आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "जी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री सी. एन.प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.3513,3514,3515,3616 and 3517/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2010-11 and 2008-09,2009-10, 2011-12,2012-13)

Gopaldas Visram and Co. Ltd, 8, Fida Building, 18, Shamaldas Marg, Mumbai-400002	बनाम/ Vs.	Dy. Commissioner of Income Tax-4(2), Mumbai
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA NO.3518/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Gopaldas Visram and Co.Ltd, 8, Fida Building, 18, Shamaldas Marg, Mumbai-400002	बनाम/ Vs.	Asstt. Commissioner of Income Tax-4(2), Mumbai
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA NO.4584, 4585, 4586, 4587 and 4588/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2008-09, 2009-10,2010-11,2011-12 and 2012-13)

Dy. Commissioner of Income Tax-4(2), Room No.640, 6th floor, Aayakar Bhavan M K Road, Mumbai-400020	बनाम/ Vs.	Gopaldas Visram and Co.Ltd, Mumbai.
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AAACCG4503F		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri Rajeev Khandelwal
प्रत्यर्थी की ओर से/ Revenue by	:	Miss Vidisha Kalara
सुनवाई की तारीख /Date of Hearing	:	23.6..2017
घोषणा की तारीख /Date of Pronouncement	:	21.9.2017

आदेश / O R D E R

PER BENCH:

These cross appeals filed by the assessee and the revenue relate to the assessment years 2008-09 to 2012-13. All these appeals are directed against the separate order dated 30.3.2016 passed by Ld CIT(A)-9. Since issues are common in all these appeals, they are clubbed together, heard together and are being disposed of by this common order, for the sake of convenience.

2. At the time of hearing, the ld. DR submitted that there is a delay of 367 and 366 days in filing appeals bearing No.4585,4586,4587 and 4588/Mum/2016 respectively and submitted that the delay was caused because of the officer in-charge of these appeals were changed frequently and when it was realized that the filing of appeals was delayed thereafter the incumbent officer proceeded to prepare the appeal papers and got sanctioned from the higher authorities. The ld. DR submitted that the revenue department is a government department and managed by the government employees. Thus the revenue has to depend on these

employees and therefore delay cannot be attributed to anyone. This delay is not motivated nor intentional one as no one is personally interested or has gained out of the admission of these appeals. The ld DR submitted before the bench that the justice and right of being heard on merit should not be denied on mere technical reasons. Hence, the ld.DR prayed that the delay in filing these appeals be condoned.

3. On the other hand, the ld.AR, heavily opposed the submissions of the ld. DR seeking condonation of delay in filing the appeals.

4. After hearing both the parties, and on perusal of the record we find that the delay in filing these appeals are not intentional one as there is no vested interest on the part of any officer working in revenue department. If the delay is not condoned it would be against the principle of natural justice which is not the intent of legislation. We also find that the reasons for delay advanced by the ld. DR are good, genuine and reasonable and hence we accept the same by admitting these appeals for adjudication.

5. Since the issues agitated in all these appeals filed by the assessee and revenue are almost identical in nature, we shall take up the appeals relating to the assessment year 2010-11 filed by the revenue first as this being the lead case. The facts relating to the issues under consideration are discussed hereunder with reference to A.Y 2010-11.

6. Grounds of appeal taken by the revenue in ITA No.4586/Mum/2016 for assessment year 2010-11 is as under:

"1. The ld. CIT(A) erred in giving relief of a total of Rs.5,78,94,079/- in respect additions made u/s 69A/69C on account of bogus purchases/unproven purchases of raw material and packing material to the assessee based on new evidences submitted by the assessee without giving the assessing officer an opportunity to examine the same, thereby violating the principles of natural justice. The breakup of the amount as discussed in various paragraphs in assessment order is listed below:-

a) Purchase of Raw material & packing material (para-3)- Rs.51,25,885/-
b) Purchase of packing material (Para 4) - Rs.23,20,807/-
c) Purchase of Raw material u/s.69A/69C (para 5) - Rs.38,04,521/-
(d) Purchase of raw material u/s 69A/69C (para 6) - Rs.1,62,860/-
(e) Purchase of from hawala parties (para 12) - Rs.1,68,31,380/-
(f) Purchases u/s.69/69C (para32) - Rs.2,96,48,626/-
Total == 5,78,94,079/-

2. The Ld. CIT(A) has erred in giving relief to the assessee of Rs.29,39,122/- on account of closing stock valuation, when the assessing officer had pointed out specific discrepancies in excise records and BIN care stock of the assessee.

3. . The Ld. CIT(A) has erred in giving relief to the assessee of Rs.29,39,122/- on account of closing stock valuation, by accepting the new submissions/evidences from the assessee without giving the assessing officer a chance to examine the same, thus violating the principle of natural justice.
4. The ld. CIT(A) erred in giving relief of Rs.3,76,000/- to the assessee on account of legal and professional fees when the assessee failed to produce parties and the parties did not comply with summons u/s 131 and hence did not discharge onus of fully proving the expenses incurred."

5. On the facts and circumstances of the case, the Ld. CIT(A) erred in giving relief to the assessee of Rs.1,58,40,500/- of amount paid to MIDC;

6. The Ld. CIT(A) erred in giving relief of Rs.16,57,094/- on account of capital expenditure disallowed by the AO, even when the assessee had purchased an asset giving him enduring benefit.

7. Given the facts and circumstances of the case, the ld.CIT(A) erred in giving relief of Rs.6,38,679/- on account of shifting of profit to M/s Deep enterprise."

In addition to these grounds the revenue has also taken following additional grounds:

"1 The Ld. CIT(A) erred in admitting new evidences under rule 46A(4) as the AO had sought details/ clarifications on the very same issues during assessment proceedings and the assessee had failed to produce the same despite repeated opportunities provided.

2 The new evidences were at best to admitted under rule 46A(1) and opportunity under rule 46A(3) should have been given to the AO, which was denied by the Ld. CIT(A) in clear violation of principles of natural justice.

3 Reliance of CIT(A) on CIT Vs Sagar Constructions 56 Taxman.com 343 (Patna) is misplaced as the facts of the case are different.

4 The order of the AO may be upheld and relief given by Ld. CIT(A) may be reversed."

7. We will first dispose of the additional grounds filed by the revenue.

7.1 The brief facts of the case are that the assessee filed return of income on 30.9.2010 declaring total income of Rs.3,58,47,950/-. The assessee is engaged in the business of manufacturing of pharmaceutical formulations and is a closely held Public Limited Company having its registered office at Office No.18, 1st floor, 8-Fida Building, Shamaldas Gandhi Marg, Mumbai-400002 with administrative office at Ground floor,

plot no. 434, Persian Apartment, V P Road, Andheri(W)-400058. The AO received the information from the Sales Tax Department, Mumbai, that the assessee was one of the beneficiary of accommodation entries from various hawala dealers and thereafter a survey action u/s 133A was conducted by the department on 19.12.2012 wherein various anomalies were found in the records maintained by the assessee. In the statement recorded on oath u/s 131 of the Act dated 20.12.2012, the assessee declared a sum of Rs.10 crores covering the assessment years 2008-09 to 2012-13 on various anomaly and discrepancies. However, later on the Director of the assessee company vide affidavit dated 15.2.2013 retracted their statement with drawing the surrender and consequently not declaring Rs.10 crores in the return of income filed for these assessment years. The AO, thereafter issued notice u/s 148 of the Act on 26.3.2013 which was replied by the assessee vide its letter dated 3.4.2013 and also requested to supply the reasons recorded for reopening of the assessment. The assessee asked the reasons vide letter dated 16.9.2013 for reopening the assessment and filed objection on 18.11.2013 which were disposed off by the AO vide order dated 16.12.2013. During the course of assessment proceedings, the assessee vide letter dated 25.3.2014 was asked to show cause as to why the special audit should not be conducted u/s 142(2A) of the Act in view of complexity involved in the accounts and in order to bring the income to tax correctly, which was

objected by the assessee vide letter dated 27.3.2014 and the said objections filed by the assessee were also disposed off vide order dated 27.3.2014. The AO referred the case of the assessee for special audit u/s 142(2A) of the Act to M/s SGCO, Chartered Accountants and the said firm was asked to give a report and detailed findings on the issue mentioned within a period of sixty days. The said firm submitted its report on 22.7.2014 after obtaining various extensions from time to time. The AO confronted the report to the assessee to file comments thereon on or before 27.8.2014. Thereafter the assessee replied to the various points in the report of the special auditor by filing various replies from time to time.

8. The ld.DR while arguing the admissions of the additional grounds submitted that the additional grounds were materially to be raised in the original appeal memo but due to inadvertence, the same could not be raised. The ld. DR submitted that the issue raised in the additional grounds of appeal emanated from the assessment records available before the authorities below and required no verification. Therefore, the ld. DR prayed before the Bench that the same be admitted and adjudicated accordingly.

8.1. Having heard both the parties on the issue if admission of legal grounds as filed by the revenue, we are convinced that the grounds raised by the revenue arose out of the records out of filing some evidences

before the CIT(A) by the assessee and the admission whereof require no verification. Accordingly we are admitting the same for adjudication.

9. The issue raised in the additional ground no.1 is regarding the admission of new evidence under rule 46A of the Income Tax Rules, 1962 by CIT(A). The ld.DR submitted that there has been clear violation of principle of natural justice by the ld.CIT(A) by admitting the additional evidences/documents submitted by the assessee during the appellate proceedings under rule 46A(4) of the Income Tax Rule, 1962 as the documents/evidences were to be admitted/considered under rule 46A(1) on fulfillment of certain conditions given under sub-rule 8 of rule 46A(1). The ld.DR argued that the ld.CIT(A) was duty bound to provide the AO an opportunity to examine these documents before admitting and relying on the same. The ld. DR submitted during the assessment proceeding the AO specifically asked the assessee on various dates to furnish the details/clarification on various issues included on various points in the report of special auditor. Since the assessee did not produce any evidences/explanations on various points raised despite fair, and reasonable opportunity given to the assessee, the action of ld.CIT(A) in admitting these evidences u/r 46A(4) was clear violation of principle of natural justice. The ld. DR contended that before admission of additional evidences by the ld.CIT(A), the necessary conditions as envisaged under rule 46A(2) were to be fulfilled and the AO was to be given an

opportunity under sub-rule (3A) of rule 46A. Finally the ld.DR prayed before the Bench in view of the violation of principles of natural justice and various proceedings as laid down under rule 46A, the order of the ld. CIT(A) should be quashed and that of AO be restored.

10. The ld.AR objected to the issue raised by the ld.DR that the ld.CIT(A) was wrong in admitting the new evidences/documents u/r 46A(4) of the Rules stating that the ld. CIT(A) specifically required the assessee to furnish the evidences in view of the fact that the ld.CIT(A) chose to examine the facts of the case in detail in exercise of powers u/s 250(4)of the Act. The ld. AR submitted that the ld.CIT(A) has power to call for additional material/evidences which he deems fit to enable him to dispose of the grounds of appeal.

11. The ld.AR heavily relied upon the decision of the Hon'ble Jurisdictional High Court rendered in the case of Smt. Prabhavati S. Shah vs CIT(1998) 231 ITR 1 (Bom),Orissa High Court in B.L.Choudhury Vs CIT (1976)105 ITR 371 and ITO Vs Industrial Roadways 112 ITD 293(Mum) and requested the Bench to dismiss the additional ground raised by the revenue as the information and documents were not filed by the assessee on its own to which the ld.CIT(A) is not obliged u/r 46A(2) to give opportunity to the assessing officer but the information/details/evidences were called for by the ld. CIT(A) under rule 46A(4) and therefore the

additional ground raised by the revenue of not offering and affording any opportunity to the AO to confront these records was without any merit and substance and deserve to be dismissed. The ld counsel further submitted that the evidences submitted before the ld CIT(A) are not new evidences and all these evidences were in fact furnished before Special Auditors was conducted audit u/s 142(2A) of the Act at the instance of ld A.O.

12. We have heard the rival submissions and perused the relevant material placed before us including the impugned orders and case law relied upon by the assessee. We find that the ld.CIT(A) has called for information /details from the assessee during the course of appellate proceedings which was filed by the assessee accordingly . We further find that even from the facts before us these details were not filed by the assessee on its own and therefore not covered by the provisions of rule 46A(2) of the Act resulting in no violation of principles of natural justice. Moreover, the case of the assessee is also squarely covered by the ratio laid down in the decisions relied upon by the ld AR. Accordingly, the additional grounds raised by the revenue are dismissed. Further the evidences called for by the CIT(A) and filed by the assessee were also before the Special Auditors in the proceedings u/s 142(2A) of the Act.

Hence they are not new evidences filed for the first time before the ld CIT(A).

13. Coming to the regular grounds of appeal No 1(a) to 1(f) raised by the revenue in this appeal for the assessment year is against the deletion of Rs.5,78,94,079/- made u/s69A/69C on account of bogus purchases/unproven purchases of raw materials and packing materials based on new evidences submitted by the assessee without giving the assessing officer an opportunity to examine the same.

14. Facts in brief are that the AO, during the course of assessment proceedings, called for certain details in respect of raw materials from the assessee which were filed accordingly. The AO carried out analysis of the report of the special auditor appointed u/s 142(2A) of the Act vis-a-vis reply of the assessee to the various points raised by the auditors in its report and found that there were some discrepancies as noticed by the special auditor for which no reply has been filed by the assessee with respect to Rs.36,56,925/- qua raw material and an amount of Rs.14,91,460/- for packing material. The details of discrepancies are as under :

Particulars	For raw material (Rs.)	For packing material (Rs.)
Discrepancy as reported by the auditor	36,56,925	14,91,460
Less: discrepancy a matched by you a per your reply dated 6.8.2014	NIL	22,500
Balance unresolved discrepancies -supporting not provided by the	36,56,925	13,58,958

assessee -Variance in qty as per purchase reg and QC reg. -Variance in product name as per supporting provided	NIL NIL	103,915 6,088
Total of unresolved discrepancies	36,56,925	14,68,960

Finally the AO added the same under section 69A/69C on the ground that the assessee has not given any details.

Similarly, in respect of the ground of appeal no 1(b) the AO made an addition of Rs.23,20,807/- on account of packing materials by observing and holding as under :

> *"4.5 Therefore, by relying on section 114(g) of the Indian Evidence Act, it is presumed that he assessee has not given details because it would have been against it. There is no option but to make addition in respect of these materials purchased out of books on some reasonable basis books on some reasonable basis. So, value of Qty of Raw Material which were pointed out by the Auditor comes to Rs.18,44,149/- (5533 x Rs.333.30/Kg). Raw Material consumed during the year are amounting to Rs.31,98,22,141 and proportionate amount of discrepancy found in raw material comes to 0.58%. The Balance Sheet does not contain quatitative details of packing materials consumed during the year. So, applying same proportion as disallowance made in Raw Materials comes to Rs.4,76,658 (0.58% of Rs.8,21,82,402) amount to Packing Material. In the circumstances, in absence of satisfactory explanation and cooperation by the assessee, an addition of Rs. 23,20,807/- is hereby added to the total income of the assessee u/s 69A/69C of the Income Tax Act, 1961.*

15. In respect of ground of appeal no 1(c) of the Revenue, the fact is that the AO added a sum of Rs.38,04,521/- by observing as under:

"5.7 The auditor has given categorical finding of the above materials not found in the BIN Cards / Stock register. Therefore, it is evident that these materials were not received / consumed by the assessee and only accounting entries were made in the purchase register. As discussed earlier. that the assessee has been indulging in such practices for which

specific information was received from the investigation department. All the materials placed on record have been considered and it shows that the assessee has claimed wrong deduction of these purchases for which goods are not received / consumed. Therefore. by relying on Section 114(g) of the Indian Evidence Act. it is presumed that the assessee has not given detail because it would have been against it. The discrepancies amounting to Rs. 38.04.521/ - (19,03,117 for raw material + 19,01,404 for packing material) are hereby disallowed and added to the total income of the assessee. 16. In respect of ground of appeal no 1(d) of the Revenue, the fact is that the AO added a sum of Rs 1,62,860/- by observing as under -

> *"6.5 The assessee has failed to explain explain to as to why the said material has been appearing in the BIN card / Stock register and not accounted for in the purchase register. The assessee has also failed to provide the valuation of the said material. Therefore, by relying on Section 114(g) of the Indian Evidence Act, it is presumed that the assessee has not given detail because it would have been against it. There is no option but to make addition in respect of these materials purchased out of books on some reasonable basis. So, value of Qty of Raw Material which were pointed out by the Auditor comes to Rs.1,29,987(390 x Rs.333.30/Kg). Raw Materials consumed during the year are amounting to Rs.31,98,22,141 and proportionate amount of discrepancy found in raw material comes to 0.04%. The Balance Sheet does not contain quantitative details of packing materials consumed during the year. So, applying same proportion as disallowance made in Raw Materials comes to Rs.32,873 (0.04% of 821,82,402) amount to Packing Material. In the circumstances, in absence of satisfactory explanation and cooperation by the assessee, an addition of Rs.1,62,860 / - is hereby made to the total income of the assessee u / s 69A / 69C of the Income Tax Act, 1961.*

16. In respect of ground of appeal no 1(d) of the Revenue, the fact is that the AO added a sum of Rs 2,96,48,626/- by observing as under -

> 32.4 *The findings of the auditor and the assessee's comments thereon have been considered. The assessee's comments are not satisfactory. It is also observed that still purchase discrepancies which are reported in Exhibit of audit report with regard to LR/DR/GRN not available remain unexplained. So, considering the*

findings of the Auditor and explanation and evidence produced by assessee, the summary of the purchase remained unexplained are as under :

FY 2009-10

Location	From	Qty	Amount (Rs.)
Cheryl	GBC Packaging	92,744	8,59,692
	Sai Chaya Plast	96,376	9,16,230
	Empire Industries Ltd	8,37,900	13,12,285
	Vitrum Glass		
	Deep Enterprises	1,00,320	13,00,809
	Orient Containers	8,40,000	4,25,959
Mahape	Kanchan Rasayan	16,200	5,31,640
	Potech Neutraceuticals	14,000	33,52,500
		4,500	9,90,000
	Piramal Glass Ltd	-	-
	Kwality containers	59,040	3,79,464
	Deep enterprises	9,516	3,17,680
	Empire industries ltd	3,36,690,	7,23,824
	Sunrise consainer ltd	19,500	1,08,067
	Seth Pet and Polymers P Ltd	66,420	4,07,626
	Sai Chaya Plast	33,369	5,20,874
	Krupa Polymers	1,02,744	1,98,681
	Oriental Containers Ltd	6,50,950	3,32,566
	Paramount Print packaging ltd	5,40,250	2,67,633
	Professionals	61,950	1,20,661
	Pristine Care product Pvt ltd.	2,51,320	7,66,333
	Ashirwad Poly Print	1006	3,21,099
	Bina-Megnish Packaging Industries	23,700	17,008
	Gem Packing	3,304	78,022
	Jaineeket Enterprises	-	-
	Sahyog Enterpries	1,418	27,759
	Superpack	-	-
	Miscellaneous Parties	5,545	10,21,315
Gelnova	Miscellaneous Parties	1,99,317	6,06,912
	(Packaging material	22,883	41,75,182
		33,67,445	48,89,816
Vadodara	Miscellaneous Parties (raw material)	8,177	46,78,992
Total		78,10,232	29648629

The explanation of the assessee is not found to be satisfactory and further till date assessee failed to give any detail along with supporting evidences as asked for so by doing on section 114(g) of the Indian Evidence Act, it is presumed that the assessee not given

detail because it would have been against it . Accordingly, an amount of Rs.2,96,48,626/- is disallowed u/s 69A/69C.

17. Aggrieved by the order of the AO, the assessee preferred an appeal before the .CIT(A) who deleted the addition of Rs.51,25,885/- after considering the various contentions and submissions of the assessee during the appellate proceedings and also after calling for and considering various records as to the purchases of raw materials and packing material by observing and holding as under :

"

"8.3. I considered the facts of the case, stand of the AO as well as submissions of the appellant. After considering the entire facts of the case, the appellant was directed to submit further supporting documents / evidences to substantiate the objection / claims raised in the grounds of appeal and so as to enable me to dispose of the ground of appeal.

8.3.1. Thereafter, the Id. AR submitted explanations / details vide letter dated 7th January, 2016 giving explanation with regard to –

(i) Re raw materials appearing in the purchase register and not appearing in the quality check register - Rs 36,56,925/-,

(ii) Re packing materials appearing in the purchase register and not appearing in the quality check register - Rs 13,58,958/ -,

(iii) Re packing materials appearing in the purchase register and not appearing in the quality check register (variation in quantity) - Rs 103,915/, and

(iv) Re packing materials appearing in the purchase register and not appearing in the quality check register (variation in the name of the product) - Rs 6,088/-.

8.3.2. A perusal of the explanation vis-a-vis assessment order show that-

(i) The observation of the Assessing Officer that the entries amounting to Rs.36,56,925 does not appear in the quality register is incorrect. The said entries are duly supported by QC register at page nos 4-2 to 4-37. Further, there are certain products for example acetone, citric acid, glycerin etc which are for internal usage in factory and hence, it is not subjected to quality check. The said remarks are mentioned in the "post assessment/ submission" column and hence, there are no unresolved discrepancies.

(ii) The observation of the Assessing Officer that the entries amounting to Rs.13,58,958 does not appear in the quality register is incorrect. The said entries are duly supported by QC register at page nos 4-38 to 4-106. Further, there are certain products received on sample basis and hence, it is not subjected to quality check. The said remarks are mentioned in the "post assessment/ submission" column hence, there are no unresolved discrepancies.

(iii) The observation of the Assessing Officer that the entries amounting to Rs.1,03,915 does not appear in the quality register is incorrect. The said entries are duly supported by QC register at page nos 4-107 to 4-111. The said remarks are mentioned in the "post assessment/ submission" column and hence, there are no unresolved discrepancies.

(iv) The observation of the Assessing Officer that the entries amounting to Rs. 6,088 does not appear in the quality register is incorrect. The said entries are received on the trial basis. The said remarks are mentioned in the "post assessment/ submission" column at page nos 4-112 to 4-114 and hence, there are no unresolved discrepancies."

Thus, it is seen that the appellant has given the supporting documents in respect of raw material and packing material for which the addition has been made by the Assessing Officer. It has further been explained that the raw material and packing material were received by it. The remarks column of the statement provided by the appellant is quite exhaustive and proves the point that the raw material and packing material purchased has been received by them. It show that AO merely took a myopic and partial view regarding the transactions and its recording in the relevant books. To arrive at any final conclusion, one has to take a wholistic/ overall view. Accordingly, I direct the Assessing Officer to delete the

disallowance on account of purchase of raw material and packing material of Rs ***51,25,885/-.***

18. Similarly, the assessee preferred an appeal before the ld.CIT(A) who deleted the addition of Rs.23,20,807/- after considering the various contentions and submissions of the assessee during the appellate proceedings and also after calling for and considering various records as to the purchases of raw materials and packing material by observing and holding as under :

"on, jewelry or valuable article and such money and hence, the impugned addition made by the Assessing Officer cannot be held as justifiable.

Further, the pre-requisites for invoking the provisions of section 69C are that
(a) the assessee has incurred any expenditure.

(b) the assessee offers no explanation about the source of such expenditure.

As per the facts mentioned above, the appellants contend that the pre-requisite to assume jurisdiction under section 69C are not satisfied as purchases cannot be treated as expenditure and hence, the impugned addition made by the Assessing Officer is bad in law and requires to be deleted.

19. Similarly, the assessee preferred an appeal before the ld.CIT(A) who deleted the addition of Rs 38,04,521 after considering the various contentions and submissions of the assessee during the appellate proceedings and also after calling for and considering various records as

to the purchases of raw materials and packing material by observing and holding as under :

> *"(vi) The observation of the Assessing Officer that the entries amounting to Rs.6,81,244 has variance in product name cannot be held as final and conclusive. The appellant has submitted that it was pointed out to the special auditors that the product names are written in short as per convenience for internal usage such as on GRN whereas technical name is used by the vendor on the invoice. However, the chemical composition or the product does not vary. The same has been explained and supported by QC register and BIN Card register at page nos 6-88 to 6-154. The said remarks are mentioned in the post assessment/ submission column and hence, there are no unresolved discrepancies.*
>
> *(vii) The observation of the Assessing Officer that the entries amounting to Rs.2,66,566 has variance in the name of two parties namely (i) Paramount Printpackaging Ltd and (ii) Pristine Care Products Pvt Ltd is incorrect. It was pointed out to the special auditors that originally it was Paramount Printing Press Pvt Ltd later since 02.06.2010 it was converted to Paramount print packaging Pvt Ltd. Later, from 24.07.2010 was converted to Paramount Print packaging Ltd and therefore, for convenience in the accounts department the same is used to avoid the confusion. Further, fresh certificate of incorporation consequent upon change of name on conversion to public limited company has been enclosed at page nos 6-155 to 6-157. Re Pristine Care Products Pvt Ltd - It was bought to the notice of the special auditors that for the sake of convenience the name of the party is written in short in internal documents. Sample bill has been enclosed at page no 6-158. The said remarks are mentioned in the post assessment/ submission column and hence, there are no unresolved discrepancies."*
>
> *To sum up, the appellant has given the supporting documents in respect of raw material and packing material for which the addition has been made by the Assessing Officer. I have further perused the various entries in the statement provided by the appellant and find that the raw material and packing material has been received by the appellant. The explanation provided by the appellant is quite exhaustive and proves the point that the raw material and packing material purchased has been received by them. Accordingly, I direct the AO to delete the disallowance on account of purchase of*

raw material and packing material of Rs.38,04,521/-. Based on the above, ground no.6 is allowed. In the result, the appellant's this ground of appeal is allowed"

20. Similarly, the assessee preferred an appeal before the ld.CIT(A) who deleted the addition of Rs 1,62,860 after considering the various contentions and submissions of the assessee during the appellate proceedings and also after calling for and considering various records as to the purchases of raw materials and packing material by observing and holding as under :

"A comparative perusal of the appellant's submissions viz-a-vis assessment order show that-

(i) The observation of the Assessing Officer that the entries of having quantities totaling to 390 nos does not appear in the purchase register is incorrect. The said entries are duly supported by the documents and explanations at page no.7-1. The said remarks are mentioned in the post assessment/submission column and hence, there are no unresolved discrepancies.

(ii) The observation of the Assessing Officer that the entries of having quantities totaling to 3,75,732 nos does not appear in the purchase register is incorrect. The said entries are duly supported by the documents and explanation at page no.7-2 to 7-50. The said remarks are mentioned in the post assessment/submission column and hence, there are no unresolved discrepancies.

(iii) Further, the Assessing Officer has calculated the consumption ratio of raw material which comes to 0.04%. The Assessing Officer applied he same proportion of disallowance for packing materials which is not correct as the consumption ratio of raw material cannot be applied to packing materials.

"In view of the above, it can be concluded that the appellant has given explanations along with the supporting documents in respect of raw material and packing material for which the addition has been made by the Assessing Officer. The various entries in the

statement provided by the appellant have been perused and it can be concluded that the raw material and packing material which appears in BIN card/stock register are also to be taken as accounted in purchase register by the appellant. The remarks column of the statement provide by the appellant is quite exhaustive and proves the point that the raw material and packing material purchased has been recorded in purchase register. Accordingly, I direct the Assessing Officer to delete the disallowance on account of purchase of raw material and packing material of Rs.1,62,860/-.

21. Similarly, the assessee preferred an appeal before the ld.CIT(A) who deleted the addition of Rs 2,96,48,626 after considering the various contentions and submissions of the assessee during the appellate proceedings and also after calling for and considering various records as to the purchases of raw materials and packing material by observing and holding as under :

In the result, the appellant's this ground of appeal is allowed"

"37.3 I considered the facts of the case, stand of the AO as well as submissions of the appellant. After considering the entire facts of the case, the appellant was directed to submit further supporting documents/evidences to substantiate the objection /claims raised in the grounds of appeal and so as to enable me to dispose of the ground of appeal

37.3.1. Thereafter, the ld.AR submitted explanations/details vide letter dated 7th January, 2016 giving explanation with regard to – point no.vi 1) on page no 21 of letter dated 6th August, 2014 of RSK in response to the special auditors' report under section 142(2A) of the Act which is reproduced below-

"The special auditors are not disputing the above purchases. They have mentioned about the non-availability of supporting documents. The same are being retrieved from the old record files, for submission in due course. Further, specifically in

respect of Form 403, we submit that this document is made in triplicate, with one copy being retained at the border check-post, one copy being retained by the transporter and the third copy being retained by the job worker factory. The fact that the sales tax department has issued the necessary C forms against all such inter state purchases is proof enough of the genuineness of the transactions"

Later, the appellants have furnished the required details on 17th September, 2014 to the Assessing Officer - refer page nos. 1 to 111 (photo copy enclosed of the supporting mentioned in the aforesaid response)

During the appellate proceedings, the appellant as directed, has given the supporting documents in respect of raw material and packing material for which the addition has been made by the Assessing Officer. The material/submissions / explanations provided by the appellant have been examined. It is found that the ld. AR has been able to explain and substantiate that the various entries in the statement provided by the appellant and the raw material and packing material are backed by supporting documents. The remarks column of the statement provided by the appellant is quite exhaustive and proves the point that the raw material and packing material purchased are supported by necessary documents. Accordingly, I direct the Assessing Officer to delete the disallowance on account of purchase of raw material and packing material of Rs 2,96,48,626/-. Based on the above, Ground No.33 is allowed"

22**.** We have heard the rival contentions, arguments and perused the material placed before us including the impugned orders and written submissions by both the parties. We find that in the present case, the ld.CIT(A) has specifically required the assessee to produce the necessary evidences in the form of stock-register, bills and vouchers and other records to verify the purchase of raw material and packing material and after examination of the records, details and evidences and only after

considering all these evidences, findings of fact have been recorded by the CIT(A) culminating into passing the reasoned order deleting the various additions made by the AO on account of purchases of raw materials and packing materials. The ld.AR to demonstrate his point of view took us through the "Remarks" column in the statements filed before the CIT(A) for the various additions made by the AO vis-à-vis the supporting documents in a few cases. Having gone through the same with the paper books and supporting documents filed before us and after hearing the learned counsels, we do not find any infirmity in the order passed by the ld.CIT(A) which has been passed after comprehensive verification of records and details specifically called for from the assessee. In view of these facts and circumstances, we do not find any reason to interfere with the order of the ld CIT(A) on this issue. Accordingly, ground of appeal nos. 1(a) to 1(d) and 1(f) raised by the revenue stands dismissed.

23. The Revenue has inadvertently raised ground of appeal no 1(e) in respect of purchase from hawala parties of Rs. 1,68,31,380/- in as much as this ground is dismissed by the CIT(A). The ld.DR accepted the same and hence, this ground stands withdrawn.

24. The issue raised in the ground no.2 and 3 of the appeal is in respect of wrongful deletion of addition of Rs.29,39,122/- made by the AO on

account of valuation of stock by ignoring the specific discrepancies pointed in the record by the AO.

25. Brief facts of the case are that the AO during the assessment proceedings, found that the in the stock register, closing stocks of Rs.3,41,147/- were found recorded in the BIN Card stock, however, the same were not considered while calculating the closing stock of the materials at the year end. Similarly, a sum of Rs.23,31,559/- was not charged to the profit and loss account but at the time of filing of income tax return, the same was claimed as deduction by the assessee as difference in opening stocks as the same has cascading effect following valuation of closing stock as the provisions of section 145A of the Act. This was also pointed out by the special auditor and the AO added the same to the total income of the assessee by observing and holding as under :

> *"18.5. The assessee failed to give any reply for the same vide their submission dated 15.09.2014, 17.9.2014 and 18.09.2014. As the assessee has not provided any details with regard to the above query, therefore, by relying on Section 114(g) of the Indian Evidence Act, it !is presumed that the assessee has not given detail because it would have been against it. There is no option but to make a fair estimation of the closing stock not accounted for in the closing stock summary at Rs. 2,66,416/- (On the basis Of finished goods discrepancies ratio with closing stock. For Raw material and packing material Rs.2,32,577/ - = 341147/ 49810398*33958240 and for WIP Rs.33,839 =341147/ 49810398*4940812). The closing stock of finished goods not found in BIN Card stock of Rs.3,41,147/- is added alongwith above estimated value of Rs.2,66,416/-. Thus, the total addition on this account is Rs.6,07,563/-. Penalty proceedings u/s 271(1)(c) are initiated for furnishing inaccurate particulars of income or concealment of income.*

18.6 'Further the amount added to the opening stock by the assesses is not allowed as the addition made last year in the closing stock is not accepted by the assessee and it is in appeal. The assessee also failed to respond on this issue. So, an addition of Rs.23,31,559/- on account of difference in opening stock is made by decreasing the opening stock by this amount."

(Addition=Rs.29,39,122/-)

26. In the appellate proceedings, the ld.CIT(A) deleted the addition after considering the contentions and submissions of the assessee by observing and holding as under :

"23.3. I have considered the stand of the AO as well as submissions of the appellant. It may further be pointed out that in the assessment order at page 97, the AO has calculated the addition at Rs. Rs.29,39,122/- which is sum total of Rs.3,41,147/- (closing stock of finished not found as per BIN card stock) plus Rs.2,66,416/ - being the estimated figure on the basis of finished goods discrepancies ratio with closing stock and plus Rs.23,31,559/ - (on account of difference in opening stock said to be made by the decreasing opening stock by the AO but while calculating this figure, the A.O has not been able to appreciate the basic principles of accountancy. The appellant is purely doing job work for Shalina as the raw material and packing material is being supplied by Shalina. Thus, the stock of raw material and packing material as at 31.03.2010 is the property of Shalina and not the appellant and thus, correctly not considered by the appellants in their closing stock. The AO is thus, directed to delete the addition of closing stock of raw material and packing material made by him of Rs 3,41,147. Further, in respect of valuation of stock as per section 145A, I have gone through the contention of the AR and find the same to be in order. It is only cascading effect that if the closing stock of the previous year is under/ overvalued then the opening stock of the subsequent year is also under/ overvalued and thus, the amount of Rs 23,31,558 is correctly claimed by the appellant and is allowable.

To conclude, in view of the above explanation of the appellant as well as keeping in view of the accounting principles, the addition made by the AO totaling to Rs.29,39,122/ - cannot be sustained under the above heading. Accordingly the AO is directed to delete this amount.

In the result, appellant's this ground of appeal is Allowed. "

27. The ld. DR relied heavily on the order of AO.The ld DR submitted that the assessee did not submit any reconciliation of various discrepancies even in the submissions filed on various hearings. The ld DR argued that there was no argument of the assessee before the CIT(A) nor nay finding by the CIT(A). The ld DR further stated that ld CIT(A) accepted the submissions made for the first time before the CIT(A) without giving any opportunity to the revenue or even did not call for his comments thereby causing violation of principle of natural justice.

28. The ld. AR vehemently submitted before us that the alleged discrepancy of Rs.3,41,147/- represented stock belonging to another party known as Shalina for which the assessee used to do job work. Shalina sent raw materials and packing materials to the assessee which were specifically disclosed by the assessee that the said stock of raw material and packing material did not belong to the assessee and therefore were not considered in the stock of the assessee however the same was duly entered in the bin as the same was necessary to maintain the account of the stock in the premises of the assessee. In respect of

disallowance of Rs.23,31,559/- which was claimed in the computation of total income at the time of filing of income tax return, the ld. AR submitted that the valuation of stocks as per audited account as on 31.3.2009 value as per section 145A of the Act there was a difference of Rs. 23,31,559 and the said difference of Rs.23,31,559/- was due to enhanced valuation of opening stock which claimed by the assessee in the computation of income correctly. The said stock was as per the valuation of the provisions of section 145A of the Act and therefore the said amount was allowable as deduction. The ld. CIT(A) after examining the issue thoroughly allowed the deduction and therefore it should be upheld as the claim being per the provisions of the Act. The ld DR on the other hand relied on the order of AO and prayed for restoring the same.

29. After hearing the rival submissions and on perusal of the material placed before us, we find that the findings recorded by the FAA are correct as there is no discrepancy in the closing stocks. There are two additions aggregating to Rs.29,39,122 comprising of Rs.3,41,147/- on account of closing stock found in the BIN Card but not shown in the closing stock for the reasons that the stocks belong to third party for whom the assessee was doing job work and second is of Rs.23,31,559/- which was not debited to the profit and loss account but claimed as deduction at the time of filing of the return because the same could not be charged to the profit

and loss account. After hearing the ld.AR and going through the order of ld.CIT(A), we find there is no discrepancy in the stocks and hence we find no infirmity in the order of ld.CIT(A). Accordingly, we uphold the order of the FAA by rejecting the ground by the revenue on this issue. We also observe that the assessee has not filed any additional evidence or documents before the ld.CIT(A) but filed informations/details as called for by the FAA under rule 46A(4) during the course of appellate proceedings and therefore there is no question of violation of principle of natural justice during the course of appellate proceedings before the FAA. Ground no.2 and 3 are dismissed accordingly.

30. The issue raised in the grounds of appeal no.4 is with regard to the deletion of addition of Rs.3,76,000/- by CIT(A) as made by the AO on account of legal and professional charges.

31. During the course of assessment proceedings, when the assessee failed to produce the parties to whom the professional charges were paid, also when the said recipients of payments did not comply with the summons under section 131 of the Act. Thereafter, the AO added the expenditure incurred on legal and professional charges on the ground that the assessee failed to file the bills and vouchers and also the summons issued u/s 131 of the Act to the recipients were also not complied with by the recipients.

32. In the appellate proceedings, before the ld.CIT(A), the ld.AR submitted all the facts and details qua the legal and professional charges as under*:*

24.7.1 Details of disallowances made by the Assessing Officer in respect of legal and professional fees is given below -

Particulars	Amount	Paper book reference
Mili C. Mody	1,25,000	Page no 24-10
Mitali M. Seth	1,51,000	Page nos 24-11 and 24-12
Shweta Singh	1,00,000	Page no 24-13
Total 3,76,000		

24.7.2 Refer point no 6 of xxx on page nos 101 to 104 of letter dater 6th August, 2014 of RSK in response to the special auditors' report under section 142(2A) o the Act which informs that the invoices have been raised by the above named parties and tax has been deduced t source thereon (enclosed therewith)

24.8 CONTENTIONS

24.8.1 The appellants submit that from the details and supporting bills and memos it will be appreciated that the legal and professional fees have been incurred during the course of business.

24.8.2 The appellants further, submit that on the basis of facts and supporting documents as submitted, the averment of the Assessing Officer that the impugned expenses incurred by the appellants and the services provided by the professionals are bogus is without any basis and devoid of any material on record. Only because the persons did not appear in pursuance of summons under section 131, the Assessing Officer cannot make the disallowance.

24.8.3 Further, it would not be out of place to mention that tax has been deducted at source on such payments, or credit, as the case may be, as per the provisions of the Act and the tax so deducted at source has been paid into the Government treasury.

24.8.4 The impugned addition made by the Assessing Officer is de hors the material on record, without any basis and only on the basis

of assumptions, presumptions, conjectures and surmises. 111e appellants submit that an addition made on the basis of assumptions and presumptions cannot be sustained.

The appellants contend that the impugned expenses have been incurred in the pursuit of business and hence, are allowable under section 37(1) of the Act; the disallowance thus, needs to be deleted."

33. The ld. CIT(A) after considering the details submitted by the assessee deleted the addition by observing and holding as under :

"28.3. I have considered the stand of the AO as well as the submissions of the appellants submit that from the details and supporting bills and memos it will be appreciated that the legal and professional fees have been incurred during the course of business. The AO has not been able to disprove the same. Only because the persons did not appear in pursuance of summons under section 131. The Assessing Officer cannot make the disallowance for non compliance on 131 notice by any respective parties, the AO has sufficient power to enforce attendant and examined them on oath and further proceed further. But for this appellant cannot be faulted with. Further, it would not be out of place to mention that tax has been deducted at source on such payments, or credit, as the case may be, as per the provisions of the Act and the tax so deducted at source has been paid into the Government treasury.

The impugned addition made by the Assessing Officer is not 'based on any reliable material on record. The AO has failed to consider the submissions namely, the ledger account, supporting invoices and income-tax return together with computation of total income of the professionals whose expenses are disallowed by the AO submitted by the AR. The AO has made the disallowances on assumptions and presumptions. In view of the same, the disallowance made by the AO under the heading legal and professional fee cannot be sustained. Accordingly, I direct the AO to delete the disallowance of Rs 3,76,000 made on this ground. Based on the above, Ground No.24 is Allowed."

34. After hearing both the parties and on perusal of the material placed before us, we find that the ld. CIT(A) allowed the appeal of the assessee after calling for various records, bills and vouchers relating to legal and professional charges on which even the TDS has been deducted at source and deposited in the Government treasury. We find that the assessee has filed the details of these expenses along with the TDS made on such payments, but the AO failed to appreciate the facts and correctly. Thus, the addition made by the AO is de hors the materials on record. Therefore we do not find any merit in the arguments of ld DR that there was no proof of services being availed by the assessee. We do not find any mistake or infirmity in the order passed by the ld.CIT(A), hence we affirm the same. Accordingly, ground no.4 is dismissed.

35. The issue raised in ground of appeal no.5 is in respect of deletion of disallowance of Rs.1,58,40,500/- by CIT(A) being amount paid to Maharashtra Industrial Development Corporation (MIDC) on account of difference between agreement value and ready reckoner rates of the stamp valuation authority.

36. The facts of the issue are that the assessee entered into leasehold agreement with MIDC and paid a premium of Rs.3,96,00,000/- for acquisition of lease hold right from MIDC and the agreement was duly registered. In the State of Maharashtra, there is a practice of affixing index tool on the documents registered in the Registry of State of Maharashtra

which duly contains the value at which the agreement is entered into and the market value as per existing ready reckoner rates. . As the market value of the property was Rs.5,54,40,500/- whereas as per the agreement it was Rs 3,96,00,000 and AO issued show cause notice to the assessee as to why the difference should not be added to the total income of the assessee u/s 69 of the Act. The assessee furnished reply stating that the premium of Rs. 3,96,00,000/-was paid to MIDC for acquiring the said leasehold land. The said reply did not find favour with the assessing officer and he added the difference to the total income of the assessee.

37. In the appellate proceedings, the ld.CIT(A) deleted the addition after considering the submissions and contentions raised by the assessee by observing and holding as under :

> *"35.3. I have considered the stand of the AO as well as submissions of the appellant. It may be pointed out that Maharashtra Industrial Development Corporation (MIDC) is a state government undertaking from which the allotment on lease of plot no A327 was received / obtained by the appellant. Therefore, there can not be any doubt or presumption against appellant with regard to any involvement of any kind of on-money changing hands in such a transaction.*
>
> *As per Section 69 of the I T Act "where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of the income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the assessing officer, satisfactory, value of investments may be deemed to be the income of the assessee of such financial year". It would be*

pertinent to mention that investments have been duly recorded in the books of account of the appellant and hence, the provisions of section 69 are not attracted.

From a bare reading of sections 69B and 69C, it is evident that the Assessing Officer cannot draw inferences and assume that there has been some illegality in the assessee's transaction in the absence of any material in its possession. It would be pertinent to mention that the Assessing Officer has merely assumed that the appellants have incurred an expenditure of Rs.5,54,40,500/-(being the market value per stamp duty valuation) without any material! evidence on record. The Assessing officer has cast the onus on the appellants to prove that they have paid "only Rs.3,96,00,000/- to MIDC as premium for acquisition of leasehold rights" when the fact remains that the said sum has been shown as paid in the books of account. If the Assessing Officer alleges that a higher sum has been paid to acquire the leasehold rights then, it is his duty and obligation of the AO to prove the allegation by bringing tangible material on record. The Assessing Officer has not been able to bring any such material on record before making the impugned addition. Therefore, in my opinion, the AO was not justified in presuming that certain 'on money' payment was involved in this transaction. Therefore, the addition made by the AO under this heading amounting to Rs.1,58,40,500/ - is deleted. Based on the above, Ground No.31 is Allowed."

In the result, appellant's this ground of appeal is Allowed.

38**.** Having heard both the sides and perusing the relevant records as placed before us, we find that the ld.CIT(A) has given well reasoned findings on the issue that the MIDC is a State owned corporation and therefore there could not be any question of on money payment in the transaction. Further, we are also in agreement with the findings of the ld. CIT(A) that the investments were duly recorded in the books of account and the provisions of section 69 could not be invoked. Further the

ld.CIT(A) has also observed that the AO could not draw any inference that the assessee has incurred expenditure of Rs. Rs.5,54,40,500/- being value as per the stamp duty valuation. Further, there is force in the argument of the ld.AR that the stamp duty valuation is of the land whereas the assessee has acquired only the leasehold rights in the land at MIDC. Hence, the comparision itself is faulty. The revenue also could not prove with the evidences that the assessee paid consideration to MIDC over and above Rs. 3,96,00,000/-. The addition/disallowance is only made by the AO is only on surmises. Under these facts and circumstances of the case, we do not find any merit in the submissions of the ld.DR and thus, uphold the order of ld.CIT(A) on this issue. Accordingly, the ground taken by the revenue is dismissed.

39. The ground no.6 taken by the revenue is against the deletion by the CIT(A) of addition of Rs.16,57,094/- on account of capital expenditure disallowed by the AO on the ground that the assessee has purchased assets which are of enduring nature.

40. The facts of the issue are that the special auditors observed that the assessee has incurred expenses of Rs.81,81,695/- under the head repairs and maintenance which were charged to the profit and loss account. Out of the said amount, Rs.19,49,552/- was incurred on PVC cabling and polyfabs. According to the AO, the said expenditure was of nature of capital expenditure as benefit of enduring nature has accrued. Therefore,

the AO was of the view that the expenditure could not be allowed as revenue and should be capitalized. The assessee submitted before the AO that the expenditure incurred on replacement of cables was of revenue in nature and rightly claimed in the profit and loss account. However, the AO rejected the contentions of the assessee and capitalized the said expenditure under the head "Electricity & Fitting" and allowed depreciation at the rate of 15% to the tune of Rs.2,92,428/- which has resulted in net disallowance of Rs.16,57,094/-.

41. In the appellate proceedings, the ld.CIT(A) deleted the disallowance by observing and holding as under :

> *"27.3. I have considered the stand of the AO as well as the submissions of the nature has to be decided on the basis of its purpose, which is replacement cables with the new ones and as such, has been correctly debited to the profit and loss account as repairs and maintenance. The contentions of the AR that the expenses are recurring in nature and do not meet the asset recognition criteria is correct. Further the repairs s submitted by the AR range from 1 per cent to 4 percent of the gross block of asset which is very negligible. There is no capital asset that comes into existence on account of the said repairs and maintenance and hence, the expenditure claimed to be revenue in nature is to be upheld.*
>
> *The AO has not appreciated these facts while making the disallowance of repairs and maintenance expenses. Accordingly, I direct the AO to delete the disallowance made on this ground Based on the above, ground no.23 is allowed.*
>
> *In the result, appellant's this ground of appeal is allowed."*

42. We have carefully considered the rival submissions and material placed before us during the course of hearing and also the finding

recorded by the ld. CIT(A) on this issue. In our opinion the findings of the ld.CIT(A) appear to be correct as the expenses incurred by the assessee is recurring in nature and do not give enduring benefit to the assessee. We, therefore are in complete agreement with the findings of the FAA that the expenditure incurred on replacement of the PVC cables and ployfabs constituted revenue expenditure on repairs and maintenance and accordingly uphold the same by dismissing the ground raised by the revenue.

43. The ground no.7 is raised against the deletion of Rs.6,38,679/- by the ld.CIT(A) as made by the AO on account of shifting of profit to M/s Deep Enterprises.

44. The facts of the issue are that the AO during the course of assessment proceedings observed that the assessee has made payment of Rs.60,38,679/- to M/s Deep Enterprises which incidentally was a proprietary concerns of Mrs.Pravina A Pobara who is the mother of Mr. Vishal Thakkar. He is one of the partners in GBC Packaging and is related party of one of the Directors of the assessee company i.e. wife of Mr.Dinesh Thakkar. The AO further observed that the purchases from the said proprietary concerns could not be considered as tax neutral as the assessee was a company whereas the supplier was proprietary concern. It was also noted by the AO that the assessee purchased packing materials from M/s Deep Enterprises and also paid commission to M/s Deep

Enterprises for arranging packing materials from GBC Packaging, an associate concern of the assessee. On the basis of said fact, the AO came to the conclusion that the assessee company was shifting its profit to the related entities. The AO after analyzing the accounts of M/s Deep Enterprises calculated the GP of Deep Enterprises at 12.22% and accordingly added a sum of Rs.6,83,679/- being 12.22% of the total purchases of Rs.55,94,758/-made by the assessee from M/s Deep Enterprises.

45. In the appellate proceedings, the ld.CIT(A) set aside this issue to AO by observing and holding as under :

> *"36.3 I have considered the stand of the AO as well as submissions of the appellant. During the appellate proceedings, it has been argued by the ld.AR that the AO cannot make an addition on the basis of AIR without bringing any material on record and hence, the impugned addition needs to be deleted. However, keeping in all fairness, it will be better that the AO carried out verification of the materials available with him and then modify/delete the disallowances after getting clarification from the appellant. Accordingly, disallowance made by the AO is allowed for statistical purposes subject to the verification. Hence, Ground no.32 is allowed subject to verification by the AO.*
>
> *In the result, appellant's this ground of appeal is allowed for statistical purposes subject to verification."*

46. We have carefully considered the rival contentions on the issue and perused the material placed before us. We observe that the AO has failed to point out the unreasonability in the prices paid for the transactions of the assessee with its associate concerns i.e whether at the prevailing

market rate of the similar transactions. In order to invoke the provisions of section 40A(2)(a) of the Act , the AO has to record a satisfaction that the rates at which the transactions were entered into with the associate concerns were more than the market rates of the similar items but not otherwise. Therefore, we are agreement with the conclusion drawn by the ld.CIT(A). In any case this issue is set aside to AO for verification and to decide based on the materials there should not be any grievance to the revenue. In view of these facts and position of law we uphold the order of the ld.CIT(A). Ground no.7 taken by the revenue is set aside.

47. In the result, the appeal of the revenue is allowed for statistical purposes.

48. We now take the appeal of the assessee for A.Y. 2010-11 in ITA No.3513/Mum/2016

49. Grounds of appeal taken by the assessee in this appeal are as under:

> "*1. The Commissioner of Income-tax (Appeals)-9, Mumbai (hereinafter referred to as the CIT(A)) erred in upholding the action of the Deputy Commissioner of Income-tax - 4(2), Mumbai (hereinafter referred to as the Assessing Officer) in issuing a notice under section 148 of the Act.*
>
> *The appellants contend that on the facts and in the circumstances of the case and in law, the issue of notice under section 148 is bad in law and needs to be quashed.*
>
> *The appellants further, contend that the said notice issued by the Assessing Officer is ab initio void inasmuch as the Assessing Officer in recording the reasons/ issuing the notice dated 26.03.2013 only*

mentions of the statement on oath administered during the course of survey proceedings, which itself is bad in law, and has, though within his knowledge, not taken cognizance of the retraction that has been filed with him on 7th March, 2013 that is, before the issue of the impugned notice under section 148; and hence, the reasons recorded by him for re-opening the assessment are bad in law and consequently, the impugned assessment order is also bad in law.

2. The CIT(A) erred in upholding the action of the Assessing Officer on facts and in law in requiring the appellants to get their books of account for the year under reference audited by a special auditor per the provisions of section 142(2A) of the Act. The Assessing Officer has without application of mind required the appellants to get their books of account audited by a special auditor as no facts required for invocation of the provisions of section 142(2A) existed to justify the same. The purpose of invocation of the provisions of section 142(2A) is only to extend the period of limitation without justifying the jurisdictional condition and hence, the assessment order is bad in law.

The appellants contend that on the facts and in the circumstances of the case and in law, the invocation of provisions of section 142(2A) of the Act is bad in law and needs to be quashed.

3. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing a sum of Rs 31,36,199 by invoking the provisions of section 40A(2)(a), on the ground that the price charged by the related parties for supply of packing material to the appellants is excessive and unreasonable.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the Assessing Officer has not given any comparative rates for purchase of packing material from related and unrelated parties and thus, the conclusion arrived at by the Assessing Officer that excess rates have been charged by related parties in supplying packing material to the appellants is baseless and erroneous and as such, the said disallowance suffers from legal infirmity; hence, requires to be deleted.

4. (i) The CIT(A) erred in upholding the action of the Assessing Officer in disallowing a sum of Rs 5,74,719 by invoking the

provisions of section 40A(2)(b), on the ground that the appellants, inspite of having license and production capacity at their disposal, have given job work to Cheryl Laboratories Pvt. Ltd. and have paid job work charges therefor.

(ii) The CIT(A) further, erred in upholding the action of the Assessing Officer in disallowing a sum of Rs 64,004 by invoking the provisions of section 40A(2)(b), on the ground that the appellants have paid job work charges to Cheryl Laboratories Pvt. Ltd. for which there is no agreement.

The appellants contend that on the facts and in the circumstances of the case and in law, the CITCA) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the Assessing Officer has not correctly appreciated the facts of the case in its entirety and hence, the said disallowance requires to be deleted.

5. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing the entire business promotion expenses Rs 26,74,430 debited to the profit and loss account, on the ground that the appellants have gravely failed to establish the nexus of such expenditure with its business requirements.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the sole basis of the disallowance is the statement on oath of the Directors administered during the course of survey proceedings, which in itself is bad in law, and that the Assessing Officer has not brought any material on record to support the impugned disallowance; hence, the said disallowance on facts and in law, requires to be deleted.

6. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing commission paid to the tune of 1,51,856 debited to the profit and loss account.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the Assessing Officer has not correctly appreciated the

facts of the case and hence, the said disallowance requires to be deleted.

7. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of a sum of Rs 1,68,31,380 by invoking the provisions of section 69A/69C of the Act merely on the ground that the said purchases are from Hawala dealers.

The appellants contend that on the facts and in the circumstances of the case and in law, the prescription of the provisions of sections 69AI 69C are not applicable and further, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the Assessing Officer has not correctly appreciated the facts of the case in its entirety and hence, the said disallowance requires to be deleted.

8. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing Rs 4,82,250, being the claim of deduction under section 80G, on the ground that the donations that have been paid are not genuine.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance of the claim of deduction under section 80G of the Act inasmuch as the sole basis of the disallowance is the statement on oath of the Directors administered during the course of survey proceedings, which in itself is bad in law, and that the Assessing Officer has not brought any material on record to support the impugned disallowance; hence, the said disallowance on facts and in law, requires to be deleted.

9. The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance of a sum of Rs 5,01,611 debited to the profit and loss account, on the ground that the underlying loan availed for Dehradun unit is already disposed of in the earlier year and hence, the said interest is not allowable.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the Assessing Officer has not correctly appreciated the facts of the case and hence, requires to be deleted.

10. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of a sum of Rs 1,83,62,550, being 10 per cent of turnover in circular trading transactions.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as the Assessing Officer has relied on the statement on oath of the Directors administered during the course of survey proceedings, which in itself is bad in law, and that the Assessing Officer has not brought any material on record to support the impugned addition; hence, the said addition on facts and in law, requires to be deleted.

The appellants further, contend that the gross profit of Rs 2,01,000 shown by the appellants on such circuitous transactions with hawala dealers be reduced from the total income inasmuch as the transactions admittedly are paper transactions.

11. The CIT(A) ought not to have upheld the without prejudice stand of the Assessing Officer for disallowance under section 40(a)(ia) of interest paid Rs 2,78,994 to Kotak Mahindra Prime Ltd without deduction of tax at source is untenable by virtue of first proviso to section 201(1) of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the without prejudice stand of the Assessing Officer inasmuch as the Assessing Officer has not correctly appreciated the facts of the case in its entirety; hence, the said disallowance requires to be deleted .

12. The CIT(A) erred in confirming the action of the Assessing Officer in disallowing the entire staff welfare expenses Rs 9,09,863 debited to the profit and loss account, on the ground that the expenses are not genuine business expenses/ accommodation! adjustment entry/ personal expense.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as the Assessing Officer in making the impugned disallowance has solely relied on the

statement on oath administered on the directors during the course of survey proceedings, which itself is bad in law, and the Assessing Officer has not brought any material on record to support the impugned disallowance. The disallowance is made by the Assessing Officer on the basis of surmises and conjectures and hence, the same ought to be deleted

13. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing expenses incurred for earning dividend income by invoking the provisions of section 14A read with rule 8D(2)(iii).

The appellants contend that on the facts and in the circumstances of the case and in law, the Assessing Officer ought not to have made the impugned disallowance inasmuch as the same is not in accordance with the prescription of section l4A read with rule 8D(2)(iii).

The appellants further, contend that the calculation of the disallowance is not In accordance with the provisions of rule 8D(2)(iii).

14. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing additional depreciation Rs 45,000 on water chilling plant.

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the Assessing Officer has not correctly appreciated the facts of the case in its entirety and hence, the said disallowance requires to be deleted.

15. The CIT(A) erred in upholding the action of the Assessing Officer in disallowing the deduction of Rs 5,66,271 claimed under section 35D of the Act on the ground that the appellants have not provided any working for admissibility of deduction under section 35D.

The appellants contend that on the facts and in the circumstances of the case and in law,
the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned disallowance inasmuch as the appellants have furnished the working together with all details and

hence, the said disallowance requires to be deleted. 16. The CIT(A) ought not to have upheld the action of the Assessing Officer in charging interest Rs 3,17,51,163 and Rs 98,329 under sections 234B and 234C of the Act, respectively.

The appellants contend that the CIT(A) ought not to have upheld the action of the Assessing Officer in charging the impugned interest under sections 234B and 234C
inasmuch as -

(a) the Assessing Officer has not given an opportunity to the appellants before charging the said interest as required by the principles of nature justice,

(b) the charging of interest is not in accordance with law. "

50. The issue raised in ground of appeal no.1 is against the upholding of the re-opening u/s 148 of the Act.

51. Brief facts of the case are that the assessment proceedings were reopened by issuing the notice under section 148 of the Act on 26.3.2013 upon receiving information from the Sales Tax Department, Government of Maharashtra(GOM) that the assessee was one of the beneficiaries of accommodation entries from Hawala Dealers as per the list published in the website of the Government of Maharashtra.
A survey was conducted on the premises of the assessee u/s 133A of the Act on 19.12.2012 in which in the statement recorded u/s 131 of the Act the assessee surrendered Rs. 10 Cr to cover various discrepancies in the assessment years 2008-09 to 2012-13 but subsequently the surrender was withdrawn and the income was not offered in the returns of income filed. The reasons for re-opening were duly recorded and supplied to the

assessee and after the assessee filed objections against the re-opening , the same were disposed of by separate order.

52. The reopening of the assessment was challenged before the ld.CIT(A) who also upheld the reopening of the assessment u/s 148 of the Act on the ground that information was received from the Sales Tax Department, GOM and constituted a valid information for re-opening the assessment. The observations and findings of the ld.CIT(A) are as under :

> *"6.3. I have considered the facts of the case, stand of the AO as well as submissions made by the Id. AR on behalf of the of the appellant. The case has been reopened by the AO on the basis of certain discrepancies noted by the AO during the course of survey and because two Directors, Shri Chandresh Thakker and Shri Dinesh Thakker also made disclosure of income of Rs.10 crores spreading in various assessment years and whereby the directors have accepted the discrepancies found with reference to the books of accounts / loose papers / stocks etc. which was pointed out by the survey team during the survey. The contention of the AO is iterated, "The fact that the assessee suo-motto gave a statement during the course of survey proceedings is a sufficient reason for the Assessing Officer for prima-facie believing that the income assessable has escaped assessment is established. Sufficiency of reasons cannot be questioned at stave of the initiation of the proceedings unless proceedings are continued to the assessment stage. "Therefore, the AO was justified in invoking section 147 and issuing notice u/s 148 for reopening of the case. It will be altogether a different proposition as to how much addition will be actually warranted in the present case, but the fact remains that he assessment was reopened on the basis of information available with the AO. It may further be pointed out that the appellant has participated in the re-assessment proceedings and now it is too late to raise any objection with regard to re-opening of the case. Therefore, the action of the AO was justified.*
>
> *In the result, appellant's ground No.2 regarding reopening of the case id dismissed."*

53. After perusing the material on record and hearing both the sides, we find that the assessment was primarily reopened by the AO after receiving the information from the Sales Tax Department of GOM that the assessee was one of the beneficiaries of the hawala transactions and therefore we are of the considered view that the reopening was done on the basis of information received from the Sales Tax Department, GOM which was not in possession of the AO at the relevant point of time i.e. at the time of framing of original assessment and therefore, we are in agreement with the conclusion drawn by the ld.CIT(A) that assessment was rightly reopened. Accordingly, the ground raised by the assessee is dismissed.

54. Grounds of appeal no.2 taken by the assessee is against the upholding of the action of the AO in appointing special auditor u/s 142(2A) of the Act.

55. During the course of assessment proceedings, the AO found that the records of the assessee were complex , bulky, voluminous and contained messy informations/details and therefore in order to assess the income correctly they should be audited by independent auditors so that the assessment could be framed and the income of the assessee could be brought to tax correctly. Accordingly , the assessee was issued a show cause as to why the special auditors should not be appointed u/s 142(2A)

of the Act. The AO after brushing aside the objections of the assessee appointed special auditor u/s 142(2A) of the Act after following the due procedure in the Act.

56. In the appellate proceedings before the FAA, the assessee challenged the action of the AO of appointing the special auditors. The ld. CIT(A) also dismissed the plea of the assessee by observing and holding as under :

> *"7.3 I have considered the facts of the case, stand of the AO as well as submissions of the appellant. The appellant has not made out any case that the books of accounts and materials found during the course of survey were not complex so as to prove that the AO was not justified in referring the matter to the Special Audit. Further, the appellant has not made out any case that Principle of natural justice was not followed by the AO while referring the matter for Special Audit u/s.142(2A). No case has been made out before me regarding the procedure followed by the AO while referring the matter for Special Audit. Therefore, the AO was justified in referring the matter for Special Audit. Further, under the given facts and circumstances, the submissions of the Ld.AR is not found to be tenable inasmuch as the appellant could have takenthis ground in Writ before the High Court and not before me. Therefore, at this stage, the objections of the appellant regarding reference of matter for the special audit by the AO cannot be entertained.*
>
> *In result, appellant's this ground of appeal no.3 is dismissed."*
> *the result"*

57. Having heard to both the parties and considering the relevant materials on records, it is observed that the accounts of the assessee were so complex that the AO has to depend on some professional help to assess the income correctly. We are, therefore, in agreement with the

conclusion drawn by the FAA that in the appointment of special auditor, the AO has followed proper procedure as laid down by the Act and did not cause prejudice/harm to the assessee and has also not violated principles of natural justice as without such audit by special auditors, the correct assessment of income could not have been possible. Accordingly, we uphold the action of the AO and confirm the conclusion drawn by the ld.CIT(A). Accordingly, ground no.2 taken by the assessee stands dismissed.

58. Ground no.3 is against the upholding of the action of AO in disallowing a sum of Rs. 31,36,199 by invoking the provisions of section 40A(2)(a), on the ground that the price charged at which the transactions was made with the related parties were excessive and unreasonable.

59. Facts of the issue are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has made purchases of raw material and packing materials from related parties. Assessing Officer after going through the comparative data of the assessee and related parties came to the conclusion that the price charged for the purchase of material from the related parties was unreasonable and excessive. Accordingly , the AO added a sum of Rs.31,36,199/- by invoking the provisions of section 40A(2)(a) of the Act by applying the rate 22.59% on the amount of purchases of raw material Rs 25,596 and

purchases of packing material Rs 1,38,57,533 details of which are given below :

Associate concern	*Raw Material (Rs)*	*Packing Material (Rs)*
Cheryl Laboratories Pvt Ltd	*25,596*	*(20,618)*
GBC Packing	*-*	*78,91,149*
GEM Packaging	*-*	*59,87,005*
Total	*25,596*	*1,38,57,533*

60. Aggrieved by the order of the AO , the assessee challenged the addition before the ld CIT(A). However, the ld. CIT(A) dismissed the appeal of the assessee after considering the contentions raised by the assessee by observing and holding as under :

> *"Reply of the appellant has been considered but not found to be acceptable and self-serving only. The appellant has failed to explain the reasonableness of the price charged by the related parties and therefore, packing material purchased from related parties is at price which was excessive and unreasonable. Therefore, an amount of Rs.31,36,199/- as disallowed by the AO and added to the total income of the appellant u/ s.40A(2)(a) of the Income Tax Act, 1961 is found to be justifiable.*
>
> *To conclude the contention of the appellant regarding GBC Packaging that the rates are not comparable has been found untenable and merely a covering exercise on the part of the appellants. Further, as pointed out by the AO that the general practice of charging higher rates for lower quantity is itself contradicting the submissions made by the AR since the appellants are found to be the second biggest customer in terms of quantity. Also, the rate charged by GBC Packaging, the related concern to the appellants is much higher as compared to the rate charged by GBC Packaging to the other related concerns.*
>
> *Similarly, the contention of appellant regarding GEM packaging and Cheryl Laboratories is not acceptable and self-serving only.*

Further, the appellant has miserably failed to explain the reasonableness of the price charged by the related concerns. As it may be seen from the submissions and contentions, the appellants' real motive in paying unreasonable and excessive purchase price is to suppress the true profits amongst group concerns. Based on the above, an amount of Rs.31,36,199/- as disallowed by the AO and added to the total income of the appellant u/s 40A(2)(a) of the Income Tax Act, 1961, This ground no.8 is upheld"

In the result, the appellant's this ground of appeal is dismissed."

61. The ld.AR submitted that the packing material purchased from GBC Packaging was a related party. The Special Auditors in their report observed that the appellant has not purchased similar items from other parties and hence, the comparative rates were not available for verification. Therefore, the Special Auditors obtained the sales register of GBC Packaging to ascertain the price charged by them to other related parties and compared the rates charged in respect of one of the packing material namely, 120 ml Amber Pet Bottle as mentioned at page nos 38 and 39 of the assessment order. The assessee submitted before the CIT(A) that GBC Packaging has sold the aforesaid packing material to related as well as non-related parties. The rate at which the material was sold to Shalina Laboraties Ltd at Rs 1.51 was the lowest price amongst all. However, the same product has been sold to the appellants at Rs 1.75. It was explained to the special auditors and also the Assessing Officer (refer letter dated 6th August,2014 - page nos 8.1 to 8.8 of the paper book) that there is a difference in rates as quantum of materials in terms

of value sold to Shalina Laboratories Ltd was 24.27 lacs as against 14.44 lacs to the appellant, which was 68% much higher. It is a general business practice that higher the quantity lower is the rate offered and hence, the price charged to Shalina Laboratories Ltd differed from the price charged to the appellant. Further, it was explained that GBC Packaging has charged Rs 1.57 to Deep Enterprise as it was to encourage the new entrants into the business and it would not be out of place to mention that samples were supplied/provided at lower rate and not the product of main supply. And hence, the rates charged to Deep Enterprise were not comparable with the price charged to the appellants. The appellants contended that the difference between the rates charged to the appellant and Shalina Laboratories Ltd is only Rs 0.24 which is only 15.89% and hence, the impugned addition could not be sustained. Further, the appellants contended that payment for such expenditure has to be viewed from businessman's point of view and not from the view point of the Revenue. Revenue cannot justify its action by putting itself in the armchair of a businessman and assume the said role to decide how much is reasonable expenditure without having regard to the circumstances of the case. The written submission state that "*in respect of packing material purchased from GEM packaging it would be pertinent to mention that the special auditors in their report have not given any adverse remarks nor has the Assessing Officer given any comparative rates as far as purchases*

from GEM Packaging were concerned to arrive at the conclusion that excess rate has been charged by them to the appellants. The Assessing Officer has extrapolated the excess rate @ 22.59%, being the alleged average difference charged in excess by GBC Packaging, to the turnover of GEM Packaging, which on facts and in law, is not tenable and hence, the impugned addition is not sustainable. Without prejudice to the above, it would be pertinent to mention that the appellants purchased corrugated boxes from GEM Packaging and there could be no comparison of rates as these boxes are of different sizes and manufactured as per the requirements of the customers and thus, the impugned disallowance cannot be made". The ld. AR in support of his contentions referred before us that disallowance under section 40A(2)(a) can be made only if the following conditions are satisfied;

> *-where the assessee incurs any expenditure ;*
> *-the payment for such expenditure is made to any person referred to in clause (b) of section 40A(2) and*
> *-the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facility for which the payment is made.*

He referred to written submissions which stated that where expenditure being excessive or unreasonable, the fair market value of such services/materials have to be determined first and unless this benchmark is set, or there is a categorical finding about the fair market value and the assessee is given an opportunity of hearing on the AO's finding about

such fair market value, there could not be any question of any disallowance under section 40A(2) of the Act . Only the excess of such benchmark can be held to be excessive or unreasonable; and if such benchmark is not set by the Assessing Officer, no disallowance could be made .

62. In the case on hand, the appellants contended that "the Assessing Officer has neither brought any material on record to show excess price charged by GEM Packaging, has not set any benchmark to make any comparison with rates charged by GEM Packaging and hence, has not satisfied the prerequisites of making a disallowance under section 40A(2). Further, it would not be out of place to mention that GEM Packaging in respect of which the disallowance has been made is in the same tax bracket as the appellants and thus, there is no loss of tax to the exchequer" and therefore the provisions of section 40A(2)(b)of the Act could not invoked. The legal proposition is that payment to sister concern cannot be disallowed under section 40A(2)(b) of the Act unless tax avoidance motive is established. In support of his contentions the ld.AR placed reliance on the following case laws:

(i) CBDT circular No 6-P-66 dated 6th July, 1968
(ii) CBDT circulars are binding on the Assessing Officer

UCOBank	237 ITR 889 (SC)
Paper Products Ltd	247 ITR 128 (SC)
Indian Oil Corp. Ltd	267 ITR 272 (SC)
Best Plastics (P.) Ltd	295 ITR 256 (Del)

(iii) Bombay High Court decision in the case of Indo Saudi Services (Travel) Pvt Ltd - 310 ITR 306
(iv) Mumbai Tribunal in the case of Triumph Securities Ltd -ITA No 2614/M/2004 and
Edwise Consultants Pvt Ltd - ITA No 5376IMumI2011, 4121IMumI2014, 5941Muml2013 (consolidated order).

The ld. AR in respect of purchases from Cheryl Laboratories Pvt Ltd contended that "*no disallowance is called for on account of smallness of the amount involved and in any view of the matter, the contentions made above in respect of GEM Packaging squarely apply to Cheryl Laboratories Pvt Ltd.*" He further submitted that "*the total purchases of packing material debited to the profit and loss account is Rs 8,36,93,103 the purchases from associate concerns aggregating Rs.1,38,78,151/- is just 16.58% of the total purchases and thus, "substantial" purchase of total packing material is not made by the appellants, as observed by the Assessing Officer. Without prejudice to the contentions mentioned above, the Assessing Officer has erred in computing the rate of 22.59% which is an average of the excess rates charged for income-tax assessment years 2010-11 and 2011-12 instead of considering 15.89% which is the excess rate charged for the year under reference - refer page no 42 of the assessment order in respect of GBC Packaging only.*"

63. Per contra, the Ld DR relied on the order of the CIT(A) and submitted that the assessee has failed to establish that such payments

are not excessive and unreasonable. The ld. DR strongly relied on the order of authorities below.

64. We have heard both the parties and perused the material placed before us including the impugned order. We find merit in the submissions of the ld.AR that the AO has failed to point out whether price paid by the assessee is excessive and unreasonable in terms of provisions of section 40A(2)(a) of the Act by bringing on record the comparative cases. Disallowance cannot be made on surmises or at the whims and fancy of the AO. Moreover in the case of GEM Packaging the provisions of section 40A(2)(a) can be invoked only when the tax avoidance motive is established as has been decided by the Hon'ble Jurisdictional High Court in the case of CIT. Vs. Indo Saudi Services (Travel) Private Limited reported in (2009) 310 ITR 306 (Bom) and the CBDT circular No 6-P-66 dated 6th July, 1968. In the given cases both the parties are in the same tax bracket. In view of these findings, we decide the issue in favour of the assessee and against the department by allowing the ground of appeal of the assessee on this issue.

65. The ground no.4 is against the payment of job work charges of Rs.6,38,723/- paid to related parties by the AO by invoking the provisions of section 40A(2)(b) of the Act.

66. Facts in brief are that during the assessment proceedings, the AO observed that the assessee paid a sum of Rs.5,74,719/- to M/s Cheryl

Laboratories as job work charges for which license and production capacity was available with the assessee and Rs.64,004/- was also paid for job work charges which was not as per normal agreement. The AO observed that the observation of the special auditor was correct that the charges paid for job work carried out by the related parities despite having production capacity available with the assessee and accordingly jobwork charges paid to the associate persons u/s 40A(2)(b) of the Act were disallowed and added to the total income of the assessee. On appeal, the ld. CIT(A) confirmed the action of the AO on this point after considering the submissions raised by the assessee as raised during the appellate proceedings by observing as under *page 88 of CIT(A):*

> **"***Therefore, the jobwork charges of Rs.6,38,723/- which is excessive and unreasonable for the various reasons mentioned above is disallowed by the AO.*
>
> *Thus, it is observed from the contentions of the AO that the appellant had available production capacity and there was no need for them to outsource the job work to its related concerns. Also, the job work charges were not authorized by any agreement and was considered excessive and unreasonable. Further, as pointed out by the AO that the appellant have practice of shifting he income between related concern as per their convenience is found justified and accordingly, the addition of Rs.6,38,723/- on account of excessive payment towards job work charges made by the AO is upheld. Based on the above discussion Ground no.9 is dismissed.*
>
> *In the result, appellant's this ground of appeal is dismissed"*

67. In the written submission it is stated as under

"that the special auditors have observed that the production capacity of the appellants has been under-utilised and yet the appellants have assigned job work to its associate concern, Cheryl Laboratories Pvt Ltd. The Assessing Officer has relied on the aforesaid observation in making the impugned disallowance. The appellants contend that production is done as per availability of raw material and work force at the respective factories. Even though the production capacity was not fully utilised, the work force for the year under reference was approximately fully utilised and hence, the job work assigned to Cheryl Laboratories Pvt Ltd stands justified. The appellants further, contend that the issue of availability of capacity and other similar issues should be left to the best judgment of the assessee and, as held by Courts time and again, the Revenue Officers should not sit in the armchair of the businessman and make decisions. The appellants thus, contend that the payment for such expenditure in the nature of job charges has to be viewed from businessman's point of view and not from the view point of the Revenue. Further, the special auditors have observed that the job work assigned for manufacturing of certain products was not mentioned in the job work agreement. The appellants submit that there can always be an oral agreement in law and in the case on hand there is no denial of the fact that the appellants have got the products manufactured by Cheryl and paid job charges therefor and hence, there can be no disallowance for the reason that the product manufactured is not mentioned in the agreement." The ld. AR further stated that "the Assessing Officer in his order has mentioned that "the assessee have the practice of shifting the income between related concern as per its convenience". The appellants contend that the associate concern, Cheryl in respect of which the disallowance has been made is in the same tax bracket as the appellants and thus, there is no purpose that is served if the incomes are shifted. Further, there is no loss of tax to the exchequer, a prerequisite to invoke the provisions of section 40A(2)(b). The legal proposition is that payment to sister concern cannot be disallowed under section 40A(2)(b) of the Act unless tax avoidance motive is established." The applicability of the provisions of section 40A(2) is discussed in the ground of appeal no. 3 which apply to the facts of the case on hand and hence, the appellants submit that the same may be considered here. In view of the above, the impugned disallowance has no legal sanctity and hence, the same need to be deleted. The ld.AR further contended that "without prejudice, the entire amount of job work charges paid to Cheryl Laboratories Pvt Ltd has been

disallowed which is totally incorrect; at best, the GP of Cheryl Laboratories Pvt Ltd. can he considered for disallowance."

68. On the other hand, the ld.DR relied on the orders of authorities below.

69. After hearing both the parties on the issue and perusing the written submissions of both the parties and on perusal of material placed before us, we find that the AO has disallowed the job work charges on the ground that it was paid to related parties despite having un-utilized production capacity. We also find that the ld.AR has duly explained before the AO as well as FAA that the production capacity remained unutilized for the various reasons viz that due to various strikes and breakdown in the factory and lack of man power at the relevant point of time. We find merit in the submissions of the ld.AR that it is for the assessee to decide whether manufacturing of a particular item is to be manufactured in house or to be outsourced, irrespective of the fact that there is un-utilized production capacity. The same is a purely commercial decision. Accordingly, we hold that the conclusion drawn by the ld.CIT(A) is not correct and hence we direct the AO to delete the addition on this point. Ground no.4 is allowed as indicated above.

70. The issue raised in the ground of appeal No.5 is against the confirmation of disallowance of entire business promotion expenses of Rs 26,74,430/-.

71. Facts of the issue in brief are that during the course of survey proceeding, the statement u/s 131 of the Act was recorded in which the directors admitted that the business expenses were not genuine. However, later on the directors retracted the same. The AO on the basis of the statement on oath, came to the conclusion that the said expenses were not genuine and accordingly added the same to the total income of the assessee. In the appellate proceedings, the FAA confirmed the action of the AO by observing and holding as under :

> *"To conclude, the appellant was given an opportunity to prove the genuineness of the business promotions expenses thereby explaining is nexus with the business by producing the list of beneficiaries along with their names and addresses to whom such gold/silver coins have been distributed. However, the appellant has failed to produce such list of beneficiaries. Further, the directors of the appellant company have themselves admitted in the statement on oath that the business promotion expenses are not genuine and are inflated. The retraction of the statement made during the survey is an afterthought and is merely not allowed. Based on the above, Ground no.10 is dismissed.*
>
> *In the result, appellant's this ground of appeal is dismissed"*

72. The ld.AR before the Bench submitted that the observations of the special auditor that the assessee has made huge business promotion payment was wrong as the same cannot be judged on the basis of merely the amount incurred but also the materiality of the same has to be seen. The ld. AR pointed out that the business promotion expense were only to the extent of 0.46% of the total turnover.

73. The ld.AR also submitted "that special auditors have mentioned that the appellants have made "heavy" payments towards business promotion expenditure. The appellant contended that business promotion cannot be seen on a standalone basis. The materiality of business promotion seen in relation to the turnover of the appellant-company which is given below-

Particulars	*Rs in crores*
Business promotion expenditure	*0.26*
Turnover	*57.90*
% of business promotion to turnover	*0.46%*

On perusal of the above table, it is observed that the business promotion expenditure incurred is just minimal percentage to the turnover of the business." The ld. AR further submitted that "the Assessing Officer in his order has mentioned that "no nexus to the business has been established or explained" whereas all the necessary details were filed as reproduced below..

Sr No.	*Particulars*	*Remarks*	*Reference to the paper book.*
1	*Gandhi Corporation dated 25.09.2009*	*This expenditure has been incurred for stall at exhibition at Ahmedabad*	*10-41*
2	*Representatives of FDA from Africa dated 06.06.2009 to 22.7.2009*	*Representatives of FDA from Africa had visited the appellants/India. Gold coins were given as it is the custom! tradition/ policy of the to give gold/silver coins to business colleagues/ customers and as a good gesture our clients borne the expenditure of their stay at sea Green hotel and also, other expenditures incurred by them during their visit*	*10-42 to 10-46*

3	*P M Zaveri & Co*	*The appellants launched a new cosmetic product "Moibelle". P.M. Zaveri & Co having good foot hold in the markets of Gujarat, Maharashtra and West Bengal were appointed in December, 2009 as marketing agents to promote the product.*	*10-50 to 10-71*
4	*Mayfair Rooms and Graviss Cartering Pvt Ltd*	*The appellants completed 60 years in business and hence, a celebration get together of existing and prospective customers was held.*	*10-79 to 10-80*

The Assessing Officer during the course of assessment proceedings on having given the aforesaid details in respect of P.M. Zaveri & Co, did not require the appellants to give any further details and hence, the Assessing Officer has fallen in error as he has disallowed the impugned expenses for want of details of distributors. The ld AR submitted that the Assessing Officer in respect of the expenses incurred for the function at Mayfair has mentioned in his order that "from ROC site it was seen that the company is not even 10 years old, so there can't be any question of 60 years completion". In view of the same, the appellants contend that Gopaldas Visram & Co Ltd was converted to a company on 20.10.2005 and were earlier carrying on the business as a partnership firm since 1947. Ld AR invited our attention to the above submissions. It is, therefore, submitted that 60 years in business is calculated since the year it was founded and not the year it was converted into a company.

74. The Assessing Officer has also made the impugned disallowance for the reason that the list of beneficiaries is not provided by the appellants.

The appellant contended that they have has not maintained such a list even in the past when the said expense has been allowed by the Department.

75. Ld AR further submitted that "for allowance under section 37(1), following conditions are to be satisfied, i.e., (a) there must be expenditure, (b) such expenditure must not be of the nature described in sections 30 to 36, (c) the expenditure must not be in the nature of capital expenditure or personal expenses of the assessee, (d) the expenditure must have been laid out or expended wholly and exclusively for the purposes of the business or profession. The word 'wholly' refers to the quantum of expenditure, while the word 'exclusively' refers to the motive, objective and purpose of the expenditure. An expenditure to which one cannot apply an empirical or subjective standard is to be judged from the point of view of a businessman and it is relevant to consider how the businessman himself treats a particular item of expenditure. The reasonableness of the expenditure can be gone into only for the purpose of determining whether, in fact, the amount is spent. Once it is established that there is a nexus between the expenditure and the purpose of business, the revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of the board of directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case."

76. It is, further, submitted that the appellants by letter dated 15.09.2014 of RSK requested the Assessing Officer to invoke the powers vested in him under section 133(6) of the Act to verify the genuineness of business promotion expenditure incurred. However, the Assessing Officer, for reasons best known to him, has failed in doing so. This implies that the Assessing Officer is either satisfied with the explanation provided to him during the course of assessment proceedings or has abruptly made the impugned addition without cross-verification."

77. The ld.AR further contended that on the admission of the directors of the appellant-company at the time of survey that that the impugned expenses have been inflated, the department cannot take a statement on oath during survey proceedings and the statement recorded during survey proceedings has no evidentiary value unless there is a corroborative materials/evidences to substantiate such statement . Reliance is placed on the decision of the Supreme Court in the case of S. Khader Khan Son (254 CTR (SC) 228). It is held that section 133A does not empower an officer to examine any person on oath and hence, any statement recorded during the survey proceedings under section 133A has no evidentiary value; consequently, any admission made during survey in statement cannot be made the basis of addition. It is held by Courts that confession during survey proceedings is not conclusive and it is open to the assessee to establish that the same was not true by filing cogent evidence - 231 CTR

(Chattis) 165. The ld counsel submitted that the appellant has brought every material on record to establish that the statement given on oath by the directors of the appellant-company during survey proceedings was on facts, erroneous and hence, retracted."

78. The ld.AR further contended that "the Assessing Officer has not considered the affidavit (retraction) that has been filed with him and all the supporting documents filed during the course of assessment proceedings. The Assessing Officer has not dealt with the submissions of the appellants in the right perspective. There is no proper reasoning given by the Assessing Officer to make the impugned addition. The impugned addition made by the Assessing Officer thus, needs to be deleted."

79. The ld.AR submitted that "the Assessing Officer has relied on the decision of Mumbai Tribunal in the case of Synthetic Colour Chem Industries and the facts in that case are distinguishable from the facts on hand and hence, the Assessing Officer has fallen in error to base the impugned addition on the said decision."

80. On the contrary, the ld.DR relied on the order of the authorities below.

81. We have carefully considered the rival submissions,written submissions filed before us and perused the material placed before us including the impugned orders of authorities below. We find that the AO disallowed the business promotion expenses merely on the basis of statement on oath of the directors of the company recorded under section 131 of the Act during the course of survey proceedings conducted under the provisions of section 133A of the Act which was retracted by the assessee later on. We do agree with the contention of the ld.AR that the statement on oath given during the survey proceedings cannot be relied as a piece of evidence in view of the decisions rendered by the Hon'ble Supreme Court in the case of CIT v. S. Khader Khan Son (2012) 254 CTR(SC) 228 (2013) 352 ITR 480 (SC) unless such statement is proved to be wrong with evidences. The ld. AR submitted that there was no materials found during the survey in corroboration of the statement given by the assessee during the course of survey proceedings u/s 133A of the Act. Therefore, in our view to rely solely on the statement on oath would be unreasonable and unjustified. Therefore we are not in agreement with the conclusion of CIT(A) on this issue. Accordingly, the AO is directed to delete the addition. This ground of appeal is allowed.

82. The next issue raised in ground of appeal no.6 is against the confirmation of commission paid of Rs.1,51,856/- for arranging purchases.

83. The facts in brief are that the special auditors observed that during the verification of commission paid there were do details on the debit notes as to the services rendered and only the amounts were mentioned. The special auditors reported that the there was no nexus of the commission paid with the business of the assessee . During the assessment proceedings the assessee provided details of partywise commission paid and submitted that the commission was genuine. The assessee also submitted that the directors of the assessee company has retracted the statement given during the survey and that has no evidentiary value. Thereafter the AO issued show cause notice as to why the commission should not be disallowed which was replied by the assessee vide letter dated that the commission is supported with bills and vouchers and payments proofs and also requested the AO to issue notice u/s 133(6) of the Act to verify the genuineness as the necessary details of recipients stands filed with the AO. The AO issued notices u/s 133(6) of the Act which was replied by the parties and it was confirmed that the commission was received by them. But the AO made the addition on the ground that M/S Deep Packaging was paid commission for arranging purchases of packing materials from GBC Packaging an associate concern of the assessee and in the case of Oman trade another recipient of commission added that commission without considering the explanation of Mr Sampat partner of Oman Trade.

In the appellate proceedings the ld CIT partly allowed the appeal by sustaining addition in respect of Deep Enterprises and deleting the addition in respect of commission paid to Oman Trade by observing that in the case of former the directors of the assessee has admitted in the statement recorded during the course of survey that the commission was not genuine and further holding that retraction was an afterthought and not accompanied with corroborative materials whereas in the second case the CIT(A) recorded a findings that the AO failed to consider the explanation offered by the party.

After considering the rival submissions of the parties and relevant records including written submissions of the parties we find that the AO has primarily relied the statement of the directors of the company which has been retracted and the CIT(A) has sustained the addition that retraction was without any corroborative material. According to the facts Mrs. Pravina Pobara was the proprietor of M/S Deep Enterprises and her relatives were partners in GBC Packaging with profit ratio of 20%. GBC Packaging is a related party but the assessee did not have any interest in the Deep Enterprises. Both the authorities below has failed to bring any materials to prove the unreasonableness of the rate at which the commission was paid. Similarly the commission paid to Re Bhairav Seth of Rs. 1900/- was disallowed with any reason. The basis of the addition is

only statement of the directors of the assessee which has been retracted. Under these facts and circumstances we are not in agreement with the conclusion drawn by the ld CIT(A) and the AO is directed to delete the additions.

This ground of appeal is allowed.

84. Ground no.7 is against the confirmation of Rs. 1,68,31,380/- by the ld.CIT(A) as made by the AO by invoking the provisions of section 69A/69C of the Act on the ground that the said purchases are from hawala dealers.

The facts in brief are that the special auditor in his report has stated that the assessee made payment for purchases by cheques to various parties who were listed as hawala dealers in the list of Sales Tax Department, Government of Maharashtra. Accordingly, the AO issued the show cause notice to the assessee as to why such addition should not be disallowed and be added to the total income of the assessee. Ultimately, the AO was not satisfied with the explanation of the assessee and added an amount of Rs.1,68,31,380/- to the total income of the assessed by placing reliance on the decision of ITAT, Mumbai in the case of Synthetic Colour Chem Industries V/s DCIT. In the appellate proceedings, the ld.CIT(A) vide para 17.3.3 of the appellate order dismissed the appeal of the assessee observing as under:-

"17. 3.3. I have considered the sand of the AO as well as submissions of the appellant, and find that the appellant has admitted of being one of the beneficiaries to that transactions of issuing bogus bills in its statement under oath in response to the summons u/ s.131 and also during survey. Here I would like to mention that the Hon'ble ITA T, Mumbai has given many judgments where it has deleted the addition made by the AO with regard to transactions involving purchases from hawala dealers violated MV AT. However, at this stage, it may be pointed that this case is different from other cases of MVAT because in the present case, certain discrepancies were noted by the survey team and the two directors of the appellant company accepted and agreed to such discrepancies and also voluntarily disclosed such transactions for taxation purpose. This makes the present case distinguishable from those cases where the Hon'bel ITAT have given relief to the cases related to hawala dealers where there was no survey at all. Keeping in view of these facts, it is concluded that the submissions made by the appellant and retraction of statement made during the survey is an after thought and not corroborated with any reliable material. Even at the cost of repetition, it is pointed out that the Directors of the assessee company had admitted on oath that the they had ***inflated purchases of Rs.75,57,784/- for which there is no corresponding sales. The appellant was issued a show cause on 10.9.2014 by the AO stating that durin****g the course of survey proceedings, under a statement taken on oath, the appellant had agreed that there was inflated purchase for AY 2010-11 to the extent of Rs.75,57,784/- for which no corresponding sales was available. The appellant was required to show cause, why the said purchase of Rs.75,57,784/- be not' disallowed and added to your to total income. So far, the appellant has not been able to substantiate that such purchases were genuine purchases from the hawala dealers. Keeping in view entire factual matrix of the case, I do not find any reason to differ with the AO. Therefore, amount of Rs.1,68,31,380/- being purchases invoice received from Hawala dealers is held to be justifiable added back by the AO. Based on the above, ground No.13 is dismissed.*

In the result, appellants this ground of appeal is dismissed."

85. We have heard the rival parties and considered the relevant materials placed before us. The ld AR submitted that it is incorrect that

there are hawala purchases without corresponding sales as the it was specifically replied in joint statement in response to query no. 14 of statement recorded during survey that purchases and sales were booked without there being any actual purchase and sales of materials. In reply to query no 18 of statement recorded during survey it was stated that in order to show high volume of transactions to the financial institutions and banks and also to grab orders from international market the inflation in the purchases and sales were made without there being any actual purchase as well as sale . All these transaction were only papers transactions without any purchase from the grey market and therefore different from normally hawala transactions. The sole motive was only to show higher purchases and turnover. In this case there is no revenue leakages as is the case in case of normal hawala transactions. In this case both the purchases and sales were to the hawala parties and all these transactions were of circuitous nature and whatever profit the assessee has made was shown in the books of accounts. We find that confirmation of entire purchases from hawala dealers by the ld.CIT(A) is not correct as these are circuitous transactions. In the case of hawala purchases the Co-ordinate Benches of the Tribunal are taking consistent view to make disallowance between 2% to 12.5% of the such purchases but the facts in present case are different. But in the instant case before us the transactions are of circuitous nature on which the profit has been shown

in the books of accounts. Under these facts and circumstances of the case, we deem it fit and fair that a reasonable disallowance is to be made. Accordingly, we direct the AO to restrict the addition to the extent of 2% of the purchases from such hawala parties. Therefore, this ground of appeal is partly allowed.

86. The 8th grounds of appeal of assessee is against the confirmation of disallowance of Rs 4,82,250/- by the ld.CIT(A) made by the AO being the claim for deduction under section 80G of the Act , on the ground that the donations paid are not genuine.

87. Facts of the issue are that during the course of survey proceedings u/s 133A of the Act and in the statement recorded u/s 131 of the Act, the directors admitted that donations to the tune of Rs.9,46,501/- to Shreemad Rajachandra Sevamangal Trust and other trusts were not genuine. The directors later retracted their statements. TThe notices sent to these parties returned unserved. On the basis of this, the AO disallowed Rs. 4,82,250/- being 50% of donations treating them as not genuine and added the same to the total income of the assessee. In the appellate proceedings, the ld.CIT(A) vide para 19.3.6 upheld the action of the AO observing as under :

> *"19.3.6……..*
> *Accordingly the appellant was confronted with the above informations and vide office note sheet dated 23.3.2016, the appellant/ld.AR was allowed opportunity to file rebuttal, if any. In*

response, the ld. AR who appeared on 23.3.2016 submitted that regarding the genuinity of the claim, the appellant has already made submissions on earlier occasions and has nothing further to submit anything more. The submission made by the appellant on the earlier occasion of hearing has already been discussed in earlier paragraph where the claim of the appellant has not been accepted and allowed for the reasons mentioned in earlier paragraphs. In view of the above informations and the facts, it is concluded that the claim made by the appellant regarding genuinity of donation is not correct. Therefore, I have gone one more reason to uphold the disallowance made by the AO as referred above. Based on the above, the ground no.15 is dismissed."

88. After hearing both the parties and on perusal of record, we find that the assessee claimed deduction u/s 80G of the Act on the donation paid to Shreemad Rajachandra Sevamangal Trust and other trusts. The disallowance was made by the AO on the basis of that notices to parties returned unserved and for not proving the genuineness of the donations made. On hearing both the parties we are of the view that the matter needs verification at the level of AO, therefore, we restore the same to the file of the AO to redo the same after giving fair and reasonable opportunity of being heard to the assessee. Therefore, this ground is allowed for statistical purposes.

89. At the time of hearing, ground of appeal no.9 which pertains to the disallowance of interest paid for loan on Dehradun Unit was withdrawn by the ld. AR. Accordingly; we dismiss this ground of appeal.

90. The ground no.10 pertains to the addition of Rs 1,83,62,550/- confirmed by the ld.CIT(A), being 10 per cent of turnover in circular trading transactions.

91. The ground is similar to ground no 7 supra. During the course of survey proceedings, the directors admitted to have indulged in the circular trading transactions for the sake of inflating the turnover. Accordingly, both the sales and purchases were verified by the special auditor and made detailed report on such transaction. However , the directors later retracted their statements and stated that sales and purchase were genuine. The AO made addition by observing and holding as under (17.5) :

> *"17.5 The reply of the assessee has been considered and the same is not acceptable. On sale of Rs.18,36,25,490/-, the assessee had shown profit of only Rs.2,01,000/- which is negligible. The assessee itself admitted that it was trading so the assessee must have debited all the direct and indirect expenses other than purchases against the actual sales and thereby reduced its actual profits. So, for this once the assessee itself is showing trading then the income of the assessee has to be increased by the G.P without considering even the direct expenses other than purchases. The assessee's comments are not satisfactory. So, considering the findings of the Auditor and statement of the Directors of the assessee company taken on oath an amount equal to Rs.1,83,62,550/- (10% of 18,36,25,490/-) being Gross Profit on the turnover of Circular Trading is disallowed.*

92. In the appellate proceedings, the ld.CIT(A) confirmed the addition made by the AO by observing and holding as under (pg 175 (CIT(A) :

> *"22.3……*

Keeping in view of the above facs brought on records by the AO, the reply of the appellant is not found to be acceptable. It may be noted that on sale of Rs.18,36,25,490/- the asesse had shown profit of only Rs.2,01,000/- which is negligible . Further, the appellant itself admitted that it was trading so the assessee must have debited all the direct and indirect expenses other than purchase against the actual sales and thereby reduced its actual profits So for this once the appellant itself is showing trading then the income of the assessee has to be increased by the GP without considering even the direct expenses other than purchases, Keeping in view of the entire factual matrix of the case, the disallowance made by the AO @ 10% GP on the turnover of Rs.18,36,25,490/- has justifiably been estimated at Rs.1,83,62,550/- being GP on the turnover of Circular Trading, Based on the above, ground no.18 is Dismissed.

In the result, the appellant's this ground of appeal is Dismissed".

Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

93. The ld. AR submitted before us that though the transactions were admitted to be of circuitous nature during the course of survey proceedings but the same has been retracted by the directors thereafter. The ld. AR submitted that the transactions of sale and purchases were paper transactions and that each such purchase was backed by corresponding sales or vice-versa. Even the special audior accepted after detailed examination that the transactions of purchases and sales were of circuitous nature as they have not given any adverse comment on the same. The ld. AR argued that the AO has not doubted the purchases and sales or has brought on record any material to show that there was any

discrepancy in the circuitous transactions. So much so, the books of account were also not rejected and therefore the addition as made by the AO and confirmed by the FAA on account of Gross Profit of circular transaction was bad in law. The ld.AR contended that all these transactions were duly reflected in the books of account and the cumulative profit on all these transactions was duly reflected in the annual accounts of the appellant. It was also argued that the AO relied on the statement during survey proceedings to make the addition when it is trite law that such statement has no evidentiary value unless corroborated by some other evidences. The ld AR relied on the decision of CIT v. S. Khader Khan Son (2013) 352 ITR 480 (SC). On the other hand the assessee has filed enough evidences to prove that the statement during survey was erroneous and hence retracted. Finally the ld AR contended that impugned addition was only made on the basis of statement which has been retracted later on without bring any materials on records which rendered the addition made as bad in law. The AO has not bothered to ixsue the notices u/s 131/133(6) of the Act to call for the details/information from the parties involved in circuitous transactions to ascertain the veracity thereof. Therefore the ld AR prayed that the said addition was uncalled for and should be deleted.

94. The ld. DR on the other hand relied on the orders of authorities below.

95. We have heard the rival contentions and perused the material placed before us. We note that facts are similar and related to ground no 7 supra. We find that in the present case, these transactions admitted to circular nature aiming to inflate the sales and purchases of the assessee but the same has been withdrawn later on by the assessee. Even if the conclusion of the AO is taken as correct even though we find it difficult to agree with the authorities below that the assessee has made GP of 10% on the said transactions which were purely guess work and without bringing any substantive material on record. The authorities below even did not investigate the matter further. The assessee has fully accounted all the sales and purchases in its books of accounts. Even the special auditors did not made any adverse inference on such circuitous transactions. Therefore, to estimate the GP @ 10% on the said transactions would be unreasonable and de-hors the facts and materials on record as the sole purpose was to inflate/increase the volume of transactions of purchases and sales for the purpose of showing higher turnover to its bankers and also procuring order from foreign markets and not to earn any profit. However in these kind of transactions we have estimated the reasonable profits as addition at 2% while deciding ground 7 in para **86** above. Accordingly, we direct the AO to restrict the addition to 2% of the purchases..

96. The issue raised in ground of appeal no.11 is against the confirmation of disallowance of Rs.2,78,994/- by the ld.CIT(A) as made by the AO u/s 40(a)(ia) for non deduction of tax at source.

97. Brief facts of the case are that the AO during the course of assessment proceedings noted that the assessee has paid a sum of Rs.2,78,994/- to Kotak Mahindra Prime Ltd on car loans. However, no TDS was deducted. The AO after issuing show cause notice to the assessee and considering it added the same to the total income of the assessee us/ 40(a)(ia) of the Act. On appeal before the ld.CIT(A), he rejected the same and confirmed the addition made by the AO vide 26.3 of the appellate order which is reproduced below:

> *"26.3……..(page 196 , 197)..Further, as pointed out by the AO the appellants have failed to deduct tax on interest on car loan of Rs.2,78,994/- paid to Kotak Mahindra Prime Ltd. As per the provisions of section 40(a)(ia) of the Act, the AO has rihtly disallowed the amount of interest paid on car loan Rs.2,78,994/-. Based on the above, the disallowance of Rs.2,78,994/- made by t he Assessing Officer is upheld and hence, Ground no.22 is Partly Allowed."*

98. After hearing both the parties on the subject, we find merit in the arguments of the ld.AR that if the interest has been shown by the payee in the return of income and paid due taxes thereon then assessee cannot be treated in default and no disallowance is u/s 40(a)(ia) is called for. Accordingly, we restore this issue to the file of the AO for verification of

this fact after giving a reasonable opportunity to the assessee. Therefore, this ground is allowed for statistical purposes.

99. The ground no.12 pertains to the confirmation of action of the Assessing Officer in disallowing the entire staff welfare expenses of Rs. 9,09,863 debited to the profit and loss account, on the ground that the expenses are not genuine business expenses but personal expenses of the directors.

100. The brief facts of the case are that the special auditor in his report noted that the assessee has debited various expenditures towards staff welfare account which represented purchase of lifeguard policy and hospital care policy as stated at pages 110 and 111 of the assessment order. Accordingly, the AO issued show cause notice to the assessee as to why these expenses should not be disallowed and be added to the total income of the assessee, in reply to which the assessee submitted that all the expenses are genuine in nature and supported with bills and vouchers. However, the reply of the assessee did not find favour of the AO and disallowed the same added to the total income of the assessee by observing and holding as under (25.5.AO) :

> *"25.5 The reply of the assessee is considered but the same is not acceptable. The assessee provided the name of policy holder whose premium was paid by it however it did not provide the name of the beneficiary and also failed to prove the business nexus of the same. So Rs.2,58,267/- paid towards various life insurance policies whose supporting documents were not provided to the auditor is disallowed considering it to be personal expenses of the Directors of the*

Company. The assessee in its reply for this point in A.Y.2011-12 stated that it had paid Rs.36,000/- to Summer Banquets for function on 4.11.2010, Rs.2,36,800/- to Grand Cuisine for function on 13.3.2011 and and Rs.1,16,000/- to J.K. Banquets for function on 31.3.2011 for celebrating 60 years in business. In para 9 above the same reply of the assessee is specified for business promotion expense in which it stated that 60 years of assessee in business is celebrated by paying amount to Mayfair on 22.1.2010. This shows that the assessee is changing heads of expenses as per its convenience and there is no consistency and the assessee is celebrating 60 years in business in both A.Y.2010-11 and A.Y.2011-12. It is not possible that the celebrations lasted for 2 complete years and the assessee celebrated the same occasion at four different locations all in Mumbai and on four different dates. Further, it is pertinent to mention that the assessee company came into existence only on 2005 so there can't be celebration of 60 years in business. This clearly shows that these expenses are not genuine business expenses rather at best can be the personal expenses of the Directors. Further, the Directors of the assessee company had admitted during survey proceedings that all the expenses incurred towards staff welfare are not genuine. Now the assessee had submitted affidavit of Mr Dinesh Thakker and Mr Chandresh Thakker wherein they had retracted their earlier statement given on oath. However relying on judgement of - Synthetic Colour Chem Industries V/s DCIT (ITAT Mumbai) wherein it was laid that - retraction of statement made ;during the survey is an after thought and is merely not allowed. So, entire expenses of staff welfare of Rs. 909,863/- needs to be disallowed considering the same to be accommodation / adjustment entry / personal expense.

Aggrieved by the order of AO, the assessee preferred an appeal on this ground before the ld.CIT(A) who also vide para 30.3 of the order dismissed the claim of the assessee by observing and holding as under (30.3 CIT(A):

"30.3. I have considered the stand of the AO as well as submissions of the appellant. It is seen that the assessee provided the name of policy holder whose premium was paid by it however it did not provide the name of the beneficiary and also failed to prove the

business nexus of the same. So Rs.2,58,2671 - paid towards various life insurance policies whose supporting documents were not provided to the auditor is disallowed considering it to be personal expenses of the Directors of the Company. The assessee in its reply for this point in AY.2011-12 stated that it had paid Rs.36,000/- to Summer Banquets for function on 04.11.2010, Rs.2,36,800/- to Grand Cuisine for function on 13.3.2011 and Rs.1,16,000/- to J K Banquets for function on 1.3.2011 for celebrating 60 yea~ business. In para 9 above the same reply of the assessee is specified for business promotion expense in which it stated that 60 years of assessee in business is celebrated by paying amount to Mayfair on 22.1.2010. This shows that the assessee is changing heads of expenses as per its convenience and there is no consistency and the assessee is celebrating 60 years in business in both AY.2010-11 and AY.2011-12. Its not possible that the celebrations lasted for 2 complete years and the assessee celebrated the same occasion at four different locations all in Mumbai and on four different dates. Further, it is pertinent to mention that the assessee company came into existence only on 2005 so there can't be celebration of 60 years in business. This clearly shows that these expenses are not genuine business expenses rather at best can be the personal expenses of the Directors.

Further, the Directors of the assessee company had admitted during survey proceedings that all the expenses incurred towards staff welfare are not genuine. Now the assessee had submitted affidavit of Mr Dinesh Thakker and Mr Chandresh Thakker wherein they had retracted their earlier statement given on oath. The retraction of statement made during the survey is an after thought and is not supported by any corroborative material favrourable to the appellant. So, entire expenses of staff welfare of Rs. 909,863/- needs to be disallowed considering the same to be accommodation /adjustment entry/personal expenses The appellant has failed to establish nexus of staff-welfare expenses with the business of the appellants. Further, the appellants have failed to provide the name of the beneficiary of the policy whose premium on life insurance has been paid by them. In absence of sufficient documentary evidence, the AO was right in making the disallowance.

Further, the directors of the appellant company have themselves admitted in their statement on oath that the staff welfare expenses made by the appellant company are bogus. The retraction of the statement made during the survey is an afterthought and is merely

not allowed. Reliance is placed on Synthetic Colour Chem Industries vs. DCIT (ITAT Mumbai). Based on the above, Ground No.26 is Dismissed."

In the result, appellant's this ground of appeal is Dismissed."

101. Before us, the ld.AR argued that said expenditure represented genuine business expenses and backed by the supporting documents filed on record and therefore the same could not be treated as non business expenditure. On the other hand the ld. DR supported the orders of authorities below. On perusal of the records and after hearing both the parties, we are of the opinion that the AO cannot rely on the admission made by the directors during the course of survey proceedings that all these expenses were bogus. However, we are of the view that the reasonable disallowance should be made to cover the possibility of some personal nature. Accordingly, we direct the AO to disallowed the same at the rate of 20% of the entire staff welfare expenses. Accordingly, this ground is partly allowed.

102. The ground no.13 is against the upholding the action of the Assessing Officer in disallowing Rs 1,58,227/- towards expenses incurred for earning dividend income by invoking the provisions of section 14A read with rule 8D.

103. During the course of assessment proceedings, the AO observed that the assessee made investment in M/s Cheryl Laboratories Pvt Ltd and

the assessee has not disallowed any expenses attributable to earning of the exempt income of Rs.12,00,050/- and therefore issued show cause notice dated 10.9.2014. After considering the reply of the assessee, the AO worked out the disallowance at Rs.8,23,879/- comprising of Rs.6,65,652/- under rule 8D(2)(ii) and Rs.1,58,227/- u/s rule 8D(2)(iii). In the appellate proceedings, the ld.CIT(A) deleted disallowance ad made under rule 8D(2)(ii) of the I.T. Rules of Rs.6,65,652/- and sustained the disallowance made under rule 8D(2)(iii).

103. We have carefully considered the rival submissions and perused the material placed before us. It has been argued by the ld.AR that M/s Cheryl Laboratories Pvt Ltd is a sister concern of the assessee and the investment made therein is of strategic nature to gain control over the said concern and therefore constitutes strategic investments on which no disallowance was called for. In view of decision of the Co-ordinate Bench of the Tribunal in the case of Garware Wall Ropes Ltd vs. ACIT (ITAT Mumbai) reported in 65 SOT 80(Mum), we are of the considered view that no disallowance is required to be made in the case of strategic investments. We are not in concurrence with the conclusion drawn by the ld.CIT(A) and accordingly set aside the order of the ld.CIT(A) and direct the AO to exclude the strategic investments while calculating the disallowance under rule 8D(2)(iii). Accordingly, this ground of appeal is allowed.

104. Grounds of appeal no.14, being disallowance on account of additional depreciation is not pressed. Therefore, dismissed as not pressed.

105. Grounds of appeal no.15. is against the disallowance confirmed by the CIT(A) as made by the AO of Rs 5,66,271/- claimed under section 35D of the Act on the ground that the appellants have not provided any working for admissibility of deduction under section 35D.

108. The facts of the case are that the assessee has claimed deduction of Rs.5,66,271/- u/s 35D in respect of preliminary expenses. The special auditors stated in their report that the details of preliminary and different revenue expenses were not provided despite repeated reminders and therefore they are not able to comment on the same. Accordingly, the show cause notice was issued to the assessee and the AO after considering the explanation rejected the same and added an amount of Rs.5,66,271/- to the total income of the assessee by observing and holding as under (pg.125 of AO):

> *"29.5 The explanation of the assessee is not found to be satisfactory and not provided with any working showing admissibility of deduction u/s 35D, the deduction of Rs.566,271/- as claimed by assessee is disallowed.*

106. The ld.CIT(A) upheld the action of the AO by observing and holding as under (34.4):

"34.3. I have considered the stand of the AO as well as the submissions of the appellant. However, I am not convinced with the details submitted and the arguments of the AR. Firstly, it may be seen that assessee has w/off expense in books and claiming the deduction u/ss 35 D the detailed break up of which has been given by the AO, which has been reproduced in earlier paragraph.

It is further seen that The provisions of Sec.35D provides for deduction in respect of certain specified expenditures which are incurred by a company before commencement of business and after commencement in connection with extension of undertaking or setting up a new unit. 1/5th of such expenditure is available as deduction for 5 years. On perusal of the Profit & Loss Account, it was observed that apart from preliminary expenses, the assessee has claimed even the deferred revenue expenses of different amount in different years.

It may further be noted that Assessee has submitted only nature of expense and ledgers of expenses, but not substantiated the eligibility of expenses with reference to section 35 D. The explanation of the assessee is not found to be satisfactory because it has not provided with any sound and reliable/workable working demonstrating admissibility of deduction u/s. 35D. Therefore, the AO was justified in disallowing the fclaim of the deduction us.35D of the I T Act, 1961. Accordingly, I uphold the disallowance made by the AO, Based on the above, Ground no.30 is Dismissed.

In the result, appellant's this ground of appeal is Dismissed."

107. After hearing both the parties on the issue and on perusal of the material placed before us, we find that the assessee has not submitted the details pertaining to the said expenses before the authorities below and therefore, the ld.AR requested before us that the matter be restored to the file of the AO so that the necessary details be filed before him and the same be decided as per law and facts. The ld. DR very fairly agreed to the contentions of the ld.AR. Under these circumstances of the case, we

deem it fit and proper to restore this issue to the file of the AO for fresh appreciation of facts and decision thereon. Accordingly, this ground is allowed for statistical purposes.

108. In the result the appeal of the assessee is allowed for statistical purposes.

ITA Nos.4584, 4585, 4587 &4588/Mum/2016

109. The issue raised in ground no.1 in ITA no. 4584/Mum/2016 (AY2008-09), in ITA no.4585/Mum/2016(AY 2009-10), ITA No.4587/Mum/2016 (AY-2011-12) and in ITA No.4588/Mum/2016(AY-2012-13) is identical to one decided by us in ground no. 1 in ITA No.4586/Mum/2016(AY-2010-11) and therefore our findings on ground no. 1 in ITA No.4586/Mum/2016 (supra) would , mutatis mutandis, apply to these grounds as well. Accordingly the ground raised in all these appeals stands dismissed.

110. The issue raised in ground no. 4 & 5 in ITA No.4584/Mum/2016 (AY- 2008-09), ground no. 2 & 3 in ITA no. 4585/Mum/2016 (AY 2009-10), ground no. 3 & 4 ITA No. 4587/Mum/2016 (AY 2011-12) and ground no.3 & 4 in ITA no. 4588/Mum/2016(AY 2012-13) is similar to one as decided by us in ground no. 2 & 3 in ITA No. 4586/Mum/2016 (AY 2010-11) and our decision would mutatis mutandis apply to these grounds. Accordingly these are dismissed.

111. The issue in ground no. 7 in ITA Nos. 4584/Mum/2016 (AY2008-09), ground no. 4 in ITA No. 4585/Mum/2016 (AY 2009-10), ground no. 5 in ITA No. 4587/Mum/2016 (AY 2011-12) & ITA No. 4588/Mum/2016 (AY-2012-13) is same as decided by us in ground no. 4 in ITA No. 4586/Mum/2016 (AY 2010-11), therefore, the decision therein would apply mutatis mutandis to these grounds as well.

112. The ground no. 7 & 8 in ITA 4588/Mum/2016 (AY-2012-13) are identical to ground no. 6 & 7 in ITA no.4586/Mum/2016 (AY 2010-11) respectively and therefore our findings on ground no. 6 & 7 in ITA 4586/Mum/2016 would mutatis mutandis apply to these grounds also. According the ground raised by the revenue are dismissed.

113. The ground no. 6 raised by the revenue in ITA No.4584/Mum/2016 for AY 2008-09 against the deletion addition of Rs. 36,00,000/- by the CIT(A) as made by the AO u/s 40A(2) of the Act.

114. The facts in brief are that the assessee paid rent to associate concern M/S Cheryl Laboratories Pvt Ltd for hiring the godown temporarily for which there was no agreement entered into. The AO during the course of assessment proceedings disallowed the same u/s40(A)(2) of the Act on the basis of auditor's qualification that agreement was not produced for verification and they are not able to comment on the same. The ld CIT(A)

allowed the ground raised by the assessee by holding that the similar issue was also there in AY 2010-11 which was allowed in favour of the assessee.

115. After hearing the rival parties and perusing the materials on records, we find that the similar issue was also there in AY 2010-11.We also find that the both the assessee as well as the recipient of rent are being assessed at the same tax bracket and find merit in the contention of the ld AR that the provisions of section 40A(2) of the Act can only be invoked where there is avoidance of tax. Moreover the ld AO has not reached or recorded any findings that the rent paid is excessive and unreasonable having regard to the fair market price of the similar property and thus the basic ingredients or preconditions for invoking provisions of section 40A(2) of the Act were not satisfied. We are, therefore, in complete agreement with the ld CIT(A) that that the addition on account of disallowance of rent is wrong and uncalled for. Accordingly we dismiss the ground raised by the revenue.

116. The issue raised in ground no 2 in ITA No. 4584/Mum/2016 (AY 2008-09) is against the deletion of commission expenses of Rs. 7,33,906/- by CIT(A) as made by the AO.

117. The brief facts of the case are that the assessee paid commission to two parties namely M/S Dios Enterprises and Millennium Enterprises at Rs. 7,03,471/- and Rs. 30,435/- respectively and the auditor was

specifically asked to verify the said expenses as the directors during survey u/s 133A of the Act accepted the fact that the commission was not genuine but later on retracted the same. The AO on the basis of special auditor's report and statement on oath of the directors added the same to the income of the assessee.

118. In the appellate proceedings, the ld CIT(A) allowed the appeal of the assessee by observing and holding that the AO has failed to bring any materials on records to prove that the commission paid is as non genuine and whereas the assessee has proved with corroborative evidences including confirmations of account from the recipients. The CIT(A) further held that similar issue has been decided in favour of the assessee in AY 2010-11 on similar facts.

119. We have heard the rival contentions and perused the relevant materials on records. We find that the assessee has filed the necessary evidences including confirmations from the parties to prove the payment of commission as genuine. The AO has relied solely on the basis of statement recorded during survey but failed to bring any material on records. The ld CIT(A) has followed own order in AY 2010-11 deciding the same issue. After examining all the facts and evidences and order of CIT(A) we find that the ld CIT(A) has passed a very reasoned order which

call for no interference and accordingly we are inclined to dismiss the ground raised by the revenue.

120. The issue raised in ground no 2 in ITA No.4587/Mum/2016 (AY 2011-12) and in ITA No.4588/2016 (AY 2012-13) is identical to one as decided by us in ground no 2 in ITA No.4584/Mum/2016 (AY 2008-09). Therefore our decision in the said ITA no. 4584/Mum/2016 (AY 2008-09) would, mutatis mutandis, apply to these appeals as well. Accordingly the grounds raised by the revenue are dismissed.

ITA No.3514,3518,3515,3516 & 3517/Mum/2016

121. The issue raised in the ground no.1 in ITA No.3514/Mum/2016 (AY 2008-09), ITA No.3518/Mum/2016 & ITA No.3515/Mum/2016 (AY 2009-10) and ITA No.3516/Mum/2016(AY 2011-12) is identical to one as decided by us in ground no. 1 in ITA No.3513/Mum/2016 (AY-2010-11) where we have dismissed the ground raised by the assessee. Our decision in the said appeal would, mutatis mutandis, apply to these appeals as well. Accordingly, the ground of appeal as raised in all these appeals for different years stands dismissed.

122. The issue in ground no 2 in ITA no. 3514/Mum/2016 (AY-2008-09) and ITA No. 3516/Mum/2016 (AY 2011-12) is identical to one as decided by us in ground no. 2 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 2 in ITA No.3513/Mum/2016 (AY-2010-11) would

mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the ground no.2 in these years are dismissed.

123. The issue in ground no 3 in ITA no. 3514/Mum/2016 (AY-2008-09), ground no. 3 & 4 in ITA No.3518/Mum/2016 (AY 2009-10), ground no. 6 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no 1 & 2 in ITA No. 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 3 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 3 in ITA No.3513/Mum/2013 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly and allowed.

124. The issue in ground no. 13 in ITA no. 3514/Mum/2016 (AY 2008-09), ground no. 5 in ITA No.3518/Mum/2016 (AY 2009-10), ground no. 7 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no 3 in ITA No. 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 4 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 4 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly and allowed.

125. The issue in ground no 4 in ITA No 3514/Mum/2016 AY 2008-09,ITA No. 3518/Mum/2016 AY 2009-10, ITA No.3517/Mum/2016 AY 2012-13 and groundno. 5in ITA No.3516/Mum/2016 AY 2011-12 is identical to ground no 5 in ITA No. 3513/Mum/2016 AY 2010-11. Therefore our decisions on ground 5 in the ITA No. 3513/Mum/2016 would, mutatis mutandi, apply to said issue in these years. Accordingly the grounds raised in these appeals are disposed off accordingly and allowed.

126. The issue in ground no 4 in ITA No.3515/Mum/2016 (AY 2009-10), ground no. 3 in ITA No.3516/Mum/2016 (AY 2011-12) and ground no 5 in ITA No. 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 6 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 6 in ITA No. 3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly and allowed.

127. The issue in ground no 5 in ITA No. 3514/Mum/2016 (AY 2008-09), ground no. 3 in ITA no. 3515/Mum/2016 (AY-2009-10), ground no. 2 in ITA no. 3518/Mum/2016 (AY 2009-10) is identical to one as decided by us in ground no. 7 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 7 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly

the grounds raised in these appeals are disposed off accordingly and partly allowed.

128. The issue in ground no 6. In ITA 3514/Mum/2016 (AY 2008-09), ground no. 8 in ITA No.3518/Mum/2016 (AY 2009-10), ground no. 9 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no 6 in ITA No. 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 8 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 8 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

129. The issue in ground no 7. In ITA No.3514/Mum/2016 (AY 2008-09), ground no. 6 in ITA No. 3518/Mum/2016 (AY 2009-10) and ground no. 8 in ITA No. 3516/Mum/2016 (AY 2011-12) is identical to one in ground no. 9 in ITA No.3513/Mum/2016 (AY 2010-11) which has been withdrawn by the ld AR during hearing and dismissed accordingly.. Accordingly the grounds raised in these appeals are disposed off accordingly.

130. The issue in ground no 8. In ITA 3514/Mum/2016 (AY 2008-09), ground no. 5 in ITA No. 3515/Mum/2016 & ground no. 9 in ITA No.3518/Mum/2016 (AY 2009-10) is identical to one as decided by us in ground no. 10 in ITA No.3513/Mum/2013 (AY 2010-11). Our findings on ground No 10 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis

mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

131. The issue in ground no 9. in ITA No.3514/Mum/2016 AY 2008-09, ground no. 4 in ITA No.3516/Mum/2016 (AY 2011-12) and ground no 7 in ITA No 3514/Mum/2016 are identical to one as decided by us in ground no. 11 in ITA No. 3513/Mum/2016 (AY 2010-11). Our findings on ground No 11 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

132. The issue in ground no 10. in ITA 3514/Mum/2016 (AY 2008-09), ground no. 4 in ITA No. 3515/Mum/2016 (AY 2009-10), ground no. 10 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no. 10 in ITA No.3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 12 in ITA No. 3513/Mum/2016 (AY 2010-11). Our findings on ground No 12 in ITA No. 3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

133. The issue in ground no 11 in ITA No.3514/Mum/2015 (AY 2008-09) and ground no. 11 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no 7 in ITA 3517/M/2016 (AY 2012-13) and in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 13 in ITA No.3513/Mum/2016

(AY- 2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

134. The issue in ground no 12 in ITA No. 3516/Mum/2016 (AY 2011-12) and ground no. 8 in ITA 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 14 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 14 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

135. The issue in ground no 12. In ITA 3514/Mum/2016 (AY-2008-09), ground no. 7 in ITA no. 3518/Mum/2016 and ground no. 9 in ITA No. 3517/Mum/2016 (AY 2012-13) is identical to one as decided by us in ground no. 15 in ITA No.3513/Mum/2016 (AY 2010-11). Our findings on ground No 15 in ITA No.3513/Mum/2016 (AY-2010-11) would, mutatis mutandis, apply to the ground raised in these appeals as well. Accordingly the grounds raised in these appeals are disposed off accordingly.

136. The issue raised in ground no. 2 in ITA no.3515/Mum/2016 (AY 2009-10) is against the upholding the disallowance by the AO of Rs.30,00,000/- claimed by the assessee u/s 35(1)(iii) of the Act.

137. The facts in brief are that the assessee donated a sum of Rs.30,00,000/- to Research Foundation for Jainology whereas the there was no approval u/s 35(1)(iii) of the Act with the said society and accordingly the AO disallowed the same.

138. In appellate proceedings the ld CIT(A) also dismissed the ground raised by the assessee.

139. The ld AR at the outset submitted before us that the said research association has moved to the High Court against the rejection of approval by the CBDP which is pending. The ld AR prayed that the AO be directed to follow the High Court order when the appeal of the assessee is finally decided. The ld DR fairly appeared convinced with the contention of the ld AR. We accordingly set aside the to the file of the AO to decide the issue as per the decision of the High Court. The ground is allowed for statistical purposes.

140. In sum and substance the appeals of the revenue are dismissed whereas the appeals of the assessee stand partly allowed for statistical purposes.

Order pronounced in the open court on 21st Sept, 2017.

Sd sd

(C.N. Prasad) (Rajesh Kumar)
न्यायिक सदस्य / Judicial Member लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :21.9.2017
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai