

**आयकर अपीलीय अधिकरण न्यायपीठ, नागपुर में ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR**

(At e-Court, PUNE)

**BEFORE SHRI D. KARUNAKARA RAO, AM AND**  
**SHRI PARTHA SARATHI CHAUDHURY, JM**

Sl. No.	ITA No./CO No.	Name of Appellant	Name of Respondent	Asst. Year
1.	414/NAG/2014	ACIT, Central Circle-2(3), Nagpur	M/s. Gupta Coalfields & Washeries Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AABCG9561E	2008-09
2.	CO 16/NAG/2014	M/s. Gupta Coalfields & Washeries Ltd. C/o. Loya Bagri & Co, Chartard Accountants, Gandhibag. Nagpur.  PAN:AABCG9561E	ACIT, Central Circle-2(3), Nagpur	2008-09
3.	429/NAG/2014	ACIT, Central Circle-2(3), Nagpur	M/s. Gupta Coalfields & Washeries Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AABCG9561E	2005-06
4.	CO 15/NAG/2014	M/s. Gupta Coalfields & Washeries Ltd. C/o. Loya Bagri & Co, Chartard Accountants, Gandhibag. Nagpur.  PAN:AABCG9561E	ACIT, Central Circle-2(3), Nagpur	2005-06

5.	477/NAG/2014	ACIT, Central Circle-2(1), Nagpur.	M/s. Gupta Coal India Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN: AAACG4587B	2006-07
6.	03/NAG/2015	M/s. Gupta Coal India Ltd. C/o. Loya Bagri & Co. Chartard Accountants, Gandhibag. Nagpur.  PAN:AAACG4587B	ACIT, Central Circle-2(1), Nagpur.	2006-07
7.	478/NAG/2014	ACIT, Central Circle-2(1), Nagpur.	M/s. Gupta Coal India Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AAACG4587B	2007-08
8.	CO 04/NAG/2015	M/s. Gupta Coal India Ltd., C/o. Loya Bagri & Co. Chartard Accountants, Gandhibag. Nagpur.  PAN:AAACG4587B	ACIT, Central Circle-2(1), Nagpur.	2007-08
9.	479/NAG/2014	ACIT, Central Circle-2(1), Nagpur.	M/s. Gupta Coal India Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AAACG4587B	2008-09

10.	CO 05/NAG/2015	M/s. Gupta Coal India Ltd., C/o. Loya Bagri & Co. Chartard Accountants, Gandhibag. Nagpur.  PAN:AAACG4587B	ACIT, Central Circle-2(1), Nagpur.	2008-09
11.	480/NAG/2014	ACIT, Central Circle-2(1), Nagpur.	M/s. Gupta Coal India Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AAACG4587B	2009-10
12.	CO 06/NAG/2015	M/s. Gupta Coal India Ltd., C/o. Loya Bagri & Co. Chartard Accountants, Gandhibag. Nagpur.  PAN:AAACG4587B	ACIT, Central Circle-2(1), Nagpur.	2009-10
13.	481/NAG/2014	ACIT, Central Circle-2(1), Nagpur.	M/s. Gupta Coal India Ltd. 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AAACG4587B	2010-11
14.	CO 07/NAG/2015	M/s. Gupta Coal India Ltd., C/o. Loya Bagri & Co. Chartard Accountants, Gandhibag. Nagpur.  PAN:AAACG4587B	ACIT, Central Circle-2(1), Nagpur.	2010-11

15-16.	482/NAG/2014 483/NAG/2014	ACIT, Central Circle 2(3), Nagpur	M/s. Gupta Global Resources Ltd. (Earlier known as Gupta Coalfields & Washeries Ltd.) 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AABCG9561E	2006-07 2007-08
17-18.	CO 08/NAG/2015 09/NAG/2015	M/s. Gupta Global Resources Ltd. (Earlier known as Gupta Coalfields & Washeries Ltd.) C/o. Loya Bagri & Co., Chartered Accountants, Gandhibag, Nagpur.  PAN:AABCG9561E	ACIT, Central Circle 2(3), Nagpur	2006-07 2007-08
19-20.	484/NAG/2014 485/NAG/2014	ACIT, Central Circle-2(1) Nagpur.	M/s. Gupta Global Resources Ltd. (Earlier known as Gupta Coalfields & Washeries Ltd.) 7 <sup>th</sup> Floor, Shriram Tower, Kingsway Sadar, Nagpur.  PAN:AABCG9561E	2009-10 2010-11
21-22	CO 10/NAG/2015 11/NAG/2015	M/s. Gupta Global Resources Ltd. (Earlier known as Gupta Coalfields & Washeries Ltd.) C/o. Loya Bagri & Co., Chartered Accountants, Gandhibag, Nagpur. PAN:AABCG9561E	ACIT, Central Circle-2(1) Nagpur.	2009-10 2010-11

Assessee by : None  
Revenue by : Shri Milind Bhusari &  
Mrs. Agnes P. Thomas

सुनवाई की तारीख / Date of Hearing : 17.10.2019

घोषणा की तारीख / Date of Pronouncement : 22.10.2019

### **आदेश / ORDER**

#### **PER BENCH :**

This bunch of appeals preferred by the Revenue and cross objections preferred by the assessee emanates from the respective orders of the Ld. CIT(A) for the relevant assessment years as per caption mentioned hereinabove and as per the grounds of appeal on record.

2. At the time of hearing through video conference, neither the assessee nor any Authorized Representative was present to represent their case. It is apparent from the record that the notice was duly served upon the assessee. However, it appears that assessee is not keen to pursue these appeals. Considering the facts and circumstances, we proceed to adjudicate the issue after hearing the submissions of the Ld. DR.

3. These cases were heard together. Since more or less issues common and facts are identical, these cases are being disposed of vide this consolidated order.

For the sake of convenience, we would first take up ITA No.414/NAG/2014 and CO No.16/NAG/2014 for adjudication as lead case.

**ITA No.414/NAG/2014 (By Revenue)**  
**CO. No.16/NAG/2014 (By Assessee)**  
**A.Y.2008-09**

4. **Ground Nos. 1, 2 and 3** raised in this appeal pertains to share premium and share application money.

5. Briefly stated relevant facts on this issue are that there was search action carried out u/s.132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the premises of Gupta Coalfields & Washeries Ltd. Gupta Coal (India) Ltd. and residential premises of Shri Padmesh Gupta on 29<sup>th</sup> July, 2009. A notice u/s. 153A of the Act was issued to the assessee on 16.06.2010 for filing return of income. The assessee filed the same on 20.12.2011 which is almost one and a half year after the time specified by the Assessing Officer declaring total income of Rs.23,98,62,570/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee had received share application money of Rs.32 Lacs and share premium of Rs.288 Lacs. The assessee was asked to explain why the same should not be treated as undisclosed income. The assessee filed the requisite information in the proceedings before the investigation wing as well as before the Assessing Officer. After analyzing the same, the Assessing Officer concluded that the share application money and share premium received by the assessee are nothing but unaccounted money of the assessee and that the assessee did not explain properly the amounts so reflected in the Balance Sheet and accordingly, the Assessing Officer treated the entire amount of Rs.3.20 Crores as undisclosed income of the assessee and added the same to the total income of the assessee.

6. Aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(Appeals). The Ld. CIT(Appeals) after considering the facts and circumstances of the case, assessment order, granted relief to the assessee on the issue as per reasons recorded in his order.

7. The Ld. DR for the Revenue has placed strong reliance on the order of the Assessing Officer. The Ld. DR further submitted that the assessee has not explained the sources of the share premium and share application money which has been duly mentioned by the Assessing Officer in the assessment order. The Ld. DR further submitted that the Assessing Officer has elaborately discussed and clearly brought out the nexus between paper companies floated by Shri D.P. Sarda and amounts received by the Gupta Groups through money laundering which has been invested in the assessee company in the form of share capital/share application money. The Ld. DR further submitted that before the Assessing Officer, the assessee failed to prove the genuineness of the transactions and the creditworthiness of the investors. The Ld. DR prayed that the matter may be restored to the file of the Ld. CIT(A) for fresh adjudication in connivance with the order of the Assessing Officer.

8. We have perused the case records and heard the submissions of the Ld. DR. We have also perused the orders of the Authorities below on the issue. It is apparent from the order of the Assessing Officer vide Paras 8.9 to 8.20 that there were several discrepancies from the side of the assessee viz. **(i)** the assessee did not explain the amounts reflected in the balance sheet as share premium and share application money; **(ii)** share application money and share premium by the assessee in the Balance Sheet is nothing but

unaccounted money of the assessee routed through paper companies; **(iii)** the assessee did not discharge his onus casted upon him to explain the amounts of share premium and share application money reflected in the Balance Sheet; **(iv)** the assessee failed to prove the genuineness of the transactions and the credit worthiness of the investors during assessment proceedings; **(v)** assessee had clearly utilized the services of various bogus entities through D.P. Sarda and other brokers to launder its unaccounted money in the form of share application money and share premium.

9. While perusing the order of the Ld. CIT(A) on the issue, we observe that the Ld. CIT(A) is silent regarding the discrepancies pointed out by the Assessing Officer. Without going any enquiry or remand report from the Assessing Officer, the Ld. CIT(A) summarily adjudicated the issue. Where the Assessing Officer made an elaborate discussion regarding the issue and latches from the part of the assessee, the Ld. CIT(A) summarily dealt with the assessee. In view of the above, we are of the considered view that this issue needs detailed factual verification and examination of the documents on record and also classification on the points which has been pointed by the Assessing Officer. The order of the Ld. CIT(A) is not a speaking order from which it can be seen that each and every points on which the Assessing Officer raised doubt, has been clearly discussed. Accordingly, we set aside the order of the Ld. CIT(A) and remit the issue back to his file for fresh adjudication. The Ld. CIT(A) shall adjudicate the issue after dealing the doubtful points indicated in the assessment order and pass a speaking order on the issue. Needless to say, the Ld. CIT(A) shall grant reasonable opportunity of hearing to the assessee in accordance with law. Thus, **ground**

**Nos.1, 2 and 3 raised in appeal by the Revenue are allowed for statistical purposes.**

10. **Ground Nos. 4, 5 and 6** raised in appeal by the Revenue pertains to the depreciations of Rs.25,72,220/- and Rs.1,69,92,222/- on account of road and railway siding and wind mill respectively.

11. The brief facts on the issue are that the assessee claimed depreciation of Rs.18,76,595/- on approach road and depreciation of Rs.6,95,625/- on railway siding. The assessee company is engaged in the business of coal washery. The Assessing Officer observed that the expenditure incurred was capitalized in the books of accounts and the depreciation has been claimed and accordingly, disallowed the claim holding that the asset wherein the construction activity was carried out is not owned by the assessee.

Regarding depreciation of Rs.1,69,92,222/- u/s. 32(1)(iia) of the Act on wind mill, the Assessing Officer observed that the additional depreciation amounting to Rs.1,69,92,222/- claimed by the assessee cannot be allowed as it is only when the new plant and machinery is used in the manufacturing or production activity and results in production of an article or thing, that one is entitled for additional depreciation on that particular plant and machinery. The assessee purchased wind mill during the year and has been allowed the normal depreciation upon the same.

12. During First Appellate Proceedings, the Ld. CIT(A) after considering the facts and circumstances, submissions of the assessee and assessment order granted relief to the assessee by placing reliance on the various decisions of

the Hon'ble Supreme Court and High Courts. The relevant extract of the findings are as follows:

*“The assessee company has incurred capital expenditure and created assets in the form of road and railway siding which are being used for the purpose of smooth functioning and to facilitate the movements of goods. The Hon'ble **Supreme Court** had an occasion to examine the allowability of depreciation on building which was not owned by the assessee. In the case of **Mysore Minerals Ltd. Vs. CIT (1999) 239 ITR 775** the Hon'ble Court held that anyone in possession of the property and having the right to use and enjoy its usufruct for the purpose of the business of the assessee is entitled to depreciation u/s.32(1). It was further observed "The very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital assets, is utilising the capital assets and thereby losing gradually investment caused by wear and tear, and would need to replace the same by having lost value fully over a period of time ... ". Following said Supreme Court decision it was held by the **Kerala High Court in CIT Vs. Parthas Trust (2001) 249 ITR 120 Kerala** that assessee was entitled to depreciation on the buildings constructed by it though the land on which they stood was not registered in its name. In the instant case the road laid down and the railway siding constructed are assets on which the assessee, is having right to use and been utilised for business purposes, the same are subject to wear and tear and therefore following the ratio of the above decision of Hon'ble Supreme Court in the case of Mysore Minerals Ltd. I am of the opinion that, on the facts and circumstances of the case, the appellant is entitled to depreciation. Further, I find from the record that the issue regarding allowance of depreciation including on Road and Railway siding have been examined and accepted in the **order u/s.143(3) dated 28-3-2006** which was passed in pursuance to the proceedings undertaken after the search u/s.132 on 24-12-2003. This order was also subject to revision proceedings u/s.263 and in such proceedings also, I find that the claim of depreciation was not disputed. Similarly, the claim of depreciation has been allowed in order u/s.143(3) for the Asstt. Year 2005-06. There are no new facts brought on record by the AO found as result of second search conducted on 29<sup>th</sup> July, 2009 so as to disallow the claim of depreciation. The depreciation of Rs.18,76,595/- claimed on road and Rs.6,95,625/- on railway siding is therefore allowed. The ground of appellant is allowed.”*

12.1 On the issue of additional depreciation of Rs.1,69,92,222/- u/s.32(1)(iia) of the Act, the Ld. CIT(A) has held as follows:

*“The issue is regarding the allowability of additional depreciation claimed u/s.32(1)(iia) on the Wind Mill. On further examination of records, I find that the appellant has entered into an Agreement with Tamilnadu Electricity Board for supply of Electricity generated from the*

*Wind Mill. The electricity generated during the year has been sold as per the aforesaid Agreement of TEB which is supported by the Sale bills. Thus there is no dispute about the fact of generation of electricity in the year under consideration. As per the provisions of Section 32(1)(iia), the additional depreciation is allowable in case of new plant and machinery which was acquired and installed for the purpose of manufacturing or production of any article or thing. According to the AO, the generation of electricity through Wind Mill is not an activity of manufacturing or production of any article or thing within the meaning of Section 32(1)(iia). The appellant has placed reliance on various judgement and decisions of Hon'ble Courts for the proposition that such activity amounts to manufacture and production of article and thing. The clause 32(1)(ii) provides for depreciation on the block of assets as per Appendix '1' of the Rules and in such Appendix the rate of depreciation for Wind Mill has been provided in Clause (xii) and Sub Clause (I) . Section 32(1)(iia) provides for additional depreciation on plant and machinery covered by Clause 32(1)(ii). Thus Wind Mill is covered within the definition of plant and machinery. The issue whether the generation of power is an activity of manufacturing and production or not and whether the electricity so generated is thing or article or not; the issue has been settled by the Hon'ble Supreme Court and various High Courts. On perusal of the judgements, I find that it has been held that generation of electricity is akin to manufacturing of a new product. In the instant case, electricity may not be seen with the eyes, however, its effect can be seen and felt. The electricity can be transmitted, transferred, delivered etc. The Hon'ble Supreme Court in the case of CST Vs. Madhya Pradesh Electricity Board (1970) 25 STC 188 (SC) and in the case of State of Andhra Pradesh vs. NTPC 127 STC 280 (SC) has held that electricity falls within the definition of goods and the process involved is manufacture and production. Hon'ble Supreme Court in the case of CIT Vs. Sesa Goa Ltd. 279 ITR 331 and CIT Vs. India Cine Agencies 308 ITR 98 has explained a broader test to determine whether manufacture is there or not, it is propounded that when a change or series of changes are brought out by application of processes which take the commodity to the point where, commercially, it cannot be regarded as the original commodity, but is, instead recognised as a distinct and new article that has emerged as a result of the process. Similar issue of whether generation of electricity amounts to manufacturing and production or not and whether electricity is an article or thing or not and including the observation of the AO in Para 10.3 was involved in the case of NTPC Vs. DCIT in ITA no. 1438/Del/2009 Asstt. Year 2005-06, wherein the Hon'ble ITAT, Delhi vide its order dated 30/4/2012 after considering the judgements of Hon'ble Supreme Court and High courts has held that electricity is an article or thing and generation of power is manufacture and production and allowed the additional depreciation. In a recent case DCIT vs. Hutti Gold Mines Co. Ltd. (2013) 39 Taxman.com 18 (8ang-Trib), the issue of availability of Additional Depreciation in Asstt Year 2008-09 on windmill has been decided in favour of the assessee. In lieu of the above stated judicial pronouncements, facts of the case and examination of records, I hold that the assessee was engaged in the manufacturing and production of article and thing and is thus entitled for additional depreciation within the provisions of Section 32(1)(iia) of the Income Tax Act, 1961. The AO is directed to allow additional depreciation of Rs.1,69,92,222/-. The ground is allowed in favour of the appellant.”*

13. We have perused the case records and heard the submissions of the Ld. DR. We have also given considerable thought to the findings of the Ld. CIT(A) on the issue. The Ld. CIT(A) while adjudicating the issue has placed reliance on the various decisions of the Hon'ble Supreme Court and High Courts wherein it has been held that the assessee was entitled to depreciation on the building constructed by it though the land on which they stood was not registered in its name. In the instant case the road laid down and the railway siding constructed are assets on which the assessee is having right to use and been utilized for business purposes, the same are subject to wear and tear and therefore, the Ld. CIT(A) held the assessee to be entitled for depreciation.

Regarding the additional depreciation claimed u/s.32(1)(iia) of the Act on the Wind mill, the Ld. CIT(A) has placed reliance on the decision of the Hon'ble Supreme Court in the case of CST Vs. Madhya Pradesh Electricity Board (1970) 25 STC 188 (SC) and in the case of State of Andhra Pradesh Vs. NTPC 127 STC 280 (SC) wherein it has been held that electricity falls with the definition of goods and the process involved in manufacture and production. The Delhi Bench of the Tribunal in the case of NTPC Vs. DCIT in ITA No.1438/Del/2009 Asstt. Year 2005-06 after considering the judgments of the Hon'ble Supreme Court and High Courts has held that the electricity is an article or thing and generation of power is manufacture and production and allowed the additional depreciation.

14. In view of the above facts and circumstances, we are of the considered view that the Ld. CIT(A) has given categorical findings on the issue which is well reasoned and therefore, the same does not call for any interference. Thus, **ground Nos. 4, 5 and 6 raised in appeal by the Revenue are dismissed.**

15. **Ground No. 7 and 8** are general in nature and hence, requires no adjudication.

16. In the result, **appeal of the Revenue in ITA No.414/NAG/2014 is partly allowed for statistical purposes.**

17. **Ground Nos. 1 to 5** raised in cross objections (CO. No.16/NAG/2014) pertains to the share premium and share application money. Since we have already set aside the order of the Ld. CIT(A) and remit the issue back to his file for fresh adjudication, accordingly, these grounds of cross objection are also remitted back to his file for fresh adjudication as per directions given in the preceding paragraphs while deciding the issue in Revenue's appeal. Thus, **ground Nos. 1 to 5 raised in cross objections are allowed for statistical purposes.**

18. **Ground Nos. 6 and 7** of the cross objections pertains to the depreciation on approach roads and railway siding and additional depreciation on wind mill. Since we have dismissed the issues while deciding the issues in Revenue's appeal, **ground Nos. 6 and 7 of cross objections are allowed.**

19. **Ground No.8** is general in nature and hence, requires no adjudication.

20. In the result, **cross objection (16/NAG/2014) filed by the assessee is allowed for statistical purposes.**

**ITA No.429/NAG/2014 (By Revenue)**  
**C.O. No.15/NAG/2014 (By Assessee)**  
**A.Y.2005-06**

21. On perusal of the records and as per submissions of the Ld. DR, it is apparent that the facts and issues raised in both, appeal and cross objection filed by Revenue and assessee respectively, are identical to the facts and issues as raised in ITA No.414/NAG/2014 and CO No.16/NAG/2014. Thus, the decision rendered in ITA No.414/NAG/2014 and CO. No.16/NAG/2014 **shall apply mutatis-mutandis** to ITA No.429/NAG/2014 and CO No.15/NAG/2014. We order accordingly.

22. In the result, **appeal of the Revenue in ITA No.429/NAG/2014 is partly allowed for statistical purposes and cross objection (15/NAG/2014) is allowed for statistical purposes.**

**ITA No.477/NAG/2014 ( By Revenue)**  
**CO No.03/NAG/2015 ( By Assessee)**  
**A.Y.2006-07**

23. **Ground No.1** raised in this appeal pertains to the addition of Rs.1,07,95,696/- out of financial expenses.

24. The brief facts on the issue are that during the course of assessment proceedings, the Assessing Officer observed that the purchase and sale of goods in the case of assessee have taken place without any delivery of goods and held that they are not the actual purpose and sale but the accommodation sales. The Assessing Officer further held that the transactions are merely paper transaction and the gross profits shown are only notional and not real and tangible. After examining the trading and profit

and loss account, the Assessing Officer observed that the financial expenditure claimed is exorbitant and the assessee could not established the genuineness of the expenditure. Accordingly, the proportionate financial expenditure to the tune of Rs.1,07,95,696/- as calculated and added to the total income of the assessee.

25. The Ld. CIT(A) upheld the findings of the Assessing Officer as per reasons recorded which is on record.

26. At the time of hearing through e-Court, the Ld. DR submitted that the financial expenses are not genuine and incurred for the purpose of paper transactions and not for the purpose of business.

27. We have perused the case records and heard the submissions of the Ld. DR. We find that on the same facts and circumstances, the Co-ordinate bench of the Tribunal, Nagpur in assessee's own case in ITA No.392/NAG/2017 dated 24.04.2019 has held as follows:

*“6. On examining the facts as well as the issue raised before us, we find the similar issue was examined by the Tribunal and the same was allowed on similar facts in favour of the assessee. The contents of Para 5 of the order of Tribunal (supra.) are relevant in this regard and the same are extracted hereunder:*

*“Therefore, under the totality of the facts and circumstances of the case, we find no reason on the part of the AO to disallow the expenditure that too on proportionate basis. We, therefore, endorse the view taken by the learned CIT(Appeals). Ground dismissed.”*

Respectfully, following the order of the Tribunal mentioned hereinabove, we, therefore, endorse the view taken by the Ld. CIT(A) and

dismiss this ground of appeal. Thus, **ground No.1 raised in appeal by the Revenue is dismissed.**

28. **Ground No.2** of this appeal pertains to the additions of Rs.1,14,54,552/- and Rs.9,32,251/- on the basis of negative cash balance.

29. The brief facts on the issue are that during the course of search action on 29<sup>th</sup> July, 2009 at the business premises of the assessee, print outs of cash book of few branches including branch at HO were found. The authorized Office enquired during the search about the negative cash balance appearing in the print outs of cash book of various branches. The Assessing Officer asked the assessee during the assessment proceedings to furnish explanation about the infirmity in the print outs of the cash book of the HO branch and Morak Branch. The assessee explained that there are the old print outs taken in between the year and are of rough nature and has no value. The Assessing Officer made addition of Rs.1,14,54,552/- for negative balance in cash book print outs of HO of the company and Rs.9,32,251/- of the Morak branch of the company by holding that the assessee has provided explanation which is general in nature and is an after-thought and vague.

30. The Ld. CIT(Appeals) deleted the addition and provided relief to the assessee as per reasons recorded which is on record. For the sake of completeness, the relevant extract of the findings are as follows:

*“.....After carefully going through the various evidences available on record, I find that there is no dispute about the fact that no separate books of accounts are maintained at the branch sites. All the books of accounts including that of HO and the various branches are maintained at Head Office at Nagpur only in the same ERP package. The AR further submitted that the separate books of account in the ERP package are maintained on the basis of transactions of each branch occurring either at branch or at HO. The transactions are recorded by the*

accountant at the Head Office at Nagpur. On perusal of the copy of the seized item, I find that the print outs of cash book are for the part period and taken in between the year. The print outs for the period 1-4-2005 to 31-5-2005 were taken on 14-11-2005 as evidenced from such print outs. Similarly, the print out for 1-4-2005 to 30-9-2005 of Morak Branch was taken on 3-1-2006 as mentioned in the impugned seized document. Thus I find force in the contention of the assessee that these are the print outs which were taken in between the year and are not the complete record of final/regular cash book. The search was conducted on 29<sup>th</sup> July, 2009 and the assessee had already finalised the books of accounts which are duly audited. The Audited Balance Sheet has been filed alongwith the return of income and on the basis of the regular books of accounts the assessment was also completed earlier to search. These books of accounts were not at all referred surprisingly, at the time of search, nor at the time of assessment. On careful examination of the seized pages of cash book, I find that the books of accounts, on the date when the prints outs were taken, could be incomplete. Secondly, as submitted by the AR, the infirmities in the system may be due to error in software or not following the proper procedure before obtaining the data. Be that it may, it is not the case of the AO that the entries found in these loose cash sheets are not found included in the regular cash book nor it is the case of the AO that the entries in the regular cash book apart from what is recorded in the seized cash book, are unexplainable or not supported with any evidence. The AO did not point out any mistake in the regular cash book in comparison to the seized cash pages. The addition of such nature cannot be made under the given facts of the case. I have examined the entries in the impugned pages with the entries in the regular cash book and found that all the entries in the impugned pages are recorded in the regular cash book. There is no negative cash balance in the regular cash book. The receipts in the cash book are from withdrawal from the Bank, cash sales and other receipts which are supported by the evidence like Bank Statement and Sale bills about which no doubt has been raised by the AO. The addition made by the AO is therefore improper and without appreciating the facts of the case. The AO is directed to delete the addition. I further find that the seized documents are the cash book of the branches including HO branch, printouts of which were taken in between the accounting year. Although the AO in Para 9.3 has observed that the assessee did not point out the reasons for negative cash balances during the search proceedings and the plea is an after-thought, however, I find that the AO has himself observed in Para 9.1 of the assessment order that the explanation regarding the transfer of cash from HO to branches and vice versa and branches inter-se was advanced at the time of search. I thus found that the assessee had explained about the transfer of funds from HO to branch and inter-se during the course of assessment proceedings and has also justified such transfer. Considering the geographical distance between the branches and the HO and the movement of staff of the appellant, the explanation of the assessee is plausible, that such transfer of funds may not be accompanied with the documentary proofs as the company is a closely held company.

It is interesting to note that the AO has accepted the transfer of funds without documents in all those period in which there was a positive cash balance. In such circumstances, the system prevailing in the case of particular assessee has to be accepted in toto and the AO

*was unjustified in adopting pick and choose policy. I find that the assessee has explained satisfactorily the reason for negative cash balance and that the proper system may not have been followed. In my considered opinion, the explanation of the assessee could not be brushed aside as there could be error in feeding the data in computer or while taking out the output if the system is not properly operated. Be that as it may, the issue to be decided and should be looked into is that whether there was sufficient sources of cash available on the date when there was a negative cash balance due to entries of expenditure. I find that the assessee has explained the source of expenditure which has resulted into negative cash balance. The assessee produced consolidated cash book of HO, reference of which is found in para 2 of the letter of the assessee reproduced at Page 10 of the assessment order, and there is no dispute about the fact that there is no negative cash balance in the consolidated HO cash book. In para 9.1 the AO himself noted that the assessee requested to look into the cash balances of the consolidated accounts and not of a particular branch. On careful examination of the seized document, i.e. cash book of Morak and HO branch with the consolidated cash book, I find that all the expenditure/outgoings in the impugned branches cash book which has resulted into negative cash balance are also found entered in the consolidated cash book of the appellant. The source of such payments is found from the withdrawals from the bank account of HDFC Bank, UCO Bank, SBI and IngVyasa Bank and also from the cash sales. The withdrawal from the bank are supported by the bank statements and the cash sales are supported by the cash sale memo. The books of accounts are audited and the AO did not reject the books of accounts. Further, I find from the assessment order that the AO did not dispute the credits in the consolidated cash book of appellant, in the form of withdrawals from bank and cash sales. The genuineness of the credits is not doubted and the entries in the bank account and the sales are accepted. No case was made out by the AO to hold that the assessee has incurred expenditure from unexplained sources nor is there any evidence found as a result of search in this regard. Thus, I hold that the assessee has successfully established the availability of source of cash on the basis of cogent evidences for the expenditure incurred which has resulted into the infirmities in the printout of the HO branch and Marak branch cashbook.*

*In view of the discussion made above, I hereby hold that that the action of the AO in making the addition of Rs. 1,14,54,552/- by holding the same as negative cash balance is unjustified and liable to be deleted. Furthermore, the action of the AO in treating Rs. 9,32,251/- as negative cash balance of the appellant's Morak Branch is also unjustified. No addition can be made on account of same. The AO is hereby directed to the **delete** the addition. The ground nos. 3 and 4 are **allowed** in favour of the appellant."*

31. We have perused the case records and heard the submissions of the Ld. DR. We have also given considerable thought to the findings of the Ld. CIT(A) while dealing with the issue. The Ld. CIT(A) observed that the Assessing

Officer did not dispute the credits in the consolidated cash book of appellant, in the form of withdrawals from bank and cash sales. The genuineness of the credits is not doubted and the entries in the bank account and the sales are accepted. No case was made out by the Assessing Officer to hold that the assessee has incurred expenditure from unexplained sources nor is there any evidence found as a result of search in this regard. Accordingly, the Ld. CIT(A) held that the assessee has successfully established the availability of source of cash on the basis of cogent evidences for the expenditure incurred which has resulted into the infirmities in the printout of the HO branch and Marak branch cashbook. In view of the above, we are of the considered view that the order of the Ld. CIT(A) on this issue is well reasoned and it does not call for any interference. Thus, **ground No.2 raised in appeal by the Revenue is dismissed.**

32. **Ground No.3** of the appeal pertains to the addition of Rs.48,000/- towards service charges paid to Shri Krishna Gupta.

33. The brief facts on the issue are that the assessee paid service charges to Shri Krishna Gupta of Rs.48,000/-. The Assessing Officer enquired about the details of services rendered by Shri Krishna Gupta to the assessee company and asked to furnish copy of contract/agreement for such services. The Assessing Officer held that Krishna Gupta has not rendered any service to the company and in absence of the documents like contract/agreement, the expenses of Rs.48,000/- cannot be held to be incurred for the purpose of business and made the addition.

34. The Ld. CIT(A) deleted the addition and decided the issue in favour of the assessee as per reasons recorded which is on record. For the sake of completeness, the relevant extract of the findings on the issue are as follows:

*“.....The assessee furnished the certificate of service charges/commission issued to Shri Krishna Gupta and also supported the payments by the vouchers which are duly acknowledged by Shri Krishna Gupta. I find the contention of the appellant reasonable, that it is not practicable to execute contracts/agreements for such smaller payments which are found to have been made on fortnight basis and that too with the person who is related. The AR has stated that the payments to other persons of such nature are also without any formal agreement and which has been accepted by the AO. I find that Shri Krishna Gupta is gainfully employed with mainly two companies with a meagre income of approximately Rs.8,000/- per month. This is the reasonable income one can earn and in the instant case, Shri Krishna Gupta has already acknowledged the income on the vouchers as well as by filing the Return of Income. The payments made by the appellant are also very meagre and are Rs.4,000/- per month. There is no evidence brought on record as a result of search or thereafter in the assessment proceedings, wherein Shri Krishna Gupta has denied of payments received and services rendered. The doubt in the mind of the AO could have been cleared by the AO by examining Shri Krishna Gupta regarding services rendered which has not been done in this case. In such circumstances and facts of the case, I hold that the assessee has justified on the basis of record the payments to Krishna Gupta and the vouchers categorically support the nature of payments and expenditure. I hold that the expenditure is incurred for the purpose of business and is allowable. The AO is directed to delete the addition of Rs.48,000/-. The ground is allowed.”*

35. We have perused the case records and heard the submissions of the Ld. DR on the issue. We have also given considerable thought to the findings of the Ld. CIT(A) wherein it is observed that Shri Krishna Gupta is gainfully employed with mainly two companies with a meagre income of approximately Rs.8,000/- per month. This is the reasonable income one can earn and in the instant case, Shri Krishna Gupta has already acknowledged the income on the vouchers as well as by filing the Return of Income. The payments made by the appellant are also very meagre and are Rs.4,000/- per month. There is no evidence brought on record as a result of search or thereafter in the

assessment proceedings, wherein Shri Krishna Gupta has denied of payments received and services rendered. The doubt in the mind of the Assessing Officer could have been cleared by the Assessing Officer by examining Shri Krishna Gupta regarding services rendered which has not been done in this case.

36. In view of the above, we are of the view that the order of the Ld. CIT(Appeals) on the issue is detailed and well reasoned and therefore, the same does not call for any interference. **Thus, ground No.3 raised in appeal by the Revenue is dismissed.**

37. **Ground Nos. 4 and 5** raised in this appeal are identical to ground Nos.4, 5 and 6 in ITA No.414/NAG/2014 of Revenue's appeal. Since facts and issues are common, the decision rendered in ITA No.414/NAG/2014 **shall apply mutatis-mutandis** to ITA No.477/NAG/2014. In this case also, we dismiss the ground Nos.4 and 5 and answer the issue in favour of the assessee.

38. **Ground No.6** is general in nature and hence, requires no adjudication.

39. In the result, **appeal of the Revenue in ITA No.477/NAG/2014 is dismissed.**

40. In **CO No.03/NAG/2015, ground Nos. 1 to 5** pertains to issue of notice u/s.153A of the Act.

41. The brief facts on the issue are that there was search action carried out u/s.132(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the premises of Gupta Coalfields & Washeries Ltd. Gupta Coal (India) Ltd. and residential premises of Shri Padmesh Gupta on 29<sup>th</sup> July, 2009. A notice u/s. 153A of the Act was issued to the assessee on 16.06.2010 for filing return of income. The assessee filed the same declaring total income of Rs.5,62,73,710/-. The grievance of the assessee is that the issuance of notice and thus, initiation of assessment proceedings u/s.153A of the Act.

42. The Ld. CIT(A) dismissed this issue as per reasons recorded which is on record. For the sake of completeness, the relevant extract of the findings on the issue is as follows:

*“The main contention of the Authorised Representatives is that no evidence is found during the course of the Search for the year under consideration and therefore the action of the AO is bad in law. On careful perusal of the available details on record, it is observed that a search action u/s. 132(1) had been carried out at the business premises of the assessee on 29/07/2009. During the course of the search operation, various items of books of accounts and documents were found and seized. Thereafter, the A.O. issued a notice u/s.153A of the I.T. Act on 16-6-2010 requiring the assessee to file the return of income within 30 days from receipt of the notice. It is observed that the appellant did not comply to same but filed the return of income on 23-12-2011 which is after almost one and half years of the time limit specified by the AO. As the search action had been carried out u/s.132(1) of the I.T. Act, the issue of notice u/s.153A, in my considered view is perfectly legal and very much in order. Thus, I find no reasons requiring any interference on this issue i.e. as far as legality of the issuing of notice u/s.153A is concerned. Accordingly, this ground of appeal is dismissed.”*

43. We have perused the case record and heard the submissions of the Ld. DR. We have also given considerable thought to the findings of the Ld. CIT(A). On perusal of the record, we find that no material or evidence of incriminating nature was found as result of search. The Assessing Officer made addition on the basis of regular entries in the books of account which is contrary to the

legislative intent of section 153A of the Act. In view of the above discussion, we set aside the order of the Ld. CIT(A) and **allow the grounds No.1 to 5.**

44. **Ground No.6** raised in cross objection is identical to ground No.1 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.1 in Revenue's appeal, ground No.6 raised in cross objection is answered in favour of the assessee. Thus, **ground No.6 raised in cross objection is allowed.**

45. **Ground No.7** raised in cross objection is identical to ground No.2 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.2 in Revenue's appeal, ground No.7 raised in cross objection is answered in favour of the assessee. Thus, **ground No.7 raised in cross objection is allowed.**

46. **Ground No.8** raised in cross objection is identical to ground No.3 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.3 in Revenue's appeal, ground No.8 raised in cross objection is answered in favour of the assessee. Thus, **ground No.8 raised in cross objection is allowed.**

47. **Ground No.9** raised in cross objection is identical to ground No.6 of the Revenue's appeal being ITA No.414/NAG/2014. Since we have dismissed the ground No.6 in Revenue's appeal, ground No.9 raised in cross objection is answered in favour of the assessee. Thus, **ground No.9 raised in cross objection is allowed.**

48. **Ground No.10** is general in nature and hence, requires no adjudication.

49. In the result, **CO No.03/NAG/2015 raised by the assessee is allowed.**

**ITA No.478/NAG/2014 ( By Revenue)**  
**CO No.04/NAG/2015 ( By Assessee)**  
**A.Y.2007-08**

50. **Ground No.1** of this appeal pertains to the deletion of addition of Rs.1.80 Crores towards purchases made from M/s. Encore Logistics Pvt. Ltd.

51. The brief facts on the issue are that the assessee purchased coal from M/s. Encore Logistics Pvt. Ltd. (ELPL) amounting to Rs. 1.80 Crore. The AO during the assessment proceedings, asked the assessee to produce proofs of transportation of goods to its site in the form of delivery memo, transportation bills and weighment slips. The assessee claimed that the goods were purchased on FOR basis and therefore these documents were not available. However, except for the impugned purchases, the other purchases from the party were substantiated with delivery proofs. During the course of the Search, the investigation wing recorded statements of Shri Omprakash J. Sharma, employee of Gupta Coal India Ltd. (GCIL) and enquired regarding the transaction of coal purchased from ELPL by the company. Shri O.P.Sharma stated that he is authorised to operate the Bank Account of M/s. ELPL and submitted various documents like minutes of the meeting of Board of ELPL, letter of authorization in his name, memorandum and articles of association, PAN of ELPL and its directors etc. The Assessing Officer observed that the entire amount credited in the IndusInd Bank account was received from the assessee and the same was withdrawn in cash. In his statement,

Shri Vidhyasagar denied having sold the impugned coal claimed to have been purchased by the company. It is also found that the enquiry regarding the impugned transactions with M/s. ELPL in connection with Banking Cash Transaction Tax (BCTT) was conducted in the month of October, 2007 and November, 2007 during which Shri O.P. Sharma submitted the copy of Bank Account with IndusInd Bank and also produced the copy of cash book of ELPL for Nagpur Branch. Mr. O. P. Sharma also furnished copy of IT return and Annual Report of ELPL for F.Y.2006-07 i.e A.Y. 2007-08. The assessment for the Asstt. Year 2006-07 was completed u/s.143(3) r.w.s. 153A and the assessment order for that year was also passed on 28-12-2011. The appellant company has made purchases from ELPL in F.Y. 2005-06 i.e. Asstt Year 2006-07 to the tune of Rs. 196.57 lacs. It is found from the assessment order that the AO has accepted the entire purchases for Asstt. Year 2006-07. During the year under consideration, the assessee has made total purchases of Rs.282.31 Lacs out of which the Assessing Officer held that he was not satisfied about the explanation furnished and held that the transactions of purchase of coal worth Rs.1.80 Crores by the assessee from M/s. ELPL as not genuine and accordingly made addition to the total income of the assessee.

52. During the First Appellate proceedings, the Ld. CIT(A) deleted the addition as per the reasons recorded which is on record. For the sake of completeness, the relevant extract of the findings is reproduced herein below:

*“.....I find that the issue regarding genuineness of purchase from ELPL were also subjected to verification in the regular proceedings u/s.143(3) for Asst. Year 2005-06 before the search in the case of Gupta Coalfields & Washeries Ltd. In para 3 of the assessment order u/s.143(3) dated 28-12-2007 which was passed before the Search, there was a specific inquiry with regard to the genuineness of purchases from ELPL. I find that the purchases from ELPL were accepted as genuine and there is no addition by the AO. Similarly, the transactions with ELPL and*

*the IndusInd bank account in which the purchase consideration was deposited was also subject to verification by the ITO- Investigation, Nagpur in connection with Banking Cash Transaction Tax Matter in the case of ELPL in the month October-November, 2012. In that proceeding, in the case of ELPL, the statement of Mr. O.P. Sharma was recorded u/s. 131 and the cash book of Nagpur Branch of ELPL and the bank statements were furnished and were verified by the investigation wing.*

*On merits of the case further, I find that the assessee has submitted evidence to justify the genuineness of the purchases like purchase invoice, copy of account of ELPL and the proof that the payment is made through banking channel. As regards the non availability of proofs of transportation, the appellant has stated that the goods were purchased on FOR basis and therefore the evidence for transportation could not be available with it. It is also an undisputed fact that the assessee has maintained complete accounts including purchase daybook, sales day-book, purchase bills, sale bills and stock register. The accounts of the assessee have been duly audited under the Income Tax Act as well as the Companies Act. The summary of the quantitative details as extracted from the stock register with respect to the goods traded are also certified by the Tax Auditor and also find place in the audited financial statement which is an undisputed fact. Neither is there any allegation of difference in the quantitative tally nor the books of accounts and the trading results have been rejected. The source of money for purchases has not been doubted. The purchases from the said party have been made throughout the financial year and the impugned purchases have been made on 31-08-2006. The goods purchased have been included in the quantitative details maintained by the assessee. The sales and closing stock figures are also undisputed by the AO.*

*In lieu of the aforesaid factual finding, I am of the view that if the investment in the purchases is not doubted and quantitative tally of the item purchased, stock and the sales are not questioned by the AO then, in such circumstances and considering the facts of the case, the purchases cannot be held to be non genuine and no addition can be made. Hon'ble Delhi Tribunal in the case of Eland International Pvt. Ltd. vs. DCIT (2009) 124 **TTJ (Del)** 554 has held "It is clear that the transactions of purchase and sale were recorded in the books of account and these transactions led to profit to the assessee, which was brought to tax. If sales have been effected out of purchases made from these parties, then, it cannot be said that the purchases were bogus. The finding of bogus sale can only lead to the inference that the corresponding amount should be deleted from the turnover of the assessee. The AO has also not rejected the books of account to estimate profit on these transactions in case it was a firm finding that purchases and sales were bogus. Therefore, on the facts of case and in absence of displacing the finding of the CIT(A) and the fact that the assessee showed profit from these transactions, there is no such error in the order of the CIT(A) which requires correction. Respectfully following the above decisions, facts of the case and the evidence available on record, the addition of Rs. 1.80 crores is therefore directed to be deleted. The ground is hereby allowed."*

53. We have perused the case records and heard the submissions made by the Ld. DR. We have also perused the order of the Ld. CIT(A) on this issue.

We find that the Ld. CIT(A) while granting relief to the assessee has placed reliance on the order of the Delhi Bench of the Tribunal in the case of Eland International Pvt. Ltd. Vs. DCIT (2009) 124 TTJ (Del.) 554. Therefore, we are of the considered view that the order of the Ld. CIT(A) is well reasoned and it does not call for any interference. Thus, **ground No.1 raised in appeal by the Revenue is dismissed.**

54. **Ground No.2** raised in this appeal are identical to ground Nos.1 in ITA No.477/NAG/2014 of Revenue's appeal. Since facts and issues are common, the decision rendered in ITA No.477/NAG/2014 **shall apply mutatis-mutandis** to ITA No.478/NAG/2014. In this case also, we dismiss the ground No.2 and answer the issue in favour of the assessee.

55. **Ground No.3, 4 and 5** raised in this appeal are identical to ground Nos.1, 2 and 3 in ITA No.414/NAG/2014 of Revenue's appeal. Since facts and issues are common, the decision rendered in ITA No.414/NAG/2014 **shall apply mutatis-mutandis** to ITA No.478/NAG/2014. In this case also, we set aside the order of the Ld. CIT(A) and remit the issue back to his file for fresh adjudication. Thus, **ground Nos. 3, 4 and 5 raised in appeal by the Revenue are allowed for statistical purposes.**

56. **Ground No.6** raised in this appeal are identical to ground Nos.2 in ITA No.477/NAG/2014 of Revenue's appeal. Since facts and issues are common, the decision rendered in ITA No.477/NAG/2014 **shall apply mutatis-mutandis** to ITA No.478/NAG/2014. In this case also, we dismiss the **ground No.6.**

57. **Ground No.7** raised in this appeal is identical to ground No.3 of the Revenue's appeal being ITA No.477/NAG/2014. Since facts and issues are common, the decision rendered in ITA No.477/NAG/2014 **shall apply mutatis-mutandis** to ITA No.478/NAG/2014. In this case also, we dismiss the **ground No.7**.

58. **Ground No.8** is general in nature and hence, requires no adjudication.

59. In the result, **appeal of the Revenue in ITA No.478/NAG/2014 is partly allowed for statistical purposes.**

60. In **CO.No.04/NAG/2015**, **grounds No.1, 2, 3 & 4** are identical to ground No.1, 2, 3, 4 and 5 of the in CO No.03/NAG/2015. Since facts and issues are common, our decision rendered in CO No.03/NAG/2015 shall apply mutatis-mutandis to CO No.04/NAG/2015. **Thus ground Nos. 1, 2, 3 and 4 raised in cross objections are allowed.**

61. **Ground No.5** raised in cross objection is identical to ground No.1 of the Revenue's appeal being ITA No.478/NAG/2014. Since we have dismissed the ground No.1 in Revenue's appeal, ground No.5 raised in cross objection is answered in favour of the assessee. Thus, **ground No.5 raised in cross objection is allowed.**

62. **Ground No.6** raised in cross objection is identical to ground No.1 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.1 in Revenue's appeal, ground No.6 raised in cross objection is

answered in favour of the assessee. Thus, **ground No.6 raised in cross objection is allowed.**

63. **Ground No.7** raised in cross objection is identical to ground No.1, 2 and 3 of the Revenue's appeal being ITA No.414/NAG/2014. Since facts and issues are common, our decision rendered in ITA No.414/NAG/2014 shall mutatis-mutandis apply to this issue. Thus, **ground No.7 raised in cross objection is allowed for statistical purposes.**

64. **Ground No.8** raised in cross objection is identical to ground No.2 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.2 in Revenue's appeal, ground No.8 raised in cross objection is answered in favour of the assessee. Thus, **ground No.8 raised in cross objection is allowed.**

65. **Ground No.9** raised in cross objection is identical to ground No.3 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.3 in Revenue's appeal, ground No.9 raised in cross objection is answered in favour of the assessee. Thus, **ground No.9 raised in cross objection is allowed.**

66. **Ground No.10** is general in nature and hence, requires no adjudication.

67. In the result, **cross objection 04/NAG/2015 is allowed for statistical purposes.**

**ITA No.479/NAG/2014 ( By Revenue)**  
**CO No.05/NAG/2015 ( By Assessee)**  
**A.Y.2008-09**

68. **Ground No.1** raised in this appeal is identical to ground No.1 of the Revenue's appeal being ITA No.477/NAG/2014. Since we have dismissed the ground No.1 of the Revenue's appeal and answered the issue in favour of the assessee, **ground No.1 raised in this appeal is also dismissed.**

69. **Ground No.2, 3 and 4** raised in this appeal are identical to ground Nos. 1, 2 and 3 raised in ITA No.414/NAG/2014. Since facts and issues are similar, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis-mutandis to this case also. Thus, **ground Nos. 2, 3 and 4 raised in this appeal are allowed for statistical purposes.**

70. **Ground No.5** raised in this appeal is identical to ground No.2 of the Revenue's appeal in ITA No.477/NAG/2014. Since facts and issues are similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this case also. Thus, **ground No.5 raised in this appeal is dismissed.**

71. **Ground No.6** is general in nature and hence, requires no adjudication.

72. In the result, **appeal of the Revenue in ITA No.479/NAG/2014 is partly allowed for statistical purposes.**

73. **Ground Nos. 1 to 4** raised in **CO No.05/NAG/2015** are identical to ground Nos. 1 to 5 of the CO No.03/NAG/2015. Since facts and issues are

similar, our decision rendered in CO. No.03/NAG/2015 shall apply mutatis-mutandis to CO No. 05/NAG/2015. Thus, **ground Nos. 1 to 4 raised in cross objections by the assessee are allowed.**

74. **Ground No.5** raised in CO No.05/NAG/2015 is identical to the issue raised in ground No.1 of Revenue's appeal in ITA No.477/NAG/2014. Since we have dismissed this ground and answered the issue in favour of the assessee, **ground No.5 raised in CO No.05/NAG/2015 is allowed.**

75. **Ground No.6** raised in CO No.05/NAG/2015 is identical to the issue raised in ground Nos. 1, 2 and 3 of the Revenue's appeal in ITA No.414/NAG/2014. Since facts and issues are common, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis mutandis to this issue also. Thus, **ground No.6 raised in this appeal is allowed for statistical purposes.**

76. **Ground No.7** raised in CO No.05/NAG/2015 is identical to the issue raised in ground No.2 of the Revenue's appeal in ITA No.477/NAG/2014. Since we have dismissed this ground while adjudicating the issue in Revenue's appeal, **ground No.7 raised in CO No.05/NAG/2015 is allowed.**

77. **Ground No.8** raised in cross objection is general in nature and hence, no adjudication is required.

78. In the result, **CO No.05/NAH/2015 filed by the assessee is allowed for statistical purposes.**

**ITA No.480/NAG/2014 ( By Revenue)**  
**CO No.06/NAG/2015 ( By Assessee)**  
**A.Y.2009-10**

79. **Ground No.1** raised in this appeal is identical to ground No.1 of the Revenue's appeal in ITA No.477/NAG/2014. Since we have dismissed this ground and answered the issue in favour of the assessee, **ground No.1 raised in this appeal is dismissed.**

80. **Ground No.2** raised in this appeal is identical to ground No.2 of the Revenue's appeal in ITA No.477/NAG/2014. Since facts and issue is similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this issue. Thus, **ground No.2 raised in this appeal by Revenue is dismissed.**

81. **Ground No.3** raised in this appeal pertains to the addition of Rs.17,16,59,104/- on account of unrecorded sales.

82. The brief facts on the issue are that during the course of search action at the premises of the appellant, some Daily Cash Sheets (DCS) were found and seized from the possession of staff, Shri Sameer Porwal. On perusal of the DCS seized and after recording the statement of Shri Porwal and Shri Padmesh Gupta, Director of the appellant company, the AO held that the receipts in DCS were cash sales of coal made by the appellant company's Majri Branch. He compared the same with the cash sales actually recorded in the regular books of accounts of the Majri Branch of the company and held that the difference thereof is the unrecorded cash sales of the Majri Branch. The total addition made on this account was Rs.17,16,59,104/-.

83. The Ld. CIT(A) has granted relief to the assessee as per the reasons recorded in his order which is on record. The Ld. CIT(A) has made elaborate discussion as per Para 5.4 of the appellate order. The relevant extract of the findings are as follows:

*“.....Once the assessee has reconciled the figures appearing in the impugned DCS with the regular books of accounts, I find no reason available with the AO to hold that the same are unrecorded cash sales of the appellant company. In my considered view, in absence of any concrete evidence rebutting the reconciliation furnished by the assessee at the time of assessment proceedings, the action of the AO in treating such an amount as unrecorded sales merely on the basis of a statement of a junior staff recorded at the back of the assessee, is unjustified. The AO is hereby directed to delete the addition of Rs.17,16,59,104/-. The ground No.4 is allowed in the favour of the appellant.”*

84. The Ld. DR submitted that the cash sales as per the books, were less, as compared to cash sales as per 'Daily Cash Sheets'. The Ld. DR further submitted that the receipts in DCS were cash sales of coal made by the assessee company Majri Branch and the difference thereof is unrecorded sales of the Majri branch.

85. We have perused the case records and heard the submissions made by the Ld. DR. We have also given considerable thought to the findings of the Ld. CIT(A) on this issue. We find the Assessing Officer found difference in the DCS which is unrecorded cash sales of the Majri Branch and accordingly, he made the addition on the basis of difference worked out at the time of search. This issue needs verification of the difference of amount, factual verification of the issue. Therefore, we set aside the order of the Ld. CIT(A) and remit the issue back to his file for verification in consonance with the principles of natural justice. Thus, **ground No.3 raised in appeal by the Revenue is allowed for statistical purposes.**

86. **Ground Nos. 4 and 5** raised in this appeal are general in nature and hence, no adjudication is required.

87. In the result, **appeal of the Revenue in ITA No.480/NAG/2014 is partly allowed for statistical purposes.**

88. In **CO No.06/NAG/2015**, ground Nos.1 to 4 raised in cross objections are identical to ground Nos. 1 to 5 of the CO No.03/NAG/2015. Since we have allowed these grounds as per discussion given in CO No.03/NAG/2015, **ground Nos. 1 to 4 raised in cross objection by the assessee are allowed.**

89. **Ground No.5** raised in CO No.06/NAG/2015 is identical to ground No.1 of Revenue's appeal in ITA No.477/NAG/2014. Since we have decided this issue in favour of the assessee and against the Revenue, **ground No.5 raised in this appeal is allowed.**

90. **Ground No.6** raised in CO No.06/NAG/2015 is identical to ground No.2 of Revenue's appeal in ITA No.477/NAG/2014. Since we have dismissed the ground No.2 in Revenue's appeal, **ground No.6 raised in cross objection by the assessee is allowed.**

91. **Ground No.7** raised in CO No.06/NAG/2015 is identical to the issue raised in ground No.3 of Revenue's appeal in ITA No.480/NAG/2014. Since facts and issue is common, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis-mutandis to this issue. Thus, **ground No.7 raised in cross objection by the assessee is allowed for statistical purposes.**

92. **Ground No.8** raised in CO No.06/NAG/2015 is general in nature and hence, requires no adjudication.

93. In the result, **CO No.06/NAG/2015 filed by the assessee is allowed for statistical purposes.**

**ITA No.481/NAG/2014 ( By Revenue)**  
**CO No.07/NAG/2015 ( By Assessee)**  
**A.Y.2010-11**

94. **Ground No.1** raised in this appeal is identical to ground No.1 raised in ITA No.477/NAG/2014. Since facts and issue is common, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.1 raised in this appeal by the Revenue is dismissed.**

95. **Ground No.2** raised in this appeal is identical to ground No.2 raised in ITA No.477/NAG/2014. Since facts and issue is common, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.2 raised in this appeal by the Revenue is dismissed.**

96. **Ground No.3** raised in this appeal is identical to ground No.3 raised in ITA No.480/NAG/2014. Since facts and issue is common, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.3 raised in this appeal by the Revenue is allowed for statistical purposes.**

97. **Ground No.4** raised in this appeal pertains to the addition of Rs.4,19,64,686/- towards undisclosed income.

98. The brief facts on the issue are that the Statement of Padmesh Gupta, Director of the appellant company was recorded on 28-8-2009 in the search proceedings. In the statement, extracts of which are reproduced at Page 12 and 13 of the assessment order, a declaration U/s.132(4) was made by which the assessee promised to show book profit of Rs. 46 crores for the assessment year under consideration. The AO compared this amount with the book profit in the Profit and Loss Account and held that the assessee has shown book profit of Rs.41,80,35,314/- as against the promise of Rs. 46 crores. Accordingly, an addition of Rs.4,19,64,686/- being the difference between the two amounts was made.

99. The Ld.CIT(A) has provided relief to the assessee as per reasons recorded in his order which is on record. The relevant extract of the findings are as follows:

*“.....In such a situation, since a major part of the year was still remaining, any such promise made or assurance given is only a best estimate of the future results, based on the recent history and current situation. However, such a variation of the actual book results from the Director's estimates cannot be taken by the AO to his advantage so as to make an addition only on the basis of statement u/s 132(4) and in absence of any other evidence of concealment or non-disclosure of income. It is surprising that the AO made such a substantial amount of 'addition only on the basis of a promise made of future results which cannot be predicted with 100% accuracy by any person. The AO lost sight of the fact that the statement was recorded on 28-8-2009, when the year was yet to end and seven months were still remaining. The addition in nature of the one made by the AO in the case before me cannot be made in the absence of any concrete evidence in the form of seized material which corroborates the statement of the Director. Admission made by the director is not a specific admission, but it was a general statement made. Any statement made in a general way and that too without reference to any particular document or paper or books of account, cannot form the basis to determine the undisclosed income. The addition made by the AO merely on the basis of statement cannot be sustained. The AO is directed to **delete** the addition of **Rs.***

**4,19,64,686/-**. *The ground of appeal is **allowed** in favour of the appellant.”*

100. We have perused the case records and heard the submissions made by the Ld. DR. We have also given considerable thought the findings of the Ld. CIT(A). The CIT(A) has observed that the books of accounts have been accepted and no defect has been pointed out. As far as any promise made or statement given during the course of search under section 132(4) is concerned, no doubt the disclosure or admission made u/s.132(4) during search proceedings is an admissible evidence but not a conclusive one. The presumption of admissibility of evidence is rebuttable one and if an assessee is able to demonstrate with the help of some material that such admission was either mistaken, untrue or under misconception of facts then solely on the basis of such admission, no addition is required to be made. Therefore, we do not find any infirmity with the findings of the Ld. CIT(A) on this issue and the same is thereby upheld. Thus, **ground No.4 raised in appeal by the Revenue is dismissed.**

101. **Ground No.5 and 6** raised in appeal are general in nature and hence, no adjudication is required.

102. In **CO No.07/NAG/2015**, **ground No.1** is general in nature and no adjudication is required.

103. **Ground No.2** raised in CO No.07/NAG/2015 is identical to ground No.1 raised in Revenue's appeal in ITA No.477/NAG/2014. Since facts and issue are common, our decision rendered in ITA No.477/NAG/2014 shall

apply mutatis-mutandis on this issue also. Thus, **ground No.2 in cross objections raised by the assessee is allowed.**

104. **Ground No.3** raised in CO No.07/NAG/2015 is identical to ground No.2 raised in Revenue's appeal in ITA No.477/NAG/2014. Since facts and issue are common, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis on this issue also. Thus, **ground No.3 in cross objections raised by the assessee is allowed.**

105. **Ground No.4** raised in CO No.07/NAG/2015 is identical to ground No.3 raised in Revenue's appeal in ITA No.480/NAG/2014. Since facts and issue are common, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis-mutandis on this issue also. Thus, **ground No.4 in cross objections raised by the assessee is allowed for statistical purposes.**

106. **Ground No.5** raised in CO No.07/NAG/2015 is identical to ground No.4 raised in Revenue's appeal in ITA No.481/NAG/2014. Since facts and issue are common, our decision rendered in ITA No.481/NAG/2014 shall apply mutatis-mutandis on this issue also. Thus, **ground No.5 in cross objections raised by the assessee is allowed.**

107. **Ground No.6** raised in this appeal is general in nature and hence, no adjudication is required.

108. In the result, **CO No.07/NAG/2015 filed by the assessee is allowed for statistical purposes.**

**ITA No.482/NAG/2014 ( By Revenue)**  
**CO No.08/NAG/2015 ( By Assessee)**  
**A.Y.2006-07**

109. **Ground No.1, 2 and 3** raised in this appeal are identical to ground No.1, 2 and 3 of the Revenue's appeal in ITA No.414/NAG/2014. Since the fact and issue is common, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground Nos. 1, 2 and 3 raised in appeal by the Revenue are allowed for statistical purposes.**

110. **Ground No.4** raised in this appeal is identical to ground No.1 of Revenue's appeal in ITA No.478/NAG/2014. Since the fact and issue is common, our decision rendered in ITA No.478/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.4 raised in appeal by the Revenue is dismissed.**

111. **Ground No.5** raised in this appeal is identical to ground No.2 of Revenue's appeal in ITA No.477/NAG/2014. Since the fact and issue is common, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.5 raised in appeal by the Revenue is dismissed.**

112. **Ground No.6** raised in appeal by the Revenue pertains to the addition of Rs.58,06,714/- on account of job work charges paid to M/s. Meenakshi Re-rollers Pvt. Ltd.

113. The facts on the issue are that the facts in brief as borne out from the records are that the assessee company had awarded a jobwork to a company

M/s. Meenakshi Rerollers Pvt. Ltd., Nagpur for handling and restacking of coal and reject coal and its sorting and screening at Sasti washery of the appellant company in the year under consideration. The total jobwork charges paid with respect to same were Rs.58,06,714/-. However, as a result of Excise enquiry of MRPL, it was held by the excise authorities that MRPL has never provided any jobwork services to GCWL and the expense claimed was merely a book entry. On basis of the Excise enquiries, the Assessing Officer also held that the assessee has failed to bring any evidence to prove that the expenses are genuine and hence made an addition of Rs.58,06,714/-.

114. The Ld. CIT(Appeals) has granted relief to the assessee as per the reasons recorded in his order which is on record. The relevant extract of the findings of the Ld. CIT(A) on this issue are as follows:

*“ .....On careful perusal of the work order and bill of MRPL with respect to the scope of work and its comparison with the scope of work with other two parties which is mentioned in Para 11.1 and 11.2, I find that there is no similarity and the scope of work differs. The scope of work in case of MRPL was unloading, handling and restacking of coal before washing, sorting and screening. of reject coal from washed coal, and after the washing process, separation of reject coal from washed coal and thereafter loading. While in the case of Sapra Transport, there was no activity before washing of coal and the impugned party was assigned the job of loading the washed coal, raw coal and rejects in truck / tipper in the plant including restacking and only supervision for removal of impurities. The impugned party was separately assigned the job of loading of washed coal, loading of rack for which there were separate rates. Thus, I find that the scope of work in the case of MRPL was wider as compared to the different scopes of work for which different rates were paid to Sapra Transport. In Para 11.3, the AO has himself noted the scope of work of Prince Thermal India Pvt. Ltd. as only picking of stones/shells and other extraneous material from coal conveyor belts at washery which in my opinion is not at all comparable with the scope of work assigned to MRPL which is quite large. Thus, when the scope of work to be performed is un comparable, I agree with the AR that the rates cannot be compared. The assessee has been able to successfully establish the difference between the work assigned to M/s. MRPL and other parties and in such circumstances, the rates charged by the parties are not comparable and the AO erred in holding that there is a huge difference in the rates of services. The conclusion drawn by the AO in my opinion is without any sound basis. The additions cannot be made on the basis of incomparable situations.*

*Thus, in view of the fact that the appellant has produced all the necessary evidences in support of the authenticity of transactions and substantial reasons for a difference in the rates of different job works, I find no merit in such a addition made by the AO on basis of concealed third party enquiries. I therefore direct that the addition made of Rs.58,06,714/- by the AO on account of non genuine expenses be deleted. The ground No.6 of the appellant is allowed.”*

115. We have perused the case records and heard the submissions made by the Ld. DR. We have also given considerable thought to the findings of the Ld. CIT(A) on the issue. We find the Ld.CIT (A) while dealing with the issue observed that the scope of work in the case of MRPL was wider as compared to the different scopes of work for which different rates were paid to Sapra Transport. In Para 11.3, the Assessing Officer has himself noted the scope of work of Prince Thermal India Pvt. Ltd. as only picking of stones/shells and other extraneous material from coal conveyor belts at washery which in my opinion is not at all comparable with the scope of work assigned to MRPL which is quite large. Thus, when the scope of work to be performed is uncomparable, the Ld.CIT(A) agree with the AR that the rates cannot be compared. The assessee has been able to successfully establish the difference between the work assigned to M/s. MRPL and other parties and in such circumstances, the rates charged by the parties are not comparable and the Assessing Officer erred in holding that there is a huge difference in the rates of services. The conclusion drawn by the Assessing Officer in my opinion is without any sound basis. The additions cannot be made on the basis of incomparable situations. Therefore, we are of the considered view that the order of the Ld. CIT(A) is fair and reasonable and it does not call for any interference. Thus, **ground No.6 raised in appeal by the Revenue is dismissed.**

116. **Ground No.7** raised in this appeal is identical to ground No.3 raised in ITA No.3 of the Revenue's appeal in ITA No.480/NAG/2014. Since fact and issue is common, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.7 raised in appeal by the Revenue is allowed for statistical purposes.**

117. **Ground No.8** raised in this appeal pertains to the addition of Rs.48,000/- towards service charges. This ground is identical to ground No.3 raised in ITA No.477/NAG/2014. Since issue common and facts are similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis-mutandis to this issue also. Thus, **ground No.8 raised in appeal by the Revenue is dismissed.**

118. **Ground No.9** raised in appeal pertains to the depreciation on approach road and railway siding. This issue is identical to ground Nos. 4 and 5 raised in ITA No.414/NAG/2014. Since issue common and facts are similar, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis- mutandis to this issue also. Thus, **ground No.9 raised in appeal by the Revenue is dismissed.**

119. **Ground No.10 and 11** raised in this appeal is general in nature and hence, no adjudication is required.

120. In the result, **appeal of the Revenue in ITA No.482/NAG/2014 is partly allowed for statistical purposes.**

121. In **CO No.08/NAG/2015, ground Nos. 1 to 4** deals with validity assessment made u/s.153A of the Act. This issue is identical to ground No.1 to 4 raised in CO No.03/NAG/2015. Since facts common and issues similar, our decision rendered in CO. No.03/NAG/2015 shall apply mutatis mutandis to this issue. Thus, **ground Nos. 1 to 4 raised in cross objection by the assessee are allowed.**

122. In **CO No.08/NAG/2015, ground No.5** deals with share application money and share premium. This issue is identical to ground No.1, 2 and 3 raised in ITA No.414/NAG/2014. Since facts common and issues similar, our decision rendered in ITA. No.414/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.5 raised in cross objection by the assessee is allowed for statistical purposes.**

123. In **CO No.08/NAG/2015, ground No.6** deals with purchases from Encore Logistics Pvt. Ltd. This issue is identical to ground No.1 raised in ITA No.478/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.478/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.6 raised in cross objection by the assessee is allowed.**

124. In **CO No.08/NAG/2015, ground No.7** deals with negative cash balance. This issue is identical to ground No.2 raised in ITA No.477/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.7 raised in cross objection by the assessee is allowed.**

125. In **CO No.08/NAG/2015**, **ground No.8** deals with job work charges paid to M/s. Meenakshi Rerollers Pvt. Ltd. This issue is identical to ground No.6 raised in ITA No.482/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.482/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.8 raised in cross objection by the assessee is allowed.**

126. In **CO No.08/NAG/2015**, **ground No.9** deals with addition on account of undisclosed income arising out of unrecorded sales. This issue is identical to ground No.3 raised in ITA No.480/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.9 raised in cross objection by the assessee is allowed for statistical purposes.**

127. In **CO No.08/NAG/2015**, **ground No.10** deals with service charges paid to Shri Krishna Gupta. This issue is identical to ground No.3 raised in ITA No.477/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **ground No.10 raised in cross objection by the assessee is allowed.**

128. In **CO No.08/NAG/2015**, **ground No.11** deals with depreciation on account of approach roads and railway sidings. This issue is identical to ground Nos.4 and 5 raised in ITA No.414/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.414/NAG/2014 shall apply

mutatis mutandis to this issue. Thus, **ground No.11 raised in cross objection by the assessee is allowed.**

129. **Ground No.12** is general in nature and hence no adjudication is required.

130. In the result, **cross objection in CO No.08/NAG/2015 by the assessee is allowed for statistical purposes.**

**ITA No.483 to 485/NAG/2014 (By Revenue)**  
**CO No.09 to 11/NAG/2015 (By assessee)**  
**A.Ys. 2007-08, 2009-10 & 2010-11**

131. The issue raised by the Revenue in ITA No. 483 to 485/NAG/2014 for adjudication are as follows:

- i) Addition towards purchases made from M/s. Encore Logistics Pvt. Ltd.
- ii) Addition on account of unrecorded sales.
- iii) Depreciation on approach road and railway siding
- iv) Addition on account of financial expenses.
- v) Addition on account of negative Cash Balance.
- vi) Addition on account of undisclosed income.

132. The issue "*addition towards purchases made from M/s. Encore Logistics Pvt. Ltd.*" is identical to ground No.1 raised in ITA No.478/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.478/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this part of the grounds raised by the Revenue in appeal is dismissed.**

133. The issue "*addition on account of unrecorded sales*" is identical to ground No.3 raised in ITA No.480/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of appeal raised by the Revenue is allowed for statistical purposes.**

134. The issue "*depreciation on approach road and railway siding*" is identical to ground Nos.4 and 5 raised in ITA No.414/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of appeal raised by the Revenue is dismissed.**

135. The issue "*addition on financial expenses*" is identical to ground No.1 raised in ITA No.477/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of appeal raised by the Revenue is dismissed.**

136. The issue "*addition on account of negative cash balance*" is identical to ground No.2 raised in ITA No.477/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of appeal raised by the Revenue is dismissed.**

137. The issue "*addition on account of undisclosed income*" is identical to ground No.4 raised in ITA No.481/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.481/NAG/2014 shall apply

mutatis mutandis to this issue. Thus, **this ground of appeal raised by the Revenue is dismissed.**

138. In the result, **appeals of the Revenue in ITA No.483 to 485/NAG/2014 are partly allowed for statistical purposes.**

139. In **CO No.09 to 11/NAG/2015**, the issues raised by the assessee for adjudication are as follows:

- i) Validity of assessment proceedings u/s.153A of the Act.
- ii) Addition on account of purchases from Encore Logistics Pvt. Ltd.
- iii) Addition on account of undisclosed income arising out of unrecorded sales.
- iv) Depreciation on approach Road and railway sidings.
- v) Addition on account of financial expenses.
- vi) Addition on account of undisclosed income on account of statement of the assessee u/s.132(4) of the Act.

140. The issue "*validity of assessment proceedings u/s.153A of the Act*" is identical to ground Nos. 1 to 5 in CO No.03/NAG/2015. Since facts common and issues similar, our decision rendered in CO. 03/NAG/2015 shall apply mutatis-mutandis on this issue also. Thus, **this ground raised in cross objection by the assessee is allowed.**

141. The issue "*Addition on account of purchases from Encore Logistics Pvt. Ltd*" is identical to ground No.1 raised in ITA No.478/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.478/NAG/2014

shall apply mutatis mutandis to this issue. Thus, **this part of the grounds raised by the assessee in cross objection is allowed.**

142. The issue "*Addition on account of undisclosed income arising out of unrecorded sales*" is identical to ground No.3 raised in ITA No.480/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.480/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of raised by the assessee in cross objection is allowed for statistical purposes.**

143. The issue "*depreciation on approach Road and railway sidings*" is identical to ground Nos.4 and 5 raised in ITA No.414/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.414/NAG/2014 shall apply mutatis mutandis to this issue. Since we dismissed this ground of appeal raised by Revenue, **ground raised by assessee in cross objection is allowed.**

144. The issue "*addition on account of financial expenses*" is identical to ground No.1 raised in ITA No.477/NAG/2014. Since facts common and issues similar, our decision rendered in ITA No.477/NAG/2014 shall apply mutatis mutandis to this issue. Thus, **this ground of cross objection raised by the assessee is allowed.**

145. The issue "*addition on account of undisclosed income on account of statement of the assessee u/s.132(4) of the Act*" is identical to ground No.4 in ITA No.481/NAG/2014. Since facts common and issues are similar, our decision rendered in ITA No.481/NAG/2014 shall apply mutatis-mutandis on

this issue also. Since we have dismissed this ground raised by the Revenue in appeal, **the ground of the assessee in cross objection is thus, allowed.**

146. In the result, **cross objections No.09 to 11/NAG/2015 filed by the assessee are partly allowed for statistical purposes.**

147. In the combined result, **appeals filed by the Revenue and cross objections filed by the assessee are allowed/partly allowed as a manner indicated above.**

Order pronounced on 22<sup>nd</sup> day of October, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> October, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Concerned CIT(Appeals), Nagpur.
4. The Concerned CIT, Nagpur
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण,  
नागपुर / DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	17.10.2019	Sr.PS/PS
2	Draft placed before author	22.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		