

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.925/Ind/2018

Assessment Years: 2014-15

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| Assistant Commissioner of Income Tax, Khandwa | Vs. | M/s. Sitaram Agrawal, Prop. M/s SMO Industries, Indore Road, Kasrawad, Dist. Khargone (M.P) |
| (Revenue) | | (Appellant) |
| PAN No.AAZPA9277E | | |

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|-----------------------|---|
| Appellant by | S/Shri S.N. Agrawal & Pankaj Mourya, ARs |
| Revenue by | Shri R.P. Mourya, Sr. DR |
| Date of Hearing | 29.07.2020 |
| Date of Pronouncement | 20.08.2020 |

ORDER

PER MANISH BORAD, AM.

The above captioned appeals filed at the instance of revenue pertaining to Assessment Year 2014-15 is directed against the order of Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT'], Indore dated 19.09.2018 which is arising out of the order u/s

143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.12.2016 framed by ACIT, Khandwa.

2. Revenue has raised following grounds of appeal :-

1. Whether on the facts and in the circumstances of the case of the Ld. CIT(A) was justified in deleting the peak credit addition of Rs. 1,25,53,136/- made to the total income of the assessee on the basis of deposits in undisclosed bank account with ICICI Bank, holding that the assessee used cash and stock available in the books of accounts for making such unaccounted credits, whereas peak credit arrived at by AO from the bank account is in not part of the turnover.

2. Whether on the facts and circumstances of the case of Ld. CIT(A) was justified in deleting the addition of Rs. 67,76,734/- made on account of G.P on total turnover after rejecting books of accounts of the assessee u/s 145(3) of the IT Act which was based on serious defects in books of accounts of the assessee.

3. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.

3. Brief facts of the case as culled out from the records are that the assessee is an individual deriving income from the business of manufacturing and trading of cotton, cotton bales and cotton seeds. Return of income declaring income of Rs.26,88,550/- was filed on 21.09.2014 electronically and further revised return on 11.3.2016 declaring total income at Rs. 73,95,540/- and agriculture income at Rs. 53,640/-. The case was selected for scrutiny through CASS.

Notices u/s 143(2) and 142(1) along with questionnaire were duly served upon the assessee. The assessment was completed u/s 143(3) dated 28.12.2016 at Rs.2,67,25,410/- and agriculture income at Rs.53,640/- after making addition of Rs. 1,25,53,136/- and Rs.67,76,734/- on account of peak credit in undisclosed bank account and low net profit respectively.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) against the above additions and succeeded.

5. Now the Revenue is in appeal before the Tribunal against the above deletions effectively raising two issues against the finding of Ld. CIT(A) firstly deleting the peak credit addition of Rs.1,25,53,136/- and also deletion of addition of Rs. 67,76,734/- by way of applying higher net profit rate.

6. We first take up Ground No.1 relating to peak credit addition of Rs.1,25,53,136/-. During the course of assessment proceedings Ld. A.O while examining the unaccounted sales transaction accepted by the assessee which were carried out through the undisclosed bank account held with ICICI Bank. Ld. A.O also examined the peak balance in the bank account and found that on

1.3.2014 there is a peak balance of Rs.1,25,53,136/-. In reply to the show cause notice it was submitted that no addition was called for on account of peak credit since the assessee had sufficient cash and stock in hand on various dates around the year which were valuing more than the peak balance available in the bank account and thus require set off before calculating the peak credit. Ld. A.O found no justification in this submission and made the addition for peak credit of Rs. 1,25,53,136/- which was subsequently deleted by Ld. CIT(A) accepting the assessee's contentions and judicial precedence referred before him. Now the issue is before us.

7. Ld. Departmental Representative vehemently argued and supported the orders of Ld. A.O and also raised doubt on the allowablity of value of stock in hand against the peak bank balance.

8. Ld. counsel for the assessee vehemently supported the orders of Ld. CIT(A) and argued on the basis of following written submission placed on record :-

1.1] The department in this ground of appeal has challenged the deletion of addition of Rs 1,25,53,136/- as made on account of peak investment.

1.2.1] The appellant in the year under consideration has shown total turnover of Rs 37,47,40,488/- in its books of account on which net profit of Rs 27,49,896/- was offered.

1.2.2] The appellant has also executed total turnover of Rs 18,82,79,709/- through his bank account with ICICI Bank which was originally not incorporated in his regular books of account but net profit on the same as calculated to the tune of Rs 47,06,993/- was offered for tax.

1.2.3] The assessing officer while passing the assessment order considered the highest credit balance in the bank account with ICICI Bank and added the same to the total income of the appellant. The assessing officer considered the same at Rs 1,25,53,136/-.

1.3] The appellant is engaged in the business of Cotton. The appellant has maintained sufficient stock in his books of account. However, some of the realizations on sale of goods were deposited in the bank account with ICICI Bank which was not incorporated in the regular books of account of the appellant.

1.4] The assessing officer while passing the assessment order considered the peak credit in the bank account with the ICICI Bank as on 01-03-2014 was of Rs 1,25,53,136/- [Peak balance of Rs 1,04,72,722/- as on 28-02-2014 and Rs 10,33,136/- as on 01-03-2014] and added the same to the total income of the appellant.

1.5] The appellant while calculating the additional income on account of unrecorded turnover as executed through his ICICI Bank account taken into consideration the cash and stock as available in its regular books of account. That when the appellant having sufficient amount of cash and stock in his regular books of account, in that case certainly he has used the same for his unrecorded business also. One cannot deny credit of the same while calculating Peak credit. The appellant deal in cotton, Cotton

bales and cotton seeds, the goods were also sold to his regular parties but realization of some of the bills were deposited in the ICICI Bank account.

1.6] That when the appellant prepared his books of account after incorporating the total turnover which includes recorded and unrecorded turnover in that case there was no negative balance of stock. Hence, there was no justification for separately adding the peak amount to the total income of the appellant on the basis of bank balance with bank account with ICICI Bank.

1.7] That for calculating the peak balance total turnover of the appellant has to be considered and the same is incorporated with Cash and stock as available in the regular books of account of the appellant. Hence, there was no justification for ignoring cash and stock as available in the books of account of the appellant and separately calculated peak investment in respect of turnover as executed through the bank account with ICICI Bank.

1.8] That it is settled position of law, while calculating the peak credit entirety of the circumstances must be taken into account. In the present case in hand, the entire transaction of the ICICI Bank taken into account in the regular books of account, there was no negative cash balance as to calculated peak. The amount as found credited in the ICICI Bank account was on account of sale proceed of material as shown in the books of account but sold by the assessee out of books and cash as found recorded in the books of account also used by the assessee for his business as done by him through ICICI Bank.

1.9] The appellant during the course of assessment proceeding filed a sheet wherein stock and cash in his books of account with the amount as found credited in the ICICI Bank account was mentioned. On perusal of the same you will find that there was no negative balance even after deducting the

amount of ICICI Bank balance from the total of Cash and stock in the regular books of account.

1.10.1] The few entries from the statement as filed during the course of assessment is re- produced hereunder for sake of clarity:-

| S.No | Date | Closing Stock | | Closing cash | Total [Stock + Cash] | Bank balance + with ICICI | Cash & Stock available |
|------|----------|--------------------|-------------|--------------|-----------------------|---------------------------|------------------------|
| | | Qty [In Quintals] | Amount [Rs] | | | | |
| | 21-02-14 | 1319.39 | 14097682 | 2393422 | 16491104 | 2130993 | 14360111 |
| | 22-02-14 | 1160.89 | 12404109 | 2372792 | 14776901 | 1730993 | 13045908 |
| | 23-02-14 | 1160.89 | 12404109 | 2365018 | 14769127 | 1730993 | 13038134 |
| | 24-02-14 | 1325.54 | 14163394 | 2357975 | 16521369 | 1621278 | 14900091 |
| | 25-02-14 | 1325.54 | 14163394 | 2303975 | 16467369 | 28134 | 16439235 |
| | 26-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 3973435 | 14135736 |
| | 27-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 6810435 | 11298736 |
| | 28-02-14 | 1328.35 | 14193419 | 2090816 | 16284235 | 10472722 | 5811513 |
| | 01-03-14 | 1328.35 | 14193419 | 1978374 | 16171793 | 1033136 | 15138657 |
| | 02-03-14 | 1328.35 | 14193419 | 1970874 | 16164293 | 1033136 | 15131157 |
| | 03-03-14 | 1328.35 | 14193419 | 1764979 | 15958398 | 1956759 | 14001639 |
| | 04-03-14 | 1647.75 | 17606208 | 1415274 | 19021482 | 506759 | 18514723 |

1.10.2] Position of stock and cash as shown in the regular books of account for whole years i.e. from 01-04-2013 to 31-03-2014 are enclosed on Page Nos 84 to 91 of the compilation. The said details have already been filed before the assessing officer and the same was not doubted by the assessing officer.

1.10.3] The appellant while calculating the peak has considered the following components: -

| S.No | Particulars |
|------|---|
| 1 | Cash as per regular books of account and as available with the assessee for his business through ICICI Bank |

| | |
|---|--|
| 2 | Stock of Finished goods as per books of account and as available for sale out of book proceed of which was deposited in the ICICI Bank account |
| 3 | Net Profit as calculated on every transactions as executed through ICICI Bank available for calculating peak credit |

1.11] That on perusal of the table as reproduced in Para 1.10.1 of this letter, you will find that after considering the credit of the cash and stock as available in the books of account, the balance as credited in the bank statement is duly explained and the assessing officer was not justified in adding an amount of Rs 1,25,53,136/- to the total income of the assessee.

1.13] That in view of the above, addition as made by the assessing officer on account of Peak credit was neither legal nor proper, after considering the cash and stock as available in the regular books of account and after considering the credit of Profit as available for investment in the un-recorded business, there was no negative balance as to attract the peak addition in the case of the assessee. The addition as made by the assessing officer on account of peak was therefore neither legal nor proper. The Ld CIT(A) has rightly deleted the same. Hon'ble bench is hereby requested to approved the order of the Ld CIT(A)

9. Ld. Counsel for the assessee also relied and referred on the following decisions:-

(i) Hon'ble ITAT Jodhpur Bench in the case of ACIT V/s Kashmir Trading company reported in 2012) 20 taxmann.com 337 (Jodhpur)

(ii) Hon'ble Allahabad High Court in the case of CIT Central Vs Fertilizer Traders reported in (2015) 42 Taxmann.com 476 (Allahabad)

(iii) Hon'ble Gujarat High Court in the case of CIT Vs Tirupati Construction Co. Reported in (2015) 55 taxmann.com 308 (Gujarat).

10. We have heard rival contentions and perused the records placed before us. Through Ground No.1 Revenue is aggrieved with the finding of Ld. CIT(A) deleting the addition for peak credit of Rs. 1,25,53,136/- in the undisclosed bank account held with ICICI Bank. It is a undisputed fact that the assessee executed total turnover of Rs.18,82,79,709/- through the undisclosed bank account held with ICICI Bank and the transactions entered into this bank account were not incorporated in the regular books of accounts. Assessee offered net profit of Rs.47,06,993/- on the unaccounted sales in the revised Return of Income. As per the Ld. A.O as on 1.3.2014 assessee's peak balance in the undisclosed ICICI Bank account at Rs. 1,25,53,136/-, however as submitted by Ld. Counsel for the assessee the peak balance was Rs.

1,04,72,722/- as on 28.2.2014. As on 1.3.2014 there are various transactions and if all the entries (debit and credit) are given effect the balance as on 1.3.2014 would be Rs.10,43,136/-. We find force in the submission of Ld. Counsel for the assessee and are convinced that the peak balance in the undisclosed bank account held with ICICI Bank is Rs.1,04,72,722/- as on 28.2.2014. Now the issue arises that whether the Ld. A.O is justified in making addition for the peak balance in the undisclosed bank account. We observe that the Ld. CIT(A) after examining the facts in detail deleted the addition for peak credit observing as follows:-

3.1] The assessee in this ground of appeal has challenged the addition of Rs 1,25,53,136/- as made on account of peak investment. I have carefully gone through the assessment order as well as submission of the appellant in this regard.

3.2] The relevant portion of the appellant submission is reproduced hereunder:-

“3.2] The assessee is engaged in the business of Cotton. The assessee has maintained sufficient stock in his books of account. However, some of the realizations on sale of goods were deposited in the bank account with ICICI Bank which was not incorporated in the regular books of account of the assessee.

3.3] The assessing officer while passing the assessment order considered the peak credit in the bank account with the ICICI Bank as on 01-03-2014 was of Rs 1,25,53,136/- and added the same to the total income of the assessee.

3.4] The assessee while calculating additional income on account of unrecorded turnover as executed through his ICICI Bank account had taken into consideration the cash and stock as available in its regular books of account. That when an assessee having cash and stock in his regular books of account, in that case certainly he has used the same for his- unrecorded business also. One cannot deny credit of

the same while calculating Peak credit. The assessee deal in cotton, Cotton bales and cotton seeds, the goods were also sold to his regular parties but realization of some of the bills were deposited in the ICICI Bank account.

3.5] That when we prepared books of account of the assessee after incorporating the total turnover which includes recorded and unrecorded turnover in that case there was no negative balance. Hence, there was no justification for separately adding the peak on the basis of Bank account with ICICI Bank.

3.6] That for calculating the peak balance total turnover of the assessee has to be considered and the same is incorporated with Cash and stock as available in the regular books of account of the assessee. Hence, there was no justification for ignoring cash and stock as available in the books of account of the assessee and separately calculated peak investment in respect of turnover as executed through the ICICI Bank.

3.7] That it is settled position of law while calculating the peak credit entirety of the circumstances must be taken into account. In the present case in hand, the entire transaction of the ICICI Bank taken into account in the regular books of account, there was no negative cash balance as to calculated peak. The amount as found credited in the ICICI Bank account was on account of sale proceed of material as shown in the books of account but sold by the assessee out of books and cash as found recorded in the books of account also used by the assessee for his business-as -done by him through ICICI Bank.

3.8] The assessee during the course of assessment proceeding filed a sheet wherein stock and cash in his books of account with the amount as found credited in the ICICI Bank account was mentioned. On perusal of the same you will find that there was no negative balance even after deducting the amount of ICICI Bank balance from the total of Cash and stock in the regular books of account.

3.9] The few entries from the statement as filed during the course of assessment is re- produced hereunder for sake of clarity: -

| S.No | Date | Closing Stock | | Closing cash | Total [Stock + Cash] | Bank balance with ICICI | Cash Stock available |
|------|----------|---------------|----------|--------------|-----------------------|-------------------------|----------------------|
| | | Qty | Amount | | | | |
| | | Quiltals | [Rs] | | | | |
| 1 | 21-02-14 | 1319.39 | 14097682 | 2393422 | 16491104 | 2130993 | 14360111 |
| 2 | 22-02-14 | 1160.89 | 12404109 | 2372792 | 14776901 | 1730993 | 13045908 |
| 3 | 23-02-14 | 1160.89 | 12404109 | 2365018 | 14769127 | 1730993 | 13038134 |

| | | | | | | | |
|-------|----------|-----------|----------|---------|----------|----------|----------|
| A - . | 24-02-14 | 1325.54 . | 14163394 | 2357975 | 16521369 | 1621278 | 14900091 |
| 5 | 25-02-14 | 1325.54 | 14163394 | 2303975 | 16467369 | 28134 | 16439235 |
| 6 | 26-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 3973435 | 14135736 |
| 7 | 27-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 6810435 | 11298736 |
| 8 | 28-02-14 | 1328.35 | 14193419 | 2090816 | 16284235 | 10472722 | 5811513 |
| 9 | 01-03-14 | 1328.35 | 14193419 | 1978374 | 16171793 | 1033136 | 15138657 |
| 10 | 02-03-14 | 1328.35 | 14193419 | 1970874 | 16164293 | 1033136 | 15131157 |
| 11 | 03-03-14 | 1328.35 | 14193419 | 1764979 | 15958398 | 1956759 | 14001639 |
| 12 | 04-03-14 | 1647.75 | 17606208 | 1415274 | 19021482 | 506759 | 18514723 |

3.10] The assessee while calculating the peak has considered the following components:-

| S.No | Particulars |
|------|--|
| 1 | Cash as per regular books of account and as available with the assessee for his business through ICICI Bank |
| 2 | Stock of Finished goods as per books of account and as available for sale out of book proceed of which was deposited in the ICICI Bank account |
| 3 | Net Profit as calculated on every transactions as executed through ICICI Bank available for calculating peak credit |

3.11] That on perusal of the table as reproduced in Para 3.9 of this letter, you will find that after considering the credit of the cash and stock as available in the books of account, the balance as credited in the bank statement is duly explained and the assessing officer was not justified in adding an amount of Rs 1,25,53,136/- to the total income of the assessee.

3.12.1] That Hon'ble Jodhpur Bench of ITAT in the case of ACIT vs Kashmir Trading Company as reported in 20 Taxmann.com 337 had an occasion to discuss The similar issue in detail and held that [refer Para 5] of the order :-

5.

----- The AO had made the addition on the basis of entries found recorded in the regular books of account apart from addition based on peak of 'Dasti Bahi'. Since the AO had made addition on the basis of peak of entries recorded in regular books of account while

determining the undisclosed income of the assessee, the entries recorded in the regular books of account have to be telescoped with entries recorded in the 'Dasti Bahi'. Learned CIT(A), therefore, is justified in allowing the telescoping of the addition made on the basis of peak credits of the entries recorded in the regular books of account against the peak of credits found recorded in 'Dasti Bahi'. In our considered opinion, learned CIT(A) is justified in telescoping the amount in the names of Shri Jai Narayan and Shri Roshan Lal to the extent of Rs. 2,68,000. Accordingly, we do not find any infirmity in the order passed by learned CIT(A) deleting the addition. "

3.12.2] That Hon'ble Allahabad High Court in the case of CIT vs Fertilizer Traders as reported in 42 taxmann.com 476 has held that [refer para 15 & 16 J as under:-

" **15.** A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons. Even then, if the genuineness of all the person is disbelieved and all the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and determination of the peak credit after arranging all the credits in the chronological order.

16. Such proposition was also considered by this Hon'ble Court in the matter of CIT v. Neemar Ram Badlu Ram [1980] 122 ITR 68 (All.) in which the relevant paragraphs are reproduced- as under:-

"The Tribunal also did not agree with the departmental authorities that merely because the assets in the balance sheet changed from time to time, the difference would not be available for explaining a similar difference in subsequent years"

3.12.3] That Hon'ble Gujarat High Court in the case of CIT vs Tirupati Construction Co as reported in 55 taxmann.com 308 has

held that [refer para 7 of the order:-

"**7.** At the outset, it is required to be noted that, while appreciating a document, it is required to be considered in its entirety and it cannot be considered in part. In the case on hand, while appreciating the papers / documents, which according to the Assessing Officer, contained accounted and unaccounted transactions on the part of the Respondent assessee, she not only failed to examine it properly but also failed in assessing the income as per law. Further, though, the AO, herself, had prepared the account of profit and loss in

respect of accounted and unaccounted entries, she did not assign any reason, as to why the profit and loss account of unaccounted transactions of the Respondent- assessee cannot be believed to be true. Moreover, the AO also did not take into consideration the explanations tendered by the Respondent assessee vide letters dated 10.12.2008 and 29.12.2008. Even, the working of the peak based on the seized diary given by the Respondent assessee for the concerned assessment years was also overlooked by the AO and, here again, no reason was assigned for the same. We are, therefore, of the opinion that the CIT(A) rightly held that it would be just and proper, if, the income from the transactions recorded in the seized diary are determined on the basis of highest peak, as increased by the net profit of 5 per cent on the receipts and taxed accordingly, for the relevant assessment years. We do not find that the CIT(A) and ITAT has committed any jurisdictional error in passing the impugned orders.

3.13] That in view of the above, addition as made by the assessing officer on account of Peak credit was neither legal nor proper, after considering the cash and stock as available in the regular books of account and after considering the credit of Profit as available for investment in the unrecorded business, there was no negative balance as to attract the peak addition in the case of the assessee. The addition as made by the assessing officer on account of peak was therefore neither legal nor proper, the same now requires to be deleted in full.

3.3 *It is clear from the above submission as well as assessment order that the assessee was engaged in the business of cotton and had shown total turnover in his books of account at Rs 37,47,40,488/- and total turnover as per bank account with ICICI Bank came to Rs 16,66,66,003/-. Thus, total turnover as shown by the assessee including both the disclosed and undisclosed turnover was to the tune of Rs 54,14,06,491/ -. It was further claimed that goods were sold to the regular parties but sale proceed in respect of few bills as realized from these parties were deposited in the bank account with the ICICI Bank which remained to be incorporated in regular books of account. It was also claimed by the assessee that he was having sufficient amount of stock and cash in his books of account so as to justify the sales as executed by him. The proceeds of the same were deposited in the bank account with ICICI Bank . The assessee during the course of assessment proceeding and also in the appellate proceeding had filed detailed chart showing the cash balance and stock as per his regular books of account and also compared the same*

*with the balance with ICICI bank on account of sale proceed as deposited. **On comparing the two, the amount of cash and stock as per books of account was always higher than the sale proceeds as deposited in the ICICI Bank and therefore, it was claimed that addition as made by the assessing officer on account of peak investment was not justified.** Few entries as shown by the assessee in his submission are being reproduced for sake of clarity hereunder:-*

| S.No | Date | Closing Stock | Closing cash | Total Stock Cash] | Bank balance with ICICI | Cash & Stock Available | |
|------|----------|--------------------|--------------|-------------------|-------------------------|------------------------|----------|
| | | Qty [In Quiltals] | Amount [Rs] | | | | |
| 1 | 21-02-14 | 1319.39 | 14097682 | 2393422 | 16491104 | 2130993 | 14360111 |
| 2 | 22-02-14 | 1160.89 | 12404109 | 2372792 | 14776901 | 1730993 | 13045908 |
| 3 | 23-02-14 | 1160.89 | 12404109 | 2365018 | 14769127 | 1730993 | 13038134 |
| 4 | 24-02-14 | 1325.54 | 14163394 | 2357975 | 16521369 | 1621278 | 14900091 |
| 5 | 25-02-14 | 1325.54 | 14163394 | 2303975 | 16467369 | 28134 | 16439235 |
| 6 | 26-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 3973435 | 14135736 |
| 7 | 27-02-14 | 1490.20 | 15922787 | 2186384 | 18109171 | 6810435 | 11298736 |
| 8 | 28-02-14 | 1328.35 | 14193419 | 2090816 | 16284235 | 10472722 | 5811513 |
| 9 | 01-03-14 | 1328.35 | 14193419 | 1978374 | 16171793 | 1033136 | 15138657 |
| 10 | 02-03-14 | 1328.35 | 14193419 | 1970874 | 16164293 | 1033136 | 15131157 |
| 11 | 03-03-14 | 1328.35 | 14193419 | 1764979 | 15958398 | 1956759 | 14001639 |
| 12 | 04-03-14 | 1647.75 | 17606208 | 1415274 | 19021482 | 506759 | 18514723 |

3.4. The assessee also referred the decision in the case of Hon'ble Jodhpur bench of ITAT in the case of ACIT vs Kashmir Trading **Company as reported in 20 taxmann.com 337** and decision in the case of Hon'ble Allahabad high court in the case of CIT Vs **Fertiliser Traders as reported in 42 taxmann.com 476** and Hon'ble Gujarat high court in the case of CIT vs **Tirupati construction co as reported in 55 taxmann.com**

308. *Considering the overall facts of the case, on perusal of the assessment order and submissions as made by the assessee, it is noticed that the assessing officer simply on the basis of credit balance in the bank account with the ICICI bank had reached to a conclusion that peak investment to the tune of Rs 1,25,53,136/- was made by the assessee and totally ignored the submission as made before him on merit. It is an undisputed fact that the assessee was having sufficient amount of stock and cash in his regular books of account the telescoping of which should have been allowed to the appellant for the total turnover as executed by him through the ICICI bank account. **Since the assessee deals in the business of cotton and the assessee himself was having sufficient amount of stock and cash in his books of account, in that case further making addition on account of peak investment in the business done out of books carried on through the bank account with ICICI Bank was not justified.***

The assessing officer has also failed to bring on record that additional goods were purchased by the assessee for executing out of books sales, the proceeds of which were deposited in the bank account with ICICI Bank. The assessee was engaged in the business of cotton and the sale proceeds in respect of some of the bills as raised to his customers were deposited in the bank account with ICICI Bank which was initially not disclosed to the department. This account was used for depositing the sale proceeds out of books. The assessing officer himself has not disputed the stock and cash as reflected in the regular books of account. Since the amount of cash and stock in the regular books of account was higher than the credits as reflected in the bank account with the ICICI bank; hence the assessing officer was not justified in making addition so made by the assessing officer of Rs. 1,25,53,136/- is deleted in full.

*Keeping in mind, the above facts and judicial decision so discussed above, the assessee accordingly get relief to the tune of Rs 1,25,53,136/-. This ground of appeal is **allowed.***

11. In the above detailed finding of fact given by Ld. CIT(A) we observe that Ld. CIT(A) has considered the total value of closing

stock of goods in hand recorded in the books of accounts and also the closing cash in hand available in the cash book against the bank balance appearing in the undisclosed ICICI bank. It is pertinent to note that on 28.2.2014 as per stock records assessee possessed 1328.35 quintal of FB cotton bales which valued at Rs.1,41,93,419/- and the cash in hand in the cash book is Rs.20,90,816/- the total of these two figures comes to Rs.1,62,84,235/-. Against this figure of the total of stock and cash in hand accounted for in the duly audited accounts the peak balance in the ICICI bank is Rs. 1,04,72,722/- which is less than the figure of stock and cash of Rs.1,62,84,235/-.

12. Now whether the assessee is eligible for set off value of stock and cash in hand appearing in the regular books of accounts against the peak balance of unaccounted transactions carried out in the bank account. The issue needs to be examined in the light of judicial precedence.

13. We find that the Co-ordinate Bench Jodhpur in the case of ACIT Vs Kashmir Trading Company (2012) 20 Taxmann.com 337 held, considering the issue wherein the Ld. A.O did not allow the

telescoping of the peak credit in the books of accounts that of 'Dasti Bahi' (Dasti Bahi is a hindi name of books containing unaccounted/undisclosed transactions), the Co-ordinate Bench confirmed the finding of Ld. CIT(A) allowing the telescoping benefit of the entries recorded in the regular books of accounts with the entries recorded in Dasti Bahi observing as under:-

"5. We have heard both the parties and gone through the material available on record. From the facts stated above, it is clear that the AO had made addition of Rs. 1,13,000 in the name of Shri Jai Narayan and Rs. 1,55,000 in the name of Shri Roshan Lal on the basis of the entries found recorded in the books of account of the assessee. The assessee had taken a plea before the CIT(A) that no addition in respect of entries found recorded in the regular books of account can be made in the assessment proceedings under s. 158BC. This plea of the assessee has been rejected by the CIT(A). Here, we would like to mention that it is a settled law that no addition on the basis of entries recorded in regular books of account can be made under s. 158BC. Since assessee had not filed any appeal against rejection of the plea, we cannot record our finding on this issue. However, learned CIT(A) has allowed telescoping of Rs. 1,13,000 in the name of Shri Jai Narayan and Rs. 1,55,000 in the name of Shri Roshan Lal out of the peak of 'Dasti Bahi'. Learned CIT(A) has recorded a finding of fact that the assessee

was not having any other source of income or any other assets. Therefore, whatever was introduced in the regular books of account in the name of bogus persons was out of the amounts appearing in the 'Dasti Bahi.' This finding of fact has not been controverted by the Revenue before us. The assessee was carrying on the business of 'Arhat' and undisclosed income was found recorded in the 'Dasti Bahi'. The AO had made the addition on the basis of entries recorded in the regular books of account apart from addition based on peak of 'Dash Bahi. Since the AO had made addition on the basis of peak of entries recorded in regular books of account while determining the undisclosed income of the assessee, the entries recorded in the regular books of account have to be telescoped with entries recorded in the 'Dasti Bahi'. Learned CIT(A), therefore, is justified in allowing the telescoping of the addition made on the basis of peak credits of the entries recorded in the regular books of account against the peak of credits found recorded in 'Dasti Bahi'. In our considered opinion, learned CIT(A) is justified in telescoping the amount in the names of Shri Jai Narayan and Shri Roshan Lal to the extent of Rs. 2,68,000. Accordingly, we do not find any infirmity in the order passed by learned CIT(A) deleting the addition."

14. Hon'ble High Court of Gujarat in the case of CIT vs Tirupati Construction Co. (2015) 55 Taxmann.com (Gujarat) dealing with the issue about the determination of the peak from the transactions recorded in the seized diary and accepting Profit &

Loss Account of unrecorded transactions prepared by the assessee held in favour of the assessee by confirming the decision taken by the Tribunal observing as follows:-

“ 6. We have heard Mr. Parikh, learned Advocate appearing on behalf of the appellant-Revenue, and perused the material on record.

7. At the outset, it is required to be noted that, while appreciating a document, it is required to be considered in its entirety and it cannot be considered in part. In the case on hand, while appreciating the papers/ documents, which according to the Assessing officer, contained accounted and unaccounted transactions on the part of the Respondent-assessee, she not only failed to examine it properly but also failed in assessing the income as per law. Further, though, the AO, herself, had prepared the account of profit and loss in respect of accounted and unaccounted entries, she did not assign any reason, as to why the profit and loss account of unaccounted transactions of the Respondent-assessee cannot be believed to be true- Moreover, the AO also did not take into consideration the explanations tendered by the Respondent-assessee vide letters dated 10.12.2008 and 29.12.2008 . Even, the working of the peak based on the seized diary given by the Respondent-assessee for the concerned assessment years was overlooked by the AO and, here again, no reason was assigned for the same. We are, therefore, of the opinion that the CIT(A) rightly held that it would be just and proper, if, the income from the transactions recorded in the seized diary are determined on the basis of highest peak, as increased by the net profit of 5 per cent on the receipts and taxed accordingly, for the relevant assessment years. We do not find that the CIT (A) and IT AT has committed any jurisdictional error in passing the impugned orders” .

15. In the light of above judicial precedence and finding of Ld. CIT(A) and on examining the facts, we observe that the assessee has maintained the regular quantitative details of the stock in hand and duly summarised stock of cotton bales and quantitative value as well as cash in hand has been annexed in the paper book from page

84 to 291. Along with the details of stock and cash in hand there is also a column mentioning the closing bank balance in the ICICI bank which was not disclosed by the assessee.

16. As on 28.2.2014 the value of stock in cash and cash in hand which total at Rs.1,62,84,235/- is higher than the unrecorded ICICI Bank balance of Rs.1,04,72,722/-. Another fact which we have observed while examining the unrecorded bank account wherein unrecorded sales were realized through banking channel and the withdrawals which are mostly by cash and certain withdrawals by way of bank transfer to some parties namely Shailendra Ginning Factory, Sourabh Bio Tech etc. These parties are also having regular transactions of purchase and sales with the assessee recorded in the regular books of accounts. In our considered view assessee had carried out the transactions of sales and purchases with the regular parties of which some have been recorded in the regular books and some have not been recorded which are routed through the ICICI bank. This facts strongly supports the submission of the assessee that the physical stock and cash in hand in the regular books have been utilised for making un

accounted sales. It is noteworthy that the assessee is carrying out of books sales transactions in the past also and till the date of peak bank balance on 28.2.2014 the profits earned on unrecorded sales have been offered to tax and they form part of the peak bank balance. So in nutshell against peak balance found in the bank account not disclosed in the regular books in the instant case three things have to be considered, firstly stock in hand available with the assessee, secondly cash in hand available in regular books and thirdly the undisclosed profit earned on the unaccounted sales till the date of peak balance which have been offered to tax. Taking these factors together, in the instant case the peak balance in the undisclosed ICICI bank account is much less than the total of stock in hand, cash in hand and unaccounted profits offered to tax. We therefore in the given facts and circumstances of the case and considering judicial precedence find no inconsistency in the finding of Ld. CIT(A) deleting the peak credit addition of Rs.1,25,33,136/-. We accordingly dismiss revenue's Ground No.1.

17. Now we take up Ground No.2 relating to deletion of addition made by enhancing net profit at Rs.67,76,734/-. Brief facts relating to this issue are that in the return of income assessee offered for tax the net profit of Rs.47,06,993/-computed @2.50% on the unrecorded sales of Rs.18,82,79,709/-. In the audited books the assessee disclosed net profit @0.73% on the sales turnover. But since the assessee had offered 2.50% net profit on the unrecorded sales Ld. A.O was of the view that the similar rate @2.50% should also be applied on the sales turnover recorded in the regular books. Though it was contended by the assessee that the rate of 2.50% was applied keeping in view that financial expenses i.e. bank interest and bank charges have already been claimed in the regular books which comes to around 1.82% of the total turnover and since this have been already claimed therefore net profit @ 2.50% was applied on the unrecorded sales. However this submission did not convinced the Ld. A.O and he rejected the books of accounts u/s 145(3) of the Act and net profit was estimated @ 2.50% on the total turnover of Rs.37,47,40,488/- thereby determining the net profit at Rs.93,68,512/- as against profit disclosed by the assessee

at Rs.25,91,778/-. Thus the difference of Rs.67,76,734/- added to the total income of the assessee. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded as Ld. CIT(A) found force in the contention of the assessee and also considered the fact that interest and bank charges have already been claimed in the regular books and the net profit rate is in consonance with the past history of net profit offered by the assessee and accepted by the Revenue.

18. Now the revenue is in appeal before the Tribunal.

19. Ld. Departmental Representative vehemently argued and supported the order of Ld. A.O.

20. Ld. Counsel for the assessee supported the finding of Ld. CIT(A) and also referred to the following written submissions:-

2.1] The department in this ground of appeal has challenged the deletion of addition of Rs 67,76,734/- from the total income of the assessee.

2.2] The assessing officer while passing the assessment order applied the rate of net profit at 2.5 % on the amount of total turnover as disclosed in the books of account of Rs 37,47,40,488/- which calculated comes to Rs 93,68,512/- and after allowing credit of net profit of Rs 25,91,778/- as disclosed in the books of account balance amount of Rs 67,76,734/- was added to the total income of the assessee:-

| S.No | Particular | Amount [Rs] |
|------|--|--------------|
| 1 | Total turnover as disclosed in the books of account | 37,47,40,488 |
| 2.1 | Net profit as estimated by applying the rate of net profit at 2.5% | 93,68,512 |
| 2.2 | Net profit as shown in the books of account | 25,91,778 |
| 2.3 | Difference in the net profit as added to the total income | 67,76,734 |

2.3] Comparative chart of percentage of Gross Profit and Net profit of proprietorship concern of the assessee M/s SMO Industries for the Assessment Years 2013-14 to 2015-16 is as under:-

| S.No | Particulars | 31.03.2013 | 31.03.2014 | 31.03.2015 |
|------|-------------------|------------|------------|------------|
| 1 | % of Gross Profit | 8.13 % | 4.45 % | 5.41 % |
| 2 | % of Net Profit | 0.91% | 0.73% | 0.84 % |

2.4] Comparative chart of income as declared in the case of the other assessee engaged in the trading activities of similar type of the assessee is as under:-

| S.No | Name of the Firm | Particular | 31.03.13 | 31.03.14 | 31.03.15 |
|------|---|-------------------|-------------|-------------|-------------|
| 1 | Sanjay Agrawal Prop of Sourabh Bio Tech, Kasrawad | Gross Profit | 2.38 | 1.06 | 1.77 |
| | | Net Profit | 0.66 | 0.50 | 0.70 |
| 2 | M/s Rajpal Cotton Industries, Sendhwa | Gross Profit | 2.30 | 2.66 | 2.67 |
| | | Net Profit | 0.31 | 0.32 | 0.35 |

| | | | | |
|---|----------------------------------|-------------------|-------------|-------------|
| 3 | M/s Suhan Cotton Fibers, Sendhwa | Gross Profit | 2.21 | 2.07 |
| | | Net Profit | 0.31 | 0.32 |

2.5] That from the above chart, the percentage of Gross profit in respect of all the above firms varies between 2.21% to 2.67% and similarly the percentage of Net Profit calculated comes to 0.31 % to 0.70%.

2.6] That in the following decisions it was held that only net profit can be taxed as income of the assessee, for this preposition we reply on the following direct decisions:-

| | | |
|---|---------------------------|--------------------------|
| 1 | CIT vs BalchandAjit Kumar | 263 ITR 610 [MP] |
| 2 | DCIT vs Himmatmal Fafaria | 009 ITJ 475 [Indore] |

2.7] That as per available decisions including that of jurisdictional high court, only net profit is taxable on the amount of unrecorded sales which in case of trading firms varies between 0.31% to 0.70%. However, while calculating the income on the amount of unrecorded turnover the assessee applied rate of net profit at 2.5%. Since, the amounts of Interest and bank charges have already been debited in the regular books of account. The assessee for the purpose of his unrecorded need not requires to make any investment in form of stock. Thus, the assessing officer was not justified in applied the net profit rate merely on the basis of income as declared by the assessee at 2.5% on the amount of total turnover as executed with the ICICI Bank

2.8] The assessing officer was therefore not justified in applied the same rate of net profit in respect of total turnover as disclosed in the regular books of account.

2.9] The appellant as explained in Ground No 1 of this appeal that he has used cash and stock as shown in his regular books of account and no funds were either borrowed from outside parties. Hence, the margin of his trading business was slightly higher than manufacturing as shown in its books of account.

2.10] The net profit of the assessee as declared in his regular books of account is as under:-

| S.No | Particulars | Amount [Rs] | % of Profit |
|------|--|--------------|-------------|
| 1 | Sales | 37,47,40,488 | |
| 2.1 | Net Profit | 27,49,896 | 0.73% |
| 2.2 | Interest as charged in the Profit & Loss A/c | 62,57,566 | 1.67% |
| 2.3 | Bank Charges | 5,66,548 | .15% |
| 2.3 | Net Profit before interest & Bank charges | 95,74,010 | 2.55% |

2.11] That while comparing the Net profit as per regular books of account and as calculated on the amount of total turnover routed through the ICICI Bank, the component of interest must be ignored. The assessee has not claimed any deduction on account of Interest in his unaccounted turnover, since, the entire funds of the regular business was used by him for the purpose of his unaccounted turnover. If the effect of Interest and Bank charges ignored, the percentage of Net profit in his books of account was 2.55% i.e. higher than what was considered by the assessee for his unaccounted business.

2.12] The assessee charged entire amount interest in its books of account. For this reason the percentage of net profit as shown in the books of account was lower than what was disclosed for unaccounted turnover. The assessing officer was grossly erred in applied the rate of net profit at 2.5% as against rate of net profit as disclosed by the assessee at 0.73%. The book result as declared by the assessee requires to be accepted and addition as made in the turnover as shown in the books of account was not justified.

2.13] That in view of the above facts of the case, the Ld CIT(A) after considering the same has deleted the addition of Rs 67,76,734/- as made to the total income of the appellant. Hon'ble bench is hereby requested to approved the order as passed by the Ld CIT(A).

21. We have heard rival contentions and perused the records placed before us. Through Ground No.2 revenue has challenged the finding of Ld. CIT(A) deleting the addition of Rs.67,76,734/- made by the Ld. A.O by way of applying net profit @2.5% as against the net profit disclosed by the assessee @0.73%.

22. Records reveal that the assessee carried out certain transactions of sale through undisclosed bank held with ICICI Bank. During the year transactions totaling to Rs.18,82,79,709/- was carried out. However the assessee disclosed net profit @2.5% on the undisclosed turnover of Rs.18,82,79,709/- and offered income of Rs.47,06,993/-and paid taxes thereon.

23. On the very basis of the fact that the assessee has undisclosed

bank account, Ld. A.O inferred that the book results or the books of accounts of the assessee cannot be relied upon for determination of profit from business and thus books of accounts needs to be rejected in view of the provisions of Section 145(3) of the Act and the fair and reasonable profit needs to be estimated on the entire turnover trade out by the assessee.

24. In the regular books of accounts assessee has disclosed turnover of Rs.37,47,40,488/- on which the net profit @ 0.73% was offered. It was submitted before the Ld. A.O that net profit @ 0.73% was arrived after claiming the interest expenditure and bank charges which in percentage terms were 1.67% and 0.15% respectively. Since the interest and bank charges already stands claimed in the regular books net profit @2.5% was applied on undisclosed turnover. However Ld. A.O was not satisfied and since he had rejected the book results he applied net profit @2.5% on the total recorded sales of Rs.37,47,40,488/- declared in the regular books thereby working out net profit at Rs.93,68,512/- as against the disclosed net profit of Rs. 25,91,778/- and the difference of Rs. 67,76,734/- was added to the total income of the assessee.

25. When the matter came up before Ld. CIT(A) assessee made detailed written submission showing consistency of net profit rate offered to tax and the fact that interest expenditure and bank charges were already debited to profit and loss account. Ld. CIT(A) based on the facts and circumstances of the case deleted the addition of Rs. 67,76,734/- observing as follows :-

GROUND No 4

4.0 *The assessee in this ground of appeal has challenged the addition of Rs 67,76,734/- to the total; income of the assessee. I have carefully gone through the assessment order as well as submission of the appellant in this regard.*

4.1 *The relevant portion of the appellant's submission is reproduced hereunder:-*

"4.2] The assessing officer while passing the assessment order applied the rate of net profit at 2.5 on the amount of total turnover as disclosed in the books of account of Rs 37,47,40,488/- which calculated comes to Rs 93,68,512/- and after allowing credit of net profit of Rs 25,91,778/- as disclosed in the books of account balance amount of Rs 67,76,734/ - was added to the total income of the assessee.

4.3] Comparative chart of percentage of Gross Profit and Net profit of M/ s SMO Industries for the Assessment Years 2013-14 to 2015-16 is as under.-

| | <i>Particulars</i> | <i>31.03.2013</i> | <i>31.03.2014</i> | <i>31.03.2015</i> |
|--|--------------------------|-------------------|-------------------|-------------------|
| | <i>% of Gross Profit</i> | <i>8.13%</i> | <i>4.45%</i> | <i>5.41%</i> |
| | <i>% of Net Profit</i> | <i>0.91%</i> | <i>0.73%</i> | <i>0.84%</i> |

4.4] *Comparative chart of income as declared in the case of the other of similar type of the other assessee engaged in the trading activities of similar type of the assessee is as under :-*

| <i>S.No.</i> | <i>Name of firm</i> | <i>Particular</i> | <i>31.03.13</i> | <i>31.03.14</i> | <i>31.03.14</i> |
|--------------|---|---------------------|-----------------|-----------------|-----------------|
| <i>1</i> | <i>Sanjay Agrawal Prop. Of Sourabh Bio Tech, Kasrawad</i> | <i>Gross profit</i> | <i>2.38</i> | <i>1.06</i> | <i>1.77</i> |
| | | <i>Net profit</i> | <i>0.66</i> | <i>0.50</i> | <i>0.70</i> |
| <i>2</i> | <i>M/s Rajpal Cotton Industries, Sendwa</i> | <i>Gross Profit</i> | <i>2.30</i> | <i>2.66</i> | <i>2.67</i> |
| | | <i>Net Profit</i> | <i>0.31</i> | <i>0.32</i> | <i>0.35</i> |
| <i>3</i> | <i>M/s Suhan Cotton Fibers, Sendhwa</i> | <i>Gross Profit</i> | | <i>2.21</i> | <i>2.07</i> |
| | | <i>Net profit</i> | | <i>0.31</i> | <i>0.32</i> |

4.5] *That from the above chart, the percentage of Gross profit in respect of all the above firms varies between 2.21 to 2.67 and similarly the percentage of Net Profit calculated comes to 0.31 to 0.70.*

4.6] *That in the following decisions it was held that only net profit can be taxed as income of the assessee, for this preposition we reply on*

the following direct decisions:-

| | | |
|--|-----------------------------------|------------------------------|
| | <i>CIT vs Balchand Ajit Kumar</i> | <i>263 ITR 610 [MP]</i> |
| | <i>DCIT vs Himmatmal Fafaria</i> | <i>009 ITJ 475 [Indore]</i> |

4.7] *That as per available decisions including that of jurisdictional high court, only net profit is taxable on the amount of unrecorded sales which in case of trading firms varies between 0.31 to 0.70. However, while calculating the income on the amount of unrecorded turnover the assessee applied rate of net profit at 2.5. Since, the amounts of Interest and bank charges have already been debited in the books of account. Thus, merely on the basis of income as declared by the assessee at 2.5 on the amount of total turnover as executed with the ICICI Bank which was not recorded in the books of account. The assessing officer was not justified in applying the same rate of net profit in respect of total turnover as disclosed in the regular books of account.*

4.8] *The assessee in the earlier para of this letter has stated that he has used cash and stock as shown in the books of account and no funds were either borrowed from outside parties. Hence, the margin of his trading business was slightly higher than manufacturing as shown in its books of account.*

4.9] *The net profit of the assessee as declared in his regular books of account is as under.-*

| <i>S.No</i> | <i>Particulars</i> | <i>Amount [Rs]</i> | <i>% of Profit</i> |
|-------------|--------------------|--------------------|--------------------|
|-------------|--------------------|--------------------|--------------------|

| | | | |
|-----|--|--------------|------|
| 1 | Sales | 37,47,40,488 | |
| 2.1 | Net Profit | 27,49,896 | 0.73 |
| 2.2 | Interest as charged in the Profit & Loss A/c | 62,57,566 | 1.67 |
| 2.3 | Bank Charges | 5,66,548 | .15 |
| 2.3 | Net Profit before interest & Bank charges | 95,74,010 | 2.55 |

4.10] That while comparing the Net profit as per regular books of account and as calculated on the amount of total turnover routed through the ICICI Bank, the component of interest must be ignored. The assessee has not claimed any deduction on account of Interest in his unaccounted turnover, since, the entire funds of the regular business was used by him for the purpose of his unaccounted turnover. If the effect of Interest and Bank charges ignored, the percentage of Net profit in his books of account was 2.55% i.e. higher than what was considered by the assessee for his unaccounted business.

4.11] The assessee charged entire amount interest in its books of account. For this reason the percentage of net profit as shown in the books of account was lower than what was disclosed for unaccounted turnover. The assessing officer was grossly erred in applied the rate of net profit at 2.5% as against rate of net profit as disclosed by the assessee at 0.73%. The book result as declared by the assessee requires to be accepted and addition as made in the turnover as shown in the books of account was not justified.

4.12] That in view of the above, addition of Rs 67,76,734/- as made to the total income of the assessee was legally and factually not justified, the same now requires to be deleted in full”.

4.2 *It is evident from the above facts that the appellant had shown total turnover in his books of account to the tune of Rs 37,40,40,488/- and unrecorded sales as executed through the bank account of ICICI Bank was of Rs 16,66,66,003/-. The assessee had shown net profit in his regular books of account at 0.73% but on the amount of unrecorded sales net profit was shown at 2.5%. The assessing officer while passing the assessment order applied the net profit rate at 2.5% on the amount of total turnover as shown by the assessee in his books of account. Comparative chart of net profit as shown by the assessee for this year and that of one year prior and also for succeeding year is as under:-*

| S.No | Particulars | 31.03.2013 | 31.03.2014 | 31.03.2015 |
|------|-----------------|------------|------------|------------|
| 1 | of Gross Profit | 8.13 | 4.45 | 5.41 |
| 2 | of Net Profit | 0.91 | 0.73 | 0.84 |

4.3 *The assessee had borrowed funds from the banks and from outside parties for the purpose of his business and the same were duly recorded in his books of account. The funds were also utilized for the purpose of his business and shown in the form of Stock, cash and Sundry debtors. The entire amount of interest and bank charges as paid on the borrowed funds were debited in his books of account. It has been claimed by the assessee that the stock and cash as reflected in the books of account was also used by the assessee for the purpose of his out of books sales which were routed through the ICICI Bank account. Since, the assessee had already accounted for entire interest and bank charges in his books of account; hence, deduction for the same was not considered while calculating the net profit rate as*

applied in respect of unrecorded turnover as executed through the ICICI Bank. The rate of net profit as declared by the assessee at 2.50 in respect of total turnover as executed through the bank account with ICICI Bank and not incorporated in the regular books of account is calculated as under:-

| S.No | Particulars | Amount [Rs] | % of Profit |
|------|--|----------------|----------------|
| 1 | Sales | 37,47,40,488 | |
| 2.1 | Net Profit | 27,49,896 | 0.73% |
| 2.2 | Interest as charged in the Profit & Loss A/c | 62,57,566 | 1.67% |
| 2.3 | Bank Charges | 5,66,548 | .15% |
| 2.3 | Net Profit before interest & Bank charges | 95,74,010 | 2.55% |

4.4 *The net profit rate prior to interest and bank charges calculated comes to 2.55% and therefore it was claimed by the assessee that net profit on the amount of total turnover as executed through the ICICI Bank which was not recorded in the books of account was offered at 2.50% in place of 0.73% as declared in the regular books of account. The assessee had further claimed that the assessing officer had grossly erred in applying the rate of net profit at 2.5% on the amount of total turnover as disclosed in the books of account. The assessee has also claimed that he had debited interest and bank charges in his books of account and therefore, the rate of net profit was reduced to 0.73% and the same was correctly disclosed by the assessee. As stated, the assessee had used his stock and cash as shown in his regular books of account in respect of sale proceeds which were deposited in the bank account with ICICI*

*Bank and therefore on the amount of unrecorded sales, he was not liable to pay any additional amount of interest and bank charges. Considering the overall facts of the case as discussed in the assessment order and submission as made by the assessee, it appears that though the net profit rate as per books of account of the assessee was at 0.73% only and various decisions including that of Hon 'ble Jurisdictional High Court in the case of **CIT--Vs- Bal Chand Ajit Kumar as reported in 263-ITR 610** had held to tax only net profit rate on the amount of unrecorded turnover, the assessee in place of 0.73%, applied the rate of net profit at 2.50% on the amount of sales not recorded in the regular books of account after taking effect of interest and bank charges and rightly so. Thus, the assessing officer was not right in applying the said rate of 2.50% which was rightly offered by the assessee in respect of unrecorded sales for the sales as shown in the books of account. The assessee during the course of assessment proceeding had explained the reason for higher rate of net profit in respect of unrecorded sales as against net profit rate as declared in respect of disclosed turnover but the assessing officer did not appreciate the submissions of the assessee. The addition as made by the assessing officer on account of low net profit rate on the amount of total turnover as shown in the books of account was not correct, as the assessee was able to explain the reason for higher rate of net profit as applied in respect of unrecorded sales as compared to the net profit rate as applied in respect of sales shown in his regular books of account. The assessee has not claimed deduction of interest paid and bank charges against, the sale proceed as realized through the ICICI Bank and shown net profit rate at 2.50% in place of 0.73% as declared in his regular books of*

account. The rate of net profit applied at 2.50% on the amount of total turnover as shown in the books of account was thus not justified; since, the percentage of net profit was calculated at 2.50% after ignoring the deduction as claimed on account of Bank interest and Bank charges. Since, both these expenses were debited in the regular books of account and after considering the amount of bank interest and bank charges the percentage of net profit gets reduced from 2.50% to 0.73% which was correctly offered and applied by the assessee on the amount of total turnover as shown in his books of account. The assessing officer failed to appreciate this aspect of the facts of the case. Therefore, the addition so made by the assessing officer to the tune of Rs 67,76,734/- is not justified and is hereby deleted in full. The assessee accordingly get relief of Rs 67,76,734/-. This ground of appeal is allowed.”

26. From perusal of the detailed finding of fact by Ld. CIT(A) and the factual aspect we observe that the Ld. A.O has only taken the basis of undisclosed bank account for rejecting the books of accounts. Nowhere in the assessment order he has pointed out any other irregularity in the regular books of accounts maintained by the assessee which are duly audited. Ld. Departmental Representative has failed to bring on record any such observation of the Ld. A.O. It is well evident that the fact of undisclosed bank account has duly been admitted by the assessee in the revised return of income and has offered the net profit @2.5% on the total transactions of the

undisclosed bank account treating it as undisclosed sales at Rs.18,82,79,709/- on which net profit of Rs.47,06,993/- has been offered. Apart from this fact during the course of assessment proceedings Ld. A.O while examining the stock records and books of accounts has not come across any mistake or irregularity which could prove that the books of accounts regularly maintained by the assessee and book results are questionable. In these given facts and circumstances of the case we are of the view that the action of the Ld. A.O rejecting the book results thereby invoking provisions of section 145(3) of the Act was not justified and so was also not justified in estimating the net profit on the regular turnover in the books of accounts @2.5% as against 0.73% offered by the assessee. Revenue has also failed to rebut the fact that Ld. A.O has not pointed out any mistake in the submissions of the assessee wherein it was mentioned that net profit rate of 2.5% applied on the undisclosed turnover was on the basis of calculation as per which the interest and bank charges were claimed in the regular books which in percentage terms were around 1.82% of the total disclosed turnover and since they have already been claimed so the percentage of interest and bank

charges were added to the net profit offered in the books of accounts and fair net profit @2.5% was applied. This application of 2.5% on undisclosed turnover cannot be equated to be applied on the regular turnover disclosed by the assessee. In the immediately preceding assessment year 2013-14 assessee has offered 0.91% as net profit rate which has been accepted by the revenue. In these given facts and circumstances of the case we hereby find no reason to interfere in the finding of Ld. CIT(A) deleting the addition of Rs.67,76,734/- and we also find no justification in the action of the Ld. A.O rejecting the books of accounts u/s 145(3) of the Act. We accordingly dismiss Ground No.2 of the revenue's appeal.

In the result appeal of the revenue stands dismissed.

The order pronounced in the open Court on 20.08.2020.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

नांक /Dated : 20th August, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,

ITA No.925/Ind/2018
Sitaram Agrawal

Asstt.Registrar, I.T.A.T., Indore