent of Rs.80,150/- and upheld the balance addition of Rs.6,14,711/-. Aggrieved, the revenue is in appeal before us and assessee has also raised cross objection in this regard.

4.4. The Ld. AR during the course of hearing agreed for the addition confirmed by the ld. CIT(A) to the extent of Rs.80,150/-. He reiterated the arguments as made before the CIT(A). In response to this, Ld. DR vehemently supported the orders of the lower authorities for the balance sum of Rs.6,14,711/-.

4.5. We have heard rival submissions and perused the material available on record. We find that the AO adjudicated this issue in detail with regard to payment made to each party. The Ld. AR before us was not able to prove that the case falls under the exception provided in rule 6DD of the I. T. Rules. Hence, we confirm the addition made by the Ld. AO. Accordingly, ground no.2 of revenue's appeal is allowed and ground no.1 of assessee's CO in this regard is dismissed.

5. The third issue to be decided in this appeal of revenue is as to whether the disallowance on account of bogus purchases could be made in the facts and circumstances of the case.

5.1. Brief facts of this issue are that the Ld. AO observed that the assessee has shown a meager profit of Rs.21,000/- on purchase and sale of betel nuts. He accordingly, proceeded to issue notice u/s. 133(6) of the Act to the parties from whom purchases

were made. The Ld. AO observed that letters in many cases returned unserved and in many cases remained unreplied. The assessee also furnished the changed addresses of certain parties. The Ld. AO observed that some of the parties confirmed the transactions *suo moto* even without letters being sent to them. The Ld. AO observed from *suo moto* reply dated 01.06.2012 of one M/s. Asha Traders that the letter was hand written and signed by Sri Asis Sarkar, Accountant of the assessee, who deposed against the assessee by stating that the said letter dated 01.06.2012 was prepared and signed by him at the behest of the assessee. The said statement was given to the assessee and opportunity for cross examination was provided by the AO to assessee which the assessee for reasons best known to him failed to utilize. Accordingly, the Ld. AO treated the purchases made from M/s. Asha Traders in the sum of Rs.18,02,848/- as bogus.

5.2. The Ld. AO issued letter to Mr. T. William John who had confirmed that he had not done any transaction with the assessee and accordingly, the Ld. AO show caused the assessee to treat the alleged purchases made from said party in the sum of Rs.14,75,415/- as bogus. The assessee replied that the transaction was made with Mr. William Tham and reply to AO was given by Mr. T. William John and accordingly, pleaded that the purchases are genuine. The Ld. AO on further examination observed that the letter was sent in the name of Mr. William Tham only that too, twice. Both the time reply was given by Mr. T. William John. The Postal Authority will not do such a silly mistake (that too, twice) that letter addressed to Mr. William Tham will be delivered to Mr. T. William John and both the time Mr. T. William John will receive and reply the letter addressed to Mr. William Tham. That means Mr. William Tham and Mr. T. William John are one person. The said fact was confirmed by Mr. T. William John over his cell phone. Mr. T. William John confirmed the undersigned over the cell phone that there is no any William Tham in his village. His full name is Tham William John and sometime people address him William Tham. Hence, there is no point in the explanation of the assessee and the transaction (of Rs. 14,75,415/-) with William Tham is bogus. ).

5.3. The Ld. AO had received information for change of address from assessee in respect of some of the parties and issued commission u/s. 131(1)(d) of the act to Income Tax Officer, Port Blair to verify the identity of the said parties and genuineness

of the transactions shown by the assessee with them. In response, ITO Port Blair, vide his letter dt. 31.10.2012 informed that the existence of M/s MKM Copra & Co. could not be ascertained in Calicut, Port Blair Andaman. The said fact was conveyed to the assessee. In response, assessee furnished a Xerox copy of affidavit from one Mr. R. Madhivannan. Vide this affidavit Mr. R. Madhivannan declared that he carried out the business under the name and style M.K.M. Copra & Co. and had a transaction of Rs. 16,15,935/- with M/s Saha Agency. The aforesaid affidavit cannot be treated as genuine and hence cannot be accepted as because:-

*- Letter was sent on the address as supplied by the assessee i.e. M/s . M.K.M. Copra & Co., Calicut, Port Blair, Andaman. Postal Authority on enquiry on 07.04.2012, 09.04.2012, 10.04.2012, 11.04.2012, 12.04.2012 and 13.04.2012 reported that the party is "Not Known" at the given address.*

*- After that Departmental Inspector visited the address and reported that there is no existence of the said party at the given address. The report of the Inspector is reproduced as below:-*

*"As directed by ITO Port Blair, I went to conduct an enquiry on 19.10.2012 in the case of M/s Saha Agency at the office premises of M/s. M.K.M. Copra & Co. Calicut, Port Blair, Andaman. I enquired in Calicut locality regarding the M.K.M. Copra & Co. but no one could tell whereabouts of M.K.M Copra & Co. I met with persons running copra business even they also could not tell anything about M.K.M Copra & Co. Few of them simply told that we have never heard this name. Under the circumstances I am of the opinion that the M.K.M Copra & Co never existing or may be existing by other name."*

*- In the aforesaid affidavit, Mr. R. Madhivannan declared that he had carried out the business under the name and style of M.K.M. Copra & Co. that means it is his proprietorship concern. But, earlier confirmation letter dt. 11.06.2012 of M/s M.K.M. Copra & Co. was signed by one R. Madhi, as Partner of the concern. As stated earlier when assessee was informed about the non-service of letter, confirmation from parties reached suo moto.*

*- The signature of R. Madhi on affidavit and on letter dt. 11.06.2012 also differs.*

*- Assessee failed to furnish/produce any other identity of the said concern like trade licence, PAN, Electricity/Telephone Bills etc. Here, it is important to mention that onus of proving identity of the person and genuineness of the transaction is on assessee.*

*Further, after receiving the submission of the assessee regarding Mr. William Tham and the said affidavit, I.T.O., Port Blair was asked to enquire the facts, who after doing enquiry reported following facts vide his letter No. ITO/ANI/ 2012-13/2162 dt. 12.03.2013:-*

*- Mr. T. William John and Mr. William Tham of Village Mus of Andaman Nicobar is one and the same person and he denied about any transaction with M/s Saha Agency during the F.Y. 2009-10.*

- *Mr. R. Madhivannan is a labour and at present his bank balance is only of Rs. 300/- .*
- *Mr. R. Madhivannan failed to produce Partnership deed, Trade licence and / or any documentary evidence that he is/was partner of M/s MKM Copra & Co.*
- *Mr. R. Madhivannan failed to produce any proof of business activity; even he has no letter pad, bill book etc.*
- *The affidavit has been made either in exchange of some favour or under coercion or pressure from the party.*

The aforesaid facts of the report of I.T.O, Port Blair were conveyed to the assessee vide letter dt. 12.03.2013 and assessee was asked to prove the identity of the said persons and genuineness of the alleged transactions.

5.4. In response to this, Id. AO observed that the assessee only gave vague and evasive reply without controverting the specific findings of the AO. Based on the above observation, the Ld. AO treated the purchases made from following three parties –

(i)	Asha Traders	-	Rs. 18,02,848/-
(ii)	William tham	-	Rs. 14,75,415/-
(iii)	M.K.M. Copra & Co.	-	<u>Rs. 16,15,935/-</u>
			Rs.48,94,198/-

as bogus purchases and disallowed the same.

5.5. Before the Ld. CIT(A) the assessee argued that the assessee purchased raw betel nuts and the same cannot be kept in store for more than one or two days. The assessee immediately sold the same. The parties who sold the betel nuts procure the same for the assessee from producers and after adding their commission or remuneration sold the same to the assessee. The assessee in turn also immediately sold the same. The sales parties are flying sales man and may not be available after three years but the fact of purchase cannot be denied. The assessee has in turn sold such purchased betel nuts. Full ledger copy of the purchase and sales have been furnished before the Ld. AO. The details of the said purchase and sales were also filed. It will be evident that the assessee has purchased betel nuts and has immediately sold the same. Unless the purchase was made there could not have been any sale. From the details of the quantity recorded in the ledger account of betel nuts purchase and sale, it could be found that the total quantity purchased was 374629 kgs and the same quantity have been sold. Unless such quantity

was purchased there could not have been any sale and if the purchase was bogus then the sale was also bogus. If the quantity purchased have been sold, purchase cannot be treated as bogus even though the parties may not be available. Reference in this connection was invited to the following judgments:

J R Solvent Industries P Ltd vs ACIT reported in 68 ITD 65 (Chand ITAT) (TM )

ITO vs Sun Steel reported in 92 TTJ page 1126 (Ahd Tribunal)

Liyakat Ali Mollah 81 TTJ page 769

5.6. In this connection it was also submitted that in so far as the factum of purchase of betel nuts is concerned the same cannot be denied since the assessee had sold the same purchased betel nuts and there could not have been any sale unless there was purchase. Further the rates at which the betel nuts were purchased from the so called bogus parties were also not higher than the rates at which the betel nuts were purchased from other parties whose purchases have been accepted by the AO. Date wise purchase of betel nuts were filed before the AO. Hence it also cannot be said that the purchase from the so called bogus parties was inflated. The Ld. CIT(A) appreciated the contentions of the assessee that but for purchase of betel nuts, there cannot be any sale. He held that just because the parties to whom purchases were made were non-existent, the fact of purchases cannot be disputed. He further observed that the rates of purchases were more or less the same as compared to other parties. He held that however, the possibility of inflating the rate of purchases cannot be ruled out in the facts of the instant case and accordingly, inflated the gross profit by 4% on purchase of 110428 kgs made from these three parties and sustained the addition of Rs.1,93,566/- (Rs.48,94,198 x 4%) and granted relief for the balance. Aggrieved, the revenue is in appeal before us on the following ground:

*“3(a) On the facts and circumstances of the case ld. CIT(A) erred in restricting the disallowance of Rs.48,94,198/- on account of bogus purchase made by the AO to Rs.1,93,566/-*

*(b) On the facts and circumstances of the case CIT(A) erred in not continuing the total disallowance made on a/c of bogus purchase as the purchase was shows from two non-existent party and the third party had categorically denied to have any transaction with the assessee.”*

The assessee has also raised the following ground in its Cross Objection:

*“2. For that the Ld. CIT(A) erred retaining addition of Rs.1,93,566/- for inflation in the rates of purchase when there was no difference in the rate of purchase between various parties.”*

5.7. We have heard rival submissions and perused the material available on record. The Ld. DR argued that the Ld. CIT(A) has not negated the facts stated by the AO and erred in resorting to estimation of gross profit by increasing it by 4% on the bogus purchases of Rs.48,94,198/-. We find that the ld. AO had accepted the sales to be genuine. He had not treated the amounts credited in the books towards sale proceeds of betel nuts as unexplained cash credit u/s. 68 of the Act. This goes to prove that credits in amounts represent only sale proceeds. Hence, arguments of the Ld. AR that without purchase of betel nuts, there cannot be any sales, needs to be appreciated. The Ld. AO had not disputed the sale of 374629 kgs of betel nuts. The assessee claimed that it had purchased 374629 kgs from various parties in Andaman & Nicobar Islands and had sold the entire quantity without leaving any closing stock with it. The assessee's case is covered by the following decision of Ahmedabad Tribunal reported in (2005) 92 TTI 1126 in the case of ITO Vs. Sunsteel wherein it was held that –

*“3. We have heard the learned Representatives of the parties and perused the records. The finding of the CIT(A) is that the assessee had discharged all its onus and complied with his duties providing that purchases are genuine, parties are not bogus, goods have been received and only after receiving the goods, the sales were made. It has been further held that there is no finding of AO or no material on record which shows payments of impugned purchases came back to the assessee. The CIT(A) has also examined the issue in the light of provisions of s. 69C and held that if the AO makes an addition of unexplained purchase of Rs. 27,39,410 as income from other sources u/s. 69C, then he has to allow deduction for incurring expenses on such purchases. Apart from above, we find undisputed sale of Rs. 28,17,207. The assessee declared GP of Rs.94,740. The calculation of GP comes to 3.36 per cent. The undisputed fact is that the AO has accepted that the assessee maintained quantity details in respect of material purchased and sold. Inventory of closing stock filed is also not in dispute. If the addition made by the AO is on account of purchases of Rs. 27,39,407, the total GP comes to Rs. 28,34,147 (27,39,407 + 94,740). The GP calculation on this estimation of profit comes to 100.6 per cent. We find that such GP is not possible in such a trade of the assessee. The finding of the AO is that following three parties were not found nor were they produced for examination:*

<i>1. Anus Association</i>	<i>Rs. 2,10,709</i>
<i>2. Rolex Enterprises</i>	<i>Rs. 1,11,042</i>
<i>3. Konica Steel</i>	<i><u>Rs. 2,58,734</u></i>
<i><u>Rs. 5,80,485</u></i>	

*On the basis of above facts, at the most it, can be presumed that the assessee di not make purchases from above parties but made from other unregistered dealer and got benefit of margin of purchases from unregistered dealer. We find that to that extent an estimation of profit can be made which will be fair and reasonable under the facts and circumstances of the case. Therefore, for the above purposes we estimate Rs. 50,000 and*

*accordingly the order of the CIT(A) is modified and the addition to the extent of Rs. 50,000 is sustained and balance addition of Rs.26,89,407 is deleted out of the total addition made of Rs. 27,39,407/-."*

5.8 ITAT, Chandigarh bench third member case in the case of J. R. Solvent Industries Pvt. Ltd. Vs. ACIT reported in 68 ITD 65( TM) wherein it was held as under:

**“HELD (AS PER THIRD MEMBER)**

*There was no categorical finding that the purchases in question were made from ‘R’ since the Accountant Member had observed at various places in his order that rice bran was purchased by the assessee ‘either from ‘R’ or from some other party/parties’. It had also been noted by the Accountant Member that (1) The assessee could not prove the identity of the said firm because it had ceased to exist by the time the assessment proceedings were taken up and there was no occasion for the assessee company to keep track of its activities; (2) The assessee had no further dealings with R except for a nominal payment of Rs. 800; (3) There was possibility of the firm having shifted to some other place by the time the Inspector of the Department deputed to locate the firm proceeded to do so; (4) The raw material purchased from whatever source went into the production of rice bran oil and this stood duly established by day-to-day records kept by the assessee company and in respect of which no discrepancies were pointed out by the Assessing Officer; (5) The yield shown by the assessee was reasonable as compared to some of the preceding assessment years and accepted by the department and the sales had also been accepted by the Assessing Officer and this proved that the relevant quantity of goods sold were available with the assessee-company. In other words, if the production stood accepted, the quantity of purchases, etc., would also stand accepted; (6) The position that would emerge in case the entire purchases from ‘R’ were treated as bogus and excluded from the manufacturing process, would be the yield resulting therefrom would be quite abnormal not only as compared to the preceding assessment year but also with reference to the yield in the other months of the year; (7) Treating the purchases as bogus would result in a situation where the out- put in the form of rice bran oil and DORB would be more than the input by figure of 1000 qtls. which was not possible in the rice bran oil extraction industry. The Accountant Member also ruled out the diversion of funds from Firm ‘R’ to the assessee and referring to the specific instance observed that the explanation given by the assessee was reasonable. The Accountant Member considered the decision of the Tribunal in the assessee’s own case for the assessment year 1987-88 and observed that the question of yield of rice bran oil and DORB cake monthwise was not considered by the Tribunal as the same was not properly projected by the assessee and the question of input and output was also not considered as had been done in the assessment year 1988-89 and this apparently was also not projected on behalf of the assessee.*

*The Judicial Member, however, had not offered any comment whatsoever on these aspects as also on various other factual details and findings recorded by the Accountant Member in his order. In conclusion, the Accountant Member had rightly took the view that the assessee did purchase rice bran, whether from the firm ‘R’ or from some other party/parties, and such rice bran did go into the production of oil otherwise the assessee would not have been able to show the yield of rice bran oil and DORB comparable to that of earlier years. After opining so, the Accountant Member, appropriately directed the Assessing Officer to recompute the addition in relation to 11600 qtls. on the ground that there was an element of inflation in the purchase price and the further confirmation of the addition of Rs. 1,45,600 on the ground that 1300 qtls. of rice bran did not reach the assessee’s premises, was also justified and to that extent the claim of the assessee*

*was not genuine. As in the case of the main addition, the Judicial Member had not offered any comments and proceeded to restore major addition while deleting the other two additions of Rs. 4,22,124 and Rs. 1,45,600.*

*Hence, inasmuch as all the three items were the facet of a consolidated order, the view of the Accountant Member had to be confirmed in toto.*

5.9 In view of the aforesaid findings and judicial precedents relied upon hereinabove, we hold that inflation of gross profit by 4% made by ld. CIT(A) would meet the ends of justice in the facts and circumstances of the case and accordingly, we do not find any infirmity in the order of the CIT(A) in this regard. Accordingly, ground no. 3 of revenue appeal is dismissed and ground no.2 of assessee's Cross Objection is also dismissed.

6. The next ground to be decided in this appeal of revenue is as to whether the Ld. CIT(A) is justified in deleting the disallowance made by Ld. AO towards donation in the sum of Rs. 42,792/- in the facts and circumstances of the case.

6.1. Brief facts of this issue are that the assessee debited donation and subscription of Rs.42,792/- in its P&L Account. The Ld. AO disallowed the same for want of supporting evidence and disallowed the same. Before the Ld. CIT(A), the assessee stated the addition was made as the assessee could not produce any supporting evidences for the same. However, it was submitted that details of the said item were not specifically asked by the AO. The payments were made to local puja committees and the chamber of commerce for membership. It has been held by the Hon'ble Calcutta High Court in the case of Bata India ltd. reported in 201 ITR 884 that such payments and puja subscriptions are allowable deduction. The expenses were fully incurred for business purposes.

6.2. The ld. CIT(A) held this issue in favour of the assessee by relying on the decision of Hon'ble Calcutta High Court in the case of Bata India Ltd., supra. Aggrieved, revenue is in appeal before us on the following ground:

*"4. On the fact and circumstances of the case, the decision of the CIT(A) is erroneous because it ignored the fact that the assessee failed to substantiate the claim of the donation expenses."*

6.3. We have heard rival submissions and perused the material available on record. We find that the assessee has produced ledger account of donation and subscription

account together with the supporting bills and evidences. From the same it can safely be concluded that the payments were made towards subscription to various puja committees and payments to Chamber of Commerce and Industry. Hence, we find that the reliance placed by the Ld. AR on the decision of Hon'ble Calcutta High Court in the case of Bata India Ltd., supra is well founded. Accordingly, we dismiss the ground no. 4 of appeal of revenue.

7. In the result, the appeal of revenue is partly allowed and the Cross Objection of assessee is dismissed.

8. Order is pronounced in the open court on 20.05.2016

Sd/-  
(N. V. Vasudevan)  
Judicial Member

Sd/-  
(M. Balaganesh)  
Accountant Member

Dated : 20th May, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ITO, Ward-36(3), Kolkata.
2. Respondent –M/s. Saha Agency, 10, Old Post Office Street, Room No. 36A, 1<sup>st</sup> floor, Kolkagta-700 001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.