

I. T. Appeal Nos. 4642,4643,4644 & 4645/Del/2014
AND I. T. Appeal Nos. 4647,4648,4649,4650 & 4651/Del/2014.
Assessment Years : 2006-07,2007-08,2008-09,2009-10 & 2010-11.

**IN THE INCOME TAX APPELLATE TRIBUNAL
 [DELHI BENCHES: “E” NEW DELHI]**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
 AND SHRI B. P. JAIN, ACCOUNTANT MEMBER**

**I. T. Appeal Nos. 4642, 4643, 4644 & 4645/Del/2014
 Assessment Years: 2006-07, 2008-09, 2009-10 & 2010-11**

Micromax Informatics Ltd.,
 C/o. Ved Jain & Associates,
 100, Babar Road, Opp. Hotel Lalit,
 New Delhi – 110 035.

Vs. Deputy Commissioner of
 Income Tax,
 Central Circle : 16,
 New Delhi.

PAN : AABCR 8863 N

A N D

**I. T. Appeal Nos. 4647, 4648, 4649, 4650 & 4651/Del/2014
 Assessment Years: 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11**

Deputy Commissioner of
 Income Tax,
 Central Circle : 16,
 New Delhi.

Vs. Micromax Informatics Ltd.,
 90 – B, Sector : 18,
 Gurgaon – 122 015.

PAN : AABCR 8863 N

(Appellants)

(Respondents)

Assessee by : Shri Ved Jain, C. A.;
 Ms. Rano Jain, Adv.; &
 Shri Ashish Chadha, C. A.;

Department by : Shri H. K. Choudhary, CIT [DR];

Date of Hearing : 13.04.2017

Date of Pronouncement : 30.06.2017

ORDER.

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PER I. C. SUDHIR, J. M. :

I. T. Appeal Nos. 4642/Del/2014 – [By the assessee] :

AND I. T. Appeal Nos. 4647/Del/2014 – [By the Revenue] :

The present cross appeals have been filed by the assessee as well as Revenue against the order dated 30.05.2014 passed by the learned CIT (Appeals).

2. In the appeal filed by the assessee, following grounds have been raised:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the

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statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reference made for special audit under section 142(2A) is bad in law.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and the assessment made in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed under section 153A is untenable in the eye of law as the Act does not give power to the AO to re-appraise and/or review the already settled issues and the assessment order passed under section 143(3) of the Act.*

7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.9,98,199/- made by the AO on account of sundry creditors.*

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(ii) That the above addition has been confirmed by arbitrarily rejecting the evidences and explanation submitted by the assessee.

8(i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.1,33,859/- made by the AO on account of website development expense.

(ii) That the said disallowance has been confirmed rejecting the contention of the assessee that the said expenditure is revenue in nature and no benefit of enduring nature has been achieved.

9. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of an amount of Rs.1,00,000/- made by the AO on account of loan from Sh. RaghavBansal squared up during the year.

10. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.42,420/- made by the AO on account of delayed payment of ESI and PF under section 43B of the Act.

11. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

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3. In the appeal filed by the Revenue, Revenue has raised the following grounds:-

- “1. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.13,983/- made by A.O. on account of scrap sale.*
- 2. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.10,00,000/- made by A.O. on account of unexplained cash credit.*
- 3. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.10,19,265/- made by A.O. on account of rate difference.*
- 4. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.2,53,449/- made by A.O. on account of TDS Claim.*
- 5. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.50,00,000/- made by A.O. on basis of seized documents.*
- 6. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.6,14,87,729/- made by A.O. on account of GP rate addition.*
- 7. The CIT(A) has erred in law and on facts as well in invoking the power u/s 250(4) to cause an enquiry on the issue of bogus purchases so as to bring on record all material and relevant facts.*

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8. *The CIT(A) has admitted additional evidence without calling for remand report from the Assessing Officer.*

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

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

4. First we take up the appeal of the assessee. The assessee is engaged in the business of Mobile telephone, Tablet pads, 3G Data Card, etc. It filed its return of income under Section 139(1) on 06.11.2006 declaring an income of Rs.1,48,64,265/-. The said return was taken up for scrutiny after issue of notice under Section 143(2) of the Act. The assessment of the same was completed under Section 143(3) at an income of Rs.1,50,40,544/- vide order dated 25.11.2008.
5. Thereafter a search and seizure operation under section 132(1) of the Income Tax Act was conducted on the assessee on 10.02.2011.
6. The AO issued notice under section 153A calling upon the assessee to file the return of income. In response thereto, the assessee filed a reply dated 13.02.2012 stating that its return already filed under section 139(1) on 06.11.2006 declaring an income of Rs.1,48,64,265/- be treated as filed in compliance to the notice under section 153A.

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7. Thereafter notices under Section 143(2) and 142(1) alongwith questionnaire were issued and the assessee was asked to submit various details and the explanation.
8. The AO, after taking into consideration the various replies, explanation and evidences submitted by the assessee completed the assessment under section 153A read with section 143(3) at a total income of Rs.8,50,13,669/- by making the following additions/ disallowances:-
 - (i) Addition on account of uncounted scrap sale
Rs.13,983/-
 - (ii) Addition on account of unexplained cash credit
Rs.10,00,000/-
 - (iii) Addition on account of rate difference
Rs.10,19,265/-
 - (iv) Addition on account of disallowance of ROC fee
Rs.1,00,050/-
 - (v) Disallowance of TDS claim
Rs.2,53,449/-
 - (vi) Addition on account of seized documents
Rs.50,00,000/-
 - (vii) Addition on account of unconfirmed sundry creditors
Rs.9,98,199/-
 - (viii) Addition on account of unverified bills
Rs.1,00,000/-
 - (ix) Addition on account of disallowance of

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Website development expenses
 Rs.1,33,859/-

- (x) Addition on account of disallowance of ESI and PF
 Rs.42,420/-
- (xi) Addition on account of GP rate
 Rs.6,14,87,729/-

9. Aggrieved by the order of the AO, the assessee preferred an appeal before the learned CIT(A) who partly confirmed the additions made by the AO.
10. Aggrieved by the order of the learned CIT(A), assessee as well as Revenue are in appeal before us.
11. At the time of the hearing, the learned AR did not press grounds no. 1 to 6 on the validity of assessment framed under section 153A and reference made under section 142(2A) and accordingly the same are rejected as not pressed.
12. Ground no.7 is regarding addition of Rs.9,98,199/- made by the AO in respect of sundry creditors. As per the assessment order, the assessee was asked to furnish the address and confirmation of three creditors viz., M/s Tellular Corporation, M/s Infodrive India Ltd. and M/s Zeta Consolidators. The assessee company furnished the addresses of M/s Infodrive India Ltd. and M/s Zeta Consolidators but no confirmation was attached.
- 12.1 The AO issued notice under section 133(6) to these companies. In response thereto, only M/s Infodrive India Ltd. responded and filed

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its confirmation. In the absence of any confirmation / reply being received from M/s Tellular Corporation and M/s Zeta Consolidators, the AO added an amount of Rs.9,98,199/- while completing assessment. The learned CIT(A) has confirmed the above action of the AO.

12.2 It was contended by the learned AR that the learned CIT(A) was not justified in confirming the above addition. These creditors represent the purchases made by the assessee in the normal course of business and the payments of which have been made by account payee cheques. The assessee is maintaining regular books of account along with stock register where purchases made from such parties have been duly accounted for. The assessee has submitted all the details including ledger account of these parties with the address. Merely because these parties have not responded to the notice issued by the AO, the same cannot be considered as income of the assessee. The assessee being in the regular business have made the purchases, having produced the books of account, invoices and the payment having been made by account payee cheques, there was no adverse material with the AO to make these additions.

12.3 The learned AR in support of its contention relied upon the judgment of the Delhi Bench of the ITAT in the case of DCIT vs. M/s Divine International, 2011 (9) TMI 134 (Del) and CIT vs. Smt. P.K. Noorjahan (1999) 237 ITR 570 (SC),

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12.4 In reply, the learned CIT [DR] relied upon the orders of the authorities below.

13. We have gone through the assessment order and the order passed by the learned CIT(A) and considered the arguments advanced by the parties. On going through the assessment order we note that the issue is regarding addition of two creditors viz.,

- i) M/s Tellular Corporation - Rs.1,08,999/-
- ii) M/s Zeta Consolidators - Rs.8,89,200/-

13.1 The Assessing Officer has made the addition on the ground that out of the three companies response was received only from one company and the other two companies did not respond to the notices issued under section 133(6). As per the assessment order and the paper book it is evident that assessee has furnished all the details about these two companies including address. The assessee has also provided the ledger account. On going through the ledger account it is also evident that the assessee has made payments by account payee cheques. There is no adverse material against the assessee about these two companies. In the absence of any adverse material we are of the view that learned AO was not justified in drawing adverse inference. In the absence of any material on record these creditors cannot be considered to be bogus or it cannot be assumed that assessee would not have made any purchases from these parties. The assessee is maintaining regular books of accounts and the same have been audited. In our

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view these are trade creditors arising in the normal course of business and as such we are of the opinion that the AO was not justified in drawing adverse inference in respect of these two creditors. Accordingly, the learned Assessing Officer is directed to delete this addition of Rs.9,98,199/-. This ground No. 7 of appeal of the assessee is thus allowed.

14. Ground No. 8 of appeal of the assessee is regarding disallowance of an amount of Rs.1,33,859/- on account of website development expenses. The learned AR was fair enough to admit that this addition was also made in the original assessment order passed under Section 143(3) and as such this addition does not arise from the order passed under Section 153A. Accordingly, this ground of appeal is rejected as not pressed.
15. Ground No. 9 is regarding addition of Rs.1,00,000/- on account of amount paid to Mr. Raghav Bansal. The assessee during the year made payment of Rs.1,00,000/- to Mr. Raghav Bansal on account of software services obtained from him. During the course of the assessment the Assessing Officer asked the assessee to submit details. In response thereto, the assessee submitted a copy of the invoice received from Mr. Raghav Bansal and the details of the payment made to him after deduction of tax at source. Thereafter, the Assessing Officer issued notice under section 133(6). In response thereto, Mr. Raghav Bansal replied vide letter dated 29.10.2013 confirming having received the payment of Rs.1,00,000/- towards professional fees and deduction of tax at

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source of Rs.5,000/- thereon. The Assessing Officer was, however, not satisfied with the reply and disallowed the amount holding that the reply given by Mr. Raghav Bansal is vague.

- 15.1 The learned CIT (Appeals) has confirmed the addition on the ground that the reply submitted by Mr. Raghav Bansal is not corroborated with supporting documents and copy of statement of bank account, ITR, etc. It was contended by the learned AR that the addition made by the Assessing Officer is untenable. The assessee during the course of the assessment proceedings has submitted complete details including invoice raised by Mr. Raghav Bansal. The Assessing Officer has called for the confirmation directly from Mr. Raghav Bansal. Mr. Raghav Bansal has submitted its reply and in this reply he has confirmed having received the payment and he has also submitted his PAN. Non-submission of the statement of the bank account by Mr. Raghav Bansal cannot be a ground for disallowance of the expenditure incurred by the assessee. The assessee having incurred the expenditure in the course of the business and having complied with the provision including deduction of tax at source and such payment having been confirmed by the recipient the same cannot be disallowed under the law. In reply the learned CIT [DR] relied upon the order of the lower authorities.

16. We have considered the rival submissions and perused the order passed by the Assessing Officer as well as learned CIT (Appeals). On going through the same we note that the assessee has incurred

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an expenditure of Rs.1,00,000/- on account of software. The assessee during the course of the assessment proceedings submitted copy of the invoice and the details of the payment made to Mr. Raghav Bansal. The Assessing Officer made an enquiry by issue of notice under Section 133(6) to Mr. Raghav Bansal. In response thereto, Mr. Raghav Bansal confirmed having received the payment and also submitted its PAN number. However, Mr. Raghav Bansal did not submit his bank account and the ITR. The Assessing Officer, on this basis, drew adverse inference and has made the addition. We are of the view that this cannot be a ground for disallowing the expenditure having made the payment through banking channel and such payment, having been confirmed directly by the recipient, such expenditure cannot be considered to be not a genuine expenditure. Merely because the recipient has not submitted the bank account can not be a ground for making disallowance in the hands of the assessee. It is not a case whereby under section 68 the source of the creditor has to be explained by the recipient. It is the case of an expenditure incurred in the normal course of business. The assessee has obtained invoice and has made payment after deducting tax at source. In our view this was sufficient evidence for allowing the expenditure and more so, when the receiver has confirmed the same in response to notice issued by the Assessing Officer under section 133(6). Thus, there is no doubt about the identity of the person and the genuineness of the expenditure. Accordingly we direct the Assessing Officer to delete the addition of Rs.1,00,000/- made by him and this ground of appeal is allowed.

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17. Ground No.10 is regarding addition of an expenditure of Rs.42,420/- made by the Assessing Officer on account of delayed payment of ESI and PF. The learned AR was fair enough to submit that this addition was made in the original assessment framed under Section 143(3) and as such this issue is not arising from the order passed under Section 153A. In view of this fact ground No. 10 is rejected.
18. Ground No. 11 is general in nature and hence need no adjudication.
19. In the result the appeal of the assessee is partly allowed.

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20. Ground no.1 is regarding deletion of addition of Rs.13,983/- on account of scrap sale. It was submitted by the learned CIT [DR] that the learned CIT (Appeals) was not right in deleting the addition made by the Assessing Officer on account of the sale of scrap. The Assessing Officer has given very detailed reasoning in the assessment order which has been ignored by the learned CIT (Appeals) while deleting the addition.
- 20.1 In reply, it was submitted by the learned AR that this addition is made arbitrarily without there being any evidence of any sale of scrap during the year under consideration. The learned CIT

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(Appeals) has examined all the facts and has rightly come to a conclusion that this addition is made merely on the basis of surmises without bringing on record any evidence of any sale of scrap during the year.

21. We have considered the submissions made by the parties and perused the assessment order as well as the order passed by the learned CIT (Appeals). On going through the same we note that there is no evidence of any sale of scrap during the year under consideration. The learned CIT (Appeals) has examined this issue and has rightly held that in the absence of any material being brought on record this addition is untenable. The relevant finding of the learned CIT (Appeals) in this regard are as under :-

“51. I have gone through the contents of the assessment order, perused the assessment record and considered the submissions made by the appellant in the course of the appeal proceedings. On going through the issue, I find that the Assessing Officer made this addition on a presumption and doubt that the appellant would have sold the scrap during the year under consideration. The AR of the appellant pointed out that it did not claim any scrap in respect of its trading activity. This fact seemed to be correct as the quantitative details submitted by the appellant and brought on record by the Assessing Officer on the basis of inference and remarks drawn by the special auditors tallied. However, the addition was

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made by extrapolating the scrap sales of mobile accessories and cartons etc. in various years and therefore addition was not based on any document or evidence. The appellant did not sell any scrap during the year. In the absence of any claim of scrap in the trading account and in the absence of any evidence that any scrap in the form carton, accessories were actually sold by the appellant company during the year under consideration, addition made on this account cannot be sustained. The Assessing Officer also did not bring any material on record to prove that the appellant made sale of scrap during the year under consideration. In the absence of any such evidence, the addition made by the Assessing Officer on this account amounting to Rs.13,983/- is deleted.”

- 21.1 We are in agreement with the finding of the learned CIT (Appeals). He has rightly come to a conclusion that in the absence of any material in the year under consideration this addition cannot be made. Accordingly we uphold the order of the learned CIT (Appeals) deleting this addition and this ground No. 1 of the appeal of the Revenue is dismissed.
22. Ground No. 2 is regarding deletion of addition of Rs.10,00,000/- made by the Assessing Officer on account of unexplained credit. It was submitted by the learned CIT [DR] that the learned CIT (Appeals) was not justified in deleting this addition. The assessee has received share application money during the year under consideration and assessee has failed to substantiate the same.

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The learned CIT (Appeals) has deleted the addition ignoring the reasoning given by the Assessing Officer in the assessment order.

22.1 In reply it was contended by the learned AR that the assessee, during the course of the assessment proceedings has submitted all the details. This share application money was received Rs.7,50,000/- from Mamta Jin and Associates and Rs.2,50,000/- from M/s Capital Associates. During the course of the hearing assessee had submitted the necessary details as called for by the Assessing Officer. The learned AR invited attention to Paper Book Pg. 109 to 112 which were filed before the Assessing Officer during the course of the assessment.

22.2 We have considered the rival submissions and perused the assessment order as well as order passed by the learned CIT (Appeals). That the assessee during the course of the assessment proceedings had filed confirmation giving name, address, PAN, mode of payment, etc. The notice issued under Section 133(6) was duly served. There is no allegation of any adverse statement or accommodation entry. The learned CIT (Appeals) has also examined this issue and has held that the assessee has submitted details in support of its contention and moreover in the original assessment under Section 143(3) no adverse inference was drawn on this and in the absence of any adverse material found during the course of the search or being brought on record by the Assessing Officer during 153A proceedings, this addition is

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unsustainable. The relevant finding of the learned CIT (Appeals) reads as under :-

“28. I have considered the submissions of the AR, perused the assessment order and the assessment record. On going through the same I noted that the appellant had filed the confirmation giving name address, PAN, mode of payment of the share applicants. The Assessing Officer issued notice u/s 133(6) which apparently was served as there was no allegation that the same was returned unserved. The Assessing Officer adversely inferred against the appellant on the ground that no reply was received from the share applicants. I am of the view that in such circumstances the Assessing Officer cannot draw an adverse inference but to conduct an enquiry in detail on the basis of the material in his possession or that on the basis of the submissions made by the appellant. The Assessing Officer having embarked upon the inquiry independently by issue of notice u/s 133(6), he was duly bound to take it to the logical end. He cannot shift the onus on the appellant when it had discharged its obligation. Further the appellant submitted the confirmation giving all the details. These details were sufficient to establish the identity of the share applicant and to conduct further enquiries. Moreover, the original assessment u/s 143(3) was completed after a scrutiny of all the details furnished by the appellant at that time, and no adverse inference was drawn by the Assessing Officer, DCIT Circle 6(1), New Delhi in her order

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dated 25.11.2008. No incriminating material was found regarding the same in the course of search u/s 132 of the IT Act, 1961. Nothing adverse has been brought on record to discredit the information provided by the appellant. The payment has been received by banking channel and not disputed ones. It is not a case of any accommodation entry or any adverse statement by anyone to this effect. The case of appellant is covered by the judgment of Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC). Accordingly I direct the addition made on this account be deleted."

22.3 We are of the view that the above finding of the learned CIT (Appeals) are the correct finding. Assessee has discharged its onus and the Assessing Officer has not brought any material to allege that these are accommodation entries. In the absence of any adverse material brought on record this addition is unsustainable and we are of the view that the learned CIT (Appeals) was justified in deleting the addition. Accordingly, this ground of appeal is dismissed.

23. Ground no. 3 in the Revenue appeal is regarding deletion of addition by the learned CIT (Appeals) of Rs.10,19,265/- made by the Assessing Officer on account of the rate difference. The Assessing Officer in the assessment order has noted that the assessee has debited a sum of Rs.10,19,265/- in the profit and loss account on account of the rate difference. The Assessing Officer

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further noted that the details of the working of these expenses had not been furnished and this expenditure is not related to business. The learned CIT (Appeals) had deleted the above addition holding that the assessee had furnished the details before the Assessing Officer vide letter dated 09.02.2013 and this amount represents the rate difference in respect of the invoices issued to the various customers by the assessee company which included customers like Bharti Televentures Ltd. and Bharti Hexacom Ltd. During the course of the hearing the learned CIT [DR] relied upon the order of the Assessing Officer.

23.1 The learned AR relied upon the order of the learned CIT (Appeals). It was contended that the contention of the Assessing Officer that the assessee has not furnished the details is not correct as is evident from the letter dated 09.02.2013 placed at Paper Book Pg. 89-90, Para 6. The learned AR also invited attention to the copy of ledger account in respect of the rate difference and the credit notes issued and also the ledger account of Bharti Televentures Ltd. placed at PB Pg. 94-95 where a credit has been given on account of the rate difference of Rs.2,33,830/- and ledger account of Bharti Hexacom Ltd. placed at PB Pg. 96-98 where a credit has been given on account of rate difference of Rs.7,84,435.20. It was further contended that the Assessing Officer has gone wrong in holding that this is not related business. The assessee has been making sales to these parties as is evident from the ledger account and the amount represents the credit notes issued on account of the rate differences in respect of

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the goods sold to these parties and hence is an allowable expenditure.

24. We have considered the submissions made by the parties and perused the record. We note that the learned CIT (Appeals) has examined this issue and has recorded the detailed finding, which reads as under :-

“31. I have gone through the contents of the assessment order, perused the assessment record and the details placed on record in the course of the assessment proceedings u/s 153A, also and considered the written submissions by the appellant company in the course of the appeal proceedings. The Assessing Officer made an addition of Rs.10,19,265/- on the ground that the appellant did not submit the details pertaining to these expenses. On perusal, I find that vide reply dated 9.2.2013, the appellant company submitted the details with regard to the rate difference in the invoices issued to various parties, which included M/s Bharti Televentures Ltd. for an amount of Rs.2,33,830/- and M/s Bharti Hexacom Ltd. for an amount of Rs.7,85,435/-. This fact is also evident from the ledger account of these parties showing sales made by the appellant company. It was stated by the AR that these parties made payments of less amount to the extent of Rs.10,19,285/- against the sale. However, from the above facts, it is evident that the expenditure is related to the business of the appellant and there is nothing on record to state that it was not related to

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business. Without bringing any adverse material on record to show that the expenditure was not incurred for the business purpose, the Assessing Officer was incorrect and unreasonable in making an addition of Rs.10,19,265/-. Accordingly, the addition made by the Assessing Officer amounting to Rs.10,19,265/- is deleted.

24.1 It is evident from the record that the assessee has submitted details vide letter dated 09.02.2013. The assessee has also submitted copy of the credit notes and also the ledger account of the respective parties. From the details, it is evident that this amount represents the difference on account of the rate in respect of the goods sold by the assessee company. The amount less realized in the course of the business on account of the rate difference cannot be disallowed and has to be deducted while computing business income. The learned CIT [DR] during the course of the hearing could not dispute this fact. Accordingly, we are of the view that the learned CIT (Appeals) was justified in deleting the addition and hence we uphold the order of the learned CIT (Appeals) and ground No. 3 of the appeal of the Revenue is rejected.

25. Ground no. 4 in Revenue's appeal is regarding deletion of addition of Rs.2,53,449/- made by the Assessing Officer on account of the TDS. The Assessing Officer has made this addition of this amount on the ground that assessee has claimed a sum of Rs.2,53,449/- on account of TDS payment disallowed in the preceding A.Y. 2005-06 but has claimed the same in the year under consideration

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on the ground that this payment has been made during the year. Since no documentary evidence has been attached the Assessing Officer disallowed the same. The learned DR relied upon the order of the Assessing Officer in support of its contention.

25.1 In reply the learned AR submitted that the observation made by the Assessing Officer that no documentary evidence has been attached is factually incorrect. In this regard attention was invited to the original assessment order passed under section 143(3) dated 25.11.2008. It was further contended that this amount represents the payment made to DTDC Courier & Cargo Ltd. of Rs.2,43,449/- on which TDS of Rs.5,322/- was deducted in the preceding financial year. This tax was not deposited on 21.6.2005 and accordingly the same were disallowed in the computation of income for A.Y. 2005-06. In view of the provision of section 40(a)(ia), since this amount stood paid in the current financial year i.e. on 21.6.2005 the same is an allowable expenditure under section 40(a)(ia). In this regard attention was invited to PB Pg. 2 i.e. computation of income and the ledger account at PB Pg. 209 where this amount has been debited.

25.2 We have considered the rival submission and perused the record. On going through the same we note that the Assessing Officer has simply disallowed the amount without looking at the record. This amount was also allowed in the original assessment framed under section 143(3) vide order dated 25.11.2008. Complete details of the same were available on record including the computation of income

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of both A.Y. 2005-06 and A.Y. 2006-07. Both these assessments have been completed under section 153A and the same was disallowed in A.Y. 2005-06 on the ground that the payment is late. As per the provision of section 40(a)(ia) if there is a delay in payment of TDS then such expenditure on which this TDS is deducted is disallowed in the year in which it is incurred and is allowed in the year in which TDS is actually paid. From the record it is evident that assessee has deposited the TDS of Rs.5,332/- in respect of payment of Rs.2,53,449/- to DTDC Courier & Cargo Ltd. on 21.6.2005 and hence the same is an allowable expenditure in view of the provision of section 40(a)(ia) in the year under consideration. Accordingly, we uphold that the learned CIT (Appeals) was correct in deleting this addition. This ground of the Revenue is accordingly rejected.

26. Ground No. 5 is regarding deletion of addition of Rs.50,00,000/- made by the AO on the basis of the seized documents. The Assessing Officer has made this addition on the ground that as per the seized document Annexure A-2 Page 8, a sum of Rs.50,00,000/- has been written in pencil on 31st March, 2006 and the assessee has failed to provide the required details of the share application money received as well as the genuineness of the transaction. The learned CIT (Appeals) has deleted this addition. It was contended by the learned CIT [DR] that the learned CIT (Appeals) was not justified in deleting this addition as the assessee has failed to furnish the necessary evidences in support of its

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contention and no reply was received in response to notice under section 133(6) by the Assessing Officer.

26.1 In reply the learned AR contended that the addition made by the Assessing Officer is untenable as the Assessing Officer has not been able to appreciate the document correctly. He invited attention to Paper Book Pg. 216 which is the seized document. It was submitted that the AO has simply lifted the figure of Rs.50,00,000/- without there being any name or any other mention on such document. On going through this page it can be easily noticed that this is a rough page in which various noting has been done about telephone number, address, etc. On the top left side, there is a Mobile number of Mrs. Praveen Kala who happens to be AGM of State Bank of India. On the same page, then there is an email ID of Mrs. Praveen Kala. Below that there is address of STC Gift Emporium, Janpath. Then there is an email ID of junior staff of State Bank of India, Mr. Sanjay. Then there is a calculation of charges on the proposed facility from State Bank of India as is evident from the fact of 91 days. Then there is a date 31st March, 2006. Below that there is a figure of Rs.50 Lac. These are all rough noting regarding banking transaction which has no relation with the Pathik Merchandise Pvt. Ltd. The AO has wrongly interpreted assessee's reply that assessee has refunded this share application money by cheque no. 121252 dated 10.12.2009. In fact the share application money from Pathik Merchandise Pvt. Ltd. was received on 11.6.2006 which has been dealt by the AO in the assessment order for assessment year 2008-09. It was further

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contended that the Assessing Officer has gone absolutely wrong as can be seen from the fact that he has not even looked at the balance sheet where there is no addition to the share application money of this Rs.50 Lac.

26.2 We have considered the arguments advanced by the parties and perused the record. On going through the seized document it is evident that there is no mention of the Pathik Merchandise Pvt. Ltd. on this page. From where the Assessing Officer has assumed it to be share capital received from Pathik Merchandise Pvt. Ltd., is not known. Even the learned CIT [DR] could not explain. We are of the view that the contention of the assessee in this regard is correct that no such money has been received on account of the share capital from Pathik Merchandise Pvt. Ltd. during the year under consideration. The learned CIT (Appeals) has examined this issue and has recorded a detailed finding as under :-

“25. I have gone through the contents of the order, perused the assessment record and considered the written submissions made by the appellant in the course of the appeal proceedings. On going through the same, I find that the Assessing Officer doubted the identity, creditworthiness of the party and genuineness of the transactions that was found recorded on the seized document marked as page 8, Annexure A-2. On going through the assessment order, I find that the appellant provided the new address at Delhi pertaining to M/s Pathik Merchandise Pvt. Ltd., when the notice issued to it u/s 133(6)

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at Kolkata address was returned undelivered. In order to ascertain the identity and creditworthiness of the party and genuineness of the transaction, the Assessing Officer issued another notice u/s 133(6), which was served on the said party and it did not return to the sender. Besides the above, the appellant also filed a confirmation from the above mentioned party giving name, address, PAN and also acknowledgement of ITRs. On perusal of the assessment record, I find that a letter was issued by the said party to the Board of Directors, Micromax Informatics Ltd. pertaining to the subject 'no dues certificate' on 12.12.2009. The contents of the letter dated 12.12.2009 are extracted below:

"In above regard it is stated that we have received back our share application money of Rs.50,00,000/-. No dues are outstanding claims are pending toward your company."

25.1 On perusal of the confirmation of account, I find that the registered office of the said party was at 27, Natore colony, Kolkata and has its office at 203, Pankaj House, H-Pocket Market, New Delhi-19. The PAN was mentioned as AACCP5777G.

25.2 On perusal, I find that the appellant submitted the copy of the acknowledgement of ITRs for the A.Y. 2008-09 filed on 27.9.2008, and for the A.Y. 2010-11 filed on 29.9.2010 u/s 139(1) of the IT Act, 1961. These returns were filed much

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before the search was conducted and on time as per law. The name of the director on the acknowledgement for the A.Y. 2010-11 was mentioned as Sh. Arvind Kumar Srivastava and PAN was mentioned as AFHPS1231F.

25.3 From the above facts, it is evident that the Assessing Officer was in possession of evidence to conduct necessary enquiry and investigation. From the internal record of the department pertaining to M/s Pathik Merchandise Pvt. Ltd. the Assessing Officer could have verified the transaction of Rs.50 lakh. The appellant provided the details and discharged its onus. The Assessing Officer having embarked upon the inquiry independently by issuing the notice u/s 133(6) at Delhi address, he was duty bound to conclude the same to the logical end by bringing some adverse material or information on the record to translate his doubt into a fact. This is not the case here. The Assessing Officer simply brought on record the inference and remarks drawn by the special auditor in his order and ignored the material furnished by the appellant and its reply that Rs.50 lakh was the share application money of M/s Pathik Merchandise Pvt. Ltd. which was refunded by cheque no. 121252 dated 10.12.2009. Despite of sufficient information in his possession, without bringing any adverse material on record, the Assessing Officer was unjustified in making the impugned addition of Rs.50 lakh. There are plethora of case laws pronounced by various courts in favour of the appellant, where the Assessing Officer failed to bring any

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adverse material in a duty bound manner, when sufficient information was in his possession. The Assessing Officer relied on the inference and remarks of the special auditor and ignored the material in his possession. Respectfully following the judgment of the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC), I hold that the Assessing Officer was incorrect and unjustified in making an addition of Rs.50 lakh. Accordingly, the addition made by the Assessing Officer amounting to Rs.50 lakh is deleted. ”

26.3 We are of the view that the findings recorded by the learned CIT (Appeals) is the correct finding and the Assessing Officer under the above discussed facts was not justified in making the addition of Rs.50 Lac on the basis of the seized document as share application money received from Pathik Merchandise Pvt. Ltd. Accordingly, we uphold the order of the learned CIT (Appeals) and dismiss this ground of appeal of the Revenue.

27. Ground no. 6 is regarding deletion of Rs.6,14,87,729/- made by the AO on account of the gross profit rate. The Assessing Officer has made this addition by holding that the gross profit rate shown by the assessee during the year under consideration is low as compared to the gross profit rate in assessment year 2010-11 and assessment year 2011-12. The Assessing Officer computed the average rate of gross profit in these two years at 28.87%, taking it

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to 28% for simplicity, made the addition of Rs.6,14,87,729/-. The learned CIT (Appeals) deleted this addition.

27.1 During the course of the hearing the learned CIT [DR] simply relied upon the order of the Assessing Officer.

27.2 The learned AR submitted that the addition made by the AO is absolutely arbitrary. The assessee has been maintaining regular books of account. These books of account have been audited not only by the statutory auditors of the company but also under a special audit carried out at the instance of the Assessing Officer under section 142(2A). The special auditors in their report have made a categorical statement that the books of account audited by them give a true and fair view of the balance sheet and the profit and loss account of the assessee company.

27.3 It was further submitted that the assessee has maintained complete record of the purchases and sale including quantity. During the course of the search no documents were found of any sale and purchase outside the books of account. It was further contended that the original assessment was completed under section 143(3) and the return of the assessee was accepted. Further attention was invited to the table made by the AO for working out the gross profit rate. On the basis of this table it was contended that the AO has gone wrong in applying gross profit rate earned by the assessee in assessment year 2010-11 and assessment year 2011-12 to the assessment year 2006-07 under

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consideration. The inference drawn by the assessing officer is illogical and without any basis.

27.4 We have considered the submissions made by the parties and perused the record. On going through the same we note that this issue has been examined by the learned CIT (Appeals) in depth on the basis of which the learned CIT (Appeals) has deleted the addition in the year under consideration. It may be relevant to refer to the finding of the learned CIT (Appeals) recorded in assessment year 2005-06 which reads as under :-

“23.10 The Assessing Officer has applied a gross profit rate of 28% by taking the average of the gross profit rate earned by the appellant in the assessment years 2010-11 and 2011-12. In this regard he has made a chart of the gross profit rate for each of the assessment years. For the year under consideration, the gross profit rate is 3.88%. The appellant during the year has made a total sale of Rs.9,39,00,811/- and purchase of Rs.9,02,08,472/-. The appellant has been maintaining regular books of account and also maintaining quantitative tally as well. These books of account have been audited under the Companies Act as well as under section 44AB of the Income Tax Act. The tax auditor has given a quantitative tally whereby it has given the opening stock with quantity and value, purchases with quantity and value, sales with quantity and value and closing stock with quantity and

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value. No discrepancy whatsoever has been pointed out in the purchases and the sales made by the appellant.

23.11 *The Assessing Officer had also ordered a special audit. The special auditors again verified the books of account and have issued a certificate that the books of account have been properly maintained. They have also certified the quantitative tally of opening stock, purchases, sales and closing stock and have not commented adversely about cost of purchases, the sale value and the valuation of the opening stock and the closing stock.*

23.12 *Further, the gross profit rate is the outcome of difference in the selling price and the purchasing cost. When the sales and purchases both have been properly accounted for and there is a complete quantitative tally of the items purchased and sold, then to assume that the appellant would have earned a gross profit higher than what has been declared would be indulging into surmises and conjecture. The higher gross profit rate can be only when the appellant either has overstated the purchases meaning thereby he has paid lesser amount to the suppliers as compared to the amount accounted for in the books of account or when the sales have been suppressed meaning thereby that he has received amount more than what has been stated in the books of account from the buyers. There is no material whatsoever on record to show that the appellant has overstated the purchases or it has*

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understated the sales. In the absence of any such evidence the Assessing Officer is not justified to enhance the gross profit rate and to make an addition. The appellant made purchases from the suppliers and the payments for these purchases were duly accounted for and have been made by cheques. These suppliers were identifiable suppliers. Similarly, the appellant has made sales to buyers which were identifiable and duly accounted for and payments were received through banking channel. Thus, it cannot be assumed that the appellant would have made lesser payment to the suppliers or would have received over and above than what was stated in the sales invoices. If it was a doubt of the Assessing Officer, it was his duty to substantiate the same by bringing positive material / evidence on record and justify such addition. In the absence of any such evidence or material it is not justified to tinker with the gross profit earned by the appellant.

23.13 *Further I noticed that the Assessing Officer has applied the average gross profit rate of assessment years 2010-11 and 2011-12. There is no reason why the gross profit rate of subsequent years should be applied to the preceding years. Simply because G P Rate of subsequent years is higher it cannot be a ground for enhancing the GP rate of earlier years.*

23.14 *In view of the above facts, I hold that the Assessing Officer is not justified in enhancing the gross profit rate and*

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making the addition of Rs.2,26,48,252/- and, therefore, the same is directed to be deleted.”

27.5 The above order passed by the learned CIT (Appeals) had come in appeal before the ITAT. The ITAT vide its order dated 28.02.2017 has upheld the order of the CIT (Appeals). The relevant finding of the ITAT in this regard reads as under:-

“24. This ground has been raised by revenue’s for deleting addition made by assessing officer on account of the GP rate.

25. At the outset Ld. AR submitted that this issue stands squarely covered by decision of this Tribunal in assessee’s own case for assessment year 2011-12. It is observed that Ld. AO had made addition due to various instances regarding improper maintenance of books of accounts made by special auditor and M/s KPMG India. On the basis of these reports assessing officer had recorded his dissatisfaction about correctness and completeness of books of account and thereafter had rejected the same.

Ld. CIT(A) has also observed as under:

I have considered the facts of the case, written submission of the appellant, findings of the Assessing Officer and perused the assessment 11 ITA No. 4641& 4646/Del/2014 (AY 2005-06) record. On going through the same, I find that the Assessing Officer rejected the books of account of the appellant on the basis of the observations made by the special auditor and M/s KPMG

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India. In this regard, I have also perused the report of the special auditor. On going through the same, it is noticed that the special auditors did not shown any dissatisfaction about the books of account. On the contrary the special auditors in their report gave a certificate that proper books of account as required by the law were maintained by the appellant. Further, they have stated that the books of account gave a true and fair view of the profit and loss account of the appellant for the period under consideration. Though the above observations of the special auditors were subject to the notes appended thereto whereby they clarified certain amounts which needed to be considered while computing the income, yet it cannot be said that the books of account were not maintained by the appellant property. There may be certain issues or discrepancies which needed to be considered while computing the income but that does not mean that the books of accounts be rejected in toto.

23.13 Further I noticed that the Assessing Officer has applied the average gross profit rate of assessment years 2010-11 and 2011-12. There is no reason why the gross profit rate of subsequent years should be applied to the preceding years. Simply because G. P. Rate of Subsequent years is higher it cannot be a ground for enhancing the GP rate of earlier years.

26. Further this Tribunal in assessee's own case vide order dated 20.02.2005 in ITA No. 6135/Del/2014 and ITA no. 5829/Del/2014 has observed as under: 12 ITA No. 4641& 4646/Del/2014 (AY 2005-06)

23.6. Our findings

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On consideration of rival contentions we are of the considered view that the rejection of books of accounts is bad in law for the following reasons:

The assessee has maintained regular books of accounts and these have been audited by the tax auditors as well as by the special auditors appointed by the AO. Both these auditors have certified that the assessee was maintaining proper books of accounts. The AO seems to have based his opinion on the report of KPMG India. This report was a due diligence report obtained by the prospective investors. Such due diligence reports cannot lead to formation of an opinion that proper books of accounts have not been kept by the assessee. The assessee also maintained quantitative details of inventory. Similarly on the issue of swap units while disposing of ground nos. 8, 9 and 10, we have dealt with the issue and from our observations it is clear that this cannot be a basis for rejection of books of accounts. Addition on account of difference in credit notes cannot also form a ground for rejection of books of accounts for the reason that we have come to a conclusion that the addition itself is arbitrary and deleted the same. In fact the AO relied on these very books of accounts and to make huge additions during the course of assessment. On the one hand the AO seeks to rely on the books of accounts and on the other hand the AO rejects the books of accounts for estimated profits on ad-hoc basis. This in our view is not permissible.

The rejection of the books of accounts cannot be done in a light hearted manner. Section 44AA of the Income Tax Act mandates that every person carrying on business or profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to

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compute this income in accordance with the provisions of this Act. Thus, the requirement is to maintain such books of accounts as may enable the Assessing Officer to compute its total income. It is only when the books of accounts are 13 ITA No. 4641& 4646/Del/2014 (AY 2005-06) maintained in such a manner which makes it difficult for the Assessing Officer to compute its total income then only the books of accounts can be rejected. This is not the case here. Even if, there are certain discrepancies or errors which are not so crucial so as to disable the Assessing Officer to compute the total income of the appellant, then the books of account cannot be rejected but such discrepancies can be taken into consideration while computing the total income.

Further, the rejection of books of accounts is not justified when mistakes in the books of accounts are of general or technical nature. The remarks given by the Assessing Officer in the appellant's case are neither sufficient for rejecting the duly audited books of accounts nor the Assessing Officer has shown that how these remarks would have a bearing in giving a finding that true income cannot be computed on the basis of books of accounts maintained by the appellant on day to day basis in regular course of business.

As already stated there is no ground whatsoever which justifies the AO to reject the books of accounts. Thus we agree with the contentions of the assessee and revert the order of the AO as upheld by the DRP. Accordingly, this ground of appeal of the assessee is allowed.

As we have held that the rejection of books of accounts is bad in law the question of enhancement of gross profit on estimate basis does not arise. The

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AO is directed to adopt the profits as declared by the assessee in its books of accounts. In view of the above, we delete this addition and this ground of appeal of the assessee is allowed.

27. Respectfully following the same we do not find it necessary to interfere with findings of Ld. CIT (Appeals) has same is upheld. Accordingly, this ground raised by revenue stands dismissed. ”

27.6 On going through the above fact we are of the view that the learned CIT (Appeals) was justified in deleting the addition made by the Assessing Officer. Further this issue is squarely covered by the order of the ITAT in assessee's own case. Accordingly, we reject this ground of the Revenue.

28. Ground no. 7 is regarding the learned CIT (Appeals) not causing an enquiry under section 250(4) on the issue of bogus purchases. During the course of the hearing the learned CIT [DR] could not substantiate with reference to which the learned CIT (Appeals) ought to have carried out the enquiry. In the absence of any specific contention of the learned CIT [DR] on this issue the same is rejected.

29. In ground no. 8 the Revenue has raised the contention that the learned CIT (Appeals) has admitted additional evidence without calling for remand report from the Assessing Officer. However, during the course of the hearing the learned CIT [DR] could not point out any additional evidence submitted by the assessee

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before the learned CIT (Appeals) with reference to which the learned CIT (Appeals) ought to have called for the remand report. In the absence of any such contention this ground of the Revenue is rejected.

30. The other 2 grounds of the Revenue i.e. (a) and (b) below ground No. 8 are general in nature and need no adjudication.

31. In result, appeal is dismissed.

32. In summary appeal of the assessee is partly allowed and that of the Revenue is dismissed.

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33. The present appeal has been filed by the Revenue against the order dated 23.06.2014 passed by the learned CIT (Appeals).

34. In the appeal filed by the Revenue, Revenue has raised the following grounds:-

“1. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.9,24,000/- made by A.O. on account of scrap sale.

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2. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.1,16,71,685/- made by A.O. on account of 2% Swap.*
3. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.1,00,000/- made by A.O. on account of TDS Claim.*
4. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.1,00,000/- made by A.O. on account of advertisement expenses.*
5. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.3,33,450/- made by A.O. on account of securities forfeited.*
6. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.3,50,250/- made by A.O. on account of foreign traveling expense.*
7. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.23,00,001/- made by A.O. on account of disallowance of short and excess.*
8. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.9,34,067/- made by A.O. on account of office renovation.*
9. *The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.21,31,23,873/- made by A.O. on account of GP rate addition.*

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10. *The CIT(A) has erred in law and on facts as well in not invoking the provisions of Section 250(4) of the IT Act, which empowers Ld. CIT(A) to conduct further enquiry on the issues involved in this case.*

11. *The CIT(A) has admitted additional evidence without calling for remand report from the Assessing Officer.*

12. (a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*

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

35. The first ground of appeal raised by the Revenue is regarding deletion of addition of Rs.9,24,000/- made by the Assessing Officer on account of scrap sale. This issue is common with the issue in the preceding assessment year 2006-07 where the Assessing Officer has made similar addition and the same was deleted by the learned CIT (Appeals). The learned CIT (Appeals) in this year has also deleted the addition following its own order for the preceding year. The order of the learned CIT (Appeals) for the preceding year has been upheld by us hereinabove. Since the facts and circumstances relating to the addition by the Assessing Officer are similar, we thus following our own above order, hold that the ground No. 1 does not stand and reject it as such.

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36. Ground no. 2 is regarding deletion of addition of Rs.1,16,71,685/- made by the AO on account of swap units. It was fairly conceded by the learned CIT [DR] that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case in assessment year 2011-12. It is observed that the Assessing Officer had made the addition assuming that assessee would have received 2% of the purchases made by it as swap units and would have sold the same outside the books of account. The learned CIT(A) has deleted the addition by holding that there was absolutely no material to hold that assessee had received such unaccounted swap units over and above what has been accounted for in the books of account and further there is no material whatsoever that assessee has made any sale of such units outside the books of accounts. Similar additions were made in assessee's own case in assessment year 2011-12. The additions so made by the Assessing Officer were deleted by the ITAT. The findings of the ITAT in this regard are as under :-

"The entire addition in this case is made by the AO on the sole ground that the confirmations given by various parties, were on plain paper and not on letterheads. These are all confirmations filed by foreign suppliers. The assessee had submitted arguments including purchase invoices, bill of entry, custom clearance, stock entries etc. The confirmation in question from these foreign parties are on additional documentary evidences. In our view these confirmations cannot be summarily rejected by the AO. The AO, in our view, should not have rejected these confirmations without enquiry. The AO had the address of these parties, the telephone numbers, e-mail addresses. The format in which the confirmations were given by foreign parties, is not within the control of the assessee. We further note that the assessee has submitted all evidences which included third party/government evidences in the form of bill of entry, custom-

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attested purchase invoices. All these purchases are from foreign suppliers and are liable for custom duty. All units received by way of import have to be declared in the bill of entry. The assessee has provided books of accounts and also the supporting evidences. The procedure explained by the assessee of accounting these units in respect of these vendors with whom there is an agreement of swap units is correct procedure and supported by custom attested invoices, bill of entry, etc. The DR during the course of hearing could not controvert the contention of the assessee. As regards the vendors with whom there is no such arrangement, we note that there is no evidence or material to even suggest that assessee would have received swap units. No material was found during search to this effect. We further note that before the DRP the assessee has also filed confirmation on the letterhead of these vendors. In view of the facts, the findings of the DRP are incorrect and against the facts on record. Under these circumstances, we are of the considered opinion that the addition in question is bad in law as it is made without any evidence. In the result this addition is deleted and these ground nos. 8, 9 and 10 of the assessee are allowed.”

36.1 In view of the above discussion, we uphold the order of the learned CIT (Appeals) and this ground of appeal of the Revenue is dismissed.

37. Ground no. 3 is regarding deletion of addition of Rs.1,00,000/- on account of TDS claim. It was contended by the learned CIT [DR] that assessee has failed to deduct tax at source in respect of payment of Rs.1,00,000/- made to M/s Sodexo Pass Services India (P) Ltd. and the learned CIT (Appeals) was not justified in deleting the same.

37.1 In reply, the learned AR submitted that this disallowance was made by the Assessing Officer arbitrarily. This expenditure has been

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made on food expenses incurred through food vouchers. The nature of expense is a purchase and hence the same is not liable for deduction of tax at source. The learned AR relied upon the order of the learned CIT (Appeals) in support of its contention.

37.2 We have considered the arguments advanced by the parties and perused the record. On going through the same we note that this expenditure has been incurred for purchase of food vouchers and such payment does not fall within the purview of TDS provisions. Accordingly, the learned CIT (Appeals) was justified in deleting the addition. Accordingly, we uphold the order of the learned CIT (Appeals) and this ground of appeal of the Revenue is thus rejected.

38. Ground No.4 is regarding deletion of addition of Rs.1,00,000/- made by the Assessing Officer on account of advertisement expenses. On going through the assessment order we note that the Assessing Officer has made an ad-hoc disallowance of Rs.100,000/- out of a total expenditure of Rs.13.34 Lac incurred by the assessee during the year under the head advertisement expenses.

38.1 The learned CIT [DR] relied upon the order of the Assessing Officer.

38.2 The learned AR relied upon the order of the learned CIT (Appeals). It was submitted by the learned AR that a similar issue has come in assessment year 2011-12 where an ad-hoc disallowance was made on

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account of advertisement expenses and the ITAT vide its order dated 20.02.2015 has deleted the disallowance.

38.3 We have gone through the assessment order and order of the learned CIT (Appeals). On perusal of the details we note that assessee has submitted complete details of the expenditure incurred. The Assessing Officer has simply made an ad-hoc disallowance. The learned CIT (Appeals) has recorded a finding of fact in Para 42, which reads as under :-

“42. I have considered the facts of the case, written submission of the appellant and the findings of the Assessing Officer. On going through the same, I find that the Assessing Officer made an adhoc disallowance of Rs1 Lac out of the total expenditure of Rs.13.34 Lac incurred by the appellant under the head advertisement expenses. The only reason given by the Assessing Officer for such disallowance was that these expenses are in the nature of gift and cannot be categorized as advertisement. This cannot be a ground for disallowing an expenditure. The appellant is maintaining the regular books of account and these expenses have been incurred in the course of business. Further in the absence of any specific instance no ad-hoc disallowance can be sustained. Accordingly the addition made on this account is hereby deleted. ”

38.4 The learned DR during the course of the hearing could not give any justification for sustaining the disallowance. The assessee having maintained regular books of account and having incurred the

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expenditure in the course of the business we are of the view that the learned CIT (Appeals) was justified in deleting the above addition. In this regard it may be relevant to refer to the finding of the ITAT in assessee's own case for assessment year 2011-12 where a similar issue has come up, which reads as under :-

“36.1. Our finding: This ground is on disallowance of advertising expenditure on adhoc basis. This disallowance is made on an adhoc basis. The books of accounts of the assessee were subject to special audit there was no adverse comment made by the special auditors on the accident claim. Under these circumstances an adhoc disallowance of ₹ 2 crores is uncalled for. The AO has accepted the directions of the DRP but the Revenue has filed this appeal. The books of accounts of the assessee are audited and no adverse comments have been given by the auditor. These books of accounts have also been provided before the AO. As the AO has not given any specific instance or valid reason for making this ad-hoc disallowance we sustain the finding of the DRP and dismiss this ground of the Revenue.”

38.5 Respectfully following the order of the ITAT in assessee's own case for assessment year 2011-12 we uphold the order of the learned CIT (Appeals) and reject this ground of the Revenue.

39. Ground No.5 is regarding deletion of addition of Rs.3,33,450/- on account of securities forfeited. It was contended by the learned

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CIT [DR] that assessee company has claimed an expenditure of Rs.3,33,250/- on account of security forfeited by M/s Telserra India P. Ltd. During the course of the hearing the Assessing Officer asked explanation for the same. Not being satisfied with the reply, the Assessing Officer had made this addition.

39.1 In reply, the learned AR submitted that the Assessing Officer has not appreciated the transaction in the right perspective. The assessee has filed detailed reply vide letter dated 21.10.2013. It was contended that assessee has placed an order for 600 units with M/s Telserra India Pvt. Ltd. and has made an advance payment of 25%. It received delivery of 330 units on 23rd March, 2006. The order for the balance 270 pieces was cancelled and accordingly the proportionate advance of 25% given for 600 units, which worked out to be Rs.3,33,450/- was forfeited by M/s Telserra India Pvt. Ltd. The total cost of the 600 units was Rs.29,64,000/-. The 25% advance for the same comes to Rs.7,41,000/- and after adjusting advance of 25% against this, the balance amount of Rs.12,22,650/- was paid. Thus the adverse inference drawn by the Assessing Officer for forfeiture of the balance advance of Rs.3,33,450/- is perverse.

39.2 The learned AR has submitted that the learned CIT (Appeals) has appreciated the facts in the right perspective and accordingly deleted the addition.

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39.3 We have considered the submissions of the parties and perused the assessment order as well as order of the learned CIT (Appeals). On going through the facts, it is noted that assessee had a business transaction with M/s Telserra India Pvt. Ltd. to whom it made payment of Rs.7,41,000/- being 25% of the total cost of the 600 units of Rs.29,64,000/- for which it had placed the order. It received delivery of 330 units and cancelled order for the balance 270 units. Since this order was cancelled the proportionate advance payment was allowed to be forfeited by assessee. Thus, this forfeiture of security against supplies is business expenditure allowable under the Act. The Assessing Officer was not justified in drawing adverse inference on the basis that assessee has made a further payment on the same date and has got its advance forfeited. It is a commercial decision taken by the assessee in the normal course of business and Assessing Officer cannot draw adverse inference on these facts. Accordingly, we uphold the order of the learned CIT (Appeals) deleting the addition and this ground of appeal is dismissed.

40. Ground No. 6 is regarding deletion of addition of Rs.3,50,250/- made by the Assessing Officer on account of foreign travel expense. It was contended by the learned CIT [DR] that assessee had debited an expenditure of Rs.3,50,250/- in respect of the foreign exchange purchased for foreign travel but has not established whether such expense has been incurred wholly and exclusively for the purposes of business of the company and accordingly the learned CIT (Appeals) was not justified in deleting the addition.

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40.1 In reply it was submitted by the learned AR that the observation made by the Assessing Officer are factually incorrect. In fact the assessee has submitted its reply and the details vide letter dated 21.10.2013 whereby complete details were provided. In this regard attention was invited to Paper Book Pgs 262-273 which were the details submitted before the Assessing Officer. It was further submitted that assessee company is making huge import of the mobile handsets and travel abroad is for the purpose of business only.

40.2 We have considered submissions of the parties and perused the record. On going through the same it is observed that this foreign exchange was purchased for the visit of two of its directors viz., Mr. Sumit Kumar and Mr. Rahul for their visit to Germany. The assessee company during the course of the assessment submitted all the details. It is also a matter of record that assessee company is in the business of import of mobile handsets. The Assessing Officer has simply disallowed the expenditure holding that there is no evidence that the visit was for business purpose. We are of the view that this observation of the AO is not correct. From the facts it is evident that this expenditure has been incurred for business purpose and assessee has submitted necessary details. The learned CIT (Appeals) examined this issue and the finding of the learned CIT (Appeals) in this regard are as under :-

“36. I have considered the submission of the appellant company perused, the assessment order and assessment record. On going through the same, it is seen that this expenditure was incurred by

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the appellant company for purchase of the foreign currency. The details of the same were submitted to the special auditor as well as to the Assessing Officer in the course of assessment proceedings. The special auditors stated that no justification was given to show that this expenditure was incurred for business purposes. The Assessing Officer further held that the appellant company failed to establish the nexus of the foreign travel made by the directors of the company to the business exigency. In this regard, I find that this expenditure was incurred by the two directors, namely Mr. Sumit Kumar and Mr. Rahul who visited Germany for business purpose. The appellant also submitted the copy of the passport of the directors who had undertaken the foreign travel to establish that such expenditure was incurred. There is no dispute about the fact that Mr. Sumit Kumar and Mr. Rahul are the two directors of the company. The appellant company is in the business of import of mobile handsets. Thus the business nexus of the foreign travel cannot be disputed. Other than just disallowing the expenditure, the Assessing Officer also did not bring any evidence that the two directors were not on business purpose to Germany. Considering these facts that the expenditure was incurred while on foreign travel by the two directors of the company, the disallowance made by the Assessing Officer cannot be sustained. Accordingly, the addition made by the Assessing Officer amounting to Rs.3,50,250/- on this account is hereby deleted and this ground of appeal is allowed.”

40.3 The learned CIT [DR] could not controvert the above finding. Accordingly, we reject this ground of appeal of the Revenue.

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41. Ground no.7 is regarding deletion of addition of Rs.23,00,001/- made by the Assessing Officer on account of short and excess. This issue is same as in the preceding assessment year 2006-07 whereby the Assessing Officer has made disallowance of Rs.10,19,265/- on account of rate difference. In the preceding assessment year 2006-07 we have upheld the order of the learned CIT (Appeals) deleting the addition on this account. The facts and circumstances of the case being same we uphold the order of the learned CIT (Appeals) on this ground. Accordingly, this ground of appeal of the Revenue is rejected.

42. Ground no. 8 is regarding deletion of addition of Rs.9,37,067/- on the ground that these expenses are capital in nature and assessee has failed to submit any reply. The learned CIT [DR] has placed reliance on the assessment order in support of this ground.

42.1 In reply, the learned AR submitted that the observations made by the Assessing Officer are factually incorrect. The assessee has submitted its reply vide letter dated 21.10.2013 along with details, which are placed as part of the paper book. The learned AR further submitted that on going through the details of these expenses it can be noted that these expenses have been incurred only for the purpose of renovation of the office and that too a rented premises. No new assets have been brought into existence. The invoice issued by M/s Design Horizon demonstrates that this is an interior work of the office. The payment of the same have been made by account payee cheque after deduction of tax at source.

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42.2 We have considered submissions of the parties and perused the order passed by the Assessing Officer as well as learned CIT (Appeals). On going through the same we note that the contention of the AR is correct. The assessee company has submitted the details during the course of the assessment proceedings. The details of such expenditure clearly show that this expenditure has been incurred for renovation of the office and the premises is on rent. Further no new asset has come into existence. Accordingly, the expenditure incurred by the assessee will be revenue in nature and allowable under Section 37(1) of the Income Tax Act.

42.3 In view of the above facts we uphold the order of the learned CIT (Appeals) and dismiss this ground of appeal of the Revenue.

43. Ground No. 9 is regarding addition of Rs.21,31,23,873/- made by the Assessing Officer on account of gross profit rate. This ground is the same as in the preceding assessment year 2006-07, whereby we have upheld the order of the learned CIT (Appeals) deleting the addition on this account. Since the facts and reasoning for making this addition are same, following our order for assessment year 2006-07 on the issue, we uphold the order of the learned CIT (Appeals) and accordingly this ground of the Revenue is rejected.

44. Ground no. 10 is regarding the action of the learned CIT (Appeals) in not causing an enquiry under section 250(4) on the issue of bogus

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purchases. During the course of the hearing the learned CIT [DR] could not substantiate with reference to which the learned CIT (Appeals) ought to have carried out the enquiry. In the absence of any specific contention of the learned CIT [DR] on this issue the same is dismissed.

45. In ground no.12 the Revenue has raised the contention that the learned CIT(A) has admitted additional evidence without calling for remand report from the Assessing Officer. However, during the course of the hearing the learned CIT [DR] could not point out any additional evidence submitted by the assessee before the learned CIT (Appeals) with reference to which the learned CIT (Appeals) ought to have called for the remand report. In the absence of any such contention this ground of the Revenue is rejected.

46. The other 2 grounds of the Revenue i.e. 12 (a) and (b) below ground no. 8 are general in nature and need no adjudication.

47. In result, appeal of the Revenue is dismissed.

I. T. Appeal Nos. 4643/Del/2014 – [By the assessee] :

AND I. T. Appeal Nos. 4649/Del/2014 – [By the Revenue] :

48. The present cross appeals have been filed by the assessee as well as Revenue against the order dated 23.06.2014 passed by the learned CIT (Appeals).

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49. In the appeal filed by the assessee, following grounds have been raised:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reference made for special audit under section 142(2A) is bad in law.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the

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contention of the assessee that the proceedings initiated under Section 153A and the assessment made in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed under section 153A is untenable in the eye of law as the Act does not give power to the AO to re-appraise and/or review the already settled issues and the assessment order passed under section 143(3) of the Act.*

7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of ofRs.1,20,00,000/- made by the AO on account of unsecured loan.*

(ii) *That the above said addition has been confirmed by arbitrarily rejecting the evidences and explanation of the assessee.*

8(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.1,35,00,000/- made by the AO on account of share application money received during the year.*

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(ii) *That the above said addition has been confirmed by arbitrarily rejecting the evidences and explanation of the assessee.*

9(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.20,44,565/- made by the AO on account of computer expenses.*

(ii) *That the above said disallowance has been confirmed rejecting the material and evidences brought on record to show that the expenses are revenue in nature and has been incurred wholly and exclusively for the purposes of business.*

10(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the disallowance of an amount of Rs.7,00,000/- made by the AO on account of R&D expenses.*

(ii) *That the above disallowance has been confirmed despite the fact that the expenses are incurred wholly and exclusively for the purposes of business.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition to the extent of an amount of Rs.1,05,765/- invoking the provision of section 43B of the Act.*

12. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the*

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disallowance of an amount of Rs.18,268/- made by the AO invoking the provisions of section 14A of the Act.

13. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

50. In the appeal filed by the Revenue, Revenue has raised the following grounds :-

“1. The CIT (A) has erred in law and on facts as well in deleting the addition of Rs.2,01,040/- made by A.O. on account of disallowance u/s 40(a)(ia).

2. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.5,80,036/- made by A.O. on account of disallowance u/s 43B

3. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.1,61,832/- made by A.O. on account of additional sales tax.

4. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.1,56,26,014/- made by A.O. on account of swap units/ warranty reimbursement and estimate of the gross profit from the sale of search units at 2%.

5. The CIT(A) has erred in law and on facts as well in deleting the addition of Rs.27,00,000- made by A.O. on account of noting of seized documents.

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6. *The CIT (A) has erred in law and on facts as well in deleting the addition of Rs.1,18,257/- made by A.O. on account of EPF and ESI u/s 2(24)(X).*

7. *The CIT (A) has erred in law and on facts as well in deleting addition of Rs.53,493/- made by A.O. on account of website development expenses.*

8. *The CIT (A) has erred in law and on facts as well in deleting addition of Rs.74,901/- made by A.O. on account of sundry creditors.*

9. *The CIT (A) has erred in law and on facts as well in deleting addition of Rs.11,90,000/- made by A.O. on account of scrap sale.*

10. *The CIT (A) has erred in law and on facts as well in deleting addition of Rs.16,96,46,787/- made by A.O. on account of G.P. rate addition.*

11. *The CIT (A) has erred in law and on facts as well in holding that assessee is eligible for deduction u/s 80IC and directing the A.O. to re-compute the allowance u/s 80IC.*

12. *The CIT (A) has erred in law and facts as well in not invoking the provisions of Section 250(4) of the IT Act, which empowers Ld. CIT (A) to conduct further enquiry on the issues involved in this case.*

13. *The CIT (A) has admitted additional evidence without calling for remand report from the Assessing Officer.*

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14. (a) *The order of the CIT (A) is erroneous and not tenable in law and on facts.*

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

Assessee's appeal :

51. Grounds Nos. 1 to 6 are rejected, as not pressed.

52. Ground no. 2 is regarding addition of Rs.1,20,00,000/- on account of unsecured loan. During the year assessee has obtained unsecured loan of Rs.1,20,00,000/- from four parties. The Assessing Officer asked the assessee to furnish evidences regarding identity, creditworthiness and genuineness of the loan. Not being satisfied with the reply, the Assessing Officer made addition of Rs.1,20,00,000/- by invoking provisions of section 68 of the Income Tax Act. The learned CIT (Appeals) has confirmed the above addition. Now the assessee is in appeal before us.

52.1 It was contended by the learned AR that assessee has obtained unsecured loan from four parties. During the course of the hearing assessee filed all documents in respect of each of these parties. During the course of the assessment proceedings the AO issued notices under section 133(6) of the I. T. Act to 11 parties which included 3 of these parties. Only 4 letters out of these 11 were received back and only one of the 3 parties from whom assessee has obtained unsecured loan remained

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unserved. Despite these facts the Assessing Officer has drawn adverse inference in respect of all the 4 parties.

52.2 The learned AR also invited attention to the questionnaire dated 13.02.2012 whereby the Assessing Officer asked assessee to submit details of the unsecured loan and assessee submitted all the necessary evidences along with confirmation in respect of all the 4 parties vide letter dated 29.08.2012.

52.3 On being brought to the notice of the assessee about the return of letters in the case of M/s BSA Fincap Pvt. Ltd., from whom assessee has taken loan of Rs.15,00,000/-, assessee again filed a reply vide letter dated 28.10.2013. Assessee also submitted to the Assessing Officer that these loans have been repaid and confirmation from each of the party has been filed along with ledger account and the balance sheet, PAN, bank statement, etc.

52.4 In reply the learned CIT [DR] relied upon the order passed by the Assessing Officer and the learned CIT (Appeals).

52.5 We have considered submissions of the parties and perused the order passed by the Assessing Officer as well as CIT (Appeals). As per the facts, the assessee has obtained unsecured loan from the following parties :-

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- i) M/s Shiv Arpan Investment and Trading Company Pvt. Ltd.
Rs.70,00,000/-
 - ii) M/s Index Securities & Research Pvt. Ltd.
Rs.25,00,000/-
 - iii) M/s BSA Fincap Pvt. Ltd.
Rs.15,00,000/-
 - iv) Tanika Finance & Leasing Pvt. Ltd.
Rs.10,00,000/-
- Total : Rs.1,20,00,000/-**

52.6 It is also a matter on record that assessee has submitted necessary details in respect of each of these parties which included confirmation, ledger account, bank statement, ITR and balance sheet. During the course of the assessment proceedings the AO made enquiry in respect of the 3 parties only by issue of notice under section 133(6) i.e. in the case of M/s BSA Fincap Pvt. Ltd., M/s Tanika Finance & Leasing Pvt. Ltd. and M/s Index Securities & Research Pvt. Ltd. It is also a matter of record that out of these 3 parties only one notice was returned back un-served i.e. M/s BSA Fincap Pvt. Ltd. Thus, from the facts, it is evident that in respect of the other 3 parties there is no adverse material so far as two parties viz. M/s Index Securities & Research Pvt. Ltd. and M/s Tanika Finance & Leasing Pvt. Ltd. are concerned.

52.7 In respect of M/s Shiv Arpan Investment and Trading Company Pvt. Ltd. it has been alleged by the Assessing Officer that the company

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does not exist at the given address. In this regard the Assessing Officer has referred to the Inspector report whereby the inspector has stated that no board of the company was found there. On the basis of this the Assessing Officer has drawn adverse inference. We are of the view that this inspector's report is not sufficient to discredit the documents and the evidences submitted by assessee in support of its contention. On going through the documents on record we note that assessee has submitted evidences in the form of balance sheet and the bank statement. The bank statement of this creditor demonstrates that this company has a term deposit with the bank and has been receiving interest regularly. This company is being assessed to income tax and filing its returns regularly. No further effort was made by the Assessing Officer to contact the Assessing Officer of this company. Merely because sign board was not found, it cannot be assumed that this company is not in existence. The inspector has also not recorded statement of any person living at the premises. The Assessing Officer also did not make any effort to find out the location of the company from the address given on the bank statement.

52.8 In view of the above facts we are of the view that the Assessing Officer was not justified in drawing adverse inference in respect of these 3 parties. As regards the 4th party viz. M/s BSA Fincap Pvt. Ltd. though the notice issued under section 133(6) came back un-served, thereafter assessee has provided complete details of this party including new address, PAN number including master data from the website of the Ministry of Corporate Affairs. The Assessing Officer thereafter did not

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make any effort to further verify the details and the evidences submitted by the assessee in support of its contention.

52.9 In view of the above facts we are of the view that assessee had discharged its primary onus to establish the claimed unsecured loan and accordingly the addition made on this account is directed to be deleted. This ground of appeal is accordingly allowed.

53. Ground No. 8 is regarding addition of Rs.1,35,00,000/- made by the Assessing Officer on account of share capital. The assessee, during the year under consideration, had received share capital of Rs.1,35,00,000/-. The Assessing Officer asked the assessee to submit the details and the confirmation in support thereof. Not being satisfied with the reply of the assessee the Assessing Officer made addition by invoking the provisions of section 68 of the Act. The learned CIT (Appeals) has confirmed the action of the Assessing Officer.

53.1 Aggrieved by the order of the learned CIT (Appeals) the assessee is in appeal before us. It was contended by the learned AR that during the year under consideration the assessee company has received share application money from the following 7 parties :-

Sl. No.	Name of the party	Amount-Rs
1.	Pathik Merchandise Pvt. Ltd.	50,00,000.00
2.	Jasmeet Leasing & Credit P. Ltd.	10,00,000.00

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3.	Magpie Plastics Pvt. Ltd.	10,00,000.00
4.	Premier Udyog Ltd.	15,00,000.00
5.	Paonta Finance & Deposit P. Ltd.	15,00,000.00
6.	Solace Properties Ltd.	25,00,000.00
7.	AsharfiImpex Pvt. Ltd.	10,00,000.00
	Total	1,35,00,000.00

53.2 The assessee has submitted details in respect of each of these parties vide letter dated 28.10.2013. The Assessing Officer issued notices under section 133(6) to these parties.

53.3 In respect of M/s Pathik Merchandise Pvt. Ltd. for which the notice could not be served earlier the assessee had given new address and thereafter the notice issued by the Assessing Officer under Section 133(6) was duly served. It was contended by the learned AR that from the assessment order it is evident that the Assessing Officer has again drawn adverse inference merely on the ground that reply has not been received. It was contended that all these companies are being assessed to income tax. Assessee has received the money as share application money during the year under consideration and the same has been returned in the subsequent year, the details of which were also given to the Assessing Officer. In this regard the learned AR invited attention to Paper Book Pg. 137.

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53.4 In reply the learned CIT [DR] relied upon the order passed by the Assessing Officer and the CIT (Appeals).

53.5 We have perused the assessment order and order passed by the learned CIT (Appeals). From the facts it is evident that assessee had received share application money from the above 7 parties to the extent of Rs.1,35,00,000/-. On being called by the Assessing Officer the assessee has submitted necessary details. The AO has drawn adverse inference merely on the basis that reply has not been received in response to the notice issued under section 133(6). We are of the view that this cannot be a ground for drawing adverse inference. The assessee has submitted all the evidences in support of its contention. There is no adverse material whatsoever against the assessee. It is also not the case of the Assessing Officer that these are accommodation entries and there is no adverse statement or material available on record in respect of the share application money received by the assessee. In the absence of any adverse material coming on record we are of the view that the Assessing Officer was not justified in making this addition in the hands of the assessee. The assessee having discharged its primary onus it was incumbent upon the Assessing Officer to make further investigation. In the absence of any adverse material the addition made by the Assessing Officer cannot be sustained and accordingly we direct the Assessing Officer to delete the addition and this ground of appeal of the assessee is allowed.

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54. Ground no. 9 is regarding addition of Rs.20,44,565/- on account of the computer expenses incurred by the assessee. It was contended by the learned AR that during the year assessee company has purchased computers for research and development. The assessee undertook a project of the Airports Authority of India to build customized hardware and software solution. This project was for the implementation of a security solution at the airports guiding the takeoff and landing of aircraft at the airports, a lot of R & D on hardware and software platforms was required. This testing was destructive in nature to building upon a solution which could run 24*7*365 days on a networked environment and lot of hardware was burnt off owing to heavy duty cycle. The hardware was used by the engineers to make the final system which was delivered to the client. Since the computer hardware was sold as part of a project there is no question of capitalizing this expenditure in the books of the assessee. The learned AR further submitted that complete details with evidences were submitted before the Assessing Officer vide letter dated 28.10.2013 and as such the Assessing Officer and CIT (Appeals) both have gone wrong in ignoring the above facts.

54.1 In reply the learned CIT [DR] relied upon the orders passed by the Assessing Officer and CIT (Appeals).

54.2 We have considered the submissions of the parties and perused the record. The issue involved here is whether the expenditure incurred

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by the assessee to the extent of Rs.20,44,565/- is revenue or capital in nature. It is not in dispute that assessee has incurred this expenditure. In case the expenditure is capital in nature, assessee will be eligible for depreciation and in case it is revenue in nature the same will be eligible as revenue expenditure under section 37 of the Act. It is the contention of the AR that these computers were not used as capital asset. These were made specifically for a particular project undertaken during the year for Airports Authority of India. The project was for a security solution and that is why these computers were used for carrying out the testing which was destructive in nature. On going through the record we find that vide letter dated 28.10.2013 assessee has given explanation and details thereof. The Assessing Officer in the assessment order has nowhere disputed these facts and details. He has merely stated that expenditure is capital in nature. Despite holding the expenses to be capital in nature he has not allowed depreciation. We are of the view that the circumstances which have been explained by the assessee do suggest that these computers have been used for a particular project. There is no reason to discard the explanation or even to doubt the explanation given by the assessee. The computers, in case the same were used as office equipment or as a machinery, will be capital in nature but when computers have been used to carry out research and development in testing, which was destructive in nature, to build up a solution and hardware of the computers having been used by the engineers to make the final system, which was delivered to the client, we are of the view that such expenditure will be revenue in nature. Accordingly, we uphold the contention of the AR and direct the Assessing

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Officer to delete the addition on this account. Accordingly, this ground of appeal of the assessee is allowed.

55. Ground No. 10 is regarding disallowance of Rs.7,00,000/- made by the Assessing Officer on account of the R & D expenses. It was submitted by the learned AR that during the year assessee has incurred a sum of Rs.17,90,799/- on account of R & D expenses. The Assessing Officer in a most arbitrary manner had disallowed a sum of Rs.7,00,000/- on the ground that such expenditure include cost of scrap and other miscellaneous items which are not part of the research and development. It was contended that this addition has been made on ad-hoc basis despite the fact that assessee has submitted complete details, each of the items and the expenditure including scrap so used for the purpose of research and development and the Assessing Officer was not justified in arbitrarily making this ad-hoc disallowance. It was submitted that the finding given by the Assessing Officer is perverse and the learned CIT (Appeals) was not justified in confirming the same ignoring the facts and the details and the evidences submitted by the assessee.

55.1 In reply the learned CIT [DR] relied upon the orders passed by the Assessing Officer and learned CIT (Appeals).

55.2 We have considered the submissions of the parties and perused the record. On going through the same we note that assessee, during the year, had incurred an expenditure of Rs.17,90,799/-. It had submitted

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the details and the same are available on Paper Book Pgs. 398-402. The Assessing Officer without pointing out a particular expenditure made just a casual remark that the expenditure including on scrap and miscellaneous items which cannot be part of the R & D expenses. We are of the view that these observations of the Assessing Officer are not justified. The assessee having incurred the expenditure and there being no issue about the genuineness of such expenditure, the disallowance cannot be made merely on the ground that this cannot be a part of R & D expenses. The assessee's books of accounts have been audited and nothing adverse has been pointed out on this issue. Further ad-hoc disallowance even otherwise is unsustainable. Accordingly, we direct the Assessing Officer to delete this addition and this ground of appeal of the assessee is allowed.

56. Ground no. 11 is regarding disallowance of Rs.1,05,765/- by invoking provisions of Section 43B. As per the Assessing Officer assessee has debited a sum of Rs.6,85,800/- on account of bonus out of which only Rs.5,80,036/- was paid before the due date of filing the return. The Assessing Officer, however, disallowed the entire amount of Rs.6,85,8066/-. The learned CIT (Appeals) has given partial relief holding that the amount paid before the due date of filing the return, Rs.5,80,036/- is an eligible expenditure under section 43B having been paid before the due date of filing the return. The balance disallowance has been upheld.

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56.1 It was contended by the learned AR that a disallowance made in this year is eligible for deduction in the subsequent year. In this regard it was submitted that as per the provisions of section 43B of the Act expenditure is to be allowed in the year in which it has actually been paid. Since this amount has been paid after the return, the Assessing Officer is directed to allow the same in the subsequent year when payment has actually been made.

56.2 The learned CIT [DR] submitted that this is a factual aspect and the deduction can be allowed after verification.

56.3 We have considered the submissions of the parties. This is a factual aspect. A sum of Rs.1,05,764/- was not paid by the assessee before the due date of filing the return and hence the same cannot be allowed in the year under consideration. However, the same will be eligible for deduction in the subsequent year when actual payment is made. The Assessing Officer may verify the same and allow the deduction if the payment of the same has been made in the subsequent assessment year. This ground is disposed of accordingly.

57. Ground no.12 is regarding disallowance of Rs.18,268/- under section 14A. It was submitted by the learned AR that considering the smallness of the amount this ground is not being pressed. Accordingly, this ground of the assessee is rejected as not pressed.

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58. Ground No. 13 is general in nature and needs no adjudication.

59. In the result the assessee's appeal is allowed in part.

Departmental Appeal No. 4649/Del/2014 :

60. Ground No.1 raised by the department is with reference to a disallowance of Rs.2,01,040/- made by the Assessing Officer under section 40(a)(ia) which was deleted by the learned CIT (Appeals). The Assessing Officer made the addition under section 40(a)(ia) amounting to Rs.2,01,040/- alleging that tax was required to be deducted on the payment made by the assessee to M/s TNT India Pvt. Ltd. which has not been done by the assessee.

60.1 The learned CIT (Appeals) deleted the addition on the basis of submissions made by the assessee stating that TDS was not deducted by the assessee in view of the fact that M/s TNT India Pvt. Ltd. has got a certificate issued from the DCIT, Bangalore that no tax is required to be deducted at source in respect of the payment being made to it and hence the assessee did not deduct tax at source.

60.2 The learned CIT [DR] relied on the order of the Assessing Officer while learned AR reiterated the submissions made before the learned CIT (Appeals). It was also stated before us that assessee vide letter dated 7.11.2013, a copy of which has been placed at paper book

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page No. 513, had submitted the reason for non-deduction of TDS to the Assessing Officer. The certificate issued by the DCIT, Bangalore was placed at paper book page No. 518. In this view of the matter, it was stated that the learned CIT (Appeals) was correct in deleting the addition.

60.3 We have heard and considered contentions of the parties and perused the record. After perusing the certificate issued by the DCIT, Bangalore to M/s. TNT India Pvt. Ltd. granting them exemption from TDS, we are of the view that the provisions of section 40(a)(ia) cannot be applied in such situation. Therefore, the addition has been rightly deleted by the learned CIT (Appeals). Accordingly, ground no.1 raised by the Revenue is rejected.

61. Ground No. 2 is in relation to disallowance of Rs.5,80,036/- made by the Assessing Officer under section 43B which was deleted by the learned CIT (Appeals). The Assessing Officer had made addition of an amount of Rs.6,85,000/- under section 43B stating that the bonus payable to the employees has not been paid on or before the due date of filing of return. The learned CIT (Appeals) deleted the addition on the basis of the submissions made by the assessee stating that out of this amount of Rs.6,85,000/- a sum of Rs.5,80,036/- was paid by the assessee before the due date of filing of return of income. In this regard copy of cash book of the assessee was duly submitted before the Assessing Officer as well as CIT (Appeals).

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61.1 The learned CIT [DR] relied on the order of the Assessing Officer, while the learned AR reiterated the submissions made before the lower authorities.

61.2 We have heard the arguments advanced by the parties and perused the record. In this regard we do not find any infirmity in the order of the learned CIT (Appeals) as only the amount of bonus which is not paid upto the date of filing of return can be disallowed under section 43B of the Act. Since an amount of Rs.5,80,036/- was paid by the assessee before the due date of filing of the return out of a total amount of Rs.6,85,000/- the learned CIT (Appeals) has rightly restricted the disallowance to Rs.1,05,764/-. The ground raised by the Revenue in this regard is thus rejected.

62. Ground No. 3 relates to addition of an amount of Rs.1,61,832/- on account of additional sales tax disallowed by the Assessing Officer which was got deleted by the learned CIT (Appeals). The assessee has debited an amount of Rs.1,61,832/- in its profit and loss account on account of additional sales tax. The Assessing Officer disallowed the said claim of the assessee alleging that said amount represents penalty and therefore is not allowable under section 37 of the Act.

62.1 The learned CIT (Appeals) deleted the addition in view of the submissions made by the assessee that additional sales tax demand

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was raised by the sales tax department during sales tax assessment only. Since the said expenditure is not in the nature of penalty, therefore, no disallowance on this account can be made.

62.2 The learned CIT [DR] relied on the order of the Assessing Officer while the learned AR reiterated the submissions made before the lower authorities.

62.3 We have considered submissions of the parties and perused the record. The learned CIT (Appeals) has given a very categorical finding in this regard at Para 40 of her order which reads as under :-

“40. I have considered the facts of the case, written submissions of the appellant, the assessment order and the documents on record. The Assessing Officer made the impugned addition on the ground that the amount of Rs.1,61,832/- was a penalty levied by the sales tax department. However, on perusal of the details filed in the paper book, I find that this is an additional sales tax demand raised by the sales tax department at the time of the sales tax assessment that was paid by the appellant. Ignoring the reply given by the appellant, the Assessing Officer issued a query pertaining to the same on 23.10.2013. On perusal of the copy of the ledger account in the paper book, it is evident that the amount paid was additional sales tax demand on account of non-receipt of ‘C’ forms from those dealers to whom sales were made by the appellant. It was explained that in the absence of ‘C’ form the tax rate was 10% during the year under

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consideration as against 4% of tax where 'C' forms were submitted. The Assessing Officer did not bring any material on record to establish that the amount paid was a penalty for certain violation of provisions of law and not an additional tax demand as claimed by the appellant. In the absence of such finding, the addition made by the Assessing Officer amounting to Rs.1,61,832/- is deleted."

62.4 Since we do not find any infirmity in this regard in the order of the learned CIT (Appeals) the ground raised by the Revenue is dismissed.

63. Ground no. 4 is regarding deletion of addition of Rs.1,56,26,014/- made by the Assessing Officer on account of swap units. It was fairly conceded by the learned CIT [DR] that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case in assessment year 2011-12. It is observed that the learned Assessing Officer has made the addition assuming that assessee would have received 2% of the purchases made by it as swap units and would have sold the same outside the books of account. The learned CIT (Appeals) has deleted the addition by holding that there was absolutely no material to hold that assessee had received such unaccounted swap units over and above what has been accounted for in the books of account and further there is no material whatsoever that assessee has made any sale of such units outside the books of accounts. Similar additions were made in assessee's own case in assessment year 2011-12. The additions so made by the Assessing Officer were

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deleted by the ITAT. The findings of the ITAT in this regard are as under :-

“The entire addition in this case is made by the Assessing Officer on the sole ground that the confirmations given by various parties, were on plain paper and not on letterheads. These are all confirmations filed by foreign suppliers. The assessee had submitted arguments including purchase invoices, bill of entry, custom clearance, stock entries etc. The confirmation in question from these foreign parties are on additional documentary evidences. In our view these confirmations cannot be summarily rejected by the Assessing Officer. The Assessing Officer, in our view, should not have rejected these confirmations without enquiry. The Assessing Officer had the address of these parties, the telephone numbers, e-mail addresses. The format in which the confirmations were given by foreign parties, is not within the control of the assessee. We further note that the assessee has submitted all evidences which included third party/government evidences in the form of bill of entry, custom-attested purchase invoices. All these purchases are from foreign suppliers and are liable for custom duty. All units received by way of import have to be declared in the bill of entry. The assessee has provided books of accounts and also the supporting evidences. The procedure explained by the assessee of accounting these units in respect of these vendors with whom there is an agreement of swap units is correct procedure and supported by custom attested invoices, bill of entry, etc. The DR during the course of hearing could not controvert the contention of the assessee. As regards the vendors with whom there is no such arrangement, we note that there is no evidence or material to even suggest that assessee would have received swap units. No material was found during search to this effect. We further note that before the DRP the assessee has also filed confirmation on the letterhead of these vendors. In view of the facts, the findings of the DRP are incorrect and against the facts on record. Under these circumstances, we are of the considered opinion that the addition in question is bad in law as it is made without any evidence. In the result this addition is deleted and these ground Nos. 8, 9 and 10 of the assessee are allowed. ”

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63.1 Respectfully following the order of the co-ordinate bench, we uphold the order of the learned CIT(A) and this ground of appeal of the Revenue is dismissed.

64. Ground No.5 is with reference to an addition of Rs.27,00,000/- made by the Assessing Officer on the basis of seized document which was deleted by the learned CIT (Appeals). On the basis of page 9 of Annexure A-5 the Assessing Officer made an addition of Rs.16,25,000/- and on the basis of page 17 of Annexure A-5, addition of Rs.10,95,000/- was made.

64.1 Before the learned CIT (Appeals) it was stated by the assessee that the documents were duly explained to the Assessing Officer by the assessee vide letters dated 15.2.2013 and 1.3.2013. Page 9 of Annexure A-5 was having some rough calculation for Rs.16,00,000/- regarding proposed tender which the assessee wished to apply for. There was no financial transaction involving of the said amount of Rs.16,00,000/-. Regarding Rs.25,000/- the same was the cash in hand of the assessee as on that date which is already a part of the books of account. Regarding page 17 of Annexure A-5 it was explained to the learned CIT(A) that the amount pertains to purchase of land amounting to Rs.1,50,63,400/- which included an amount of Rs.10,95,000/- in cash. These payments were duly recorded in the books of account. Copy of ledger account along with sale deed were produced before the Assessing Officer.

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64.2 The learned CIT [DR] relied on the order of the Assessing Officer while learned AR reiterated the submissions made before the lower authorities.

64.3 We have considered submissions of the parties and perused the record. The explanation with regard to these seized documents was placed before the Assessing Officer as the letters through which the explanation was given by the assessee were shown to us by the learned AR. We observe that the AO had totally ignored the detailed submission with regard to these seized documents given by the assessee vide its letters dated 13.2.2012 and 28.2.2012. The evidences in this regard were filed with letter dated 15.2.2013 and 20.2.2013. The findings of the learned CIT (Appeals) in this regard are as follows :-

“The Assessing Officer ignored the submissions made by the appellant. The cash payment of the Rs. 19.95 lacs was duly found recorded on 28.08.2007 and the payments made for purchase of property is borne out of the books of account and the registration deed. Without bringing any material on record contrary to that of the submissions made by the appellant, the Assessing Officer unjustified in making such addition of Rs.16,25,000/- and Rs.10,95,00,000/- (Rs.27,00,000/-). Accordingly, the addition made by him amounting to Rs.27,00,000/- is deleted. ”

64.4 Since there is no infirmity in the order of the learned CIT (Appeals) in this regard, the ground raised by the Revenue is rejected.

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65. Ground no. 6 is with reference to a disallowance of Rs.1,18,257/- made by the Assessing Officer on account of ESI and PF. It was stated at the Bar that the said addition has been made by the Assessing Officer on the basis that these expenses were disallowed in the original assessment completed under section 143(3). The assessee filed an appeal against the said order whereby the addition was deleted by the learned CIT (Appeals) and as such this addition does not arise from the order passed under Section 153A. Accordingly, this ground of appeal of the Revenue is rejected.

66. Ground No. 7 of appeal of the Revenue is regarding disallowance of an amount of Rs.53,493/- made by the Assessing Officer on account of website development expenses. The learned AR was fair enough to admit that this addition was also made in the original assessment order passed under Section 143(3) and as such this addition does not arise from the order passed under Section 153A. Accordingly, this ground of appeal is also dismissed.

67. Ground No. 8 is on account of addition of Rs.74,901/- made by the Assessing Officer on account of sundry creditors which got deleted by the learned CIT (Appeals). The addition of Rs.74,901/- was made by the Assessing Officer on the ground that M/s R.K. Communications had not replied to the notice under section 133(6) issued by the Assessing Officer. The learned CIT (Appeals) deleted the addition on the ground that merely because the creditor has not responded to the notice issued under section 133(6), the addition cannot be made.

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67.1 The learned CIT [DR] relied on the order of the Assessing Officer while the learned AR relying on the order of the learned CIT (Appeals) further stated that it is not the case of the Assessing Officer that the notice has come back un-served. The Assessing Officer having embarked upon an enquiry it was upon him to carry the enquiry to the logical end. Non-receipt of reply from the party cannot be a ground for making the addition. Reliance in this regard was placed on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (2008) 216 CTR 195 (SC).

67.2 We have considered submissions of the parties and perused the record. We agree with the submission made by the learned AR that the notice under section 133(6) having been duly served, just on the basis of the fact that no reply was received from the creditor, the addition cannot be made. The learned CIT (Appeals) has given her findings in this regard at Para 65, which read as under :-

“65. I have considered the submission of the appellant, perused the assessment order and the details on record. On going through the same, I find that this addition was made by the Assessing Officer merely on the ground that the said creditor did not submit reply in response to the notice issued by him under Section 133(6) pertaining to the balance of Rs.74,901/-. In my view this cannot be a ground for drawing adverse inference against the appellant. The appellant is maintaining regular books of accounts and were audited. The credit was stated to out of the normal course of business. The

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Assessing Officer did not bring any material on record to prove that the creditor was bogus or that no transaction occurred for pending balance. Accordingly the addition made on this account is hereby deleted and this ground of appeal is allowed. ”

67.3 We find no infirmity in the order of the learned CIT (Appeals) in this regard. The ground raised by the Revenue is thus rejected.

68. Ground No. 9 is regarding deletion of addition of Rs.11,90,000/- on account of scrap sale. It was submitted by the learned CIT [DR] that the learned CIT (Appeals) was not right in deleting the addition made by the Assessing Officer on account of the sale of scrap. The Assessing Officer has given very detailed reasoning in the assessment order which has been ignored by the learned CIT (Appeals) while deleting the addition.

68.1 It was admitted at the bar that the similar issue had also arisen in the assessment year 2006-07, which has been dealt with by the ITAT as follows :-

68.2 We have considered the submissions of the parties and perused the assessment order and the order passed by the learned CIT (Appeals). On going through the same we note that there is no evidence of any sale of scrap during the year under consideration. The learned CIT (Appeals) has examined this issue and has rightly held that in the absence of any material being brought on record this

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addition is untenable. The relevant finding of the learned CIT (Appeals) in this regard are as under :-

“51. I have gone through the contents of the assessment order, perused the assessment record and considered the submissions made by the appellant in the course of the appeal proceedings. On going through the issue, I find that the Assessing Officer made this addition on a presumption and doubt that the appellant would have sold the scrap during the year under consideration. The AR of the appellant pointed out that it did not claim any scrap in respect of its trading activity. This fact seemed to be correct as the quantitative details submitted by the appellant and brought on record by the Assessing Officer on the basis of inference and remarks drawn by the special auditors tallied. However, the addition was made by extrapolating the scrap sales of mobile accessories and cartons etc. in various years and therefore addition was not based on any document or evidence. The appellant did not sell any scrap during the year. In the absence of any claim of scrap in the trading account and in the absence of any evidence that any scrap in the form carton, accessories were actually sold by the appellant company during the year under consideration, addition made on this account cannot be sustained. The Assessing Officer also did not bring any material on record to prove that the appellant made sale of scrap during the year under consideration. In the absence of any such evidence, the addition made by the Assessing Officer on this account amounting to Rs.13,983/- is deleted. ”

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68.3 Respectfully following the same we do not find it necessary to interfere with findings of Ld. CIT (Appeals) and the same is upheld. Accordingly, this ground raised by revenue stands rejected.

69. Ground no. 10 relates to addition of Rs.16,.96,46,787- made by the Assessing Officer on account of G. P. rate addition. The Assessing Officer has made this addition by holding that the gross profit rate shown by the assessee during the year under consideration is low as compared to the gross profit rate in other assessment years. The learned CIT (Appeals) deleted this addition.

69.1 During the course of the hearing the learned CIT [DR] simply relied upon the order of the Assessing Officer.

69.2 The learned AR submitted that the addition made by the Assessing Officer is absolutely arbitrary. The assessee has been maintaining regular books of account. These books of account have been audited not only by the statutory auditors of the company but also under a special audit carried out at the instance of the Assessing Officer under section 142(2A). The special auditors in their report have made a categorical statement that the books of account audited by them give a true and fair view of the balance sheet and the profit and loss account of the assessee company. Further it was submitted that a similar issue arose in the assessment year 2005-06 whereby the addition was deleted by the learned CIT (Appeals).

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69.3 The said order passed by the learned CIT (Appeals) has come in appeal before the ITAT. The ITAT vide its order dated 28.02.2017 has upheld the order of the CIT (Appeals). The relevant finding of the ITAT in this regard reads as under :-

“24. This ground has been raised by revenue’s for deleting addition made by assessing officer on account of the GP rate.

25. At the outset Ld. AR submitted that this issue stands squarely covered by decision of this Tribunal in assessee’s own case for assessment year 2011-12. It is observed that Ld. AO had made addition due to various instances regarding improper maintenance of books of accounts made by special auditor and M/s KPMG India. On the basis of these reports assessing officer had recorded his dissatisfaction about correctness and completeness of books of account and thereafter had rejected the same.

Ld. CIT (Appeals) has also observed as under:

I have considered the facts of the case, written submission of the appellant, findings of the Assessing Officer and perused the assessment 11 ITA No. 4641& 4646/Del/2014 (AY 2005-06) record. On going through the same, I find that the Assessing Officer rejected the books of account of the appellant on the basis of the observations made by the special auditor and M/s KPMG India. In this regard, I have also perused the report of the special auditor. On going through the same, it is noticed that the special auditors did not shown any dissatisfaction about the books of account. On the contrary the special auditors in their report gave a certificate that proper books of account as required by the law were maintained by the appellant. Further, they have stated that the books of

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account gave a true and fair view of the profit and loss account of the appellant for the period under consideration. Though the above observations of the special auditors were subject to the notes appended thereto whereby they clarified certain amounts which needed to be considered while computing the income, yet it cannot be said that the books of account were not maintained by the appellant property. There may be certain issues or discrepancies which needed to be considered while computing the income but that does not mean that the books of accounts be rejected in toto.

23.13 Further I noticed that the Assessing Officer has applied the average gross profit rate of assessment years 2010-11 and 2011-12. There is no reason why the gross profit rate of subsequent years should be applied to the preceding years. Simply because G. P. Rate of Subsequent years is higher it cannot be a ground for enhancing the GP rate of earlier years.

26. Further this Tribunal in assessee's own case vide order dated 20.02.2005 in ITA No. 6135/Del/2014 and ITA no. 5829/Del/2014 has observed as under: 12 ITA No. 4641& 4646/Del/2014 (AY 2005-06)

23.6. Our findings

On consideration of rival contentions we are of the considered view that the rejection of books of accounts is bad in law for the following reasons:

The assessee has maintained regular books of accounts and these have been audited by the tax auditors as well as by the special auditors appointed by the AO. Both these auditors have certified that the assessee was maintaining proper books of accounts. The AO seems to have based his opinion on the report of KPMG India. This report was a due diligence report obtained by the

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prospective investors. Such due diligence reports cannot lead to formation of an opinion that proper books of accounts have not been kept by the assessee. The assessee also maintained quantitative details of inventory. Similarly on the issue of swap units while disposing of ground nos. 8, 9 and 10, we have dealt with the issue and from our observations it is clear that this cannot be a basis for rejection of books of accounts. Addition on account of difference in credit notes cannot also form a ground for rejection of books of accounts for the reason that we have come to a conclusion that the addition itself is arbitrary and deleted the same. In fact the AO relied on these very books of accounts and to make huge additions during the course of assessment. On the one hand the AO seeks to rely on the books of accounts and on the other hand the AO rejects the books of accounts for estimated profits on adhoc basis. This in our view is not permissible.

The rejection of the books of accounts cannot be done in a light hearted manner. Section 44AA of the Income Tax Act mandates that every person carrying on business or profession shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute this income in accordance with the provisions of this Act. Thus, the requirement is to maintain such books of accounts as may enable the Assessing Officer to compute its total income. It is only when the books of accounts are 13 ITA No. 4641& 4646/Del/2014 (AY 2005-06) maintained in such a manner which makes it difficult for the Assessing Officer to compute its total income then only the books of accounts can be rejected. This is not the case here. Even if, there are certain discrepancies or errors which are not so crucial so as to disable the Assessing Officer to compute the total income of the appellant, then the books of account cannot be rejected but such discrepancies can be taken into consideration while computing the total income.

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Further, the rejection of books of accounts is not justified when mistakes in the books of accounts are of general or technical nature. The remarks given by the Assessing Officer in the appellant's case are neither sufficient for rejecting the duly audited books of accounts nor the Assessing Officer has shown that how these remarks would have a bearing in giving a finding that true income cannot be computed on the basis of books of accounts maintained by the appellant on day to day basis in regular course of business.

As already stated there is no ground whatsoever which justifies the AO to reject the books of accounts. Thus we agree with the contentions of the assessee and revert the order of the AO as upheld by the DRP. Accordingly, this ground of appeal of the assessee is allowed.

As we have held that the rejection of books of accounts is bad in law the question of enhancement of gross profit on estimate basis does not arise. The AO is directed to adopt the profits as declared by the assessee in its books of accounts. In view of the above, we delete this addition and this ground of appeal of the assessee is allowed.

27. Respectfully following the same we do not find it necessary to interfere with findings of Ld. CIT(A) has same is upheld. Accordingly, this ground raised by revenue stands dismissed.”

69.6 On going through the above fact we are of the view that the learned CIT (Appeals) was justified in deleting the addition made by the Assessing Officer. Further this issue is squarely covered by the order of the ITAT in assessee's own case. Accordingly, we reject this ground of the Revenue.

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70. Ground no. 11 relates to disallowance of deduction under Section 80-IC.

70.1 The learned CIT [DR] relied on the order of the Assessing Officer, while the learned AR relied on the order of the learned CIT (Appeals). The learned AR further stated that after giving a categorical finding as to the eligibility of the assessee with reference to deduction under section 80IC of the Act, the learned CIT (Appeals) has rightly directed the Assessing Officer to compute the said deduction.

70.2 We have considered submissions of the parties and perused the record. From the perusal of the order of the learned CIT (Appeals), we observe that he has dealt with every aspect of the eligibility of deduction under section 80IC and then held that the assessee is eligible for the same. Further direction to the Assessing Officer has been given in Para 26.19, which reads as under :-

“ 26.19 In view of the above, I direct the Assessing Officer to re-compute the allocation of common expenses. The expenses on account of target incentive, research and development expenses and special trade discounts be excluded. Expenses in regard to the finance cost be allocated after excluding in the ratio of capital employed. Accordingly this ground of appeal is partly allowed. ”

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70.3 Since we do not find any infirmity in this regard in the order of the learned CIT (Appeals) the ground raised by the Revenue is rejected.

71. Ground no. 12 is challenging the non-conducting of further enquiry by the learned CIT (Appeals). We do not find from the perusal of order of Assessing Officer as well as CIT (Appeals) that there was any need for the learned CIT (Appeals) to conduct further enquiry as all the documents and evidences were already produced before the Assessing Officer. Therefore, this ground of the Revenue is rejected.

72. Ground no. 13 is challenging the admission of additional evidences without remand report. From the perusal of order of both Assessing Officer as well as CIT (Appeals) we do not find any additional evidence was filed by the assessee before the learned CIT (Appeals). Since there was no additional evidence, the question of admission of the same and sending the matter to the Assessing Officer for remand report does not arise. The ground raised by the Revenue is rejected.

73. Ground no. 14 is general in nature and need no adjudication.

74. The appeal is thus dismissed.

75. In summary appeal preferred by the assessee is partly allowed and that of Revenue is dismissed.

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AND I. T. Appeal Nos. 4650/Del/2014 – [By the Revenue] :

76. The present cross appeals have been filed by the Revenue as well as assessee against the order dated 23.06.2014 passed by the learned CIT (Appeals).

77. In the appeal filed by the Revenue, Revenue has raised the following grounds :-

“1. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.89,86,600/- made by the Assessing Officer on account of disallowance of Sundry Creditors.

2. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.20,00,000/- made by the Assessing Officer on account of disallowance of advertisement expenses.

3. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.4,29,049/- made by the Assessing Officer on account of disallowance of R & D Expenses.

4. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of

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Rs.5,00,000/- made by the Assessing Officer on account of disallowance of miscellaneous expenses.

5. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.2,14,74,439/- made by the Assessing Officer on account of disallowance u/s 40(a)(ia).*

6. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.6,70,942/- made by the Assessing Officer on account of disallowance of bonus.*

7. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.16,00,000/- made by the Assessing Officer on account of prior period expenses.*

8. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.41,34,000/- made by the Assessing Officer on account of disallowance of scrap sales.*

9. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.5,46,23,767/- made by the Assessing Officer on account of disallowance of swap units at 2%.*

10. *The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of*

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Rs.8,81,95,000/- made by the Assessing Officer on account of seized documents.

11. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.38,19,89,577/- made by the Assessing Officer on account of disallowance of G.P. rate.

12. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in holding that assessee is eligible for deduction u/s 80IC and directing the A.O. to re-compute the disallowance u/s 80IC.

13. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in not invoking her power under Seciton 250(4) to cause an enquiry on the issue of bogus purchases so as to bring on record all material and relevant facts.

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

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

78. In the appeal filed by the assessee, following grounds have been raised :-

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“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reference made for special audit under section 142(2A) is bad in law.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and the assessment made in consequence thereto

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are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed under section 153A is untenable in the eye of law as the Act does not give power to the AO to re-appraise and/or review the already settled issues and the assessment order passed under section 143(3) of the Act.*

7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the addition of Rs.10,00,000/- made by the AO on account of noting in seized documents.*

(ii) *That the above addition has been confirmed by arbitrarily rejecting the evidences and explanation of the assessee.*

8. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

Departmental appeal – ITA No. 4650/Del/2014 :

79. Ground No. 1 is with regard to the addition of Rs.89,86,600/- made by the Assessing Officer on account of difference in creditors ledger account and confirmations filed by the parties, which was deleted

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by the learned CIT (Appeals). The Assessing Officer made this addition on account of difference in creditors ledger account in the assessee's books and the confirmation filed by these parties. The assessee explained the reconciliation difference before the Assessing Officer. However, disregarding the same, the Assessing Officer preferred to make the addition.

79.1 Before the learned CIT (Appeals) also assessee explained the difference between the ledger account and the confirmation filed by these parties. Considering the same the learned CIT (Appeals) deleted the addition.

79.2 The learned CIT [DR] relied on the order of the Assessing Officer.

79.3 The learned AR, during the course of hearing before us, submitted at the outset that similar reconciliation of accounts were also there in assessee's own case for assessment year 2011-12 wherein the issue has been decided in favour of the assessee by the order dated 20.02.2015 passed by the ITAT, "I" - Bench, Delhi vide ITA Nos. 6135 and 5829/Del/2014.

79.4 We have considered the arguments advanced by the parties and perused the record. On perusal of the order of the ITAT in assessee's own case for assessment year 2011-12 we observe that similar issue has also arisen in that case which was decided in favour of the assessee

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by the ITAT. The relevant findings in this regard are at Para 18.6, which read as under :-

“18.6. Our findings :

This addition has been made by the AO on mere surmises without verifying the explanations and evidences filed by the assessee. Merely because there are certain variations in reconciliation on accounts with three parties, variations are treated as income. The assessee has placed a copy of a note giving reconciliations on accounts with these parties at page 2410 of the paper book. It is also claimed that there are factual errors in the case of Cargo Planners and as per party account it is Rs. 2,28,30,232/- and not Rs. 22,83,232/- as mentioned in the assessment order. Such silly type of mistakes have been made a basis for the addition, without considering the submissions of the assessee. As the accounts stand fully reconciled, we are of the considered opinion that no addition can be sustained on this ground. Thus we delete the addition and allow this ground of the assessee.”

79.5 We also observe that a similar issue had also arisen in assessee's own case for assessment year 2008-09 in the appeal filed by the department. Since no distinguishing facts were brought to our notice, respectfully following the order of the coordinate bench of the ITAT we hereby dismiss this ground raised by the Revenue.

80. Ground no. 2 refers to disallowance of Rs.20,00,000/- made by the Assessing Officer on account of advertisement expenses. During the course of the assessment the Assessing Officer observed that assessee vide its letter dated 07.11.2013 has submitted that the bills relating to advertisement expenditure were not traceable but all payments were made through bank. Accordingly, the Assessing Officer

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disallowed a sum of Rs.20,00,000/- out of a total expenditure of Rs.5,27,38,414/-.

80.1 The learned CIT(A) deleted the disallowance stating that the AO had made adhoc disallowance without bringing any specific instance of disallowable expenditure as the books of the assessee were audited and no adverse comment or remarks were made by the auditors including the special auditor. The learned CIT(A) deleted the disallowance of Rs.20,00,000/-.

80.2 The learned CIT [DR] relied upon the order of the Assessing Officer.

80.3 The learned AR, at the outset, submitted that this issue is also covered by the order of the Delhi I Bench of the ITAT in assessee's own case in ITA Nos. 6135 and 5829/Del/2014 dated 20.02.2015 whereby a similar ad-hoc disallowance made by the AO was said to be not tenable by the ITAT.

80.4 We have considered the submissions of the parties and perused the record. On perusal of the order of the ITAT, we observe that the issue of disallowance of advertisement expenses on the similar ground was there before the ITAT which was deleted by the CIT (Appeals) and in appeal by the Revenue the ground was dismissed by the ITAT stating as follows :-

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“36.1. Our finding: This ground is on disallowance of advertising expenditure on ad-hoc basis. This disallowance is made on an adhoc basis. The books of accounts of the assessee were subject to special audit there was no adverse comment made by the special auditors on the accident claim. Under these circumstances an adhoc disallowance of ₹ 2 crores is uncalled for. The AO has accepted the directions of the DRP but the Revenue has filed this appeal. The books of accounts of the assessee are audited and no adverse comments have been given by the auditor. These books of accounts have also been provided before the Assessing Officer. As the Assessing Officer has not given any specific instance or valid reason for making this ad-hoc disallowance we sustain the finding of the DRP and dismiss this ground of the Revenue. ”

80.5 Since no distinguishing facts were brought to our notice, respectfully following the order of the coordinate bench of the ITAT we hereby reject this ground raised by the Revenue.

81. Ground No. 3 relates to disallowance of Rs.4,29,049/- on account of R & D expenses. The Assessing Officer disallowed the R & D expenses of Rs.4,29,049/- claimed by the assessee stating that these expenses pertain to samples only and since no such bills have been provided the disallowance was made.

81.1 The learned CIT (Appeals) deleted the disallowance stating that assessee had submitted the details of R & D expenditure before the

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Assessing Officer vide its letter dated 07.10.2013. It was observed by the learned CIT (Appeals) that the allegation of the Assessing Officer that assessee did not submit the details is factually incorrect as all the details were submitted in the course of assessment proceedings and were placed in the Paper Book. Since the books of accounts of the assessee were audited and auditors including the special auditor did not give any adverse comment or remarks on this issue, the addition was deleted by the learned CIT (Appeals).

81.2 The learned CIT [DR] relied on the order of the Assessing Officer.

81.3 The learned AR relying on the order of the learned CIT (Appeals) stated that since all the details were filed before the Assessing Officer vide letter dated 07.10.2013 the said disallowance is not called for.

81.4 We have considered the submissions made by the parties and perused the record. On perusal of the order of the learned CIT (Appeals) we observe that the allegation of the Assessing Officer of the assessee not filing details of R & D expenditure is factually incorrect as details were submitted by the assessee vide its letter dated 07.10.2013 which has been reproduced by the learned CIT (Appeals) in its order. The operative part of the first appellate order in this regard is at Para 45, which reads as under :-

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“45. I have considered the submission of the appellant and perused the assessment order and the documents on record. On going through the same, it is evident that the appellant vide letter dated 7.10.2013 submitted the details of the research and development expenses. The allegation of the Assessing Officer that the appellant did not submit the details is factually incorrect as all the details submitted in the course of assessment proceedings and were placed in the paper book and submitted in the course of the appeal proceedings. Moreover the books of account of the appellant company were audited and the auditors including the special auditor did not give any adverse comment or remarks on this issue. Therefore, considering all these facts, the Assessing Officer was not justified in making the impugned addition. Accordingly, the addition of Rs.4,29,049/- is deleted.”

81.5 We do not find any infirmity in the order of the learned CIT (Appeals) in this regard and prefer not to interfere with the same. The ground of appeal raised by the Revenue is thus rejected.

82. Ground No. 4 is with regard to disallowance of Rs.5,00,000/- made by the Assessing Officer on account of miscellaneous expenditure. The Assessing Officer made an ad-hoc disallowance of Rs.5,00,000/- out of the miscellaneous expenditure claimed by the assessee stating that the submission of the assessee that all bills are not traceable though all payments have been made through bank is not sustainable.

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82.1 The learned CIT (Appeals) deleted the addition stating that the disallowance of any expenditure on ad-hoc basis without pointing out any specific instance of the inadmissible expenditure is not tenable especially in view of the fact that nothing adverse was pointed out by the auditors including the special auditor on this account.

82.2 The learned CIT [DR] relied on the order of the Assessing Officer.

82.3 The learned AR reiterated the submissions made before the learned CIT (Appeals) and also relied on the order of the ITAT in assessee's own case for assessment year 2011-12 whereby at Para 36.1, while dealing with the issue of ad-hoc disallowance of advertisement expenditure the ITAT observed that no adverse comments having been made by the special auditor and books of account having been duly produced before the Assessing Officer such ad-hoc disallowance is not sustainable.

82.4 We have considered the rival submissions and perused the record. It is an undisputed fact that assessee has produced the books of accounts before the Assessing Officer and the Assessing Officer had not given any specific instance or valid reason for making ad-hoc disallowance. Books of the assessee are duly audited and respectfully following the order of the ITAT in assessee's own case we hereby dismiss the ground raised by the Revenue.

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83. Ground No. 5 is on account of disallowance of Rs.2,14,74,439/- made by the Assessing Officer invoking the provisions of section 40(a)(ia) of the Act. With regard to certain expenditure since assessee has not deducted tax at source, as per section 40(a) (ia), the Assessing Officer made disallowance of Rs.2,14,74,439/-.

83.1 The learned CIT (Appeals) deleted the disallowance on the basis of the fact that provisions of Section 40(a)(ia) were invoked by the Assessing Officer on account of the deduction of TDS at lower rate. The learned CIT (Appeals) was of the view that on the payment of Rs.2,14,74,439/- the tax at the rate of 1% was deducted by the assessee whereas as per section 194C the tax was to be deducted at the rate of 2%. Relying on the decision of the Hon'ble Calcutta High Court in the case of CIT Vs. S.K. Tekriwal 361 ITR 432, the learned CIT (Appeals) deleted the disallowance.

83.2 The learned CIT [DR] relied on the order of the Assessing Officer.

83.3 The learned AR during the course of hearing before us stated that this issue is also covered in favour of the assessee by the order of the ITAT, Delhi Bench in assessee's own case for assessment year 2011-12 in I. T. Appeal Nos. 6135 and 5829/Del/2014 dated 20.2.2015.

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83.4 An alternate submission made by the learned AR was that subsequent to the amendment made by the Finance Act, 2012 to section 201(1), wherein a proviso was inserted the assessee cannot be treated as an assessee in default if the deductee has furnished return of income under section 139 of the Act. It was submitted that assessee has submitted the details whereby all the three deductees are Income tax payees.

83.5 We have heard the rival submissions and perused the record. The assessee had submitted the details of all the deductees before the Assessing Officer. However, a certificate prescribed under section 201(1), specifically the proviso provided thereunder, is also required to be filed by the assessee in such case.

83.6 During the course of hearing the learned CIT [DR] has submitted that he has no objection if the issue is remitted to the Assessing Officer to make necessary compliance by filing the prescribed certificate about the deductees having filed the return of income, paying taxes thereon and the amount on which TDS was liable to be deducted, has been included in their income.

83.7 Under these circumstances, this issue is remitted to the file of the Assessing Officer for necessary compliance as required under section 201(1) of the Act. The ground is thus allowed, for statistical purposes.

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84. Ground No. 6 relates to addition of Rs.6,70,942/- made by the Assessing Officer under section 43B on account of bonus payable. The Assessing Officer made the disallowance of bonus amounting to Rs.6,70,942/- stating that the amount of bonus has been paid beyond the due date of filing of return. Therefore, the same is not allowable under section 43B of the Act.

84.1 The learned CIT (Appeals) deleted the said disallowance stating that in fact the amount of Rs.6,70,942/- was paid before the due date of filing the return.

84.2 The learned CIT [DR] relied on the order of the Assessing Officer.

84.3 The learned AR stated before us that the learned CIT (Appeals) has given a categorical finding with regard to the fact that the amount was in fact paid before the due date of filing the return. Further, it was stated that the issue is also covered in favour of the assessee by the order of the ITAT in assessee's own case for assessment year 2011-12.

84.4 We have considered the submissions of the parties and perused the record. On perusal of the order of the ITAT in assessee's own case for assessment year 2011-12 we observe that on the similar issue the verdict given by the ITAT is at Para 17.6, which reads as under :-

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“17.6. Our findings :

The AO has not bothered to carry out the directions of the DRP. The claim made by the assessee is as per law. It only required verification of the facts as submitted by the assessee. This is not done by the AO. Under these circumstances we delete the addition and set aside the matter to the file of the AO. The AO will verify the claim of the assessee and whether the disallowance has to be restricted to ₹ 24,40,854/- is correct or not. In the result this ground is allowed for statistical purposes. ”

84.5 Respectfully following the order of the coordinate bench of the ITAT we also like to remand this issue back to the file of the Assessing Officer to verify the same as per the direction given by the ITAT. The ground No. 6 is thus allowed, for statistical purposes.

85. Ground no. 7 relates to disallowance of Rs.16,00,000/- made by the Assessing Officer on account of prior period expenses. The Assessing Officer disallowed the amount of Rs.16,00,000/- paid by the assessee on account of LIC premium for two years in advance holding the same to be prior period expenses.

85.1 The learned CIT (Appeals) deleted the disallowance stating that since the premium paid by the assessee was for the period 12.3.2008 to 11.3.2009 and the payment was made on 31.3.2009 the same cannot be said to be prior period expenses.

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85.2 The learned CIT [DR] relied on the order of the Assessing Officer.

85.3 The learned AR stated before us that the learned CIT (Appeals) has given a detailed finding in his order at Para 54 with regard to the fact that the amounts paid relate to financial year 2008-09 and not financial year 2007-08 and accordingly the expenditure incurred are not in the nature of prior period expenditure.

85.4 We have considered submissions of the parties and perused the record. The learned CIT (Appeals) has given a categorical finding that the premium was paid for the period from 12.3.2008 to 11.3.2009 and the payment was made as on 31.3.2009. These facts were not controverted by the learned CIT [DR] during the course of hearing before us also. The findings of the learned CIT (Appeals) in this regard are at Para 54 which read as under :-

“54. I have considered the submission of the appellant and perused the assessment order and the documents on record. On going through the same, I find that this issue has been clarified by the appellant to the Assessing Officer vide letter dated 8.11.2013 / 11.11.2013. It was clarified that this was a premium paid to the insurance company and this premium was paid for the period from 12.03.2008 to 11.03.2009. This payment was made on 31.03.2009. The whole confusion had arisen because in the narration it was stated that this was a premium paid for financial

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year 2007-08 as against correct financial year 2008-09. This premium is related to the financial year 2008-09 and hence cannot be classified as prior period expenses. I have gone through the letters filed by the appellant as well as evidence in support thereof. On going through the same, I find that this was a premium paid for the period 12.03.2008 to 11.03.2009 and the payment was made on 31.03.2009. In view of these facts, the Assessing Officer was not justified in disallowing the same as prior period expenses. Accordingly this addition of Rs.16,00,000/- is deleted. ”

85.5 As we find no infirmity in the order of the learned CIT (Appeals) in this regard, the ground raised by the Revenue is rejected.

86. Ground no.8 is regarding deletion of addition of Rs.41,34,000/- on account of scrap sale. It was submitted by the learned CIT [DR] that the learned CIT (Appeals) was not proper in deleting the addition made by the Assessing Officer on account of the sale of scrap. The Assessing Officer has given very detailed reasoning in the assessment order which has been ignored by the learned CIT (Appeals) while deleting the addition.

86.1 In reply, it was submitted by the learned AR that this addition is made arbitrarily without there being any evidence of any sale of scrap during the year under consideration. The learned CIT(A) has examined all the facts and has rightly come to a conclusion that this addition is made merely on the basis of surmises without bringing on record any

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evidence of any sale of scrap during the year. Further, it was submitted that similar additions were made in assessment year 2006-07 and assessment year 2007-08 also.

86.2 We have considered the submissions of the parties and perused the assessment order and the order passed by the learned CIT (Appeals). On going through the same we note that there is no evidence of any sale of scrap during the year under consideration. The learned CIT (Appeals) in this year has granted relief to the assessee on the basis of his own detailed notings and finding in earlier years. The learned CIT (Appeals) has examined this issue and has rightly held that in the absence of any material being brought on record this addition is untenable.

86.3 We are in agreement with the finding of the learned CIT (Appeals). He has rightly come to a conclusion that in the absence of any material in the year under consideration this addition cannot be made. Further, we have also confirmed the order of the learned CIT (Appeals), in this regard, in earlier years also. Accordingly we uphold the order of the learned CIT (Appeals) deleting this addition and this ground of the Revenue is rejected.

87. Ground No. 9 is regarding deletion of addition of Rs.5,46,23,767/- made by the AO on account of swap units. It was fairly conceded by the learned CIT [DR] that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own

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case in assessment year 2011-12. It is observed that the learned AO has made the addition assuming that assessee would have received 2% of the purchases made by it as swap units and would have sold the same outside the books of account. The learned CIT(A) has deleted the addition by holding that there was absolutely no material to hold that assessee had received such unaccounted swap units over and above what has been accounted for in the books of account and further there is no material whatsoever that assessee has made any sale of such units outside the books of accounts. Similar additions were made in assessee's own case in assessment year 2011-12. The additions so made by the Assessing Officer were deleted by the ITAT. The findings of the ITAT in this regard are as under :-

“The entire addition in this case is made by the AO on the sole ground that the confirmations given by various parties, were on plain paper and not on letterheads. These are all confirmations filed by foreign suppliers. The assessee had submitted arguments including purchase invoices, bill of entry, custom clearance, stock entries etc. The confirmation in question from these foreign parties are on additional documentary evidences. In our view these confirmations cannot be summarily rejected by the AO. The AO, in our view, should not have rejected these confirmations without enquiry. The AO had the address of these parties, the telephone numbers, e-mail addresses. The format in which the confirmations were given by foreign parties, is not within the control of the assessee. We further note that the assessee has submitted all evidences which included third party/government evidences in the form of bill of entry, custom-attested purchase invoices. All these purchases are from foreign suppliers and are liable for custom duty. All units received by way of import have to be declared in the bill of entry. The assessee has provided books of accounts and also the supporting evidences. The procedure explained by the assessee of accounting these units in respect of these vendors with whom there is an agreement of swap

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units is correct procedure and supported by custom attested invoices, bill of entry, etc. The DR during the course of hearing could not controvert the contention of the assessee. As regards the vendors with whom there is no such arrangement, we note that there is no evidence or material to even suggest that assessee would have received swap units. No material was found during search to this effect. We further note that before the DRP the assessee has also filed confirmation on the letterhead of these vendors. In view of the facts, the findings of the DRP are incorrect and against the facts on record. Under these circumstances, we are of the considered opinion that the addition in question is bad in law as it is made without any evidence. In the result this addition is deleted and these ground nos. 8, 9 and 10 of the assessee are allowed.”

87.1 We uphold the order of the learned CIT (Appeals) and this ground of appeal of the Revenue is rejected.

88. Ground No. 10 relates to addition of Rs.8,71,95,000/- made by the Assessing Officer on account of seized documents. The Assessing Officer made an addition of Rs.8,81,95,000/- on the basis of seized documents out of which an amount of Rs.8,71,95,000/- was deleted by the learned CIT (Appeals). In the ground raised by the Revenue the figure has been wrongly mentioned as Rs.8,81,95,000/-. The submission of the assessee before the learned CIT(A) was that the document on the basis of which the addition of Rs.8,71,95,000/- was made has been considered by the Assessing Officer while making assessment of Mr. Vikas Jain and on the basis of this document only an addition of Rs.2,09,50,000/- has been made in the hands of Mr. Vikas Jain vide order dated 28.3.2013. A copy of order was also placed on record.

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88.1 The learned CIT (Appeals) deleted the addition made in the hands of the assessee on the basis of the fact that the impugned document has already been considered in the case of Mr. Vikas Jain and the addition in pursuance to the same document has been made in his hand.

88.2 The learned CIT [DR] relied on the order of the Assessing Officer while learned AR placed its reliance on the order of the learned CIT (Appeals).

88.3 We have considered the submissions of the parties and perused the record. On perusal of the order of the learned CIT (Appeals) we find that he has given a categorical finding with regard to the fact that the same document has been considered at the time of assessment of Mr. Vikas Jain and the addition has been made substantively in his hand. Therefore, addition made on the basis of the same document in the hands of the assessee will amount to double addition. The findings of the learned CIT (Appeals) are at Para 30.2, which reads as under :-

“30.2 Pertaining to the second addition of Rs.8,71,95,000/- I find these documents i.e. page 103-104 of Annexure A-12 were considered on substantive basis in the assessment of Sh. Vikas Jain and the addition on the basis of these documents was made in his hands, and accordingly the contention of the appellant is correct that

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such addition cannot be made in the hands of the appellant company. In support of the same, the appellant submitted a copy of the order passed u/s 153A/143(3), in the case of Sh. Vikas Jain dated 28.03.2013 for the assessment year 2009-10 by DCIT, Central Circle-16, New Delhi. Accordingly, I find no reason to hold the same transaction in the hands of the appellant company, when a substantive addition was made in an order dated 28.03.2013 in the case of Sh. Vikas Jain. Accordingly, the addition made by the appellant amounting to Rs.8,71,95,000/- is deleted as it would also amount to double addition. ”

88.3 Since we find no infirmity in the order of the learned CIT (Appeals) the ground raised by the Revenue is hereby rejected.

89. Ground no. 11 is regarding addition of Rs.38,19,89,577/- made by the Assessing Officer on account of gross profit rate. This ground is the same as raised in the preceding assessment year 2006-07, whereby we have upheld the order of the learned CIT (Appeals) deleting the addition on this account. Since the facts and reasoning for making this addition is same, following our order for assessment year 2006-07 we uphold the order of the learned CIT (Appeals) and accordingly this ground of the Revenue is dismissed.

90. Ground No. 12 is with regard to deduction under section 80IC. The Assessing Officer disallowed the amount of Rs.9,58,56,777/- claimed by the assessee under section 80IC of the Income Tax Act.

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The learned CIT (Appeals) allowed the claim of the assessee. However, the learned CIT (Appeals) directed the Assessing Officer to compute the claim under section 80IC after properly allocating the expenses to work out the quantum of claim of the assessee without prejudice to its eligibility.

90.1 The learned CIT [DR] relied on the order of the Assessing Officer while the learned AR submitted that the learned CIT (Appeals) has allowed the claim of the assessee only on the basis of documents filed before the Assessing Officer and then held the assessee to be eligible for the deduction under section 80IC.

90.2 We have considered submissions of the parties and perused the record. It is a fact on record that the learned CIT(A) has elaborately dealt with all the documents filed by the assessee before the AO and it is also a fact that the AO has not pointed out any discrepancy, deficiency or incorrect claim by the assessee. However, since the matter related to allocation of expenses between exempted units and non-exempted units, only in this regard to work out the quantum of claim of deduction, the direction was given to the Assessing Officer. We do not find any infirmity in the direction so given by the learned CIT (Appeals) and hence the ground raised by the Revenue in this regard is rejected.

91. Ground no. 13 is regarding the learned CIT (Appeals) not causing an enquiry under section 250(4) on the issue of bogus purchases. During

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the course of the hearing the learned CIT [DR] could not substantiate with reference to which the learned CIT(A) ought to have carried out the enquiry. In the absence of any specific contention of the learned CIT [DR] on this issue the same is rejected.

92. Ground no. 14 is general in nature and therefore needs no adjudication.

93. In result appeal is partly allowed.

Assessee's Appeal – ITA No. 4644/Del/2014 :

94. The learned AR preferred not to press grounds Nos. 1 to 6. Therefore, grounds Nos.1 to 6 are dismissed as not pressed.

95. Ground no.7 relates to the addition of Rs.10,00,000/- made by the Assessing Officer on the basis of seized documents. The Assessing Officer has made addition of Rs.10,00,000/- on the basis of seized documents. As per Assessing Officer the explanation of the same could not be given by the assessee.

95.1 The learned CIT (Appeals) also confirmed the addition stating that the argument of the assessee that the seized documents contain only stray noting and do not belong to the assessee cannot be relied upon in the absence of any evidence filed by the assessee in this regard.

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95.2 The learned AR at the time of hearing before us took us to the copy of the seized document placed at paper book Pg. 97 and stated that the document does not belong to the assessee and as such no addition on the basis of this loose paper found during the course of search without any corroborative evidence can be made. Reliance was placed on number of judgments including :-

- i) CIT vs. Babu Mohan Lal Arya Smarak Educational Trust, (High Court of Allahabad), ITA No. 303 of 2013 dated 7.11.2013;
- ii) ACIT vs. Vatika Greenfield (P) Ltd., ITAT Delhi (2009) 121 TTJ 208 Delhi;
- iii) ACIT vs. Dr. Kamla Prasad Singh 3 ITR 533 (2010) ITAT Patna Bench;
- v) CIT vs. Khosla Ice & General Mills, Punjab & Haryana High Court 2013 (1) TMI 451;
- vi) ACIT vs. Buldana Urban Co-op. Credit Society Ltd. 23 ITR (Trib) 411;
- vii) Alliance Hotels vs ACIT 142 ITD 270 (Mumbai Tribunal).

95.3 The learned CIT [DR] relied on the order of the lower authorities.

95.4 We have considered the submissions of the parties and perused the record. The explanation of the assessee with regard to the impugned

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document is that it did not belong to it and there were stray noting on this document. We find that the addition has been made by the AO on the basis of this document without any corroborative evidence. There is no name of the assessee in this document, no date is given there and nobody has signed the same. As stated by the assessee this document rightly appears to contain some stray notings. In our view no addition on the basis of such document can be made. Reliance placed by the learned AR on the order of the coordinate bench of the Delhi Tribunal in the case of Vatika Greenfield (P) Ltd. (Supra) is not out of place, whereby it has been held that the presumption is envisaged in section 292C is limited. The correctness of the document found at the time of search or survey to that presumption has not been extended by the statute to be presumed to be the income of the assessee. In this view of the matter, we hereby direct the Assessing Officer to delete the addition. Hence this ground of the assessee is allowed.

96. Ground No. 8 is general in nature and need no adjudication.

I. T. Appeal Nos. 4645/Del/2014 – [By the assessee] :

AND I. T. Appeal Nos. 4651/Del/2014 – [By the Revenue] :

97. The present cross appeals have been filed by the Revenue as well as assessee against the order dated 23.06.2014 passed by the learned CIT (Appeals).

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98. In the appeal filed by the Revenue, Revenue has raised the following grounds :-

“1. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.91,66,859/- made by the Assessing Officer on account of disallowance of TDS.

2. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.30,00,00,000/- made by the Assessing Officer on account of disallowance of excess warranty provision.

3. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.8.219 crore made by the Assessing Officer on account of disallowance of prior period expenses.

4. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.32,16,00,000/- made by the Assessing Officer on account of disallowance of spare parts on free of cost.

5. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.1,80,00,000/- made by the Assessing Officer on account of disallowance of scrap sale.

6. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of

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Rs.28,93,51,616/- made by the Assessing Officer on account of disallowance of credit notes.

7. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.50,00,000/- made by the Assessing Officer on the basis of seized documents.

8. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.1,00,00,000/- made by the Assessing Officer on account of disallowance of advertisement expenses.

9. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.27,70,000/- made by the Assessing Officer on account of disallowance of IPO expenses.

10. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.6,65,66,385/- made by the Assessing Officer on account of disallowance of sundry creditors.

11. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in deleting the addition of Rs.1,39,80,000/- made by the Assessing Officer on account of disallowance of payment to M/s Grant Thornton.

12. The Commissioner of Income Tax (Appeals) has erred in law and on facts as well in not invoking her power under

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Seciton 250(4) to cause an enquiry on the issue of bogus purchases so as to bring on record all material and relevant facts.

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

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

99. In the appeal filed by the assessee, following grounds have been raised:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)/[CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the appellant and the assessment

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framed under Section 153A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reference made for special audit under section 142(2A) is bad in law.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and the assessment made in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed under section 153A is untenable in the eye of law as the Act does not give power to the AO to re-appraise and/or review the already settled issues and the assessment order passed under section 143(3) of the Act.*

7(i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the*

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addition of Rs.25,00,000/- made by the AO on account of noting in seized documents.

(ii) That the above addition has been confirmed by arbitrarily rejecting the evidences and explanation of the assessee.

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition of an amount of Rs.5,24,450/- invoking the provisions of section 14A of the Act.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.27,38,177/- made by the AO on account of bonus expenses invoking the provision of section 43B of the Act.*

10. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

Departmental appeal – ITA No. 4651/Del/2014 :

100. Ground no.1 is with regard to disallowance of Rs.91,66,859/- made by the Assessing Officer by invoking the provisions of section 40(a) (ia) of the Act. The addition was made by the Assessing Officer in three parts –

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i)	Payment to M/s Colormagix Prints P. Ltd.	Rs.23,77,066.00
ii)	Payment / credit to various parties without deducting tax	Rs.50,36,162.00
iii)	Non-deduction of TDS @ 20%	<u>Rs.17,53,631.00</u>
Total :		<u>Rs.91,66,859.00</u>

100.1 Since the assessee had not deducted TDS out of these payments the disallowance was made by the AO under section 40(a)(ia) of the Act.

100.2 Before the learned CIT (Appeals) the assessee contended that with regard to the payment made to M/s Colormagix Prints P. Ltd. the assessee had in fact deducted TDS from the payment made to said party and duly deposited the same in the government account. The TDS return showing the relevant entries was filed before the learned CIT(A). It was also contended that during the filing of fourth quarter TDS return there are some bills aggregating to Rs.17,97,003/- and accordingly TDS of Rs.35,939/- was inadvertently credited to M/s Colormagix Digital Prints Pvt. Ltd. instead of M/s Colormagix Prints Pvt. Ltd. Assessee had filed revised return and the mistake was rectified. The documents in the form of reconciliation, TDS certificate with ledger account of Colormagix Prints Pvt. Ltd., ledger account of Colormagix Prints Pvt. Ltd. and original TDS certificate as well as revised TDS certificate of Colormagix Prints Pvt. Ltd. and Colormagix Digital Prints Pvt. Ltd. were produced.

100.3 With regard to the second part of Rs.50,36,162/- the contention of the assessee before the learned CIT (Appeals) was that

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the TDS has been duly deducted out of these payments. The documentary evidences were duly filed before the learned CIT (Appeals).

100.4 With regard to the third part of Rs.17,53,631/- the assessee stated that since section 206AA was introduced with effect from 1st April, 2010 the same is applicable to the payments after 1st April, 2010 and since the impugned payments have been made before this date the provisions of this section cannot be applicable.

100.5 The learned CIT [DR] relied upon the order of the Assessing Officer.

100.6 The learned AR reiterating the submissions made before the learned CIT (Appeals) stated that assessee had filed complete reconciliation on account of payment to M/s Colormagix Prints Pvt. Ltd. whereby it becomes very clear that there is no failure on the part of the assessee to deduct TDS. With reference to the payments to various parties without deducting TDS, our attention was invited to paper book pages 1069 to 1230 containing ledger accounts, invoices and TDS certificates of all the parties vide reply dated 6.11.2013 before the Assessing Officer. For the remaining Rs.17,53,631/- it was reiterated that section 206AA being introduced with effect from 1.4.2010 the same is not applicable to the said amount.

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100.7 We have considered the submissions made by the parties and perused the record. We observe that assessee had filed complete reconciliation showing that there is no failure on its part to deduct TDS on payment to M/s Colormagix Prints Pvt. Ltd. With reference to the other parties also all relevant details and documents were duly filed by the assessee before the AO with its letter dated 6.11.2013. We also agree with the argument of the learned AR that section 206AA having been effective from 1.4.2010 cannot be made applicable to the payments made before the said date. The learned CIT (Appeals) after appreciating all these documentary evidences and explanation given by the assessee has given a detailed finding in this regard at Paras 39 to 39.4 of its order reading as under :-

“39. I have considered the submission of the appellant and perused the assessment order and the documents thereof. The disallowance has been made in respect of the following three payments:-

- i) Payment to M/s Colormagix Prints Pvt. Ltd. amounting to Rs.23,77,066/-*
- ii) Payment/credit to various parties without deducting thereon amounting to Rs.50,36,162/-*
- iii) Non deduction of TDS @ 20% as per section 206AA amounting to Rs.17,53,631/- (Para*

39.1 With regard to the first payment of Rs.23,77,066/- the appellant filed a complete reconciliation. As per this reconciliation there is no failure on the part of the appellant to deduct tax at source.

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It is a case where the Assessing Officer has overlooked the reply filed by the appellant and hence the disallowance made by him is not correct.

39.2 With regard to the amount of Rs.50,36,162/- again the appellant has deducted tax at source. The appellant has also filed copy of ledger account, invoice and TDS certificate of each of these parties vide letter dated 6.11.2013. The Assessing Officer overlooked this submission and hence the disallowance made by the Assessing Officer is not correct.

39.3 The third part is Rs.17,53,631/-. I notice that there is non-deduction of tax at source at the rate of 20% in view of the provisions of Section 206AA introduced by the Finance Act with effect from 1.04.2010. The contention of the appellant regarding the applicability of the provision in respect of payment made on or after 1.04.2010 is correct.

39.4 In view of the above facts and provisions of law, I hold that the addition made by the Assessing Officer amounting to R.91,66,859/- is unjustified and, therefore, the same is deleted. ”

100.8 We find no infirmity in the order of the learned CIT (Appeals) as the same is comprehensive and reasoned one. The same is upheld. In result the ground is rejected.

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101. Ground No. 2 is with reference to disallowance of Rs.30,00,00,000/- on account of excess warranty provision made by the Assessing Officer.

101.1 The assessee had made a provision for warranty in the year under consideration at Rs.75,00,00,000/-. The special auditor was of the view that the warranty provision should only be to the extent of Rs.40,00,00,000/- and proposed a disallowance of Rs.30,00,00,000/- on account of excess warranty. The Assessing Officer relying on the findings of the special auditor made the disallowance.

101.2 Before the learned CIT (Appeals) a detailed note on the basis of which the provision for warranty worked out was furnished. It was stated that the warranty provision has been estimated on a rational and scientific basis. The learned CIT (Appeals) has refer to the said method at para 26 of her order. After considering the method adopted by the assessee the learned CIT (Appeals) deleted the disallowance made by the Assessing Officer.

101.3 The learned CIT [DR] relied on the order of the Assessing Officer.

101.4 The learned AR stated before us that the provision for warranty has been credited by the assessee on the basis of a rational and scientific calculation. This estimated provision is computed on year to year basis since there is no doubt on the genuineness of the

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expenditure incurred by the assessee, no disallowance on account of excess provision can be made. Reliance in this regard was made on the following judgments :-

- i) High Court of Delhi Woodward Governor India Ltd. v. CIT [2013] 37 taxmann.com 419 (Del.);
- ii) Supreme Court of India Rotork Controls India (P.) Ltd. v. CIT [2009] 180 TAXMAN 422 (SC);
- iii) High Court of Delhi CIT v. Woodward Governor India Ltd. [2010] 195 TAXMAN 328 (Del.).

101.5 We have considered the submissions of the parties and perused the record. There is no doubt that the assessee has followed a systematic, scientific and rational method for computing the provision for warranty. The Assessing Officer has estimated the warranty provision on the basis of his own prudence. However, since the provision for warranty is just an estimation and the assessee having used a scientific basis for the same and there being no question imposed by the Assessing Officer on the genuineness of the said expenditure we do not find any reason for the Assessing Officer to tinker with the method adopted by the assessee on his own. We also agree with the reasoning given by the learned CIT (Appeals) that any adjustment on account of any excess provision or less provision will be subject matter of consideration in the year in which the expenditure is incurred. Even if the provision is disallowed in one year it will automatically lead to increase of expenditure in the next year. Thus, the net result otherwise on this account will be revenue neutral. Also in

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view of the judgments relied upon by the AR we are inclined to dismiss this ground of the Revenue.

102. Ground No. 3 relates to disallowance of prior period expenses amounting to Rs.8.219 crore. Out of the prior period expenses amounting to Rs.14,49,60,000/- an addition of Rs.8.219 crore was made by the Assessing Officer on account of warranty expenses.

102.1 Before the learned CIT (Appeals) the assessee contended that the warranty expenditure of Rs.8.219 crore was provided during the financial year 2008-09 as per the company policy. Since the expenditure was actually more than the provision the same has been debited in the year under consideration. This is in fact the expenditure of the year under consideration and incurred during the year. The learned CIT (Appeals) after considering the submission of the assessee deleted the said addition.

102.2 The learned CIT [DR] relied on the order of the Assessing Officer.

102.3 The learned AR stated before us that assessee had made provision for warranty in the preceding year and has incurred more expenditure on warranty during the year. The Assessing Officer has not verified the expenses on warranty incurred by the assessee and has also brought out any adverse finding.

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102.4 We have considered rival submissions and perused the record. We do not find any wrong in the argument raised on behalf of the assessee that if the expenditure incurred in a year is less than or more than the provision made in earlier year the difference cannot be termed as prior period expenditure. In this regard the learned CIT (Appeals) has giving findings at Para 32.3 of her order which read as under :-

“32.3 In terms of accounting standards and accounting policies, every person is required to make an estimation of provision in respect of liabilities to be incurred during the year based on the set parameters. In case, if the expenditure actually incurred subsequently is more or less than the said provision made, the difference amounts to income or expenditure of that year and it cannot be termed as prior period expenses. The appellant having made provision of warranty in the preceding year, and actually incurred more expenditure on warranty in the year under consideration, the same cannot be disallowed by the Assessing Officer. More so, the Assessing Officer did not verify the expenses on account of warranty incurred by the appellant and did not bring any adverse material on record. Accordingly, I hold that the Assessing Officer was not justified in holding the warranty expenditure as prior period expense and accordingly the addition made by the Assessing Officer amounting to Rs.8.219 cr. is deleted. Thus ground of appeal is partly allowed.”

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102.5 We do not find any infirmity in the order of the learned CIT (Appeals) in this regard and hence reject the ground raised by the Revenue.

103. Ground No. 4 is with regard to disallowance of Rs.32,16,00,000/- on account of spare parts on free of cost basis. The AO was of the view that huge expenses of Rs.32.16 crore have been claimed by the assessee on account of memory card, battery, charger, spares, etc. distributed free of cost to super distributors but assessee has failed to justify the said expenses with any evidence, much less the evidence showing business nexus.

103.1 Before the learned CIT (Appeals) the contentions raised by the assessee were that the assessee is making purchases of mobile phones and accessories. The phones so purchased are sold to various distributors. It was contended that there is no allegation that any of the purchases made by the assessee is not genuine. Similarly all the sales made by the assessee are through proper invoices and duly accounted for. The amount of Rs.32.16 crore consist of spares, dangler, SIM, posters, terminals for testing, charger, HF, battery and memory card. It was also contended that disallowance was made only in the absence of any documentary evidences in this regard. The assessee explained to the learned CIT (Appeals) that a detailed reply in this regard was given to the special auditor. A CD containing ledger account of spares and other items given during the year was also provided to the Assessing Officer. When the assessee has sold the mobile, the SIM card and battery has been inserted therein, it was contended that

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there cannot be a separate challan for transportation bill. It cannot be the case of the Assessing Officer that assessee had not sold the mobile phones.

103.2 The learned CIT (Appeals) after considering the submission of the assessee in detail deleted the addition.

103.3 The learned CIT [DR] relied on the order of the Assessing Officer

103.4 The learned AR reiterated the submissions made before the learned CIT (Appeals). It was contended that the allegation of the Assessing Officer that there was no supporting documents or evidence is factually incorrect as the assessee vide letter dated 7.11.2013 submitted the details of free of cost items provided during the year along with copy of the invoices of the same. The Assessing Officer has not brought any evidence to establish that the assessee has received any payment in excess from the distributors of spare parts. Therefore, the action of the learned CIT (Appeals) in deleting the addition is justified.

103.5 We have considered the submissions of the parties and perused the record. We observe that the learned CIT (Appeals) has considered the submissions of the assessee very elaborately. The relevant part of the same are considered at Para 23 to 23.7 which reads as under :-

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“23. I have considered the facts of the case, written submissions of the appellant, contents of the Assessing Officer on this issue and details submitted in the paper book. I also called for assessment record and perused it as well as the special audit report u/s 142(2A). The Assessing Officer made an addition on the basis of the observations made by the special auditor and also on the ground that the appellant failed to justify the said expenses with any evidence showing business expenses. From the facts, I find that this allegation was made on the basis that the appellant had supplied spare parts to the extent of Rs.32.16 crore free of cost to its distributors and that the appellant failed to provide evidence and justification for such free distribution.

23.1 The appellant in its submissions stated that the appellant was engaged in the business of mobile phones and accessories. The phones so purchased were sold to various distributors, and were duly recorded in the books of account of the appellant and there was no finding given either by the Assessing Officer or the special auditor that purchases were not genuine. Similarly, all sales were made through proper invoices by the appellant and were duly accounted for in the books. There is no comment or any material brought on record either by the Assessing Officer or the special auditor to state that the appellant made sales outside the books of account. The appellant was maintaining a stock record and quantitative records. During the course of the special audit the special auditor raised this issue regarding the stock of stores and spares to the extent of Rs.27.921 Crores. The appellant company clarified that the

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correct amount was Rs.32.16 Crore but not Rs.27.92 crore and comprised of 4 figures given as under:-

1.	Spares	Rs.2.70 Crores
2.	Dangler, SIM, Posters and Other terminals for testing	Rs.0.49 Crore
3.	Charger, HF, Battery	Rs.3.07 Crores
4.	Memory Card	<u>Rs.25.30 Crores</u>
Total		: Rs.32.16 Crores

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The appellant company further clarified that spares to the extent of Rs.2.70 Crores were used in repair as a part of warranty of mobile handsets. These spares were issued on challans and used by the authorized service centres. In this regard the appellant company has pointed out that as proof of using these spares in repairs the authorized service centres have sent shells of the damaged parts to the appellant company.

23.2 With regard to the distribution of posters, etc. amounting to Rs.0.49 crore, the same were issued to the marketing department for advertisement and marketing to the super distributors. The value of Rs.0.49 cr. was booked as expenditure in the financial year 2010-11 relevant to the assessment year 2011-12.

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23.3 With regard to the items/spares like charger, battery, memory card, it was explained that the appellant company while selling mobile handsets were required to insert SIM / memory card and the battery. The total cost of these memory cards, batteries, chargers, etc. was recovered in the form of selling price of the mobile handsets. The total cost of these items including memory card amounting to Rs.25.10 Crore and battery/charger amounting to Rs.3.67 Crore were duly recorded in the form of sale of mobile handsets to the distributors. Therefore, from the above facts and supporting evidences in the form of recording in the book of account and invoices, it cannot be said that the above items/spares were given free of cost of the distributors.

23.4 On receipt of the above reply, the special auditor further raised a query pertaining to the spares for repairs, publicity material and was apprehensive of possible leakage of revenue and observed as under:

“In the absence of any supporting documents, evidences being produced to us the revenue leakage cannot be ruled out in this regard.”

This apprehension was related to the material given to the distributors in the form of posters and other items to the extent of Rs. 0.49 Cr. and possible leakage on this account.

23.5 From the detail on record, further, it is noticed that in response to the show cause notice issued, vide letter dated 7.11.2013, the

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appellant submitted a detailed reply along-with a CD containing ledger account of spares and other items. It was explained that there were around 90,000 invoices through which the above items were given to the distributor. In the course of the assessment proceedings, copies of these invoices were also submitted in proof thereof, and also offered to furnish more invoices, if need be by the Assessing Officer.

23.6 Thus, the allegation of the Assessing Officer that the appellant had failed to provide any evidence and justification for supplying spare parts free of cost to the distributors is factually incorrect. It appears that the special auditor as well as the Assessing Officer did not appreciate the business of the appellant in the right perspective. The sales of mobile made by the appellant included SIM card and battery and no separate challan was made for transportation of the SIM card and the battery. The sale of mobile phones which includes SIM card and battery was duly accounted for in the books of account of the appellant. In the absence of any adverse material or document to establish that the appellant made sale of SIM card and battery out side the books of account, the Assessing Officer is unjustified and has no reason to draw a negative inference. In any case, even if the Assessing Officer held that spare parts were given free of cost to the distributors, yet the same would be an expenditure incurred by the appellant in the course of the business. The Assessing Officer did not bring any material or evidence on record to establish that the appellant company received payment from the

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distributors for supply of these spare parts and that such payments made were not accounted for. It is a matter on record that the appellant was searched u/s 132 and no incriminating material was found or seized to suggest that the appellant sold these spare parts and received payments from the distributors over and above than what was found accounted for in the books of account.

23.7 In view of the aforesaid discussion, without bringing any adverse material on record, the Assessing Officer is unjustified in making an addition of Rs.32.19 crores on the ground that the details were not furnished with evidence to substantiate the expenditure incurred by the appellant on the account. Accordingly, the addition of Rs.32.16 crore made by the Assessing Officer is deleted.”

103.6 We do not find any infirmity in the order of the learned CIT (Appeals) as it comprehensive and reasoned one and hence reject the ground raised by the Revenue.

104. Ground No. 5 is in relation to the addition of Rs.1,80,00,000/- made by the Assessing Officer on account of scrap sales. It was submitted by the learned CIT [DR] that the learned CIT (Appeals) was not proper in deleting the addition made by the Assessing Officer on account of the sale of scrap. The Assessing Officer has given very detailed reasoning in the assessment order which has been ignored by the learned CIT (Appeals) while deleting the addition.

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104.1 In reply, it was submitted by the learned AR that this addition is made arbitrarily without there being any evidence of any sale of scrap during the year under consideration. The learned CIT (Appeals) has examined all the facts and has rightly come to a conclusion that this addition is made merely on the basis of surmises without bringing on record any evidence of any sale of scrap during the year. Further, it was submitted that similar additions were made in the assessment year 2006-07, assessment year 2007-08 also.

104.2 We have considered the submissions of the parties and perused the assessment order and the order passed by the learned CIT (Appeals). On going through the same we note that there is no evidence of any sale of scrap during the year under consideration. The learned CIT (Appeals) in this year has granted relief to the assessee on the basis of his detailed findings given in earlier assessment years. The learned CIT (Appeals) has examined this issue and has rightly held that in the absence of any material being brought on record this addition is untenable.

104.3 We are in agreement with the finding of the learned CIT (Appeals). He has rightly come to a conclusion that in the absence of any material in the year under consideration this addition cannot be made. Further we have also confirmed the order of the learned CIT (Appeals) in this regard in earlier years also. Accordingly we uphold the order of the learned CIT (Appeals) deleting this addition and this ground of the Revenue is rejected.

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105. Ground No. 6 is with regard to disallowance of Rs.28,93,51,616/- on account of swap units / warranty / reimbursement. It was fairly conceded by the learned DR that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case in assessment year 2011-12. It is observed that the learned AO has made the addition assuming that assessee would have received 2% of the purchases made by it as swap units and would have sold the same outside the books of account. The learned CIT(A) has deleted the addition by holding that there was absolutely no material to hold that assessee had received such unaccounted swap units over and above what has been accounted for in the books of account and further there is no material whatsoever that assessee has made any sale of such units outside the books of accounts. Similar additions were made in assessee's own case in assessment year 2011-12. The additions so made by the Assessing Officer were deleted by the ITAT. The findings of the ITAT in this regard are as under :-

"The entire addition in this case is made by the AO on the sole ground that the confirmations given by various parties, were on plain paper and not on letterheads. These are all confirmations filed by foreign suppliers. The assessee had submitted arguments including purchase invoices, bill of entry, custom clearance, stock entries etc. The confirmation in question from these foreign parties are on additional documentary evidences. In our view these confirmations cannot be summarily rejected by the AO. The AO, in our view, should not have rejected these confirmations without enquiry. The AO had the address of these parties, the telephone numbers, e-mail addresses. The format in which the confirmations were given by foreign parties, is not within the control of the assessee. We further note that the assessee has submitted all evidences which included third party/government evidences in the form of bill of entry, custom-

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attested purchase invoices. All these purchases are from foreign suppliers and are liable for custom duty. All units received by way of import have to be declared in the bill of entry. The assessee has provided books of accounts and also the supporting evidences. The procedure explained by the assessee of accounting these units in respect of these vendors with whom there is an agreement of swap units is correct procedure and supported by custom attested invoices, bill of entry, etc. The DR during the course of hearing could not controvert the contention of the assessee. As regards the vendors with whom there is no such arrangement, we note that there is no evidence or material to even suggest that assessee would have received swap units. No material was found during search to this effect. We further note that before the DRP the assessee has also filed confirmation on the letterhead of these vendors. In view of the facts, the findings of the DRP are incorrect and against the facts on record. Under these circumstances, we are of the considered opinion that the addition in question is bad in law as it is made without any evidence. In the result this addition is deleted and these ground nos. 8, 9 and 10 of the assessee are allowed."

105.1 Respectfully following the order of the co-ordinate bench, we uphold the order of the learned CIT (Appeals) and this ground of appeal of the Revenue is rejected.

106. Ground no. 7 is against the action of the learned CIT (Appeals) in deleting the addition of Rs.50,00,000/- on the basis of seized documents. The Assessing Officer made addition of Rs.50,00,000/- on the basis of seized document page No. 8 of Annexure A-2.

106.1 Before the learned CIT (Appeals) the assessee submitted that a detailed reply in this regard was filed before the Assessing Officer in which it was stated that pages 7 to 8 show the detail of AGM of

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SBI, Ms. Praveen Kala and her email ID. It has been written that the company has obtained working capital limit, non fund based from IMG Vysya Bank. There is no mention or reference whatsoever of any share application money being received from M/s Pathik Merchandise Pvt. Ltd. as alleged by the Assessing Officer. It was further submitted that this amount not being a share application money of M/s Pathik Merchandise Pvt. Ltd., the addition on this account is untenable. A document has to be read as a whole and cannot be read in isolation. There is no such money which has been received by the company as share capital or share application from 31st March, 2006. As regards the credibility of M/s Pathik Merchandise Pvt. Ltd. the necessary documents were submitted in assessment year 2006-07. After considering the submission of the assessee, the learned CIT (Appeals) deleted the addition made by the Assessing Officer.

106.2 The learned CIT [DR] relied on the order of the Assessing Officer.

106.3 The learned AR stated before us that addition of Rs.50 lacs was made by the Assessing Officer on account of seized document page 8 of A – 2, alleging that no explanation with regard to the same was offered by the assessee. On the said document, an amount of Rs.50,00,000/- was mentioned along with the name of Praveen Kala, AGM of SBI. The said amount was received by the assessee from M/s Pathik Merchandise (P.) Ltd. as share application money in the earlier year, however, the same was refunded back to the party. Also, addition on account of this

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share application money was made by the Assessing Officer in A.Y. 2006-07. The confirmation from the said party along with the copy of ITR was also submitted to the Assessing Officer. Also, during the course of proceedings for A.Y. 2006-07, the Assessing Officer issued notice under section 133(6) to the party, which was also served on the party, which further establishes the existence of the party. Therefore, making the impugned addition as unexplained cash credit u/s 68 of the Act that too in the absence of any evidence brought on record and without any enquiry is not tenable as per law. Reliance is placed on the following judgments :-

- i) CIT v. Orissa Corporation (2008)
216 CTR 195 (SC);
- ii) CIT v. Rakam Money Matters Pvt. Ltd.
[ITA No. 778 of 2015 dated 13-10-2015];
- iii) CIT v. Vrindavan Farms (P) Ltd.
[ITA No. 71, 72, 85/D/2015 dated 12.08.2015]
- iv) CIT v. Fair Finvest Ltd. [2013]
357 ITR 146 (Del.).

106.4 We have considered the submissions of the parties and perused the record. From perusal of the paper book the relevant pages to which our attention was sought by the learned AR we find that Rs.50,00,000/- was received as share application money from M/s Pathik Merchandise Pvt. Ltd. in the assessment year 2006-07 and the relevant evidences were duly filed by the assessee in that assessment

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year and the page referred to by the Assessing Officer relates to the details regarding one Ms. Praveen Kala giving her email ID and address. The learned CIT (Appeals) has given a categorical finding in this regard at Para Nos. 45.2 to 45.4, which reads as under :-

“45.2 The second addition of Rs.50,00,000/- pertained to the page 8 of Annexure A-2. On perusal of this page placed in the paper book at 659, I find that there were certain notings and proposed working pertaining to banking transactions. The name of Sh. Praveen Kala and her email id a praveenkala@sbi.co.in was mentioned, along with the address, 12th Floor, JawaharVyaparBhavan, Tolstoy Marg, New Delhi. At one end of the page 31/3/2006 / 50,00,000/- was scribbled. IN reply dated 20.02.2013, the appellant submitted that Sh. Praveen Kala was AGM of SBI (CAG) and the notings pertained to the working capital limit. However, the special auditors sought clarification on this page and the same has been incorporated by the Assessing Officer in his order as under:-

“Ledger account and confirmation of M/s Pathik Merchandise (P) Ltd. from whom Rs.50 Lakhs were received as share application money.

How and why the same was refunded by the company along with reason of such refund.

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Credibility of M/s Pathik Merchandise (P) Ltd. and other elements for paying such amount in light of Section 68 of the Income Tax Act, 1961.”

45.3 *The special auditors, thereafter, submitted their comments as under :*

“In absence of any reply submitted by the Assessee Company in this regard, credibility/ genuineness of M/s Pathik Merchandise (P) Ltd. could not be proved/ established. Therefore, an amount of Rs.50,00,000 may be treated as unexplained cash credits in the F.Y. 2005-06.”

45.4 *In response to the questionnaire issued vide letter dated 9.11.2013, the appellant again reiterated the explanation given in the above paragraph. Ignoring the period to which the document pertained, despite of the special auditor pointing out that this should be treated as unexplained cash bought in the financial year 2005-06, the Assessing Officer made an addition with any enquired made on the contents of this page in the assessment year 2010-11. The appellant argued that no amount of Rs.50 lac was received by the appellant company on 31.03.2006 as share capital or share application money. The appellant stated that Rs.50 lac was received as share application money from M/s Pathik Merchandise Pvt. Ltd. and was refunded back and necessary documents were submitted and considered by me in the order for said assessment year 2006-07. In the absence of any evidence bought on record by the*

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Assessing Officer after necessary enquiry from the details recorded on this page, I hold that the Assessing Officer was not justified and correct in making an addition for the sake of an addition. Accordingly, the addition of Rs.50 lac is deleted. ”

106.5 Finding no infirmity in the order of the learned CIT (Appeals), we hereby reject the ground raised by the Revenue.

107. Ground No. 8 is with reference to disallowance of Rs.1,00,00,000/- made by the Assessing Officer on account of advertisement expenditure. During the course of hearing before us it was agreed by both the parties that this issue is covered by the order of the ITAT in assessee's own case for assessment year 2011-12 in I. T. Appeal Nos. 6135 & 5829/Del/2014 dated 20.02.2015 whereby in Para 36.1 action of the learned CIT (Appeals) in deleting the ad-hoc disallowance made by the Assessing Officer has been sustained. On perusal of the order of the ITAT we find that the ITAT has given a finding with regard to ad-hoc disallowance made by the Assessing Officer in following terms :-

“36.1. Our finding: This ground is on disallowance of advertising expenditure on adhoc basis. This disallowance is made on an adhoc basis. The books of accounts of the assessee were subject to special audit there was no adverse comment made by the special auditors on the accident claim. Under these circumstances an adhoc disallowance of ₹ 2 crores is uncalled for. The AO has accepted the

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directions of the DRP but the Revenue has filed this appeal. The books of accounts of the assessee are audited and no adverse comments have been given by the auditor. These books of accounts have also been provided before the AO. As the AO has not given any specific instance or valid reason for making this adhoc disallowance we sustain the finding of the DRP and dismiss this ground of the Revenue.”

107.1 Respectfully following the order of the coordinate bench of the ITAT, we hereby reject the ground raised by the Revenue.

108. Ground no.9 is with reference to disallowance of Rs.27.70,000/- on account of IPO expenses. The contention of the assessee before the Assessing Officer as well as CIT (Appeals) was that it has not incurred any IPO expenses during the year under consideration and hence claim having been not made in the return of income the same cannot be disallowed.

108.1 The learned CIT (Appeals) deleted the addition .

108.2 The learned CIT [DR] relied on the order of the Assessing Officer while learned AR reiterated the submissions made before the lower authorities.

108.3 We have considered the submissions of the parties and perused the record. As there is no claim made by the assessee in its

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profit and loss account on account of IPO expenditure there cannot be any occasion to make disallowance of the same. The learned CIT (Appeals) has deleted the disallowance giving reasoning that the expenditure which was not claimed by the assessee in its profit and loss account no separate disallowance was required to be made by the Assessing Officer. We agree with this finding made by the learned CIT (Appeals) and reject this ground of appeal raised by the Revenue.

109. Ground No. 10 relates to the addition of Rs.6,65,66,385/- on account of sundry creditors. The Assessing Officer has made an addition on account of the following parties :-

i.	Bhajan Lal Commercial Pvt. Ltd. –	Rs.1,28,659
ii.	BMR Distributors –	Rs.9,398
iii.	Shiva Agencies –	Rs.2,83,38,839
iv.	Kumbhat International –	Rs.2,54,17,680
v.	Paras Offset –	Rs.77,93,351
vi.	VR Trading –	Rs.43,13,030
vii.	Sharad Electronics –	Rs.5,65,428

109.1 The explanation of the assessee before the Assessing Officer as well as learned CIT (Appeals) was basically that all the documents related to the creditors were duly filed before the Assessing Officer as well as learned CIT (Appeals).

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109.2 The learned CIT (Appeals) after considering all the documents filed by the assessee deleted the addition.

109.3 Before us also the contention of the learned AR was mainly the reiteration of submissions made before lower authorities.

109.4 We have considered the submissions of the parties and perused the record. After perusal of the documentary evidences filed by the assessee to which our attention was invited by the learned AR, we do not find any infirmity in the order of the learned CIT (Appeals) in deleting the said addition made by the Assessing Officer. The assessee submitted the details of the above creditors along with complete addresses vide letter dated 30.10.2012 (PB 359 – 391). Thereafter, the assessee submitted copies of ledger accounts of the parties along with reply dated 11.01.2013 (PB 425 – 630). Copy of confirmation of account of the said parties was also submitted by the assessee vide reply dated 08.11.2013 (PB 1381 – 1627). Further, vide reply dated 11.11.2013 the assessee again submitted the copy of confirmation of account of the said parties (PB 1630 – 1655).

In the case of Bhajan Lal, Shiva Agencies and Sharad Electronics, there is a debit balance in the books of the assessee, and there was no reason for the Assessing Officer to make the impugned addition.

In the case of Kumbhat International, a perusal of the ledger account (PB 1646 – 1653) reveals that there is no difference in the balances of

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the two parties, and therefore, the addition made in this regard is uncalled for.

In the case of Paras Offset, BMR Distributors and VR Trading, the difference is merely on the account that certain transaction has been accounted for in the subsequent year.

The Assessing Officer has made the impugned additions without obtaining the complete copy of account, and therefore, the same has been rightly deleted by the learned CIT (Appeals).

110. Ground No. 11 is in relation to addition of Rs.1,39,80,000/- made by the Assessing Officer on account of disallowance of payment made to M/s Grant Thornton. During the year under consideration the assessee has claimed an expenditure of Rs.279.60 Lac on account of business advisory services rendered by M/s Grant Thornton. The Assessing Officer disallowed 50% of the expenses on the ground that the same appear to be excessive.

110.1 Before the learned CIT (Appeals) the assessee submitted that a detailed reply in this regard was filed before the Assessing Officer dated 30.10.2013 together with the copy of bill, copy of email communication, feasibility study report. Concurring with the argument advanced by the assessee that the sufficiency of an expenditure incurred by a business cannot be questioned by the Assessing Officer. The addition was deleted by the learned CIT (Appeals).

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110.2 The learned CIT [DR] relied on the order of the Assessing Officer, while the learned AR submitted before us that during the year, assessee had claimed an expense of Rs.279.60 lacs on account of business advisory services rendered by M/s Grant Thornton. The Assessing Officer disallowed 50% of the said expenses on the ground that the same appeared to be excessive. In this regard, assessee vide reply dated 30.10.2013, submitted before the Assessing Officer the copy of the bill, copy of email communications and the feasibility study report (PB 941 – 1011). The Assessing Officer has not brought out any material to establish that the payment made by the assessee was excessive. Once the expenditure has been incurred and the same is related to the business of the assessee (which has not been doubted by the Assessing Officer), the Assessing Officer cannot sit in the arm chair of the assessee and decide how much expenditure should have been incurred. Reliance is placed on the following judgments :-

i) Delhi High Court in the case of CIT Vs. Dalmia Cement
254 ITR 377 (Del.)

ii) CIT Vs. Modi Revlon Pvt. Ltd.
[ITA No. 1450/2010 dated 29.08.2012]

Further, without pointing out any discrepancy in the documents produced, the Assessing Officer cannot make an ad-hoc disallowance merely on the basis of suspicion. Reliance is placed on the following judgments :-

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- i) CIT v. S.S.P. (P) Ltd. [2011]
 202 TAXMAN 386 (P&H);
- ii) Friends Clearing Agency (P) Ltd. v. CIT [2011]
 237 CTR 464 (Del.).

110.3 We have considered the submissions of the parties and perused the record. We observe that the disallowance has been made by the Assessing Officer not questioning the genuineness of the expenditure but merely on the ground that the expenditure incurred by the assessee seems to be excessive. Ad-hoc disallowance of 50% of the expenses has been made. The learned CIT (Appeals) after considering the submission made by the learned AR and also the judgments relied upon has given the finding at Para 36, which reads as under :-

“36. I have considered the submission of the appellant and perused the assessment order and the documents thereof. On going through the assessment order I notice that the AO has disallowed the 50% of the expenses on the ground that the same is quite excessive. The Assessing Officer also did not bring any material on record to establish that payment made by the appellant was excessive. It is a matter of record that the assessee has actually incurred this expenditure. So far as the genuineness of this expenditure is concerned the same cannot be doubted. Once the expenditure has been incurred and it is related to the business the Assessing Officer cannot it in the judgment of the businessman to decide how much expenditure should have been incurred and then to disallow

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the balance amount. In this regard I draw support from the judgment of the Delhi High Court in the case of CIT vs. Dalmia Cement (Bharat) Ltd. 254 ITR 377 (Del). The above judgment has been applied in the case of CIT vs. Modi Revion Pvt. Ltd. ITA No. 1450/2010 dated 29.08.2012. In view of the facts as stated hereinabove and the position of the law I hold that the disallowance made by the Assessing Officer is unsustainable and the same is hereby deleted. ”

110.4 We do not find any infirmity in the order of the learned CIT (Appeals) in this regard and hence, reject the ground raised by the Revenue.

110.5 In result, the appeal is dismissed.

Assessee’s appeal No. 4645/Del/2014 :

111. Ground Nos. 1 and 10 are general in nature, therefore, need no adjudication while the learned AR at the time of hearing before us preferred not to press ground nos. 2 to 6. Therefore these grounds are rejected as being not pressed.

112. Ground No. 7 relates to addition made on account of no explanation of source of amount appearing in the noting recorded on seized document amounting to Rs.25,00,000/-. The Assessing Officer made the addition of Rs.25,00,000/- on the basis of seized document

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being page 6 of Annexure A-2 on the basis of observation made by the special auditor.

112.1 The learned CIT (Appeals) confirmed the addition holding that the payment was made by the assessee, but source of such payment was not explained by the assessee.

112.2 The learned AR while arguing before us submitted that it was brought to the notice of the Assessing Officer vide reply dated 20.2.2013 that the said page was some rough work and contained the details of the property which was owned by the assessee and further some reference was made in the said document for the proposed state of the art flagship centre. It was stated that there was no mention of any sum of Rs.25,00,000/- in the said document. The learned AR further submitted that the learned CIT (Appeals) has misinterpreted the facts and has erred in holding that the payment was made by the assessee.

112.3 The learned CIT [DR] relied on the order of the lower authorities.

113. We have considered the submissions and gone through the record. On perusal of the reply dated 20.02.2013 filed before the Assessing Officer, copy of which is also placed at paper book page 655, we observe that a detailed note with regard to the explanation of whatever was recorded in this seized document was given to the

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Assessing Officer. From the perusal of the copy of seized document placed in the paper book we agree with the submission made by the learned AR that there is no mention of any sum of Rs.25,00,000/- being given as advance for purchase of land. Further whatever has been written under the head L1, L2, L3 and L4 has been explained by the assessee to the Assessing Officer in this reply. It has been stated that the company proposed to undertake L3 and L4 repair at the proposed factory to be obtained on rent at Naraina. Since we could not find any sum of Rs.25,00,000/- in this seized document, the question of making addition of the same does not arise. In view of this we hereby direct the Assessing Officer to delete the addition made by him. This ground of appeal is allowed in favour of the assessee.

114. Ground no. 8 is in relation to disallowance of Rs.5,24,450/- made by the Assessing Officer by invoking the provisions of section 14A read with Rule 8D. Since there were investments made by the assessee in its balance sheet the Assessing Officer made the disallowance under section 14A by making computation as per Rule 8D which was confirmed by the learned CIT (Appeals).

114.1 Before us the learned AR submitted that the investments made by the assessee are reflected in the Schedule – 7 of the Balance Sheet (PB 15), which are as under :-

- i) ING Vysya Debt Fund – Rs.70,000
- ii) ING Vysya Life Insurance Policy – Rs.70,00,000

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iii)	In subsidiary company	–	Rs.12,70,000
iv)	Mutual Funds	–	Rs.20,00,40,000

114.2 The Assessing Officer without application of mind and without pointing out as to how he is not satisfied with the claim of the assessee has made the impugned addition, which is bad in law, as has been held in the following judgments :-

- i) CIT v. Taikisha Engineering India Ltd. [2015]
370 ITR 338 (Del.);
- ii) Kalyani Steels Ltd. v. ACIT
[ITA No. 1733/PN/2012 dated 30.01.2014];
- iii) Minda Capital Ltd. v. DCIT
[ITA No. 1568/Del/2013 dated 25.03.2015].

114.3 Without prejudice to above, the learned AR submitted that investment made by the assessee in ING Vysya Debt Fund and ING Vysya Life Insurance Policy does not enable the assessee to earn any exempt income. Therefore, the same are to be excluded for the purpose of calculating the average investments. Further, it was stated that investment made by the company in its subsidiary is not for earning any exempt income and has been made for strategic purposes and for business expediency, and therefore, the same is also to be excluded from the calculation of average investment. Therefore, after excluding the above, the maximum disallowance which could have been made

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was for Rs.5,00,100/-, as the average investments would be Rs.10,00,20,000/- [20,00,40,000/-].

114.4 We have considered the submissions of the parties and gone through the record. After perusing the balance sheet of the assessee and considering the submissions made on behalf of the assessee, we agree with the alternative contention raised by the learned AR that while making computation as per Rule 8D clause (iii), 0.5% of the average value of investment has to be taken as the administrative expenses incurred for earning the tax free income. The contention of the learned AR is that the Assessing Officer while making the said computation has taken all investments including the one which do not yield tax free income.

114.5 Concurring with this contention of the learned AR, we hereby remit this issue back to the file of the Assessing Officer to re-compute the disallowance under section 14A. The Assessing Officer is specifically directed to take only those investments which yield tax free income for the purposes of clause (iii) of Rule 8D. The ground raised by the assessee is allowed, for statistical purposes.

115. Ground No. 9 relates to disallowance of Rs.27,38,177/- made by the Assessing Officer under section 43B of the Act. This ground was confirmed by the learned CIT (Appeals) and at the time of hearing before us the arguments of the learned AR were only to the extent

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of allowing benefit in the succeeding year on the basis of actual payment being made. The learned CIT [DR] did not have any objection against the same. After hearing both the parties we hereby direct the Assessing Officer to give assessee the benefit of the impugned expenditure in the year in which the actual expenditure is made since section 43B allows the expenditure to be claimed on cash basis. In view of this, the ground raised by the assessee is allowed for statistical purposes.

116. The appeal is thus partly allowed.

117. In summary, the appeal of the Revenue is dismissed and that of the assessee is partly allowed.

118. The order is pronounced in the Open Court on: 30th June, 2017.

Sd/-
(B. P. JAIN)
ACCOUNTANT MEMBER

Sd/-
(I. C. SUDHIR)
JUDICIAL MEMBER

Dated : the 30th June, 2017.

MEHTA

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Copy of the Order forwarded to:-

1. Appellants;
2. Respondents;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

BY ORDER

ASSISTANT REGISTRAR

	Date
Draft dictated on	30.06.2017
Draft placed before author	30.06.2017
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	

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