IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 2045/Del/2015 : Asstt. Year : 2011-12

M/s Sports Infratech Pvt. Ltd., 204, Okhla Industrial Estate, Phase-III, New Delhi-110020	Vs	Dy. Commissioner of Income Tax, Central Circle-5, New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AABCJ7255J		

Assessee by : Sh. Sanjay Jain, CA &
Sh. Rakesh Joshi, CA
Revenue by : Sh. S. S. Rana, CIT DR

Date of Hearing : 05.04.2018		**Date of Pronouncement : 13.06.2018**

ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 30.01.2015 of ld. CIT(A)-24, New Delhi.

2. Following grounds have been raised in this appeal:

"1) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing purchases of cement amounting to Rs.3,56,58,304/- as alleged bogus purchases, without considering the facts and circumstances of the case.

2. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in considering late payment charges of Government as penalty and disallowing the same u/s.37 of the Income Tax Act,

1961, without considering the facts and circumstances of the case.

3) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing a sum of Rs.4,87,220/- towards Liquidated damage, without assigning valid reason & without considering the facts and circumstances of the case.

4) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in restricting the action of Learned Assessing Officer in making a disallowances of Rs.19,92,480/- towards business promotion, without considering the facts and circumstances of the case.

5) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in restricting the action of Learned Assessing Officer in disallowing the interest of Rs.2,52,000/- on proportionate basis, without considering the facts and circumstances of the case.

6) The appellant craves leave to add, amend, alter or delete the said ground of appeal."

3. Ground No. 2 was not pressed and Ground No. 6 is general in nature, so these grounds did not require any comment on our part.

4. Vide ground no. 1, the grievance of the assessee relates to the confirmation of addition of Rs.3,56,58,304/- made by the AO on account of alleged bogus purchases.

5. The facts related to this issue in brief are that a survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted on 28.10.2010 at the business premises of the

assessee. Consequently the action u/s 133A of the Act was taken and notice u/s 142(1) of the Act was issued to the assessee. In response, the assessee informed that the return of income was e-filed on 11.10.2012 and a copy of the acknowledgment was furnished. On perusal of the said return, the AO noticed that an income of Rs.3,75,66,500/- had been shown by the assessee which was processed u/s 143(1) of the Act. Thereafter, the AO issued the notice u/s 143(2) of the Act. During the course of assessment proceedings, the AO observed that during the course of post survey enquiry, the assessee was called for furnishing the details of contract executed for CWG 2010, audited balance sheet for the financial year 2009-10, list of all suppliers along with the bills of import and local. He further observed that the assessee had furnished a list of 51 parties from whom materials/goods had been purchased during the financial year 2010-11. Out of those parties, survey u/s 133A of the Act was carried out by the department on the following five concerns:

1. Karakrome Industries, G-11, Patel Nagar-III, Ghaziabad-201001 (UP) - Rs. 24,98,645/-
2. Hariom Sales, 4474, Gali Raja Patnamal, Pahari Dhiraj, Sadar Bazar, Delhi-6 - Rs. 70,72,131/-.
3. Kuber Alloys P. Ltd., A-65/4, GT Karnal Road, Delhi-33 - Rs. 1,49,71,636/-.
4. Shiv Trading Co., New B-91, Gali No.9, East Nathu Colony, Shahdara, Delhi-92- Rs. 81,23,819/-.
5. Shree Nath Trading Co., 3263, Gali Door Wali, Ram Chowk, Ram Bazar, Kashmiri Gate, Delhi-6 - Rs. 54,90,718/-.

6. The AO further observed that out of the above said five concerns, four concerns except M/s Karakrome Industries at Sl. No.

(1), were not found on the address mentioned as per the copy of the bills supplied by the assessee. The AO pointed out that in order to verify the genuineness of the transactions of purchase of cement from the aforesaid parties notices u/s 133(6) of the Act were issued asking them to furnish the details of transaction showing purchases of cement by the assessee but the notices issued to M/s Hariom Sales, M/s Kuber Alloys Pvt. Ltd., M/s Shiv Trading Co. and M/s Shree Nath Trading Co. were received back unserved, therefore, the genuineness of the transactions of purchase of cement from those parties could not be verified. He further observed that the assessee claimed the expenses of Rs.3,56,58,304/- for purchase of cement from the above four concerns which never existed, the premises were located in the narrow lanes of the densely populated localities where such bulk carriage of cement would require daily movement of the trucks which was not possible in those areas. He also observed that the Director of the assessee company had stated that the cement was centrally purchased at Delhi for the sites located outside Delhi like Seoni (MP), Bhopal, Ranchi etc. In such circumstances, the authorized dealers of the cement would be maintaining office with sufficient manpower and at commercial places and not at residential places as mentioned in the invoices. The AO asked the assessee to produce the parties for verification/examination/cross-examination, by asking those parties to bring with them their complete books of accounts, stock register, bill book, proof of deliver challans, proof of loading and unloading, how the delivery of material was made, proof of purchase of material in respect of the corresponding sale, mode of payment,

proof of receipt of material by the party of purchase etc. The assessee was also asked to produce its books of accounts and all relevant vouchers including stock register and site register showing consumption of cement, details of project wise consumption of cement. The AO observed that despite affording opportunity, not even a single party was produced by the assessee for verification. He, therefore, held that the assessee had obtained fake bills for purchase of cement amounting to Rs.3,56,58,304/-. Therefore, the same was added to the income of the assessee.

7. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted as under:

> *"That the allegation made by the assessing officer is totally baseless. The AO has disallowed these purchases merely on the plea that the appellant has failed to produce the parties involved in these purchases. On being intimated by the AO to produce these parties, the appellant has written to them about their presence being required to the office of income tax in connection with the transaction with the appellant. But beyond this appellant cannot do anything else. The AO has power to ask to attend income tax proceeding with the AO by invoking provisions of section 131 by issuing summons, but he has not exercise the same and entire onus is being put on the appellant."*

8. It was further submitted that the assessee had discharged the onus cast upon it by furnishing confirmations from the parties, ledger accounts alongwith purchase bills and bank statements reflecting the amount paid through the account payee cheques. It was also stated that the assessee had declared sufficient gross profit rate of 41% on the sales during the year and that any addition of the said Rs.3.56 crores would result the G.P of 56% which was unrealistic. It was stated that the assessee had offered a net profit

rate of 18% as against statutory assumption of 8% in case of construction work u/s 44AD of the Act. Thus, there was no ground for interfering with the assesseeôs results. It was further stated that nature of work carried out by the assessee was of national importance and was to be completed in a time bound manner, hence, it could not have spent time to complete the formalities of getting quotations from suppliers, checking their reputation in the market etc. It was further stated that the AO did not consider all the facts and material furnished before him and did not reject the books of accounts which were maintained properly by the assessee and that the bills raised by the assessee had been duly certified by the Architect appointed by the Government agencies who released the payments thereof. It was submitted that during the survey conducted u/s 133A of the Act at the assesseeôs premises, no incriminating document was found which revealed that the assessee had nothing to hide from the department and the addition was completely uncalled for.

9. The ld. CIT(A) also reproduced the submissions of the assessee at page nos. 6 to 10 of the impugned order which are reproduced verbatim as under:

> *"Further no addition on account of purchases from these parties could be made in the hands of appellant for the following reasons:-*
>
> *I. Onus discharged by the appellant:- During the Assessment proceedings the appellant had provided the evidence in support of the genuineness of the purchases. It had provided the following details:*

1. Confirmation of the parties
2. Ledger account along with the purchases bills
3. Bank statement reflecting the amount paid though the account payee cheque.
The appellant submit that during the assessment proceedings the assessee has discharged its onus with evidence to prove the transaction was genuine. The appellant has proved identity of the supplier and also submitted new addresses of these parties. It is beyond the control of appellant to produce the parties before the Ld. AO as appellant cannot force them for the same. AO could have issued summons to these parties which is well within his power, but the Ld. AO has simply shifted his burden on the appellant.

2. Sufficient Gross Profit declared by the appellant:- The appellant has offered gross profit of 41% of the sales during the year and further addition of 3.56 crore mil give gross profit of 56% of the sales for the year which is an unrealistic estimates. The appellant has carried out construction & other related work for the common wealth game. In construction work even section 44AD assumes net profit of 8% whereas the appellant has offered net profit of 18%. The Ld. AO has alleged the appellant has taken fake bills to reduce its profit for the year under consideration. In the opinion of the AO this 18% income offered by the appellant is also a reduced figure of actual profit without considering the fact that the income declared by the appellant is much more than the statutory provisions of section 44AD of the Act.

3. Nature of work carried out:- As mentioned above the appellant has carried out construction & other related work for the common wealth game. The assignment given to the appellant has to be completed in time bound manner. The appellant has to procure the construction material as and where it was available. It cannot spent time to complete the formalities of getting quotations from the-two three vendors, checking reputation of the

supplier in the market etc, in such type of work timely delivery of the work is most important, In fact the nature of job was a national issue as the stadium and other construction carried out by the appellant was to be used for common wealth games hosted by India. Hence a minor delay may impact the name of nation in the international market.

4. Non consideration of factual aspect:- The Ld AO has not considered other factual aspect of matter i.e. receipt of material, proper maintenance of books of accounts, certification by the Govt. agencies etc. The Ld. AO has not even rejected books the books of accounts of the appellant. Once the Ld. AO has accepted the books of the assessee which are duly audited, he cannot increase the income over and above the returned income of the appellant. The appellant has maintained proper books of accounts wherein all the details of purchases and utilization of material were available. The bills raised by the appellant has been duly certified by the architect duly appoint of Govt. agencies before releasing payment thereof. Today engineering is so advance that cement utilized in the constructed area can be easily find out. But Ld. AO choose to remain silent on these vital facts and merely made the addition only on the basis of non production of suppliers before the AO by the appellant. Further recently Mumbai High Court in the case of Nickunj Exim Pvt. Ltd. (INCOME TAX APPEAL NO. 5604 OF 2010) has held as under:-

> *"However, from the order of the Tribunal dated 30.04.2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence*

Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot conclude that the purchases were not made by the respondent assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated 30.04.2010 of the Tribunal."

The Hon'ble High Court has stressed on the issue that unless both sale & purchase being doubted by the AO and books of accounts not being rejected, no addition on the basis of non appearance of suppler can be made on account of bogus purchase.

5. Non availability of incriminating documents during survey:- We would like to submit that a survey U/s 133A was carried out at office premises of the appellant and statement of directors were also recorded. In this extensive operation at the business premises no incriminating documents were found by the survey party at the premises of appellant. The Ld AO has not alleged in the order that payment made to these parties has been returned back to the appellant. Therefore there is no basis available with the department in support of their claim that the purchases mentioned in the order were not genuine. The onus is on the department to prove that the transaction reflected in the audited books of assessee is not genuine specially in the circumstances when it is supported with all the documents and payment

thereof has been made by account payee banking cheque. There is no allegation by the Ld AO that the payment made by the assessee has not been reached to the suppliers bank account, neither there is an acceptances by the supplier that he has not supplied goods against the bill issued. Therefore all the surrounding circumstances are in favour of the appellant and action of the Ld. AO is without any basis.

In addition to this we are also relying on the following decisions in support of our claim:-

(A) Dy. CIT vs. Adinath Industries (2001) 170 CTR (Guj) 262 :(2001) 252 ITR 476(Guj)
(B) CIT vs. M.K. Brothers (1986) 52 CTR (Guj) 228: (1987) 163 ITR 249 (Guj).
(C) Sagar Bose vs. ITO (1996) 56ITD 561 (Cal):
(D)Milk Food (P) Ltd. vs. Dy. CIT-(2000) 111 Taxman 323 (Del)(Mag):
(E) Asstt. CIT vs. Rehmat Khan Chandan Khan and Party (1995) 52 TTJ (Jp) 203
(F) J.H. Metals vs. ITO (2001) 71 TTJ (Asr) (TM) 683 : (2001) 77 ITD 71 (Asr) (TM)
(G) J.R. Solvent Industries vs. Asstt. CIT (1999) 63 TTJ (Chd)(TM) 165 : (1999) 68 ITD 65 (CM) (TM)
(H) Balaji Textiles (1994) 49 ITD 177 (Bom)
(I) Dy. CIT vs. Brahmaputra Steels (P) Ltd. (2002) 76 TTJ (Gau) 447

4.1.7 The AR has submitted the following documents in support of the appellant's claim that the transaction of purchase of cement was genuine one. It has been submitted that these documents were also produced before the A.O.

***1.** Copy of ledger account in our books of account of all three parties.*
***2.** Copy of purchase bills from these parties.*
3. Bank statement showing payment being made to these parties.

4. Confirmation from these parties.
5. Copy of balance sheet & profit & Loss for the year ended 31.3.2011."

10. The ld. CIT(A) after considering the submissions of the assessee sustained the addition by observing in paras 4.1.8 to 4.1.15 of the impugned orders as under:

"4.1.8 I have considered the submissions of the AR and the assessment order. It is noted that the AO has been more than reasonable. Out of the five parties on whom survey was conducted, he has not made any addition in respect of the purchases supposed to have been made from Karacrome Industries. This party was available at the address given by the assessee and also received the notice sent u/s 133(6) from postal authorities. The other four parties were not available at the given addresses and even notices sent u/s 133(6) to the addresses given by the assessee have been returned unserved by the postal authorities.

4.1.9 The A.O. has noted that during the survey conducted at the address of M/s. Hariom Sales, the person present at the premises had stated on oath that no concern in the name of M/s. Hariom Sales ever operated from the-said premises. This adverse evidence was confronted to the Director on 14.9.11 who failed to do anything further in the matter. The relevant para 5.3 of the assessment order is reproduced below for ready reference:

5.3 In the case of Hariom Sales situated at 4474, Gali Raja Patnamal, Pahari Dhiraj, Sadar Bazar, Delhi-6, statement on oath was recorded of a person found at the premises carrying out the business of garments in the name of Jagdamba Enterprises since 1987, Shri Mohan Dev who stated that no concern in the name of Hariom Sales ever existed at the premises and carrying out the business of cement. Summons u/s 131 of the Act were issued to the Director of the Company

who appeared on 14.09.2011 for confronting the statement, in the case of Hariom Sales. The assessee replied that he has to check with this purchase department and if some verifiable documents are there, it will be submitted.

4.1.10 In the case of Kuber Alloys (P) Ltd., the survey at the said premises had revealed that person connected with the said company was carrying on the business of printing and never did any trading in cement. This fact was confirmed by the landlord of the premises and was duly confronted to the Director of the appellant. He had stated that Sh. Ajay Jain of Kuber Alloys Pvt. Ltd. was his old acquaintance and he was dealing with him on regular basis and that he would ask him to produce the necessary documents. However, nothing further happened in this regard. Para 5.4 to the assessment order dealing with this issue is reproduced below for ready reference:

5.4 In the case of Kuber Alloys Pvt. Ltd., A-65/4, G.T, Karnal Road, Delhi-33, it was found that the person Shri Ajay Jain had vacated the premises about 7-8 months before but he -was carrying out the business of printing of pouches but never carried out the business of trading of cement as was stated by the landlord of the premises in the statement recorded u/s 131 of the Act. On confronting with the Director Shri Siddarath Verma stated that Shri Ajay Jain was their old acquaintance and he has dealing with him on regular basis, and he would ask him to produce the documents in confirmation for his business transactions.

4.1.11 In the case of M/s. Shiv Trading Co., the survey action revealed that one Mr. Vipin Kumar had taken a room on rent, displayed the name plate of Shiv Trading Co. for 2 to 3 days and then vacated the room and went away. In this regard also, the appellant did not do any further act. The relevant para 5.5 of the assessment order is reproduced below for ready reference:

5.5 In the case of Shiv Trading Co., New B-91, Gali No. 9, East Nathu Colony, Shahdara, Delhi-32, landlord of the premises Shri Sushil Kumar stated that some Vipin Kumar had taken one room on rent and hoisted the Board in the name of Shiv Trading Co. for 2-3 days then he vacated the room and went away. On confronting the director with the statement of the landlord, he stated to inquire about the vendor and would supply the documents of the landlord, he stated to inquire about the vendor and would supply the documents in support of the transactions.

4.1.12 In the case of Shreenath Trading Co., action u/s 133A showed that the said entity never traded in cement. The Director of the appellant also did not take any further action to substantiate purchase from the said party. The relevant para 5.6 of the assessment order is reproduced below for ready reference:

5.6 In the case of Shree Nathu Trading Co., 3263, Gali Door Wali, Ram Chowk, Ram Bazar, Kashmiri Gate, Delhi-6, one resident at the premises for last 30-40 years stated that a person in the name of SunilJain use to work for packing of computer C but never traded in cement. On confronting the director with the statement recorded u/s 131 of the Act he stated to verify it from his purchase department, and since the material is directly delivered at the site, they never physically verify the person or his office address. The payments have been made through cheques and are bona-fide.

4.1.13 It is noted here that the appellant was confronted at every stage including at the stage of assessment proceedings with the adverse findings of the survey at the supplier premises. As noted by the A.O., these suppliers were not only unavailable at the premises-but were also found to be not engaged in trading cement as per the information provided by the persons present at

the premises. Further, the appellant has not been able to produce the delivery vouchers/lory receipts, day to day stock receipts and issue register, proof of loading and unloading etc. The relevant paras 5.7, 5.8 and 5.9 of the assessment order on this issue are reproduced below for ready reference:

5.7 The assessee company M/s. JST (India) P Ltd., claimed the expenses of Rs.3,56,58,304/- for purchase of cement form the above four concerns which never existed, the premises are located in the narrow lanes of the densely populated localities where such bulk carriage of cement would require daily movement of the trucks which is not possible in those areas. The Director has also stated that the cement is centrally purchased at Delhi for the sites located outside Delhi like Seoni (MP), Bhopal, Ranchi etc. In such circumstances, the authorized dealers of the cement will be maintaining office with sufficient manpower and at commercial places and not at residential places as mentioned in the invoices.

5.8 Therefore, the assessee company was asked vide noting on notesheet dated 27.02.2013 to produce these parties for verification/examination/ cross-examination asking these parties to bring with them their complete books of accounts, stock register, bill book, proof of delivery challans, proof of loading and uploading, how the delivery of material was made, proof of receipt of material in respect of the corresponding sale, mode of payment, proof of receipt of material by the party of purchase, copy of P&L A/c and balance sheet for the year ending 31.03.2010 and 31.03.2011, copy of H Form, details of sale purchase with M/s. Jublee Sports India Pvt. Ltd., of the year ending 31.03.2010 and 31.03.2011.

5.9 The assessee company was also asked to produce his books of accounts and all relevant books and vouchers including stock register and site register

showing consumption of cement. Details of project wise consumption cement and the proceedings for this purpose was adjourned to 06.03.2013. Despite affording opportunity of verification/ cross examination not even a single party wise produced by the assessee for verification/cross examination. In view of these circumstances the genuineness of the transaction of purchase of cement from the aforesaid four parties remains unverifiable.

4.1.14 From the above, it is evident that the appellant was not having the necessary documents to establish that such huge quantity of cement was actually procured by it. He did not have the necessary documents to establish the movements of goods, loading & unloading, receipt and issue. The only evidence which it has with itself are in the nature of purchase bill and evidence of having paid the amount through bank account. It is noted here that mere submission of purchase bill and evidence of payments through banking channel could not have resulted in discharge of onus in the appellant's case. After getting the list of suppliers from appellant himself the department had conducted survey at the so called suppliers' premises and found adverse .evidences. At that point of time, the onus shifted to the appellant come out with evidence of actual receipt of cement, actual purchase of cement and its actual use. I am of the view that in this exercise, the appellant has utterly failed. Sufficient opportunities were also provided during the assessment proceedings and the appellant has not been able to discharge the onus cast upon it on the basis of adverse findings of the survey action.

4.1.15 As regards G.P. rate being high, it is noted here that the A.O. has doubted the very expenditure incurred by the appellant. The allegation of pilferage of Common Wealth Games funds, stand established in the given case. A very high rate of G.P. & N.P. indicates that the appellant might have charged huge amount to Common Wealth Games. Merely because of G.P. & N.P. rate is

high it would not establish that the purchases, which were otherwise not proved, were genuine. Further the non rejection of books of account in itself cannot vitiate the A.O's action. He has made a limited disallowance and the same is perfectly valid in the background of adverse evidences. I also do not find any merit in the argument of the AR that due to the nature of work, the appellant could not verify the reputation etc. of the suppliers. If a person is in a hurry it is very likely that he would go to well established suppliers of cement than reaching out to unknown players who were not at all traceable and who were not even known to the people in the neighborhood to be trading in cement. In view of the above, I confirm addition of Rs.3,56,58,304/- made to the total income. The ground on the issue is rejected."

11. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee furnished the list of all the parties from whom materials/goods had been purchased and also submitted the copies of the purchase bills. A reference was made to para 5.1 of the assessment order. It was further submitted that the assessee on being intimated by the AO to produce the parties had written to them about their presence being required in the Income Tax Office in connection with the transaction with the assessee and that the AO had power to summon them u/s 131 of the Act but no such action was taken by the AO. He also referred to page no. 50 of the assesseeôs paper book which is the copy of the profit and loss account and submitted that the purchases shown therein included the purchases of the cement made from this party. It was contended that the contract sales had not been doubted and that the said sales could not have been possible without these

purchases. It was further submitted that the copies of purchase bills of the different parties, their Form DVAT-16, were furnished before the AO. A reference was made to page nos. 120, 124 to 287 of the assesseeôs paper book. It was further submitted that the assessee maintained complete accounts including stock register, purchase book, sales book, purchase bills etc. and the books of accounts were duly audited under the Income Tax and Sales Tax Act. The purchases made were entered item wise in the stock register maintained by the assessee, all the payments for the purchases were made through cheques, the consumption of the raw material including the cement purchased by the assessee had been accepted and that it was not the case of the AO that the assessee inflated the consumption of the material and the corresponding sales were not doubted. Therefore, the addition made by the AO was not justified. It was also submitted that the assessee furnished various evidences to show that the actual delivery was made by the parties and the material was consumed in the work contract, the consumption has not been doubted, therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified. It was contended that the gross profit rate shown by the assessee was better than the preceding year and that the work done for the Common Wealth Games premises was only 25% of the total turnover and similar work was done in the preceding year but no such disallowance was made in the said year. It was also stated that the supply of the cement to the assessee has not been denied, the consumption of the cement had also been accepted, therefore, the addition made by the

AO and sustained by the ld. CIT(A) was not justified. The reliance was placed on the following case laws:

- *CIT Vs Sunrise Tooling Systems P. Ltd. 361 ITR 206 (Del.)*
- *CIT Vs JMD Computers & Communications P. Ltd. 180 Taxman 485 (Del.)*
- *CIT M/s Nikunj Eximp Enterprises Pvt. Ltd. Vs ITO 372 ITR 619 (Bom. HC)*
- *CIT Vs M.K. Brothers (1987) 30 Taxman 547 (Guj. HC)*
- *Babulal C. Borana Vs ITO (2005) 282 ITR 251 (Bom.)*
- *Jintendra Harshadkumar Textiles Vs ITO in ITA No. 771/Mum./2011*
- *ITO Vs Sh. Paresh Arvind Gandhi in ITA No. 5706/Mum/2013*
- *Sh. Ganpatraj A. Sanghavi Vs ACIT in ITA No. 2826/Mum/2013*
- *ITO Vs Zazsons Exports Ltd. (2015) 55 Taxmann.com 522 (Lucknow-Trib.)*
- *J.R. Solvent Industries (P.) Ltd. Vs ACIT (1999) 68 ITD 65 (Chd.)*
- *CIT Vs Bholanath Poly Fab Pvt. Ltd. (2013) 355 ITR 0290 (Guj.)*

12. In his rival submissions, the ld. CIT DR strongly supported the orders passed of the authorities below and reiterated the observations made therein. It was further submitted that out of the five parties on whom survey was conducted only one party received the notice u/s 133(6) from the postal authorities. Therefore, no addition was made by the AO in respect of the purchases supposed to have been made from that party but the other parties were not available at the given addresses and the persons present at the address of M/s Hariom Sales stated on oath that no concern in the name of M/s Hariom Sales ever operated from the said premises. It was further submitted that in the case of M/s Kuber Alloys (P) Ltd.,

the survey at the said premises revealed that the person connected with the said company was carrying on the business of printing and never did any trading in cement. It was stated that in the case of M/s Shiv Trading Co., the survey action revealed that one Mr. Vipin Kumar had taken a room on rent and displayed the name plate of Shiv Trading Co. for 2 to 3 days and then vacated the room. As regards to M/s Shreenath Trading Co., it was stated that the said entity never traded in cement and that the assessee was confronted at every stage of the assessment proceedings with the adverse findings of the survey at the supplier premises. It was emphasized that the AO noted that the suppliers were not only unavailable at the premises but were also found to be not engaged in trading of cement as per the information provided by the persons present at the premises. Therefore, the addition was rightly made by the AO and the ld. CIT(A) was fully justified in sustaining the impugned addition. The reliance was placed on the following case laws:

- *N K Proteins Ltd. Vs CIT (2017-TIOL-23-SC-IT)*
- *CIT Vs Arun Malhotra (2014) 363 ITR 195*
- *Vijay Proteins Ltd. Vs ACIT (2015) 58 Taxmann.com 44 (Guj.)*
- *CIT Vs La Medica (2001) 250 ITR 575 (Del.)*
- *N K Industries Ltd. Vs DCIT (2016-TIOL-3165-HC-AHM-IT)*
- *Shivnandan Buildcon (P.) Ltd. Vs CIT (2015) 60 Taxmann.com 347 (Del.)*

13. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO made the additions considering the purchases of the cement from four parties as bogus

purchases for the reasons that the notices issued u/s 133(6) of the Act were returned by the postal authorities. However, the project wise consumption furnished by the assessee was not doubted. It is also noticed that the assessee produced the books of accounts for verification/examination of the AO. Those books were not rejected by invoking the provisions of Section 145(3) of the Act and the receipt from sales and services had been accepted, the gross profit rate shown by the assessee at 41.17% was better than the gross profit rate shown in the preceding year at 38.43%. In the present case, it is not in dispute that the assessee was maintaining complete books of accounts including daily item wise stock register, purchase book, sales book, purchase bills, those books of accounts were duly audited. The ld. CIT(A) alleged that a very high rate of GP and NP indicated that the assessee might have charged huge amount to Common Wealth Games and that merely because of GP and NP rate was high it would not be established that the purchases were genuine. However, nothing is brought on record to substantiate that the assessee had charged huge amount to Common Wealth Games and moreover, the claim of the assessee that work done by the assessee for the Common Wealth Games was only 25% was not rebutted. In the present case, it is not in dispute that in the earlier years, the similar type of work was done, no such addition as was made, as has been done in the year under consideration. In the instant case, the assessee furnished the complete details of the invoices from the parties in question. The assessee also furnished copies of their ledger account showing that the purchases were made by the assessee from those parties. The

assessee also furnished the confirmation of accounts from those parties, the ledger accounts, copies of invoices and bank statement showing payments which are placed at page no. 119 to 161, 162 to 203, 204 to 230, 231 to 281 in the cases of M/s Shiv Trading Co., M/s Hariom Sales, M/s Shreenath Trading Co. and M/s Kuber Alloys (P) Ltd. respectively. The consumption of the cement by the assessee was not doubted and the sales have been accepted.

14. On a similar issue the Honôble Jurisdictional High Court in the case of CIT Vs Sunrise Tooling System (P.) Ltd. (2014) 361 ITR 206 (supra) held as under:

> *"This court is of the opinion that the Income-tax Appellate Tribunal cannot be faulted in its approach in rendering the findings of fact. Although the learned counsel for the Revenue endeavoured to submit that the Income-tax Appellate Tribunal fell into error in overlooking and discounting the statement of D. K. Jain on the ground that it was retracted, the discussion quoted above would show that the Income-tax Appellate Tribunal took note of the materials before the Assessing Officer and the Commissioner of Income-tax (Appeals), which included the assessee's books of account as well as the sales tax records of Shree Laxmi Industrial Corporation. These established firmly and conclusively that the claim of the assessee that it had purchased goods from Shree Laxmi Industrial Corporation were borne out. The Income-tax Appellate Tribunal also noted—and we agree with that approach entirely—that the income-tax authorities had not even rejected the books of the assessee even while finding the claim as genuine transaction to be bogus.*
>
> *Having regard to the conspectus of the circumstances, we are of the opinion that the impugned order does not disclose any error, warranting framing of substantial*

questions of law. The appeal is unmerited and is accordingly dismissed."

15. In the present case also, the assessee furnished the sales invoice of the vendor on record, the purchases were entered item wise in the stock register, all the payments were made through cheques. The consumption shown by the assessee was not doubted, the payments made through account payee cheque to the concern parties had been accepted and the books of accounts were not rejected. Therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified.

16. Similarly, the Hon'ble Jurisdictional High court in the case of CIT Vs JMB Computers & Communications P. Ltd. 180 Taxman 485 (supra) held as under:

"5. *In the impugned judgment the Tribunal meticulously went through the evidence on record and returned the following findings of fact:(i) it is undisputed that the assessee was maintaining complete accounts including daily item-wise, stock register, purchase book, sales book, purchase bills and sales books;*

(ii) the accounts of the assessee have been duly audited under the Income-tax Act as well as the Companies Act;

(iii) sales invoices of vendors were placed on record before the Assessing Officer. Insofar as purchases made by the assessee, were concerned they were entered in the item-wise stock register maintained by the assessee;

(iv) all payments for purchases have been made by cheques;

(v) a complete quantitative analysis between purchases made and corresponding sales were prepared and filed before the Assessing Officer. The quantitative analysis made has not been called into question by the Assessing Officer;
(vi) ledger accounts of the six suppliers showed substantial debit balances indicating that the assessee had made advance payments to the suppliers on several dates.

6. *In view of this the Tribunal came to the conclusion that the deletion made by the CIT(A) had to be sustained. The Tribunal in particular, noted that the Department having accepted the purchases, it could not have been assumed that the assessee had inflated its purchase by introducing fictitious purchases. The Tribunal made a particular note of the fact that the statement of Sh. Ashok Kumar who is the brother of Sh. T.R. Chadda, the source from which the revenue had received information about bogus purchases by the assessee had evidently made a statement on 26-2-2002 admitting therein that he was carrying on the business of issuing bogus accommodation bills on commission basis with the assessee; which was not put to the assessee, for rebuttal or cross-examination.*

7. *Before us the Learned counsel for the revenue had laid great stress on the fact that the Department had carried out investigation which revealed that purchases have been made from non-existent parties and this was established by virtue of the fact that inquiries with the banks of the suppliers had revealed that they were operated by Sh. Ashok Kumar, who was the brother of Sh. T.R. Chadda or his employees. We note that this aspect of the matter was obviously not put to the assessee as this was not part of the report which the inspector had prepared for the perusal of the Assessing Officer. Therefore, this submission of the counsel for the revenue cannot in our view take his case any further.*

8. *As a matter of fact as noted in paragraph 1.5 of the CIT(A) orders the evidence regarding Sh. T.R. Chadda's operation collected by the investigating wing was not even available with the Assessing Officer.*

9. *In view of the findings of fact returned by two authorities below which are not perverse, no question of law, much less a substantial question of law arises for our consideration. In the result the appeal is dismissed."*

17. The facts of the assesseeôs case are similar to the facts of the aforesaid referred to case.

In the present case also, the assessee had shown better gross profit rate in comparison to the preceding year, so there was no occasion to make the further addition.

18. On a similar issue, the Honôble Jurisdictional High Court in the case of CIT Vs Nikunj Eximp Enterprises Pvt. Ltd. Vs ITO 372 ITR 619 (supra), it has been held as under:

"We have considered the submission on behalf of the Revenue. However, from the order of the Tribunal dated April 30, 2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement, i.e., reconciliation statement but also in view of the other facts. The Tribunal records that the books of account of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department, i.e., Defence Research and Development Laboratory, Hyderabad. Further, there were confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the Commissioner of

Income-tax (Appeals), one cannot conclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as the Commissioner of Income-tax (Appeals) have disallowed the deduction of Rs. 1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated April 30, 2010, of the Tribunal.

In view of the above, we find that question as formulated is not a substantial question of law. Therefore, the appeal is dismissed with no order as to costs."

19. In the present case also, the AO made the addition only on this basis that the notices issued u/s 133(6) of the Act to the suppliers were returned by the postal authorities. In our opinion, the said basis was not sufficient to conclude that the assessee had not made the purchases of cement particularly when the consumption of the cement was not doubted and the sales have been accepted. We, therefore, by considering the totality of the facts as discussed hereinabove and by keeping in view the ratio laid down in the aforesaid judicial pronouncements, are of the view that the addition made by the AO and sustained by the ld. CIT(A) on account of the purchases of the cement from the four parties was not justified particularly when the consumption of the cement was not doubted and the sales on the basis of the said consumption had been accepted, books of accounts maintained in regular course of business were not rejected. Book results were better than the earlier year.

20. As regards to the case of M/s N. K. Proteins Ltd. Vs CIT (supra) relied by the ld. CIT DR is concerned in the said case, adhoc addition was made and the assessee was involved in the trading and speculation of castle seeds but in the present case, the consumption of the cement was not doubted and the gross profit rate shown by the assessee was better than the preceding year, the sales has been accepted, the assessee properly maintained the books of accounts which were duly audited. Therefore, the case relied by the ld. CIT DR is distinguishable on facts.

21. Vide ground no. 3, the grievance of the assessee relates to the sustenance of addition of Rs.4,87,220/- made by the AO towards liquidate damage.

22. The facts related to this issue in brief are that the AO made the impugned addition by observing that no satisfactory explanation had been furnished by the assessee. Therefore, the liquidated damages were added back to the income of the assessee.

23. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that whenever there was any delay in handling over any particular assignment within stipulated time, the principal recovered liquidated damages from the contractor. Therefore, it was an allowable deduction as per the normal practice of industry. The reliance was placed on the decision of the ITAT Special Bench, Hyderabad in the case of KCP Ltd. Vs ITO reported at 34 ITD 50.

24. The ld. CIT(A) after considering the submissions of the assessee observed that the assessee had not given any factual details of the liquidated damages claimed by it. Therefore, he confirmed the addition made by the AO.

25. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the amount was deducted by the contractor, since there was delay in the supply. A reference was made to page no. 282 of the assesseeôs paper book which is the detail of the liquidated damages for late completion of the project, for the said delay an amount of Rs.4,37,220/- has been recovered by Air Force Commanding Officer, Chandigarh and Rs.50,000/- by HUDA Div.-II, Hisar.

26. In his rival submissions, the ld. CIT DR strongly supported the orders of the authorities below.

27. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the impugned amount has been recovered by the Government authorities, namely Air Force Commanding Officer, Chandigarh and HUDA Div.-II, Hisar. The said recovery were made since, there was delay in completion of the project.

28. On a similar issue, the ITAT Special Bench in the case of KCP Ltd. Vs ITO 34 ITD 50 (supra) held as under:

"Liquidated damages for breach of contract for delay in supply of goods are allowable deduction in the assessment year relevant to the point of time when the breach occurred."

29. In the present case, the liquidated damages were paid by the assessee since there was delay in the completion of the project assigned to it as per the agreement. Therefore, it was an allowable expenditure. In that view of the matter, the impugned addition made by the AO and sustained by the ld. CIT(A) is deleted.

30. Next issue vide ground no. 4 relates to the sustenance of disallowance of Rs.19,92,480/- claimed by the assessee for business promotion.

31. The facts related to this issue in brief are that the AO during the course of assessment proceedings noticed that the assessee had debited following expenses under the head business promotion expenses:

S. No.	*Description*	*Amount*
1.	*Annual Cricket Match*	*Rs.47,000/-*
2.	*CWG Opening Ceremony Tickets*	*Rs.1,89,000/-*
3.	*CWG Opening Ceremony Tickets*	*Rs.13,480/-*
4.	*CWG Closing Ceremony Tickets*	*Rs.20,43,000/-*
	Total	***Rs.22,92,480/-***

32. The AO was of the view that the aforesaid expenses had not been incurred by the assessee wholly and exclusively for the purposes of business and that no satisfactory explanation was furnished by the assessee. He, therefore, made the disallowance of Rs.22,92,480/- and added back the same to the income of the assessee.

33. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted as under:

> *"That the learned A& disallowed sum of Rs. 22,92,480/- on account of some of the expenses being claimed under business promotion expenses. These disallowed amount include expenses incurred for the opening ceremony of the CWG tickets. As mentioned above appellant has carried out construction work of common wealth game and now on being successfully completion of the project it will be dream of every business entrepreneur to see its performance by participating in the programme being performed over there. This will help in growing up its business by putting the photographs of participation in its successfully completed assignments. They may also refer in their business broachers about the event. But without acknowledging all these aspect the Id A 0 has simply disallowing the same. The Id A 0 has not given any reason to reach the conclusion that the expenses were not incurred for the purpose of business & Profession. The business who runs the business know better than the Assessing Officer that which expenses will give benefits to run its business smoothly. Hon'ble Delhi High court about the allow ability of deduction U/s 37(1) of the I.T Act, in case of CIT Vs. B Dalmia Cement Ltd. (254 ITR 377)(Del) held as under:*
>
> "For *the allowance under section 37(1), the following conditions are to be satisfied, i.e. (a) there must be expenditure, (b) such expenditure must not be of the nature described in sections 30 to 36, (c) the expenditure must not be in the nature of capital expenditure or personal expenses of the assessee, (d) the expenditure must have been laid out or expended wholly and exclusively for the purposes of the business or profession. The word "wholly" refers to the quantum of expenditure, while the word "exclusively" refers to the motive, objective and purpose of the expenditure. An expenditure to which*

one cannot apply an empirical or subjective standard is to be judged from the point of view of a businessman and it 'is relevant to consider how the businessman himself treats a particular item of expenditure. The term "commercial expediency" is not a term of art. It means everything that serves to promote commerce and includes every means suitable to that end. In applying the test of commercial expediency, for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business the reasonableness of the expenditure has to be judged from the point of view of the businessman and not the Revenue"

34. The ld. CIT(A) after considering the submissions of the assessee allowed the relief of Rs.3,00,000/- by observing as under:

"4.4.4 I have considered the submissions of the AR and perused the assessment order. The major component of the business promotion expenditure is towards commonwealth game opening and closing ceremony tickets (Rs.20,43,000/- + Rs.1,89,000/-). The amount spent on the tickets is so huge that any Assessing officer would naturally ask for the details of the persons for whom the tickets have been purchased and who actually participated in the said ceremonies. There is no doubt that the appellant who has executed work for commonwealth games could be definitely interested in taking part in the opening and dosing ceremonies. However, expenditure of the kind claimed by the appellant cannot be justified merely on the basis of bills and vouchers. The appellant was required to state who all from the company took part in the said ceremony and how such large number of tickets had to be purchased by it. In the absence of any such details, it would be incorrect on the part of the AO to accept the claim that the expenditure has been incurred wholly and exclusively for the purpose of the business.

4.4.5 Even during the appeal proceedings what has been submitted is a general argument as to why business promotion expenditure was to be incurred. There is no denial that any enterprises is required to spend certain amount on business promotion. But if the amount is very huge on the very phase of it there is a requirement that the same should be justifiable. In the present case, however, the justification is missing. Therefore, I find merit in AO's observation that the expenditure has not been incurred wholly and exclusively for the purpose of business. At the same time I also note here that at least some amount of business promotion expenditure is legitimately allowable. Therefore, I am of the view that ends of justice would be met if, Rs. 3 lacs out of Rs. 22.92 lacs is allowed to be deducted from the profits and the balance is disallowed. Ordered accordingly. The appellant gets a relevant relief of Rs. 3 lacs and the balance addition is confirmed."

35. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that in the assesseeôs case, the incurring of expenses has not been doubted and the assessee incurred those expenses for the business promotion, so those were allowable as per the ratio laid down by the Honôble Jurisdictional High Court in the case of CIT Vs B. Dalmia Cement Ltd. reported at 254 ITR 377.

36. In his rival submissions, the ld. CIT DR submitted that the assessee did not disclose the name of the persons for whom the tickets were purchased for the opening and closing ceremony of the Common Wealth Games. Therefore, the impugned disallowance was rightly sustained by the ld. CIT(A).

37. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee incurred the expenses towards opening and closing ceremony of Common Wealth Games for which the assessee had executed work. Even the ld. CIT(A) admitted those facts and observed that there was no doubt that the assessee who had executed work for Common Wealth Games could be definitely interested in taking part in the opening and closing ceremonies. He also observed that the expenditure of the kind claimed by the assessee could not be justified merely on the basis of bills and vouchers. Therefore, there was no doubt for incurring the expenses on account of business promotion. In the present case, the disallowance was made merely on this basis that the names of persons who participated were not disclosed, however, it is not brought on record as to whether the AO asked the assessee to give the names of all the persons who participated in watching the opening and closing ceremonies of the Common Wealth Games. The ld. CIT(A) held that at least some amount of business promotion expenditure was legitimately allowable and he allowed the relief of Rs.3,00,000/- but the sustenance of disallowance was without any basis, particularly when, it was not brought on record that the expenses were not incurred by the assessee for business promotion. We, therefore, considering the totality of the facts are of the view that when the expenses were incurred for the promotion of the business those were allowable as business expenditure. In that view of the matter, the impugned addition made by the AO and sustained by the ld. CIT(A) is deleted.

38. The last issue vide Ground No. 5 relates to the disallowance of interest of Rs.2,52,000/- sustained by the ld. CIT(A) on proportionate basis.

39. The facts related to this issue in brief are that the AO during the course of assessment proceedings noticed that the assessee had given loans and advances of Rs.98,89,000/- to the persons who were not directly related/connected with the business activity of the assessee, on the said amount no interest was being charged from those persons. He also observed that the assessee had paid interest to bank on overdraft limit amounting to Rs.75,93,285/-. The AO asked the assessee to explain as to why proportionate expenses should not be disallowed. According to the AO, no explanation was furnished by the assessee. He, therefore, disallowed proportionate interest of Rs.5,04,000/- by applying the interest rate of 12% per annum.

40. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted as under:

> *"The Ld. AO observed that appellant has given loan of Rs.98.89 lacs without interest and paid interest on over draft facility taken from loan. In this regard the appellant would like to inform that the total interest free funds available to the appellant are as under:-*

Capital	*1,71,30,000*
Reserve & Surplus	*7,53,86,768*
Total	*9,25,16,768*

Therefore out of total funds of Rs. 9.25 crore the appellant has given loan of Rs.98.89 lacs. So no borrowed funds are being utilized by the assessee in granting this loan & advance. Further Ld. AO has not given any finding that the appellant has used interest bearing finds to these parties. Therefore in such circumstances the presumption that interest free funds were used will prevail as held by the Hon'ble Bombay High Court in case of Reliance Utility & Power Ltd. (313 JTR 340)(Bom) wherein the Hon'ble High Court held as under:-

"If there be interest free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. (Supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd, (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (Supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the

High Court. The principle therefore would be that if there are funds available both interest free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest free fund generated or available with the company, if the interest free funds were sufficient to meet the investments."

Further Hon'ble Delhi High Court also in case of B Dalmia Cement Ltd. (254 ITR 377) on disallowance of interest for not using the funds for business purpose held as under:-

If all the requisite conditions for allowance of interest are fulfilled, it is not possible and open to the Revenue to make a part disallowance, unless there is a positive finding recorded that a part of the amount borrowed was not used for the purposes of the business. As was observed in Madhav Prasad's case [1979] 118 ITR 200 (SC), the expression "for the purpose of business" appearing in section 36(1)(iii) and section 37(1) is wider in scope than the expression "for the purpose of making or earning income" used in section 57(iii). Therefore, the scope for allowing a deduction under section 36(1)(iii) is much wider than the one available under section 57(iii).”

41. The ld. CIT(A) after considering the submissions of the assessee restricted the disallowance to 50% of what had been made by the AO by observing in para 4.6.3 of the impugned order as under:

“4.6.3 I have considered the submissions of the AR and the assessment order. The AO has made the disallowances on a summary basis. He has not taken into account the availability of such huge amount in the appellant's Capital Account and Reserves and Surplus Account. His reasonings are also very brief. At the same time the appellant had not cared to give any explanation,

to the AO when he was called upon to provide the explanation. This has not been disputed. It is likely that the appellant avoided giving explanation because he did not want to get further scrutinized on this issue. Considering the same, I am of the view that it would be appropriate if the disallowance is restricted to 50% of what has been disallowed by the AO. The balance addition is hereby confirmed."

42. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that surplus funds were available with the assessee and that the loans and advances were given out of the surplus funds. It was further submitted that the interest was paid to the bank on the overdraft limit which was utilized for the business purposes. Therefore, the disallowance sustained by the ld. CIT(A) was not justified.

43. In his rival submissions, the ld. CIT DR strongly supported the orders of the authorities below.

44. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the assessee explained before the ld. CIT(A) that it was having total fund of Rs.9.25 crores and the loan was given only of Rs.98.89 lacs. In the instant case, nothing is brought on record to substantiate that the borrowed funds from the bank were diverted for non-business purposes and no nexus was established between the interest free loans given and the interest bearing funds raised by the assessee. Therefore, the adhoc disallowance made by the AO and sustained by the ld. CIT(A) was not justified particularly when the assessee was having surplus funds which were almost 10 times

then the interest free loans and advances given. We, therefore, considering the totality of the facts, delete the disallowance sustained by the ld. CIT(A).

45. In the result, the appeal of the assessee is partly allowed.

(Order Pronounced in the Court on 13/06/2018)

Sd/-	Sd/-
(K. N. Chary)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 13/06/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR