

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 1025 to 1027/PUN/2011
निर्धारण वर्ष / Assessment Years: 2004-05 to 2006-07

Shri P.M. Chordia,
Plot No.10, Ahinsa Nagar,
Opp. Akashwani, Jalna Rd.
Aurangabad,
Pin-431 001
PAN : AAHPC1004H

.....अपीलार्थी /

Appellant

बनाम / V/s.

The Income Tax Officer,
(Central), Aurangabad.

.....प्रत्यर्थी /

Respondent

Assessee by : Shri Sunil Ganoo

Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 05.12.2018

घोषणा की तारीख / Date of Pronouncement : 01.03.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are three appeals under consideration filed by assessee for the assessment years 2004-05 to 2006-07. The appeals shall adjudicate vide following paragraphs.

ITA No.1025/PUN/2011
A.Y. 2004-05

2. Grounds raised by assessee for assessment year 2004-05 read as under:

“1. On the facts and in the circumstances prevailing in the case and as per the provisions of law, the CIT(A) has erred in confirming the addition of Rs.23,13,943/- considering the facts and evidences presented before him & explanation filed by the appellant. The aforesaid addition confirmed by CIT(A) and his finding being legally and factually, unsustainable, arbitrary and devoid of merits, the same may please be deleted.

2. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

3. During proceedings before the Tribunal, assessee raised **additional grounds** summarized in the chart form. The issues raised are extracted as follows.

“1. Addition of Rs.20,00,000/- confirmed by the learned CIT(A) on the ground of alleged unexplained expenditure being factually and legally unsustainable and being arbitrary and devoid of merits. The same may please be deleted.

2. Additional Ground of appeal No.1 sought to be raised by this ground of appeal, the disallowance of Rs.1,00,000/- sustained by the learned CIT(A) out of dubur/labour charges is challenged on the ground that in the absence of incriminating material the impugned disallowance is bad in law and deserves to be deleted.

3. Additional Ground of appeal No. 2 sought to be raised. By this ground of appeal the appellant is challenging the addition of Rs.28,156/- confirmed by the learned CIT(A) on account of unproved agriculture income.

4. Additional Ground of appeal No. 3 sought to be raised. By this ground of appeal the appellant is challenging the addition of Rs.1,53,655/- made by the learned Assessing Officer on the ground of disallowance of excess claim of depreciation.

5. Additional Ground of appeal No. 4 sought to be raised. By this ground of appeal the appellant is challenging the addition of Rs.32,132/- made by the learned Assessing Officer on the ground of disallowance of expenditure for failure to deduct and pay the TDS.

4. **General facts of the Assessee:** Briefly stated relevant facts include that the assessee is engaged in the business of Civil

Construction and hiring of Machinery. There was search and seizure action u/s.132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the group of cases of P.M. Chordiya of Aurangabad. The said search action resulted in seizure of various documents, diaries etc. Assessee filed the return of income u/s.139(1) of the Act on 31.10.2004 declaring the total income of Rs.13,71,425/- for A.Y.2004-05. Assessee disclosed the agricultural income of Rs.2,61,560/- for this assessment year. Assessment was completed u/s. 143(1) of the Act on 07.01.2005. Subsequent to the search action and in response to the notice u/s.153 of the Act, assessee filed return of income on 31.10.2006 declaring same total income Rs.13,71,490/-and agricultural income of Rs.2,61,560/-.

4.1 There is no regular assessment and scrutiny u/s.143(3) of the Act in this case. Obviously, the notice u/s.143(2) was not issued. Further, considering the date of search on 02.02.2006, the due date for issue of notice u/s.143(2) for assessment year 2004-05 expired. Hence, the assessment constitutes a "non-abated/completed assessment". During assessment proceedings u/s.153A r.w.s.143(3) of the Act as per law, the Assessing Officer determined the total income of assessee at Rs.55,84,697/-. The Assessing Officer made following additions:

"Income as per return of income filed

Rs.13,71,490/-

<i>Add : Addition as discussed in Para 3(I) above</i>	<i>Rs.4,95,775/-</i>
<i>Addition as discussed in Para 3(II) above</i>	<i>Rs.7,75,332/-</i>
<i>Addition as discussed in Para 3(III) above</i>	<i>Rs.1,53,655/-</i>
<i>Addition as discussed in Para 3(IV) above</i>	<i>Rs.4,00,000/-</i>
<i>Addition as discussed in Para 3(VI) above</i>	<i>Rs.20,00,000/-</i>
<i>Addition as discussed in Para 3(VII) above</i>	<i>Rs. 32,132/-</i>
<i>Addition as discussed in Para 3(VIII) above</i>	<i>Rs.3,00,000/-</i>

Addition as discussed in Para 3(IX) above Rs.56,313/-
Rs.42,13,207/-

Total Income : Rs.
55,84,697/-”

From the above additions, apart from other additions, the Assessing Officer disallowed agricultural income to the tune of Rs.56,313/- on ad-hoc basis out of total claim of Rs.2,81,560/-.

5. During First Appellate proceedings, the assessee questioned about the correctness of the additions made by the Assessing Officer. The CIT(A) passed an order adjudicating each of the said additions and granted partial relief to the assessee.

6. Aggrieved with the order of confirming additions by the First Appellate Authority, the assessee is in appeal before us with the issues as extracted above.

We shall now take up each of the issue raised by assessee before us for adjudication.

Ground No. 1 relating to addition of Rs.20,00,000/-

7. Ground No.1 relates to confirming of addition of Rs.20,00,000/- on account of unexplained expenditure. Backgrounds facts of this issue include that the search action resulted in the discovery and seizure of a diary No.A-7. Contents of Page 84 and 85 of the paper book filed before us are relevant. The said pages are scanned herein below:

85

2) खर्चा
पत्रिका

50,000	- Patil
25,000	- Talakar
1,00,000	- DE
8,500	- Manoj
88,000	- Cash KPE
1,96,500	एस.वाय.जावळे S.Y. JAWALE
62,75,000	एस.वाय.जावळे S.Y. JAWALE
08,21,400	एस.वाय.जावळे S.Y. JAWALE

खर्चा
3/2/10

(A7) (7)

84

10,00,000	- DE
3,00,000	- Deshmukh Cash
3,40,000	- Ulhas Diesel
10,000	- Pandit
50,000	- Godavari Auto
2,00,000	- Ulhas Diesel
5,00,000	- Cash KPE Maharashtra
15,00,000	- Cash (17/3)
20,00,000	- D.D. (17/3)
8,00,000	- Ulhas
2,00,000	- CEO

खर्चा
3/2/10

खर्चा
3/2

एस.वाय.जावळे
S.Y. JAWALE
कार-यंत्रणेचे कार्याधीक्षक
TANU JAWALE
ऑफिस (केंद्रिय) नाशिक
(I.T.) (Central) Nasik

Side Exp.
Expenses
Expenses
Side Expenses
Portuaries
Diesel
Miscellaneous

These above entries on page 84 and 85 of the seized papers constitute the details of the expenditure of the assessee about which there is no dispute. The total expenditure works out at Rs.71,96,500/-. The assessee also received two R.A bills (I & II R.A. Bill) with the value of Rs.62,75,104/-. The netting the said receipts against the expenditure and thus, the balance works out to Rs.8,21,400/-. These figures are available at the said seized paper. The expenditure details of Rs. 5 Lakhs and Rs.15 Lakhs totaling to Rs.20 Lakhs (vide page 84) relates to the month of March are relevant and the same was subject matter of the addition. Statement was recorded from Shri Kishor Popatlal Chordia on 21st March, 2006 during search action based on this paper. The relevant questions and answers at Q.5 and Q.6 are extracted herein below:

“Q.5 I am showing you page No. 1 & 2 of Annexure A-7 seized in the residence of Shri P.M. Chordia. Kindly explain the following:

- 1) *The entry mentioning the cash of **Rs.5 Lacs***
- 2) *The entry mentioning the cash of **Rs.15 Lacs** as on 16/03*
- 3) *The entry mentioning “Rs.20,00,000” D.D.*
- 4) *The entry mentioning “ Rs.2,00,000/-“ CEO*
- 5) *The entry mentioning cash of Rs.88,000/-*

Ans. 1) I have withdrawn an amount of Rs.5 Lacs from Vaijapur Merchant Co-op. Bank, Vaijapur in March, 2004. P.M. Chordia Engineers and Contractors had a Current Account in the said bank.

2) I have withdrawn an amount of Rs.15 Lacs from Vaijapur Merchant Co-op. Bank, Vaijapur in March, 2004. P.M. Chordia Engineers and Contractors has a Current Account in the said bank.

3) Two D.Ds. of Rs.17,00,000/- and Rs.3,00,000/- totaling to Rs.20,00,000/- were drawn on Vaijapur Merchant Co-op. Bank, Vaijapur in March, 2004.

4) “ CEO Rs.2,00,000/- : These are the routine expenses in the course of business. I would like to mention here that these are not accounted for in the books and offer it as an additional income for A.Y.2004-05.

5) Rs.88,000/- is a cash withdrawal from Vaijapur Merchants Co-op. Bank.

Q. 6 As stated by you in answer to question no. 5, the entries mentioned at Sr. No.1, 2 and 5 are your receipts on account of withdrawal from Vaijapur Merchants Co-op. Bank, Vaijapur. On the other hand remaining entries mentioned on page No.1 and 2 of Ann. 7 are the expenses. In view of the above fact, your explanation that the entries are Sr. No.1, 2 & 5 are withdrawals from the bank, does not appear convincing. Kindly explain as to how the expenses and the receipts are summed up to arrive at a figure of Rs.71.96 Lacs.

Ans. These are tentative receipts and expenses. The expenses are made in cash but they are accounted for in the books of accounts. I have nothing more to state on this issue.”

From the above, on the said Rs. 20 Lakhs, it is evident that assessee explains the source of withdrawals of cash and not explained the purpose of cash withdrawals. The Assessing Officer did not accept the source of the cash withdrawals too.

7.1 Thus, during the assessment proceedings, the attention of the Assessing Officer was on said cash expenditure of Rs. 20,00,000/- (Rs.5,00,000/- + Rs.15,00,000/-) relevant to the month of March. Statement of Shri Kishor Popatlal Chordia was recorded u/s.131 of the Act on 21st March, 2006. Assessee failed to explain the expenditure of Rs.20,00,000/-. Considering the said facts, the Assessing Officer proceeded to make addition on account of unexplained expenditure after giving following discussion in the assessment order. Contents of Para 3(V) are relevant on account of unaccounted expenditure u/s.69C of the Act and the same are extracted as under:

“3(V) Addition on account of unaccounted expenditure

u/s.69C:

During the course of action us/d.132, a pocket diary at A-7 was seized. On verification of the same, it was found that the assessee

*has recorded various transactions to the tune of Rs.71.96.000/-. Out of this, the expenditure of Rs.60,96,000/- was incurred by the assessee for the business purpose. The AR of the assessee was requested to intimate that as to why such **unexplained expenditure** should not be added to the income of the assessee. The AR of the assessee filed detailed submission and stated that most of the expenditure is recorded in the books of accounts and the sources of such payments are bills of Rs.62 lakhs received on account of work done. The contention of the assessee is partly acceptable. The bill of Rs,41,75,104/-was received on 29/03/2004. This is evident from statement of Vaijapur Merchant Bank. Assessee has incurred expenditure of Rs.20 lakhs which was made by Shri Kishore Chordiya to the tune of Rs.5 lakhs and another expenditure of Rs.15 lakhs on the site, is made prior to receipt of such bill. Hence **sources of expenditure** to the tune of Rs.20 lakhs are **unexplained**. For this reasons, addition of Rs.20,00,000/- is made to the total income of the assessee Penalty proceedings u/s.271 (1)(c) for concealment of me income is separately initiated.”*

From the above, it is evident that the Assessing Officer invoked the provision of section 69C relating to the “**unexplained expenditure etc.**”

8. During First Appellate proceedings, the said issue was examined and the CIT(A) confirmed the said addition after considering the explanation of the assessee. The contents of Para 9 to 9.2 are relevant in this regard and the same are reproduced herein below:

*“9. Ground No.6 relates to addition of Rs.20,00,000/- u/s 69C towards unaccounted expenditure in AY.2004-2005. The AO noticed certain notings in the pocket diary seized showing details of business expenditure related to contract work at Vaijapur site to the tune of Rs.60,96,000/-. Out of the notings of total amounts of Rs.60,96,000/-, the AO has made addition of Rs.20,00,000/- towards **unexplained expenditure** as the appellant could not explain the source of the above expenditure.*

9.1 The appellant has contended that the subjected expenditure of Rs.20,00,000/- is recorded in the books of accounts under various heads like Dubber expenses, labour expenses, diesel expenses, vehicle repairs, bitumen etc. The appellant has explained that the payment shown to be made to Shri Kishore Chordiya in the seized document is utilized for making labour payments and other site expenses. The appellant has claimed that the notings in the seized document are made to roughly determine the value of Work in Progress of the project. The appellant has further explained that

the notings are in respect of expenditure in relation to the contract work of Vaijapur site and include both the expenses incurred till date and expenses to be incurred.

9.2 I have carefully considered the facts of the case, orders of the A.O, remand report of the AO, submissions of the appellant and relevant evidence on record. On perusal of the seized documents inventories as A-7, it is observed that the impugned entries are appearing as under:

*5,00,000/- Cash KPC March
15,00,000/- Cash 16/3*

From the above, it is clear that cash of Rs.5,00,000/- is paid in the month of March and cash of Rs.15,00,000/- is paid on 16/03/2004. The appellant has failed to prove that the above cash payments are recorded in the books of accounts and also the appellant is unable to prove the source of the said undisclosed payment for expenses. Considering the above facts, the addition made of Rs.20,00,000/- u/s.69C of the Act is confirmed. Ground No. 6 is dismissed.”

9. Aggrieved with the above decision of confirming addition of CIT(A), the is in appeal before us.

10. Before us, Ld. Counsel for the assessee on this issue filed written arguments and submitted that the said seized pages constitutes tentative figures of expenditure and the relevant payments are accounted in the books of account. He also submitted that the cash amounts are already borne out of cash book. Further, Ld.AR submitted that the expenditure of Rs. 20 Lakhs constitutes basically estimation. Further, Ld. AR submitted that discrepancy noted by the Assessing Officer is not good enough to reject the argument of the assessee. Further, Ld. AR submitted that the cash is withdrawn from the banks.

For the sake of completeness the said written arguments are extracted as follows:

*“The learned Assessing Officer has made the addition on the basis of noting on page Nos.1 and 2 of Diary No. A-7 seized from the appellant during search and seizure action on 02.02.2006 [Copy of relevant pages filed at Serial Nos. 84 & 85 of Paper Book No. 1 filed by the appellant]. The said diary is in the handwriting of Mr. Kishor Popatlal Chordiya- son of the appellant whose statement u/s 131 was recorded on 21/03/2006 after the conclusion of the search and seizure action. Since at the relevant time Mr.Kishor Chordiya was **in confused state** of mind certain minor factual errors were committed by him while answering the queries which errors were corrected subsequently. But both the **lower authorities have made a big issue and** have made the impugned substantial addition.*

The appellant vide his written submissions dt.20/ 11/2007 [copy filed at Page Nos.91 to 97 of Paper Book No.1 filed] vide Page Nos.93 to 95 of paper Book No.1 has correctly explained the entries on the captioned seized papers.

The learned Assessing Officer did not properly appreciate the facts and for the reasons mentioned in Para No. 3[v] on Page No.4 of the impugned assessment order has made the addition.

The learned CIT(A) for the reasons given in Para Nos. 9 to 9.2 on page No.16 of his appellate order has confirmed the addition.

The appellant is assailing the addition on following grounds.

- 1. Both the lower authorities have conveniently ignored the answer given by Mr. Kishor Chordiya to Q. No.6 [page No.88 of paper book No.1] of his statement recorded where he has categorically stated that the notings were **tentative receipts** and payment which have been **accounted** for in the books of account.*
- 2. It is pertinent to note that the **entries of Rs.20.00 lacs** are evidences in bank pass book of Vaijapur Merchant's Co-op Bank [please refer page No. 122 & 123 of Paper Book No.2. The appellant further submits that the search and seizure action was carried on 02.02.2006, whereas the return of income for the A.Y.2004-05 was filed on 31.10.2004 along with tax audit report. The Cash Book of the appellant for the F.Y.01/04/2003 to 31/03/2004 fully supports the **Entries of Rs.20.00 lacs as appearing on the seized Paper**. During the course of assessment proceedings, the said Cash Book was produced before the learned Assessing Officer for verification and the **same was ignored** without assigning any reason.*
- 3. Against the entry of Rs.5,00,000.00 on the captioned seized Paper it is mentioned Cash K & C 16/3 site expenses. It was explained that the said was the figure of **estimate of expenditure** incurred till 16/03.*
- 4. The mere perusal of bank pass book shows that on 29/03/2004 the appellant has withdrawn Cash of **Rs.40.00** lacs out of which an amount of Rs.17.00 lacs was deposited in same bank account on 2/4/2004 and D.D. was purchased.*

*This **minor discrepancy** in explaining the notings on seized paper is not fatal.*

5. *It is pertinent to note that precisely for the same reason no addition in respect of other entries appearing on the impugned papers have been made. Both the lower authorities have without any demur accepted the explanation give by the appellant on Page No.94 of the Paper Book No.1 filed by the appellant. This clearly demonstrates that the impugned addition is devoid of merits and deserves to be vacated.*
6. *Both the lower authorities have failed to appreciate the well settled law that statement recorded u/s.131 of the I.T. Act, 1961 has no evidential value.”*

11. *Per contra*, Ld. DR for the Revenue heavily relied on the order of Assessing Officer and CIT(A). Bringing our attention to the orders of Assessing Officer/ CIT(A), Ld. DR submitted that it is a case where the assessee undisputedly spent expenditure of Rs.20,00,000/- i.e. Rs.5,00,000/- + 15,00,000/- and the purpose of the expenditure was not explained by the assessee despite a number of opportunity granted by the Assessing Officer. Referring to the argument advanced by the Ld. AR before us, Ld. DR submitted that notings provided at page 84 and 85 of the paper book are not the tentative figures as the amounts are reflected in odd figure as well as round figure. It is the case of Assessing Officer that the there no is dispute about the sources of income/ cash noted in the seized paper. The dispute is about the explanation of expenditure by assessee qua business purpose within the meaning of section 37 of the Act. Ld. DR also submitted that, while other figures are actual expenditure, these two figures totaling to Rs.20 lakhs cannot be estimated figures. He also submitted that the contents on the seized papers should be rejected fully or accepted fully.

12. We have heard the both the parties on this issue and find there is no dispute about seized document on one side and contents of seized document on other. In para 3(V), Assessing Officer held that the source of Rs.20 Lakh of expenditure is unexplained and the claim of accounted cash of the transaction was also proved. Further, we also noted that the case of CIT(A) is that the assessee failed to explain the purpose of the expenditure despite many opportunities and the assessee failed to discharge the onus relating to end use of the said sum of Rs.20 lakhs *qua* the business purposes. The CIT(A) confirmed the same for the reasons that *“The appellant has failed to prove that the above cash payments are recorded in the books of accounts and also the appellant is unable to prove the source of the said undisclosed payment for expenses”*. Thus, the sources of Rs.20 Lakhs, the claim of accounted of the same and purpose of expenditure are the core issues.

From the above, it is evident, the order of CIT(A) is cryptic one and does not constitute a speaking order after considering and rebutting the arguments advanced by the assessee before him. We find that the assessee explained that the said cash of Rs.20 Lakhs was out of withdrawals from the banks and the cash book of the assessee. Assessee submitted the cash book to evidence the accounted nature of the same. On the issue of business purpose of the expenditure of Rs.20 Lakhs, Ld. AR rely on the various papers. The CIT(A) did not rebut the same in his order. Further, we also find that the Assessing Officer invoked the provisions of section 69C of the Act relates to unexplained expenditure etc.” and described the same as “unaccounted expenditure”. There is difference between “unaccounted expenditure” and

“unexplained expenditure”. The Assessing Officer erroneously mentioned the expenditure as “unaccounted expenditure” instead of “unexplained expenditure”. The said mistake was not rectified by the CIT(A) too though he used the expression “unaccounted expenditure” as well as “unexplained expenditure” inter-changeably in Para 9 of his order.

13. In our view, there is no clarity in the mind of Assessing Officer as well as CIT(A) on this issue. Further, as a whole, the order of CIT(A) suffers from lack of clarity in explaining the sources of cash as well as expenditure incurred for business purpose. Thus, in our view, the orders of the AO/CIT(A) fall short of the speaking orders. Therefore, we are of the opinion that there is need for passing a speaking order on these issues at the level of Assessing Officer. We also observed that assessee’s argument has not been duly considered while passing order either by the Assessing Officer or by CIT(A) on the issue of tentative receipts, accounted nature of the expenditure, minor discrepancy and evidentiary value of the statement recorded u/s.131 of the Act. Therefore, in our considered view, when there is confusion in the mind of Assessing Officer and CIT(A) on one side and the shortage of a speaking order on other, the matter should be remanded to the file of CIT(A) for one more round of adjudication by him on this issue. The CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principle of natural justice. Accordingly, with these remarks, **ground No.1 raised by assessee in appeal is allowed for statistical purpose.**

Additional ground No.2 relating confirming of 1,00,000/- out of Rs.3 Lakhs disallowed by the Assessing Officer.

14. Briefly stated relevant facts include that the Assessing Officer made addition of Rs.3,00,000/- to the total income of assessee for want of third party vouchers in respect of the claim of expenditure on account of dubber/ labour charges. Taking cue from the seized/impounded vouchers, the Assessing Officer came to the conclusion that the said account is not fully verifiable. The assessee submitted before the Assessing Officer that submission of the third party vouchers is not possible in this kind of account. Assessing Officer disallowed the sum of Rs.3,00,000/- on this account as per discussion given in Para 3(VII) of the assessment order.

15. In the First Appellate proceedings, this issue was adjudicated by the CIT(A) and CIT(A) restricted the addition to Rs.1,00,000/- as against Rs.3,00,000/- as per discussion given in Paras 6 to 6.2 of his order. For the sake of completeness, contents of Paras 6 to 6.2 are extracted as under:

“6. Ground No.3 relates to addition on account of disallowance of dubber expenses/labour expenses. On verification of seized vouchers, the AO noticed that the expenditure claimed of dubber/labour expenses is not fully verifiable and hence has made disallowances of the said expenses:

A.Y.	Amount of disallowance
2000-2001	1,00,000
2004-2005	3,00,000
2005-2006	2,00,000
2006-2007	2,00,000

6.1 The appellant has contended that the considering the very nature of the business of appellant, it is not possible to obtain

third party vouchers in respect of each and every expenditure, hence the addition made by the AO is unjustified. It is further contented that considering the commercial expediency, expenditure is to be incurred compulsorily without appropriate bills/expenses. The appellant has further contented that the AO has not neither mentioned the exact basis on which the disallowance is made nor pointed out specific defects, hence it is requested to delete the additions made by the AO. The appellant has alternatively argued that the addition be restricted up to Rs.50,000/- in each of the years.

6.2. I have carefully considered the facts of the case, orders of the A.O., remand report of the AO, submissions of the appellant and relevant evidence on record. The AO has made ad-hoc additions without pointing any specific defects. Even the claim of the appellant is not. Acceptable as the same is general in nature. Considering the totality of the facts/and to meet both the ends of justice, the addition made by the AO is restricted to Rs.1,00,000/- in each of the years. Ground No.3 is partly allowed.”

16. Before us, Ld. Counsel for the assessee, in connection with the said additional ground, submitted written arguments stating that such addition cannot be made in the absence of any incriminating material in the case like this. He, however, could not demonstrate that the assessment made by the Assessing Officer u/s.153A r.w.s.143(3) of the Act is non-abated assessment. The ld. AR for the assessee placed reliance on the following decisions:

- i) CIT Vs. SKS Ispat and Power Ltd. reported in 398 ITR 594 (Bom.)
- ii) CIT Vs. Deepak Kumar Agarwal reported in 398 ITR 586 (Bom.)

17. On the other hand, Ld. DR for the Revenue heavily placed reliance on the order of Assessing Officer and CIT(A).

18. We have heard both the parties and perused the material available on record. The case of the Assessing Officer is that there is requirement of making disallowance out of dubbar/labour charges for want of third party evidence. The Assessing Officer disallowed sum of Rs.3 Lakhs on ad-hoc basis. In process, AO ignored the fact that assessment is being made u/s.153A of the Act and addition can be only made with the help of incriminating material. No such material is relied upon by the Assessing Officer quantifying the disallowance of Rs.3 Lakhs. Similarly, CIT(A) also failed to rely on such material seized during search and seizure action for restricting the disallowance the said sum of Rs.1,00,000/-.

In our view, such disallowance is unsustainable as the same is not supported by incriminating material gathered during search action. We also find that this is a case where the assessee filed return of income originally on 31.10.2006 and the same constitutes non abated assessment as the time provided for issuing notice u/s.143(2) of the Act was expired much before the event of search action on the assessee on 02.02.2006. Accordingly, addition made by AO and partly confirmed by the CIT(A) stands deleted. Hence, **additional ground No.2 raised in appeal by assessee is allowed.**

Additional Ground No. 3 relating addition of Rs.28,156/-

19. Additional ground No.3 relates to the addition of Rs.28,156/- on account of unproved agriculture income. In the assessment proceedings, Assessing Officer made *ad-hoc* based disallowance of 20% of the claim of agricultural income and added the same income from undisclosed

sources. In this year, assessee claimed agricultural income Rs.2,81,563/-. The relevant discussion given by the Assessing Officer in this regard is extracted as under:

“..... Since there is no documentary evidences available with the assessee such as 7/12 Extracts etc., the AR of the assessee was asked as to why the said agricultural income of Rs.2,81,563 should not be treated as income from undisclosed sources and should not be added to the total income of the assessee. Except the sale bills of agricultural produce in some cases, the AR of the assessee could not put forth any plausible explanation to substantiate his claim of agricultural income. In the result, 20% out of the said agricultural income is hereby treated as income from undisclosed sources and an amount of Rs.56,313/- is made to the total income of the assessee.”

20. During First Appellate proceedings, the CIT(A) restricted the addition to Rs.28,156/- i.e. 10% of the agricultural income declared to meet both the ends of justice. The relevant observation given by the CIT(A) in this regard is extracted as under:

“.....It is observed that the AO has made additions to the extent of 20% of agricultural income declared without any basis. In the remand report, the AO has contended that after considering agricultural expenses at 35% of the gross agricultural receipts, the resultant income arrived is more than the additions made by the AO, hence the additions made are very reasonable. It is observed that the contention of the AO is not proved considering that out of seven assessment years, in the case of A.Y.2001-2002, A.Y.2005-2006 and A.Y.2006- 2007, the resultant income after estimating expenses at 35% of gross receipts works out to be less than the addition made by the AO in that year. The blanket rate of 35% for agricultural expenses cannot be accepted in view of the following facts:

- (1) The agricultural expenses cannot remain constant for all the agricultural activities and are dependent on the nature of the crop cultivated.*
- (2) The expenses related to a single crop can spread into two financial years considering that sowing takes place in a particular year and other expenses related to cutting of crop take place in another financial year.*

In my opinion and considering the totality of the facts, the addition made by the AO is restricted to 10% of agricultural income declared

to meet both the ends of justice. Accordingly additions confirmed for A.Ys.2000-01 to 2006-07 are as under:

A.Y.	Agricultural Income declared	Addition confirmed (10% of agricultural income declared)
2000-2001	4,24,740	42,474
2001-2002	2,22,661	22,266
2002-2003	4,32,964	43,296
2003-2004	2,75,950	27,595
2004-2005	2,81,563	28,156
2005-2006	81,415	8,142
2006-2007	1,82,072	18,207

21. Aggrieved with the order of CIT(A) in restricting the addition of Rs.28,156/- i.e. 10% of the agricultural income, the assessee raised present ground and filed following written submissions.

“The learned Assessing Officer vide para No.3[VII] on page No. 4 and 5 of the impugned assessment order has treated 20% of agricultural income as income from undisclosed sources and made an addition of Rs.56,313/-. The learned CIT(A) for the reasons given in Para No.7 on page Nos.12 and 13 of the impugned appellate order has restricted the addition to Rs.28,156/-.

The appellant most respectfully submits that it is a well settled law that in assessment made in consequence of search and seizure action no addition can be made in the absence of incriminating material. The reliance is placed on the case laws mentioned in arguments pertaining to additional ground of appeal No.1 referred above.”

22. On the other hand, Ld. DR for the Revenue heavily placed reliance on the order of Assessing Officer and CIT(A).

23. We have heard both the parties and perused the material available on record. The case of the Assessing Officer is that the sum of 20% of agricultural income claimed by assessee in the original return of income u/s.139(1) of the Act (Rs.28,156/-) should be treated as non agricultural income merely for want of sale bills of the agricultural produce. It is not the case of Assessing Officer, there is existing

incriminating material to prove that agricultural activities of the assessee are not genuine. It is also not the case of Assessing Officer there were any bogus sale bills discovered during search action. Further, CIT(A) failed to bring any contrary evidence against the assessee for restricting disallowance @10% of the agricultural income. Thus, this is a case where ad-hoc addition has been made without having any supporting incriminating material. Accordingly, we are of the opinion that in this search proceedings of the case where assessment is non abated, such ad-hoc addition are unsustainable. Accordingly, addition made by Assessing Officer and restricted by CIT(A) is deleted. Hence, **additional ground No. 3 raised in appeal by assessee is allowed.**

Additional ground No. 4 relating to addition of Rs.1,53,655/-

24. Additional ground No. 4 relates to disallowance of Rs.1,53,655/- on account of disallowance of excess claim of depreciation. In the assessment proceedings, the Assessing Officer noticed that for the assessment year under consideration, the assessee is eligible for depreciation on assets at Rs.22,13,068/- and the assessee has claimed it at Rs.23,66,723/- i.e. excess by Rs.1,53,655/-. The relevant discussion given by the Assessing Officer is extracted herein below:

“3(III) Disallowance of excess claim of depreciation:

The AR of the assessee vide order sheet entry dated 01/11/2007 asked to provide the details of eligible allowance of depreciation. The AR of the assessee has submitted the detailed chart. On going through the same, it is noticed that for the assessment year under consideration, the assessee is eligible for depreciation on assets at Rs.22,12,068 and the assessee has claimed it at Rs.23,66,723/- i.e. excess by Rs.1,53,655/-. The same is added to the total income of the assessee being excess depreciation claimed.”

25. During First Appellate proceedings, the assessee did not challenge this issue due to lack of knowledge and inadvertence.

26. Before us, Ld. Counsel for the assessee submitted that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. The Ld. Counsel has placed reliance on the case laws mentioned in arguments pertaining to additional ground No.1 referred above.

27. After hearing both the parties, we are of the opinion that this issue should be remanded to the file of CIT(A) for adjudication. The order of the CIT(A) does not his decision on this issue. In the remand proceedings, the CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principle of natural justice. The assessee is directed to furnish necessary documents with regard to his claim. After considering the same, CIT(A) shall pass a speaking order. Accordingly, **ground No.4 raised in appeal by assessee is allowed for statistical purpose.**

Additional ground No. 5 relating to addition of Rs.32,132/-

28. By the additional ground No.5, assessee has challenged the addition of Rs.32,132/- on account of disallowance of expenditure for failure to deduct and pay the TDS. In assessment proceedings, Assessing Officer noted that the assessee credited an amount of Rs.32,132/- by way of interest on TDS which was deducted in the

computation statement while computing the income under the head “income from business or profession”. Hence, addition of Rs.32,132/- was made to the total income of the assessee.

29. During First Appellate proceedings, the assessee did not challenge this issue due to lack of knowledge and inadvertence.

30. Before us, Ld. Counsel for the assessee submitted that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. The Ld. Counsel has placed reliance on the case laws mentioned in arguments pertaining to additional ground No.1 referred above.

31. After hearing both the parties, we are of the opinion that this issue should also be remanded to the file of CIT(A) for adjudication. The order of the CIT(A) does not contain his finding on this issue. The CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principle of natural justice. The assessee is directed to furnish necessary documents with regard to his claim. After considering the same, CIT(A) shall pass a speaking order. Accordingly, **ground No.5 raised in appeal by assessee is allowed for statistical purpose.**

32. In the result, appeal of the assessee for assessment year 2004-05 is partly allowed for statistical purpose.

ITA No.1026/PUN/2011
A.Y. 2005-06

33. Grounds raised by assessee for assessment year 2005-06 read as under:

“1. On the facts and in the circumstances prevailing in the case and as per the provisions of law, the CIT(A) has grossly erred in confirming the addition of Rs.8,83,587/- considering the facts and evidences presented before him & explanation filed by the appellant. The aforesaid addition confirmed by CIT(A) and his finding being legally and factually, unsustainable, arbitrary and devoid of merits , the same may please be deleted.

2. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

34. During proceedings before the Tribunal, deviating from the above grounds, assessee raised grounds/additional grounds, which are summarized in the chart form and the same are extracted as follows.

“1. Ground of appeal No.1: *By this ground of appeal, the disallowance of Rs.3,00,000/- on account of alleged unexplained expenditure sustained by the learned CIT(A) is challenged on the ground that in the absence of better particulars the ad-hoc disallowance is bad in law and deserves to be deleted.*

2. Additional ground of appeal No.1 : *By this ground of appeal, the disallowance of Rs.1,00,000/- sustained by the learned CIT(A) out of dubbar expenses and labour charges is challenged on the ground that in the absence of incriminating material the impugned disallowance is bad in law and deserves to be deleted.*

3. Additional ground of appeal No.2 sought to be raised: *By this ground of appeal the appellant is challenging the addition of Rs.8,142/- confirmed by the learned CIT(A) on account of unproved agricultural income.*

4. Additional ground of appeal No.3 sought to be raised : *By this ground of appeal the appellant is challenging the addition of Rs.2,05,286/- made by the learned Assessing Officer on the ground of disallowance of excess claim of depreciation.*

We shall proceed to adjudicate the above ones in the following paragraphs of the order.

Ground of appeal No.1 relating to the disallowance of Rs.3,00,000/-

35. Briefly stated relevant facts include that during the course of search action u/s.132 of the Act, some papers relating to unexplained expenditure in Item No.A-4 & A-5 & A-6 were found. It was also found that certain entries relating to receipt of hire charges received from by Shri Nasir were found. During assessment proceedings, assessee was asked to explain as to why the unexplained expenditure should not be added to the income of the assessee. The Ld. AR for the assessee gave detailed submissions. Assessing Officer was convinced with explanation of the assessee as some of the expenditure are not found debited in regular books of accounts. Relevant discussion given by the Assessing Officer in assessment order is extracted as under:

“3(III) Addition on account of unexplained expenditure:

During the course of action u/s.132, some papers relating to unexplained expenditure in Item No. A-4, A-5 & A-6 were found. Similarly, it was found that certain entries of hire charges received from by Shri Nasir etc. were also found. AR of the assessee was asked to explain as to why the unexplained expenditure should not be added to the income of the assessee. The AR of the assessee has given a detailed submission.

A) Amounts taken out by employees, proprietor for the purpose of business expenditure. Some amounts have been taken out for site expenditure which is accounted in the regular book of accounts.

B) Some of the expenditure like agarbatti etc. is made by cheque and not pertain to this business.

C) The expenditure is not at all expenditure but bank deposits.

The contention of the AR of the assessee is not fully convincing. Some of the expenditure are not found debited in regular books of accounts. Similarly, hire charges from Jalna are also not regularly shown in the books of accounts. Considering such deficiencies, an amount of Rs.3,00,000/- is added to the income of the assessee.”

36. Aggrieved with the said adverse views of the Assessing Officer in the assessment order, assessee filed appeal before the CIT(A). During First Appellate proceedings, CIT(A) confirmed the addition of Rs.3,00,000/- by observing as under:

“10. Ground No.7 relates to addition on account of unexplained expenditure of Rs.3,00,000/- each in AY.2005-2006 and AY.2006-2007. The AO noticed that certain expenditure appearing in the seized documents inventorised as A-4, A-5 and A-6 is not recorded in the books of accounts. The AO has asserted that the appellant has failed to provide any plausible explanation, hence has made addition of Rs.3,00,000/- each in AY.2005-2006 and AY.2006-2007 towards unexplained expenditure.

10.1 The appellant has contended that the payments appearing represent cash paid to sons of the appellant Shri Kishor Chordiya, manager in charge of the construction division and Shri Sachin P. Chordiya, manager in charge of the petrol pump division. It is explained that the entries of cash paid to the managers of divisions is not recorded in the books of accounts and payments made by the managers to outside parties is duly recorded in the books of accounts. The appellant has contended that the said payments are reflected in the books of account in the name of the persons to whom payment is eventually made by the manager in charge. The appellant has further claimed that the payments cannot be regarded as unexplained in view of the fact that the cash balance in the books of accounts is more than the amount of impugned entries on the date noted in the seized documents in each instance.

10.2 I have carefully considered the facts of the case, orders of the AO., remand report of the AO, submissions of the appellant and relevant evidence on record. It is usual for the business having number of divisions to keep some amount of cash with the manager in charge of the respective divisions for making payments in the course of day to day business activities. The contention raised by the appellant that sufficient cash balance is available on the respective dates as per the books of account is not proved in the absence of any supporting evidence. Considering the above facts, the addition made by the AO of Rs.3,00,000/- each in A.Y.2005-2006 and A.Y.2006-2007 is confirmed. Ground No. 7 is dismissed.”

37. Aggrieved with the order of CIT(A), assessee filed appeal before us by raising grounds as extracted above.

38. Before us, Ld. Counsel for the assessee submitted that without giving the better particulars of the alleged unexplained expenditure, no ad-hoc disallowance can be made in the assessment framed u/s.153A of the Act. He also filed written submissions and the same are extracted as under:

“The learned Assessing Officer vide Para No. 3(III) on page No.3 of the impugned assessment order has made the disallowance by placing reliance on papers in seized diaries A-4, A-5 and A-6 on the ground that some of the expenses are not debited in books of accounts and has summarily rejected the explanation of the appellant and has made an ad-hoc disallowance of Rs.3,00,000/- which has been confirmed by the learned CIT(A) for the reasons as mentioned in para 10.2 on page No.17 of the impugned appellate order.

The appellant most respectfully submits that without giving the better particulars of the alleged unexplained expenditure, no ad-hoc disallowance can be made in the assessment framed u/s.153A of the I.T. Act, 1961 and hence the disallowance made is requested to be deleted.”

39. On the other hand, Ld. DR for the Revenue heavily relied on the orders of Assessing Officer and CIT(A).

40. We have heard both the parties on this issue of ad-hoc addition of Rs.3,00,000/- and find the same based on certain documents inventorised but not entered in the books of account. Neither the Assessing Officer nor the CIT(A) explained the manner of arriving the figure of Rs.3,00,000/-. On the other hand, the case of the assessee is that the ad-hoc additions are unsustainable in the assessment made u/s 153A of the Act. The assessee has explained the said payments made by cash paid to Shri Kishor Chordiya, Manager in Charge, Shri Sachin P. Chordiya, Manager in Charge of the Petrol Pump division. The

assessee also submitted that there are sufficient cash balances in the books of account to account for the said cash payments.

41. Considering the above explanation and sufficient of cash balances in the books of account, we are of the opinion there is no scope in this kind of assessment for ad-hoc addition more so when there is sufficient cash balances to explain the cash outflow mentioned in the said seized papers. Considering the same, we are of the opinion there is no case for the Revenue to make addition on this account. Accordingly, ground no.1 raised by the assessee is allowed.

Additional Ground of appeal No.1 - disallowance of Rs.1,00,000/- on account of dubbar expenses and labour charges.

42. This ground relates to the disallowance of Rs.1,00,000/- on account of dubbar expenses/labour charges. During assessment proceedings, Assessing Officer noticed that the assessee debited the expenditure under the head dubbar/labour charges. On verification of seized/impounded vouchers, Assessing Officer found that the expenditure under the said account are not fully verifiable. The AR of the assessee was asked to explain the same. Eventually, Assessing Officer rejected the explanation of the assessee and proceeded to make addition of Rs.2,00,000/- by observing as under:

“3(VI) Disallowance of expenditure:

On verification of the expenditure details, it is noticed that the assessee has debited the expenditure under the head dubbar/labour charges. On verification of seized/impounded vouchers, it is seen that the expenditure under the said account are

not fully verifiable. The Ld. AR of the assessee was asked to explain the said discrepancy. The AR of the assessee has contended that the very nature of the business is such that the third party vouchers are not possible in each case. The explanation of offered by the AR of the assessee is not fully convincing and in the result, an addition of Rs.2,00,000/- is made to the total income of the assessee.”

43. Aggrieved with the assessment order, assessee filed appeal before CIT(A). In First Appellate proceedings, CIT(A) restricted the addition to Rs.1,00,000/- as against Rs.2,00,000/- added by the Assessing Officer. Contents of Para 6 to 6.2 are relevant in this regard and the same are reproduced as under:

“6. Ground No. 3 relates to addition account of disallowance of dubber expenses/labour charges. On verification of seized vouchers, the AO noticed that the expenditure claimed of dubber/labour expenses is not fully verifiable and hence has made disallowance of the said expenses:

<i>A.Y.</i>	<i>Amount of disallowance</i>
<i>2000-2001</i>	<i>1,00,000</i>
<i>2004-2005</i>	<i>3,00,000</i>
<i>2005-2006</i>	<i>2,00,000</i>
<i>2006-2007</i>	<i>2,00,000</i>

6.1 The appellant has contended that the considering the very nature of the business of appellant, it is not possible to obtain third party vouchers in respect of each and every expenditure, hence, the addition made by the AO is unjustified. It is further contended that considering the commercial expediency, expenditure is to be incurred compulsorily without appropriate bills/expenses. The appellant has further contended that the AO has not neither mentioned the exact basis on which the disallowance is made nor pointed out specific defects, hence it is requested to delete the additions made by the AO. The appellant has alternatively argued that the addition be restricted up to Rs.50,000/- in each of the years.

*6.2 I have carefully considered the facts of the case, orders of the A.O., remand report of the AO, submissions of the appellant and relevant evidence on record. The AO has made **ad-hoc additions** without pointing any specific defects. Even the claim of the appellant is not acceptable as the same is general in nature. Considering the totality of the facts and to meet both the ends of justice, the addition made by the AO is restricted to Rs.1,00,000/- in each of the years. Ground No.3 is partly allowed.”*

44. Before us, Ld. Counsel for the assessee submitted that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. He also filed written submissions and the same is reproduced herein below:

“The learned Assessing Officer vide Para 3(VI) on page No.4 of the impugned assessment order has made this addition on the ground that on verification of seized/impounded vouchers, it is seen that the expenditure under the said account are not fully verifiable. The appellant explained that considering the very nature of expenditure the third party vouchers were not possible in each case. The learned Assessing Officer therefore made a disallowance of Rs.2,00,000/- which has been reduced by the learned CIT(A) to Rs.1,00,000/-.

*The appellant most respectfully submits that it is a well settled law that in assessment made in consequence of search and seizure action, **no addition can be made in the absence of incriminating material.***

In support of this contention the appellant wishes to place reliance on following decisions and the copies of the same are enclosed.

i) CIT Vs. SKS Ispat and Power Ltd. reported in 398 ITR 594 (Bom.)

ii) CIT Vs. Deepak Kumar Agarwal reported in 398 ITR 586 (Bom.)”

45. On the other hand, Ld. DR for the Revenue heavily relied on the orders of Assessing Officer and CIT(A).

46. We have heard both the parties on this issue of confirming the addition of Rs.1,00,000/- out of the ad-hoc addition of Rs.2,00,000/- made by the Assessing Officer in the assessment and find the said addition is made without having the basis of any incriminating material. Therefore, in our view, such ad-hoc additions are unsustainable in the assessment made u/s 153A of the Act. In view of the settled legal proposition in the matter, we are of the opinion, the counsel’s

arguments are sustainable. Accordingly, addition ground no.2 is allowed.

Additional ground of appeal No.2 relating to the addition of Rs.8,142/-

47. During assessment proceedings, Assessing Officer treated 20% of agricultural income as income from undisclosed sources and made addition of Rs.16,283/-. Relevant observation given by Assessing Officer reads as under:

“..... Since there is no documentary evidence available with the assessee such as 7/12 extract etc, the AR of the assessee was asked as to why the said agricultural income of Rs.81,283/- should not be treated as income from undisclosed sources and should not be added to the total income of the assessee. Except the sale bills of agricultural produce in some cases, the AR of the assessee could not put forth any plausible explanation to substantiate his claim of agricultural income. In the result, 20% out of the said agricultural income is hereby treated as income from undisclosed sources and an amount of Rs.16,283/- is made to the total income of the assessee.”

48. During First Appellate proceedings, the CIT(A) restricted the addition to 10% of agricultural income declared to meet both the ends of justice. CIT(A) dealt with this issue vide para 7.2 by holding as under:

“7.2 I have carefully considered the facts of the case, orders of the A.O, remand report of the AO, submissions of the appellant and relevant evidence on record. It is observed that the in support of the agricultural income claimed by the appellant, he has filed the sale bills and 7/12 extracts land holding evidencing land holdings. The AO has pointed out that in the A.Y.2004-2005 the appellant has claimed agricultural receipts on account of sale of sweet lime however, expenses in respect of plantation of sweet lime seeds is not present either in the preceding year or in the current year. The AO has also pointed out that in A.Y. 2005-2006, the appellant has not shown any labour expenses and salary of employee as is shown in the earlier years. It is further pointed out by the AO that the appellant has not produced sale bill in support of cash sale of agricultural produce claimed of Rs.1,00,000/- on 30/4/2005 in the books of accounts. The appellant has not offered any explanation in respect of the above irregularities pointed out by the AO. Considering the above anomalies, it is evident that the appellant has claimed excessive agricultural income than actually earned.

It is observed that the AO has made additions to the extent of 20% of agricultural income declared without any basis. In the remand report, the AO has contended that after considering agricultural expenses at 35% of the gross agricultural receipts, the resultant income arrived is more than the additions made by the AO, hence the additions made are very reasonable. It is observed that the contention of the AO is not proved considering that out of seven assessment years, in the case of AY.2001-2002, AY.2005-2006 and AY.2006- 2007, the resultant income after estimating expenses at 35% of gross receipts works out to be less than the addition made by the AO in that year. The blanket rate of 35% for agricultural expenses cannot be accepted in view of the following facts:

- (1) The agricultural expenses cannot remain constant for all the agricultural activities and are dependent on the nature of the crop cultivated.*
- (2) The expenses related to a single crop can spread into two financial years considering that sowing takes place in a particular year and other expenses related to cutting of crop take place in another financial year.*

In my opinion and considering the totality of the facts, the addition made by the AO is restricted to 10% of agricultural income declared to meet both the ends of justice. Accordingly, additions confirmed for A.Ys. 2000-2001 to 2006-07 are as under:

<i>A.Y.</i>	<i>Agricultural Income declared</i>	<i>Addition confirmed (10% of agricultural income declared)</i>
<i>2000-2001</i>	<i>4,24,740</i>	<i>42,474</i>
<i>2001-2002</i>	<i>2,22,661</i>	<i>22,266</i>
<i>2002-2003</i>	<i>4,32,964</i>	<i>43,296</i>
<i>2003-2004</i>	<i>2,75,950</i>	<i>27,595</i>
<i>2004-2005</i>	<i>2,81,563</i>	<i>28,156</i>
<i>2005-2006</i>	<i>81,415</i>	<i>8,142</i>
<i>2006-2007</i>	<i>1,82,072</i>	<i>18,207</i>

49. Before us, Ld. Counsel for the assessee submitted that it is a well settled law that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. He also filed written notes of argument and the same is extracted as under:

“The learned Assessing Officer vide Para 3(VII) on page No. 4 and 5 of the impugned assessment order has treated 20% of

agricultural income as income from undisclosed sources and made an addition of Rs.16,283/-. The learned CIT(A) for the reasons given in Para No. 7 on page Nos. 12 and 13 of the impugned appellate order has restricted the addition to Rs.8,142/-.

The appellant most respectfully submits that it is a well settled law that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. The reliance is placed on case laws mentioned in arguments pertaining to additional ground of appeal No.1 referred above.”

50. On the other hand, Ld. DR for the Revenue heavily relied on the orders of Assessing Officer and CIT(A).

51. We have heard both the parties on this issue of confirming the addition of Rs.8,142/- out of the ad-hoc addition of Rs.16,283/- made by the Assessing Officer in the assessment and find the said addition is made without having the basis of any incriminating material. Therefore, in our view, such ad-hoc additions are unsustainable in the assessment made u/s 153A of the Act. In view of the settled legal proposition in the matter, we are of the opinion, the counsel's arguments are sustainable. Accordingly, addition ground no.2 is allowed

Additional ground of appeal No. 3 relating to the addition of

Rs.2,05,286/-

52. This ground of appeal relates to addition of Rs.2,05,286/- on account of disallowance of excess claim of depreciation. During assessment proceedings, Assessing Officer discussed this issue vide para 3(V). The contents of Para 3(V) read as under:

“3 (V) Disallowance of Excess claim of depreciation:

The AR of the assessee vide order sheet entry dated 01/11/2007, asked to provide the details eligible allowance of depreciation. The AR of the assessee has submitted the detailed chart. On going through the same, it is noticed that for the assessment year under consideration, the assessee is eligible for depreciation on assets at Rs.22,01,278/- and the assessee has claimed it at Rs.24,06,564/- i.e. excess by Rs.2,05,286/-. The same is added to the total income of the assessee being excess depreciation claimed.”

53. During First Appellate proceedings, the assessee did not challenge this issue due to lack of knowledge and inadvertence.

54. Before us, Ld. Counsel for the assessee submitted that in assessment made in consequence of search and seizure action, no addition can be made in the absence of incriminating material. The Ld. Counsel has placed reliance on the case laws mentioned in arguments pertaining to additional ground No.1 referred above.

55. From the above, it is evident that the issue relating to the disallowance of excess claim of depreciation was not challenged by the assessee before the first appellate authority. The assessee's counsel submitted that the same lapse happened due to lack of knowledge. Otherwise, the issue arises from the order of the Assessing Officer.

56. After hearing both the parties, we are of the opinion that this issue should be remanded to the file of CIT(A) for adjudication. The CIT(A) shall grant reasonable opportunity of being heard to the assessee in accordance with set principle of natural justice. The assessee is directed to furnish necessary documents with regard to his claim. After considering the same, CIT(A) shall pass a speaking order. Accordingly,

ground No.4 raised in appeal by assessee is allowed for statistical purpose.

57. In the result, appeal of the assessee for assessment year 2005-06 is partly allowed for statistical purpose.

ITA No.1027/PUN/2011
A.Y. 2006-07

58. Grounds raised by assessee for assessment year 2006-07 read as under:

“1. On the facts and in the circumstances prevailing in the case and as per the provisions of law, the CIT(A) has erred in confirming the addition of Rs.04,18,207/- considering the facts and evidences presented before him & explanation filed by the appellant. The aforesaid addition confirmed by CIT(A) and his finding being legally and factually, unsustainable, arbitrary and devoid of merits , the same may please be deleted.

2. The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

59. During proceedings before the Tribunal, deviating from the above grounds, ld. AR for the assessee raised additional grounds summarized in the chart form and the same are extracted as follows.

“1. Ground of appeal No.1: *By this ground of appeal, the disallowance of Rs.3,00,000/- on account of alleged unexplained expenditure sustained by the learned CIT(A) is challenged on the ground that in the absence of better particulars the ad-hoc disallowance is bad in law and deserves to be deleted.*

2. Additional ground of appeal No.1 : *By this ground of appeal, the disallowance of Rs.1,00,000/- sustained by the learned CIT(A) out of dubbar expenses and labour charges is challenged on the ground that in the absence of incriminating material the impugned disallowance is bad in law and deserves to be deleted.*

3. Additional ground of appeal No.2 sought to be raised: *By this ground of appeal the appellant is challenging the addition of Rs.18,207/- confirmed by the learned CIT(A) on account of unproved agricultural income.*

Ground of appeal no.1 relating to the disallowance of Rs.3,00,000/-

60. The facts of the case of the above ground are identical to the facts of preceding assessment year 2005-06 in ITA No.1026/PUN/2011 which we have already adjudicated and decided the issue in favour of the assessee. Therefore, our decision in ground of appeal no.1 in ITA No.1026/PUN/2011 for the assessment year 2005-06 shall apply mutatis mutandis to the said ground of appeal no.1. Accordingly, ground of appeal no.1 is allowed.

Additional Ground of appeal No.1 – disallowance of Rs.1,00,000/- on
account of dubbar expenses and labour charges.

61. The facts of the case of the above ground are identical to the facts of preceding assessment year 2005-06 in ITA No.1026/PUN/2011 which we have already adjudicated and decided the issue in favour of the assessee. Therefore, our decision in additional ground of appeal no.1 in ITA No.1026/PUN/2011 for the assessment year 2005-06 shall apply mutatis mutandis to the said ground of appeal no.1. Accordingly, ground of appeal no.1 is allowed.

Additional Ground of appeal No.2 relating to the addition of Rs.18,207/-

62. The facts of the case of the above ground are identical to the facts of preceding assessment year 2005-06 in ITA No.1026/PUN/2011 which we have already adjudicated and decided the issue in favour of the

assessee. Therefore, our decision in additional ground of appeal no.2 in ITA No.1026/PUN/2011 for the assessment year 2005-06 shall apply mutatis mutandis to the said ground of appeal no.1. Accordingly, ground of appeal no.1 is allowed.

63. In the result, appeal of the assessee for assessment year 2006-07 is allowed.

64. Resultantly, all the three appeals of the assessee are disposed off in terms indicated above.

Order pronounced on 01st day of March, 2019.

Sd/-	Sd/-
(विकास अवस्थी /VIKAS AWASTHY)	(डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01st March, 2019.

SB/Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Aurangabad.
4. The CIT, Central, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True Copy//

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.