

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-4246-4248/Del/2014  
(Assessment Year: 2006-07, 2007-08, 2008-09)**

DCIT Central Circle-11 New Delhi	Vs.	M/s. Vasudeva Jewellers Pvt. Ltd. 2653, Vijay Plaza Building, Karol Bagh, New Delhi PAN : AABCV6233G
--	-----	--

**ITA No. 3669/Del/2014  
Assessment Year : 2007-08**

M/s. Vasudeva Jewellers Pvt. Ltd. 2653, Vijay Plaza Building, Karol Bagh, New Delhi PAN : AABCV6233G	Vs.	DCIT Central Circle-11 New Delhi
<b>Appellant</b>		<b>Respondent</b>

**Assessee by : Sh. Ved Jain, Adv, Sh. Ashish Goel,  
Ms. Surbhi Goel, CA.**

**Revenue by : Shri J.K.Mishra, CIT-DR**

<b>Date of Hearing</b>	<b>10.01.2019</b>
<b>Date of Pronouncement</b>	<b>15.03.2019</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

ITA 4246/Del/2104 is the appeal preferred by the Revenue against the order dated 09/05/2014 passed by the Ld. CIT (Appeals) – XXXI, New Delhi {CIT (A) } and pertains to Assessment Year (AY) 2006-07. ITA 4247/Del/2014 is the Revenue's appeal against order dated

09/05/2014 passed by the Ld. CIT (Appeals) – XXXI, New Delhi and pertains to AY 2007-08 whereas ITA 3669/Del/2018 is the assessee's cross appeal for AY 2007-08. ITA 4248/Del/2014 is the Revenue's appeal against order dated 09/05/2014 passed by the Ld. CIT (Appeals) – XXXI, New Delhi and pertains to AY 2008-09. Since all these appeals involve identical issues, they were heard together and they are being disposed of through this common order for the sake of convenience. We now take up the appeals one by one.

2.0 ITA 4246/Del/2014 (Department's Appeal) for Assessment Year 2006-07:

The brief facts of the case are that the assessee is stated to be carrying out the business of trading in gold bullion and food grains. A search and seizure operation u/s 132(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') was conducted at the residential and business premises of Shri Rajesh Kanodia and his group concerns/companies /family members on 28/03/2011. Statutory notice u/s 153C of the Act was issued on 05/09/2012 and in response thereto, the return of income was filed declaring an income of Rs. 5,61,700/-. The assessment was completed u/s 153C of the Act on 28/03/2013 at an income of Rs. 2,97,32,922/- after making an addition of Rs. 15,90,026/- by making an estimated addition by estimating the gross profit @ 0.2% on sale of gold

bullion/bars. This addition was made on the ground that since the entire sales were made in cash, the profit shown by the assessee was not verifiable. A further addition of Rs. 2,75,81,196/- was made by adding back the entire payment made to various farmers for purchase of agricultural produce on the ground that some incriminating documents were found regarding these payments and further on the ground that these amounts were not reflected in the books of accounts of the assessee.

2.1 The assessee's appeal before the Ld. CIT (A) was allowed and both the additions were deleted. Now, the department is before the ITAT challenging the deletion by the Ld. CIT (A). The grounds raised by the Revenue in this appeal are as under:

1. *The order of Ld. CIT (A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.15,90,026/- made by the Assessing officer on account of GP rate of 0.2% of total turnover of Rs.79,50,13,356/- as against a GP rate at 0.01% which appears to be at lower side, since the assessee was making total sales in cash and no details of parties to whom sales were made furnished and the profit shown by the assessee was not verifiable.*
3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.2,75,81,196/- made by Assessing Officer on account of cash paid to farmers since, the assessee has not furnished the complete details and address of*

*parties from whom purchases have been made and to whom sales have made during the year, documentary evidences regarding source of cash paid to farmers, details regarding payments received from the parties to whom agricultural produce sold, mode of payment received and confirmation from the parties.*

*4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

2.2 On going through the above grounds of appeal, it is noted that there are two effective issues. The first issue is the deletion of addition of Rs.15,90,026/- made by the Assessing Officer (AO) by enhancing the gross profit rate to 0.2% on the reasoning that the profit declared by the assessee was on the lower side. The second issue is regarding the deletion of addition of Rs. 2,75,81,196/- made by the AO on account of the cash payment to the farmers.

3.0 The Ld. CIT DR submitted that the Ld. CIT (A) was not justified in deleting the above additions made by the assessing officer on the basis of the reasons stated in the assessment order. The Ld. CIT DR filed a written synopsis, the relevant part of the said synopsis reads as under:

*2. "In this case, surprisingly sale of the assessee running into hundreds of crores is in cash only. Assessee is selling huge quantity of bullion and jewellery only in cash that too exceeding Rupees 1 Lakh. There is no dispute about the purchase.*

*However, details of sale party has not been furnished. As regards, sale in cash, the assessee has furnished the general kind of explanation in pages 546-549 of PB for A.Y. 2006-07. In the similar trade, the director of the company Sh. Rajesh K Kanodia, in his proprietary concern has shown GP rate of 0.01% (as mentioned in the order of the ITAT in his case for A.Y. 2005-06), while in the case of the assessee it is merely 0.0075%. Since the assessee has not furnished any specific reason for such low GP, particularly in the light of the fact that all the sale, that too running in lakhs, in in cash, the A.O. had no option but to estimate a reasonable profit ratio. The books of account are maintained on the basis of transactions recorded by the assessee. Since the assessee is not providing the particulars of sale and cash sale vouchers were seized, the A.O has rightly made the addition on account of low GP.*

*3. In respect of cash sale of grains and pulses in A.Y 2006-07, it may be noted that this was not the business of the assessee neither in the past nor in A.Y. 2007-08 onwards. The assessee has shown cash purchases from 10 farmers in 133 transactions and cash sale to about 10 farmers, The addresses of sellers and buyers have not furnished. Since the source of cash deposits was not satisfactorily explained, the A.O. has treated the deposits as cash-credits. In this regard, reliance is placed on the decision of the Hon'ble ITAT, Mumbai Bench in the case of Champalal S Shah V ITO [2017] 86 taxmann.com 258 in which assessee was showing source of cash deposits from cash sale of bullion and the address of those parties were not provided.*

*4. Further, reliance is also placed on the order of Hon'ble Kolkata High Court in the case of CIT-II v Sanjay Jain (2015) 55 Taxmann.com 512.“*

4.0 In reply, it was submitted by the Ld. AR that the addition made by the assessing officer by enhancing the gross profit rate is arbitrary and *ad hoc*. It was submitted that the AO had made the addition merely on the basis of doubts and suspicion, without there being any material or evidence, to support the allegation that the assessee had earned profits over and above what was stated in the books of accounts. In this regard the Ld. AR invited our attention to the assessment order to point out that no discrepancy whatsoever had been pointed out in the books of account maintained by the assessee company. The Ld. AR submitted that these books of accounts were duly audited, the assessee had maintained complete stock records, the purchases were from reputed suppliers, including banks etc and the sales were duly recorded. The Ld. AR submitted that the assessing officer was not been able to point out any inconsistency and on the contrary, the addition had been made merely on the basis of doubt, as was evident, from the assessment order itself where the AO had stated that the addition was being made to cover up any possible leakage. It was contended by the Ld. AR that when the books of accounts were duly maintained which were duly

audited, no addition on account of GP Rate could be sustained without the books of account being rejected. It was further submitted that in the present case, the AO had simply made the addition without even rejecting the books of accounts.

4.1 As regards the sales having been made in cash, it was submitted by the Ld. AR that there was no prohibition under any law, including Income Tax Act, in making the sales in cash and as such no adverse inference could be drawn merely because the sales have been made in cash. It was further stated that the Ld. CIT (A) has deleted the addition relying on his own order in the case of the assessee for AY 2005-06. It was further submitted that the Revenue had filed an appeal against the said order before the ITAT. However, the same was dismissed due to low tax effect. The Ld. AR further submitted that similar additions were also made in the group case of Mr. Rajesh Kanodia and this identical issue in that case was decided by the Ld. CIT (A) by relying on the order in the case of M/s Vasudeva Jewellers in AY 2005-06. It was further submitted that in the case of Mr. Rajesh Kanodia, the ITAT has decided the appeal and confirmed the deletion of the addition made on this account. On this basis, it was submitted by the Ld. AR that the facts of the present case were identical to the facts in the case of Mr. Rajesh Kanodia being ITA No.

4241-43/Del/2014 wherein, vide order dated. 28.7.2017, the ITAT has upheld the decision of the Ld. CIT (A).

4.2 On the issue of addition of Rs. 2,75,81,196/- made by the AO on account of cash purchases of food grains from the farmers, it was submitted by the Ld. AR that the above said addition had been made by the AO without appreciating the facts of the case. It was submitted that the impugned addition had been made on the basis of document A-3 (vouchers) seized from the premises of the assessee. The Ld. AR submitted that these vouchers were part of the regular books of account and showed payments made to various farmers for the purchase of food grains. It was submitted that during the year the assessee was also involved in trading of food grains. The total purchases of the food grains were Rs. 2,78,65,926/- and the same were sold for Rs. 3,20,96,683/-. In the process, the assessee had earned an income of Rs. 42,30,757/- which had been duly declared in the audited accounts filed along with the return of income much before the search. The Ld. AR reiterated that since the entire purchases were made from cultivators i.e., farmers and was also sold in the unorganized sector, all the transactions were done in cash. The Ld. AR invited our attention to the documents placed before the AO in support of the above transactions which included Sales Tax Returns (Paper book Pg. 287-389), Bank statements (Paper book Pg.

392-433), Audited Financial statements (Paper book Pg. 6-23), Tax Audit Report (Paper Book Pg. 24-44), Source of payment to farmers made by assessee- Date wise chart (Paper Book pg. 439-450), Copy of Sale invoices (Paper book Pg. 452-567). It was submitted that all these documents were dated prior to the date of search and indicate that the assessee was engaged in trading of food grains and further same was also disclosed in the VAT returns and in the return of income filed in the usual course. It was contended that the Ld. CIT (A) has rightly deleted the addition made by the AO and has correctly held that the contention of the AO that the assessee had not furnished evidences showing the land holding/s of the farmers and the proof of cultivation done by the farmer/s as not warranted as it was not a case where the assessee had claimed exemption of agriculture income. The Ld. AR re-emphasised that the AO had not brought any adverse evidence to disbelieve the submissions. It was submitted that there was no dispute that the assessee had declared the purchase and sale of agricultural produce. It was also submitted that the quantitative details of stock were duly reflected in the Annual accounts of the company (Paper Book pg. 22), nature of business was duly specified in Form 3CD (Paper Book Pg. 25), details of Stock movement were provided in the Tax Audit Report (Paper Book Pg. 32). The Ld. AR submitted that the assessee had made withdrawal of cash

of Rs. 11,85,000/- from bank on 08.09.2005, as was evident from Paper Book Pg. 451, and the same was paid to the farmers and then the farmers were paid from the sale proceeds of the commodities.

4.3 It was contended by the Ld. AR that in the absence of any adverse document or material having been brought on record by the AO, the Ld. CIT (A) had rightly held that the payment/s made by the assessee cannot be said to be unexplained.

5.0 We have heard the rival submissions and have also perused the orders passed by the authorities below. The first issue is regarding the deletion of addition made by the AO by enhancing the gross profit rate. On going through the order of the Ld. CIT (A), we note that the Ld. CIT (A) has deleted the addition following his order for the proceeding assessment year 2005-06. The findings recorded by the Ld. CIT (A) in assessment year 2005-06 are as under:

*“4.8.6 I have considered the submissions of the AR and the assessment order. The AO has made the addition on the ground that the GP rate declared by the assessee was at lower side and that the GP rate in the group cases are not constant and cannot be verified from the details filed by the assessee. He proceeds to make an addition in GP rate of 0.2% to cover up the possible leakage of revenue by the assessee during the year under consideration. Thus it is noted that the entire addition is an adhoc addition without any specific empirical basis. How the AO has arrived at GP rate of 0.2% is not ascertainable from the order.*

*The AO stated in the order that the sales made by the assessee is at lesser price than the market rate on various occasions. However, this is a general statement without any specific instances which could be considered for adjudication. The AO also stated that the date and timing of sale of gold cannot be said with certainty and the price of sale considered by the assessee in the cash voucher cannot be verified in the absence of any details of buyers. This observation again is not specific and cannot be subjected to adjudication at this stage. Even otherwise, it is not in dispute that the appellant has furnished the books of accounts with purchase and sale details/ledgers and day to day stock register with quantitative details. There appears to be no mandate or requirement that the assessee should record the name and address of all the parties in the sale bills when the same is made across the counter in cash. The assessing officer has not disputed the total turnover of the assessee as he has adopted the GP rate on the declared turnover itself. Further, there is also no dispute on the appellant's submissions before the AO that it has filed VAT returns before the appropriate authorities, the copies of which have also been furnished before the AO. There is also no dispute about the assessee furnishing details of purchase of gold from bank/MMTC and furnishing of other details in support of opening stock, sales closing stock and cash deposits in bank accounts. The AO has also not countered or pointed out any deficiencies in the modus operandi of the business model as submitted before him "reproduced at page 3 of the assessment order".*

*4.8.7 The AO has also not countered the summary of the arguments/submissions taken before the AO as reproduced by*

*him at the later part of page 3 and the beginning part of the page 4 of the assessment order. It is also observed that the AO has not reproduced the entire contents of the written submissions of the appellant dealing with the cash sales and absence of names and addresses of the buyers in the cash sales. The relevant portion of the assessee's written submissions which have been omitted to be reproduced in the assessment order which are directly dealing with the said issues is reproduced below for ready reference:*

*“Execution of sales and disclosures in books of accounts*

*It involves following steps*

*1. Execution of sales*

- (a) Orders for purchase of commodity with MMTC and other reputed organization suppliers are placed upon receipt of enquiry by the customers. Such orders are delivered by the suppliers at prevailing rates of the commodity at the time of supplies.*
- (b) Upon receipt of the supplies and costs thereof it is ensured that the supplies be made at a rate so that at least minimum of the cost be recovered.*
- (c) Further as per market tend prevalent in the trade it is the practice that the supplies are made at a rate on which the orders from customers are booked by them and not on the date of delivery. Thus considering the volatile nature of market where the prices are frequently fluctuating there is an obvious likely situation where the sales are recorded at a rate that may be lower and higher than the market rates.*
- (d) However, due precautions commensurate with the knowledge, expertise and experience of management is taken that even in adverse situations no sale be made at a price lower than costs however since the market is uncontrollable predictable even after taking due precautions the possibility of loss in some cases cannot be ruled out where the prices of the commodity have risen after the booking received from customers.*

(e) For the sales so made, bills are duly raised and cash received thereof is properly accounted for in books of accounts.

(f) As discussed earlier, the assessee is mainly engaged in the business of Manufacturing, fabricate, import, export, trading and otherwise dealing in Silver, Gold and Diamond Jewellery, precious and semi precious stones, Due to the nature of items and its significant valuation, the turnover runs in hundreds of crores of rupees. Since the entire purchases are being made from suppliers on national international repute and big organizations like MMTC etc. there is a huge pressure of timely payment to them by us otherwise they start charging heavy interest on daily basis on the outstanding amount.

In support following documents have already been placed on record for your reference and records:

(a) Stock Movement Sheet containing details of purchases and sale.

(b) Copies of relevant purchases and sales bills.

(c) Market rates of commodity obtained from internet in support of cost of sales recorded in books.

1. Disclosures made in accounts and records

(a) However, considering the market and business peculiarities and cut throat competition in the line of business, the assessee is dealing, it is not practicable for the assessee to insist the purchasers, making cash purchases from the assessee, to disclose their fully names and addresses, and therefore, on cash bills names and address are not/not fully recorded. It may be appreciated that even otherwise in if the buyer had stated wrong names and addresses, the we are bound to record whatever names and addresses has been given, as the assessee has no reason to doubt the version of the buyer. In this line of business, normally, the buyers are reluctant to disclose their identity and when the assessee has shown entire sales amount in cash, which is duly recorded in books and audited as such even by tax auditors. Without prejudice it may also be appreciated that in any case non disclosure of names and addresses of the purchasers is not going to adversely affect the interest of the assessee or revenue.

- (b) The assessee is duly maintaining day-to-day quantitative details of purchase and sales made by it. The Quantitative tallies of purchases and sales made and record thereof is duly maintained which were even examined by investigating authorities and it is a matter of fact on record that no deviation thereof was found in a conclusive proof of not only the facts stated above but also the genuineness involved thereof.*
- (c) The cash sales so made is duly recorded in the books of accounts and cash thereof after meeting necessary expenses, recorded in books is deposited in bank accounts as and when required so after considering working capital requirements and other contingencies. As a consequential evidence reference is drawn to the fact that major amount received through cash sales was deposited in bank and duly shown in books of accounts which is an automatic acid test and proof of genuineness of facts involved.*
- (d) In this connection reference is also respectfully drawn to sales tax returns already filed, being yet again a proof of the fact that the assessee has fully paid the sales-tax on sales, which was liable to be debited in profit and loss account.*

*In view of the facts stated above it is thus undoubtedly that all the sales executed by the company are not only duly recorded in the books of accounts but also the accounts regularly maintained in the course of business, duly audited under the provisions of the Act and it is a matter of fact borne out by the audit report that they are free from any qualification by the auditors. This read in conjoint with outcomes of search wherein nothing in contradiction was found sternly suggests that it should be taken as correct, unless there are strong and sufficient reasons to indicate that they are unreliable.*

*4.8.8 Considering the above, I am of the view that in the absence of any specific empirical deficiencies pointed out by the AO, the*

*accounts of the assessee could not be doubted especially in respect of the GP rate. The AO is not disputing the purchase figures nor the sales figures. He has not pointed out any instance of out of book sales or bogus purchases. The kind of observations made by the AO could be made against any assessee. There is always possibility that a businessman would be attempting to reduce the taxable profits. However, such mere possibility, without any specific evidence cannot be a ground to make an adhoc addition. Further, it is noted that he AO has adopted a certain GP rate without even specifically explaining why and on what basis he has adopted that rate. In the present case the appellant has been filing the VAT returns and the AR has pointed out that the trading results are in perfect synchrony the P&L figures furnished in the return of income. Unless the AO is able to point out specific instance of sale of gold jewellery at lower than the market rate it would not be possible to uphold the decision of the AO. The whole assessment order only contains very general observations of the AO, but do not give any specific instances based on which he has made such remarks. Therefore, I do not find any merit in this kind of adhoc additions. It is also noted that there is merit in AR's argument that the addition is otherwise unsustainable as the AO has not rejected the books of accounts. In this regard reliance has been placed by the AR on the decision of Hon'ble Delhi Bench of ITAT in the case of ACIT Vs Sh. Vijay Kumar Aggarwal (ITA No.: 4183/Del/2012 dated 28/06/2013) wherein it has been held as under.*

*“4. After considering the arguments of both the sides and the facts of the case, we do not find any infirmity in the order of the learned CIT (A). The Assessing Officer has mentioned*

*that the profit on sale of paintings is ranging between 10% to 1000%. However, on what basis he made such observations is best known to him. The learned CIT (A) has recorded the finding that in assessee's own case, last year, the gross profit disclosed was 14.78% while the gross profit in the year under consideration was better. Further, the question of application of GP rate can arise only on the rejection of books of account as per Section 145(3). For rejection of books of account, the Assessing Officer has to record the finding that he is not satisfied about the correctness or completeness of the accounts of the assessee or the method of accounting provided under Section 145(1) or Accounting Standards as notified under Section 145(2) have not been followed by the assessee. In this case, the Assessing Officer has not recorded any such finding which may entitle him to reject the books of account and apply the gross profit rate. In the GP rate disclosed by the assessee is low in the opinion of the Assessing Officer, that entitles the Assessing Officer to probe deep into the accounts of the assessee but, that by itself, is not sufficient for rejection of books of account under Section 145(3) and application of higher GP rate. Evidently, in this case, the Assessing Officer has not rejected the books of account of the assessee and, therefore, in our opinion, the estimation of gross profit by applying the GP rate of 50% was not justified. We, therefore, uphold the order of learned CIT (A) and dismiss the appeal filed by the Revenue."*

*4.8.9 Considering all the above, I hereby delete the addition made on account of enhancing the GP rate by 0.2% made by the AO with the remark that it was being made to cover up the possible leakage of revenue by the assessee."*

5.1 The above order was followed by the Ld. CIT(A) in the case of Mr. Rajesh Kanodia, proprietor of M/s Vasudeva Jewellers, a sister concern, which was also part of the search in the assessment year

2005-06, 2006-07 and 2007-08. These orders passed by the Ld. CIT (A) in the case of Mr. Rajesh Kanodia came up for consideration before the ITAT in ITA Nos. 4241-4243/Del/2014. The ITAT, vide order dated 28.07.2017, has upheld the orders of the Ld. CIT (A) deleting the *ad hoc* addition made by the AO. The relevant finding of the ITAT reads as under:

*“16. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is noticed that the AO accepted the opening stock, purchases, closing stock and cash deposits in the bank accounts which were recorded by the assessee in his books of accounts maintained in the regular course of business. The AO doubted the value of the sale for the reason that the date and timing of sale of gold could not have been said with certainty and that the price of sale considered by the assessee in the cash voucher could not be verified in the absence of any details of buyers, however, no inflated sale was pointed out. On the contrary, the sale was duly declared by the assessee in his VAT returns filed before the appropriate authorities (copies of which were furnished before the AO). In the present case, it is noticed that he AO applied GP rate of 0.2% on estimate basis and made the ad-hoc addition. However, no specific instance of inflated purchase or suppressed sale was pointed out and no specific defect was pointed out in the books of accounts. The assessee furnished the books of accounts with purchase/sale details, ledger and day to day stock register with quantitative details, the same had been accepted by the AO. Therefore, the ad-hoc addition made by the AO, by applying the GP rate of 0.2% was*

*not justified, particularly when no comparable case was brought on record wherein such a profit was earned. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the Ld. CIT (A) rightly deleted the addition made by the AO by following his own order for the reassessment year 2005-06 in the case of M/s Vasudeva Jewellers Pvt. Ltd. (supra), against which an appeal was filed by the department before the ITAT in ITA No. 4245/Del/2014 which has been dismissed vide order dated 12.07.2016. In that view of the matter, we do not see any merit in this appeal of the department.”*

5.2 Having perused the orders passed by the Ld. CIT (A) as well the one passed by the coordinate Bench of the ITAT, we are of the view that the addition made by the AO has rightly been deleted by the Ld. CIT (A). The assessee has maintained regular books of account which are duly audited. The assessee has maintained complete stock records. The assessing officer has not pointed out any error or discrepancy in the books of account maintained by the assessee. The assessing officer has also accepted the opening stock, purchases, sales and closing stock. The cash sales have been duly recorded in the books of accounts. In absence of any statutory provision prohibiting sales in cash, no adverse inference can be drawn merely on the basis the sales have been made in cash. We also note that this is a case of search and nothing incriminating was found during the

search so as to doubt that the sales recorded in the books of account were understated. The AO has made the impugned addition merely on the basis of a doubt as has been rightly pointed out by the Ld. AR by referring to the assessment order. Further, in absence of rejection of the books of accounts, *the ad hoc* addition to the GP Rate cannot be sustained. In view of the above facts, we uphold the order of the Ld. CIT (A) deleting the addition of Rs. 15,90,026/-. Accordingly, ground no. 2 is dismissed.

5.3 The next issue in ground no.3 is the deletion of the additions made by the AO on account of the payments to the farmers in respect of the purchase of food grains. On going through the assessment order, we note that the assessing officer has made the addition on the basis that the assessee had not furnished any details of farmers like their addresses, details of purchases made from them, any documentary evidences showing that purchases have been actually made, land holdings of the farmers and proof of cultivation done by the farmers. It has also been alleged that the assessee had not furnished evidence regarding withdrawal of cash for making payments to the farmers.

5.4 The Ld. CIT (A) has deleted the addition and the findings of the Ld. CIT (A) on deletion of the addition are as under:

*“4.3.8 I have considered the submission of the AR, the assessment order and the various documents referred to by the AR. It is observed that the AO has made the addition of Rs.2,75,81,196/- on the ground that the assessee has not furnished evidences showing the land owning of the farmers and proof of cultivation done by the farmers. It has been further stated by the AO that the assessee has not furnished evidences regarding withdrawal of cash for making payment to the farmers. There is no merit in these observations of the AO. The documents such as the VAT returns, P&L account and Balance Sheet, Auditor’s report all submitted by the appellant in the usual course of the business much before the date of search before the appropriate authorities indicate that the appellant did engage itself in trading in food grains and also disclosed it both in the VAT returns and in the Return of Income filed in the usual course. Not only the figures tally but the explanation with regard to the appellant’s involvement in trading in food grains also match with the documents submitted before the AO.*

*4.3.9 The contention of the AO that the assessee has not furnished evidences showing the land holding of the farmers and the proof of cultivation done by the farmer is not warranted. It is not a case where the assessee is claiming agricultural income and exemption thereof. It is a case where the assessee is trading in agricultural produce i.e. cereals and pulses. It has made purchase of cereals and pulses and it has made sales of the same. In the purchase and sale of the same it has made profit which has been included in the taxable income and as such there is no onus on the assessee to furnish evidences showing the land owning by the farmers. The appellant’s onus gets discharged by*

*the submissions/explanation/and documents as above. If the AO did not believe the appellant's explanation, there was a need to bring on record further adverse evidences if any. However, the AO could not have compelled the appellant to furnish such details without any adverse evidences. The cash paid vouchers with revenue stamp affixed and duly signed by the receiver, in themselves, are not adverse evidences. There is no dispute that the appellant had declared the purchase and sale of agricultural produce. The AO has not been able to rebut the claim of the appellant that it engaged in trading of agricultural produce.*

*4.3.10 The evidences in this regard are overwhelmingly in favour of the appellant. The quantitative details of opening stock, sales and purchases at Point No. 14 of Notes to Accounts\_in the Audited Balance Sheet clearly show that the appellant purchased 18,31,983.65 Kg of cereals and pulses whose value is also shown as Rs.278.66 lakhs. This balance sheet is dated 31.08.2006 and is part of the Return of Income filed originally on 28/11/2006 before the department. Thus, the explanation cannot also be termed as an afterthought. The copies of form DVAT-16 filed before the Delhi Sales Tax authorities for the month of March'2006, January' 2006, December' 2006, November'2006, Augus'2006, May'2006 present in the paper books show on their 1<sup>st</sup>pages that Bullion and Cereals & Pulses were the commodities dealt with by the appellant during the relevant Previous Year.*

*4.3.11 The contention of the AO that the assessee has not furnished evidences regarding withdrawal of cash for making payment to the farmers is also not borne out of records. In this regard the assessee has shown to have submitted detailed reply before the AO, a copy of which was also filed in the paper book &*

*placed at pages 439 to 450. The assessee has made withdrawal of Rs.11,85,000/- from the bank on 8<sup>th</sup> September, 2005 as is evident from the copy of the bank statement placed at paper book page 451. The AR has submitted that this cash withdrawal has been utilized for making payment to the farmers and thereafter the assessee has been receiving money on sale and making further purchases. In the audited balance sheet and profit and loss account, the assessee has given details of the purchases and sale of these agricultural commodities including quantitative details. This audited balance sheet was filed much before the date of the search. Once the appellant leads evidences to show that he had done trading in food grains and points out that the cash voucher refer to the payments made to farmers, the AO could have disagreed with such claim only by bringing any adverse evidences. But no evidences are brought on record. Thus the conclusion arrived at by the AO that the payment of Rs.2,75,81,196/- remained unexplained is not born out of records. Hence, the addition made on this count is hereby deleted. The ground is allowed.”*

5.5 On going through the facts and the order passed by the Ld. CIT (A), we note that the assessee has purchased agriculture produce from various farmers. The payments found mentioned in the seized documents relate to the said purchase of agriculture produce from the farmers. From the audited balance sheet it is evident that the assessee, during the year, has done trading in food grains. Since, these purchases have been made from the farmers, the payments of

the same have been made in cash and are reflected in the books of accounts. It is not the case of the assessing officer that these payments were not found reflected in the books of accounts of the assessee company. We have also examined the various documents to which our attention was invited by the Ld. AR. We note that the sales and purchases of the food grains have been duly reflected in the sales tax returns filed for the relevant period. The assessee company has also furnished a detailed chart mentioning the source of payments made to the farmers along with copies of supporting evidences to substantiate its claim regarding source of payments for these purchases. The assessing officer has not pointed out any discrepancy in the same. As regards the observation of the assessing officer and the contention of the Ld. DR raised in the written submission that the assessee has not furnished evidence/s regarding withdrawal of cash for making payments to the farmers and that the source of cash deposit was not satisfactorily explained, after examining the documents on record, we are of the view that this observation is factually incorrect. The assessee, during the assessment proceedings, has submitted detailed reply in response to notice dated 06.02.2013 issued by the assessing officer whereby he has explained the source of payments. On perusal of the detailed chart submitted by the assessee it is noted that the assessee has made a withdrawal of Rs.

11,85,000/- on 08.09.2005 from the bank and has utilized the same for making payments to the farmers. Thereafter, the assessee has sold the produce so purchased and the amount received against such sales has been utilized for making further purchases and so on. We have also verified the fund flow statement filed before the assessing officer along with the above-mentioned letter which gives the complete details on a day to day basis of the purchases made and the sales along with the sources. This fund flow statement is running from 08.09.2005 when the assessee made the first purchase of Rs.1,50,000/- out of the cash withdrawal of Rs.11,85,000/- from its bank account with Allahabad Bank till 31.03.2006. The Ld. CIT DR, during the course of the hearing, could not point out anything adverse in this statement and the details of the purchases and sales submitted by the assessee both in quantity and value. We have also perused the balance sheet and the annexure thereto. On going through the same, we note that assessee has made a total purchase of the agriculture commodities i.e. pulses and cereals of Rs.2.78 Crore and has made sales of Rs.3.21 Crore with the result that a profit of Rs. 0.43 Crore has been declared on such sales and purchases of agriculture commodities. It is not the case of the assessee that it is claiming any exemption on such income. In these circumstances, we are of the view there was no justification for the AO to draw any

adverse inference merely because vouchers of purchases in cash were found during the search. These vouchers are part of the regular books of account and it is also not the case that such vouchers were unaccounted for. We have also gone through the various judgments relied upon by the Ld. DR. The facts of these judgments are different than the present case. In these cases, there were deposits in the bank for sales made in cash against purchases in credit and the assessee had failed to substantiate the credit purchases. It was on these facts that the additions were made under section 68 of the Act. In the present case, the assessee has first withdrawn cash and then made the purchases from the cash so withdrawn and after making sales against paid purchases received the cash against such sales. So, first there is source of the money in the case of the assessee and hence, it cannot be said that the cash received against sale is unexplained credit.

5.6 We have also gone through the findings recorded by the Ld. CIT (A) and we are in agreement with the findings of the Ld. CIT (A). In view of the above analysis we are in agreement with the findings of the Ld. CIT (A) and see no reason to interfere with the same and accordingly, ground no.3 is dismissed.

5.7 Ground Nos.1 & 4 are general in nature and need no adjudication.

6.0 In the result, the appeal of the Revenue for AY 2006-07 is dismissed.

7.0 ITA 3669/Del/2014 (Assessee's Appeal) and ITA 4247/Del/2014 (Department's Appeal) for AY 2007-08:

The facts in brief relevant to this year are that in this year also notice u/s 153C of the Act was issued on 05/09/2012 subsequent to the search which had taken place on 28/03/2011. The assessee filed its return of income on 04/12/2012 and an income of Rs. 6,06,960/- was declared therein. The assessment was completed u/s 153C of the Act on 28/03/2013 at an income of Rs. 2,39,19,083/-. The additions were on two counts. The first addition was of Rs. 91,09,118/- being addition on account of gross profit estimation by estimating the same @ 0.2% on the ground that the assessee had made only cash sales of gold bullion and, therefore, the profit was not verifiable. The other addition was of Rs. 1,42,03,005/- which pertained to cash deposits of the same amount as appearing in the ledger seized from the residence of Shri Rajesh Kumar Kanodia.

7.1 The assessee's appeal before the Ld. CIT (A) was partly allowed wherein the gross profit addition/enhancement was deleted by the Ld. CIT (A) by following his earlier year's order on identical issue in AY 2006-07. With respect to the other addition of Rs.

1,42,03,005/-, the Ld. CIT (A) held that the assessee should be allowed the benefit of telescoping and, thereafter, he worked out the peak credit at Rs. 96,41,736/- and confirmed the addition to that extent and deleted the balance.

7.2 The assessee as well as the Revenue, both being aggrieved, are now before the ITAT and have raised the following grounds in their respective appeals:

7.2.1 Grounds raised in Assessee's Appeal:

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153C against the appellant are in violation of the statutory conditions and the procedure prescribed under the law and as such the same is bad in law and likely to be quashed.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under section 153C and assessment framed in consequence thereof is bad and liable to be quashed in the absence of any valid satisfaction being recorded by the AO of the searched person that any incriminating material belonging to the assessee was found during the course of the search.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment framed is against the spirit of Section 153C of the Act whereby the reassessment is to be confined to the additions and disallowances consequent to the material found during the course of the search and does not give power to the AO to re-appraise/review the completed assessment.*
5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the addition to the extent of Rs.96,41,736/- made by the AO on account of a document found during the course of the search.*  
(ii) *That the said addition has been confirmed the learned CIT(A) ignoring the fact that this document was not found from the premises of the assessee and no transaction stated in the document pertains to or have been corroborated to be that of the appellant company.*  
(iii) *That addition has been confirmed by arbitrarily rejecting the detailed explanation and evidences brought on record by the assessee.*
6. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.*

7.2.2 Grounds raised in Department's Appeal:

1. *The order of Ld. CIT (A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.91,09,118/- made by the Assessing officer on account of GP rate of 0.2% of total turnover of Rs.455,45,59,305/- as against a GP rate at 0.01% which appears to be at lower side, since the assessee was making total sales in*

*cash and no details of parties to whom sales were made furnished and the profit shown by the assessee was not verifiable.*

- 3. On the facts and circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.1,42,03,005/- made by Assessing Officer on account of cash deposits.*
- 4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

8.0 In the appeal filed by the Revenue, ground nos. 1 & 4 are general in nature and hence need no adjudication.

8.1 Ground No. 2 in Revenue's appeal is deletion of addition made by the AO by enhancing the GP rate to 0.2% as against the GP rate declared by the assessee on the reasoning that the same appears to be on the lower side. This issue is the same as in the appeal for the preceding A.Y. 2006-07. Both the parties agreed that the facts of this issue are identical to the facts of the issue in the A.Y. 2006-07. In ITA No. 4246/Del/2014 for AY 2006-07, we have already upheld the order of the Ld. CIT (A) and dismissed the ground raised by the Revenue. The relevant finding on this issue are contained in Para 5.2 above of this order. Following our own order for the A.Y. 2006-07, we upheld the order of the Ld. CIT (A) in deleting the addition made by

the AO by enhancing the gross profit rate and, accordingly, ground 2 is dismissed.

8.2 Ground No. 3 in Revenue's appeal is regarding partial relief of Rs.45,61,269/- given by the Ld. CIT(A) out of the total addition of Rs.1,42,03,005/- made by the assessing officer. Ground No. 5 in assessee's appeal is regarding addition of Rs. 96,41,736/- sustained by the Ld. CIT(A) out of the addition of Rs.1,42,03,005/- made by the assessing officer. Thus, both these grounds are related.

8.3 It was submitted by the Ld. CIT DR that Ld. CIT (A) was not justified in deleting the above addition. The Ld. CIT DR contended that this addition has been made on the basis of the seized documents found during the course of the search at the premises of the assessee and, thus, the presumption under section 132(4A) read with section 292C of the Act that this document belonged to the assessee and that the contents of this document were true, would be applicable. It was submitted by the Ld. CIT DR that the assessing officer had accordingly made the addition of the aggregate of credit side of this document assuming that the same was undisclosed income of the assessee. It was submitted by the Ld. CIT DR that the Ld. CIT (A) was not justified in restricting the addition to Rs. 96,41,736/- as against the addition of Rs. 1,42,03,005/- made by the AO, once he has held that this document belonged to the

assessee. The Ld. DR filed a written synopsis. The relevant part of the synopsis is as under:

*“5. In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to presumption of entries found recorded in documents seized during search from the premises of the director of the assessee company Sh. Rajesh Kanodia in terms of sections 132(4A) & 292C of I.T. Act:*

- 1. CIT Vs Sonal Construction [2012-TIOL-851-HC-DEL-IT] (Delhi)*
- 2. CIT Vs Naresh Kumar Aggarwala[2011] 9 taxmann.com 249 (Delhi)/[2011] 198 Taxman 194 (Delhi)/[2011] 331 ITR 510 (Delhi)*
- 3. Mahabir Prasad Rungta Vs CIT [2014] 43 taxmann.com 328 (Jharkhand)/[2014] 266 CTR 175 (Jharkhand)*
- 4. Bhagheeratha Engineering Ltd Vs ACIT [2017] 79 taxmann.com 325 (Kerala)/[2015] 379 ITR 244 (Kerala)/[2016] 282 CTR 209 (Kerala)*
- 5. Ashok Kumar Vs CIT [2016] 69 taxmann.com 129 (Patna)/[2016] 239 Taxman 436 (Patna)/[2016] 386 ITR 342 (Patna)/[2016] 290 CTR 450 (Patna)*
- 6. Baldev Raj Vs CIT [2010] 2 taxmann.com 335 (Punjab & Haryana)*

*Particularly for A.Y. 2007-08, in respect of the document seized from the premises of the director of the assessee company and as stated by Sh Rajesh Kanodia on oath that the seized document belonged to the assessee, onus was always on the assessee to explain the true and correct details of transactions recorded on the documents seized. The assessee has failed to discharge onus cast*

*on it. Under the circumstances, the A.O. has rightly added the cash deposits received by it. In this regard, the ratio of the following decisions may also be kindly considered:-*

- A. Mahavir Woolen Mills vs Commissioner of Income-tax [2000] 111 TAXMAN 566 (DELHI)*
- B. Commissioner of Income-tax vs P.R. Metrani 120 TAXMAN 612 (KAR.)*
- C. P.R. Metrani vs Commissioner of Income-tax, Bangalore 157 TAXMAN 325 (SC)*

*As regards cash receipts in A.Y. 2007-08, the CIT (A) has sustained the addition to the extent of peak credit. In this regard, reliance is placed on the following decision of Hon'ble Allahabad High Court in the case of Bhaiyalal Shyam Behari v CIT (276 ITR 38).*

*Further, reliance is placed on the decision of Hon'ble Delhi HC in the case of CIT v D K Garg (2017) 84 Taxmann.com 257.*

*Further, in respect of proceedings u/s 153 C, decision in the case of DR. A. V. Sreekumar v CIT [2018] 90 taxmann.com 355 (Kerala) may kindly be considered.*

*In the above mentioned case, Hon'ble Kerala HC has considered the decision of Delhi HC in the case of Kabul Chawla also. In the instant case also, on the basis of evidence/material available with the A.O., the assessment could have been reopened u/s 148. The mere fact that the provision under which the Department proceeded was not proper, would not vitiate the entire proceedings especially since there is no procedural requirement distinguishing a notice under Section 148 or one under Section 153A/153 C.”*

8.4 In reply, it was submitted by the Ld. AR that the entire addition made by the AO was unsustainable as the document on the basis of which this addition had been made did not pertain to the period relevant to the assessment year under consideration. The Ld. AR invited our attention to the seized document placed at Paper Book pages 56-58 to point out that this document pertained to the period from 1<sup>st</sup> April, 2007 to 27<sup>th</sup> November, 2007 whereas the year under consideration was assessment year was 2007-08, i.e. previous year 2006-07. It was submitted that, thus, the addition on the basis of this document was legally unsustainable in the year under consideration.

8.4.1 It was further contended by the Ld. AR that the AO had not pointed out as to under which section this addition was being made, i.e. whether it was being assumed that the seized document represented unexplained cash credit so as to apply section 68 or whether it was being assumed that the seized document represented unexplained investment so as to apply provisions of section 69. It was submitted that in absence of any finding as to whether it was cash credit or investment by the assessing officer, the addition made was unsustainable.

8.4.2 The Ld. AR further contended that in any case both under sections 68 and 69, additions can be made only in the year in which

the credit appears or investment is made and the seized document on the basis of which this addition has been made clearly showed that it did not pertain to the year under consideration.

8.4.3 It was further submitted by the Ld. AR that the AO and Ld. CIT (A), both, had gone wrong in not appreciating that Section 132(4A), though, makes a presumption that the document belongs to the person from whose control or possession the document is found, but at the same time this section also states that the contents of such document are true. If that be so, it has to be assumed that what is stated in the seized document is true. It was submitted that from the document, it was apparent that this was an account of a person named 'KS'. If that be so then while applying provisions of section 132(4A), it has to be presumed that the credit appearing in this account pertains to the said person 'KS' and hence, no addition can be made on the basis of credit in this account. It was further submitted that the order passed by the assessing officer is silent and has not stated as to under what assumption was the addition being made on account of this document. It was submitted that the AO has not stated as to what inference he was drawing on the basis of this document. It was submitted that simply because some figures have been found to be stated on a piece of paper, it cannot be assumed that such figures represented income and that too earned by the

assessee. It was submitted that the assessing officer being an adjudicating officer has to determine the correct income based on the facts before him. The Ld. AR submitted that the AO, first, has to apply his mind to the paper and the figures stated therein and even in the absence of any explanation, after analysis by him, has to record a finding with the reasoning as to how the figure stated in the seized document is being considered as income and, thereafter, also record a finding that such income being considered by him on the basis of the document before him is that of the assessee. The Ld. AR emphasized that in the present case, no such exercise had been carried out by the AO as was evident from the assessment order and further that the credit side had been assumed as income without establishing any correlation.

8.4.4 It was further submitted by the Ld. AR that the Ld. CIT (A), though, has restricted the addition to the peak credit but he has also gone wrong in confirming the addition on the basis of peak credit without giving any finding as to how the figure stated in the seized document was being assumed as income of the assessee.

8.4.5 The Ld. AR submitted that without prejudice to his contention that the entire addition was unsustainable, the addition, if any, cannot exceed the peak credit. It was submitted that a seized document has to be considered in its entirety and debit side cannot

be ignored while considering the credit side and as such the Ld. CIT (A) was justified to consider both debit and credit sides.

9.0 We have considered the rival submissions and have also perused the orders passed by the AO and the Ld. CIT (A). The AO has made the addition of Rs. 1,42,03,005/- on the basis of the seized document. The Ld. CIT (A) has restricted this addition to Rs. 96,41,736/- on the basis of peak credit. On going through the seized document placed at paper book page 56-58, we note that the seized document pertains to the period 1<sup>st</sup> April, 2007 to 27<sup>th</sup> November, 2007. The transactions recorded therein on these pages pertain to this period. This period will fall in assessment year 2008-09 and not in Assessment Year 2007-08 in which year the AO has made the addition. The Ld. CIT DR during the course of the hearing has fairly admitted that this document does not pertain to the year under consideration. Taking into consideration this fact, the addition made by the AO is unsustainable and, accordingly, the AO is directed to delete the entire addition of Rs.1,42,03,005/-. Accordingly, ground no. 3 of Revenue's Appeal is dismissed and Ground No.5 of assessee's appeal is allowed.

9.1 In view of our finding on ground no.5 of the assessee's appeal, the other grounds nos. 1 to 4 & 6 become academic in nature and hence are not being adjudicated upon.

10. In the result, for AY 2007-08, the appeal of the Revenue is dismissed and that of the Assessee is allowed.

11. ITA 4248/Del/2014 (Department's Appeal) for AY 2008-09:

The facts in brief which are relevant to this year are that in this year also notice u/s 153C of the Act was issued on 05/09/2012 subsequent to the search which had taken place on 28/03/2011. The assessee filed its return of income on 04/12/2012 and an income of Rs. 3,04,530/- was declared therein. The assessment was completed u/s 153C of the Act on 28/03/2013 at an income of Rs. 79,02,679/-. The addition was of Rs. 75,98,149/- being addition on gross profit estimation to 0.2% on the ground that the assessee had made only cash sales of gold bullion and, therefore, the profit was not verifiable. The assessee's appeal before the Ld. CIT (A) was allowed on the issue wherein the gross profit addition/enhancement was deleted by the Ld. CIT (A) by following his earlier year's order on identical issue in AY 2005-06. Now, the Department has approached the ITAT against this deletion and has raised the following grounds of appeal:

- 1. The order of Ld. CIT (A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 75,98,149/- made by the Assessing officer on account of GP rate of 0.2% of total turnover of*

*Rs.379,90,74,730/- as against a GP rate at 0.01% which appears to be at lower side, since the assessee was making total sales in cash and no details of parties to whom sales were made furnished and the profit shown by the assessee was not verifiable.*

*3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

12.0 In the appeal, ground nos. 1 & 3 are general in nature and hence need no adjudication.

12.1 Ground No. 2 in Revenue's appeal is against the deletion of addition of Rs. 75,98,149/- made by the AO by enhancing the GP rate to 0.2% as against the GP rate declared by the assessee on the reasoning that the same appears to be on the lower side. This issue is the same as in the department's appeals for the preceding A.Y. 2006-07 and 2007-08. Both the parties during the course of the hearing agreed that the facts of this case are identical to the facts of the issue in the A.Y. 2006-07 and 2007-08. In ITA No. 4246/Del/2014 and 4247/Del/2014 for AY 2006-07 and 2007-08 respectively, we have upheld the order of the Ld. CIT (A) deleting the addition made by AO by enhancing the gross profit rate and have dismissed the ground raised by the Revenue. (Refer to Para 5.2 and 8.1 of this order). Accordingly, following our own orders for the A.Y. 2006-07 and 2007-08, we upheld the order of the Ld. CIT (A) for this

assessment year deleting the addition of Rs. 75,98,149/- made by the AO by enhancing the gross profit rate and, accordingly, ground 2 is dismissed.

13. In the result the appeal of Revenue for AY 2008-09 is dismissed.

14. In the final result, all the three appeals of the Revenue are dismissed and the sole appeal of the assessee is allowed.

Order pronounced in the open court on 15.03.2019.

**Sd/-**

**(G.D.AGRAWAL)  
VICE PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 15.03.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	Dictated on dragon
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	