

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "A", MUMBAI**  
**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.4415/Mum/2013 (Assessment Year- 2009-10)

M/s Aqdas Maritime Agency Pvt. Ltd. 32/33, Eastern Chamber, 4 <sup>th</sup> Floor, Nandlal Jani Marg, Poona Street, Mumbai-400009 <b>PAN:AAECA8490K</b>	<b>Vs.</b>	Asst.CIT, Circle-(6)(1) Mumbai.
(Appellant)		(Respondent)

ITA No.1559/Mum/2013 (Assessment Year- 2009-10)

Asst.CIT, Circle-(6)(1) Mumbai.	<b>Vs.</b>	M/s Aqdas Maritime Agency Pvt. Ltd. 32/33, Eastern Chamber, 4 <sup>th</sup> Floor, Nandlal Jani Marg, Poona Street, Mumbai-400009 <b>PAN:AAECA8490K</b>
(Appellant)		(Respondent)

Cross Objection No.113/Mum/2018 (Assessment Year- 2009-10)

M/s Aqdas Maritime Agency Pvt. Ltd. 32/33, Eastern Chamber, 4 <sup>th</sup> Floor, Nandlal Jani Marg, Poona Street, Mumbai-400009 <b>PAN:AAECA8490K</b>	<b>Vs.</b>	Asst.CIT, Circle-(6)(1) Mumbai.
(Appellant)		(Respondent)

Assessee by : Mrs. Prakash Jhunjhunwala &  
Sanjay Jain (AR)

Revenue by : Shri R.P. Meena & Rajesh  
Kumar Yadav (DR)

Date of hearing : 25.04.2018

Date of Pronouncement : 18.07.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This set of two appeals by both the parties and cross objection by assessee are directed against the order of Ld. Commissioner of Income-

tax (Appeals)-14 [Ld. CIT(A)], Mumbai dated 26.11.2012 in the assessment order passed under section 143(3) of the Act on 30.12.2011 for Assessment Year 2009-10. The Revenue has raised the following grounds of appeal:

1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to the assessee without appreciating that onus was on the assessee to prove that evidence gathered during survey did not reflect true state of affairs and CIT(A) ought not to have accepted 'new' stance of the assessee without any cogent evidence in support of the same when assessee had failed to discharge the onus cast on it."
2. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in failing to appreciate that mere wrong mentioning of section in the assessment order (section 69A in place of section 68 of the IT Act) did not change the character of amounts shown under the head 'secured loan' and 'Share application money' to "unaccounted sale".
3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition in respect of Share application money of Rs.4, 51,35,015/-".
4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to the assessee on account of Share application money merely treating it as an unaccounted sale without any cogent evidence and failing to appreciate evidence and details gathered during the course of survey."
5. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition in respect of unsecured loan of Rs.8,29,51,196/-".
6. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to the assessee on account of unsecured loan merely treating it as an unaccounted sale without any cogent evidence and failing to appreciate evidence and details gathered during the course of survey. "
7. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in failing to appreciate that addition on account of amount allegedly

shown as Share application money and secured loan were "aggregate to total income" and did not form part of "sales".

8. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in failing to appreciate that relief if any out of amount shown allegedly as u secured loan" and "Share application money" could be to the extent it gets taxed twice as part of gross profit on corresponding amount offered for tax additionally as "unaccounted sales."

9. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition in respect of "Entertainment & CFS expenses" of Rs. 68, 22, 000/- u/s. 69C of the Act ".

10. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief to assessee out of disallowance of unaccounted entertainment and clearing forwarding expenses debited under the head "Entertainment & CFS account" without cogent evidence f. prove that the expenses were actually incurred by the assessee for the purpose of business".

11. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the interest expenses of Rs. 25,17,178/- without considering the fact that onus was on assessee to prove that application of loan of Rs.20.6 crores was exclusively for purpose of business of assessee and not for creating capital asset which was not put to use during the year. ".

12. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the relief on account of disallowance of interest without taking on record how the disallowance made by the AO is unreasonable and without any evidence that the loan applied by the assessee is used for the purpose of business of the assessee, income from which was offered for tax'.

13. "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in granting relief out of the disallowance of interest of Rs. 28,73,823/- by ignoring the fact that the loan is used for capital work in progress. "

14. "The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

2. The assessee in its cross appeal has raised the following grounds of appeal:

The appellant company prefers an appeal against an order passed by Ld. Commissioner of Income Tax (Appeal) 14, Mumbai dated 26/11/2012 on following amongst other grounds each of which are without prejudice to any other :-

1.0 A humble prayer is made to condone the delay of 102 days in filing of the appeal being caused under bonafide reasons and compelling circumstances beyond control of the appellant;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.69C of alleged entertainment and clearing forwarding expense of Rs.68,22,000/- (50% of Rs 1,36,44,000/-);

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of interest on cash credit (C.C) account of Rs.3,56,645/- on ignoring the fact such bank loan had been used exclusively for the purpose of business;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of alleged unaccounted cash deposit made in Abhudaya Co-op bank Ltd of Rs.14,65,000/-;

5.0 The Ld CIT(A), though deleted the additions in 1<sup>st</sup> appeal, erred in not adjudicating the alternate prayer of the appellant to adopt the concept of Real income and estimate the total income utmost to the extent of 5% of the alleged unaccounted receipts.

3. On service of notice of appeal by Revenue, the assessee has filed Cross Objection raising the following grounds of appeal:

The appellant company prefers a cross objection appeal against an order passed by Ld. Commissioner of Income Tax (Appeal) 14, Mumbai dated 26/11/2012 on following amongst other grounds each of which are without prejudice to any other :-

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) while deleting the additions of Share application of Rs.4,51,35,015/- erred in not considering the undisputed fact that the opening balance of Rs.3,47,61,175/- cannot be taxed u/s.68 in impugned year;

2.0 The Ld CIT(A), though deleted the additions in 1<sup>st</sup> appeal, erred in not adjudicating the alternate prayer of the appellant to adopt the concept of Real income and estimate the total income utmost to the extent of 5% of alleged unaccounted receipts.

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.69C of clearing & forwarding expense of Rs.68,22,000/- (50% of Rs 1,36,44,000/-);

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the disallowance of interest on cash credit (C.C) account of Rs.3,56,645/- on ignoring the fact the bank loan had been used exclusively for the purpose of business;

5.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of unaccounted cash deposit made in Abhudaya Co-op bank Ltd of Rs.14,65,000/-;

4. Brief facts of the case are that the assessee is a Private Limited Company, engaged in the business of Clearing and forwarding Agents, Cargo handling Services and Logistic support, filed its return of income for Assessment Year 2009-10 on 30.09.2009 declaring total income at Rs. 69,65,488/-. The assessment was completed on 30.12.2011 under section 143(3). A survey action under section 133A was conducted in the office of assessee on 19.01.2009 (during the period relevant to the Assessment Year under consideration). During the survey proceeding, the books of account maintained on computer in the office of assessee were extracted. In the extracted information/books of account by the

assessee in its computer in its office premises, many discrepancies were identified. On the basis of discrepancies identified by survey team and by the enquiries conducted by Assessing Officer during the assessment proceeding, the Assessing Officer made the addition of Rs. 4,51,35,015/- on account of Share application money by treating as unexplained money under section 69A, addition of unsecured loan of Rs. 8,29,51,196/-, addition of Rs. 1,36,44,000/- on account of entertainment expenditure/unexplained expenditure and disallowance of Rs. 28,73,828/- on account of interest expenditure under section 37. On appeal before the Ld. Commissioner (Appeals), the addition of Share application money of Rs. 4,51,35,015/- and addition of unsecured loan of Rs. 8,29,51,196/- was deleted, however, the addition on account of unexplained expenditure of Rs. 1,36,44,000/- was restricted to 50% and out of interest expenditure of Rs. 28,73,823/-, a sum of Rs. 25,17,178/- was deleted. Therefore, aggrieved by the order of Ld. CIT(A) both the parties have filed their cross appeals raising the grounds of appeal against sustaining/deleting the various addition as referred above.

5. We have heard the Ld. Departmental Representative (DR) for the Revenue and Ld. Authorized Representative (AR) of the assessee and perused the material available on record. At the outset of hearing the Ld. AR of the assessee submits that he is not pressing the appeal filed by the assessee as well as Cross Objection filed in revenue's appeal by

assessee. Therefore, considering the submission of assessee, the appeal of the assessee being ITA No. 4415/Mum/2013 and Cross Objection No. 113/Mum/2018 are dismissed as not pressed. Now we shall consider the merits of various grounds of appeal raised in revenue's appeal.

6. Ground No. 1 to 8 relates to deleting the additions of Share application money and unsecured loan. Both the additions/ deletion referred in the grounds are based on the same set of facts; therefore, all the grounds were heard together with the consent of the parties. The ld. DR for the revenue submits that a survey action under section 133A was carried out at the premises of the assessee on 19.02.2009. During the survey action certain documents related with the books of account, were extracted from the computer of the assessee in its office premises. In the statement of account maintained on the Computer, extracted during the survey proceeding it was noted that assessee has received Share application money of Rs. 7,15,96,190/-, however, while filing return of income the assessee has shown Share application money of only Rs.2,64,61,175/-in its Audited balance sheet as on 31 March 2009. The assessee was asked to explain the discrepancies with documentary evidences. The assessee furnished its reply dated 26<sup>th</sup> of December 2011, in the reply the assessee contended that at the time of survey, the accounts were not reconciled and the summary in ledger was not

properly grouped, hence, the same could not be reconciled. The assessee was asked to furnish the complete address of the parties, who have given Share application money and the details with mode of payment along with cheque No., bank names and date of receipt of amount. The assessee was also asked to furnish the documents of showing of Share application money received by the assessee and Share allotted to the applicants along with information to the Registrar of Company. The assessee did not supply the address of all the parties and failed to submit the mode of transaction, details of cheque and receipt of the amount and repaid later on etc. As the assessee could reconcile only amount of Rs.2,64,61,175/-, therefore, the difference of Rs. 4,51,35,015/- (Rs. 7,15,96,190- Rs. 2,64,61,175/-) was added as unexplained money under section 69A. Similarly, during the survey proceeding, as per books of accounts, the assessee has shown unsecured loan from sister concern/ Company for Rs. 8,29,51,196/- however, in the balance-sheet furnished along with the return of income the assessee has shown unsecured loan of Rs. 15 lakhs only. The assessee was asked to furnish the address of all sister concern, name of partners/proprietors and to explain the reasons of difference in the books of account. The assessee in its reply contended that the assessee has taken unsecured loan of Rs. 15.00 lakhs only and the other accounts of sister concern is a current account which were wrongly classified under unsecured loan, whereas it is current

liability of group, therefrom, the assessee failed to explain the amount, confirmation of account. There is no proper explanation of the dubious transaction therefore; the same was treated as unexplained money received by assessee under section 69A. The learned Commissioner (Appeals) deleted the addition by accepting the version of assessee. The assessee failed to substantiate its contention before the assessing officer. The contentions of the assessee that accounts were not final and there was a mistaken grouping of the entry are afterthought contention, concocted by the assessee. The Id. DR for the revenue submits that the Id Commissioner (Appeals) accepted the reconciliation furnished for the first time before him. No remand report or verification was sought from the assessing officer. The Id. DR prayed for sustaining the entire addition on account of Share application money as well as unsecured loan.

7. On the other hand the Id. AR of the assessee supported the order of Id. Commissioner (Appeals). The Id. AR of the assessee further submits that the assessing officer erroneously assumed that assessee received Share application money from various parties. The books of account extracted from the computer during the course of survey, were not audited and there were grouping errors in respect of various entries. The entries were collected subsequently during the statutory / tax Audit. The recordings of incorrect entry in the unaudited books of account were

subject to the correction and reconciliation, which cannot be the basis of making huge addition of unrealistic figures. The assessing officer ignored the fact that subsequent to survey on 19 January 2009, the assessee corrected its books of account and offered the alleged Share application money of Rs. 4.51 Crore as its income by crediting the same to the profit and loss account. Therefore, the income from operations of business as per Audited profit and loss account extracted during survey, received disclosed were only of Rs. 31.37 Crore, whereas the received disclosed in the profit and loss account were Rs. 49.68 Crore. The assessee itself has considered the alleged Share application money as income by crediting the receipt to the profit and loss account. Therefore, it was not justified by assessing officer for making the addition of Share application money. Even otherwise they unaudited books of account found during the course of survey under section 133A which was later on duly reconciled, cannot we relied. The main difference in the alleged Share application money recorded in the unaudited books pertains to Aziz Gulab Sheikh from whom the assessee had allegedly received Rs. 3.68 Crore. The assessing officer while making addition of Rs. 4.51 Crore had erroneously considered the repayment of Share application money received during the earlier year of Rs. 89.00 lakhs whose repayment in cheques had been made during the current year the money received from a Aziz Gulab Sheikh was wrongly grouped as Share

application money, actually pertains to the assessee's logistic/ transport business, which earlier was incorrectly grouped as Share application money and was correctly disclosed under liability side of unaudited balance sheet. However, after survey while finalising the audited accounts the assessee corrected the entries and grouped the said receipt which pertains to the transport receipt under sales and the same has been shown in the income side in the Audited profit and loss account. Therefore, no addition under section 69A can be made.

8. Regarding unsecured loan of Rs. 8.29 Crore it was submitted that during the relevant financial year the assessee received loan of Rs. 15 lakhs only. In support of receipt of loan the assessee furnished confirmation of account of the parties. The assessee discharged its onus regarding the receipt of unsecured loan by furnishing name, address and PAN number of the lender, confirmation of account of unsecured loan of Rs.15 lakhs. And the confirmation of four parties that payment made by them pertains to the transport contract and does not pertain to the unsecured loan. The Id. AR further submits that the addition was made by assessing officer only on the basis of erroneous entries recorded in unaudited books of account. The Id. AR of the assessee further explained that assessee is engaged in the business of logistic services /contract activities and required it to arrange trucks, trailers, containers on behalf of its clients, in logistic business the assessee also acts as a

mediator, wherein payments are received from the clients for making payment to the transport operators/ contactors for incurring expenses on which the assessee received small margin money or commissions only. The assessee's accountant while recording the transaction made grouping errors wherein the amount received from clients/contractors for transport contract were erroneously grouped under unsecured loan. The ld. AR for the assessee submitted that the assessee voluntarily rectified/ corrected the books of account and offered the alleged unsecured loan as its income by crediting the said sum to the profit and loss account. Thus, the income receipt from operation as per Audited profit and loss account is Rs. 49.68 Crore. However, during the survey it was gathered only at Rs. 3.37 Crore. Therefore, the assessee has offered more income while filing return of income. The ld AR of the assessee further explained the audited and unaudited profit and loss account in the following manner;

	Impounded books(during survey)	Audited books of account	Audited books of account
Particulars	As on 19 January 2009	As on 19.01 2009	As on 31.03.2009
(a) Sales	30,98,13,932/-	4,30,47,8513/-	48,95,72,666/-
(b) Other income	39,40,223/-	40,60,323/-	73,14,479/-
Total	31,37,54,155/-	43,45,38,836/-	49,68,87,145/-

9. In support of his submission the ld. AR of the assessee relied upon the following decision ;

- (i) Chawla Brothers (P) Limited Vs ACIT 43 SOT 651 (Mum-ITAT)
- (ii) Virender Kr Aggarwal Vs ITO 3 SOT 843(Jab),
- (iii) Garima H Jain Vs ACIT 87 ITD 242 (Pune TM)
- (iv) ITO Vs Dr. KR Jayachandran 70 TTJ 324(Cochin),
- (v) Agarwal Trading Company Vs ITO 111TTJ 589 (Delhi),
- (vi) Raj Sons Jewellers Vs ITO 56 TTJ 1106 (Delhi),
- (vii) CIT Vs Forech India Ltd. 329 ITR 336(Delhi),
- (viii) Kedarnath Jute Mgf Co. Ltd Vs CIT 52 ITR 363(SC)

10. We have considered the rival submission of the parties and have gone through the orders of the authorities below. During the assessment proceedings the assessing officer noted that the assessee has shown the Share application money of rs.2,64,61,175/-, however, during the survey action, statement extracted shows that the assessee received Share application money of Rs.7,15,96,190/-. The assessee was asked to explain and provide the evidence to substantiate its claim. The assessee vide its reply dated 26.12.2011 contented that the assessee received Rs.6,00,000/- as Share application money from Nor Mohd. The assessee returned Share application money of Rs.89,00,000/- during the year for the following person;

- (1) *Marwan Wire Product* Rs.14,00,000/-
- (2) *Prem Keshwani* Rs.40,00,000/-
- (3) *Rubina M.A. Shaikh* Rs.35,00,000/-

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*Total* Rs,89,00,000/-  
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*The assessee also furnished the details of the Share money with the assessee and furnished the following details,*

*Opening balance* 3,47,61,175/-  
*Addition Receipt during the year* 6,00,000/-  
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		3,53,61,175/-
<i>Less: repayment during the year</i>		89,00,000/-
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<i>Balance as on</i>	31.03.2009	2,64,61,175/-
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*The assessee further contended that the figure of Share application money at the time of survey were not reconciled, which has been reconciled now.*

11. The contention of the assessee was not accepted by assessing officer on his view that as per the statement generated at the time of survey the assessee has shown Share application money from 12 persons of Rs.7,15,96,190/-. The names of all such persons were mentioned by assessing officer in para 5.2 of its order. The assessing officer asked the assessee to furnish complete address of persons who have made Share application money along with Cheque No, date, amount and name of Bank or the detail of cash received and the declaration of Share application. The assessing officer noted that the assessee furnished the address of some of the parties, the details of which were found incomplete. The assessing officer on his observation worked out the difference of Rs. 4,51,35,015( Rs. 7,15,96,190 – Rs, 2,64,61,175) and treated the same as unexplained money and made addition under section 69A of the Act. No further inquiry was conducted by assessing officer in respect of information and evidences furnished by assessee.
12. Similarly, for unsecured loan the assessing officer noted that the assessee has shown unsecured loan of Rs.15 lacks, however, during the survey it was recorded that the assessee has shown unsecured loan of

Rs. 8,29,51,196/- from sister concern and Rs. 15 lacks from Raj Kishore Singh. The assessee was asked to furnish the address of all the sister concerns, name of the partners or proprietors and to substantiate the reasons of difference or if any amount has been paid back in the year. The assessee filed its reply vide its reply dated 26.12.2011. In the reply the assessee contended that the assessee has availed unsecured loan of Rs. 15 lacks only and the other accounts of the sister concern are the current account, which were wrongly classified as unsecured loan of group, whereas it is a current liability of group. The details of the sister concern i.e. Citizen Transport Company, Ishwar Enterprises, Maxine Marine International and Taurus Transport along with their confirmation was furnished. The contention of the assessee was not accepted by assessing officer. The assessing officer made the additions on the basis of statement extracted from the computers during the survey action. The assessing officer concluded that the entries are made in cash and the entries are dubious and that PAN and address of the parties are not mentioned on the confirmation. The assessing officer concluded that amount of Rs. 8,29,51,196/- remained unexplained and treated the same as unexplained money under section 69A of the Act. We have noted that the assessing officer has not made any verification in respect of the unsecured loan, despite receiving the details furnished by assessee.

13. The assessee urged similar contention before the First Appellate Authority, as submitted before us and contended that the assessing officer erroneously assumed that the assessee has received said application money in cash from various persons. The books of account extracted from the computer during the course of survey, were unaudited and were having grouping errors in respect of a entries, which have been corrected subsequently during the statutory Audit. The assessing officer ignored the vital fact that the assessee subsequently to the survey action voluntarily rectified its books of account and offered the alleged Share application money as its income by crediting the same to its profit and loss account. Therefore, the assessee itself had considered the alleged Share application money as income by crediting his receipt to the Profit and Loss account and the assessing officer was not justified in making addition of the alleged Share application money. Similarly, for unsecured loan, the assessee contended that during the course of assessment proceeding the assessee contended that it has received only Rs. 15 lacks as unsecured loan and filed the confirmation of account of the parties and the balance amount pertains to the transport receipt. The assessing officer solely relied upon the erroneous entries record in the unaudited books of account recovered during the course of survey instead of appreciating the evidences furnished during the assessment before the assessing officer.

14. The Id Commissioner (Appeals) after considering the Audited profit and loss account and the impounded un-audited profit and loss account during the survey action, observed that during the survey the receipt recorded were only of Rs.31,37,54,155/- however, the receipt disclosed in the profit and loss account at Rs. 49,68,87,145/-. Therefore, the assessee itself had considered the alleged Share application money by crediting the receipt to the profit and loss account, therefore, the assessing officer was not justified in making the addition of alleged Share application money the assessing officer erred in considering only one side of the entries (credit side) recorded in the un-audited books of account and ignored the other side of entries (corresponding debit side) disclosing the expenses/losses record in the same unaudited books of account found during the course of survey action. The documents/books of account are to be relied in totality and not in a piecemeal manner. The assessing officer while relying on un-audited books, erroneously assumed that assessee has received alleged Share application money in cash while ignoring the vital fact that such entries represent cash received from assessee's client/contractors are its transport receipt. The difference in Share application money recorded in rough un-audited books pertains mainly pertains to Aziz Gulab Sheikh of Rs. 3,68,85,015/- had already been considered as income by crediting in the sales account in its profit and loss account. Therefore, addition under

section 69A would result in to double taxation. The Id. Commissioner (Appeals) also compared the reconciled Audited books of account with un-audited books of account as referred in paragraph 4.9 of the impugned order.

15. For unsecured loan the Id. Commissioner (Appeals) observed that the assessee categorically stated that it has received only Rs. 15 lacks as unsecured loan and filed confirmation of account of the parties and stated that rest of the amount pertains to the transport receipt. The assessing officer is accepted this fact in para 6.3 of its order. The assessing officer ignored the confirmation of the account and made the addition under section 69A. The addition is totally unjustified the assessee has discharge his onus by furnishing PAN, name of address of the lender, confirmation of account of unsecured loans of Rs. 15.00 lakhs, certificate of 4 parties confirming that the payments made by them pertains to the transport receipt and not pertains to unsecured loan. The assessing officer made addition solely on the basis of erroneous entries recorded in unaudited books of account extracted during course of survey. The Id. Commissioner (Appeals) on his observation that the assessee has voluntary rectified its books of account and offered the alleged unsecured loan as its income by crediting the same to the profits and loss account. Thus, the income from the operation as per Audited Profit and Loss account is much higher than the receipt recorded during

the survey from un-audited accounts. When the assessee has already considered the receipt of from 4 parties as income by crediting it in the sales account in its profit and loss account, therefore, the addition under section 69A would result in to double taxation. The assessing officer has no evidence to justify that assessee received the alleged unsecured loan and has not brought any evidence on record to establish that the assessee has received such amount.

16. The Id. Commissioner (Appeals) specifically observed that the assessee's books of account were not rejected by the assessing officer during the assessment proceeding. The Id. Commissioner (Appeals) also considered the contention of the assessee that the assessing officer ought to have allowed the set off of payment/expenses found in the un-audited books and to consider the concept of real income. On the basis of his observation the Id. Commissioner (Appeals) concluded that the assessing officer not conducted an inquiry, at the time of survey the only extract of accounts maintained in the computer were obtained. The assessee was not asked about the entries maintained in the computer, especially 'Share application money' and 'unsecured loan' and the source thereof. Neither, the parties in whose names such credit entries were made were confronted. Even, during the assessment proceeding the assessing officer has not confronted the parties. None, of the parties were summoned, nor the statement was recorded by assessing officer.

The assessee specifically contended that there was grouping errors in the incomplete books of account during the course of survey and all the receipt reflected in the books so found head been accounted in the final accounts. The assessing officer has not made any comment upon the contention of the assessee. The assessing officer has not commented about the Audited books of account of the assessee. The survey was conducted at the premises of assessee on 19 January 2009. The books of account on that day of survey were certainly incomplete/not closed. The assessing officer made addition of these two amounts under section 69A as unexplained money for the reasons that the identity and creditworthiness of the Share applicants and the loan creditors have not been proved by the assessee. However, the case of assessee is that such receipt does not pertain to the Share application money and unsecured loan, rather these pertains to assessee's transport and logistics business, which have been received in the normal course of business. Such transport receipt have already been considered by the assessee has said receipt in its Audited books of account which have been filed on record. Moreover, the confirmation in this regard from the concerned parties whose creditworthy nest is not doubtful. Therefore, the Id. Commissioner (Appeals) concluded that the receipt pertains to Share application and unsecured line or they relates to the business transaction, such receipt have been considered as income in the Audited

profit and loss account file along with the return of income. The Id. Commissioner (Appeals) extracted Profit and Loss account and the balance-sheet of the assessee in para 4.22 of its order. The Id. Commissioner (Appeals) finally concluded that the sales reported in un-audited profit and loss account found during the survey on 19 January 2009 is only at Rs. 30,98,13,932/-, whereas the sales disclosed in the audited/corrected profits and loss account for the same period as on 19 January 2009 disclosed by assessee is at Rs. 43,04,78,513/-, thereby an excess amount of Rs. 1,20,66,44,581/- is already considered as income by the assessee. Moreover, there was a net loss of Rs. 1,20,44,282/- on the date of survey in the profit and loss account, whereas after correcting the mistake in Audited report there is profit of Rs. 6,75,88,704/- on the day of survey. Thus, it is evident that assessee after correcting the mistake in due process of audit, has not only disclosed higher amount of sales but also disclosed higher profit in the profit and loss account. The Id. Commissioner (Appeals) concluded that the assessing officer while making huge addition has ignored the facts that profit and loss account were not complete on the day of survey. The Id. Commissioner (Appeals) finally concluded that assessing officer has not doubted the correctness of the Audited balance sheet as books of account were not rejected. No incriminating material was brought by

assessing officer on record, therefore, the addition on account of Share application money and unsecured loan were deleted.

17. We have seen that the assessing officer has given more weightage to the unaudited accounts entry extracted at the time of survey instead of considering the audited profit and loss account. We have also noted that the statement of the Directors of the assessee was not recorded during the survey action. The assessing officer also ignored the fact that the assessee has shown/offered more income while filing the return of income. The assessee has offered more receipt of income at the time of filing return, than the receipt extracted at the time of survey. We have noted that there was a difference in the entry in the un-audited books of accounts and the assessee has explained each and every item of difference by reconciliation. The ld. DR has failed to bring any contrary material to our notice to show that the comparison made by ld. Commissioner (Appeals) is not correct. No contrary law is brought to our notice.

18. The Hon'ble Delhi High Court in CIT Vs Forech India Ltd (supra) held that the discrepancies pointed out in the stock was fully reconciled on behalf of the assessee although the plea was taken that some of the purchases including purchases made at high sea were not entered in financial book, though goods were actually received at the factory premises. It is not disputed that books of account of the assessee at the

time of survey were incomplete. The assessee later completed books of accounts after incorporating all the purchases and showed that position of his stock at the premises and in the books of accounts stood reconciled. This was conveyed by the assessee to the DCIT, and has been certified it. The same position was maintained by the assessee during the course of assessment proceeding. The assessee also relied upon the fact that completed books of account was audited and supported by report of Auditor, which were later on completed on after incorporating all the purchases in stock position reconciled. Thus, the assessing officer approach was not correct in making the addition of excess stock found during the survey.

19. The coordinate bench of Mumbai Tribunal in *Chawla Brothers Vs ACIT* (supra) held that merely on basis that at time of survey, some differences were found in stock that does not mean that there will be an automatic addition on account of differences. It was further held that the survey is done without any formal notice and usually involves an element of surprise; it is possible to know the true nature and extent of the business activities of the assessee vis-a-vis his records. It means that where it is found that there is no discrepancy; the fact found in survey should serve as an opportunity to the taxpayer to prove the correctness of his accounts as found in a contemporaneous check.

20. Jabalpur Bench of Tribunal in *Virendra Kumar Aggarwal Vs ITO* (supra) held that the accountant of the assessee was not having proper knowledge of the accounts, therefore, the entries made in wrong head i.e. instead of bill receivable account as asset; he has shown in trading account as work in progress. There is wide misconception about the impact of this wrong entry in the books of account. It was further held that addition made on the basis of wrong entries in the books of account which is not reasonable and justified, the assessing officer is expected to pass cogent order on the basis of fact available before him in the statement of account and not to take the undue advantage of lack of knowledge of the assessee for bona fides mistake for recording wrong entry in the books.
21. Delhi Tribunal in *ITO Vs Navin Goyal* (Supra) held that in the subsequent balance sheet the assessee elaborately and sufficiently explained the discrepancies in the original balance sheet. The assessee furnished complete and due information before the Assessing Officer in the assessment proceedings. If the assessee had any mal-intention, the revised balance sheet would not have been filed. The differences questioned by the Assessing Officer were duly explained to him in the assessment proceedings by linking them with the bank accounts and other evidences. The Assessing Officer had not dealt with any of the explanations offered by the assessee. Those explanations along with the

revised balance sheet had not been shown to be bad or false. Therefore, the Commissioner (Appeals) was justified in deleting addition.

22. In Ms Garima H.Jain Vs ACIT (supra) it was held that when the assessee having furnished the final cash book before the assessing officer reconciling the figures of seized cash book except one amount, low addition could be sustained in respect of unexplained expenses found recorded in the seized books or in respect of investment in the firm. In ITO Vs Dr. K.R. JayaChandra (supra) it was held that no addition is warranted if there was purely accountancy mistake and nothing else.

23. In Aggarwal Trading Company Vs ITO (supra) it was held that when the assessee is clearly explained the contradiction in question, there is no justification to treat the amount in question as scarce credit within the meaning of section 68. The difference of dates in which the entity appears in the books and in the bank statement is correlated. This cannot be taken as an afterthought action of the assessee. It is very likely that there can be mistake when the accounts were maintained on the basis of counter files of cheques and that too by a part-time accountant clerk. The explanation is very natural and plausible. The assessing officer had stretched the presumption too far. It would be a reasonable to come to the conclusion to which assessing officer has come; therefore, the entire addition in question is deleted. Further, in Rajsons Jewellers Vs ITO

(supra) it was held that when assessee has submitted explanation for each errors/mistake in cash book, ledger and also explained how that mistake has been rectified later on and taken into consideration with the final profit and loss account. On the contrary, the assessing officer has added each and every figure without ascertaining the impact of the error, whether it will increase the income or reduce the income. The assessee has also filed reconciliation of books of account with profit and loss account along with explanation in support of its contention that profit and loss account filed with the return of income gives a true picture of the profit and no further adjustment is required.

24. Considering the above referred factual and legal discussion, we do not find any illegality or infirmity in the order passed by learned Commissioner (Appeals). No contrary fact of law is brought to our notice to take the other view. In the result these grounds of appeal are dismissed.

25. Grounds No.9 to 10 relates to deleting the addition on account of entertainment and CFS expenses. The ld. DR for the revenue supported the order of assessing officer. The ld. DR further submits that during the survey action it was found that the assessee has made the expenditure in cash and majority of the amount worth more than Rs. 20,000/- paid to individual party. However, in the Audited profit and loss account furnished with the return of income, the expenditure has been debited

under the head of entertainment expenditure. The assessee failed to substantiate its contention before the assessing officer. However, the Id. Commissioner (Appeals) allowed the half of the expenditure without any cogent reason. The Id. DR prayed for restoring the order of assessing officer

26. On the other hand the Id. AR of the assessee supported the order of Id. Commissioner (Appeals). The Id. AR of the assessee submits that the assessee produced all related evidence and vouchers and the source thereof was explained before the assessing officer as well as before Id. Commissioner (Appeals). The details of entertainment and CFS expenses are filed at page No.71 to 77 of the paper book. The Id. Commissioner (Appeals) sustained 50% of the addition. The Id. AR of the assessee prayed for rejecting the grounds of appeal.

27. We have considered the rival submission of the parties and have gone through the orders of authorities below. The assessing officer on the basis of statement extracted from unaudited books of account during the survey action made the addition on account of entertainment expenditure of Rs. 1,36,44,000/-. The assessing officer further observed that majority of expenses were incurred in cash and were over and above Rs.20,000/-. During the first appellate stage the assessee explained that the word 'CFS' denotes the clearing, forwarding and supervision expenses. The assessee claimed to have incurred such

amount in cash for its sales personal and the staff for incurring expenses on the transport, clearing and forwarding expenses. Before Id Commissioner (Appeals) the assessee explained that the word entertainment was pre-fixed in such ledger account as a staff incurred routine clearing, boarding and hotel expenses. However, while finalising the final audited accounts after survey, the assessee corrected the entries and posted it in the respective ledger accounts as per the voucher and supporting document received from its sales personal and staff. The Id. Commissioner (Appeals) asked the assessee to explain the nature of the expenses debited to the audited profit and loss account which were earlier recorded under the head 'entertainment CFS' account. The assessee furnished sample vouchers and explained the nature of the expenses. The assessee also explained the source and nature of expenses. However, the Id. Commissioner (Appeals) instead of allowing the entire expenses observed that part of the expenditure is certainly incurred for business, especially when the nature of assessee's business required incurring of such expenses in cash. However the Id. Commissioner (Appeals) sustained the 50% of the addition out of total expenditure of Rs. 1,36,44,000/-. We have noted that the Id. Commissioner (Appeals) has not given any specific reason in sustaining such expenditure to 50%. Though, the assessee challenged action in sustaining 50% in its appeal, however, the same was not pressed. In our

view the action of Id. Commissioner (Appeals) is without any reason. Moreover, the assessee itself admitted that most of the expenses were incurred in cash. Considering the peculiarity of the facts of the case, we do not find any justification in allowing 50% of the expenses. Therefore we find merit in the grounds of appeal raised by revenue. In the result these grounds of appeal are allowed.

28. Ground No. 11 to 13 relates to deleting the interest expenses. The Id. DR for the revenue supported the order of assessing officer. The Id DR further submits that the assessee has disclosed the addition of Capital Work in Progress of Rs. 2,05,27,341/- and the assessee claimed the interest expenses during the year of Rs. 3,01,70,874/- on secured loan of Rs. 20.60 Crore. The assessing officer on his observation that assessee had not capitalised the interest expenses to the capital work in progress and disallowed the proportionate interest of Rs. 28,73,824/- (14% of Rs. 2,05,27,341/-) . The Id. Commissioner (Appeals) sustained the addition to the extent of Rs. 3,56,645/- only and deleted the remaining disallowance. The Id DR submits that the disallowance of interest expenses was justifiable as the assessee has not capitalised the interest expenses and prayed for restoring the order of assessing officer and to reverse the order of Id Commissioner (Appeals)

29. On the other hand the Id. AR of the assessee supported the order of Id. Commissioner (Appeals). The Id AR for the assessee submits that the

assessee availed secured loan of Rs. 20 .09 Crore. The loan was secured against Cargo handling equipments and Commercial Vehicle. The details are filed at page no. 61 to 63 of paper book. And balance loan of Rs. 50,94,930/- pertains to routine cash credit accounts. The assessee has sufficient own interests free funds available with it, which consist of Share capital, Share application and reserve and surplus of Rs. 11.30 Crore. Thus, the addition of Capital work in progress has been sourced out of owned surplus funds and interest disallowance was not justified, which was rightly appreciated by Id. Commissioner (Appeals). In support of his submission the Id AR for the assessee relied on the decision of Hon'ble Bombay High Court in CIT Vs Reliance Utilities ltd.(313 ITR 340 Bom).

30. We have considered the rival submission of the parties and have gone through the orders of authorities below. The assessing officer while during the assessment noted that the assessee has outstanding secured loan of Rs. 20.62 Crores, has proportionately activated to the interest to the working progress of the assessee and made the proportionate disallowance thereof. However, the learned Commissioner (Appeals), noted that loan of Rs. 20.09 Crore are secured against Cargo handling equipment and commercial vehicles. Therefore, the interest thereon cannot be disallowed against the work in progress. The balance loan of Rs. 5 0.94 lakhs pertains to the routine cash credit account. The assessee

has sufficient interest refunds of Rs. 11.3 Crore. Therefore, the presumption cannot be ruled out that addition to the capital work in progress would also have been sourced out of the interest free funds. Therefore, the assessing officer was not justified in disallowing proportionate disallowance on entire amount of secured loans of 20.6 Crore. However, the learned Commissioner (Appeal) disallowed 50% of the interest paid on the cash credit account. In our view the Id. Commissioner (Appeals) has taken a correct view on the basis of the peculiarities of the facts of the case. The Hon'ble Bombay High Court in Reliance Utilities and Power Ltd (supra) held where the assessee has his own funds as well as borrowed funds, a presumption can be made that the advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for this purpose. Accordingly, the disallowance of the interest on the borrowed funds is not justified. No contrary facts of law are brought to our notice to take a contrary view. Thus, we do not find any infirmity or illegality in the order passed by Id. Commissioner (Appeals), which we affirm. In the result these grounds of appeal is also dismissed.

31. The In the result, appeal filed by revenue is partly allowed.

Order pronounced in the open court on 18<sup>th</sup> day of July 2018.

Sd/-  
(G.S. PANNU)  
**ACCOUNTANT MEMBER**  
Mumbai; Dated 18/07/2018

Sd/-  
(PAWAN SINGH)  
**JUDICIAL MEMBER**

SK.P.S

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER  
(Asstt. Registrar)  
**ITAT, Mumbai**