

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH: 'E', NEW DELHI**  
**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER**  
**AND**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 4873 TO 4875/Del/2014  
Assessment Years: 2008-09 to 2010-11

DCIT, CENTRAL CIRCLE-03, ROOM NO. 355, 3 <sup>RD</sup> FLOOR, JHANDEWALAN EXTENSION, NEW DELHI - 110 055	Vs.	M/S MAHESH WOOD PRODUCTS (P) LTD., A-121, ASHOK VIHAR, PHASE-1, NEW DELHI (PAN AAACM0118Q)
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Pramita M. Biswas, CIT(DR)
Assessee by	Sh. S.K. Gupta, CA

**ORDER**

**PER H.S. SIHU, JM**

These 03 appeals are filed by the Revenue against the respective Orders passed by the Ld. CIT(A)-1, New Delhi relating to assessment years 2008-09 to 2010-11. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with the facts of ITA No. 4874/Del/2014 (AY 2009-10). However, grounds of all the three appeals are reproduced hereunder:-

**ITA NO. 4873/DEL/2014 (AY 2008-09)**

- 1) The CIT(A) has erred in law and on facts of the case in admitting the additional evidence and deleting the addition of Rs. 1,50,00,000/- made on account of unexplained cash credit without examining and adjudicating upon on merits of the case.
- 2) The CIT(A) has erred in law and on facts of the case in deleting the amount of Rs. 1,00,04,952/- made on account of income from unexplained source without examining and adjudicating upon on merits of the case.
- 3) (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.  
(b) The assessee craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

**ITA NO. 4874/DEL/2014 (AY 2009-10)**

- 1) The CIT(A) has erred in law and on facts of the case in admitting the additional evidence and deleting the amount of Rs. 1,50,0,000/- made on account of unexplained cash credit.
- 2) The CIT(A) has erred in law and on facts of the case in admitting the additional evidence and deleting the addition of Rs. 75,000/- made on account of commission.
- 3) The CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 74,67,928/- made on account of claiming the forfeited amount in respect of transaction of properties, in expenses by the assessee.
- 4) The CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 73,06,000/-

made on account of income from unexplained sources.

- 5) The CIT(A) has erred in law and on facts of the case in deleting the addition amount of Rs. 1,02,32,074/- made on account of income from unaccounted manufacture and sale of katha.
- 6) The CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 1,22,77,495/- made being the difference between income admitted by the assessee in his statement recorded at the time of search u/s. 132(4) and the income disclosed in the return.
- 7) (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.  
(b) The assessee craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

**ITA NO. 4875/DEL/2014 (AY 2010-11)**

- 1) The CIT(A) has erred in law and on facts of the case in deleting the amount of Rs. 70,00,000/- made on account of unexplained cash credit without examining and adjudicating upon on merits of the case.
- 2) The CIT(A) has erred in law and on facts of the case in deleting the amount of Rs. 18,87,931/- made on account of income from unexplained source without examining and adjudicating upon on merits of the case.
- 3) The CIT(A) has erred in law and on facts of the case in deleting the amount of Rs.

8,37,62,070/- made on account of income from unexplained sources without examining and adjudicating upon on merits of the case.

- a) The order of the CIT(A) is erroneous and not tenable in law and on facts.
- b) The assessee craves leave to add, alter or amend any / all of the grounds of appeal before or during the course of the hearing of the appeal.

**ITA NO. 4874/DEL/2014 (AY 2009-10)**

2. The brief facts of the case are that a search and seizure operation was carried out u/s. 132 of the Income Tax Act, 1961 (in short "Act") in Mehta group of cases on 30.6.2009. The assessee was also covered in the search. Notice u/s. 153A of the Act was issued on 13.4.2010, in response to which the assessee filed a letter dated 07.02.2011 by stating that the return originally filed on 01.2.2011, declaring income of Rs. 7,30,63,320/-, be treated as return in response to the said notice. Further notice u/s. 143(2)/142(1) of the Act alongwith questionnaire was issued on 21.6.2011, 02.11.2011 and 15.11.2011. The case of the assessee was assessed at an income of Rs. 12,45,21,820/- after making additions / disallowances. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 17.6.2014 has allowed the appeal for statistical purposes. Aggrieved with the impugned order, Revenue is in appeal before the Tribunal.

3. Ld. CIT(DR) relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of appeal. With regard to ground no. 1. relating to addition of Rs. 1,50,00,000/- made u/s. 68 of the Act on account of acceptance of share application money is concerned, she submitted that there was Non-compliance of the summons u/s 131 of the Act issued to the share applicant; Opportunity was given to produce persons along with evidences of source of investment, but assessee failed to produce those persons; there was report of Inspector that the share applicants don't exist at the addresses given; the shares were allotted at huge premium of Rs.900 premium of face value of Rs.100 each when there was no business plan which could affect the profitability of the company. Hence, she submitted that the addition in dispute was rightly made by the AO. In support of her contention, she stated that the following decisions may kindly be considered with regard to addition u/s. 68 of the I.T. Act and filed the copies thereof:-

1. Navodava Castle Pvt Ltd Vs CIT (2015-TIQL-314-SC-IT)

where Hon'ble Supreme Court held that merely because the assessee has been able to show that the shareholder companies were duly incorporated and their identity & genuineness stands established, there were deposits of cash in the bank accounts prior to issue of cheque or pay orders, the same would raise suspicion and addition can be made on such account

2. CIT Vs Navodava Castle Pvt Ltd T20141 367 ITR 306 (Del)

where Hon'ble Delhi High Court accepted that since the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

3. CIT Vs MAF Academy (P.) Ltd (361 ITR 258)

where Hon'ble Delhi High Court held that where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said transactions was to be added to assessee's taxable income under section 68

4 Rick Lunsford Trade & Investment Ltd Vs CIT T20161 385 ITR 399 (Cal)

The assessee did not produce books of account or bank accounts or shareholders' register. Eight out of fifty six persons from shareholders' list provided by assessee denied subscription. Remaining notices returned with endorsement "not known". Hon'ble Calcutta High Court held that unexplained share application money was rightly treated as assessee's income

5 Rick Lunsford Trade & Investment Ltd Vs CIT r2016-TIQL-207-SC-IT1 (Supreme Court)

where Hon'ble Supreme Court dismissed SLP upholding that it is open to the Revenue Department to make addition on account of alleged share capital u/s 68, where the assessee company has failed to show genuineness of its shareholders.

6. CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34)

where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68.

7. CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)

where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68.

8 CIT Vs Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman 165) where Hon'ble Delhi High Court held that where in order to ascertain genuineness of assessee's claim relating to receipt of share application money, Assessing Officer sent notices to share applicants which returned unserved, however, assessee still managed to secure documents such as their income tax returns as well as bank account particulars, in such circumstances, Assessing Officer was justified in drawing adverse inference and adding amount in question to assessee's taxable income under section 68.

9 CIT Vs Frostair (P.) Ltd (26 taxmann.com 11, 210 Taxman 221)

where Hon'ble Delhi High Court held that where details furnished by assessee about share applicants were incorrect, addition under section 68 was proper

10 CIT Vs N R Portfolio Pvt Ltd f2013l 29 taxmann.com 291 (Delhi)[2013] 214 Taxman 408 (Delhi)/r2013l 263 CTR 456 (Delhi)

where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding.

11 CIT Vs Empire Builtech (P.) Ltd (366 ITR110)

12. where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

13. CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/2015/ 228 Taxman 88) where Hon'ble Delhi High Court held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate withdrawals of

money from bank, impugned addition made under section 68 was to be confirmed

14. N K Proteins Ltd Vs CIT (2017-TIQL-23-SC-IT) where Hon'ble Supreme Court held that entire undisclosed income generated out of bogus transactions, deserves to be added to total income

15. N K Proteins Ltd Vs CIT (2016-TIOL-3165-HC-AHM-IT) where Hon'ble Gujarat High Court held that addition on basis of undisclosed income cannot be restricted to a certain percentage, when the entire transaction was found as bogus

16. PCIT Vs Bikram Singh [2017] 185 taxmann.com 104 (Delhi)- even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to

pump in black money into banking channels and such practices continue to plague Indian economy.

3.1 She further relied upon the decision of the Hon'ble High Court in the case of Pr. CIT vs. Bikram Singh dated 25.8.2017 passed in ITA 55/2017 by filing the copy thereof.

4. However, on the other hand, Ld. counsel for the assessee relied upon the order of the Ld. CIT(A) and submitted that additional evidences were submitted before Ld. CIT(A) which consist of copy of ITR's of the share applicants of the subsequent years; Confirmation of the loan, Memorandum of Association, Share application form, Company Master data, list of signatories, latest communication by income tax department, Copies of Share certificates, audited balance sheet, e-filed ITR-V etc already filed before the AO during assessment proceedings. The additional evidences have been admitted by the Ld. CIT(A) which were filed under Rule 46A of the I.T. Rules, 1962. He submitted that the department has not raised any grievance on admission of the additional evidences by the Ld. CIT(A). The additional evidences were referred to the AO during appeal proceedings by the Ld. CIT(A) and the remand report obtained. The Ld. CIT(A) has discussed the remand report and rejoinder of the assessee in para 4.3 and 4.4 at pages 21-23 of CIT(A) order. It was further submitted that on the allegation of AO that inspector report was obtained during assessment proceedings showing that the parties did not exist. In the rejoinder, para 1.5.4 at page 22 of Ld. CIT(A) order, it was

mentioned that the share applicant companies are actually working companies as evident from latest communication made by the Income Tax Department at the given address and MCA Master data. The AO failed to provide the inspector report even during the remand proceedings and fact remain uncontroverted about un-confrontation of the inspector report during assessment proceedings/remand proceedings. He further submitted that for failure to confront the inspector report, the Hon'ble Rajasthan High Court in the case of Pr CIT vs Dhanlaxmi Equipments P Ltd in ITA No.189/2016 Dt: 23.10.2017 (PB 126-127) confirmed the finding of the ITAT that such a failure cannot be ground for rejecting the identity and existence of the share applicant companies and when there are ample evidences showing communication by the department with those companies. Without prejudice to above, it was submitted that the assessee has suffered due to causal handling of judicial matter like assessment. The post search assessment proceedings were started in June 2011 after gap of 2 years from the date of search on 30.06.2009. Late assumption of assessment proceedings put the assessee on avoidable burden of making compliance of over 70 cases belonging to the group in less than six months. It was highlighted that since assessments involved based on seized material, the late commencement of assessment proceedings was indeed cruel for the assessee from the point of view of compliance. He further submitted that Ld. CIT(A) took a note of following points in para 4.5 of the CIT(A) order on page 23, while deleting the addition of Rs.1,50,00,000/- of share application money:

- a) Payments were received through banking channel.
- b) All share applicants were duly assessed to tax and are existing companies with annual returns filed under Companies Act.
- c) Summon/Notices issued by revenue had been duly served on all share applicant companies.
- d) Assessee had filed copies of share application forms, bank statements of share applicants and their PAN Details which proves that the assessee had discharged primary onus u/s 68 of IT Act.
- e) No evidence with revenue to prove that share applicant companies could not be found at given address was ever confronted to appellant.
- f) Assessee was never required to explain or justify the reason for issue of share at huge premium.
- g) No material was found during course of search u/s 132 to establish the share capital was not genuine.

4.1.1 He further submitted that in addition to what is held by the Ld. CIT(A), the assessee's counsel submitted that the assessment year in question is the year just before search/s 132 of the Act by the department and no evidences have been found by the department to dispute or question the cash credits in question. There is no material provided by the investigation wing in case of investigation in other cases that those parties are bogus and fictitious entities. The inspector report appears to have been obtained in the month of Dec 2011 which is clearly contrary to the material on record which show that in notices/summons

were issued to those share applicants in the year 2013 were duly served and also income tax returns were filed in subsequent years:

<b><u>S.No</u></b>	<b><u>Name of Share Applicants</u></b>	<b><u>Detail of Communication/ Filling of ITR</u></b>
1.	M/s APT Properties Pvt Ltd	On 13.08.2013, notice was served by AO, Coy Ward 2(1) (PB 86). Return for AY 2012-13 filed on 31.03.2013. (PB 89).
2.	M/s Kay Buildwell Pvt Ltd	Summon u/s 131 was served on 18.02.2013 by Dy CIT-14(1), New Delhi. (PB 103). Return for AY 2011-12 filed on 30.03.2012. (PB 106).
3.	Multitech SemiConductorsPLtd.	Summon u/s 131 was served on 18.02.2013 by Dy CIT-14(1), New Delhi. (PB 124). Return for AY 2012-13 filed on 31.03.2013. (PB 121).
4.	Shweta Mehandi Products P Ltd	Summon u/s 131 was served on 18.02.2013 by Dy CIT-14(1), New Delhi. (PB 151) Return for AY 2010- 11 filed on 26.09.2010. (PB 153).
5.	M.s Skylink Softwares P Ltd	Summon u/s 131 was served on 18.02.2013 by Dy CIT-14(1), New Delhi. (PB 167) Return for AY 2012- 13 filed on 31.03.2013. (PB 170).

4.1.2 It was further submitted that Ld. CIT(A) held that on basis of these material there cannot be dispute about the identity of these parties and there is no reason to hold that those entities are bogus entities as has been done by the AO. In view of the material made available before the Ld. CIT(A) and also submitted in the present appeal, the deletion of addition of Rs. 1,50,00,000/- need be upheld.

4.1.3 It was further submitted that it is a case of no enquiry based on the evidences submitted. The assessee relies on CIT vs Goel Sons Golden Estate Pvt Ltd ITA No.212/2012 (Del) (PB 90) to hold that in absence of any enquiry and non-verification of the details submitted, the factual findings of the AO are incomplete and pars. Further reliance is placed in Pr. CIT vs Softline Creations P Ltd 387 ITR 636 (Del) (PB 24-29), C/T vs Laxman Industrial Resources P Ltd (2017) 397 ITR 106 (Del) (PB 3-6) and ACIT vs TRN Energy Pvt Ltd ITA No.453/Del/2016 Dt: 01.01.2018 (PB 30-40).

4.1.4 Ld. AR for the assessee further submitted that there are ample number of authorities which place emphasis on the duty of AO to conduct complete and whole heartedly enquiry to take the matter to logical end which is not done by the AO in the present case. This is evident from the fact that summons were got served on the share applicants but no efforts were made to ensure compliance of the same. He submitted that Inspector's report was never confronted either during appeal proceedings or remand proceedings. He placed the reliance on the following judgments:

- Pr. CIT vs Rakam Money Matters P Ltd ITA No.778/2015 Dt: 13.10.2015 (Del) (PB 66-68);
- C/T vs Russian Technology Centre P Ltd ITA No.547, 549 & 555/2013 Dt: 15.12.2016 (Del) (PB 69-72);
- Pr CIT vs Oriental International Company Pvt Ltd ITA No.9/2018 Dt: 08.01.2018 (Del) (PB 73-74);
- CIT v. Gangeshwari Metal (P) Ltd 361 ITR 10 (Del) (PB 85-89) relying on lovely exports (supra)

4.1.5 He further draw our attention to the following judgements wherein it has been conclusively held, relying on the decisions in the case of Lovely Exports Pvt Ltd (216 CTR 195) (SC), that as long as the identity of the share applicant was proved, the burden of proving the creditworthiness was not on the Assessee Company. It was also held that if the share application money is received from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual assessments in accordance with law. But the said amount cannot be taken as unexplained income in the hands of the recipient assessee. The above view was followed in plethora of judgments some of them are mentioned below:

- (1) Sofia Finance Ltd (205 ITR 98) (Del) (FB)
- (2) CIT vs Steller Investment Ltd (192 ITR 287) (Del) upheld in CIT vs Steller Investment Ltd (251 ITR 263) (SC)
- (3) CIT VS Vrindavan Farms (P) Ltd ITA No. 71 to 72 & 84/2015 (Del) dated 12.08.2015 (PB 1-2)

- (4) CIT vs Fair Invest P Ltd ITA No.232/2012 Dt:22.11.2012 (Del) (PB 75-78);
- (5) Pr. CIT vs. Goodview Trading Pvt. Ltd. ITA No.377 of 2016 (Del) dated 21.11.2016 (PB 93-95)
- (6) Pr. CIT vs Green Valley Plywood Ltd ITA 358/2016 Dt: 01.06.2016 (Del) (PB 22-23)
- (7) CIT vs Divine Leasing & Finance Ltd. 299 ITR 268 (Del)
- (8) Achal Investment Ltd vs CIT (268 ITR 211) (Del)
- (9) CIT vs Dolphin Canpack Ltd (204 CTR 50) (Del)
- (10) CIT vs Glocom Impex (P) Ltd. (205 CTR 571) (Del)
- (11) CIT vs Gangaur Investment Ltd. (335 ITR 359) (Del)
- (12) CIT vs Dwarkadhish Investment (P)Ltd. (330 ITR 298) (Del).
- (13) CIT v. Winstral Petrochemicals Pvt Ltd [(2011) 330 ITR 603 (Del) (PB 123-125);
- (14) CITv. Value Capital Services (P) Ltd [(2008) 307 ITR 334 (Del.).
- (15) Uttam chand P. Jain 320 ITR 554 (Bom).
- (16) CIT v. Bhaval Synthetics [(2013) 35 Taxmann.com 83 (Raj)];
- (17) CIT v. Peoples General Hospital Ltd [(2013) 35 taxmann.com 444(MP);
- (18) CIT v. Kamna Medical Centre (P) Ltd [(2013) 35 toxmonn.com 470 (All);
- (19) CIT v. GP International Ltd [(2010) 186 Toxmon 229 (Pun &Hor);
- (20) CIT vs Arunananda Textiles Pvt Ltd [(2011) 15 Toxmonn.com 226 (Kor);

(21) CIT vs Jai Kumar Bakliwal [(2014) 45 taxmann.com 203 (Raj);

(22) CIT vs Vacmet Packaging (India) (P) Ltd [(2014) 45 taxmann.com 204 (All)].

4.1.6. He further draw our attention towards the decision of the High Court in the case of CIT vs Kamdhenu Steel & Alloys Limited and Others [(2012)206 Taxman 254(Delhi)] (PB 8-21), which has been upheld by the Hon'ble Supreme Court placed in the compilation of judgments. This judgment was pronounced subsequent to the decision of the case of Nova Promoters. In this judgment, it was held that once the assessee discharges its initial onus u/s 68, the AO is required to considered the evidences furnished and such evidences cannot be brushed aside by him before it could nail the assessee and fasten with a liability u/s 68. It AO fails to carry his suspicion to logical conclusion by further investigation, the addition u/s 68 is not sustainable. The said views have also been echoed, reiterated and affirmed subsequently in the following cases:

(a) CIT v. Gangeshwari Metal (P) Ltd (supra) (Del) (PB 85-89);

(b) CIT v Jay Dee Securities & Finance Ltd [(2013) 32taxmann.com 91 (All)];

(c) CITv. Apex Therm Packaging Pvt Ltd [(2014) 42 taxmann.com 473 (Guj)];

(d) CIT vs Victor Electrodes Ltd [(2010) 329 ITR 271 (Delhi)

4.1.7 Ld. AR for the assessee also submitted that in the instant case there is, if at all, a suspicion that the amounts received are allegedly unexplained. It is respectfully submitted that it is a settled law that

suspicion, howsoever strong, cannot take place of proof and there can be no addition on the basis of mere suspicion. Reference, in this regard, may be made to the following decisions:-

- (1) Lalchand Bhagat Ambica Ram v CIT (1959) 37ITR 288 (SC);
- (2) CIT v. Paras Cotton Co (2007) 288 ITR 211 (Raj.)
- (3) Faqir Chand Chaman Lai v. ACIT (2004) 1 SOT 914 (Asr.)  
[Department's appeal dismissed by P&H High Court in 262 ITR 295 and also by SC in 268 ITR 215 (St);
- (4) ITO vs Shreedham Construction P Ltd in ITA No. 3754-3756/Mum/2017 Dt: 14.11.2017 (PB 41 -60)

4.1.8 It was further submitted that Ld. CIT(A) has taken objection to the premium of Rs.900 per share on the face value of Rs.100 per share charged by the assessee company considering the lack of proven track record. The identical issue came for consideration before Hon'ble Delhi High Court in the case Pr. CIT vs A.R. Leasing Pvt Ltd in ITA No.361/2017 Dated: 03.07.2017 wherein it was held that if the AO disregards the documents furnished by the assessee to discharge onus u/s 68 and comes to the conclusion that transaction of receiving money as share capital was not a genuine one primarily because the premium charged by the Assessee was much higher than the prevalent market trend, the action of the is not tenable unless AO had brought on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee. The share premium of Rs.900 per share in the present case cannot be reasoned for showing the receipt as unexplained cash

credit. Since the provisions of sec 56(2) (viib) of the Act is introduced w.e.f from 01.04.2013 cannot be applied retrospectively. Reliance is placed on decision of Hon'ble Bombay High Court in the case of CIT Vs Green Infra Limited ITA No. 1162 of 2014 Dt: 6.01.2017 (PB 135-137) and CIT vs M/s Gagandeep Infrastructure Pvt Ltd (2017) 394 ITR 680 (Bom) (PB 138- 141). In support of above contention, he also filed a Paper Book containing pages 1-190 in which he has attached the copy of e-filed ITR-V alongwith computation of income; copy of audited balance sheet and profit and loss account for AY 2009-10; list of advances forfeited; copies of agreements for land at Rohtak and Karnal of various persons; copy of statement of Mr. Mahesh Mehta recorded u/s. 132(4) of the Act; copy of the year wise GP ratio chart; copy of remand report dated 9.5.2014; copies of documents submitted in support of share application money and unsecured loans of various companies and copies of submission submitted as rejoinder to remand report.

5. We have heard both the parties and perused the records, Paper Book filed by the assessee; submissions of both the parties, case laws relied upon from both sides and especially the impugned order. We find that the addition in dispute is based on two facts i.e. first inability of the assessee to produce the Directors of the applicant companies, and second on account of absence of the applicant companies at the given addresses. We note that the case of the assessee is that it was provided with adequate opportunity to establish the transactions and it was not confronted with even the Inspector's report stating that he said

companies were not found. From the facts of the case, it appears that the assessee was required to establish the transactions and to produce the Directors/Principal Officers of those companies vide order-sheet entry dated 30.11.2011. Subsequently, summons were directly issued by the revenue to the share applicant companies on 16.12.2011 for compliance on 21.12.2011 and physical verification was also carried out by the revenue through the Inspector. Thus, the entire process of verification of share capital and framing of the assessment was completed in a period of last month before the proceeding was barred by limitation on 31.12.2011. Since the notice u/s 153A of the Act initiating the scrutiny proceeding was issued much earlier on 13.04.2010, the inescapable conclusion that can be reached is that the assessment was completed in a hurried manner, and therefore the defence of the assessee that it was not provided adequate opportunity appears correct. Further, we do not find from the record that the assessee was ever confronted with the Inspector's report based on which the adverse view was finally taken by the revenue. The revenue has also not commented on the replies received by post. Principles of natural justice are applicable to tax proceedings and, therefore, non-supply of the Inspector's report and failure to comment on the replies received from the parties adversely affected the right of the assessee to be heard. In these circumstances, the assessee cannot be prevented from adducing evidence in its favour. The revenue has also not rebutted or assailed the evidence filed. Therefore, Ld. CIT(A) has rightly admitted the additional evidences produced by the assessee under Rule

46A of the IT Rules. We further note from the evidence filed that the share applications were received through banking channel. All share applicant companies are duly assessed to tax and are existing companies with annual returns filed under the Companies Act also. The summons / notices issued by the revenue had been duly served on these parties, and their failure to respond to the summons merely cast the onus on the assessee to establish the transactions. The assessee filed copies of share application forms received from the share applicant companies, bank statements evidencing the receipt of share application money, and PAN details of the applicant companies. Thus, the primary onus stood discharged by the assessee. Therefore, it cannot be concluded that these parties are non-existent or that the share application money received was bogus. There is nothing on record to suggest that the finding of the revenue that the share applicant companies could not be found at the given addresses, was confronted to the assessee. The issue of share premium raised by the revenue in the assessment order to doubt the genuineness of share capital raised also cannot be held against the assessee as the assessee was never required to explain or justify this matter. No evidence was found in the search to establish that the share capital raised was not genuine. Hence, we note that the case laws cited by the Ld. DR are on distinguished facts, therefore, are not applicable. However, our aforesaid view is fortified by the judgment of Hon'ble Supreme Court in the case of Lovely Exports 216 CTR 195 (SC) wherein, it was held as under :-

*"2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961?. We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."*

5.1 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the aforesaid precedent, we are of the view that the addition made by the AO was not legally sustainable and therefore, the same was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 raised by the assessee.

6. As regards ground no. 2 relating to addition of Rs. 75,000/- on account of unaccounted commission paid on the accommodation entry of share application is concerned, Ld. CIT(DR) has relied upon the order of the AO on this issue and stated that the AO has treated the share application money as a accommodation entries. She further submitted that AO calculated the commission of Rs. 75,000/- @ 0.5% on share application money of Rs.1,50,00,000/-.

6.1 However, Ld. Counsel for the assessee has relied upon the order of the Ld. CIT(A) and stated that AO has not bring any material or evidence on record which basis above addition of Rs.75,000/- was made and the AO has referred general practice of accommodation entry providers in para 7 of the assessment order. He further submitted that no live link found in support of such general practice with the assessee. It was further submitted that no material or evidence was found during course of search u/s 132 of the Act to support allegation of any commission was paid to accommodation entry providers. The addition of Rs.75,000/- was made by calculating commission @0.5% which was based on presumption and without any basis. The above share application money of Rs.1,50,00,000/- and the share applicants were found genuine and not accommodation entry providers. The said addition of Rs.1,50,00,000/- was deleted by the Ld. CIT(A), therefore addition of commission on said amount was rightly deleted by the Ld. CIT(A). In view of the fact that no material or evidence was found by the AO either in the assessment proceedings nor in the remand proceedings that the assessee has procured accommodation entries from hawala entities, the addition of commission for such non-existent accommodation entries are based on mere suspicion, conjecture and surmises. The cases relied in above ground No. 1 are also relied to contest the present ground of appeal raised by the department. In view of the above submission made before in the present appeal, the deletion of addition of Rs.75,000/- need be upheld.

6.2 After hearing both the parties on the issue in dispute, we note that there is no evidence to support the allegation of the revenue that commission was paid to raise share capital. The addition was without any basis, hence, Ld. CIT(A) has rightly deleted the addition on this ground. Even otherwise, we uphold the action of the Ld. CIT(A) on the deletion of addition of share capital u/s. 68 of the Act, as aforesaid in para no. 5 & 5.1 of this order, hence, the addition on account of commission is not tenable, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.

7. As regards ground no. 3 relating to addition of Rs.74,67,928/- on account of disallowance of expense of forfeited advance for purchase of land is concerned, Ld. CIT(DR) relied upon the order of the AO and submitted that some of the agreements have not been produced during assessment proceedings; no efforts were made by the assessee to recover the amount from parties and also no litigation proceedings have been initiated and if initiated final fate of such proceedings have not been disclosed. It was further submitted that the liability in question is a contingent liability and deduction thereof is not permitted under law. She further submitted that there was no commercial expediency involved in claiming such deduction as no prudent businessman would make payment so early which on earlier occasions has been forfeited obviously for non-compliance of certain condition by those parties and the genuineness of the claim has been doubted and has been treated as ex- gratia payments

no allowed u/s 37(1) as not incurred wholly and exclusively for the purpose of business. Despite that detail has been submitted at the fag end of the proceedings and therefore there was no time available for making inquiries. Hence, the AO has rightly made the addition which needs to be upheld.

7.1 However, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that the additional evidences were submitted before Ld. CIT(A) which consist of agreements with the five parties which could not be submitted before the AO during assessment proceedings. For admission of additional evidences, application under rule 46A were filed before Ld. CIT(A) and in rule 46A Application, the assessee explained the reason why the additional evidence could not be submitted during assessment proceedings and the reason was that the AO required the assessee to furnish exhaustive details to support the loss of Rs.74,67,928/- claimed on account of forfeiture of advances. The assessee on random basis furnished some of the agreements to support the claim. Besides above, as has been mentioned by the AO, the time available for making compliance was too short and the assessee was unable to collect the agreements which were instantly available from the staff of the assessee at site in the short time. There was a reasonable and sufficient cause preventing the assessee from producing these evidences. Since, department has not raised any grievance on the admission of additional evidences, merits of admission of the additional evidences by the Ld. CIT(A) is not dealt with in the present appeal. It was submitted

that Ld. CIT(A) took note of the fact in para 6.2 of the CIT(A) order that Assessee is in the business of real estate developers where developers usually land stock from farmers at agreed rates and cash advances are given to the prospective seller landowners to book the properties; payment made to such farmers was not disputed by the AO and there is no evidence to show that these payments were not made; it is a usual practice in real estate business that on account of disputes between farmers and developers, the agreements fall through and advances given were forfeited; Such forfeiture of advance is a loss incurred in the ordinary course of business and allowable u/s 37(1) of IT Act. In addition to above, it was submitted before the Ld. CIT (A) as stated in 1.7.5 of Ld. CIT(A) order has mentioned that AO has not found anything adverse with regard to such advances and agreement to sell with those farmers as evident from the remand report where no adverse comments were given by the AO. Apart from these, the adverse inference made AO regarding submission made in regard to agreement to sell at fag end of the assessment proceedings, the assessee submitted said para that AO himself admitted that questionnaire dated 15.12.2011 was issued to assessee to submit the relevant documents in support of claim of forfeited advance which is just 16 days before date of completion of assessment. It was further submitted that the advances which were forfeited by the assessee were made in the earlier years and same has been accepted in the earlier assessments, writing off such undisputed advances cannot be questioned by the department on the ground that these advances are not

genuine. Finally, he stated that assessee has relied on number of judgments before Ld CIT(A) which are reproduced in Ld.CIT(A) order in para 1.7.6 to 1.7.9 on pages 29-30. In view of the above submission made before the Ld. CIT(A), also submitted in the present appeal and Copies of agreements to sell with the parties are enclosed in paper book at pages 24-48, the deletion of addition of Rs.74,67,928/- need be upheld.

7.2 After hearing both the parties and perusing the records, we find that the assessee had carried on the business of sale of katha and real estate. Revenue from real estate business was shown at Rs. 2,93,91,700/-. Real estate developers usually buy land stock from farmers at agreed rates. Cash advances are given to the prospective seller landowners to book the properties. Sometimes, dispute arise between farmers and developers as to the terms of the sale. In such circumstances, the agreements fall through and the amounts of advances given are forfeited by the sellers. It is usual practice in the real estate business. The fact of payment is not disputed, at least there is no evidence that the payments were not made. Thus, the loss was made in the ordinary course of real estate business of assessee and was also incidental to the said business. In these circumstances, the claim is allowable loss/ expenditure u/s. 37(1) of the Act and hence, the disallowance made was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the

Ld. CIT(A) on the issue in dispute and reject the ground no. 3 raised by the Revenue.

8. As regards ground no. 4 relating to addition of Rs. 73,06,000/- on account of unaccounted purchases of coal is concerned, Ld. CIT(DR) has relied upon the order of the AO on this issue and submitted that on perusal of the Seized Annexure O-I/A-29 (Coal Register), the AO found that there was purchase of 4246910 Kgs of coal and only purchase of 2623300 Kgs of coal was recorded in the regular books of account which show unaccounted purchase of 1623610 kgs (4246910 minus 2623300) of coal amounting to Rs.73,06,000/- used for manufacturing of katha which was sold through unaccounted sales. She further submitted that the AO rejected explanation of assessee that the assessee had offered additional income of Rs.6 Crore to tax on account of income from unaccounted sale of katha. Hence, the addition need not be interfered and the order of the Ld. CIT(A) may be cancelled on this issue.

8.1 However, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) in para 7.2 noted that the undisclosed manufacture of katha obviously involved undisclosed purchase of coal as expenditure incurred for manufacturing process of katha. He further submitted that the unaccounted purchase of coal in question has been utilized for manufacture of Katha sold through unaccounted sale. It was further submitted that the assessee has offered Rs.6,00,00,000/- net additional income to tax on account of sale of unaccounted katha in return of income for AY 2009-10 and same was duly

recorded in the audited balance sheet of the assessee for the year under consideration under the head other income in Schedule "I" (PB 16) and also disclosed by way of notes to account in Note No. D annexed to balance sheet (PB 22). It is also relevant to note that no evidence was found in the course of search u/s 132 of the Act that the above unaccounted coal has produced income in excess of the income of Rs.6 Crore offered to tax. The onus lies on the assessing officer to prove with evidence that the assessee has earned income in excess of what has been declared by assessee in its return of income. There cannot be any onus lay upon the assessee to prove a negative fact. The assessee has given a detailed working which is reproduced by the AO on page 12 of the assessment order where unaccounted sales have been estimated at Rs.36.80 Crore in the hands of the assessee out of total unaccounted sales of Rs.44.80 Crore noted in annexure A-4/S2. He submitted that the AO does not dispute the above bifurcation as the other party namely M/s Raj Katha Products P Ltd has offered additional income of Rs.80 lakh in its return of income. From the working of unaccounted sales of Rs.36.80 Crore, the payment for coal amounting to Rs.73,06,000/- cannot exceed the coal expenses to be incurred for making the above unaccounted sales. The coal consumption for sale of Katha Rs 17.40 (PB 16 Schedule H of P&L Account) Crore is Rs 1.07 Crore(PB 17 Schedule J of P&L Account) which comes to 6.16 %. The coal purchase for unaccounted sale of Rs.36.80 Crore based on above percentage of coal consumption should have been Rs.2.26 Crore which is much higher than the unaccounted coal

of Rs.73,06,000/- noted in the seized records. It is therefore important to note that when additional income for unaccounted sales are offered for tax, no separate addition for the input cost incurred for making unaccounted sales cannot be made as it will amount to double taxation. In view of the above submission made before the Ld. CIT(A) and also submitted in the present appeal, he requested to uphold the action of the Ld. CIT(A) in deleting the addition of Rs.73,06,000/-.

8.2 After hearing both the parties and perusing the records, we find that the assessee carried on unaccounted business of purchase / manufacture and sale of katha. On this count, the assessee has admitted additional net income of Rs. 6,00,00,000/- during this assessment year and disclosed in the return filed as income from other sources. The undisclosed manufacture of katha obviously involved undisclosed purchase of the coal, which was used in the manufacturing process. The said purchase of coal was expenditure incurred for the manufacturing of katha. It is not the case that the coal was not used for manufacture. As the net income from undisclosed business was admitted, no separate addition on account of purchase of coal is unwarranted. Therefore, the addition made was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 4 raised by the Revenue.

9. As regards ground no. 5 relating to deletion of addition of Rs. 1,02,32,074/- (Rs. 1,02,32,074/- correct amount) on account of

unaccounted transactions in the seized documents is concerned, Ld. CIT(DR) relied upon the order of the AO and submitted that the AO computed short declaration of Income of Rs.1,02,32,074/- (Rs. 1,24,16,505/- correct amount) as per revised working done by the AO on the working of bahi Annexure A-4/S-2 seized during the course of search. She further submitted that the sales as per the above annexure was Rs.44.77 Crore and the assessee made the working of the additional income taking the unaccounted sales of Rs.44.80 Crore belonging to two entities namely M/s Mahesh Wood Products P Ltd (Assessee) and its sister concern namely M/s Raj Katha Products P Ltd. The AO objected to attribution of unaccounted sales to M/s Raj Katha Products P Ltd but he missed the point that the in the statement of Sh Mahesh Mehta, Director of assessee company recorded u/s 132(4) in reply to question No.8 is relevant. The question in the statement was "*Q.No.8 You are requested to broadly workout the details of unaccounted receipts as recorded in BAHI A-1 to A-4 for F.Y.2008-09 and F.Y.2009-10. Ans. My accountant Sushil Sharma has worked out the gross unaccounted cash receipts recorded for F.Y.2008-09 are approximately Rs.40 crore for sale of katta outside the books of accounts. It includes unaccounted sale of katta produced at both my factories i.e M/s Raj Kattha Product (P) Ltd. and M/s Mahesh Wood Products (P) Ltd. Bahalgarh, Sonapat. Further Rs. 20 crore (approximately) pertain to the cash receipt of real estate transactions undertaken by me which are not recorded in regular books of accounts. Similarly for F.Y.2009-10 (i.e. 01.04.2009 to 30.06.2009) unaccounted*

*cash receipt from katha sale is Rs. 10 crore and unaccounted cash receipt from real estate transactions is Rs.0.40 crore."* In view of above statement, she submitted that the AO is not justified in objecting to break up of unaccounted sale as per the seized records between the two entities. Thus the AO has prepared a chart on page 13 of the assessment order where he has computed the short declaration of income of Rs. 1,02,32,074/- (Rs. 1,24,16,505/- correct amount) but the AO has made certain mistakes in computing the above short declaration. She requested to uphold the correct figure of addition and cancel the order of the Ld. CIT(A) on the issue in dispute.

9.1 However, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) in para 8.2 of his order has noted the wrong working taken the AO on arbitrary basis as noted from Note No.2 and 3 of the submission of the assessee in para 1.9.1 reproduced in Ld. CIT(A) at page 34-36. He further submitted that the statement of the assessee's director reproduced in para no. 9, as aforesaid of this order, shows that the unaccounted sales pertain to two units and the assessee has bifurcated the sales between the two units based on the seized records. The AO has not found any specific defect in working out unaccounted sale. In view of the above, he requested to uphold the action of the Ld. CIT(A) in deleting the addition in dispute.

9.2 After hearing both the parties and perusing the records, we find that the income from undisclosed manufacture and sale of katha and undisclosed income from sale of real estate to be taxed, based on the

documents seized, amounted to Rs. 8,05,91,893/-. As against this amount the additional income offered to tax was Rs. 8,10,63,320/-, i.e. Rs. 7,30,63,320/- in the hands of the assessee and Rs. 80,00,000/- in the hands of M/s Raj Katha Products Pvt. Ltd. an associate concern. However, the calculation made by the AO suffers from mistakes as pointed out by both the parties. However, there is no case bringing additional income to tax. Therefore, the addition made by the AO was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 5 raised by the Revenue.

10. As regards deletion of addition of Rs. 1,22,77,495/- on account of difference between income being admitted by the assessee in his statement recorded at the time of search u/s. 132(4) and the income disclosed in the return is concerned, Ld. CIT(DR) relied upon the order of the AO and submitted that the total surrender of income as per statement of the director Sh Mahesh Mehta was Rs.10 crore and AO found that the assessee has offered following additional income of Rs.6.80 Crore and additional income of Rs.1,97,22,505/- (Rs.73,06,000/- plus Rs.1,24,16,505/-) made by him and there remained shortage of Rs.1,22,77,495/-. She submitted that AO took the right view that the above short disclosure need be taxed as the same was made based on the incriminating documents found in the course of search. Hence, she requested not to interfere in the addition in dispute and cancel the order of the Ld. CIT(A) on the issue in dispute.

10.1 However, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A) and submitted that the statement recorded u/s 132(4) of the Act have no evidentiary value unless corroborating evidence found in respect of income offered to tax as recorded in statement. It was further submitted that the director of the assessee company Sh Mahesh Mehta at the time of statement u/s 132(4) of the Act has roughly disclosed income of Rs.10 Crore from unaccounted sale of katha. However, the actual working given by assessee during assessment proceedings and also during first appeal proceeding indicate justification of computation of additional income at lower amount as per the chart reproduced in para 8.1 of the Ld. CIT(A) order at page 34. He further submitted that no evidence or corroborating evidence was brought on record by the AO in support of above addition of Rs.1,22,77,495/- apart from just relying on the income offered to tax by the director of the assessee company. He further submitted that reliance is placed on the judgments by the assessee reproduced in para 1.10.10 of Ld. CIT(A) order at page 41-43. Besides that assessee relying on the decision of the following case requested to uphold the action of the Ld. CIT(A) in deleting the addition in dispute.

- DCIT vs. Mahesh Mehta in ITA No. 2771/Del/2014 dated 25.5.2017 in assessee's own group case.
- CIT vs. Harjeev Aggawal 290 CTR 0263 (Del.)
- CIT vs. Balaji Wire (P) Ltd. 304 ITR 0393 (Del.)
- CIT vs. Bansal High Carbons (P) Ltd. 223 CTR 0179 (Del.)
- CIT vs. K. Bhuvanendran & Ors. 303 ITR 0235 (Mad.)

- Chetnaben J Shah Legal Heir of Jagish Chandra K. Shah vs. ITO 288 CTR 0579 (Guj.).

10.2 After hearing both the parties and perusing the records and the case laws cited by the Ld. Counsel for the assessee, we find that in tax proceedings, statements are recorded as evidence for confirming or denying a particular financial transaction having implication for tax purposes. In itself, a statement recorded u/s. 131 / 132(4) of the Act will have no evidentiary value unless establishes a fact relevant to tax proceedings. In the present case, the statement u/s. 132(4) of the Act of Sh. Mahesh Mehta, Director of the assessee company, confirmed the unrecorded transactions in the seized documents and on that basis he made admission of undisclosed income to be distributed among various entities belonging to the group in different Assessment years. The admission of Rs. 10 crore as income from undisclosed katha business was a rough estimate on the basis of undisclosed turnover of Rs. 44.78 crore. The actual working, as given in the table reproduced in para 8.1 of the Ld. CIT(A)'s order indicates that the undisclosed income as per assessee was Rs. 8,05,91,893/-. Even as per the AO the undisclosed income came to Rs. 9,34,79,821/-, and the mistakes in this working have been pointed out by AR and accepted by the Ld. CIT(A). The addition made has no basis, except a general admission at the time of search. We note that the AO has himself accepted that the undisclosed income based on transactions recorded in seized documents came to Rs. 9,34,79,821/-. Thus, the question of any further addition with regard to the undisclosed

income as per the seized documents does not arise. Hence, the addition made cannot be legally sustained and therefore, was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 6 raised by the Revenue.

11. In the result, the Revenue's Appeal No. 4874/Del/2014 (AY 2009-10) stand dismissed.

**ITA NO. 4873/Del/2014 (AY 2008-09)**

12. As regards ground no. 1 relating to addition of Rs. 1,50,00,000/- u/s. 68 of the Act on account of unexplained cash credit is concerned, Ld. CIT(DR) has relied upon the order of the AO and stated that AO made addition for failure of the assessee in furnishing copy of bank statements, copy of ITR of the lenders; there was report of inspector that the lenders does not exist at the address given; Opportunity was given to produce persons along with evidences of source of investment and the assessee failed to produce those persons and Non-compliance of the notices u/s 133(6)/summon u/s 131 of the loan creditors. Hence, the addition made by the AO was rightly made. In support of her contention, she relied upon the case laws which she relied upon on the similar issue in ITA No. 4874/Del/2014 (AY 2009-10), in the preceding paras of this order and requested to sustain the addition in dispute.

12.1 On the other hand, Ld. counsel for the assessee submitted that additional evidences were submitted before Ld. CIT(A) which consist of

Bank Statement and Copy of ITR of the lenders. Confirmation of the loan already filed before the AO during assessment proceedings. For admission of additional evidences, application under rule 46A was filed before Ld. CIT(A) and in rule 46A of the Rules, the assessee explained the reason why the additional evidence could not be submitted during assessment proceedings and the reason was that the assessee was required vide questionnaire dated 15.12.2011 to establish transactions and the matter was getting time barred on 31.12.2011 and hence due to inadequate time available to the assessee, the required details could not be furnished during assessment proceedings. He further submitted that in the remand report dated 09.05.2014 (PB 67-68) did not dispute the above fact cited for inability to furnish the documents during assessment proceedings on behalf of the assessee. However, the AO gives a general statement that proper opportunities were furnished to assessee to submit relevant documents. The AO objected to admission of additional evidences. It was the further submissions that the assessee filed a rejoinder on the remand report which is the relevant portion is on page 89 of the paper book reproduced in para 3.1 and onwards of Ld. CIT(A) order at pages 6-11. In the rejoinder, para 3.1.3, it was mentioned that the assessee has suffered due to causal handling of judicial matter like assessment. The post search assessment proceedings were started in June 2011 after gap of 2 years from the date of search on 30.06.2009. Late assumption of assessment proceedings put the assessee on avoidable burden of making compliance of over 70 cases belonging to the group in less than six months. It was

highlighted that since assessments involved based on seized material, the late commencement of assessment proceedings was indeed cruel for the assessee from the point of view of compliance. It was also submitted that on 30.11.2011 the AO required assessee to file confirmations of unsecured loans and nothing else which was submitted. Thereafter, the AO vide notice u/s 142(1) dated 15.12.2011 (PB 32) required assessee in para 7 to provide proof of identity/creditworthiness and genuineness of the five parties only out of which four parties are the parties with addition of Rs. 1,20,00,000/- were the fresh cash credit for which addition of Rs.1,50,00,000/- was made. He further submitted that the Ld. CIT(A) admitted the additional evidences on four grounds in para 5.2 at page 11 viz. (A) Adequate opportunity was not provided to furnish these evidences and first opportunity was given on 15.12.2011 to furnish evidences; (B) The reply to letters u/s 133(6)/summons by the revenue were independently tiled by the creditors and inspector was deputed to verify their addresses; (C) The assessment was completed in hurried manner in a month; (D) The inspector report was never confronted to the assessee and neither during assessment proceedings nor during remand proceedings. He further stated that Ld. CIT(A) took a note that the AO had not adversely commented on the evidences directly filed before him during assessment proceedings by the lender parties. The Ld. CIT(A) took a note of fact that the lenders are assessed to tax. One of the creditors M/s Kela Devi Building P Ltd was subsequently issued notice u/s 153C (PB 64) and other parties have been served summons u/s 131 in case of

enquiry by DCIT, Circle 14(1), New Delhi in case of M/s Prinku Landfin Pvt Ltd (PB 61-63, 65-66). The Ld. CIT(A) held that on basis of these material there cannot be dispute about the identity of these parties and there is no reason to hold that those entities are bogus entities as has been done by the AO. In addition to what is held by the Ld. CIT(A), the assessee's AR submitted that the assessment year in question is the year just before search/s 132 by the department and no evidences have been found by the department to dispute or question the cash credits in question. There is no material provided by the investigation wing in case of investigation in other cases that those parties are bogus and fictitious entities. The inspector report appears to have been obtained in the month of Dec 2011 which is clearly contrary to the material on record which show that in Feb 2013, the summons have been served on those parties by the department and Aug 2013 in case of Kela Devi Builders P Ltd, notice u/s 153C was issued against the company. In view of the above, he requested that deletion of addition of Rs.1,50,00,000/- need be upheld.

12.2 After hearing both the parties and perusing the records, we find that we have dealt with similar addition while deciding the ground no. 1 in ITA No. 4874/Del/2014 (AY 2009-10), vide para no. 5 to 5.1 of this order, as aforesaid, wherein we have upheld the action of the Ld. CIT(A) on the similar issue and rejected the similar ground of the Revenue, hence, following the consistent view as taken by us in para no. 5 to 5.1 of this order, the action of the Ld. CIT(A) in the present appeal is upheld and ground no. 1 raised by the Revenue stand dismissed.

13. As regards ground no. 2 relating to deletion of addition of Rs. 1,00,04,952/- is concerned, we find that Ld. CIT(DR) has submitted the AO based on the noting in annexure O-2/A-40 found that there has been cash receipt of Rs.1,00,04,952/- by M/s Raj Katha Products P Ltd which is not reflected in regular books of account. She further submitted that the AO treated the above document in the hands of assessee although it has been also been dealt in the assessment of M/s Raj Katha Products P Ltd. Hence, she requested to sustain the addition in dispute and cancel the order of the Ld. CIT(A) on this issue. We further note that Ld. Counsel for the assessee, on the other hand, submitted that the documents pertains to M/s Raj Katha Products P Ltd and there is a finding by the Ld. CIT(A) for AY 2008-09 that the document pertain to M/s Raj Katha Product P Ltd. Based on the above annexure, the above company had offered the additional income of Rs.6 crore from unrecorded transactions. He further submitted that Ld. CIT in para 6.2, there is a finding that the Raj Katha Products P Ltd appeal was decided were unaccounted sales of Rs.1,00,004,952/- and unaccounted expenses of Rs.85,00,698/- were considered to compute the additional income of Rs.15,04,254/- and the same are subjected to tax in AY 2009-10 and not in AY 2008-09. In view of above, there is no justification to consider the same document in the case of the assessee. Hence, he requested to confirm the order of the Ld. CIT(A) on this issue. After hearing both the parties and perusing the impugned order, we note that it was held by the Ld. CIT(A) in the case of Raj Katha Products Pvt. Ltd. in Appeal No. 363/13-14 vide order dated

13.6.2013 that unaccounted sales of Rs. 1,00,04,952/- related to FY 2008-09 (AY 2009-10), the amount could not be brought to tax in AY 2008-09. Accordingly, Ld. CIT(A) rightly held that the addition made does not pertain to this assessment year and cannot be sustained and correctly deleted the addition in dispute, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject ground no. 2 raised by the Revenue.

14. In the result, the ITA No. 4873/Del/2017 (AY 2008-09) stand dismissed.

**ITA NO. 4875/DEL/2014 (AY 2010-11)**

15. As regards ground no. 1 relating to deletion of addition of Rs. 70,00,000/- made on account of unexplained cash credit u/s. 68 of the Act is concerned, we note find that we have already dealt with similar addition while deciding the ground no. 1 in ITA No. 4874/Del/2014 (AY 2009-10), vide para no. 5 to 5.1 of this order, as aforesaid, wherein we have upheld the action of the Ld. CIT(A) on the similar issue and rejected the similar ground raised by the Revenue, hence, following the consistent view as taken by us in para no. 5 to 5.1 of this order, the action of the Ld. CIT(A) in the present appeal is also upheld and ground no. 1 raised by the Revenue stand dismissed.

16. As regards ground no. 2 relating to addition of 18,87,931 made on account of income from unexplained source is concerned, Ld. CIT(DR) relied upon the order of the AO, however, Ld. counsel for the assessee relied upon the order of the Ld. CIT(A). After perusing the impugned

order, we find that the income admitted from undisclosed manufacture and sale of katha is more than the amount chargeable to tax. The calculation by the AO suffers from the mistakes. Hence, there is no case for bringing additional income tax. Therefore, the Ld. CIT(A) has rightly deleted the addition in dispute, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.

17. As regards ground no. 3 relating to deletion of addition of Rs. 8,37,62,070/- on account of unexplained sources is concerned, Ld. CIT(DR) has relied upon the order of the AO and Ld. counsel for the assessee relied upon the order of the Ld. CIT(A). After hearing both the sides and perusing the impugned order, we find that the assessee has included Rs. 2,20,00,000/- as income from unaccounted sales and Rs. 80,00,000/- as income from undisclosed sale of stock. Thus, total of Rs. 3,00,00,000/- has been offered for taxation as income from other sources. It is also noted that Ld. CIT(A) has already held that there is no basis to conclude that assessee had income of another Rs. 10 crore during this year also as the said statement of Sh. Mahesh Mehta, Director of assessee company, was not based on any documentary evidence and the total unaccounted sale, including unaccounted sale of stock, itself came to Rs. 9.70 crore of which income of Rs. 6.90 crore has already been offered to tax in the hands of the assessee (remaining Rs. 2.80 crore has been offered in the case of RKT). Therefore, in these circumstances, Ld. CIT(A) has rightly held that the addition made by the

AO based on mere statement of the director of the assessee company is not backed by any evidence and the unaccounted income detected during search has already been offered to tax. Hence, he rightly held that the addition of Rs. 8,37,62,079/- made by the AO is not legally sustainable and accordingly, deleted the addition in dispute, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 3 raised by the Revenue. In the result, the ITA No. 4875/Del/2014 (AY 2010-11) stand dismissed.

18. In the result, all the 03 appeals filed by the Revenue stand dismissed.

Order pronounced on 21-02-2019.

**Sd/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

Date:21/02/2019

**SRBhatnagar**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

AR, ITAT, New Delhi