

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.319,320,321,322,323 & 325/Chd/2014
(Assessment Years : 2005-06 to 2009-10 & 2011-12)

Ajay Kumar Sood Engineers & Contractors Sanjay Sadan, Chotta Shimla	Vs.	The DCIT Central Circle-II Chandigarh
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PAN: AAKFA4648J

ITA No.345/Chd/2014
(Assessment Year : 2011-12)

The DCIT Central Circle-II Chandigarh	Vs.	Ajay Kumar Sood Engineers and Contractors Sanjay Sadan, Chotta Shimla Shimla
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ITA Nos.136 & 137/Chd/2015
(Assessment Years : 2010-11 to 2011-12)

Shri Ajay Goel Goel Plaza, Ram Bazar Shimla, H.P-171001	Vs.	The DCIT Central Circle-II Chandigarh
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PAN: ABHPG6306K

(Appellant)	(Respondent)
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Assessee by	:	Shri. Sudhir Sehgal Shri. Dinesh Sood
Department by	:	Sh. Manjit Singh, Dr. Gulshan Raj

Date of hearing	:	24/05/2018
Date of Pronouncement	:	13/06/2018

ORDER

PER BENCH:

All the above appeals have been filed by the different Assesseees and Cross Appeal filed by the Revenue against the separate order of the Ld. CIT(A), Gurgaon.

2. Year wise grounds of Appeal in case of Ajay Kumar Sood Engineers & Contractors are as under:

Grounds of appeal in ITA No.319/Chd/2014 for A.Y. 2005-06:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 7,43,502/- as unexplained expenditure.

Grounds of appeal in ITA No.320/Chd/2014 for A.Y. 2006-07:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 10,56,406/- as unexplained expenditure.

Grounds of appeal in ITA No.321/Chd/2014 for A.Y. 2007-08:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 19,68,805/- as unexplained expenditure.

Grounds of appeal in ITA No.322/Chd/2014 for A.Y. 2008-09:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 5,28,126/- as unexplained expenditure.

Grounds of appeal in ITA No.323/Chd/2014 for A.Y. 2009-10:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 8,70,269/- as unexplained expenditure.

Grounds of appeal in ITA No.325/Chd/2014 for A.Y. 2011-12:

1. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order which is contrary to law and the facts of the case;
2. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.
3. The Ld. CIT(A) has erred by upholding the Ld. DCIT's order wherein he added Rs. 3,15,69,373/- by applying adhoc GP rate.
4. The Ld. CIT(A) erred by upholding the addition of Rs. 24,90,000/- on account of alleged unexplained expenditure.

Revenue has raised only one effective ground of appeal in ITA No. 345/Chd/2014 for A.Y. 2011-12 which reads as under:

" 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing relief of Rs. 1.75 Cr. To the assessee on account of surrendered income against the addition made by the AO on the basis of low G.P. rate of 4.27% against the GP of 19.63% and 13.29% declared during the immediately preceding A.Y.s 2009-10 and 2010-11 respectively even though the surrender was made to cover any discrepancy in the documents and books seized during the course of search work in progress and stock over and above the normal business income."

Year wise grounds of Appeal in case of Sh. Ajay Goel are as under:

Grounds of appeal in ITA No.136/Chd/2015 for A.Y. 2010-11:

1. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order which is contrary to law and facts of the case;*
2. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order dated: 28/03/2013 which seems to has been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.*
3. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order wherein he added Rs. 49,96,580/- out of labour charges payable which were surrendered during search and already accepted and taxed during the assessment year; 2011-12.*
4. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order wherein he added Rs. 2,21,275/- on account of cash payments invoking provisions of Section 40A(3).*
5. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order wherein he added Rs. 6,46,000/- on account of alleged receipt from running of resort.*
6. *The Ld. CIT(A) has erred by upholding the DCIT/s order wherein he made addition of Rs. 1,72,20,000/- on basis of stamp paper value of land sold by the assessee which was held as stock in trade and profit taxed as business income.*

Grounds of appeal in ITA No.137/Chd/2015 for A.Y. 2011-12:

1. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order which is contrary to law and facts of the case;*
2. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order dated: 28/03/2013 which seems to has been passed after 31/03/2013 since same is dispatched on 04/04/2013 and as such is time barred and needs to be quashed.*
3. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order wherein he added Rs. 28,61,000/- on account of cash payments invoking provisions of Section 40A(3).*
4. *The Ld. CIT(A) has erred by upholding the Ld. DCIT/s order wherein he added Rs. 6,46,000/- on account of alleged receipt from running of resort.*

3. Firstly we shall deal with the case of Shri. Ajay Goyal

ITA No. 136/Chd/2015 for A.Y. 2010-11

4. Ground No. 3 relates to addition of Rs. 49,96,580/- on account of labour charges.

4.1 Before us the Ld. AR argued that the amount has been surrendered during the search stands accepted and taxed for the A.Y. 2011-12, hence the issue is referred to the file of Assessing Officer to examine if this amount has been surrendered and offered to tax in the A.Y. 2011-12 and if found correct the addition stands deleted for the A.Y. 2010-11.

5. Ground No. 4 relates to addition of Rs. 2,21,275/- under section 40A(3)

5.1 The Assessing Officer on perusal of the cash book made addition of Rs. 2,00,000/- on account of payment made to Mangal Singh for purchase of land on 10/09/2009 and on account of material account of Rs. 21,275/- on 10/10/2009.

5.2 Before us, the Ld. AR explained that the amounts of Rs. 2,00,000/- has been paid for purchase of land which was taken into capital account and not charged in P&L Account. Section 40A(3) reads as under:

(3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

5.3 Since in the instant case the amount of Rs. 2,00,000/- has not been claimed as a deduction, the provisions of Section 40A(3) are not attracted to this transaction and hence the addition is hereby directed to be deleted. Regarding the amount of Rs. 21,275/- it was submitted that it was used for purchase of material at the site of Sanjauli for urgent requirement. Owing to the business expediency, the amount involved in the purpose intended we hereby delete the addition made on account of cash purchase which was required on urgent basis.

6. Ground No. 5 relates to addition of Rs. 6,46,000/- on account of receipt from resort operation.

6.1 During the search documents marked A-1 was impounded from the premises of M/s Shimla British Resort, a guest house run by the assessee showing receipts of Rs. 1,61,500/- for the period of 06/06/2009 to 02/08/2009. The Assessing Officer has extrapolated this amount for the entire year to Rs. 6,40,000/- based on the decision of ITAT Hyderabad which held that where a regular pattern of suppression is established the lawful presumption is that there is suppression of whole of the assessment year but subject to adjustment of special factors.

6.2 Before us, it was argued by the Ld. AR that it was a trial run made on the basis for the purpose of selling out the resort. Secondly, if it is assumed that the resort has been run for the entire year, then the assessee would be entitled for the expenditure involved in running the resort. Thirdly, it was argued that this

resort has been already reflected in the fixed assets at Rs. 1,69,09,621/-and if the resort is taken as running business enterprise then the assessee would be eligible for depreciation @10% which would result into Rs. 17,00,000/- for the year.

6.3 The Ld. DR supported the orders of the lower authorities and summed up the issues vide letter dt. 24/05/2018.

6.4 Based on the facts and arguments we find that it is a neutral proposition to confirm the addition and allow expenditure and the depreciation.

6.5 In view of the peculiar facts and circumstances of the case the addition made by the Assessing Officer is liable to be deleted.

7. Ground No. 6 relates to addition of Rs. 1,72,20,000/- on account of land deal.

7.1 During the search, a sale deed dt. 31/08/2009 entered between the assessee and one Smt. Pavit Kaur of Shimla. As per the sale deed the assessee sold property comprising of land and building for a consideration of Rs. 42,00,000/- whereas the market value of the property as per registration authorities was Rs. 2,18,20,000/- hence the Assessing Officer has brought the difference of amount between the sale and the value determined as per the stamp duty authorities to tax as undisclosed income.

7.2 The Ld. CIT(A) has confirmed the addition invoking the provisions of Section 50C, hence now the question for adjudication, stands whether the provisions of Section 50C are applicable in case of sale of asset which was stock in trade.

7.3 Before us, Ld. AR reiterated the pleas taken before the lower authorities and Ld. DR relied on the orders of the Ld. CIT(A).

7.4 The Ld. DR supported the orders of the lower authorities and summed up the issues vide letter dt. 24/05/2018.

7.5 We have heard and perused the records. We hereby lay down that the provisions of Section 50C are not applicable for the sale of assets which are part of stock in trade and remand the matter back to the file of Assessing Officer for the limited issue to examine if the asset in question has been shown / reflected

as stock in trade or in closing stock in the regular returns filed by the assessee and take a decision in accordance with the law laid down.

ITA No. 137/Chd/2015 for A.Y. 2011-12

8. Ground No. 3 relates to contraventions of provisions of Section 40A(3)

8.1 During the year the assessee has paid in cash of Rs. 28,61,000/- to Kamal Nain, Nangal Singh and Sanjay towards the purchase of land which is treated as capital asset. On perusal of the record the amount of Rs. 28,61,000/- (except Rs. 1,61,000/-) was said to be paid in the presence of concerned Tehsildar at the time of registry or earlier and when the seller insists for cash payments. With regard to the provisions of Section 40A(3) the same is being deleted as the issue is already stands adjudicated above while dealing with similar addition to the one dealt in ground no. 4 for the A.Y. 2010-11.

8.2 Ground No. 4 relates to addition of Rs. 6,46,000/- on account of receipts from running of the resort.

8.3 With regard to the above addition the same is being deleted as the issue is already stands adjudicated above while dealing with similar addition to the one dealt in ground no. 5 for the A.Y. 2010-11.

9. Now we shall deal with the case of M/s Ajay Kumar Sood Engineers & Contractors

10. The assessee has filed revised grounds of appeal vide letter dt. 14/08/2014 and hence the same are being replaced by the original grounds.

Ground No. 3 for the

A.Y. 2005-06 relates to addition of Rs. 7,43,502/- as unexplained expenditure.

A.Y. 2006-07 relates to addition of Rs. 10,56,406/- as unexplained expenditure.

A.Y. 2007-08 relates to addition of Rs. 19,68,805/- as unexplained expenditure.

A.Y. 2008-09 relates to addition of Rs. 5,28,126/- as unexplained expenditure.

A.Y. 2009-10 relates to addition of Rs. 8,70,269/- as unexplained expenditure.

Ground No. 4 for the

A.Y. 2011-12 relates to addition of Rs. 24,90,000/- as unexplained expenditure.

10.1 During the course of search and seizure operation under section 132(1) of the Income Tax Act, 1961 on 08/10/2010 books of account marked as A1 to A40

were found and seized from the residence of Shri. Sanjay Kumar Sood at Shimla. During the search the assessee was confronted about the writings on the page no. 104 of A-36. Shri. Sanjay Sood explained that the writings belongs to him and not readily recollect what the entries on the documents are all about.

11. For the A.Y. 2005-06 :

- i. The page no. 9 of document A-2 is a ledger copy of Nathuram and party in the books of accounts of AKS Engineers and Contractors ensues the details of cash payment of Rs. 1,78,225/- in the F.Y. 2004-05.
- ii. The page no. 45 of document A-2 is a ledger copy of P.K. Constructions in the books of accounts of AKS Engineers and Contractors ensues the details of cash payment of Rs. 1,06,160/- in the F.Y. 2004-05.
- iii. The page no. 92 of document A-2 is a ledger account of work pertaining to PMGSY in the books of accounts of AKS Engineers and Contractors ensues the details of cash payment of Rs. 4,59,117/- to one Mr. S.S. Hansretta and others in the F.Y. 2004-05.

11.1 The Ld. CIT(A) confirmed the additions on the grounds that during the remand proceedings the Assessing Officer has refuted the assessee's contention that the entries in the seized documents A-1 to A-40 relate to business expenses duly reflected in the books as the same was not borne out of the copy of account submitted by the assessee. On the other hand assessee has contended that the Assessing Officer has in fact admitted to the expenses as related to business and substantiated through not clearly. In other words the expenses pertained to his business and were not personal.

11.2 On a perusal of the documents, it is evident that these payments as appearing are required to be reconciled with the books of accounts. If assessee is unable to reconcile with the books of accounts then naturally the payments become unaccounted and so the onus upon the assessee is to explain the source thereof. Clearly the expenses which have been made in cash, have not been recorded in the books of accounts.

11.3 This observation of the Ld. CIT(A) is based on the remand report of the Assessing Officer which reads as under:

Addition on account of unexplained expenditure u/s 69C of the Income Tax Act 1961:-

During the course of search operation u/s 132(1) of the I. T. Act'61 at the residence of Sh. Sanjay Kumar Sood at Sanjay Sadan, Chhotta Shimla, books of accounts marked as A-1 to A-40 were found and seized. These documents were confronted to him u/s 132(4) of the I. T. Act'61 and his statement was recorded. The relevant extracts of his statements recorded u/s 132(4) of the I. T. Act'61 are reproduced below-

"Q.29 / am showing you page no 104 of this document A-36, on this page payments with cash and cheques are written, on this page one cheque no. is also written. Please explain the contents of this page. In whose writing this page is written.

Ans The writing on this page is mine. However, I cannot recollect for what purpose I had written these figures."

As per the provisions of Section 292C of the I. T. Act, 1961 the onus lies on the assessee to explain the contents of these documents, since they were seized from his residence. The assessee was asked to show cause vide order sheet noting dated 13.03.2013 why the expense recorded on these documents should not be treated unexplained expenditure u/s 69C, since he has failed to reconcile the expenses recorded on them with regular books of accounts. In response to that the assessee reiterated that he is not in a position to reconcile the same. The assessee failed to reconcile the expenses recorded on the said documents with regular books of accounts. Hence the unexplained expenditure of Rs.7,43,502/- recorded on the said documents was treated unexplained expenditure u/s 69C of the I.T. Act'61 and added back to the total income of the assessee.

Now in the appellate proceedings the assessee has submitted that the documents marked A-1 to A-40 relate to expenses relating to his business and these are reflected in books of accounts and the details of the same are highlighted and attached. However the assessee's submission and the copy of account submitted by the assessee do not clearly substantiate his claim. In view of the same, the addition made earlier is recommended to be sustained."

11.4 Thus the Assessing Officer made addition under section 69 mainly on the grounds that the assessee was not in a position to reconcile the notings in the seized material with the regular books of accounts.

11.5 Before us, the assessee has explained the notings on page no. 9 of A-2 and page No. 92 of A-2 juxtaposing the amounts in the ledger account with that of the cash withdrawals giving the details of the cheque. Regarding the notings on page no. 45 of A-2 the cash debited was of Rs. 1,00,700/- on 20/03/2005 whereas cash withdrawn shown was on 29/03/2005 vide cheque no. 859230.

11.6 Ld. CIT DR relied on the rationale given by the Ld. CIT(A).

11.7 Having gone through the documents produced before us which were also available before the lower authorities the amounts on page no. 9 and 92 stands explained against the cash withdrawals and hence the amount of addition is hereby ordered to be deleted. Regarding the page no. 45 of Annexure A-2 since the withdrawals precedes the cash payments no benefit of availability of the cash in hand can be given. The assessee's argument that the entries on this page are vague and has no relevance cannot be accepted as

the entries on the ledger on all pages is found to be written continuously in continuity and purposefully. Hence, the amount of Rs. 1,06,160/- which could not be explained with relation to the cash withdrawals hereby stands confirmed.

12. Regarding Assessment Year 2006-07, the issue is on the similar grounds. The relevant pages are page 92 of A-2, page 1 of A-4, page 213 of A-5, page 79 and 85 of A-6.

12.1 The Ld. CIT(A) held that page 213 of the document A-5 which is a ledger account of P.K. Construction showing cash payment of Rs. 1,03,200/- in the F.Y. 2005-06 is the same as page no. 45 of A-2 and confirmed the addition.

12.2 Ld. CIT DR relied on the rationale given by the Ld. CIT(A).

12.3 Having gone through the documents produced before us which were also available before the lower authorities the amounts on page no. 92 of A-2, page 1 of A-4, page 213 of A-5, page 79 of A-6 stands reconciled as per the details of the cash withdrawn and cash in hand on the date of incurring of expenses. Regarding the entries of page no. 85 of A-6 the assessee explains that as decipherable from the ledger account it belongs to Jakhu land which pertains to the partners and not to the firm. Since the expenses mentioned in the ledger account seized are duly explained with regard to the cash available and cash withdrawals, no addition on this account is called for. Hence the addition made by the Assessing Officer is hereby ordered to be deleted.

13. Regarding Assessment Year 2007-08, the issue is on the similar grounds. The relevant pages of the seized material are page no. 1 of A-4 which is a ledger account of Amit Singla , page no. 45 of A-6 , page no. 103 of A-6, page no. 27 of A-8, page no. 153 of A-8, page no. 75 of A-9, page no. 129 of A-10 (total 7 entries).

13.1 The Ld. CIT(A) confirmed the addition on the grounds that the assessee has not reconciled the entries with the books.

"The assessee has tried to pass of Page - 1 of the document A-4 which is a copy of ledger account of Amit Singla showing cash payment of Rs. 1,00,000/- on 10.02.2006 and cash payment of Rs. 25,000/- on 19.05.2006 as vague having no relevance is not tenable. The narrations in the ledger on the two dates clearly mention Cash payments. Rs. 25,000/- paid on 19.05.2006 pertain to this AY 2007-08. Page - 45 of the document A-6 is a copy of ledger account of work pertaining to PMGSY, Thana Road, Jubbal for F.Y. 2006-07 and shows the payment of Rs. 5,04,744/- which assessee has not reconciled with the books. I find that the AO has added the payments which are other than the cheques payments. Similarly i.r.o.

Page -103 of the document A-6 pertaining to Rampur site, only the cash payments of Rs. 3,21,900/- has been considered by the AO.

Page -27 of the document A-8 is a ledger account of M/s G.S. Kalsi Enterprises for F.Y. 2006-07 and contains a detail of payment of Rs. 3,86,600/-. It appears to be payment made in cash and DD totaling to Rs. Then at the top, left, a sum of Rs.3,75,000/- is added with tax of Rs.15,600/- which adds to Rs. 3,86,600/-. Hence this could be easily explained by the assessee by giving the DD and bill nos. besides a confirmation. The position is the same in the other documents. Only the cash components evident from the seized papers have been added by the AO.

On a perusal of the documents, it is evident that the payments as appearing are required to be reconciled with the books of accounts. If assessee is unable to reconcile with the books of accounts then naturally the payments become unaccounted and so the onus upon the assessee is to explain the source thereof. Clearly the expenses which have been made in cash, have not been recorded in the books of accounts.

Thus by virtue of sec 69C, it becomes obligatory on the part of the assessee to explain, to the satisfaction of the AO, the source of expenditure made by him, with a rider that if the explanation is not satisfactory, the AO could use his discretion to add the expenditure as deemed income for the year in which the expenditure was incurred".

13.2 Ld. CIT DR relied on the rationale given by the Ld. CIT(A).

13.3 Having gone through the documents produced before us which were also available before the lower authorities the amounts on page no.45 of A-6, 103 of A-6, 27 & 153 of A-8, 75 of A-9, and page no.129 of A-10 stands explained against the cash withdrawals and hence the amount of addition is hereby ordered to be deleted. Regarding the page no. 1 of Annexure A-4 the assessee could not reconcile the amount of Rs. 25,000/- on the grounds that the entry is vague and has no relevance . We find that the one entry which the assessee could not explain as vague as the entries on that page starting from 15/04/2005 to June 2016 could easily be deciphered and explained, one entry of 19/05/2006 cannot be treated as vague. The assessee's argument that the entries on this page are vague and has no relevance cannot be accepted as the entries on the ledger on all pages is found to be written continuously in continuity and purposefully. Hence, the amount of Rs. 25,000/- which could not be explained with relation to the cash withdrawals hereby stands confirmed. We also clarify here that the Assessing Officer has made addition of Rs. 3,86,600/- as per page no. 27 of A-8 whereas the entries on A-8 totals to 3,01,600/- which has been duly explained.

14. Regarding Assessment Year 2008-09:

14.1 The Assessing Officer made addition on the similar grounds mentioned above pertaining to page no. 129 of A-10 page no. 5 of A-13 and page no. 89 of A-32.

14.2 Ld. CIT(A) confirmed the addition holding as under:

"On a perusal of the seized ledger account of Verma Cut Stone supplier (document page 129 of the document A-10), it is very evident that Rs. 2,00,000/- on 19.07.2007 and Rs. 20,000/- on 04.12.2006 have been paid in cash. Now the assessee has sought to put forth that Rs. 2,00,000/- was actually a cheque payment dated 15.7.2007. This argument cannot be accepted as the date of 19.07.2007 is clearly stated in the seized document. Similarly, i.r.o A-13, page 5 which is a ledger copy, the payment in cash of Rs.2,25,000/-on 15.6.2007 is crystal clear and assessee's attempt to show that the computer printout of ledger of the party does not reflect the cash payment has no credibility. The position is the same with regard to Rs.1,03,126/- as Page -89 of the document A-32 indicates the total liability of Rs.1,03,126/- against which advance of Rs.24,000/- was given and the balance of Rs.80,026/- as paid in cash on dated 24.12.2007? In this backdrop, assessee's endeavor to explain otherwise does not hold any water.

During the remand proceedings the AO has refuted the assessee's contention that the entries in the seized documents A-1 to A-40 relate to business expenses duly reflected in the books as the same was not borne out of the copy of account submitted by the assessee. On the other hand assessee has contended that the AO has in fact admitted to the expenses as related to business and substantiated though not clearly. In other words the expenses pertained to his business and were not personal.

On a perusal of the documents, it is evident that the payments as appearing are required to be reconciled with the books of accounts. If assessee is unable to reconcile with the books of accounts then naturally the payments become unaccounted and so the onus upon the assessee is to explain the source thereof. Clearly the expenses which have been made in cash, have not been recorded in the books of accounts.

Thus by virtue of sec 69C, it becomes obligatory on the part of the assessee to explain, to the satisfaction of the AO, the source of expenditure made by him, with a rider that if the explanation is not satisfactory, the AO could use his discretion to add the expenditure as deemed income for the year in which the expenditure was incurred".

14.3 Ld. CIT DR relied on the rationale given by the Ld. CIT(A).

14.4 We have gone through the documents placed before us the entry on page no. 129 of A-10 pertains to cash paid to Verma Cut Stone Supplier on 19/07/2007 whereas the cash in hand available on the date stands at Rs. 17,95,803/- hence this addition is liable to be deleted as the assessee could prove the availability of cash for the expenditure incurred. Further the assessee has taken a plea that the amounts mentioned on page no. 5 of Annexure A-13 as vague and has no relevance.

14.5 On perusal of the ledger account we find that it belongs to a running account for SAS Construction Company Delhi and the entries of debit starts from

15/06/2007 onwards. The details of TDS has also mentioned. Hence it cannot be said to be a irrelevant, vague document. The entry on 15/06/2007 clearly shows the payment of cash of Rs. 2,25,000/- . In the absence of any plausible explanation before the lower authorities by the assessee or even before us the amount is hereby confirmed as the cash paid in the absence of proof of availability of cash in hand or cash withdrawals from banks. Regarding the entries on page no. 89 of A-32 of Rs. 1,03,126/- the assessee's paper book on page no. 46 & 47 could not give any plausible explanation and incurring of expenditure of this amounts has not been matched with the regular books of accounts or availability of the cash. Hence we hereby confirmed the addition made by the Assessing Officer on account of the debit entries.

15. Regarding Assessment Year 2009-10:

15.1 The Assessing Officer made addition on account of cash expenses under section 69C mentioned on page no.29 & 76 of A-11 page no. 61 of A-15.

15.2 Ld. CIT(A) confirmed the addition holding as under:

"It is undisputed that diaries were found in the course of search, admitted by the Shri Sanjay Kumar Sood, partner of the assessee-firm, to be in his handwriting and pertaining to business expenses. The seizure is marked A-1 to A-40. In the statement recorded u/s 132(4), assessee in reply to Q.29 admitted that the writing on the page was his but could not recollect the purpose for having written the figures.

On a further perusal of the impugned order, it is seen that the amounts involved emanating from the seized documents are:

- a) Page - 29 of the document A-II is a copy of ledger account of M/s S.K. Butel for F.Y. 2008-09 and shows a cash payment of Rs. 1,00,000/- on 21.07.2008.*
- b) Page - 76 of the document A-II is a copy of ledger account of Mall Road Project for F.Y. 2008-09 and shows cash payment of Rs. 6,00,000/- on various dates.*
- c) Page -61 of the document A-15 is a copy of ledger account of M/s Shiv Filling Station for the F.Y. 2008-09 and shows cash payment of Rs. 6,00,000/- on various dates.*

During the remand proceedings the AO has refuted the assessee's contention that the entries in the seized documents A-1 to A-40 relate to business expenses duly reflected in the books as the same was not borne out of the copy of account submitted by the assessee. On the other hand assessee has contended that the AO has in fact admitted to the expenses as related to business and substantiated though not clearly. In other words the expenses pertained to his business and were not personal.

On a perusal of the documents, it is evident that the payments as appearing are required to be reconciled with the books of accounts. If assessee is unable to reconcile with the books of accounts then naturally the payments become unaccounted and so the onus upon the assessee is to explain the source thereof.

Clearly the expenses which have been made in cash, have not been recorded in the books of accounts".

15.3 Ld. CIT DR relied on the rationale given by the Ld. CIT(A).

15.4 We have gone through the documents placed before us by the Ld. AR and find that cash in hand available is of Rs. 40,06,973/- on the date of incurring of expenditure of Rs. 1,00,000/- on 21/07/2008 as per page no. 29 of Annexure A-11. Similarly for the expenditure incurred on 21/05/2008 and 11/07/2008 of Rs. 1,00,000/- each, the assessee could show the bank withdrawals of Rs. 1,00,000/- each on 19/05/2008 and on 11/07/2008. Hence no addition is warranted on this expenditure as the availability of the cash is proved through accounts regarding page no. 61 of A-15 we find that it is the expenditure incurred for purchase of diesel in cash from Shiv Filling Station which has been paid in cash and entered into the regular accounts.

15.5 Having gone through the ledger account of diesel for the period 01/04/2008 to 21/05/2008, it is observed that the bills have been duly reflected in the diesel account. Hence no addition on this account is called for and accordingly we hereby delete the addition made by the Assessing Officer.

16. Regarding Assessment Year 2011-12:

16.1 The Ground No. 3 relates to addition by applying adhoc GP rate.

16.2 The Assessing Officer made addition by adopting a GP rate of 10% on the turnover of Rs. 55.09 crores being the contractual receipt against the GP declared by the assessee of 4.27%. The GP rates of the contractual business of the assessee from the A.Y. 2005-06 to A.Y. 2011-12 is as under:

A.Y.	Turnover (in Rs.)	G.P (in Rs.)	G.P rate (%)
2005-06	63217053	14193089	22.45
2006-07	103332115	20327787	19.67
2007-08	121081144	19396600	16.02
2008-09	321310249	19756418	6.15
2009-10	109858236	21566221	19.63
2010-11	245279523	32620633	13.29
2011-12	550966869	23527313	4.27

16.3 During the assessment proceedings the assessee explains that the site wise details cannot be prepared as the assessee has executed works and booked income as partial completion method on basis of measurement and bills finalized by the department and work details provided by the same. The Assessing Officer held that the assessee has huge expenses on account of petty

work of Rs. 6.16 crores and petty contractor of 1.61 Crores no details of TDS or project to which the expenses were incurred have not been furnished and hence the G.P. is to be estimated.

16.4 The Ld. CIT(A) has confirmed the addition holding that no reasonable explanation was given by the assessee for following G.P. The order of the Ld. CIT(A) is as under:

AY	Turnover (in Rs.)	GP (in Rs.)	GP rate (%)
2005-06	6,32,17,053	1,41,93,089	- 22.45
2006-07	10,33,32,115	2,03,27,787	19.67
2007-08	12,10,81,144	1,93,96,600	16.02
2008-09	32,13,10,249	1,97,56,418	6.15
2009-10	10,98,58,236	2,15,66,221	19.63
2010-11	24,52,79,523	3,26,20,633	13.29
2011-12	55,09,66,869	2,35,27,313	4.27

Considering the fall in GP for the year i.e. 4.27%, AO required the assessee to furnish the details of work executed and expenses incurred/receipts project-wise for the year. The assessee contended that it was not possible to prepare site-wise details. The AO also observed that debit of large expenses to the tune of Rs. 6,16,27,258/- on account of petty works and Rs.1,61,50,962/- on account of petty contractors in the trading account. However no detail of such expenses were filed i.e. nature of expenses, names and addresses of the persons to whom these payments were made, whether tax had been deducted at source on such payment or not, project to which these expenses were related. Neither were vouchers produced for the huge expenses incurred under different heads. The assessee was therefore asked to substantiate the steep fall in the GP rate. In response the assessee ascribed the fall in GP to outflow by way of interest payment on funds borrowed for installing heavy machinery and ensuing depreciation. This explanation did not find favor and so the AO was prompted to cause the assessee as to why the trading results for the contractual business should not be rejected. Getting no response, AO proceeded to recast the trading result by applying the GP rate of 10% on the total contractual receipts and thereafter reducing the gross profit declared by the assessee. The resultant figure of Rs.3,15,69,373/- was added back by the AO. The relied case was that of CIT-II vs Competent Construction Company, ITA No. 646 of 2010 (O&M) dated 1.11.2012.

During the remand proceedings, the AO has strongly objected to the details of petty work, detail of expenses on which TDS was deducted with copies of quarterly statements of TDS supplied at this stage. She has contended that due opportunity had been given to the assessee and even despite the show cause for recasting the trading results vide order sheet dated 15.3.2013, neither the bills/vouchers nor other documentary evidences to prove the genuineness of the expenses had been furnished. She has therefore recommended the upholding of the addition made in the impugned order. On the other hand the assessee has argued that the AO has accepted the correctness of the expenses on the basis of which the adhoc GP was estimated.

In the written submissions before me, the assessee had furnished copy of ledger account, 1.4.2010 to 31.3.2011, depicting the petty contract work, the TDS amount and the particulars which contain only the names of the persons and against some name petty Cont. or Sub. Cont have been mentioned. This totals to Rs.1,61,50,902/- and TDS of Rs.1,61,508/-. Similarly for the petty expenses of Rs.6,14,48,029/-, the ledger copy provides only the names of the persons/parties. Names of the persons/parties in both the ledger copies are without any addresses; in this case even the station has not been mentioned. The petty work expense details does not add up to Rs. 6,16,27,258/- which is the amount booked by the assessee. No TDS certificates/confirmations/tenders or any documents for

that matter to substantiate the claim of the assessee has been forth coming. Even the four copies all dated 07.10.2011 of Deductor's copy of TDS and the total of TDS deducted and deposited does not tally with the details in the ledger copies filed. This is despite there being no unmatched challans. So when the reasons which convinced the AO to make the GP addition have been clearly elucidated in the impugned order, I would think the assessee has failed miserably in his attempt to proof his case. There is no reason why the primary documents could not have been placed before the AO or even at the appellate stage to establish its case.

The AO has applied a GP rate of 10% for the year against 4.27% shown by the assessee. As for the rate applied, the same is found to be reasonable considering the history of the assessee's case **as** evident from the table (supra). Even if one is to consider the case of Competent Construction Company relied upon, the same is comparable as in that case too, the net profit was estimated based on the fluctuating rates declared coupled with the fact that the books of accounts were not found properly maintained. In the case at hand, the assessee did not furnished project-wise details or any material which could have facilitated the proper determination of rate of GP especially in the backdrop of the sudden dip in AY 2011-12. The rate of 10% applied for the year is therefore held to have been ascertained rationally by the AO and I have no reason to interfere with the same. Consequently the addition of Rs. 3,15,69,373/- on account of GP is confirmed. Assessee fails on this ground.

16.5 Before us the Ld. AR submitted the abstract of gross turnover, net turnover, gross profit and net profit for the A.Y. 2005 to 2012 which is as under:

AJAY KUMAR SOOD ENGINEERS AND CONTRACTORS									
Ass. Year	Gross Turnover	Department Material	Net Turnover	Gross Profit	Depreciation	Net Profit	G.P Rate	N.P Rate	N.P Before Dep.
2005-06	6,32,17,053	11,09,598	6,21,07,455	1,42,62,514	48,18,082	35,21,800	22.96	5.67	13.43
319/Chd/2014									
2006-07	10,33,32,115	13,63,659	10,19,68,456	2,04,48,622	30,18,611	57,39,346	20.05	5.63	8.59
320/Chd/2014									
2007-08	12,10,81,144	92,87,943	11,17,93,201	1,98,86,260	29,85,981	86,85,809	17.79	7.77	10.44
321/Chd/2014									
2008-09	12,13,10,249	1,00,53,472	11,12,56,777	2,21,47,416	30,32,363	96,84,245	19.91	8.70	11.43
322/Chd/2014									
2009-10	10,98,58,236	97,73,428	10,00,84,808	2,42,05,587	34,13,433	1,15,19,869	24.19	11.51	14.92
323/Chd/2014									
2010-11	24,52,79,523	1,16,37,008	23,36,42,515	3,72,04,303	69,57,444	1,26,40,889	15.92	5.41	8.39
324/Chd/(A)									
2011-12	55,09,66,869	17,97,12,315	37,12,54,554	2,76,11,663	91,66,499	89,18,631	7.44	2.40	4.87
325/Chd/(A)									
Ass. Year 2010-11 Already decided in favour of assessee									
Ass. Year: 2011-12 Net Profit After Surrender 1.75 Cr.									
Out of total work Rs. 45,04,02,687/- is as Sub Contractor to Contractor.									

16.6 The Ld. AR argued that the assessee firm was working exclusively in the state of Himachal Pradesh from 2003 and later it was working exclusively as a government contractor in H.P. as a partnership firm. The firm was always working as contractor with the direct contract being allotted to the firm by the government. For the assessment year 2010-11 the assessee moved to Rajasthan as a sub contractor for the part of six lane on Delhi Jaipur highway. He argued that during the Ass. Year: 2010-11 out of total work for Rs 24.52 Cr. 14.35 Cr was as sub contractor at Rajasthan and during the Ass. Year: 2011-12 out of total work for Rs 54.75 Cr. 44.66 Cr was as sub contractor at Rajasthan. It was submitted that the

assessee firm had no earlier experience of working in the plain area and on a project of this magnitude as it can be observed that the turnover has risen to Rs. 55 Crores during the current year as against Rs. 25 Crores in the previous year and in the range of Rs. 10 Crores for all the earlier years and the profits margins were lowered as the bids were taken for high turnover. It was also argued while the profit percentage was kept at minimum the overall profits of the assessee have not much changed. He argued that the assessee firm was working as a sub contractor for a BOT (Build Operate & Transfer) project and not as a direct contractor for the government as it had been doing earlier which is a major reason for fall in gross profit. The Ld. AR also submitted that the details of petty work on which TDS was deducted was submitted before the Ld. CIT(A).

16.7 The Ld. DR in addition to placing reliance on the order of the Ld. CIT(A), argued that in spite of giving sufficient opportunity to the assessee to explain the huge drop in the GP rate from earlier years, the assessee failed to give any plausible explanation. Further, he argued that the assessee had debited huge expenses on account of 'petty work' and 'petty contractor' but failed to give details of such expenses. It is in this background that the Ld. Assessing Officer's rejection of books of accounts placing reliance on the decision of Hon'ble ITAT Chandigarh in the case of Competent Construction Company and applying a GP rate of 10% to compute the GP of the assessee needs to be confirmed. He argued that the GP rate applied by the Ld. Assessing Officer is not adhoc and is based on the GP rate declared by the assessee in the earlier years.

16.8 We have heard Ld. Representatives of both the parties and perused the material placed on record. The GP rate oscillated between 22.92% to 7.44% so as the gross turnover from Rs. 6.3 Crores to Rs. 55.09 Crores. The gross profit in absolute figure ranged from Rs. 1.42 Cr. to Rs. 2.76 Cr. It is also a fact on record that out of the turnover of Rs. 55.09 Cr, Rs. 45.05 Cr. is a sub contract of road construction as against the contracts of the state government in the earlier years. The margins in petty contract were cannot be compared with the profits of highway sub contract especially when the assessee has ventured into the contract for the first time in the year. The observation of the Assessing Officer that the assessee has debited an amount of Rs. 7.77 Cr. on account of petty contract also squarely proves that the remaining amount of Rs. 45 Cr. is on sub contract work and for which Rs. 17.97 Cr. material has been supplied by the

Government for the BOT project also give credence to the profits returned by the assessee.

16.9 Notwithstanding anything post search, the addition on account of gross profits in the absence of any material to prove in congruencies in the books of account or any other evidence to prove bogus or inflated purchases or expenses, without bringing on record mistakes in maintenance of books of accounts and resorting to estimation of gross profit based on the history of the assessee in the presence of new venture embarked upon by the assessee cannot be accepted upon and the addition made on account of gross profit by rejecting of books of accounts on adhoc basis and in the absence of any comparable cases is liable to be deleted.

17. The Ground No. 4 relates to addition of Rs. 24.9 Lacs made by the Assessing Officer on account of cash expenses under section 69C mentioned on page no.104 of Annexure A-36.

17.1 The Assessing Officer made addition on account of seized material which has been written in the assessee's own hand writing. The complete part of the assessment order on this issue is as under:

"This document shows cash payment of Rs. 24,90,000/-. This document was also confronted to Shri Sanjay Sood the partner of the firm who admitted that this document has been written in his own hand writing but he could not recollect or what purpose he had written these figures.

The assessee was asked to show cause vide order sheet noting dated 13/03/2013 why the expense recorded on these documents should not be treated unexplained expenditure under section 69C, since he has failed to reconcile the expenses recorded on them with regular books of accounts. In response to that the assessee reiterated that he is not in a position to reconcile the same.

The assessee has failed to reconcile the expenses recorded on the said documents with regular books of accounts. Hence, the unexplained expenditure recorded on these documents is treated unexplained expenditure under section 69C of the I.T. Act 1961 and added back to the total income of the assessee. The total amount of unexplained expenditure of Rs. 24,90,000/- recorded on these documents is added back to the total income of the assessee".

17.2 The Ld. CIT(A) has confirmed the addition on the grounds that the assessee failed to reconcile the expenses recorded with the regular books of accounts. The complete part of the Ld. CIT(A)'s order on this issue is as under:

"It is undisputed that diaries were found in the course of search, admitted by the Shri Sanjay Kumar Sood, partner of the assessee-firm, to be in his handwriting and pertaining to business expenses. The seizure is marked A-1 to A-40. In this case the relevant page is 104 of A-36 which depicted payments in cash/cheques. In the statement recorded u/s 132(4), assessee in reply to Q.29 admitted that the writing

on the page was his but could not recollect the purpose for having written the figures.

On a further perusal of the impugned order, it is seen that the document reflected cash payment of Rs.24,90,000/- and as assessee failed to reconcile the expenses recorded therein with the regular books of accounts, AO treated the same as unexplained expenditure u/s 69C.

During the remand proceedings the AO has refuted the assessee's contention that the entries in the seized documents A-1 to A-40 relate to business expenses duly reflected in the books as the same was not borne out of the copy of account submitted by the assessee. On the other hand assessee has contended that the AO has in fact admitted to the expenses as related to business and substantiated though not clearly. In other words the expenses pertained to his business and were not personal.

On a perusal of the document page 104 of A-36, copy furnished with the written submissions, it is seen that it contains notings viz. cheques with amounts written against it, papers against which 5.30 is written and registry. In addition cash has been written clearly against two sums of 20.00 and 4.90. This adds up to 24.90. From the contents of the page it cannot be said that the entries are vague and has no relevance. If it was business expenditure as claimed then some substantiation by way of other evidences should have been furnished. It is also evident that the expenses have not been recorded in the books of accounts. From the notings on the seized paper, it appears to be pertaining to property transaction as the words registry...papers...cash and cheques components can be clearly decipherable.

By virtue of sec 69C, it becomes obligatory on the part of the assessee to explain, to the satisfaction of the AO, the source of expenditure made by him, with a rider that if the explanation is not satisfactory, the AO could use his discretion to add the expenditure as deemed income for the year in which the expenditure was incurred.

From the aforesaid discussion, it is evident that the assessee has not made any endeavor at any stage to explain cogently the facts and circumstances of the case. Thus I am inclined to uphold the addition of Rs.24,90,000/- made by the AO u/s 69C.

17.3 Before us, the Ld. AR submitted the page no. 104 of A-36 is a rough noting and produced the copy of the seized paper before us.

17.4 Ld. DR strongly supported the orders of the Assessing Officer and the Ld. CIT(A).

17.5 Having perused the seized material and the orders of the lower authorities which is mentioned above in toto, we find that the addition has been made without bringing anything on record as to what the expenses pertains to. The Assessing Officer has made addition on the grounds that the seized document could not be reconciled with the regular books of accounts. The seized material which is small piece of paper doesn't mention any date or the period to which it belongs to. There is no other material in the form of document or asset which can be correlated or corroborated with regard to the entries on the seized papers by the Revenue. Even if it is deemed that it could be a property transaction, nothing could be identified or brought on record to which property or the asset the said transactions belongs to. The proof of incurring of the

expenditure on any investment is a condicio / sine qua non for any addition to be made under section 69C.

17.6 The Hon'ble Delhi High Court in the case of Commissioner Of Income Tax-V vs M/S Radhika Creation dt. 30 April, 2010 held as under:

We find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about , the source of such expenditure or part thereof or the explanation, if it is offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income-tax Appellate Tribunal had observed:-

"As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of Section 69C are not applicable as there was no unaccounted expenditure."

(underlining added)

6. What the Assessing officer attempted to do was to go into the authenticity of the expenditure and he returned a finding that the expenditure was not authenticated by vouchers and consequently, he added the said expenditure as unexplained expenditure under Section 69C. We are in agreement with the observations and findings of the Commissioner of Income-tax (Appeals) as well as that of the Income-tax Appellate Tribunal that this is not a case which falls under Section 69C. Clearly, Section 69C refers to the „source of the expenditure“ and not to the expenditure itself.

Consequently, the Assessing Officer was clearly wrong in treating the said expenditure as unexplained expenditure under Section 69C of the said Act and the lower appellate authorities were right in their conclusions in deleting the said addition.

17.7 Hence, keeping in view the overall facts of the document and the orders of the authorities below where no tangible reason has been given for the addition, and the judgment of the Hon'ble High Court on the issue is squarely applicable to the facts and circumstances of the instant case, we hereby delete the addition made by the Assessing Officer.

18. Revenue's Appeal No. 345/CHD/2014 for A.Y. 2011-12 as against the intrapolation of Rs. 1.75 Crores surrendered during the search against the addition made by the Assessing Officer on account of gross profit.

18.1 Brief facts of the case are that, as per the to the assessment order dt. 28/03/2013 the assessee has surrendered an additional income of Rs. 1.75 Crores which has been shown in the computation of income separately in the return filed by the assessee in response to the notice issued under section 142(1). As

per the assessment order the surrender made by the assessee is accepted but penalty proceedings under section 271AAA were initiated separately.

18.2 The issue before us in the appeal filed by the Revenue is while the addition made on account of GP rate @10% was Rs. 3,15,69,373 /- the Ld. CIT(A) erred in restricting the GP to Rs. 1,40,69,373/- by giving benefit of Rs. 1.75 Cr. surrendered and declared in the return. Primarily on the facts of the case the surrender made by the assessee has to be given benefit by extrapolating the additions made based on the seized material in the search assessments against the surrendered income in the remaining amount determined is to be brought to tax.

18.3 Before us, the Ld. DR argued that the surrendered income cannot be allowed to be set off against the additions made as the surrendered income should be treated not as income from business and profession but as deemed income under section 69 C by relying on the judgment of Hon'ble Gujarat High Court in the case of Fakir Mohamed Haji Hasan Vs. CIT 247 ITR 290.

18.4 The Ld. DR vehemently argued that since the surrendered income has not been substantiated with any documentary evidence nor the assessee has given any explanation regarding the source it cannot be allowed to be set off against the business income / loss. The arguments made by the Ld. DR in written form are as under:

The Ld.AR argued that the department could not find any other source of income during the search except the business of the appellant. All purchases and receipts are fully vouched. The AR contended that, no defect was pointed out in the books of accounts. According to the AR, the surrendered amount have been recorded in the business heads of the assessee in its books of accounts and duly offered to tax which has been accepted by the Assessing Officer. The AR also stated that once the surrender had been accepted by the department, the Assessing Officer cannot tax it as income u/s 69, 69A and 69B during the assessment proceedings and argued that decision in the case of the Assessing Officer but being raised by the Revenue in the appellate stage.

18.5 The Ld. AR relied on the decision in the case of Gaurish Steels Pvt. Ltd. vs. ACIT ITA no. 1080/CHD/2014, and on the decision of Hon'ble ITAT, Chandigarh in the case of Kumar Enterprises vs. DCIT Chandigarh ITA no. 525/CHD/2014.

18.6 We have gone through the arguments of both the parties and perused the material placed on record, we find that as per the assessment order the assessee has surrendered the income, offer the same in computation of income, filed return and the same was accepted by the Assessing Officer. The Assessing Officer never brought this surrendered income nor intended to bring this income

to tax under any other head. Even if it is considered to be treated under deemed income under section 69C as per the arguments of the Ld. DR the facts of the case are totally different compare to the case laws relied by the Ld. DR. The only issue in the case of M/s Kim Pharma Pvt. Ltd. of the Hon'ble Punjab & Haryana High Court was relating to the cash surrendered as the other incomes were already treated by the Assessing Officer himself as business income. It has been held in the case of M/s Khurana Rolling Mills (P) Ltd. in Appeal No. 518/IT/CIT(A)-I/Ldh./2014-15 dated 31.03.2016 for A.Y. 2012-13 as under:

"I have carefully considered the facts of the case, the basis of the addition made and the argument of the AR. During the course of the survey operations conducted at its business premises, the appellant surrendered an amount of Rs. 1 crore. The said income has been shown in the P&L account by the appellant. The Assessing Officer assessed the surrendered income as deemed income u/s 69 and 69B by relying on the judgment of M/s Kim Pharma Pvt. Ltd. ITA no. 106 of 2011 (P&H) & Fakir Mohamad Haji Hasan in ITA no. 165 CTR 1011 (Guj). Thus, the business losses were not allowed to be set off against the surrendered income. The AR contended that the appellant is maintaining all the statutory records required under the provisions of the Central Excise Act, VAT Act and Companies Act and that there is no finding during the course of the survey operations or the assessment proceedings to the effect that the appellant is engaged in any activity outside the books of accounts. The AR further contended that all the books of accounts upto the date of the survey along with the relevant purchase bills, sales bills, expenditure vouchers, capital expenditure and other supporting documents and details were verified during the course of the survey but no discrepancy was found therein. Further, the stock was verified with the excise and stock records showing details of purchase of raw material, consumable stores, raw material used for production, sale of finished goods, wastage and closing stock of raw materials and no discrepancy was found during the course of the survey operations. No discrepancy was found in the cash in hand verified with the books of accounts. Therefore, there is force in the appellant's contention that it was maintaining complete books of accounts with proper records on the date of the survey and no incriminating evidence or record not in consonance with the books of accounts was found. There was no cash credit found during the survey which the appellant could not explain. No investment was found which was not recorded in the books of accounts. Further, no document, information, records showing ownership of any money, bullion Jewellery or other valuable article was found and neither any evidence showing that the appellant was the owner of any bullion jewellery or other valuable article where it was found that amount invested in the same exceeded the amount recorded in the books of accounts. No evidence was found showing that the appellant had incurred any expenditure for which no explanation could be offered regarding the source of the said expenditure. Thus, the AR contended that sec68, 69, 69A, 69B and 69C are not applicable in its case. The appellant surrendered Rs. 1 crore as business income in the form of sundry debtors during the survey operations. The AR has contended that the surrender offered by appellant on account of undisclosed sundry debtors is purely related to the business carried out by the appellant. No undisclosed business activity has been found during the survey. The AR pointed out that as per the statement of Sh. Baljinder Singh s/o Sh. Charan Singh recorded during the survey operations, the amount of Rs. 1 crore was surrendered as income of the company over and above the normal business income. The AR has rightly pointed out that in the case of Kim Pharma Ltd. vs. ITO, IT AT Chandigarh bench, the amount surrendered on account of cash was not allowed to be assessed as business income since the source has not been explained and the same was assessed u/s 69A of the Act whereas in the appellant's case mode and manner has been applied to the surrendered income as applied to the income earned during the regular course of the business. No evidence has been found during the survey operations and the discrepancies found were related to the

assessee's business and not to any other source of income. The said submissions of the AR were not controverted in the remand report. Reliance has been placed by the AR on the decision of Sh. Kuldeep Kumar vs. CIT, Hon'ble ITAT Chandigarh bench in ITA 1015/CHD/2009 for A.Y. 2006-07 wherein it has been held, after considering the case of the Hon'ble Gujarat High Court in the case of Fakir Mohamad Haji Hasan, that income cannot fall beyond the five heads made under the act. Further, reliance has been placed on the decision of the Hon'ble Apex court reported in CIT vs. D.P. Sandhu & Bros. 273 ITR 1 wherein it has been held that section 56 provides for chargeability of income of every kind which has not been excluded from the total income under the act only if it is not chargeable to income tax under any heads specified in sec 14 and if the income is included under any one of the heads it cannot be taxed u/s 56. Further, reliance has been placed on the case of DCIT vs. Radhe Developers India Ltd. & Anr. (Guj) 329 ITR 1 wherein the judgment of Fakir Mohamad Haji Hasan has been considered and the judgment of the Hon'ble Apex Court in the case of D.P. Sandhu & Bros. P. Ltd. Supra have been referred to and it has been held that the act does not envisage taxing income under any head not specified u/s 14 of the Act. The Department did not find any other source of income except the business of manufacture of steel items and, according to the AR, the same is clear as per the offer letter of surrender also wherein it is stated that the surrender amount is over and above the book version which shows that the income offered is a part and parcel of its existing business activities. Reliance has also been placed by the AR on the judgment of Hon'ble Gujarat High Court in the case of Shi I pa Dyeing and Printing Mills 39 taxmann 3 wherein, after considering its earlier judgment of Radhe Developers India Ltd. and of D.P. Sandhu & Bros. (SC), the issue was decided in favour of the assessee and the judgment in the case of Kim Pharma Ltd. (P&H) was considered and distinguished. The surrender made by the appellant was on account of advances and receivables which are considered under the head 'business income'. The Assessing Officer has not been able to establish in the assessment order with supporting evidence that the income surrendered was not out of the business of the appellant. Further, there is force in the appellant's contention that the Assessing Officer has nowhere objected to the heads under which the appellant has surrendered these amounts. In the case of M/s Kim Pharma P. Ltd. (P&H) supra reliance has been placed on the ratio laid down in Fakir Mohamad Haji Hasan vs. CIT 247 ITR 290 (Guj) wherein it has been held that only where the nature and source of investment made or the nature and source of acquisition of money, bullion etc. owned by the assessee or the source of expenditure incurred by the assessee are not explained, then the value of such investments or money and the value of articles not recorded in the books or the unexplained expenditure may be deemed to be the income of such assessee and that the moment a satisfactory explanation is given about the nature and source by assessee, the income would be treated under the appropriate head of income. However, in the appellant's case, the Assessing Officer could not establish that payments received as per the slips were from sources other than the business of the appellant. Therefore, apart from the cash, all other income surrendered is to be brought to tax under the head business income while the cash is to be taxed under the head deemed income u/s 69A of the Act. Moreover, the Assessing Officer has not disputed the business losses of the appellant. The Assessing Officer has not found any disallowable expenditure to show that the appellant has manipulated its books of accounts to bring down its total income. No such evidence has been brought on record to show that the assessee has booked any bogus expenditure and there is therefore no reason to doubt the veracity of the books of accounts and the expenditure therein. The heads under which the surrender has been made has not been challenged by the survey team or the Assessing Officer. In the case of Kim Pharma Vs. CIT in ITA no. 106 of 2011 (P&H) supra the Hon'ble High Court has upheld the treatment of additional income on account of sundry credits, repairs to building, and advances to staff to be treated under the head 'income from business and profession' and only in respect of cash found where no clear source could be established by the appellant the same was treated under the head 'income from other sources'. The Assessing Officer has not appreciated the decision in the case of Kim Pharma (supra) properly and has misapplied it. The AR has placed reliance on the case of M/s Gaurish Steels Pvt. Ltd. reported in 43 ITR 414 dated 17.09.2015 of the Hon'ble ITAT Chandigarh Bench, wherein the Assessing Officer

did not dispute the business losses incurred by the assessee and did not reject the books of accounts. Relying on the case of Kim Pharma P. Ltd. Vs. CIT (P&H) (supra) and referring to the case of Fakir Mohamad Haji Hasan vs. CIT (Guj) (supra), it was held in the said case that the income apart from cash, in the shape of discrepancies in the cost of construction of building, in stock and in advances and receivables was to be treated as 'business income' as the Assessing Officer and the survey team failed to find other source of income except for business income. Therefore, in the said case only the cash found was treated as income from other sources and it was held that all other income surrendered could be brought to tax under the head 'business income' and the business losses incurred by the assessee during the year were allowed to be set-off against the income surrendered during the survey except the amount of cash surrendered. The appellant's case is covered by the said decision of the Hon'ble Jurisdictional ITAT in the case of M/s Gaurish Steels Pvt. Ltd. (supra)

18.7 Similarly the facts in the instant case are different from the facts of the case of M/s Kim Pharma (supra) , Fakir Mohmed Ali Hasan(supra) and Khusi Ram & Sons. There is no surrender in the form of cash or on account of unexplained expenditure or investment by the assessee. It is also not the case of the Assessing Officer to treat the amount for taxation separately beyond the established heads. Hence, keeping in view the facts of the case the appeal of the Revenue is hereby dismissed.

19. In the revised grounds submitted, in Ground No. 2 the assessee has challenged that the upholding of Ld. DCIT's order dt. 28/03/2013 which seems to have been passed after 31/03/2013. Since the quantum additions have been adjudicated on facts of the case and on merits, and since the assessee has got substantial relief, any adjudication on this issue becomes academic in nature and hence not being dealt with.

20. As a result all the above appeals of the assessee are treated as allowed for statistical purposes and the appeal of the revenue for the A.Y. 2011-12 is treated as dismissed.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 13/06/2018

AG

Copy to:

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