

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.3287/DEL/2013
Assessment Year:2007-08

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| DCIT Central Circle 22 New Delhi | v. | Ashwani Kumar & Co. Pvt. Ltd. B-92, Mayapuri Indl. Area Phase II, New Delhi |
| | | TAN/PAN:AACCA0441J |
| (Appellant) | | (Respondent) |

I.T.A. No.3557/DEL/2013
Assessment Year:2007-08

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| Ashwani Kumar & Co. Pvt. Ltd. B-92, Mayapuri Indl. Area Phase II, New Delhi | v. | DCIT Central Circle 22 New Delhi |
| TAN/PAN:AACCA0441J | | |
| (Appellant) | | (Respondent) |

I.T.A. No.4895/DEL/2013
Assessment Year:2009-10

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| DCIT Central Circle 2(1) New Delhi | v. | Ashwani Kumar & Co. Pvt. Ltd. B-92, Mayapuri Indl. Area Phase II, New Delhi |
| | | TAN/PAN:AACCA0441J |
| (Appellant) | | (Respondent) |

I.T.A. No.3558/DEL/2013
Assessment Year:2009-10

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| Ashwani Kumar & Co. Pvt. Ltd. B-92, Mayapuri Indl. Area Phase II, New Delhi | v. | DCIT Central Circle 22 New Delhi |
| TAN/PAN:AACCA0441J | | |
| (Appellant) | | (Respondent) |

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|------------------------|-------------------------|----|------|
| Assessee by: | Shri Pankaj Dadu, C.A. | | |
| Revenue by: | Shri S. K. Mishra, D.R. | | |
| Date of hearing: | 12 | 10 | 2017 |
| Date of pronouncement: | 30 | 11 | 2017 |

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid cross-appeals have been filed by the Revenue as well as by the assessee against separate impugned order dated 25/3/2013 for the quantum of assessment passed under section 143(3) read with section 147 for assessment year 2007-08; and order dated 2/4/2013 for the quantum of assessment passed under section 143(3) for assessment year 2009-10, passed by the ld. CIT (Appeals)-III, New Delhi.

2. We will first take up the cross-appeal for assessment year 2007-08. In the appeal filed by the Revenue, the following ground has been raised:-

“On the facts and in the circumstances of the case, the CIT (A) has erred in deleting the addition of Rs.5,10,30,537/- made by the Assessing Officer on account of unexplained investment in stock being the difference in the stock statement submitted to the bank as compared to the stock statement furnished to the Assessing Officer during the course of assessment proceedings.”

3. The brief facts *qua* the issue raised are that the assessee-company has filed its return of income for assessment year 2007-08 on 25/10/2007 declaring its total taxable income at Rs.47,85,298/-. Such return of income was subjected to scrutiny and assessment order under section 143(3) was passed vide order dated 31/12/2009 accepting the returned income. Thereafter, assessee's case has been reopened under section 147 by issuance of notice dated 28/3/2011 under section 148. The background and the 'reasons' for reopening the case was that a search and seizure operation under section 132(1) was carried out on 8/11/2008 in the case of Nimitaya Group in which Ashwani Mahajan Group was also covered. The assessee-company was also subjected to survey under section 133A, wherein it was revealed that the assessee-company has taken huge share application money. Based on this information, assessee's case has been reopened. During the course of re-assessment proceedings and on perusal of the audit report, the Assessing Officer noted that the closing stock of the company as on 31/3/2007 had been shown at Rs.4.98 crores, whereas the value of stock statement as on 27/3/2007 furnished to the City Bank had been shown at Rs.10,08,30,357/-. The Assessing Officer further observed that from the computer printout, it was seen that as per machine-wise stock valuation, the value of 163 machines had been shown at Rs.9,21,94,750/- and thus, came to the conclusion that there is a difference between the value shown to the City Bank and the value disclosed in the tax audit report. In response to show cause notice, assessee had stated as under:-

“The assessee company has shown the value of stock as on 27.03.2007 at Rs.10,08,30,357/- and Rs.4,98,00,000/- as on 31.03.2007. The difference of Rs.5,10,30,357/- in the stock statement submitted to bank includes plant & machinery, immovable and immovable assets purchased from DRT, Delhi for Rs.3,64,66,010/- and Rs.1,45,64,347/- are advances to various parties against purchases which are duly reflected in the books of accounts of the assessee company. Details of all the above are enclosed herewith which justify that there is no difference in the closing stock of the company.”

4. However, the Assessing Officer made the addition on account of difference between the stock statement given to the bank and the valuation of stock shown in the tax audit report.

5. Before the Id. CIT (A), assessee submitted that the entire reconciliation of the difference amount of Rs.5,10,30,357/- was submitted to the Assessing Officer which has been failed to be taken note by him. Thus, it was submitted that there is no difference in the value of closing stock for the reasons that:-

- (i) *firstly*, there is no difference in the quantity and value of closing stock, which has been worked out by the Assessing Officer;
- (ii) *secondly*, there is no cash element in the closing stock and the difference of Rs.5,10,30,357/- is on account of payment given to the suppliers of purchase through account payee cheques from the said bank account and such payments have been shown as amounts recoverable and no expenses including purchases have been debited

and, therefore, it will have no effect on the profit of the assessee-company for assessment year 2007-08;

- (iii) *thirdly*, reconciliation of stock statement is meant only for their bankers. There is no misuse of funds of the overdraft or cash credit account, because it was merely to enjoy credit facilities against the closing stock;
- (iv) *fourthly*, for the last several years, assessee has been regularly assessed and the trading results and gross profit of the assessee-company have always been accepted. There is no cash sale or cash purchase or any unaccounted sale of purchase found during the year which also supports that there is no difference in the closing stock as on 31/3/2007.

6. The Id. CIT(A), on perusal of the material placed on record and the financial statements, noted down the following reconciliation:-

| | | | |
|-----|-----------------------|----------------|--------------------------------|
| (a) | Plants and machinery | Rs.3,64,66,010 | Schedule VIII of Balance sheet |
| (b) | Advances to suppliers | Rs.1,45,64,347 | Schedule XI of balance sheet |
| | | Rs.5,10,30,357 | |

7. Ld. CIT(A) further noted that assessee has disclosed to the banking authorities stock of Rs.10,08,30,357/- comprising of three items; *firstly*, plant & machinery (Rs.3,64,66,010/-); *secondly*, advances to suppliers (Rs.1,45,64,347/-); and *lastly*, stock in hand (Rs.4,98,00,000/-). All these three items are duly accounted for in the assessee's books of account. He further observed that the value of stock statement, which were called for by the Assessing Officer during the assessment proceedings, if compared with the value of stock as per books of account, it can be seen stock figure given to the bank does not contain quality-wise and quantum-wise description of each stock item and its value thereof and the assessee is not maintaining any day-to-day stock register looking to the nature of business activity carried out by it. Thus, he held that addition could not be made merely on the basis of difference in the closing stock based on stock statement furnished to the bankers which does not give any discrepancy of quantity of item-wise stock which was given to the bankers solely for the purpose of credit limit. In support of his reasoning, he relied upon the judgment of **Hon'ble Allahabad High Court in the case of CIT vs. Khan & Sirohi Rolling Mills reported in 200 CTR 595**. He also took note that similar addition was made in the group concern wherein the ld. CIT (A) has given relief on similar lines.

8. Before us, the ld. Sr. D.R., strongly relying upon the order of the Assessing Officer, submitted that mere fact that assessee had shown higher valuation of stock to the bank as compared to the closing stock appearing in the books of account shows that assessee is not showing correct position of stock and,

therefore, Assessing Officer was justified in treating the difference of closing stock as unexplained investment.

9. On the other hand, the ld. counsel for the assessee relied upon the order of the ld. CIT (A) and also cited various decisions on the point that merely because there is a difference in value of stock as shown in the books of account and given to the bank and without there being any difference in quantum or item-wise, no addition can be made.

10. We have heard the rival submissions and also perused the relevant finding given in the impugned orders. The sole basis of the Assessing Officer for making the addition on account of unexplained investment in the stock is that, assessee had disclosed the value of stock to the bank at Rs.10,08,30,357/- as against the value of closing stock shown in the books of account as on 31/3/2007 at Rs.4.98 crores. We find that before the ld. CIT(A) as well as before the Assessing Officer, assessee has duly explained that difference amount of Rs.5,10,30,357/-, which has been added by the Assessing Officer, was *firstly*, on account of plant & machinery of Rs.3,64,66,010/- which has been shown in Schedule VIII of the balance sheet; and *secondly*, advance to the suppliers shown at Rs.1,45,64,347/- reflected in Schedule XI of the balance sheet. Thus, there is no such difference apparently in the value of closing stock. It is also an admitted fact that there is no difference in the quantum and in the actual value of the closing stock as appearing in the books of account and there is no cash element on such difference because the amount aggregating to Rs.5,10,30,357/- is on account of payment given to the suppliers for purchase/expenses incurred through account

payee cheques from the bank account and such payments have been shown as amount recoverable and no expenses including purchase have been debited to the profit & loss account, therefore, there is no effect on the profit of the assessee-company for assessment year 2007-08 *qua* this amount. Otherwise also, it is quite standard practice that the stock statement given to the bank is to enjoy higher credit limit and if stock statement does not give quantity and item-wise details and simply value has been enhanced (though it is not the case here), then no adverse inference can be drawn so as to hold that higher value of stock shown to the bank is to be reckoned as unexplained investment in the hands of the assessee. The Id. CIT (A), after proper appreciation of facts and taking note of the details, has given a categorical finding which is not only in accordance to law but is also based on correct appreciation of facts. Thus, we uphold the order of the Id. CIT (Appeals) in deleting the addition of Rs.5,10,30,357/-.

11. Now we will take up assessee's appeal. In the original grounds of appeal, assessee had challenged the addition of Rs.90 lakhs for unexplained credit on account of share application money received from four entities. Later on, vide petition for admission of additional ground dated 3/10/2017, assessee has raised the following additional grounds:-

- 1) *That the appellant refers to its appeal no. 3557/DEL/2013 for A.Y. 2007-08 filed on 3.6.2013 alongwith Statements of Fact and Grounds of Appeal.*
- 2) *That having regards to the facts and circumstances of the case, Learned A.O. has erred in law and on facts in*

framing impugned assessment order without complying the mandatory conditions of Sec. 147 to 151 and reopening of the case and framing the impugned assessment order is bad in law and beyond the jurisdiction of the A.O. and there is no valid satisfaction as per the law u/s 151 of Income Tax Act, 1961.

3) That having regard to the facts and circumstances of the case, Learned A.O. has erred in law and on facts in making addition of Rs.90,00,000/- on account of Share Application Money u/s 68 by treating it as alleged accommodation entry and by disregarding the submissions/evidences of the assessee and without giving adequate opportunity of being heard and without bringing anything contrary on record and without providing opportunity of cross examination.

4) That the original assessment in this case was passed u/s 143(3) on 31.12.2009 therefore, no notice u/s 148 could have been issued without the prior satisfaction of Ld. CIT in terms of proviso to Sec. 151(1) of I.T. Act, 1961 which, as per records, was not followed.

5) That the said impugned additions of Rs. 90,00,000/- and the impugned assessment order are bad in law , illegal, unjustified, contrary to facts and law without giving adequate opportunity of hearing in violation of principles of natural justice and the same deserves to be quashed and the same are not sustainable on legal and factual grounds.

6) That having regards to the facts and circumstances of the case, Ld. A.O. has erred in law and facts in charging interest u/s 234A, 234B, 234C and 234D of Income Tax Act, 1961.

12. So far as legal ground, which has been raised in grounds No. 2 and 4, we find that the assessee has not taken these grounds either before the Assessing Officer or before the Id. CIT (A). These are purely legal and jurisdictional grounds challenging the validity of reopening under section 147 and also challenging the power of the authority for sanctioning notices under section 148 in terms of provisions of section 151(1). All these facts as raised in the legal grounds though does not need any investigation of new facts, but definitely it needs verification from records which before are us are not completely available. Therefore, in the interest of justice, we feel that legal issues, which have been raised before us, should be sent back to the file of the Assessing Officer to be adjudicated in accordance to law after giving due opportunity to the assessee of being heard.

13. Besides this, the Id. counsel for the assessee has also raised another legal issue before us that, no notice under section 143(2) has been served upon the assessee after assessee has filed the return of income in compliance to the notice under section 148. This issue too has not been raised either before the Assessing Officer or before the Id. CIT (A), therefore, being a legal issue, we are remanding back the matter to the file of the Assessing Officer to verify from records as to whether any notice under section 143(2) has been served to the assessee in accordance to law. Needless to say that if on all the legal issues, it is found that either notice under section 143(2) has not been served upon the assessee; or notice under section 148 has not been sanctioned by the competent authority; or reasons recorded are not in accordance with law, then such proceedings will

become *void-ab-initio*. Accordingly, we are remanding back the entire legal issues raised before us to the file of the Assessing Officer to be decided afresh in accordance to law after giving due and effective hearing to the assessee.

14. So far as the addition relating to Rs.90 lakhs on account of share application money is concerned, one of the preliminary ground raised by the assessee before us is that, the Assessing Officer has raised the query on this aspect at the fag-end of the limitation period and no proper opportunity was given to produce the persons from the companies who had subscribed to share application money of the assessee-company. Otherwise, on merits, Ld. Counsel submitted that whatever documents could be available to prove prima-facie genuineness of the transaction along with identity and creditworthiness of the companies, who had subscribed to the shares, was duly filed. However, the only adverse inference that has been drawn against the assessee is that assessee could not produce these persons, which in the absence of proper opportunity and time assessee could not comply with.

15. On the other hand, the ld. Sr. D.R. strongly opposing to assessee's submission on the issue of share application money, submitted that the Assessing Officer did give opportunity to the assessee to produce the Directors of four share applicant companies, however, the assessee failed to do so and even before the ld. CIT(A), assessee could not produce these persons. Therefore, the order of the ld. CIT (A) in confirming the said amount of Rs.90 lakhs should be confirmed.

16. After considering the rival submissions and on perusal of the relevant material on record, we find from the perusal of the order sheet entry (copy of which was filed during the course of hearing before us), show cause notice have been issued to the assessee at the fag-end of limitation, therefore, apparently it seems that the time given to the assessee to produce the persons from the share applicant companies was less. Though this opportunity was given again by the ld. CIT (A), but it seems that assessee failed to produce the said share applicants. Now before us, the ld. counsel for the assessee submitted that assessee would be in a position to produce these persons and in the interest of justice the matter should be restored back to the file of the Assessing Officer, because assessee has given all the relevant documents to prove all the three limbs of proving the nature and source of credit, i.e., identity; genuineness and creditworthiness. Simply because Directors or the authorized persons from the said company could not be produced, no adverse inference could have been drawn. Looking to the entire facts and circumstances of the case and on the basis of the plea taken by the ld. counsel for the assessee and in the interest of substantial justice, we feel that the issue of share application money of Rs.90 lakhs should be set aside to the file of the Assessing Officer and assessee will try to produce the concerned from the said entities to confirm the said transaction. Assessing officer shall give due and effective opportunity to the assessee to substantiate its case. Accordingly, appeal of the assessee is allowed for statistical purposes.

17. Now we will take up the cross-appeals for assessment year 2009-10. The Revenue in the grounds of appeal has raised the following grounds:-

1. *On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the sedition of Rs.9,15,99,354/- on account of value of stock, without considering the fact that assessee has failed to prove the correct value of stock on the basis of books of accounts before the AO.*
2. *Ld. CIT(A) has erred in deleting the addition of Rs.9,50,000/- on account of cash deposit, the assessee has failed to explain the sources of cash deposit before the AO.*
3. *Whether on the facts and circumstances of the case Ld' CIT(A) has erred in deleting the addition of Rs.1,26,49,249/- on account of unaccounted advance given to A-One Machine Components (P) Limited, without considering the facts that assessee has failed to prove the genuineness of the transaction before the AO.*

18. The brief facts *qua* the first issue raised are that the Assessing Officer, on perusal of stock statement filed before the bank as on 25/3/2008 at Rs.12,56,33,468/- and the value of closing stock shown in the audit report as on 31/3/2008 at Rs.8,42,50,000/-, noted that there is a substantial difference of Rs.4,13,83,468/-. In response to show cause notice, assessee submitted as under:-

“It is again submitted that the value of stock as on 25.03.2008 of submitted to bank includes plant & machinery and advances made to suppliers whereas the stock statement as on 01.04.2008 shows Rs. 8,42,50,000/-. All the above value of plant & machinery and advances made for purchases have been shown in the books of account of

the assessee company. Copies of these accounts showing the difference of Rs.4,13,83,468/- are enclosed herewith which justify that there is no difference in the value of stock. ”

19. The Assessing Officer held that assessee's contention that difference on account of plant & machinery and advances to the suppliers, which are duly reflected in the books of account, is not supported with any reliable documentary evidence and accordingly he made addition of difference amount of Rs.4,13,83,468/- as unaccounted investment outside the books of account. Apart from that, Assessing Officer noted that such a difference in the value of stock as per books of account and as submitted to the bank authorities were for sums amounting to Rs.2,61,20,464/- as on 30/9/2008; and Rs.2,40,95,422/- as on 31/10/2008 and has added these amounts also, without even considering the fact that difference as on 31/3/2008 at Rs.4,13,83,468/- was not for this financial year and no addition could have been made in the assessment year 2009-10.

20. Before the ld. CIT (A), assessee gave detailed submissions which have been dealt and incorporated by the ld. CIT (A) from pages 12 to 15 of the appellate order which by and large on the same lines as given before the ld. CIT (A) in the appeal for assessment year 2007-08, which has been dealt by us in the aforesaid appeal for assessment year 2007-08. The ld. CIT (A) deleted the addition on the ground that the amount of Rs.4,13,83,468/- could not have been added in this year and for the balance amount, he gave same reasoning as given in appeal for assessment year 2007-08.

21. We have heard the rival submissions and perused the relevant finding given in the impugned order as well as the material referred to before us at the time of hearing. As apparent from the records, out of aggregate addition of Rs.9,15,99,354/- made by the AO on account of difference in value of stock as per books of account and as per stock statement submitted to the bank, an amount of Rs.4,13,83,468/- was the difference in the closing stock as on 31/3/2008, ostensibly same could not have been added in assessment year 2009-10, because it pertains to assessment year 2008-09. The findings of the Id. CIT(A) that such addition on account of difference in value of stock as on 31/3/2008 cannot be added in the impugned assessment year, is thus affirmed.

22. So far as the difference in value of stock as on 31/10/2008 and 30/9/2008, the difference in the value of stock is not on account of any quantitative difference or item-wise difference, *albeit* this was the amount advanced to the suppliers and amount on account of freight expenses. In the books of account, assessee has made separate entry whereas before the bank, assessee has included as part of stock-in-hand, the details of which are as under:-

| Particulars | | As on 30.09.2008 | As on 31.10.2008 |
|--------------------|----------------------------|-----------------------------|-----------------------------|
| (a) | Advances to suppliers | 2,45,41,095 | 2,21,46,627 |
| (b) | Amount of Freight Expenses | 15,79,369 | 19,48,795 |

23. This reconciliation was given to the Assessing Officer during the course of assessment proceedings and also during the course of remand proceedings by the ld. CIT (A). The ld. CIT (A) has categorically observed that the Assessing Officer could not point out any discrepancy in respect of stock as on 30/9/2008 vide his remand report dated 11/2/2013. However, in respect of advances made to the parties as on 31/10/2008, the Assessing Officer on enquiry in the remand proceedings pointed out the following discrepancies:-

| S. No. | Particulars | Amount | Remarks |
|--------|---------------------------------|-----------|-------------------------------------------------------------|
| 1. | Jalpa Machinery (P) Ltd. | 13,50,000 | Party does not exists at A-41, Mayapuri, Phase-1, New Delhi |
| 2. | Sadashiv Marketing (P) Ltd. | 45,15,000 | Party not available |
| 3. | Punita Bharadwaj | 5,00,000 | Party were available but did not file the confirmation |
| 4. | North South Enterprise (P) Ltd. | 14,50,000 | Party were available but did not file the/ confirmation |

When this discrepancy was confronted to the assessee, assessee gave the following documents to prove the genuineness:-

| S. No. | Particulars | Remarks |
|--------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Jalpa Machinery (P) Ltd. | Stated that correct address in A-47, Mayapuri and not A-41, Mayapuri filed the confirmed copy of accounts with PAN details, and photocopy of return of income. |

| | | |
|----|---------------------------------|------------------------------------------------------------------------------------------|
| 2. | Sadashiv Marketing (P) Ltd. | Filed the confirmed copy of account, with PAN details and photocopy of return of income. |
| 3. | Punita Bharadwaj | Filed the confirmed copy of account, with PAN details and photocopy of return of income. |
| 4. | North South Enterprise (P) Ltd. | Filed the confirmed copy of account, with PAN details. |

24. Again when comment was sought from the Assessing Officer by the ld. CIT (A) post assessee's filing of documents, the Assessing Officer said that either party was not available at the address or have refused to have any dealing with the assessee. The ld. CIT (A) held that the person (Punita Bharadwaj) about whom Assessing Officer had said that she refused to have any dealing, had given her confirmation letter that she had dealt with the company and the ld. CIT (A) asked the Assessing Officer to send enquiry folder containing the statement of Punita Bhardwaj about whom Assessing Officer has stated that she has refused. Even for the other two parties also for whom AO has said their addresses not available, he asked for Assessing Officer's enquiry report but till passing of the order by the ld. CIT (A) enquiry folder was not made available to him by the Assessing Officer.

25. The ld. Sr. D.R. before us submitted that the ld. CIT (A) should have given more opportunity to the Assessing Officer to produce the enquiry folder and, therefore, the matter should be restored back for examining this issue.

26. On the other hand, the ld. counsel for the assessee had strongly opposed for setting aside the issue on the ground that

all the basis to prove that advances given to the suppliers, were through account payee cheques which were duly reflected in the books of account which has also been confirmed by them. The assessee also given correct address as appearing in the return of income of the respective parties filed for various assessment years. Thus, the matter should be decided here on merits.

27. On consideration of entire factum and material discussed in the impugned order, we find that so far as the amount of advance given to the suppliers appearing in the books as on 30/9/2008, there seems to be no discrepancy pointed out by the Assessing Officer in respect of stock as on 30/9/2008 in the remand proceedings. Thus, the amount of Rs.2,61,20,464/- which has been added by the Assessing Officer on account of difference in stock has rightly been deleted by the ld. CIT(A) which we confirm.

28. Now so far as the difference in stock on account of advances given to four parties as appearing in the books of account as on 31/10/2008, we find that in the case of three parties, assessee has filed confirmation, copy of account with their PAN details and photocopy of return of income. All the amounts in question has been paid through account payee cheques which has duly been reflected in the regular books of account of the assessee. Assessing Officer's case for making addition was that there is a difference of value of closing stock appearing in the books and as disclosed to the bank. When assessee submitted that this amount of Rs.2,40,95,422/- was on account of advances given to the suppliers, he then wanted to verify the transaction from these parties whether the advances

given and appearing in the books of account are fictitious, was never subject matter of doubt by the Assessing Officer at the assessment stage. Be it as that may be, we find that the Id. CIT (A) has duly acknowledged the evidences filed by the assessee in support of the advances given to the suppliers and whatever adverse comment which has been given by the Assessing Officer that either party is not available at the address or one person has stated that he has not done any dealing with the assessee, the Ld. CIT(A) has duly considered the entire facts and material on record while giving his finding and also noted that factum of report and enquiry file was not submitted by the AO before the Id. CIT(A), despite his requisition.

29. So far as in the case of Punita Bhardwaj where she has refused having any dealing with the assessee, we feel that the matter should be restored back to the file of the Assessing Officer to confront to the assessee as to what was her statement given in the enquiry when she herself has given confirmation letter that she has dealt with the assessee and has received amount through account payee cheques. Only for this limited purpose, the matter is remanded back to the Assessing Officer with regard to the advances given to Punita Bhardwaj.

30. So far as advances given to other three parties, we do not find any reason to tinker with the finding of the Id. CIT(A) for the reason that assessee has not only filed confirmation, copy of account, but also their returns of income and given correct addresses shown by these parties in their returns of income which was made available to the Assessing Officer. There is no adverse material on record to rebut these evidences. When the

parties have confirmed that the amount has been given through account payee cheques, it cannot be held that advances given to the suppliers are non-genuine. Thus, for these three parties, the finding of the Id. CIT (A) is confirmed and no interference is called for. Accordingly, ground No.1 as raised by the Revenue is treated as partly allowed for statistical purposes.

31. Lastly, the Revenue has challenged the addition of Rs.1,26,49,000/- on account of unaccounted advance given to A-One Machine Components (P.) Ltd. The Assessing Officer on this issue has noted the following facts in the assessment order:-

“8. During the course of search at various business and residential premises of five Sub-Groups relating to the Nimitaya Group, incriminating documents/data stored in CPUs Laptops and Servers pertaining to other concerns were found and seized. During the course of post search proceedings and after examining documents found and seized, data stored in CPUs, Laptops and Servers found and seized/impounded and documents filed by the assessee, documents/information collected from banks, data taken from internet from the internet site of ROC, PAN data query, it has been noticed that following concerns are running their business activities from the same business premises of respective Sub-Group and are also managed and controlled by me same persons who have substantial interest in the Sub-Group.

| | | | | |
|-------------------------------------------------------|----------|----------------------------------------|----------------------------------------------|----------------|
| <i>i. A-One Machined Components Pvt. Ltd.</i> | 27.12.04 | AAFCA0530P Ward 19(), New Delhi | Machine Repairs and Cooler Parts | Not covered |
| <i>ii. A-1 Mayapuri Indl Area, Phase I, New Delhi</i> | | | | |

M/s Ashwani Kumar & Co Pvt. Ltd is doing the business of sick units, plant and machinery and old junk machines etc. Although the assessee claims it to be a Trading activity, but this requires various types of processing, repairing, assembling and dismantling of machines which makes it suitable to fetch higher price in market. In fact, such activity cannot be termed as 'Trading'. But to bypass the Custom Duty and Excise Duty levied on such items, he is showing such expenses on processing in the names of other business concerns which are also run by him but there are other persons/employees of Shri Ashwani Kumar who are shown as the shareholders etc. of these concerns. The authorized officer at Party D-1 has informed as per his Survey Report that Shri Ashwani Kumar Mahajan is also proprietor of Gurulal Enterprises and directors in the following companies:

- 1. Sadashiv Marketing Pvt. Ltd.*
- 2. North South Enterprises Pvt. Ltd.*

The other directors of the above two companies are also director in A One Machinery Components Pvt. Ltd was also functioning from the portion of the premises with the same

main entrance. Shri Pradeep Nagdev and Shri Gopal Nagdev are the directors of the company residing at A-3/50, Janak Puri, New Delhi. Shri Pradeep and Shri Gopal Nagdev are also director of North South Enterprises Pvt. Ltd along with Shri Ashwani Kumar Mahajan. Both the companies' i.e., A One Machined Components Pvt. Ltd and M/s North South Enterprises Pvt. Ltd are having similar nature of business.

The seized documents show credit balance of Rs.1,26.49,249.80 standing in the name of A-One Machined Components Pvt. Ltd as on 31-10-2008, The assessee was asked as to why this amount of Rs.1,26,49,249 80 be not added to the total income.”

32. Assessee in response to show cause notice, submitted that the amount standing in the name of A-One Machine Components (P.) Ltd. as on 31/10/2008 were duly reflected in the books of account and copy of ledger account was also filed. The Assessing Officer rejected assessee's contention on the ground that assessee had not furnished any confirmation of copy of bank account and balance sheet to prove the entry appearing in its books of account.

33. Before the ld. CIT(A), assessee submitted that necessary documents and confirmation were submitted during the course of assessment proceedings, but the Assessing Officer has completely ignored the same. Copy of said confirmation of Rs.1,26,49,249/- from A-One Machine Components (P.) Ltd. was duly filed along with books of account and financial statement of the assessee for relevant period. The ld. CIT (A), on perusal of

the entire material placed on record, held that assessee had filed confirmation and copy of account of the said company and mainly because of non-furnishing of bank account, the Assessing Officer cannot hold that assessee has failed to establish the genuineness of the transaction. However, during the course of appellate proceedings, assessee did file bank statement, ledger account, vouchers, reconciliation statement, details of dealings between assessee as well as the said company, etc. However, the Assessing Officer had objected for admission of such additional evidence in his remand report. The ld. CIT (A) held that evidence, which has been filed by the assessee, are merely supportive documents and otherwise the transaction itself is proved from other evidences filed by the assessee before the Assessing Officer as well as before him. On perusal of the copy of account, the ld. CIT (A) noted that in both sale/purchase and dealings with the said company are duly reflected and it is a complete genuine transaction and, therefore, he deleted the said addition.

34. After hearing both the parties, we find that such a finding of the ld. CIT(A) is based on correct appreciation of facts, because not only this transaction is reflected in the copy of account but is also confirmed by the confirmation letter filed by the said company along with copy of bank statement. The entire transaction stands verified based on various evidences as discussed by Ld. CIT (A) and, therefore, there is no reason to treat the said amount as unexplained credit. Thus, the addition deleted by the ld. CIT (A) is upheld.

35. Now we will deal with assessee's appeal wherein assessee has challenged the addition of Rs.62 lakhs on account of

undisclosed investment in the property on the alleged payment of cash.

36. During the course of search, a document was found marked as Page 6 of Annexure A1 and also certain pages of Annexure A2 showing that assessee had purchased a land measuring 6 Kanal 16 marlas at Village Jakhoda, Haryana. This land was registered for a sale consideration of Rs.21.25 lakhs and Rs.1,64,300/- was paid towards stamp duty. However, as per record a figure of “62” was mentioned which was treated as Rs. 62 lakhs by the Department and it was concluded that, this was the amount which might have been paid in cash outside the books of account. In the absence of any proper explanation and documentary evidence, the Assessing Officer treated the entire cash amount as income from undisclosed sources. While making this addition, he held that this addition would be made in the hands of the company on substantive basis and on protective basis in the case of the Director, Shri. Ashwani Kumar Mahajan. The Id. CIT(A) has confirmed the said addition on the ground that assessee could not rebut the document found from his place and presumption is drawn in terms of section 132(4A) read with section 292C and, therefore, addition has rightly been made by the Assessing Officer. While coming to his conclusion, he relied upon catena of decisions and which have been dealt and incorporated in the impugned appellate order. The relevant findings of the Id. CIT (A) while confirming the said addition is as under:-

“5.11. It is thus held that mere general and vague contention of the appellant that the seized documents are

loose papers and the same are not in his handwriting cannot be a basis to negate the addition made in the order of assessment.

5.12. *The page 6 of Annexure A-1 is seized from the appellant's premises and the notings therein clearly spells in no uncertain terms that land is purchased and part component is paid by cheque and part in cash, and simply stating, that the same is not in appellant's handwriting, I am afraid, does not come to appellant's rescue, to rebut the onus cast upon by the provisions of section 132(4A) and section 292C. No explanation has been given by the appellant as to how the under what circumstances the said paper is found from his premises and how the entries on the said seized document does not relates to him.*

5.13. *Thus taking in totality of all the facts and circumstances and evidences on record and entries /notings on the seized documents, I hold that Rs.62,00,000 have been paid by the appellant from its undisclosed sources in cash for the purchase of property. Accordingly, addition made by the AO is upheld.”*

37. The ld. counsel for the assessee submitted that assessee was given no opportunity by the Assessing Officer and these queries were raised at the fag-end of the assessment proceedings, which is evident from the copy of the order sheet entries, which has been filed before us. Moreover, assessee had rebutted this document on the ground that it is not in his handwriting and noting if at all belongs to the broker from whom Assessing Officer should have enquired and assessee has categorically submitted

that this document does not belong to him or is not in his handwriting. Thus, he prayed that the matter can be restored back to the file of the Assessing Officer so that proper enquiry can be made before making addition as the same has not been done by the Assessing Officer.

38. On the other hand, the ld. Sr. D.R. strongly relied upon the orders of the Assessing Officer and the ld. CIT (A) and submitted that the onus, which was cast upon the assessee, has not been discharged and, therefore, the transaction mentioned in the said document is to be added in the hands of the assessee only.

39. After hearing both the parties and on a perusal of the impugned order, we find that a document was seized from the premises of the assessee which mentioned sale transaction of land which reflected that property was registered for a consideration of Rs.21.25 lakhs and other expenses like stamp duty of Rs.1,64,300/-. In the said seized document, there is a figure of "62" which has been read as Rs.62 lakhs which has been presumed to be made in cash. We at the outset agree that the presumption is raised against the assessee in terms of section 132(4A) and 292C that documents belongs to the assessee and onus is upon the assessee to rebut such presumption, however such a presumption is a rebuttal presumption which assessee has to explain with cogent evidence that it belongs to someone else, but here assessee has only denied the transaction without rebutting it by way of proper evidence. However, in the interest of justice, we are of the opinion that, since no proper opportunity was given by the Assessing Officer, therefore, the matter should be remanded back to the file

of the Assessing Officer to examine this issue afresh and assessee would be at liberty to rebut this presumption by proving that the transaction recorded therein; specially element of cash, does not belong to him or expenses has not been incurred by him towards purchase of the said plot. The Assessing Officer shall decide this issue after giving due opportunity to the assessee and if required, assessee may produce the broker to substantiate his point. Accordingly, this issue is restored to the file of the Assessing Officer to be decided afresh and in accordance to law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

40. In the result, appeals of the Revenue for assessment year 2007-08 is dismissed; and for the assessment year 2009-10 are partly allowed for statistical purposes; whereas, the appeals of the assessee for assessment year 2007-08 and 2009-10 are allowed for statistical purposes.

Order pronounced in the open Court on 30th November, 2017.

**[O. P. KANT]
ACCOUNTANT MEMBER**

**[AMIT SHUKLA]
JUDICIAL MEMBER**

DATED:30th November, 2017

JJ:15-1611

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

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