

**आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3786/Mum/2011

(निर्धारण वर्ष / Assessment Year: 2007-08)

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|---|------------------------|--|
| J.V. Chem (India),<br>B-1, Neelkanth Chhaya,<br>R.B. Mehta Marg,<br>Ghatkopar East,<br>Mumbai- 400077 | <b>बनाम/</b><br><br>v. | ITO 22(1)(2),<br>4 <sup>th</sup> Floor, Tower 6,<br>Vashi Rly. Station<br>Building,<br>Vashi,<br>Navi Mumbai |
| स्थायी लेखा सं./PAN :AABFJ4268L   |                        |  |

आयकर अपील सं./I.T.A. No.3763/Mum/2011

(निर्धारण वर्ष / Assessment Year: 2007-08)

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|---|------------------------|--|
| ITO 22(1)(2),<br>4 <sup>th</sup> Floor, Tower 6,<br>Vashi Rly. Station Building,<br>Vashi,<br>Navi Mumbai | <b>बनाम/</b><br><br>v. | J.V. Chem (India),<br>B-1, Neelkanth Chhaya,<br>R.B. Mehta Marg,<br>Ghatkopar East,<br>Mumbai-400077 |
| स्थायी लेखा सं./PAN : AABFJ4268L  |                        |  |
| (अपीलार्थी /Appellant)  | ..                     | (प्रत्यर्थी / Respondent)  |

|              |                            |
|--------------|----------------------------|
| Assesee by:  | Shri. Sanjay Parikh        |
| Revenue by : | Shri. Rajeev Gubgotra (DR) |
|              |                            |

सुनवाई की तारीख /Date of Hearing : 26.03.2019

घोषणा की तारीख /Date of Pronouncement : 24 -06-2019

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

These cross appeals, filed by assessee as well as by Revenue, being ITA No. 3786/Mum/2011 & ITA no. 3763/Mum/2011 respectively both for assessment year 2007-08 are directed against the appellate order dated 25.02.2011 in appeal no. CIT(A)-33/IT/1364/2009-10 passed by learned Commissioner of Income-tax (Appeals)-33, Mumbai (hereinafter called "the CIT(A)"), the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 29.12.2009 passed by learned

Assessing Officer (hereinafter called “the AO”) u/s 143(3) of the Income-tax Act, 1961 (hereinafter called “the Act”). Since both the appeals emanates from the same appellate order passed by learned CIT(A) and involves common issues, they are taken together and disposed off by this common order.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) in ITA no. 3786/Mum/2011 for AY 2007-08, reads as under:-

*“1. On the Facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs 7,29,641/- U/s 40 (a) (ia) and disallowed Rs.1,07,762/- being Commission paid to various parties. Looking to the facts & circumstances of the case, Your appellant request your honor that the assessing officer may be directed to delete the said addition of expenses amounting to Rs. 1,07,762 /- in toto.*

*2. The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting in disallowance of Rs. 10,605/-being transport charges. Your appellant request your honor to accept the claim of Transport Charges and delete addition of Rs. 10,605/- in toto.*

*3. The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs.84,944/- being disallowance of various expenses. Your appellant request your honor that the officer to delete the said addition of expense amounting to Rs.84,944/-.*

*4. The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs.15,692/- being disallowance of depreciation on car. Your appellant request your honor that the officer to delete the said addition of Rs. 15,692/-.*

*5. The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs.36,943/- being disallowance of Warehousing charges. Your appellant request your honor that the officer to delete the said addition of expense amounting to Rs.36,943/-.*

*6. The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs.25,088/- being disallowance of various expenses. Your appellant request your honor that the officer to delete the said addition of expense amounting to Rs.25,088/-.*

7. *The Learned Commissioner of Income Tax (Appeals) erred in law in not accepting your appellant plea for deleting the addition in toto of Rs.4,86,522/-- being disallowance u/s 41 (1) for purchases made from m/s Anil Enterprise. Your appellant request your honor that the officer to delete the said addition of Rs.4,86,522/-.*

8. *Your appellant craves leave to add, to amend and /or to alter any of the grounds of appeal, if need be.”*

3. The grounds of appeal raised by the Revenue in the memo of appeal filed with the tribunal in ITA no. 3763/Mum/2011 for AY 2007-08, reads as under:-

“1. *On the fact and circumstances of the case and in law, the Ld Commissioner of Income-tax (Appeals ) has erred in deleting the addition of Rs.62,41972/- by giving a finding that VAT/MVAT netted sales figure is reconciled on the basis of working as per Sec. 145 A which were not provided during the assessment proceeding and thereby admitting additional evidence in contravention of Rule46A.*

2. *On the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals ) erred in granting relief of Rs.5,00,000/- on account of addition made to closing stock without considering the fact that no register was maintained by the assessee as specified in the Audit report.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in granting the above relief without appreciating the fact that discrepancy in the stock was noticed during survey proceedings on 24/2/2009 vis-a-vis physical inventory taken on that date.*

4. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in granting relief of Rs.13,52,661/- on account of fall in G.P without appreciating the fact that the estimation of G.P was justified at the end of A.O. as no stock register was maintained by the assessee and further the assessee could not explain the inflated expenses of commission and transportation in the trading account.*

5. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made on account of unexplained commission expenses without appreciating the fact that the details produced during the scrutiny proceeding clearly reflected the discrepancy and the same could not be proved by the assessee.*

6. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made u/s. 41 (1) of the Act to the extent of 75% in respect of M/s. Anil Enterprises*

*without appreciating the fact that the said party could not establish transaction with the assessee both during assessment proceedings and remand proceedings.*

7. *The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.*

8. *The appellant craves leave to amend or alter any grounds or add a new ground, which may be necessary.”*

4. The brief facts of the case are that the assessee is engaged in trading in Chemicals. Survey action u/s. 133A of the 1961 Act was conducted by Revenue on 24.02.2009 at the business premises of M/s. J.V Chem at B-1, Neelkant Chhaya, R.B. Mehta Road, Ghatkopar (East), Mumbai - 400077 , sales office at 403, Parshwa Chambers, 17/21, Issaji Street, Masjid Bunder, Mumbai-400003 and godown at C/o Anand & Co. , Matre Compound, Val Grampanchayat, Ajoor Phata Road, Val Village, Bhiwandi, Thane. It was observed by the AO that regular books of accounts maintained by the assessee for impugned period were not found during the course of survey operations conducted by Revenue u/s 133A of the 1961 Act on 24.02.2009 at registered office nor it was found at sales office. The assessee , however , submitted during the course of survey operations that books of accounts are available in computer software programme. The statement on oath of Shri. Vipual Thosani, partner of the assessee was recorded by Revenue on 25.02.2019 who stated that the said books of accounts for the relevant period are available in computer software and the same was verified by the Revenue during survey operations. However, physical copies of the said regular books of accounts were not found for relevant period during survey operations. The assessee had given print out of purchases and sales register to the survey team for verification with the computer software . Based upon above factual matrix, the AO concluded that the assessee is not maintaining regular books of accounts.

4.2 The first addition is made by the AO in assessment framed u/s 143(3) of the 1961 Act vide assessment order dated 29.12.2009 on account of difference in sales as per print out taken from computer and sales declared by the assessee in the audited books of accounts for the relevant period, and the difference was noted as under:-

| A.Y     | Sales as per print out taken from computer | Actually sales credited to trading account | Difference in sales |
|---------|--|--|---------------------|
| 2007-08 | Rs. 16.00 Crores                           | Rs. 15.37 Crores                           | Rs. 0.63 Crores     |

4.3 The assessee was asked by the AO to explain the aforesaid difference in sales. The assessee during the course of assessment proceedings submitted before the AO , reconciliation statement of sales as per sales register and sales shown in P&L Account. The assessee submitted that the aforesaid differential in figures in sales is on account of MVAT/CST collected by the assessee which was although part of the sales invoices but was not considered part of the gross turnover as per Accounting Standards prescribed by ICAI . It was submitted by assessee that net turnover after adjusting MVAT/CST was credited to Trading Account while MVAT/CST collected was made part of the Balance Sheet directly and reflected under the head Liabilities or Assets after adjusting Input Credits set off on Purchases and also MVAT paid to Government. The assessee submitted that explanation with respect to sales reconciliation was given and further reconciliation statement of Sales as per sales register and sales as per P&L account for 3 years are also given and is part of the records. The assessee also contended that it will be wrong to say that books of accounts were not available at the time of survey. The assessee submitted that books of accounts along with supporting bills, vouchers etc were available at the time of survey and were produced before the survey team but due to shortage of space being only 180 square feet of the office and 15 people to accommodate in such a small space and since records were removed by survey team during survey operations and dumped/scattered in the office , it became difficult to trace some of the records at that time. It was submitted that all records and books of accounts were available in computer and the same were made available to survey team. The assessee submitted reconciliation of the sales summary before the AO during the course of assessment proceedings as under:

As per Summary

Rs. 15,96,95,157/-

|                      |                   |
|----------------------|-------------------|
| Less VAT Paid        | Rs.58,90,978/-    |
|                      | -----             |
| As per Balance Sheet | Rs.15,37,99,179/- |
|                      | -----             |

4.4 The AO was not satisfied with the reply furnished by the assessee and was of the view that the assessee has not produced evidences of payment of VAT nor the same were shown in Balance Sheet and P&L account as payable. The AO also observed that during survey item-wise sale for the above period were taken as per annexure on which total sales were reflected in the account at Rs. 16,00,41,149/- Thus, AO was of the view that the assessee has not offered any satisfactory explanations with respect to the differences in sales and also with respect to the payments of MVAT/CST. This led AO to make additions to the income of the assessee to the tune of Rs. 62,41,972/-, vide assessment order dated 29.12.2009 passed by the AO u/s 143(3) of the 1961 Act.

4.5 Being aggrieved by an aforesaid additions made to income of the assessee by the AO vide assessment order dated 29.12.2009 passed u/s 143(3) of the 1961 Act, the assessee filed an first appeal with learned CIT(A). After considering the submissions of the assessee , learned CIT(A) was pleased to accept the contentions of the assessee by holding that assessee is following exclusive method of accounting for sales and MVAT/CST , wherein sales are recorded in books of accounts after reducing MVAT/CST i.e. net of taxes . The learned CIT(A) observed that the assessee has submitted complete details including month wise Sales, MVAT/CST payments and Ld. CIT(A) was pleased to hold that additions are not sustainable in the eyes of law and thus, additions were ordered to be deleted by learned CIT(A) vide appellate order dated 25.02.2011, by holding as under:-

*“ 5. Ground No.(i) relates to addition on account of alleged sales discrepancies for an amount of Rs.62,41,972/-. In the assessment order in para No.7 the Assessing Officer has stated that sales as per print out taken from computer was found to be at Rs.16 crores during the course of survey action whereas sales credited to trading account found to be only to Rs. 15.37 crores. The Assessing Officer concluded that assessee has not offered convincing explanation in regard to the*

differences in sales and also the alleged payment of VAT. Then in para No.7.1 of the assessment order the officer has discussed that in absence of any satisfactory explanation from the appellant the difference is taken under the head Suppression of Sales an amount of Rs.62,41,972/-

5.1 The appellant has filed written submission during the course of appellate hearing and submitted that the same is on account of the fact that sales are reported in Profit and Loss Account as "Net of Tax" ie. MVAT Act which though from part of sales invoice, not considered as a part of the gross turnover. During the appellate proceedings the appellant has furnished copy of trading account inclusive of sales tax in support of their plea. I have gone through the trading account furnished, it is seen that the appellant is following exclusive method and sales are recorded after reducing VAT/CST on sales at Rs.15,37,99,177/-. As per the register showing month-wise sales where the amount 4% of CST, 4% of VAT and 12.5% VAT have been reflected totaling to Rs. 15,96,95,155/-. The VAT paid for an amount of Rs.58,95,978/- has been excluded to arrive at the figure Rs.15,37,99,177/- shown in the balance sheet. To my understanding the figures are reconciled and there is no discrepancy after taking into account VAT set off figures as claimed before Assessing Officer already. It is note worthy that a survey was conducted in the case on 24.02.2009 when accounts for A.Y 2007-08 were already completed and return was filed and sales figure in computer as per bills were found at Rs.16 crores. Hence, it cannot be assumed that the appellant has tried to suppress the sales figures with the help of VAT as VAT figures were also finalized by that time and were reflected in the ledger account already closed. Working as per clause 12(b) of 3CD has been furnished as under :

"Given below is the working as per section 145A which is self explanatory.

| J.V.Chem (India) A.Y.2007-08   |              |  |
|--|--------------|--|
| Clause 12(b) of 3CD  |              |  |
| The assessee follows Exclusive method for Accounting of VAT in relation            |              |  |
| The effect on Profit/Loss due to deviation from Sec 145A is calculated here below: |              |  |
| Gross Profit as per Books  | 3,261,313.00 |  |
| Add:- Vat on Sales   | 5,895,978-00 |  |
| Add:- Vat on Closing Stock   | -            |  |
| Less:- Vat on Purchase   | 5,498,213.00 |  |
| Less:- Vat paid  | 408,667.00   |  |

|  |              |  |
|--|--------------|--|
|  |              |  |
| Less:- Vat on Opening Stock                      | -            |  |
| Add:- Vat Refund                                 | 10,902.00    |  |
| Gross Profit as per Sec 145A                     | 3,261,313.00 |  |
| Note: No VAT is payable on Closing Stock         |              |  |
| Note: The Net impact on Profit & Loss A/c is Nil |              |  |

W  
e hope these will meet your requirement, if you need any further information, please let us know.”

Accordingly addition of VAT amount as difference is not sustainable and hence deleted. Ground No. (i) is allowed.”

4.6 The matter is now before tribunal at the behest of Revenue vide ground no. 1 raised by Revenue in memo of appeal filed with the tribunal. The Ld. DR submitted before the Bench that Ld. CIT(A) has not followed the mandate of Rule 46A of the Income-tax Rules, 1962 as additional evidences by way of working given for reconciling opening and closing stock vis-a-vis MVAT/CST to arrive at Income in terms of Section 145A were not before the AO and the learned CIT(A) ought to have forwarded the same to the AO for comments/remand report in terms of Rule 46A of the 1962 Rules. It was submitted by learned DR that survey operations u/s 133A of the 1961 Act were conducted by Revenue on 24.02.2009 and there was a difference in sales as per computer records and the actual sales as is recorded in books of accounts , which led to the additions on account of suppressed sales to the tune of Rs. Rs. 62,41,972/ . The learned DR relied upon assessment order passed by the AO and our attention was drawn to the orders of the authorities below. It was submitted by learned DR that learned CIT(A) erred in admitting additional evidences in violation of Rule 46A of the 1962 Rules and relief was granted to the assessee without forwarding additional evidences to the AO for comments/remand report. It was also submitted that MVAT/CST liability is not reflected in the Books of accounts, wherein it is explained that the amount of MVAT/CST is not reflected in the balance sheet nor the same is reflected in P&L account.

4.7 The Ld. Counsel for the assessee in rebuttal submitted that there is no mismatch between the sales recorded in the computer printouts and sales as

is reflected in the audited financial statements. It was explained by learned counsel for the assessee that the difference was only on account of MVAT/CST which was reflected in the Balance sheet after adjusting Input Tax Credits on Purchases and MVAT/CST deposited by the assessee with Government. It is explained that the assessee is following exclusive method of accounting which is a permissible method as approved by ICAI for accounting sales wherein sales are shown net of MVAT/CST. Our attention was drawn to page no. 29 of the paper book wherein letter dated 17.03.2009 filed on 18.03.2009 by the assessee with the AO during the course of assessment proceedings is placed and it is submitted by learned counsel for the assessee that complete details of sales and purchases as per register duly reconciled with Balance Sheet as on 31.03.2006, 31.03.2007 and 31.03.2008 along with challans for sales tax paid were filed before the AO . It was submitted that survey u/s 133A was conducted by the revenue on 24.02.2009 . Our attention was drawn to page no. 42-44 of the paper book wherein complete reconciliation of the sales alongwith MVAT/CST paid is filed for the relevant period. It was submitted that reconciliation of opening and closing stock vis-a-vis MVAT/CST for the purpose of Section 145A was filed before the Ld. CIT(A) which the learned CIT(A) reproduced in its order at page 7 . It was submitted by learned counsel for the assessee that this working u/s 145A was not before the AO but this working is consequential to note at clause 12(b) of Form No. 3CD which is tax-audit report issued by chartered accountant u/s 44AB of the 1961 Act which was before the AO which stipulated that there is not deviation from the method of valuation prescribed u/s 145A and hence, no effect thereof on the Profit or Loss(refer to page 19/PB). Our attention was drawn to page no. 38 of the paper book wherein assessee filed an letter dated 08.12.2009 with the AO during the course of assessment proceedings reconciling difference in Sales as per P&L account and as per Sales Register alongwith complete details of MVAT/CST and it was submitted that sales are duly reconciled and no additions are warranted. It was submitted that there was minor difference of around Rs. 3 lacs+ between sales of 16 crore(inclusive of MVAT/CST) as was reflected in computer printout and final sales figures( inclusive of MVAT/CST) as per books of accounts of Rs. 15.97 crores which was mainly due to cash discounts etc. given to customers which is duly accounted for in books of accounts and hence it was prayed no additions are warranted.

4.8 We have considered rival contentions and perused the material on record including orders of authorities below and paper book filed by the assessee. We have observed that the assessee is engaged in trading in chemicals. We have observed that the assessee was surveyed by Revenue u/s 133A of the 1961 Act on 24.02.2009. The survey operations u/s 133A were conducted on 24.02.2009 by Revenue at the business premises of M/s. J.V Chem at B-1, Neelkant Chhaya, R.B. Mehta Road, Ghatkopar (East), Mumbai -400077 , sales office at 403, Parshwa Chambers, 17/21, Issaji Street, Masjid Bunder, Mumbai-400003 and godown at C/o Anand & Co. , Matre Compound, Val Grampanchayat, Ajoor Phata Road, Val Village, Bhiwandi, Thane. As per Revenue , during the course of survey operations conducted u/s 133A of the 1961 Act, the regular books of accounts maintained by the assessee for impugned period were not found at registered office nor were these regular books of accounts were found at sales office . These facts are vigorously disputed by the assessee. The assessee has consistently claimed that its business premises was very small of 180sq feet and 15 people were to be accommodated during survey operations in such a small office space. Regular Books of accounts were produced but these books of accounts were scattered by survey team all over the office which led to confusions and non finding of relevant books of accounts. The assessee , however , had also submitted that books of accounts are available in computer software programme. The statement on oath of Shri. Vipul Thosani, partner of the assessee was recorded by Revenue on 25.02.2019 who stated on oath that the said books of accounts for the relevant period are available in computer software and the same were verified by the Revenue during survey operations. The assessee had claimed to have given print out of purchase and sales register to the survey team for verification with the computer software . Based upon above factual matrix, the AO concluded that the assessee is not maintaining regular books of accounts for relevant period under consideration. The assessee had also claimed that it is maintaining stock records on computer software. The accounts of the assessee are duly audited by a Chartered Accountant who has issued a tax-audit report dated 10.10.2007 in Form No.3CB and 3CD and have certified that proper books of accounts have been kept by the assessee firm(page 2 & 18-27/pb) . The said tax-audit of the accounts of the assessee u/s 44AB of the 1961 Act for

relevant period was conducted by CA on 10.10.2007 which is much prior to date of survey conducted by Revenue on 24.02.2009. We have no reasons to doubt about veracity of CA tax-audit report certifying that books of accounts were maintained by the assessee as well we have no reasons to doubt about the consistent stand taken by the assessee explaining its position as to factual matrix and also to the fact that books of accounts were available in computer software in electronic form. The assessee during survey had also claimed that all the books of accounts were also available in computer software. Nothing prevented Revenue from taking print out or soft copy of complete books of accounts of the assessee. It is observed that as per the details of sales taken from computer during the course of survey operations, sales were to tune of Rs. 16 crore while the actual sales credited to the audited trading account were to the tune of Rs. 15.37 crore. We have observed that the assessee has satisfactorily explained that the assessee is following exclusive method of accounting while accounting for sales wherein sales net of MVAT/CST are credited to turnover in books of accounts to sales account which got reflected in Trading Account while MVAT/CST collected by the assessee on these sales are reflected in the liability side of the balance sheet which is adjusted for Input-tax credits on Purchases and MVAT/CST paid by the assessee . This is one of the recognised method of accounting. The assessee has duly submitted complete reconciliation of sales before the AO. The assessee has duly filed reconciliation statement of the sales and purchases with Balance Sheet before the AO. Reference is drawn to page no. 29 of the paper book wherein vide submissions dated 17.03.2009 filed on 18.03.2009, the assessee has filed before the AO during the course of assessment proceedings , details of sales and purchases as per register duly reconciled with Balance Sheet as on 31.03.2006, 31.03.2007 and 31.03.2008. Reference is also drawn to page no. 38/39 of the paper book wherein the assessee has submitted before the AO during course of assessment proceedings explanation for difference in sales as per sales register of Rs. 16 crores and as per P&L account of Rs. 15.37 crores which was explained before the AO to be on account of accounting of sales , MVAT/CST on exclusive method basis. The assessee in the aforesaid reply dated 08.12.2009 refuted allegation of Revenue that no day to day stock records were maintained. This is also consistent stand of the assessee that stock records in electronic form through its accounting software is duly

maintained on day to day basis. The assessee submitted in this reply dated 08.12.2009 that computerised accounts of its business operations is maintained and day to day stock register is available. It is claimed that the assessee has personalised specialised software which enable it to update stock data automatically and hence it is claimed that stock data was maintained on day to day basis . The assessee also claimed that it is under ambit of Excise Law and various returns are to be filed under Excise Laws as it is claiming MODVAT benefits. Reference is also drawn to page no. 42-44 of the paper book wherein complete reconciliation of sales and stocks is placed with MVAT/CST liability. These charts of reconciliation were before the authorities below. The main grievance of the Revenue vide ground number 1 is that working as was submitted by the assessee u/s 145A of the 1961 Act which is reproduced by learned CIT(A) in its appellate order(reproduced above in para 4.5 of this order) was filed for the first time before learned CIT(A) and the same was never filed before the AO. It is claimed by Revenue that this working u/s 145A submitted by assessee for the first time before learned CIT(A) is an additional evidence produced by the assessee for the first time before learned CIT(A) and was never before the AO during assessment proceedings. It is claimed by Revenue that learned CIT(A) never forwarded this working to the AO for comments/remand report and Rule 46A of the 1962 Rules is infringed/breached. At first blush, this argument of the Revenue looks quite attractive but on careful perusal , it is observed that this working is merely to support the clause 12(b) of the tax-audit report issued by CA u/s 44AB of the 1961 Act wherein it is disclosed by CA who conducted tax-audit that there is no deviation from the method of valuation prescribed u/s 145A and hence no effect on profit or loss. This tax-audit report was admittedly filed by the assessee before the AO which is emanating from para 1 of the page 1 of the assessment order . Thus, the working submitted by the assessee before the learned CIT(A) to prove and substantiate its stand as to what was declared in tax-audit report that there are no deviations from the method of valuation as is prescribed u/s 145A of the 1961 Act was true and correct , cannot in our considered view to be said to be an additional evidences and the contentions of the Revenue that there is breach of mandate of Rule 46A of the 1962 Rules by learned CIT(A) is fallacious and this contention of the Revenue as to infringement of Rule 46A of the 1962 Rules stand rejected. The assessee through this working u/s

145A brought to the notice of learned CIT(A) that there will be no impact on income chargeable to tax vide exclusive method followed by it for accounting for sales , MVAT/CST and stocks , which stood already disclosed/reported to Revenue vide tax-audit report as well while filing computation of income in return of income filed with Revenue. The income tax return along with computation of income filed with Revenue as well tax-audit report were all before the AO during the course of assessment proceedings. Under these factual matrix of the case before us, we do not find any justification and merits in the contention of the revenue and we are of the considered view that proper explanations were given by the assessee during the course of the assessment as well appellate proceedings before the learned CIT(A) and in our considered view, the Ld. CIT(A) rightly deleted the additions as were made by the AO and we do not find any merit in the appeal filed by the Revenue vide ground no.1 and we are inclined to dismiss ground number 1 of the Revenue's appeal. The appellate order of learned CIT(A) stood confirmed on this ground. The Revenue fails on this ground. We order accordingly.

5. We come to the next issue rased by Revenue in its appeal filed with tribunal which is regarding additions of Rs. 5 lacs made by the AO on account of mismatch of closing stock . It was observed by the AO that during the course of survey proceedings conducted by Revenue on 24.02.2009 u/s 133A of the 1961 Act , physical inventory of stock lying at Bhiwandi warehouse has been taken and details of which are as under:-

*(i) Stock as on 24.02.2009 as per stock register maintained by the assessee firm:*

|                     |                 |
|---------------------|-----------------|
| <i>(a) Methanol</i> | <i>27 Drums</i> |
| <i>(b) Toluene</i>  | <i>28 Drums</i> |
| <i>(c) Aceton</i>   | <i>57 Drums</i> |

*(ii) Stock as on 24.02.2009 at Bhiwandi Godown*

|                     |                 |
|---------------------|-----------------|
| <i>(a) Methanol</i> | <i>73 Drums</i> |
| <i>(b) Toluene</i>  | <i>65 Drums</i> |
| <i>(c) Acetone</i>  | <i>34 Drums</i> |

5.2. The AO observed that during course of survey operations conducted by Revenue u/s 133A of the 1961 Act on 24.02.2009 , there was no stock register found for AY 2006-07 and 2007-08 and there is a possibility of underestimating of closing stock for AY 2007-08. The assessee submitted vide letter dated 09.12.2009 before the AO during the course of assessment proceeding that the assessee deny the allegation of Revenue that no stock register were maintained . It was submitted that the assessee is maintaining computerised accounts for its business operations and day to day stock register were available during the course of survey. It was claimed that the assessee is having personalised accounting software for accounts in which stock data get automatically get updated, as soon as the data for purchases and sales are recorded in the computer. It was observed by the AO that in auditors report there is no mention of any stock register. It was further observed by the AO that in the P & L Account, the value of closing stock is taken as per certificate obtained by the auditors from the partners of the firm. The AO further observed that there is no concrete evidence in support of the valuation of the closing stock. The AO observed that due to non maintenance of stock register, the quantitative tally of the stock cannot be verified. The AO revalued closing stock at Rs. 25,49,167/- as against closing stock of Rs. 20,49,167/- declared by the assessee in the trading, Profit & Loss Account , leading to addition of Rs. 5 lacs made for want of verification of closing stock and non maintaining of quantitative tally of the stock, vide assessment order dated 29.12.2009 passed by the AO u/s 143(3) of the 1961 Act.

5.3 Aggrieved by an assessment framed by the AO vide assessment order dated 29.12.2009 u/s 143(3) of the 1961 Act , the assessee filed first appeal with learned CIT(A). It was explained that proper stock reconciliation were submitted between physical stock and book records, proper stock records were maintained and quarterly return of stock were filed for availing Modvat credit under Excise Rules and Law . It was also submitted by assessee before learned CIT(A) that even if there is discrepancies in stock found on the date of survey on 24-03-2009, the additions cannot be made for impugned AY 2007-08 . The Ld. CIT(A) was pleased to grant relief to the assessee vide appellate order dated 25.02.2011, by holding as under:-

6.1 *In the appellate proceedings the appellant has submitted submission stating that they are filing quarterly return of stock for Modvat credit under Excise Rules and Act. Further the appellant has submitted that they maintain proper stock records which was available both at the time of survey and at the time of scrutiny. In support of the same copy of the stock register has been furnished. In view of this I am of the opinion that in absence of any working contradicting the stand of assessee addition made in closing stock on adhoc basis is not sustainable and hence deleted. Ground No.(ii) is allowed.*

5.4 . Now , Revenue is aggrieved by relief granted by Ld. CIT(A) to the assessee. It was submitted by Ld. DR that additions to the tune of Rs. 5 lacs were made on account of discrepancies in stock . The learned DR placed on record appellate order passed by ITAT,Mumbai for AY 2006-07 in assessee's own case along with copy of tax-audit report (Annexure-6), which is placed in file. The learned DR submitted that closing stock as per tax-audit report for the financial year 2005-06 is 90928 Kgs of various kinds of chemicals while the opening stock as per tax-audit report for the financial year 2006-07 is 92788 kg(page 25/PB) of various types of chemicals. Thus, it was contended that proper stock records are not maintained by the assessee. It was contended by learned DR that stock register was produced before the learned CIT(A) for the first time which is an additional evidences and Rule 46A of the 1962 Rules was breached. Our attention was drawn to para 6 of page 7 of appellate order passed by learned CIT(A) and prayers were made not to admit additional evidences filed by the assessee for the first time before learned CIT(A). Thus, it was prayed by learned DR that learned CIT(A) erred in deleting the additions as were made by the AO.

5.5 The learned counsel for the assessee in rebuttal drew our attention to page 3 of the paper book which are notes to audited financial statements for the relevant period and submitted that the assessee is valuing inventories/stock at cost or net realisable value , whichever is lower . Our attention was also drawn to page no. 4 of the paper book which is an audited Balance Sheet as at 31.03.2007 to contend that stock in trade is certified as to quantity and value thereof by a partner and was valued at Rs. 20,49,167 as on 31.03.2007. Our attention was also drawn to page no. 22 of the paper book wherein vide clause no. 28(a) are the quantitative details of the stock traded by the assessee which is part of the tax-audit report, vide Annexure-

9. Our attention was also drawn to page no. 25 of the paper book wherein aforesaid Annexure 9 is placed which is the quantitative details of chemicals dealt with by the assessee is placed which is part of tax-audit report. Our attention was also drawn to page no. 33 of the paper book wherein inventory of opening and closing stock was submitted by the assessee before the AO during assessment proceedings vide letter dated 26.11.2009. Our attention was also drawn to page no. 39 of the paper book wherein letter dated 08.12.2009 filed by the assessee before the AO during assessment proceedings is placed, wherein it was categorically refuted by the assessee as to allegation of the Revenue that no stock registers were maintained. The assessee has submitted that it is maintaining computerised accounts for its business operations and the day to day stock register gets updated on recording of purchase and sales data as the assessee claimed to be using personalised accounting software. Our attention was also drawn to page no. 45 to 49 of the paper book wherein quarterly returns under Excise Laws and Rules were submitted before the Superintendent of Central Excise. Our attention was also drawn to page no. 132-139 of the paper book filed by the assessee, wherein copy of assessment order dated 31.12.2010 passed by the AO for AY 2006-07 u/s 143(3) read with Section 147 of the 1961 Act is placed wherein the AO has recorded (page 2/para 2 of the assessment order-page 133/pb) that stock register for AY 2007-08 was submitted by the assessee on 20.11.2010. It was submitted stock register was filed by assessee before the AO on 20.11.2010 during the course of assessment proceedings for AY 2006-07 although it was after an assessment order for AY 2007-08 was passed by the AO on 29.12.2009. Our attention was also drawn by learned counsel for the assessee to remand report dated 04.02.2011 issued by the AO on directions of learned CIT(A) which is placed in paper book at page no. 119 and reply to Remand Report was submitted by the assessee before Ld. CIT(A) on 24.02.2011 which is placed at paper book at page 120-121. It was submitted by learned counsel for the assessee that additions were made by the AO owing to allegation of mismatch in stock to the tune of Rs. 5 lacs on estimated basis while the AO did not give any basis for making these additions.

5.6. We have considered rival contention and perused the material on record including orders of authorities below and paper book filed by the

assessee. We have observed that the assessee was surveyed by revenue u/s. 133A on 24.02.2009. As we have seen in preceding issue adjudicated by us vide para 4 to 4.8 in this order, there was a dispute between rival parties as to maintenance of stock records. The assessee had contended that it was maintaining proper books of accounts and stock registers as it was maintaining the records through personalised accounting software in computer including stock registers and details of sale and purchases including stock were duly available during the course of survey operations conducted by Revenue on 24.02.2009 and also during the course of assessment proceedings conducted by the AO. We have already deleted additions made on account of non reconciliation of sales vide para 4 to 4.8 above of this order. Now, in this issue before us there was a mismatch of physical inventory of stock and records as maintained in stock register by the assessee on 24.02.2009 when physical inventory was taken by survey team and the addition were made by the AO by estimating additions to closing stock of Rs. 5 lacs owing to discrepancies in stock due to non availability of stock records and non reconciliation of quantitative details of stock by the assessee. There was some mismatch in physical stock vis-a-vis stock as per stock register as on the date of survey on 24.02.2009 which is reproduced in para 5 of this order by us. However, the AO was not able to correlate this mismatch to the year under consideration as to how the additions are warranted in the year under consideration viz. AY 2007-08 for physical stock taken on 24.02.2009, as the discrepancies were found during the course of survey on 24.02.2009 which pertains to AY 2009-10. It is understandable if the said income due to differential in stock is brought to tax for AY 2009-10 by invoking provisions of Section 69, 69A, 69B, 69C or other applicable provisions of the 1961 Act but how the said income could be brought to tax in AY 2007-08 without specific defects/reasoning being pointed out by the AO and correlating the said income to AY 2007-08 cannot be accepted. The onus was on the AO to correlate the said income to AY 2007-08 and to bring to tax in AY 2007-08. Secondly, the AO could not specify defects in the books of accounts/stock records which could be attributable or co-related to bringing to tax, income during the impugned year under consideration due to these stock discrepancies. It is well settled in tax-jurisprudence that every year is a separate tax unit and income attributable to particular year can only be brought to tax in that year and

cannot be brought to tax in any other year. We have noted that the assessee is following policy of valuing inventories on the basis of cost or net realizable value, whichever is less, which is an acceptable policy for valuing inventories as accepted and recognised method of valuing inventories and no fault can be found with this policy being followed by the assessee. In our considered view, the assessee on its part has duly submitted complete details and in our considered view Ld. CIT(A) has rightly deleted the addition as were made by the AO on estimated basis. However, the Ld. DR has pointed out that the closing stock for AY 2006-07 was 90,928 Kg of different types of chemicals dealt in by the assessee as on 31.03.2006, while for AY 2007-08, the opening stock as on 01.04.2006 was taken as 92,788 Kg. of chemicals instead of taking closing stock of preceding year as opening stock and to this extent owing to specific defect being pointed out by learned DR, we are remitting the matter back to the file of AO for limited verification of this differential in closing stock of AY 2006-07 and opening stock of AY 2007-08 and for make additions to income accordingly, if any as per mandate of the applicable provisions of the 1961 Act. Needless to say that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings in accordance with principles of natural justice in accordance with law and evidences/explanations filed by the assessee shall be admitted by the AO to be adjudicated on merits in accordance with law. The appeal of the Revenue on this ground number 2 and 3 is allowed partly for statistical purposes. We order accordingly.

6. The next ground raised by Revenue in its appeal vide ground number 4 relates to additions made of Rs. 13,52,661/- by the AO on account of low GP ratio declared by the assessee, which was later deleted by Ld. CIT(A) in first appellate proceedings conducted at the behest of the assessee. The Revenue is aggrieved by appellate order passed by learned CIT(A) and has come in an appeal before the tribunal. During the course of assessment proceedings, the AO observed that assessee has shown turnover of Rs. 15,37,99,177/- and declared Gross Profit of Rs. 32,61,314/- which translates to GP Ratio of 2.12% on against GP ratio of 2.96% declared in AY 2006-07. The GP ratio declared in the AY 2005-06 was still higher at 3.26%, The AO observed that partners of the assessee are also doing the same kind of business in the individual capacity under the name of style of M/s. Kunal

Enterprises and M/s. Meecham Enterprises. The AO observed that assessee has shown following turnovers and GP ratio for last three years , as under:-

| A.Y.    | Gross Sales       | Gross profit    | G.P Ratio |
|---------|-------------------|-----------------|-----------|
| 2007-08 | Rs.15,37,99,177/- | Rs. 32,61,314/- | 2.12%     |
| 2006-07 | Rs.8,98,38,152/-  | Rs.26,63,059/-  | 2.96%     |
| 2005-06 | Rs. 5,96,88,795/- | Rs. 19,50,915/- | 3.26%     |

6.2. The AO observed that percentage of the GP ratio is falling year by year. The AO also observed that the assessee is not maintaining day to day stock register and the auditors reported in tax-audit report that inventories are being valued based on cost or net realisable value whichever is lower and is certified based on as certified by partner of the assessee. The AO observed that as per records maintained by the assessee, the auditor did not certified that the stock records were maintained by the assessee and in absence thereof, the auditors have not examined such stock registers. The AO further observed that there is an inflated claim of commission paid of Rs. 17,30,871/- as against Rs. 5,66,009/- paid during preceding year. The AO also observed that the assessee has shown transport charges amounting to Rs. 22,81,007/- as against Rs. 12,86,808/- during preceding year. Thus, AO was of the view that the assessee has not declared true and correct income and opening and closing stocks were certified on estimated basis with a view to evade taxes. The AO also observed that the competitors who are in the same business in the same locality namely Shri. Jitendra C. Parekh of M/s. Parekh Industrial Corporation has shown following GP ratio :-

| A.Y.    | Gross Sales     | Gross Profit    | Percentage |
|---------|-----------------|-----------------|------------|
| 2007-08 | Rs. 1,81,56,617 | Rs. 16,18,241/- | 8.91%      |
| 2006-07 | Rs. 1,70,79,125 | Rs.12,76,389/-  | 7.47%      |

6.3 The AO estimated the GP of the assessee at 3% of sales and made additions of Rs. 13,52,661/- to the income of the assessee vide assessment order dated 29.12.2009 passed by the AO u/s 143(3) of the 1961 Act. The

matter went in appeal to Ld. CIT(A) at behest of the assessee who was pleased to grant relief to the assessee , vide appellate order dated 25.02.2011 passed by learned CIT(A).

6.4 Now, revenue being aggrieved by the deletion of the addition by learned CIT(A) towards low GP ratio has filed an appeal with tribunal. Our attention was drawn at the outset by Ld. DR that similar GP additions made by the AO for AY 2006-07 has now been sustained by tribunal in ITA no. 8866/Mum/2011 vide orders dated 27.04.2016 and prayers were made by learned DR to sustain GP additions made by the AO for AY 2007-08 as the factual matrix has remained the same for this year under consideration. It is brought to our notice by learned DR that the assessee's GP is consistently falling over the years and assessee is consistently showing low GP ratio over the years. The GP ratio for the last three years declared by the assessee is reproduced hereunder:-

| A.Y.    | Gross Sales       | Gross profit    | G.P Ratio |
|---------|-------------------|-----------------|-----------|
| 2007-08 | Rs.15,37,99,177/- | Rs. 32,61,314/- | 2.12%     |
| 2006-07 | Rs.8,98,38,152/-  | Rs.26,63,059/-  | 2.96%     |
| 2005-06 | Rs. 5,96,88,795/- | Rs. 19,50,915/- | 3.26%     |

6.5 Our attention was also drawn by learned DR to paper book / page no. 171 wherein the assessee has placed on record chart of GP ratio for AY 2010-11 to AY 2015-16 declared by the assessee which is as under:-

| A.Y.    | G.P. % | N.P. % |
|---------|--------|--------|
| 2010-11 | 1.29   | 0.39   |
| 2011-12 | 1.79   | 0.38   |
| 2012-13 | 1.13   | 0.24   |
| 2013-14 | 2.24   | 0.39   |
| 2014-15 | 2.04   | 0.3    |
| 2015-16 | 2.77   | 0.37   |

6.6 Thus it was submitted by learned DR that assessee is consistently showing low GP ratio which was the main reason for survey conducted by Revenue u/s 133A on 24.02.2009 .

6.7 The Ld. Counsel for the assessee on the other hand pleaded that ITAT has for the preceding year confirmed the additions on account of low GP ratio. It was submitted that there were no rejection of books of accounts by the AO of this year. Our attention was also drawn to the assessment order passed by the AO and it was submitted that the AO had relied on GP ratio of third parties for making additions to the income of the assessee. Our attention was drawn to page no. 50 of the paper book wherein explanation was given before the AO during course of assessment proceedings justifying fall in GP ratio as under:-

*“J.V.Chem (India)*

*Justification for fall in Gross Profit Rate*

*Table showing GP for last two years.*

| <i>A.Y.</i>    | <i>Gross sales</i>    | <i>Gross Profit</i> | <i>G.P.ratio</i> |
|----------------|-----------------------|---------------------|------------------|
| <i>2007-08</i> | <i>15,37,99,177/-</i> | <i>32,61,314/-</i>  | <i>2.12%</i>     |
| <i>2006-07</i> | <i>8,98,38,152/-</i>  | <i>26,63,059/-</i>  | <i>2.96%</i>     |

*As it can be seen from the above the rate of GP as compared to previous year has fallen down by less than 1% i.e. merely by 0.84%. The reason for fall in GP rate can be attributed to:*

| <i>Particulars</i>      | <i>A.Y.2007-08</i>  | <i>A.Y.2006-07</i> | <i>Increase by Rs.</i> | <i>Reason</i>  |
|-------------------------|---------------------|--------------------|------------------------|--|
| <i>Total sales</i>      | <i>15,37,99,177</i> | <i>8,98,38,151</i> | <i>6,39,61,026</i>     |  |
| <i>Purchases</i>        | <i>14,53,76,414</i> | <i>8,78,29,120</i> | <i>5,75,47,294</i>     |  |
| <i>Transport charge</i> | <i>22,81,007</i>    | <i>12,86,808</i>   | <i>9,94,199</i>        | <i>Increase in sales and purchases, as alongwith with increase in transportation cost.</i> |

|                   |                  |                 |                  |   |
|-------------------|------------------|-----------------|------------------|---|
|                   |                  |                 |                  |   |
| <i>Commission</i> | <i>17,30,871</i> | <i>5,66,009</i> | <i>11,64,861</i> | <i>Due to increase in purchases/sales</i> |

*As it is quite clear from the above table, gross profit margin were squeeze on account of increase in expenses, hike in price of goods procured for trading and the same hike could not be pass on to the customer due to stiff competition , hence no increase in margin on turnover, hence there is decrease in the Gross Profit margin.”*

6.8. We have considered rival contentions and perused the material on record. We have observed that the assessee is in the business of trading in chemicals and survey action u/s. 133A was conducted by revenue on 24.02.2009. We have observed that despite increase in turnover, the assessee is consistently showing a low GP ratio over years and its GP ratio is consistently falling for the last three years, the details of which are as under:-

| A.Y.    | Gross Sales       | Gross profit    | G.P Ratio |
|---------|-------------------|-----------------|-----------|
| 2007-08 | Rs.15,37,99,177/- | Rs. 32,61,314/- | 2.12%     |
| 2006-07 | Rs.8,98,38,152/-  | Rs.26,63,059/-  | 2.96%     |
| 2005-06 | Rs. 5,96,88,795/- | Rs. 19,50,915/- | 3.26%     |

6.9 Further, we have observed that the GP ratio is consistently very low even in AY 2010-11 to 2015-16, the details of which are as under:

| A.Y.    | G.P. % | N.P. % |
|---------|--------|--------|
| 2010-11 | 1.29   | 0.39   |
| 2011-12 | 1.79   | 0.38   |

|         |      |      |
|---------|------|------|
| 2012-13 | 1.13 | 0.24 |
| 2013-14 | 2.24 | 0.39 |
| 2014-15 | 2.04 | 0.3  |
| 2015-16 | 2.77 | 0.37 |

6.10 We have observed that the turnover of the assessee has increased from Rs. 8.98 crores for AY 2006-07 to Rs. 15.38 crores in the year under consideration which instead should have brought economies of scale leading to higher GP ration but instead opposite happened as GP ratio has fallen from 2.96% to 2.12% which is a very peculiar feature and the assessee ought to have explained special circumstances which are especially in its knowledge as to why its GP has fallen despite turnover increasing over years which is against normal business patterns .Net profit ratio declared by the assessee is also abysmally low . We have also observed that the AO made comparative analysis with assessee's competitor M/s. Parekh Industrial Corporation who was also trading in chemical in the same area on the same locality and in whose case , an assessment was framed u/s 143(3) of the 1961 Act who has declared higher GP ratio of 8.91% , as detailed hereunder:

| A.Y.    | Gross Sales     | Gross Profit    | Percentage |
|---------|-----------------|-----------------|------------|
| 2007-08 | Rs. 1,81,56,617 | Rs. 16,18,241/- | 8.91%      |
| 2006-07 | Rs. 1,70,79,125 | Rs.12,76,389/-  | 7.47%      |

As could be seen the said Parekh Industrial Corporation has not only shown GP ratio of 8.91% for AY 2007-08 but it's GP ratio was increasing with increase in turnover. While the assessee is showing just the opposite. The assessee has give justification for fall in GP ratio/Low GP ratio but it is not a satisfactory explanation given by the assessee but rather is an general explanation given by the assessee which is not satisfactory. This consistent fall in GP ratio despite turnover being increasing year by year and low GP /NP ratio declared by the assessee consistently over the year is one of the reason for survey conducted by the revenue on 24.02.2009 against the assessee u/s. 133A of the Act. We have observed Mumbai-tribunal in the preceding year AY 2006-07 was pleased to upheld the addition as was made

by revenue on the grounds of Gross Profit in ITA no. 8866/Mum/2011 vide appellate order dated 27.04.2016, wherein tribunal held as under:-

4 First we will discussed the Ground no. 1 raised in the present appeal about the addition of Rs. 2,68,144/- on account of difference of estimated gross profit. We have heard the Authorised Representative (AR) for assessee and Departmental Representative (DR) for revenue. AR of the assesses argued that in a survey action u/s. 133A, 15 person came at the office premises (a tiny space of 180sq feet) for making the survey, consisting of ITO's/ADCIT and staff of ITO. The search commenced in afternoon and was completed in early morning to next day. During the survey operation all record of assessee was mixed in a very small place and there was a total chaotic. During survey operation no incriminating material was found nor was any discrepancy in the record of assesses recorded. After satisfying each officer individually verifying all the documents, the survey action was called off. During the re-assessment proceeding, the assesses was made to suffer a lot as the AO was biased against the assessee, reason of bias was that assessee did not co-operate at the time of survey in the senses that assesses did not declare any undisclosed/additional income during the survey operation. The AR of the assessee has argued that addition on the basis of estimated difference in Gross Profit of Rs. 2,68,144/- is wrong. AO calculated it on the basis of difference of declared Gross Profit in the current AY to the AY-2005-06. AR argued that Gross Profit and Net Profit rate of the assesses from AY 2010-11 to 2015-15(sic. 2015-16) is as under:

| AY      | GP%  | NP%  |
|---------|------|------|
| 2010-11 | 1.29 | 0.39 |
| 2011-12 | 1.79 | 0.38 |
| 2012-13 | 1.13 | 0.24 |
| 2013-14 | 2.24 | 0.39 |
| 2014-15 | 2.04 | 0.3  |
| 2015-16 | 2.77 | 0.37 |

And in support of his argument the assesses placed on record copy of assessment order for AY 2010-11, 2011-12 and 2012-13.

DR for revenue relied upon the order of authorities below.

5. We have considered the rival contention of the parties and perused the material available on record. The assessee has not challenged the reopening of the assessment. We have seen that

*during the scrutiny/re-assessment proceeding, the assessee was asked to file re-conciliation of purchases with purchase register along with supporting bills and vouchers and stock register of purchase during the relevant year. The assessee submitted necessary document and information, consisting documents/stock register and statement of account. AO rejected the books of account of the assessee and estimated the gross profit on the basis of declared profit for AY 2005-06 @ 3.26% and in current year the profit declared at 2.96%. And on the basis of percentage of gross profit of previous year and difference of .30% for current was added in the income of assessee. The calculation is arrived at Rs. 2,68,144/- and the same is added in the assessment order. CIT (A) while considering this ground concluded that AO has brought on record after making various adjustment and inclusive of CST and MAT gross sale figure was arrived at Rs. 9.39 Crore against print out figure of Rs. 9.43 crore and past reconciliation still difference of Rs. 4.00/- lacs remains un-reconciled. The AO has also brought a major defect on record that all local sales which comprise 70% of the total sale (Rs. 7.01 Crores out of Rs. 9.39 Crores) were found to be without proof of delivery though the assessee had claimed transportation charges of Rs. 12,86,608/-. This was the reason for rejecting the books of account of the assessee, making addition in gross profit after comparing the figure for the preceding year. i.e AY-2005-06, for which the books of account were available and found during the survey proceedings. The books for the previous year relevant to AY 2005-06 were also audited, coupled with the fact that the gross profit for that was higher (at 3.26%) than that for the year under consideration, which was at 2.96%, the difference amounting to Rs. 2,68,144/-. The books of account were accordingly, i.e., in view of all discrepancies and unexplained reductions in gross profit rate, rejected, and addition for said differences in GP made.*

*6. We have perused the statement of gross profit and net profit filed by AR of the assessee in respect of AY 2010-11 to AY 2015-16 and there is an average variation of 0.28% and AO added the net profit of 0.30 comparatively to earlier A.Y. We have also noticed that the assessee has not challenged the re-opening/re-assessment proceeding for the reasons best known to him. The CIT(A) has considered all the facts and material with regard to addition on the basis of gross profit for earlier year. We found no perversity in the order passed by CIT(A) , hence , this ground is dismissed.”*

As could be seen from aforesaid tribunal order that various discrepancies/inconsistencies in the accounts were noted by tribunal while confirming additions towards low GP for AY 2006-07 . In the instant year

under consideration before us, the AO has highlighted various inconsistencies in the assessment order framed for AY 2007-08. The AO had estimated GP ratio @3% of sales which in our considered view is very fair and reasonable. The competitor of the assessee from the same locality in the same business namely Parekh Industrial Corporation declared higher GP Ratio of 8.91%. Estimation of GP requires some guess work but the same should be in the realm of fairness and reasonability and should not be unconscionable. The decision of the AO to estimate GP ratio of the assessee is @3% of sales is very fair and reasonable. The decision of Hon'ble Supreme Court in the case of Kachwala Gems is relevant. We do not find any reason to disturb the additions as were made by the AO on account of low GP ratio and appellate order passed by learned CIT(A) is cryptic and is not sustainable in the eyes of law as no valid justification for such an abysmally low GP could be answered by learned CIT(A) while on the other hand the AO has brought on record comparative analysis of GP ratio of competitor from the same locality. The AO has also noted abnormal increase in certain expenses as well several discrepancies and inconsistencies in accounts maintained by the assessee. The economies of scale ought to have increased GP ratio and profitability owing to increased turnover but instead GP ratio and profitability fell. These are special circumstances which are against the normal business patterns and are especially within the knowledge of the assessee which assessee ought to have duly explained. The onus was on the assessee to demolish the findings of the AO and its own results against normal business patterns with the cogent evidences but the assessee has given general replies and hence the assessee failed to discharge the onus as was on the assessee. Hence we are inclined to set aside appellate order passed by Ld.CIT(A) and confirm additions as were made by the AO in its assessment order. The ground no. 4 filed by the revenue is allowed. The Revenue succeeds on this ground. We order accordingly.

7. The AO during the course of assessment proceedings observed from the trading and P&L account that the assessee has debited an amount of Rs. 17,13,870/- under the head 'Commission Paid' as against Rs. 5,16,009/- incurred towards commission for the immediately preceding year. The AO observed that commission as percentage of turnover has gone upto 1.12% as against 0.57% paid for last year and in the opinion, the assessee paid more

commission to show lower GP as compared to preceding year and to reduce tax liability. The AO also observed from verification of details of commission paid during financial year 2006-07 that the assessee has made payment of commission amounting to Rs. 24,60,511/- while as per Trading account, the commission debited was only Rs. 17,30,870/- , leading to difference of Rs. 7,29,641/- . The AO observed that the assessee could not offer any satisfactory explanation with respect to difference in the commission paid shown in the trading account and in the statement furnished by the assessee during the course of assessment proceedings, which led AO to make additions to the income of the assessee to the tune of Rs. 7,29,641/- u/s. 69C of the 1961 Act.

7.2 Aggrieved, the assessee filed first appeal before the Ld. CIT(A) who was pleased to hold that assessee has filed statement during the course of assessment proceedings before the AO of the commission paid exceeding Rs. 50,000/- which totalled to Rs. 16,23,108/- on which TDS was deducted and the amount did not match with P&L Account because the assessee has not given the details of commission of less than Rs. 50,000/- but these commissions are reflected in the ledger account . The learned CIT(A), however, disallowed commission paid of Rs. 1,07,762/- on which no TDS was deducted and appeal was partly allowed by learned CIT(A), vide appellate order dated 25.02.2011 passed by learned CIT(A).

7.3 Both assessee and revenue are aggrieved by the appellate order passed by learned CIT(A) and have come in an appeal before the tribunal. The Ld. DR submitted that Ld. CIT(A) has disallowed an amount of Rs. 1,07,762/- towards commission owing to non deduction of income-tax at source on these commissions, while remaining commission paid of Rs. 6,21,879/- which was earlier disallowed by the AO out of total commission disallowed of Rs. 7,79,641/- was allowed by learned CIT(A). The Ld. Counsel for the assessee submitted that the commission amount shown in the statement included brokerages which is separately reflected in Profit and Loss Account and hence aggregation of both the heads is required. Our attention was also drawn to page no. 5 of the paper book which is an audited Trading and Profit and Loss Account of the assessee for the year ended 31.03.2007, wherein commission paid reflected was Rs. 17,30,870.50 which was debited to Trading account while Brokerage amount was reflected

at Rs. 4,89,284 in Profit and Loss Account, aggregating to Rs.22,20,154.50. It was submitted that commissions expenses accounted for in Books of accounts were net of commission earned by the assessee. The assessee drew our attention to page 51-54 of the paper book. It was submitted that Gross commission paid ( excluding brokerage) was Rs. 20,47,313.50. Our attention was also drawn to page no. 29 of the paper book wherein details of TDS on commission for the period 01.04.2006 to 31.03.2007 were submitted before the AO during the course of assessment proceedings vide letter dated 17.03.2009 filed on 18.03.2009. Our attention was also drawn by learned counsel for the assessee to page no. 55/paper book wherein commission paid exceeding Rs. 50,000/- was filed before the AO is placed. Our attention was also drawn to page no. 33 of the paper book wherein the assessee has submitted vide letter dated 26.11.2009 filed before the AO during assessment proceedings, details of the brokerage and commission along with TDS details. The learned counsel for the assessee also brought to our notice page no. 35/pb, wherein vide letter dated 04.12.2009 details of commission and brokerage as also TDS details were filed before the AO during assessment proceedings .

7.4 We have considered rival contentions and perused the material on record. We have observed from Trading, Profit and Loss of the assessee for the year ended 31.3.2007 (placed in PB/page 5) that the assessee has debited Rs. 17,30,870.50 towards commission paid in Trading Account while an amount of Rs. 4,89,284/- was debited towards Brokerage in Profit and Loss Account. The assessee has placed on record Ledger account of Commission paid at page 51-54/paper books wherein commission earned by the assessee also stood credited and Net Commission Expenses( net of commission income ) of Rs. 17,30,870.50 is reflected in ledger account. The assessee submitted details of commission paid of above Rs. 50000/- during assessment proceedings before the AO , which is placed on record in paper book at page 55. The AO added and disallowed commission based on differentials of commission figures in statement furnished vis-a-vis books of accounts . The other reasons for disallowance of commission paid was increase in commission expenses in the year under consideration vis-a-vis preceding year. While making additions towards fall in GP ratio, the AO also cited increase in commission expenses in the year under consideration vis-a-

vis preceding year as one of the reasons. We have already sustained additions owing to fall in GP ratio in preceding para's of this order. We have observed that learned CIT(A) held that there is no differential in books of accounts vis-a-vis statement furnished by the assessee. The learned CIT(A) had observed that the assessee had furnished statement in which commission exceeding Rs. 50000/- was shown and hence there is no differential if the commission upto Rs. 50000/- is also taken into account. We have observed that the Ld. CIT(A) has rightly made additions by disallowing commission expenses of Rs. 1,07,762/- on which no income-tax was deducted at source by invoking provisions of Section 40(a)(ia) of the 1961 Act. The powers of learned CIT(A) are co-terminus with powers of the AO. The assessee also could not controvert this position even before us and only bald averments are made and no serious averments are made. Thus we affirm appellate order passed by Ld. CIT(A). The grounds raised by both the parties stand dismissed. This dismisses ground number 1 raised by the assessee and ground number 5 raised by Revenue. We order accordingly.

8. The next ground raised by the assessee in its appeal before the tribunal vide ground number 2 relates to the additions of Rs. 10,605/- confirmed by learned CIT(A) out of additions of Rs. 31,086/- made by the AO towards differential in transportation charges. The AO observed that there was a difference of Rs. 1,55,434/- between amount debited towards transportation charges in the trading account and as per submission made by the assessee, wherein 20% of the said differential amount were disallowed by the AO to the tune of Rs. 31,086/- The assessee filed an appeal with the Ld. CIT(A) who was pleased to give credit for Rs. 49,376/- of the transportation charges which were separately disallowed by AO by invoking provisions of Section 40(a)(ia) of the Act and the balance amount of transportation charges of Rs. 1,06,058/- remained unexplained as per learned CIT(A), wherein additions/disallowance of transportation charges were confirmed by learned CIT(A) to the tune of 10% of unexplained transportation charges to the tune of Rs. 1,06,058/- leading to disallowance of Rs. 10,605/- . Before us Ld. Counsel for the assessee has not made any serious contentions to support its case and only bald averments are made . In the absence thereto of any serious challenge to the well reasoned appellate order passed by learned CIT(A) and as per material on record, we

confirm the additions as sustained by learned CIT(A) . The differential in transportation charges as were observed by authorities below could not be explained by the assessee even before us. We also note that Revenue has not raised any challenge to part relief granted by learned CIT(A) to the assessee. Thus, this ground of appeal filed by the assessee being ground number 2 raised by the assessee in its appeal filed with tribunal stand dismissed. We order accordingly.

9. The next ground being ground number 3 raised by assessee in memo of appeal filed with tribunal relates to addition of Rs. 84,944/- made by the AO of various expenses by disallowing 25% of the following expenses , for which the assessee did not submitted any details, the details of expenses are as under:-

| Sr. No. | Head of expense   | Amount debited |
|---------|---|----------------|
| 1       | Telephone charges including mobile expenses of the partners | 95805          |
| 2       | Office expenses   | 69268          |
| 3       | General expenses  | 45832          |
| 4       | Sales Promotion   | 18550          |
| 5       | Conveyance  | 110322         |
|         | Total   | 339777         |

The AO observed that the assessee has not submitted supporting evidences in support of the above expenditure incurred by the assessee. The assessee could not prove that these expenses were incurred for business of the assessee which led AO to make additions/disallowance of these expenses to the tune of 25% of these expenses , leading to additions of Rs. 84,944/- to the income of the assessee by the AO. The assessee filed an first appeal with Ld. CIT(A) but again the assessee did not submit proper supporting for these expenses and the appeal of the assessee stood dismissed by learned CIT(A). The assessee being aggrieved by appellate order passed by learned CIT(A) has filed an second appeal with the tribunal. Even before us , no serious explanations/supporting evidences to support and justify these expenses

being incurred wholly and exclusively for the purposes of business were submitted . The learned DR supported the orders of authorities below. After hearing both the parties and after carefully going through orders of authorities below and material on record, we are of the view that the assessee could not bring on record cogent material to prove/substantiate its contention that these expenses were incurred wholly and exclusively for the purposes of the business of the assessee.Thus, The proper supporting/explanation and justification of incurring these expenses wholly and exclusively for the purposes of business of the assessee is not forthcoming. The onus was on the assessee which it failed to discharge. The personal usage of these expenses for the benefit of partners/family members of the partners cannot be ruled out. We donot find any merit in the appeal of the assessee which stand dismissed. Ground no. 3 raised by assessee in memo of appeal filed with tribunal stand dismissed. We order accordingly.

10. Ground no. 4 raised by the assessee in memo of appeal filed with tribunal relates to disallowance of depreciation on car to the tune of 15,692/- which ground is relatable to ground no. 3 which we have adjudicated in para 9 as above in this order. Similar additions to the income of the assessee by disallowance of 25% on depreciation on car amounting to Rs. 15,692/- was made by the AO which were later confirmed by Ld. CIT(A). The assessee being aggrieved has now filed second appeal . No serious contentions were raised by Ld. Counsel for the assessee even before tribunal to substantiate /justify that car was wholly and exclusively used for the purposes of the business of the assessee . It is also observed that car is registered in the individual name of partners and personal usage of the car for benefit of partners/family members cannot be ruled out and hence this addition is sustained. Ground No. 4 raised by the assessee in memo of appeal filed with tribunal stands dismissed. We order accordingly.

11. Similar is the fate of disallowance of expenses towards warehousing charges(Rs. 36,943/-) and Hamali Charges(Rs.25,088/-) challenged by the assessee vide ground no. 5 and 6 raised by the assessee in memo of appeal filed with tribunal. The additions were made towards warehousing charges of Rs. 36,943/- by the AO which were later confirmed by learned CIT(A). The assessee did not furnished details of the party to whom these warehouse charges were paid which led AO to disallow 25% of warehousing charges

totalling Rs. 1,47,775/-, leading to disallowance of Rs. 36,943/- The learned CIT(A) also disallowed the said expenses considering the said disallowance to be reasonable. The assessee has now filed an second appeal before tribunal and we find that no serious contentions were raised before us by learned counsel for the assessee before the tribunal to substantiate and justify allowing the entire warehousing expenses. The learned DR supported the orders of authorities below. After hearing both the parties and carefully going through the material on record, we find no reason to deviate from the decision taken by the Ld. CIT(A) and we affirm the order of learned CIT(A) and sustain the disallowance as proper and satisfactory explanation of incurring of these expenses are not submitted by the assessee. The Ground no. 5 raised by assessee in its appeal stand dismissed. We order accordingly.

11.2 Vide Ground no. 6 raised by assessee in its appeal filed with tribunal has challenged disallowance of 25% of hamali charges amounting to Rs. 1,25,440/- leading to disallowance of Rs.25,088/- by the AO by holding that the assessee has not furnished any documentary evidences in support of payment made to M/s Anand and Company and Mr. Suresh Bind. No address of Mr Suresh Bind was submitted by the assessee before the AO .The learned CIT(A) held the said disallowance to be reasonable. The assessee has filed second appeal and no serious contentions were raised by assessee before us to prove/substantiate that these expenses are duly supported by documentary evidences and were genuine/bonafide expenses incurred wholly and exclusively for the purposes of business. We have no reason to deviate from the decision taken by the Ld. CIT(A) which we affirm . Ground no. 6 raised by the assessee stand dismissed.We order accordingly.

12. The next ground being ground number 7 raised by the assessee in memo of appeal filed with tribunal relates to part relief granted by Ld. CIT(A) with respect to amount payable to M/s Anil Enterprises which stood credited in books of accounts of the assessee wherein additions were made earlier by the AO by invoking provisions of Section 41(1) of the 1961 Act wherein additions to the tune of Rs. 19,22,834/- which stood credited to the said party in the books of accounts of the assessee was added by the AO as income of the assessee, wherein the addition to the tune of 25% of the purchases made by the assessee from the said party during the year were confirmed by learned CIT(A) on the grounds that purchase price of the

drums were inflated , leading to confirmation of disallowance amounting to Rs. 4,86,522/- against which assessee has come in appeal, while rest of the additions as were made by the AO were deleted by Ld. CIT(A) which has aggrieved Revenue. The Revenue has also come in appeal before the tribunal being aggrieved by part relief being granted to the assessee by learned CIT(A) , vide ground number 6 raised by Revenue in memo of its appeal filed with tribunal. Thus, both assessee and revenue being aggrieved by the decision of learned CIT(A) has come in an appeal before tribunal. There were two additions made u/s 41(1) by the AO wrt M/s Jay Ambe Enterprises and M/s Anil Enterprises but since dispute wrt additions made u/s 41(1) of the credit balance outstanding to the credit of Jay Ambe Enterprises has attained finality between rival parties, we will restrict our discussions to additions made wrt credit of M/s Anil Enterprises u/s 41(1) towards purchases of drums made by the assessee from said party. It was observed by the AO during the course of assessment proceedings that an amount of Rs. 19,22,834/- stood credited to the account of M/s Anil Enterprises during the year under consideration. The notice u/s 133(6) was issued by the AO to M/s Anil Enterprises to verify the genuineness of the creditor M/s Anil Enterprises. The postal authorities returned the said notice unserved with remark 'Not Known'. The assessee was asked by the AO to prove genuineness of the aforesaid creditor. The assessee filed unsigned ledger account of the said party as appearing in its books of accounts . The assessee expressed its inability to produce this party and to produce evidence in support of the said creditor. The AO made additions to the tune of Rs. 19,22,834/- u/s. 41(1) of the 1961 Act.

12.2 Aggrieved by an assessment framed by the AO , the assessee filed first appeal with learned CIT(A). During the course of appellate proceeding before the Ld. CIT(A), the assessee submitted that at the fag end when the assessment was getting time barred, the AO vide letter dated 17.12.2009 asked assessee to file confirmation from the said party on 21.12.2009. The assessee submitted confirmation of the said party before the AO on 24.12.2009. The said confirmation is duly placed in paper book at page 105. The assessee claimed that this party is a regular trading party and trading with this party is continuing even till the date submissions were made by the assessee before learned CIT(A) on 30.10.2010. The assessee also submitted

that payments were made to this party through banking channel. The assessee also supplied new address of Anil Enterprises. The learned CIT(A) forwarded confirmation letter to AO for submitting remand report as these were additional evidences submitted before Ld. CIT(A). During Remand Report Proceedings, the AO issued summons u/s. 131 to Anil Enterprises on 23.12.2010 to file return of income, Balance Sheet , P&L account, ledger account, delivery challans/transportation challans for relevant period. The said party did not submit any details before the AO in pursuance to summons issued u/s 131 of the 1961 Act nor the said party appeared personally before the AO. The assessee was asked by the AO to file the requisite details. The assessee filed ledger account of Anil Enterprises in its books of accounts and bill copies of the party. However , the assessee did not file other details. The assessee did not file details of delivery i.e. delivery challans and transportation details, storage or warehouse details and hence transaction with the said party M/s Anil Enterprises was held to be not genuine purchase transactions. The copy of remand report was forwarded by learned CIT(A) to the assessee for rebuttal. The assessee in rebuttal to remand report submitted before learned CIT(A) that the said party M/s Anil Enterprises is a regularly trading party and the purchase transactions with said party are also going on till today while filing reply on 24.02.2011. The assessee also submitted copies of bills and as well copies of bank statements to prove that all payments were made through banking channel. The assessee also submitted confirmation of ledger account of Anil Enterprises as it appears in its books of accounts as well assessee's ledger as it appears in the books of M/s Anil Enterprises. The learned CIT(A) observed that assessee is dealing regularly with Anil Enterprises and even today that there are dealing between both the parties . The payments were made through bank channel and the assessee had submitted confirmation. The learned CIT(A) observed that the said party is supplying drums for packing chemicals sold by the assessee . The learned CIT(A) observed that M/s Anil Enterprises is the only party who is supplying drums to assessee for packing chemicals but the said party has chosen not to authenticate sales made to the assessee. The learned CIT(A) observed that in view of this the quantum of purchases i.e. price of these drums cannot be taken as fully authentic and hence 25% of the amount of purchases to the tune of Rs. 19,46,088/- made from this party i.e. Rs. 4,86,522/- was disallowed and added to the income

of the assessee by learned CIT(A). The learned CIT(A) was of the view that since the party is in existence and payments are made through banking channel , it canoe be treated as cessation of liability u/s 41(1) of the 1961 Act especially when the party has confirmed the balance.

12.3. Both the assessee and Revenue are aggrieved by the decision of Ld. CIT(A) and have filed second appeals with tribunal. It was submitted by Ld. DR that additions were made by the AO u/s. 41(1) with respect to credit balance appearing in the name of Anil Enterprises in the books of accounts of the assessee . The remand report were called by Ld. CIT(A) with respect to additional evidences filed by the assessee.The learned CIT(A) disallowed 25% of the purchases by holding that the prices could not be taken as authentic and genuineness of these purchases were held to be not proved. The learned DR would rely on assessment order. The learned counsel for the assessee submitted that additions were made u/s 41(1) by the AO to the tune of entire credit balance of Rs. 19,22,834/- standing to the credit of the said M/s Anil Enterprises in books of accounts of the assessee , while learned CIT(A) upheld disallowances to the tune of 25% of total purchases made by assessee from said party holding that authenticity of price paid for these purchases could not be proved. Our attention was drawn to page 112 of paper book which is letter dated 24.12.2009 filed by assessee with AO where in confirmation from M/s Anil Enterprises was filed by the assessee with the AO during assessment proceedings. Our attention was also drawn to page 115 of paper book, wherein ledger extract of the assessee from said Anil Enterprises were filed on 22.11.2010 before AO during remand report proceedings. It was submitted that dealings were continuing with the said party for purchasing drums for packing chemicals even after closure of financial year. Our attention was drawn to page 123/124 of paper book , wherein account of assessee in books of accounts of Anil Enterprises from April 2007 onwards till 19.03.2008 is placed. It was claimed that merely because the party has not appeared before the authorities below, no additions can be made.

12.4. We have considered rival contentions and perused the material on record. We have observed that the assessee is trading in chemicals. The assessee is buying drums from M/s Anil Enterprises which are used for packing chemicals . The assessee has made purchases to the tune of Rs.

19,46,088/- from the said party during the relevant period. The AO in order to verify genuineness of these purchases issued notice u/s 133(6) during assessment proceedings . The said notices returned unserved by postal authorities with remark 'Not Known' . The assessee was called upon by the AO to prove genuineness of these purchases and to prove this creditor. The assessee filed confirmation from this party but could not produce this party before the authorities below. In appellate proceedings before learned CIT(A), the learned CIT(A) called for remand report from AO with respect to additional evidences filed by the assessee. The summons were issued by AO u/s 131 to the said party namely M/s Anil Enterprises in Remand Report proceedings but again the said party did not co-operated and did not filed any documents before the AO directly nor appeared before the AO. The assessee has however filed with AO ledger extract of its books of accounts showing transactions with M/s Anil Enterprise as well ledger extract from M/s Anil Enterprises with respect to its accounts appearing in books of accounts of Anil Enterprises. The assessee had claimed to be buying drums from the said party which were used for packing chemicals. The assessee has also claimed that its trading dealings for purchases of drums continued even after the end of financial year and this party is the only party who is supplying drums to the assessee. The AO had earlier invoked provisions of Section 41(1) of the 1961 Act wherein entire credit amount as is appearing in the books of accounts of the assessee to the tune of Rs. 19,22,834 were added owing to creditors not being proved on the allegation of cessation of liability by the AO . The learned CIT(A) however confirmed additions to the tune of 25% of the purchases during the year of Rs. 19,46,088/- on account of non proving of authenticity of purchase price of these drums purchased from M/s Anil Enterprises. The learned CIT(A) noted that dealings are continued with this party even after closure of financial year but the party failed to confirm its dealing with the assessee by not co-operating with authorities. We have observed that the assessee has given all details with respect to purchases made from M/s Anil Enterprises including consumption details of drums, invoices, payment proof through banking channel, confirmation from said party. Reference is drawn to page 125 of paper book. The regular dealings with said party continued even after closure of previous year. There is no incriminating information in the possession of the Revenue that these purchases are bogus or prices were inflated. No

comparative analysis with respect to prices charged for drums by other parties is made by Revenue. The learned CIT(A) disallowed 25% of purchases on the grounds that authenticity of purchase price could not be proved, but learned CIT(A) failed to bring on record any evidences/comparative analysis to prove how the price charged by M/s Anil Enterprises is on higher side. The addition has been confirmed by learned CIT(A) merely on conjectures and surmises solely for the reasons that M/s Anil Enterprises did not authenticate transactions directly. No further enquiries were made by the authorities below to obtain independent data to prove that higher prices for drums was charged by Anil Enterprises. The learned CIT(A) rightly held that in the instant case Section 41(1) cannot be invoked as the dealing with said party continued even after the end of previous year and also that payments were all made through banking channel. Thus, this addition in our considered view is not sustainable in the eyes of law as the liability has not ceased to exist as on 31.03.2007 as the trading dealings of the assessee with the said party M/s Anil Enterprises continued even after closure of previous year and secondly payments were made through banking channel. The assessee has proved consumption of drums for packing of chemicals. The confirmations obtained by assessee from this party were filed. The invoices received from said party was filed. The stock register was filed. Thus, even on the ground of inflated price of the drums, additions are not sustainable as there is no incriminating material before the Revenue to come to conclusion that prices were inflated by Anil Enterprises. In the confirmation filed, the PAN number of Anil Enterprises is quoted (page 105/pb). Copy of PAN card of proprietor of M/s Anil Enterprises was also filed (pb/page 118). The Revenue could have initiated action against the said party for not complying with notices u/s 133(6) or summons u/s 131 but the assessee cannot be burdened with liability to pay tax for failure of Anil Enterprises to respond to notices issued by authorities below u/s 133(6) or summons issued u/s 131 of the 1961 Act, unless cogent incriminating evidences are brought on record to fasten tax-liability on the assessee. The AO also fail to take notice that amount payable as at 31.03.2007 vide confirmations payable to said Anil Enterprises was Rs. 7,15,154/- and not Rs. 19,22,834/- as the rest of the amount stood paid during the year through banking channel against purchases of drums made by the assessee. The entire purchases were added by the AO u/s 41(1) towards cessation of liability despite the fact that

substantial amount towards purchases made was paid within the previous year through banking channel. The said confirmation from M/s Anil Enterprises reflecting purchases made during the year and payments made during the year by the assessee duly certified by said M/s Anil Enterprises for relevant period is placed in paper book at page 105 and 115-118 . In any case, we have confirmed the additions vide this order towards low GP ratio as the assessee is consistently showing abysmally low GP for which no satisfactory explanation is offered by assessee. Thus, we decide this issue in favour of the assessee and dismiss the ground raised by the Revenue. The assessee succeeds on this ground and additions as was sustained by learned CIT(A) stood deleted., while part relief granted by learned CIT(A) stood affirmed. We order accordingly.

13. In the result , both the appeals filed by the assessee and revenue are partly allowed, as indicated above.

Order pronounced in the open court on 24.06.2019

आदेश की घोषणा खुले न्यायालय में दिनांक: 24.06.2019 को की गई ।

Sd/-

(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 24.06.2019

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI