



M/s Best Paper Mills Pvt. Ltd.
Assessment Years : 2007-08 to 2013-14

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. / I.T.A. No.975/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2007-08)
&
2. आयकर अपील सं. / I.T.A. No.984/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)
&
3. आयकर अपील सं. / I.T.A. No.988/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)
&
4. आयकर अपील सं. / I.T.A. No.985/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2010-11)
&
5. आयकर अपील सं. / I.T.A. No.986/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)
&
6. आयकर अपील सं. / I.T.A. No.987/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)
&
7. आयकर अपील सं. / I.T.A. No.989/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT-9(2)(1) Room No.665A, 6 th Floor Aaykar Bhavan, M.K. Marg Mumbai-400 020.	बनाम/ Vs.	M/s. Best Paper Mills Pvt.Ltd. 2, Ground Floor, Ram Niwas Paranjpe “B” Scheme Road No.3, Vile Parle(E) Andheri, Mumbai-400 057.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AAACB-2782-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

- &
- 8.C.O. No.126/Mum/2018
(Arising out of ITA No.984/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2008-09)



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- &
9.C.O. No.127/Mum/2018
(Arising out of ITA No.988/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2009-10)
- &
10.C.O. No.128/Mum/2018
(Arising out of ITA No.985/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2010-11)
- &
11.C.O. No.129/Mum/2018
(Arising out of ITA No.986/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2011-12)
- &
12.C.O. No.125/Mum/2018
(Arising out of ITA No.987/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2012-13)
- &
13.C.O. No.130/Mum/2018
(Arising out of ITA No.989/Mum/2017)
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Best Paper Mills Pvt.Ltd. 2, Ground Floor, Ram Niwas Paranjpe "B" Scheme Road No.3, Vile Parle(E) Andheri, Mumbai-400 057.	<u>बनाम/</u> Vs.	DCIT-9(2)(1) Room No.665A, 6 th Floor Aaykar Bhavan, M.K. Marg Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-2782-M		
(प्रत्याक्षेपक / Cross Objector)	:	(प्रत्यर्थी / Respondent)

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14.आयकर अपील सं. / I.T.A. No.772/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2007-08)
- &
15.आयकर अपील सं. / I.T.A. No.773/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)
- &
16.आयकर अपील सं. / I.T.A. No.774/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)
- &
17.आयकर अपील सं. / I.T.A. No.775/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Best Paper Mills Pvt.Ltd. 2, Ground Floor, Ram Niwas Paranjpe "B" Scheme Road No.3, Vile Parle(E) Andheri, Mumbai-400 057.	<u>बनाम/</u> Vs.	DCIT-9(2)(1) Room No.665A, 6 th Floor Aaykar Bhavan, M.K. Marg Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-2782-M		



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(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
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Assessee by	:	S/Shri B.V. Jhaveri and M. Gopal Krishnan- Ld. ARs
Revenue by	:	Shri Rajesh Kumar Mishra- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05/04/2019
घोषणा की तारीख / Date of Pronouncement	:	19/06/2019

आदेश / ORDER

Per Bench

1. The aforesaid cross-appeals as well as cross-objections for several Assessment Years [AY] arises out of common order passed by Ld. Commissioner of Income-Tax (Appeals)-16, Mumbai, [CIT(A)] on 25/11/2016 for AYs 2007-08 to 2013-14. For ease of reference and better understanding, the same could be tabulated in the following manner: -

No.	ITA / CO No.	AY	Assessment framed u/s	Assessment order dated	Remarks
1.	975/Mum/2017	2007-08	143(3) r.w.s. 147	24/03/2015	Revenue's Appeal
2.	984/Mum/2017	2008-09	143(3) r.w.s. 147	24/03/2015	Revenue's Appeal
3.	988/Mum/2017	2009-10	143(3) r.w.s. 147	26/03/2015	Revenue's Appeal
4.	985/Mum/2017	2010-11	143(3) r.w.s. 147	24/11/2015	Revenue's Appeal
5.	986/Mum/2017	2011-12	143(3)	27/01/2014	Revenue's Appeal
6.	987/Mum/2017	2012-13	143(3)	20/03/2015	Revenue's Appeal
7.	989/Mum/2017	2013-14	143(3)	22/02/2016	Revenue's Appeal
8.	126/Mum/2018	2008-09	143(3) r.w.s. 147	24/03/2015	Assessee's Cross-Objections
9.	127/Mum/2018	2009-10	143(3) r.w.s. 147	26/03/2015	Assessee's Cross-Objections
10.	128/Mum/2018	2010-11	143(3) r.w.s. 147	24/11/2015	Assessee's Cross-Objections
11.	129/Mum/2018	2011-12	143(3)	27/01/2014	Assessee's Cross-Objections
12.	125/Mum/2018	2012-13	143(3)	20/03/2015	Assessee's Cross-Objections
13.	130/Mum/2018	2013-14	143(3)	22/02/2016	Assessee's Cross-



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					Objections
14.	772/Mum/2017	2007-08	143(3) r.w.s. 147	24/03/2015	Assessee's Appeals
15.	773/Mum/2017	2008-09	143(3) r.w.s. 147	24/03/2015	Assessee's Appeals
16.	774/Mum/2017	2009-10	143(3) r.w.s. 147	26/03/2015	Assessee's Appeals
17.	775/Mum/2017	2010-11	143(3) r.w.s. 147	24/11/2015	Assessee's Appeals

The assessee's cross-objections are in support of the impugned order whereas the assessee's appeals contest validity of reassessment proceedings u/s 147. The revenue's appeal arises out of quantum relief provided by Ld. CIT(A) in the impugned order.

2.1 Taking AY 2011-12 as the lead year, we proceed to adjudicate the same. The grounds raised by the revenue reads as under: -

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of suppression of yield without appreciating the facts of the case?"
2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that persons whose statements were recorded were technical persons and, therefore, their statements could not be relied upon when the yield can be stated only by technical persons?
3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the evidence in the form of blank challans, statements of the suppliers and statement of the Technical Director?
The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the DCIT 9(2)(1) be restored.

2.2 Facts in brief are that assessee being *resident corporate assessee* stated to be engaged in *manufacturing of MG Craft Paper* was assessed for impugned AY u/s. 143(3) of the Act on 27/01/2014 wherein income of the assessee was determined at Rs.1701.02 Lacs after sole addition of Rs.1097.13 Lacs on account of alleged suppression of yield as against returned income of Rs.603.99 Lacs e-filed by the assessee on 02/09/2011. Notice u/s 143(2) was issued to the assessee on



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31/07/2012 which was followed by notice u/s 142(1) wherein the assessee was directed to file requisite information / details / documents in support of the returned income. As evident from revenue's ground of appeal, the sole issue under consideration is certain estimated addition on account of alleged understatement of yield by the assessee in manufacturing process.

Quantum Assessment Proceedings

2.3 During the course of assessment proceedings, It transpired that the assessee reflected yield of paper (in Metric Tons) at around 80% during AY 2011-12 as well as in the earlier years. The yield of impugned AY was reflected as 80.41%. The main raw material used for the production of *M.G. Kraft Paper* was indigenous paper waste and imported paper waste. The waste paper came from card-board of boxes / packing materials of TV, fridge and other packing material of similar nature. The company had two manufacturing units in the same premises at Plot No.57/FGH, GIDC, 1st Phase, Vapi, Gujarat. Unit-I was set up in 1997 whereas Unit-2 was set up in 2004. Both the units were stated to be working on same technology. The only difference being the finished paper produced in Unit-II was of higher strength because of use of higher percentage of imported paper waste.

2.4 The raw material i.e. waster paper was stated to be supplied to the assessee by various agents & suppliers in *lorries / trucks*, who in turn, collected the same from various *Raddiwalas* and small time waste paper collectors. The *Raddiwalas* were asked to make truck-load of waste papers which was supplied to the assessee company at its factory gate



where the load was weighed and delivery challans filled up with requisite details of quantity etc.

2.5 The manufacturing process involved procurement of waste paper which was put into pulper. The impurities like plastic, ropes, nails etc. were washed out through sieve and turbo along with pumps. This process was repeated several times. The resultant product was put in the machine chest where it was stored temporarily. Then the product was put into the machines which were adjusted to produce the required thickness of the Kraft Paper. The end product was placed in jumbo rolls which were then cut into smaller pieces as per the customers' order. The wastage created out of cutting of jumbo rolls was again used as raw material to produce finished goods. The only waste generated during entire manufacturing process was only the sand / dirt / ropes / threads / nails etc.

2.6 Discreet market enquiries from similar manufacturers revealed that the yield ratio in this line of manufacturing was around 90%. Another assessee namely *M/s. Aryan Paper Mills Pvt. Ltd.* stated to be engaged in similar line of manufacturing and assessed in the same range was showing yield of 89% to 90%. The aforesaid factors led the Ld. AO to doubt the yield reflected by the assessee. Accordingly, the assessee was asked to produce the purchase bills, weighment slips, lorry receipts etc. pertaining to purchase of indigenous raw material in order to justify the yield percentage.

2.7 Upon perusal of details furnished by the assessee, Ld. AO formed an opinion that yield has been suppressed by the assessee in its books



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of accounts by inflating purchase of indigenous waste paper stated to be procured from various parties. These parties were identified as follows: -

- i) *M/s Ajay Trading Co.*
- ii) *M/s Ajit Trading Co.*
- iii) *M/s Anmol Trading Co.*
- iv) *M/s Rajendra Trading Co.*
- v) *M/s Poojan Trading Co.*
- vi) *M/s Kunal Traders*
- vii) *M/s Hetal Enterprises*
- viii) *M/s Raj Trading Co.*

It transpired that these parties made substantial sales to the assessee and declared meager income. Another feature noted was that these parties reflected substantial purchases from unregistered parties in cash.

2.8 The perusal of sample delivery challans issued by these parties revealed that all details on the challans were written in blue ink whereas the quantity was mentioned in black ink. Further, the signature of recipient of goods in the premises of the assessee was invariably in black ink. This peculiar feature was noted on all the challans issued by different parties. The said factors led the Ld. AO to believe that the quantities mentioned on the challans were filled by assessee's employees and not by the aforesaid suppliers / sellers. The perusal of bank accounts of few suppliers revealed that huge cash was withdrawn immediately after depositing the cheques. Another observation was that the weighing slips of all the purchases from these parties was issued by the assessee only and they were not carrying any serial number. It was observed that tare weight of few vehicles was different in weighing slips for same vehicle. The perusal of purchase bills, weighing slips and delivery challans pertaining to M/s Ajay Trading Co., M/s Ajit Trading Co. & M/s Anmol Trading Co. were produced during the course of



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assessment proceedings for verification wherein it was noted that delivery challans were not numbered, susceptible for manipulation and hence, not reliable.

2.9 In the above background, during the course of assessment proceedings, the assessee was subjected to survey action u/s 133A on 10/01/2014 wherein the statement of few of the suppliers was recorded, the relevant portion of which has already been reproduced in the quantum assessment order. During survey, some blank original delivery challan books of above-mentioned parties / entities bearing the signatures of the suppliers was found. The description of the material and weight was not written and it was observed that the same were filled by assessee's employees as per their convenience. The shortcomings in the challan books impounded during survey proceedings have been tabulated by Ld. AO in *para-8* of the quantum assessment order.

2.10 Accordingly, Ld. AO formed an opinion that the assessee utilized these concerns for inflating its purchase of indigenous waste paper which was corroborated by signed blank delivery challans of these parties as found during survey operations. The same was done with a view to inflate the consumption of raw material leading to lower yield and thereby leading to suppression of taxable income.

2.11 During survey proceedings, the statement of one of the suppliers namely Shri Rajesh Shah prop. M/s Raj Trading Co. was recorded. Some of the questions which would be pertinent to adjudication of the appeals, could be extracted in the following manner: -

Q.5 How do you purchase goods from your suppliers?

Ans. There are many URD suppliers who keep contacting us for supply of waste papers collected by them. After negotiating for rates, I instruct them to deliver their goods directly at



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the factory premises of either BEST Paper Mills Pvt. Ltd. or Supreme Kraft Paper P.Ltd. depending upon the nature and quality of their paper waste.

The rates negotiated with the URD suppliers include the Cost of transportation. The mode of transportation is decided by the URD suppliers themselves.

Q.6 What records do you maintain about purchases from the so-called URD suppliers and payments towards the same?

Ans. On our instruction, the URD suppliers deliver their goods at factory premises of our customers, viz, BEST Paper Mills Pvt. Ltd. or supreme Kraft Paper P.Ltd.

We have kept our blank delivery challan books at the gate of Best Paper Mills Pvt. Ltd., who receive the goods on our behalf. The person at the gate of the Mill weighs the goods and fill-up the blank delivery challan books kept with them. The delivery challans are prepared in duplicate, white copy is original which is kept by the Mill themselves and green copy is duplicate which is collected by us everyday from the Mill - almost twice a day. I am producing herewith delivery challans which were collected yesterday.

Based on duplicate copy of delivery challans collected by us, we prepare purchase vouchers which are computerized. The bills prepared by us include the name of the URD suppliers, quantity, rate and value of the goods supplied by them.

Depending upon cash withdrawals and available cash balance, we make Payments to the concerned URD suppliers. On payment of cash to the URD suppliers we obtain their signatures on payment vouchers.

The purchase vouchers are with regard to supply of goods by the URD suppliers whereas payment vouchers are with regard to payments made to the URD suppliers for the goods delivered by them to the mills on our behalf.

I am producing herewith purchase vouchers and payment vouchers for your kind verification.

Q.7 On verification, it is observed that while purchase vouchers are mostly prepared for nearly lakhs of rupees, but all the payment vouchers are less than Rs.19,800. Please explain.

Ans.: Here I would like to state that the purchase vouchers contain amounts for every single delivery of goods at the factory premises. Mostly the value of the goods delivered exceeds Rs.20,000 and hence the purchase vouchers are for that much amount exceeding Rs.20,000.

All the suppliers are illiterate and do not maintain any bank account. Hence, they insist on cash payments. As per Income-tax rules, we are not supposed to make payments exceeding Rs.20,000 on a single day to any particular person. To comply with this rule, we make payments to the URD suppliers in cash for amounts less than Rs.20,000 on two to five different days,

Q.8 Do you keep blank delivery challans at the gate of Supreme Kraft Paper P. Ltd. also?

Ans.: No, I do not keep any blank delivery challans.

Q.9 When blank delivery challans are kept at the gate of BEST Paper Mills Pvt. Ltd. why no blank delivery challans at the gate of Supreme Kraft P.Ltd.?

Ans.: I have been dealing with BEST Paper Mills P. Ltd. for the last 10 to 12 years, whereas my dealings with Supreme Kraft Paper P. Ltd. is since last 5 to 6 years. Further, 70% to 80% of my sales are to BEST Paper Mills P. Ltd. and 20% to 30% sales are to Supreme Kraft Paper P. Ltd. Hence, I have not kept any delivery challans with Supreme Kraft Paper P. Ltd.

Q. 10. How do you raise sale bills on your customers?

Ans We raise sale bills on the basis of delivery challans collected by us from the factory premises of BEST Paper Mills P. Ltd. or in the case of Supreme Kraft Paper P. Ltd. the delivery challans given to us by URD suppliers. One sale bill is prepared based on 8 to 10 delivery challans.

Q.11. What are- the contents of the Sale Bills?



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Ans. Sale bills contain particulars of goods, Vehicle/Truck No. by which the goods were delivered, quantity, rate and amount.

I am producing herewith sale bills raised upto 09-01 -2014 for your kind verification.

Q.12 It is observed that both Purchase vouchers, and Sale bills are prepared based on delivery challans collected/received by you. However, while sale bills contain Vehicle/Truck Nos., purchase vouchers do not contain the same. Why?

Ans.:This omission is by mistake and there is no particular reason for not writing the vehicle number in the purchase vouchers.

Upon perusal of statement and factual matrix, Ld.AO formed an opinion that the stated entity was in collusion with the assessee and all the transactions were manipulated in order to accommodate the assessee.

Similar statement was also recorded from *Shri Kunjal Shah*, Partner of *M/s Poojan Trading Co. u/s. 131* prior to the date of survey, the relevant extract of which has also been reproduced in *para 11* of the quantum assessment order.

2.12 During survey proceedings at assessee's premises on 10/01/2014, the statements of various other persons were also recorded. *Shri Tarkeshwar Singh*, Machine-in-charge of Plant No. 1 submitted that yield of the plant-1 varied between 80% to 90% whereas *Shri Arvind Singh*, Machine-in-charge of Plant No.2 submitted that yield was 90%. *Shri Rajeev Shetty*, Accounts-in-charge submitted that the goods were received at the factory gate where the goods receipt notes [GRN] were generated, Based on GRN, the inward register was maintained in the computer and stock register was prepared. The goods lying in the store was issued based on consumption needs of Plant-1 & Plant-2. The consumption need was delivered through a paper on which the quantity of waste paper along with the chemicals was mentioned. The consumption ledger was generated after the issuance of raw materials by the store. Thereafter, the reel-wise production of the finished goods was entered into the computer. It was also submitted that it was



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company's policy to tear off the paper immediately after entering the requisite quantity of raw material into the computer system. *Shri D.B.Ashar, Director (Technical)* submitted that Unit No.1 was single wire whereas Unit No. 2 was triple wire and the strength of paper produced in Unit No. 1 was lower in comparison to strength produced by Unit No.2. It was submitted that 12% to 15% went into waste and the difference in wastage produced by the two units was negligible.

2.13 All these facts and circumstances were confronted to *Shri Ramesh K. Shah*, Managing Director [MD] of the assessee during the course of survey proceedings who was stated to have admitted that the yield could be about 85% and accordingly, offered additional income on account of suppression of yield for AYs 2011-12 to 2013-14 and 2014-15 (up-to 10/01/2014 i.e. up-to the date of survey). The quantum assessment order, at *para 13*, record a finding that the yield on the date of survey was to the tune of 83%.

2.14 In the aforesaid circumstances, Ld. AO, in the course of assessment proceedings, formed an opinion that the assessee's books of accounts were not reliable and accordingly rejected.

2.15 During the course of assessment proceedings, the assessee is stated to have submitted that the yield during financial year 2013-14 was 83.44% and accordingly, the yield for the impugned AY may be considered as 84%. However, rejecting the same, adopting yield of 87%, bogus consumption of indigenous waster paper was worked out to be 9455.60 Tones valued at Rs.1097.13 Lacs. Accordingly, the same was added to the income of the assessee as inflated purchases on account of suppression of yield.



Proceedings before Ld. CIT(A)

3.1 Aggrieved, the assessee contested the same before the Ld. CIT(A) vide impugned order dated 25/11/2016 which is common order for AYs 2007-08 to 2013-14. During appellate proceedings, the assessee filed detailed submissions and contested the rejection of books of accounts and consequential estimation of yield as made by Ld. AO. The relevant submissions of the assessee has already been extracted on *para no. 5* of the impugned order, which are not reproduced here for the sake of brevity.

3.2 In the said submissions, the assessee, *inter-alia*, explaining the *modus operandi* of procurement of raw material and manufacturing process, controverted each and every findings of Ld. AO and assailed the conclusions drawn therefrom. It was submitted that the yield was estimated in an arbitrary manner without pointing out any specific defects in the books of account and without there being any incriminating material to substantiate the findings. The attention was also drawn to the fact that statements recorded during survey proceedings u/s 133A would have no evidentiary value unless corroborated with circumstantial evidences. It was also submitted that MD of the assessee never admitted that yield was manipulated in the books of accounts. The assessee also denied having admitted to surrender of additional income before Ld.AO.

3.3 The information as well as documents filed by the assessee were subjected to three remand proceedings vide remand reports dated 23/11/2015, 08/08/2016 & 05/10/2016 which were furnished by Ld. AO



along with assessment & survey folders and the said material was duly considered by Ld. first appellate authority. The proceedings of three remand reports could be summarized in the following manner.

First Remand Proceedings

4.1 The remand report filed by Ld. AO on 23/11/2015 was confronted to the assessee who filed rejoinder against the same and paragraph wise comments were given against each and every observation made by Ld.AO.

4.2 In sum and substance, the assessee submitted that findings of Ld. AO were not corroborated by any evidences. All the suppliers had filed their respective Income Tax Returns reflecting sales made by them to the assessee which stood corroborated by the statements given by them during survey proceedings. The survey team did not bring forth any material evidence on record to prove that any bogus purchases were debited in the books of accounts.

4.3 It was also submitted the employees of the assessee were not technical expert and gave theoretical average of yield as per their own perception only and not the actual yield based on various factors specific to the assessee. The attention was drawn to the fact that actual yield on the date of survey was 83% which was not disputed by Ld. AO and therefore, no additions would be sustainable merely on the basis of bald allegations.

4.4 Regarding confessional statement made by *Managing Director [MD]*, the assessee assailed the same by submitting that nowhere in the statement, the *MD* admitted to have manipulated the actual yield and the confession was not voluntary but a forceful one which was made at the



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behest of survey team. In fact, the MD made a statement that composite yield during the year was around 83.44% which stood corroborated by the finding of Ld. AO that actual yield on the date of survey was approx. 83%. Reliance was placed on the decision of Hon'ble Madras High Court rendered in **CIT V/s S.Khader Khan [300 ITR 157]** as confirmed by Hon'ble Supreme Court reported at **352 ITR 480**. Reliance was also placed on **CBDT Comm. No. 286/2/2003-IT(Inv.) dated 10/03/2003** to submit that departmental authorities were not be obtain confessions as to undisclosed income but concentrate on the collection of evidence of undisclosed income.

4.5 The assessee also controverted the manner of yield estimation as adopted by Ld. AO and submitted that the same was arbitrary and without any basis. The attention was drawn to the fact that the yield of 87% as adopted by Ld. AO was nothing but estimated average yields of 85% & 90% of Unit-I & Unit-II respectively without there being any supportive material to substantiate the estimation. It was submitted that no expert opinion was obtained by Ld. AO to arrive at such estimation. Therefore, the addition merely on presumption, guess-work could not be sustained in the eyes of law. The assessee bolstered the same by submitting that the assessee approached government bodies i.e. Central Pulp & Research Unit (CPPRI) & Shriram Institute of Industrial Research (SRI) to study the manufacturing process and scientifically estimate the assessee's yield in manufacturing process. Both the reports, as per assessee's submissions, corroborates the yield reflected by the assessee during manufacturing process and the same has remained uncontroverted.



Second Remand Proceedings

5.1 In the above background, Ld.AO was specifically asked to file details of any incriminating material in the form of documents found during survey proceedings which could prove that the purchases were inflated or sales were suppressed. The Ld. AO filed another remand report dated 08/08/2016 which was again confronted to the assessee.

5.2 During these remand proceedings, summons / notices were issued to the remaining 6 suppliers directing them to produce evidences related to sale made by them to the assessee. All the parties attended and submitted that they were regularly filing their respective return of income along-with audited accounts. Such audited accounts reflected the sales made by them to their customers including the assessee. They further stated that all the sales made by them to the assessee was recorded in the books of accounts as duly supported by Sales invoices & delivery challans. They also filed their copies of return of income, audited accounts, ledger extracts, bank statements highlighting the transactions along with copies of bills / invoices pertaining to the assessee. They also filed copies of Sales Tax / VAT returns filed by them before the respective authorities. The parties also submitted that since all the purchases were made by them from unregistered petty vendors in cash and therefore, heavy cash was withdrawn from their respective bank accounts to make onward payment to these unregistered vendors / dealers.

5.3 The assessee, reiterating its stand, *inter-alia*, submitted that the assessee was maintaining full particulars of purchase / consumption of quantity of waste paper electronically and the entire consumption could



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be verified from the records. The same was sought to be fortified by the fact that no discrepancies were noted by the survey team in the stock of raw material on the date of survey. Neither the survey team nor the Assessing Officer had pointed to any document which constitute a discrepancy between books of account, physical quantity of stock and other records. The Ld. AO chose to rely merely on the self-confessional statement extracted forcibly by the survey team during survey on 10/01/2014 to make an addition in AY 2011-12, which was very much against the spirit of cited CBDT circular dated 10/03/2003.

Third Remand proceedings

6. In view of assessee's submissions, Ld. AO was again called for along with assessment records and survey folders and also directed to point out any incriminating material collected during the course of survey and assessment proceedings. The Ld. AO, vide remand report dated 04/10/2016 reiterated the observations as made in earlier remand reports which were controverted by the assessee in similar manner. The assessee also submitted that the two entities namely M/s Aryan Paper Mills private Limited and M/s Gayatrishakti Paper & Board Limited as picked up by Ld. AO to make yield comparison, were not comparable to the assessee since the quality of paper manufactured by them was different and different Plant & Machinery was being used by them to manufacture the paper.

Findings of Ld. CIT(A)

7.1 The Ld. CIT(A) considered the factual matrix in paras 9 to 9.12 and observed, in *para-10*, that no incriminating material regarding unaccounted cash, purchases, sales or investment was found during the



course of the survey. No inventory of stock was prepared by the survey team and no defect was found either in cash or in stock on the date of survey. Further, no incriminating material regarding suppression of sales or of unaccounted purchases were found during the course of the survey.

7.2 It was observed in *para 10.1*, that the MD of assessee company, while answering to question nos. 16 to 27, submitted that all the books of accounts were correct and there was no manipulation of yield. The MD of the company did not agree with the interpretation of survey team regarding the yield ratio. The MD clearly explained all the aspects of the yield and interpreted the various statements of employees in the correct perspective.

7.3 It was also observed that on the date of survey the average yield found during financial year 2013-14 till the date of survey i.e. 10/01/2014 was worked out as 83.44% which was not disputed by survey team or Ld. AO. In fact, it was the observation of Ld. AO that yield ratio appearing in the books of account around the date of survey was to the tune of 83% where the assessee had not been able to manipulate the books to that extent. Further, there was addition to Plant & Machinery during the period 01/04/2010 to 31/03/2014 which supported assessee's stand that there was gradual increase in yield on year to year basis during aforesaid period.

7.4 Regarding estimation of yield, it was observed that the assessee produced technical opinion from govt. bodies i.e. CPPRI & SRI. Expert from these institutes visited the factory premises of the assessee and gave technical opinion regarding yield of the company. However, Ld. AO



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did not examine the technical opinion or sought any third-party opinion on the same which was in contradiction to CBDT Instruction No. 5/2011 [F.No.225/61/2011-IT(A-11)] dated 30/03/2011 which mandate Ld. AO to seek technical opinion in cases involving complex issue of technical nature. This requirement was also highlighted in the decision of Hon'ble Supreme Court rendered in **CIT V/s Bharti Cellular Ltd. [330 ITR 239]**. However, Ld. AO merely preferred to rely on the general statements made by the employees during the course of survey. The said statements were not supported by any documentary evidences.

7.5 Regarding confession by MD, it was observed at para-10 that survey team had requested the MD to disclose yield at the rate of 85% for various assessment years. Relying upon the statement made on 10/01/2014, Ld. AO chose to made addition for AY 2011-12 without there being any other independent evidence in support of the yield either as per the self-confession of the assessee or as estimated by Ld. AO. The same was in contradiction to CBDT instructions dated 10/03/2003 and 18/12/2014 which discouraged the reliance on self-confessions and declarations obtained during the course of surveys and others proceedings with a view to make additions while farming assessment orders. The relevant extract of the circulars has already been reproduced in the impugned order.

7.6 It was further observed in *para 10.6*, that Ld. AO examined all the suppliers who corroborated the genuineness of sale of waste paper to the assessee. These suppliers were regularly filing their respective Income Tax Returns. All the suppliers were registered with the Sales Tax Department and filing the requisite Sales Tax / VAT Returns. Therefore,



the conclusion that the assessee made bogus purchases was not factually correct.

7.7 Regarding huge cash withdrawals made by the suppliers of the assessee, the Ld. CIT(A) concurred with assessee's submissions that the assessee could not exercise control over the conduct of business of the suppliers. The assessee purchased huge volume of waste paper which was delivered by approx. 50 to 60 trucks every day. The payments to the suppliers were through banking channels and the suppliers were assessed to tax and therefore, no adverse inference could be drawn from such business practices of the suppliers in relation to yield of the assessee which was manufacturing related subject.

7.8 The Ld. CIT(A) also observed that no independent evidence in support of declaration obtained during the course of survey has been brought on record. The alleged suppression of yield was not supported by any excess physical stock or unaccounted cash found during survey, no evidence of unaccounted sales / investments was brought on record and there was no other circumstantial evidence to support the alleged suppression of yield.

7.9 The Ld. CIT(A) also disapproved the stand of Ld. AO in rejecting the books of accounts since no specific defects or discrepancies were pointed out in the books. The books were duly audited. Further, Ld. AO merely estimated the yield at 87% which was nothing but estimated yield of 85% & 90% of Unit-I & II respectively. No credible reasons for making addition on such basis were given by Ld. AO.

7.10 At para 11.5, it was observed that MD, in its statement, clearly indicated that the yield for FY 2013-14 was 83.44% which was not



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disputed by the survey team. It was also noted that the MD of the assessee did not admit that the purchases were manipulated or that the actual yield was 85%. In fact, the survey team requested the MD of the assessee to offer additional income considering yield percentage as 85% and therefore, the confession was not voluntary. In the above background, Ld. CIT(A) opined that inferences drawn by Ld. AO on the basis of self-confession were not correct on facts.

7.11 Upon perusal of yield reflected by different comparable entities as picked up by Ld. AO, it was concluded that the stated entities were not comparable to that of assessee company. In fact, the assessee had disclosed higher taxable profit percentage than as reflected by M/s Aryan Paper Mills Pvt. Ltd. Therefore, mere fact of higher yield reflected by said entity could not be considered as an evidence or discrepancy which would constitute a justifiable ground to reject the books of accounts of the assessee and make addition for alleged suppression of yield.

7.12 The given factual matrix was considered at the threshold of various judicial pronouncements, the gist of which has already been reproduced in the impugned order. In sum and substance, it was noted that no addition could be made merely on the basis of statement obtained during survey proceedings without there being any cogent material on record to substantiate the same and these statements would have no evidentiary value. It was sine qua non that there was some other material to correlate undisclosed income with such statement.

7.13 Finally, after due consideration, Ld. first appellate authority reached a conclusion that no incriminating material / documents regarding unaccounted cash, stock, sales, purchases or investments were found



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during the course of survey proceedings. No discrepancy was found either in the cash or physical stock and Ld. AO heavily relied upon the statement of the employees recorded during the course of survey. The MD of the assessee categorically submitted that records of consumption and production were duly maintained and accounted in the books of accounts. The books of account were duly maintained and no discrepancies could be found by the survey team in the records maintained by the assessee. Finally convinced with assessee's submissions, the impugned additions as made by Ld. AO were deleted. The final observation of Ld. CIT(A) could be extracted in the following manner: -

16.1 From perusal of the relevant questions and their answers it is evident that the M.D. of the company categorically and repeatedly reiterated that records of consumption and production were duly maintained and accounted in the books of account. It was further stated that all the books of accounts were duly maintained and no discrepancy could be found by the survey team in the records maintained by the appellant.

16.2 In response to Q.No.20, the M.D. of the company stated that "*I stand by the fact that 83.44% is the actual composite yield percentage of the Plant 1 & 2. However, to buy peace of mind I am declaring 85% yield from AYs 2011-2012 to 2013-14.*" A careful examination of the statement revealed that it was not an unconditional disclosure. The appellant once again emphasized that actual yield was 83.44% on the date of survey and just for purchasing peace of mind he was admitting a yield @85%. If the yield was suppressed then either there must have been some unaccounted stock or proof of unaccounted sales or unaccounted investments as a result of suppression of yield. The survey team could not substantiate the higher yield by way of findings during the course of survey in the form of unaccounted sales, purchases, cash, stock or investments. Whereas in the first sentence of so-called disclosure statement, the appellant once again reiterated that actual yield was 83.44% on the date of survey. Since in the statement, the appellant emphasized that actual yield was 83.44% and just for purchasing peace of mind he was declaring the yield at 85% which was not supported by any of the findings of survey team during the course of survey. Since the statement is in itself contradictory, therefore it cannot be treated as a voluntary disclosure supported by any of the findings as a result of survey U/S.133A.

16.3 The A.O. has also heavily relied upon the statements of various persons employed at the plant which are discussed in the assessment order. Majority of the persons whose statements were recorded were technical persons related to maintenance and running of the plant. They were not the men of accounts.



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Moreover, they just stated estimate of percentage yield and not exact figures. As pointed out earlier, no incriminating documents were confronted during the course of survey while recording the statement of employees and M.D. of the company (statements recorded during the course of survey are attached as Annexure 1 to this order). Since these persons were not involved in the maintenance of accounts and calculation of the yield, therefore, in absence of any supporting documents their statements cannot be relied for making additions. For rejecting books of accounts, the Ld. A.O. mentioned in para 4 of the assessment that the assessee company had suppressed its yield by inflating purchases of indigenous waste paper in its books of accounts from various parties.

16.4 The names of such parties were mentioned at page 3 of the assessment order. U/s.250(4) of the Act, the A.O. was directed to issue summons u/s.131 and examine all the parties along with their books of accounts. In this regard a report was received 25.01.2016. All such parties not only appeared before the A.O. but also produced all necessary books and vouchers along with books of accounts. They not only admitted that all the purchases made by the appellant were genuine but also produced other supporting evidences. All were filing their income tax return and were also registered with the Sales tax Department. The A.O. had simply mentioned that purchases made by the vendor were mostly in cash and there were heavy cash withdrawals in the accounts of all these vendors. These parties were dealing in purchases of waste papers from small vendors. Keeping in view the nature of trade practice, discrepancies pointed out by the A.O. are not significant. Moreover, the appellant cannot be held responsible for the conduct of business of their vendors from which it had made purchases.

16.5 While rejecting the books of account, the A.O. had also relied upon the delivery challans and according to the A.O. two different types of inks were used while preparing the delivery challans. According to the appellant the delivery challans were prepared by 2 separate persons. The format in blue ink was prepared at the time of arrival of truck / lorry at gate by a different person and weight was taken at weighbridge by different person and as a matter of policy used different ink for clarity and accounting convenience. Moreover, delivery challans cannot be used for inflating the purchases without corresponding bogus purchase bills.

16.6. It was further clarified by the appellant that use of different ink facilitated accounting staff because different ink was clearly visible. There was no categorical, unconditional and voluntary disclosure. The A.O. had no cogent material for rejecting the books of accounts. He could not find any discrepancy in stock, cash, sales, or investment. He has rejected the books of account just on the basis of certain assumptions and suspicions. In view of these the action of the A.O. for invoking the provisions of Section 145 cannot be sustained. Since the books of account maintained by the appellant were duly audited and no concrete discrepancies were pointed out, therefore addition on the basis of percentage yield cannot be sustained. Moreover, the comparable considered by the A.O. were also not similar in terms of turnover, net profit and type of machinery used, therefore, the comparable cannot be taken as correct comparable.

16.7 On the contrary, appellant has produced report of Govt. agent i.e. Central Pulp and Paper Research Institute which had conducted their on-spot trials and given their report which is reproduced at page no.53 of this order. The appellant has also submitted report of Shriram Institute for Industrial Research Institute which has



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prepared the report after on-spot trials. On the other hand, survey team did not try to take actual yield after observing the manufacturing trials during the course of survey. The technical reports prepared by the Central Pulp & Paper Research Institute and Shriram Institute for Industrial research Institute were also produced before the A.O. and also forwarded to the A.O. during remand proceedings. The A.O. had not found out any defect in the technical reports produced by the appellant.

16.8 The disclosure during the course of survey was not unconditional and it was also not supported by any documentary evidences. Moreover, the yield taken by the A.O. is also not supported by equal and fair comparable whereas the technical opinion given by the government agency supports the claim of the appellant. The A.O has failed to bring any cogent material necessary for invoking provisions of sections 145(3) of the Act. Hence without valid rejection of books of account, yield cannot be changed. As stated in the foregoing paragraphs, the A.O. has heavily relied upon the statement of various employees and M.D. of the appellant company which are discussed in the assessment order without bringing any independent cogent evidence in support of such reliance placed on it. In view of this, the facts of the appellant are similar to the facts of various case laws decided by the Hon'ble ITAT and Hon'ble High Courts discussed in the foregoing paras. Respectfully following the judgements of the Hon'ble High Courts and Tribunals, the appeal of the appellant is allowed and addition of Rs.10,97,13,327/- is deleted.

16.9 In the result, the appeal of the appellant for A.Y.2011-12 is allowed.

Aggrieved, the revenue is in further appeal before us. The assessee's cross objections are in support of the impugned order.

Submissions before us

8.1 The Ld. Departmental Representative [DR] primarily relying upon the stand of Ld. AO, submitted that the actual yield was higher which was evident from the statement of Technical Persons recorded during survey proceedings. The attention has been drawn to the confession made by Shri Ramesh K. Shah, in his statement, disclosing additional income on account of suppression of yield. Our attention is further drawn to the fact the blank delivery challan books were found from the premises of the assessee which were susceptible to manipulation. The quantity in the challans were filled by the assessee's employees only which is evident from the fact that different ink was used to fill the weight in the delivery challans. In the above background, it was submitted that



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Ld. AO was justified in estimating the yield as per the statement given by various persons during survey proceedings.

8.2 Per Contra, Ld. Authorized Representative for Assessee [AR], primarily relied upon elaborate submissions and evidences produced during appellate proceedings. It has been submitted that the issue has been clinched in proper perspective by Ld. first appellate authority which would warrant no interference. Reliance has been placed on following judicial pronouncements in support of various submissions: -

- i) Hon'ble Bombay High Court in Pr.CIT V/s Time & Space Haulers [ITA No. 52 of 2016 dated 04/07/2018]
- ii) Mumbai Tribunal in ITO V/s Times & Space Hauler [ITA No.1824/M/2011 dated 19/06/2015]
- iii) Mumbai Tribunal in ITO V/s Eternity Jewels [ITA No.1318/Mum/2016 dated 04/02/2019]
- iv) Hon'ble Kerala High Court in B.F.Varghese V/s State of Kerala [72 ITR 726]

Our findings and Conclusions

9.1 We have carefully heard the rival submissions, perused relevant material on record including the orders of lower authorities and deliberated on judicial pronouncements as cited before us.

9.2 The order of Ld. AO would reveal that yield percentage reflected by the assessee has been disturbed primarily by relying upon statements of assessee's employees & Managing Director as recorded during survey proceedings on 10/01/2014. The Ld. AO formed an opinion that the delivery challan books were susceptible for manipulation and the assessee has understated yield percentage by inflating purchase of raw material in the books of accounts.

9.3 Before proceeding, it would be imperative to highlight the *modus operandi* adopted by the assessee to procure the raw material from



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various suppliers. The facts on record would reveal that the assessee was sourcing waste paper from few suppliers, who in turn, were procuring the same from small vendors including *Raddiwalas* who were mainly operating in unorganized sectors. The rates of raw material were negotiated by these suppliers with the small vendors and after finalizing the same, the vendors were directed to deliver the waste paper directly at assessee's premises. Accordingly, truck loads of waste paper were directly delivered at assessee's factory gate where the weight of the waste paper was taken and entered into respective blank delivery challans kept by these suppliers at assessee's premises. One copy of the same was obtained by the suppliers from assessee's premises which formed the basis for generating sales invoices against the assessee and for making onward payment by these suppliers to the vendors. Another copy was retained at assessee's premises for feeding into the stock register which was maintained electronically. This peculiar *modus operandi* adopted by the assessee stood corroborated by the statement of all the suppliers as obtained by Ld. AO. The suppliers, in their statements, confirmed that blank delivery challans books were kept at assessee's premises for operational convenience to facilitate delivery of raw material. The survey team also found the blank delivery challan books at assessee's premises. The weight of truck loads was taken as assessee's factory gate which was filled into delivery challan books. This *modus operandi*, in itself explain the findings of Ld. AO that blank delivery challan books were found during the course of survey. In fact, the suppliers have admitted that blank books were kept at assessee's premises, which were filled with quantitative details after weighing the



raw material at the factory gate. This practice was adopted by the assessee for number of years for operational convenience. Therefore, no adverse inference could be drawn against the assessee by the fact that that blank delivery challan books were found at the factory gate. Similarly, no inference could be drawn by the fact that the weight was written in different ink.

9.4 Proceeding further, another fact to be noted is that the vendors of the suppliers were mostly unregistered dealers operating in unorganized sectors and were dealing in cash. The fact explains heavy cash withdrawal made by the suppliers from their respective bank accounts. Be that as may be, the assessee was not exercising any control over the conduct of suppliers' business and no adverse inference could be drawn against the assessee on the basis of cash withdrawals made by the suppliers. In fact, all the suppliers were filing their respective Income Tax Returns, their accounts were audited as per law and due compliances were made by them under VAT / Sales Tax laws. These suppliers confirmed having made sales to the assessee. There is not even an iota of submission that raw material was not supplied to the assessee. The payments to all the suppliers were made by the assessee through banking channels. No discrepancies have been found in the ledger statements of these suppliers. Nothing has been brought on record to establish that any cash got exchanged between the assessee and these suppliers on account of *alleged bogus supplies*. The allegations that these suppliers were in collusion with the assessee is not supported by any material.



9.5 Another pertinent fact to be noted is that no discrepancy has been pointed out by survey team in physical stock of raw material or finished goods on the date of survey. No evidence of suppressed sales, unaccounted cash / investments / sales have been brought on record. No defect has been pointed out either in cash or in stock during survey. The revenue is unable to point out that except for statements, any incriminating material was found during the course of survey proceedings. Pitted against the same was the fact that the assessee was a corporate entity and its books were duly audited as per law over the years. The auditors have not made any adverse comment on quantitative details being maintained by the assessee.

9.6 So far as the rejection of books of accounts is concerned, we find that no specific discrepancy or defects have been pointed out by Ld. AO in the books of accounts. In fact, the addition has been made by Ld. AO merely by disturbing the figures of purchase of raw material without disturbing any other component of books of accounts. We find that the assessee's books were subjected to Audit under Income Tax Act as well as under The Companies Act and the same could not be rejected in a light manner. Our view is fortified by the decision of this Tribunal rendered in **ITO V/s M/s Eternity Jewels [ITA NO. 1318/Mum/2016 dated 04/02/2019]** wherein it has been observed that Ld. AO could not reject the books merely on the basis of surmises and conjectures without pointing out any defect in the books of accounts. Similarly, Hon'ble Kerala High court in **B.F Varghese V/s State of Kerala [supra]** has held that mere fact that the yield disclosed in the books of accounts was not comparable with estimation made by assessing authority would be no



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ground to reject the books of accounts. This Tribunal in **ITO V/s Time and Space Haulers [ITA No.1824/Mum/2011 19/06/2015]** has confirmed the stand of Ld. CIT(A) that without pointing any particular defect in the audited accounts, it was not correct to reject the books u/s 145(3). This decision of Tribunal has already been confirmed by Hon'ble Bombay High Court wherein Hon'ble Court has observed that the power to reject books could be exercised only where Assessing Officer was not satisfied with the correctness and completeness of books of accounts. This satisfaction was sine qua non before rejecting the books. Therefore, the given factual matrix does not inspire us to sustain the stand of Ld. AO in rejecting the assessee's books of accounts.

9.7 So far as the veracity of statement recorded u/s 133A is concerned, we find that the same to be contradictory in nature since the Machine-in-Charge of Plant-I made a bald statement that the yield could be in the range of 80% to 90% whereas Machine-in-Charge of Plan-II submitted that the yield could be 90% whereas Director (Technical) submitted that there could be wastage of 12% to 15% and there was insignificant difference between the yield of two plants. Therefore, none of the statements, in our opinion, could be termed as reliable statement but given by the employees based on their own personal perception. The Managing Director, on the other hand, submitted that yield could be around 83.44% which is corroborated by the finding of Ld. AO that yield on the date of survey was 83% which could not be manipulated by the assessee. In reply to question no. 11, Shri Ramesh K. Shah [MD] submitted that wastage was generally in the range of 18-20%. In reply to question No. 15, it was submitted that records of consumption and



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production were duly maintained and accounted for in the books of accounts. In reply to question no. 19, the composite yield during the financial year 2013-14 was submitted to be 83.44%. Further, in reply to question no.20, the said fact was reiterated and at the same time, it was submitted that to buy peace of mind, the yield is being declared as 85% from AYs 2011-12 to till date, which has led Ld. AO to proceed with the additions in the hands of the assessee. However, Ld. AO, while estimating the yield, has disregarded the same also and adopted an arbitrary yield of 87%. No evidence, whatsoever, has been brought on record to establish as to how the yield was suppressed by the assessee and how the correct yield was 87%. The said estimates, in our opinion, were arbitrary and without any sound basis. The said estimation, as rightly noted out by Ld. first Appellate authority, was nothing more than an average of 85% and 90%, as submitted by the employees in their statements.

9.8 As against Ld. AO's estimation, the assessee placed on record expert opinion in the shape of reports of govt. agencies viz. Central Pulp & Research Unit (CPPRI) & Shriram Institute of Industrial Research (SRI) who studied the manufacturing process and scientifically estimated the assessee's yield in manufacturing process. The same was completely been disregarded and Ld. AO has not brought on record any expert opinion to counter the same which is contrary to CBDT instruction No.5/2011 [F.No.225/61/2011-IT(A-11) dated 30/03/2011 which require Ld. AO to seek technical opinion of experts and bring on record technical evidences in cases involving complex issue of technical nature. This requirement has also been highlighted by Hon'ble Supreme Court in **CIT**



V/s. Bharti Cellular Ltd. [330 ITR 239] wherein the Hon'ble Court emphasized on the need to rely upon the opinion from technical experts in cases involving complex technical matters so that Appellate forums are able to decide the legal issues based on the factual foundation of a case.

9.9 It is settled law that statements recorded during survey proceedings would have no evidentiary value unless corroborated with circumstantial evidences or cogent material to substantiate the same. The Hon'ble Madras High Court in similar factual matrix in **CIT V/s S.Khader Khan [300 ITR 157]** after considering the decisions of Hon'ble Supreme Court rendered in **Pullangode Rubber Produce Co. Ltd. V/s State of Kerala [91 ITR 18]** & Hon'ble Kerala High Court in **Paul Matthews and Sons V/s CIT [263 ITR 101]** culled out following principle as to statement made during survey operations u/s 133A: -

From the foregoing discussion, the following principles can be culled out:

- (i) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in **Pulkngode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18** ;
- (ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide **Paul Mathews and Sons v. CIT [2003] 263 ITR 101 (Ker.)**;
- (iii) The expression "such other materials or Information as are available with the Assessing Officer" contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide **CIT v. G. K. Senniappan [2006] 284 ITR 220 (Mad.)** ;



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- (iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S. Ajit Kumar [2008] 300 ITR 152 (Mad.);
- (iv) Finally, the word "may" used in section 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act", as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement, obtained under section 133A would not automatically bind upon the assesses we do not see any reason to interfere with the order of the Tribunal.

This cited decision has already been confirmed by Hon'ble Supreme Court by way of dismissal of Revenue's Appeal reported at **352 ITR 480**. Applying the aforesaid principal to the facts of the present case, we find that additions have primarily been made by Ld. AO on the basis of statements recorded during survey proceedings without bringing on record any circumstantial evidences or cogent material to substantiate the additions and therefore, the same could not be sustained under law. The CBDT Comm. No. 286/2/2003-IT(Inv.) dated 10/03/2003 & Comm. No.286/98/2013 IT (Inv.II) dated 18/12/2014 also reinforces the view that confessions, if not based on credible evidences, would serve no useful purpose. Further, it is trite law that additions could not be made merely on the basis of certain presumptions, conjectures or surmises. It is pertinent to note that, despite three remand proceedings, Ld. AO is unable to place on record any incriminating material as found during survey operations which would suggest suppression of yield by the assessee.



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9.10 The Ld. AO has compared the assessee's yield with other entities without elaborating the technology being used by those concerns and the contents / quality of raw material etc. procured by those firms. No conclusions, in our opinion, could be derived merely on the basis of bald comparison.

9.11 The assessee has also placed on record the yield percentage achieved during manufacturing process in earlier as well as succeeding years, which could be tabulated in the following manner: -

AY	Yield %
2004-05	80.481
2005-06	81.091
2006-07	80.057
2007-08	80.389
2008-09	81.395
2009-10	81.627
2010-11	80.627
2011-12	80.406
2012-13	81.191
2013-14	82.683
2014-15	83.672
2015-16	84.458
2016-17	84.602
2017-18	84.864
2018-19	86.822

Upon perusal, we find that the assessee was reflecting yield in the range of 80% to 81% from AYs 2004-05 to 2011-12. Thereafter, the yield has shown improvement which stood explained by the fact that there were additions in the Plant & Machinery from 01/04/2010 onwards which further corroborates assessee's stand.

10. Keeping in view the totality of facts and circumstances, we are of the considered opinion that Ld. CIT(A) was justified in deleting the quantum additions as made by Ld. AO on account of *alleged suppression of yield*. By confirming the same, we dismiss the appeal.



Revenue's Appeal for AY 2007-08 to 2010-11 & 2012-13 to 2013-14

11. Identical grounds have been raised by the revenue in these AYs. The impugned order is common order for all the years. Following its finding in AY 2011-12, Ld. first appellate authority has deleted additions in other AYs. Therefore, our findings, observations and conclusions as made for AY 2011-12, would *mutatis mutandis* apply to all these years. Resultantly, the revenue's appeals stands dismissed.

Assessee's Cross-Appeals : AYs 2007-08 to 2010-11

12.1 The assessee's appeal for 2007-08 to 2010-11 are identical worded and contest the validity of reassessment proceedings initiated by Ld. AO u/s 147 on the basis of AY 2011-12. The Ld. CIT(A) has confirmed the validity of reassessment proceedings by observing that Ld. AO has specific information of suspected purchases in his possession and there was *prima-facie* tangible material on record at the time of issuing notice u/s 148. Aggrieved, the assessee is in further appeal before us with the plea that reassessment proceedings were not in accordance with law and hence, deserves to be quashed in *toto*.

12.2 Since, we have already dismissed revenue's appeal on merits for all the years, delving into the legality of the same as urged by the assessee would become merely academic in nature and therefore, we refrain from dealing the same. Resultantly, the assessee's appeal for all the years stand dismissed as *infructuous*.

Assessee's Cross-Objections : AYs 2008-09 to 2013-14

13. The assessee's cross-objections in all the years are identical worded and merely support the findings of Ld. first appellate authority in the impugned order. Since we have confirmed the stand in the impugned



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Assessment Years : 2007-08 to 2013-14

order, no specific adjudication of the same would be required. The dismissal of revenue's appeal makes these cross-objections *infructuous*.

Conclusion

14. The revenue's appeals stand dismissed. The assessee's cross-appeals as well as cross-objections stands dismissed, being *infructuous*.

Order pronounced in the open court on 19th June, 2019.

Sd/-

(C.N. Prasad)

Sd/-

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/06/2019

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.