

ITA NO. 152/A/2013, 179/A/2013, 632/A/2014, 633/A/2014 & C.O. 16/A/2013  
BALAJI AGRICULTURAL INDUSTRIES PRIVATE LIMITED

**IN THE INCOME TAX APPELLATE TRIBUNAL,**

**ALLAHABAD BENCH, ALLAHABAD**

**(THROUGH VIRTUAL COURT)**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. 632/ALLD/2014**  
**(Assessment Year- 2007-08)**  
**ITA No. 152/ALLD/2013**  
**(Assessment Year-2009-10)**  
**ITA No. 633/ALLD/2014**  
**(Assessment Year- 2010-11)**

M/s Balaji Agricultural Industries Pvt. Ltd., Sahson, Allahabad-221507, U.P.		Joint Commissioner of Income Tax (OSD), Central Circle-Allahabad,U.P.
PAN: AAACB9238J		
(Appellant)		(Respondent)

**ITA No. 179/ALLD/2013**  
**(Assessment Year-2009-10)**  
**CO No. 16/ALLD/2013**  
**(arising out of ITA No. 179/Alld./2013)**  
**(Assessment Year-2009-10)**

Joint Commissioner of Income Tax (OSD), Central Circle-Allahabad, U.P.		M/s Balaji Agricultural Industries Pvt. Ltd., Sahson, Allahabad-221507, U.P.
		PAN: AAACB9238J
(Appellant)		(Respondent)
Assessee by:		Mr. Praveen Godbole, CA
Respondent by:		Ms. Namita S. Pandey, CIT-DR
Date of hearing:		14.12.2020
Date of pronouncement:		13.01.2021

## **ORDER**

### **PER BENCH:**

These four appeals filed by assessee as well by Revenue relates to three different assessment year(ay's) namely ay:2007-08 , 2009-10 and 2010-11. The assessee has filed appeals for all the three ay's viz. 2007-08, 2009-10 and 2010-11, while Revenue on its part has filed cross appeal for ay: 2009-10. The Cross Objection (C.O.) is filed by assessee for ay: 2009-10 arising out of Revenue's appeal , which is filed in support of the appellate order passed by learned Commissioner of Income-tax (Appeals), Allahabad granting part relief to the assessee. Since common issues are involved in all these appeals, hence all these four appeals and CO were heard together by Division Bench and are disposed of by this common order. These four appeals and CO were heard by Division Bench through video conferencing mode through Virtual Court.

2a. The grounds of appeals raised by assessee in ITA No. 632/Alld/2014 for ay : 2007-08 in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad (hereinafter called "the tribunal") reads as under :

### **ITA No. 632/ALLD/2014**

*"1. That in any view of the matter the assessment framed vide Order dated 28.12.2011 U/s 143(3) of the Income Tax Act*

*by the assessing officer and his actions as partly maintained by the Commissioner of Income Tax (Appeals) both are unjustified and illegal on facts of the case and also bad in law, therefore the declared income of the assessee in the return should have been accepted in the facts and circumstances of the case.*

*2. That in any view of the matter observations and findings of the two lower authorities for making and maintaining additions/disallowances in their orders are incorrect, general, vague and contrary to the actual facts of the case and hence deserve to be ignored.*

*3. That in any view of the matter the assessee denies his liability to be assessed since the assessing officer has no jurisdiction to pass assessment order for the block period in absence of any valid action U/s 132 of the Income Tax Act and also mandatory requirement were not complied for framing a valid and legal assessment.*

*4. That in any view of the matter the appellant is maintaining regular book of accounts duly supported by the Stock register, bills-vouchers based on which return was also filed alongwith audit report and moreover no adverse findings are there with regard to books of accounts and method of accounting therefore the declared income and book result are liable to be accepted in all fairness as proviso of Section 145(3) of the Income Tax is not invoked.*

*5. That in any view of the matter a part sum of Rs. 1,00,000/- out of the addition of Rs.*

*2,00,000/- made by saying undisclosed income by the Assessing Officer and*

*maintained by the Commissioner of Income Tax (Appeal) is highly unjustified and illegal in the facts and circumstances of the case, hence the same is liable to be deleted.*

*6. That in any view of the matter a part sum of / Rs. 2,347/- out of the disallowance of Rs. 4,694/- made by the assessing officer under the head general expenses as maintained by the Commissioner of Income Tax (Appeal) ignoring the correct facts is unwarranted in the facts and circumstances of the case hence the same deserves to be deleted.*

*7. That in any view of the matter a part sum of Rs. 2,996/- out of the disallowance of Rs. 5,992/- made by the assessing officer under the head dispensary expenses as maintained by the Commissioner of Income Tax (Appeal) without appreciating the true facts correctly is wrong, hence the same is liable to be deleted in the facts and circumstances of the case.*

*8. That in any view of the matter assessment framed and Assessing Officer's actions as partly confirmed are abinito void, unlawful and bad in law, without appreciation of facts and utter disregard of the submissions tendered by the appellant the lower authorities based on unwarranted presumptions, surmises, conjectures and imagination only without any evidence, therefore the additions/disallowance under different head so made and maintained are*

*unwarranted hence the same are liable to be deleted.*

*9. That in any view of the matter no reasonable*

*opportunity was provided to the assessee before making the additions/disallowances under different heads which is highly unjustified and illegal.*

*10. That in any view of the matter the penal interest charged under various provisions of the Income Tax Act is highly unjustified and illegal in the facts and circumstances of the case.*

*11. That in any view of the matter the assessee reserves his right to take any further ground of appeal, before hearing of the appeal.”*

2b. The grounds of appeals raised by assessee in ITA No. 152/Alld/2013 for ay : 2009-10 in memo of appeal filed with tribunal reads as under :

**ITA No. 152/ALLD/2013**

*“1. That in any view of the matter since it is an admitted fact on record that a survey u/s 133A of the income tax act was conducted on 27.08.2009 and not any search and seizure u/s 132(1) therefore the proceedings initiated u/s 153A of the income tax act and the entire assessment made u/s 153A(b) are unjustified and illegal and the two lower authorities*

*failed in considering the issue in appropriate manner.*

*2. That in any view of the matter assessment framed u/s 153A(b) of the income tax act vide order dated 28.12.2011 is bad both on the facts and in law as the entire*

*additions/disallowances made under different heads are unjustified, incorrect and illegal as the same are made by ignoring the accepted method of accounting by the department hence the declared income should have been accepted in the facts and circumstances of the case.*

*3. That in any view of the matter in respect of business activities complete books of accounts have been maintained which are supported by day to day stock registers in respect of pig iron, coal and other items. The purchase are fully vouched and recorded in books which were verified and found correct also and likewise proviso to section 145(3) of the income tax act was not invoked by the assessing officer and therefore the lower authorities are wrong in making, confirming and in maintaining in the part of the additions/disallowances which is unwarranted.*

*4. That in any view of the matter part of the addition of Rs. 1,16,50,023.00 out of Rs. 3,08,98,592.00 as maintained by the Commissioner of Income Tax (Appeals) as per Para 4.2.7 of his order is highly unjustified and in this regard observations and findings*

*recorded by the Commissioner of Income Tax (Appeals) are totally incorrect and contrary to the actual facts of the case.*

*5. That in any view of the matter the learned Commissioner of Income Tax (Appeals) in Para 4.2.7 of his order is wrong and incorrect in covering up the lapses on the part of the assessing officer by saying that “the books of*

*accounts are not complete and correct, therefore book results are rejected u/s 145(3) of the income tax act.” In fact the learned Commissioner of Income Tax (Appeals) travelled beyond his jurisdiction by recording such findings. The appellant’s case is also covered by the decision of the Apex Court reported in (2009) 319 ITR 3 (Supreme Court) in the case of CIT vs. Flexi Pack.*

*6. That in any view of the matter in the course of survey in the premises of third party an annexure P-6 was found and facts of which was fully explained in detail to the two lower authorities and the entries of the same also tallied with the books of accounts hence the addition as maintained by the Commissioner of Income Tax (Appeals) is highly unjustified and objectionable.*

*7. That in any view of the matter since the main items for manufacturing is pig iron and coal which are supported by day to day stock registers and likewise for finished goods also stock registers are maintained and recorded in books therefore addition maintained by the Commissioner of Income Tax (Appeals) is*

*unwarranted.*

*8. That in any view of the matter addition of Rs. 1,02,000.00 as made by the assessing officer as per Para 4 of the assessment order and the same as maintained by the Commissioner of Income Tax (Appeals) as per Para 5.2 of his order without considering and discussing the issue is highly unjustified and unwarranted in the facts and circumstances of the case.*

*9. That in any view of the matter disallowance of Rs. 9,426.00 and Rs. 6,320.00 under the head 'General expenses' and under the head 'Dispensary expenses' a disallowance at the rate of 10% unwarranted because in the income tax act there is no such provision to disallow the expenses on percentage basis hence liable to be deleted.*

*10. That in any view of the matter the interest as charged under different section of the income tax act is highly unjustified.*

*11. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal."*

2c. The grounds of appeals raised by Revenue in ITA No. 179/Alld/2013 and C.O. No. 16/Alld./2013 filed by assessee arising out of ITA No. 179/Alld/2013 , both for ay:2009-10, in memo of appeal/C.O. filed with the tribunal reads as under :

**ITA No. 179/ALLD/2013**

*“1. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,92,48,569/- out of Rs. 3,08,98,592/- made on account of extra profit without looking into the merits as well as modus operandi of the case under reference and categorical findings made therein by the A.O.*

*2. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,03,27,195/- on*

*account of unexplained purchases without verifying the facts & assigning any logical reasons for the same.*

*3. That the CIT(A) is not justified in law and on facts in deleting the addition of Rs. 81,015/- on account of freight charges as unexplained expenditure without assigning any logical reason.*

*4. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the A.O. be restored.*

*5. That the appellant craves leave to add or amend any one or more of the ground of the appeal as stated above as and when need for doing so may arise.”*

**C.O. 16/Alld/2013 arising out of ITA No.  
179/Alld./2013**

*“1. That in any view of matter it is not correct to say that the Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs. 1,92,48,569/- in the facts and circumstances of the case. The order of C.I.T. (Appeal) is correct but the addition in part as maintained is highly unjustified.*

*2. That in any view of matter it is not correct to say that Commissioner of Income Tax (Appeal) has erred in law and on facts in deleting the addition of Rs. 1,03,27,195/- on account of alleged unexplained purchases but since the matter was properly examined by C.I.T. (Appeal) hence his action is correct in deleting the addition.*

*3. That in any view of matter the learned C.I.T. (Appeal) is perfectly justified in deleting the addition of Rs. 81,015/- on account of freight charges.*

*4. That in any view of matter addition of Rs. 1,16,50,023/- maintained out of the addition of Rs. 3,08,98,592/- is highly unjustified and liable to be deleted and rejection of account is not correct specially when provision of Section 145(3) is not invoked by the assessing officer hence maintained addition is liable to be deleted.*

*5. That in any view of matter addition of Rs. 1,02,000/- as maintained by C.I.T. (Appeal) as per para 5.2 of his order is not correct as the addition maintained without considering the facts and circumstances of the case.*

*6. That in any view of matter it not correct to say that the order of C.I.T. (Appeal) being erroneous in law and on facts.*

*7. That in any view of matter the respondent reserve his right to taken any facts ground of appeal or amend before hearing of appeal.*

*8. That in any view of matter departmental appeal is bad in law as well as on facts and therefore liable to be dismissed and addition maintained are also liable to be deleted.”*

2d. The grounds of appeals raised by assessee in ITA No. 633/Alld/2014 for ay : 2010-11 in memo of appeal filed with tribunal reads as under :

**ITA No. 633/ALLD/2014**

*“1. That in any view of the matter the assessment framed vide Order dated 28.12.2011 U/s 143(3) of the Income Tax Act by the assessing officer and his actions as partly maintained by the Commissioner of Income Tax (Appeals) both are unjustified and illegal on facts of the case and also bad in law, therefore the declared income of the assessee in the return should have been accepted in the facts and circumstances of the case.*

*2. That in any view of the matter observations and findings of the two lower authorities for making and maintaining additions/disallowances in their orders are incorrect, general, vague and contrary to the actual facts of the case and hence deserve to be ignored.*

*3. That in any view of the matter the assessee denies his liability to be assessed since the assessing officer has no jurisdiction to pass assessment order for the block period in absence of any valid action U/s 132 of the Income Tax Act and also mandatory requirement were not complied for framing a valid and legal assessment.*

*4. That in any view of the matter the appellant is maintaining regular book of accounts duly supported by the Stock register, bills-*

*vouchers based on which return was also filed alongwith audit report and moreover no adverse findings are there with regard to books of accounts and method of accounting therefore the declared income and book result are liable to be accepted in all fairness as proviso of Section 145(3) of the Income Tax is not invoked.*

*5. That in any view of the matter addition of Rs. 25,750.00 as per para 3 of assessment order as made by the assessment order and his action as confirmed by the CIT(A) is highly unjustified, incorrect and illegal in the facts and circumstances, of the case and in this regard the entire observations and findings of both the two lower authorities in their orders are incorrect and contrary to the actual facts of the case, hence the addition is liable to be deleted.*

*6. That in any view of the matter addition of Rs. 1,31,880/- as made and confirmed by the two lower authorities are highly unjustified and incorrect as this is not any undisclosed income as presumed by the assessing officer rather the amount is fully recorded in the books of accounts at different places, hence the addition is liable to be deleted in the facts and circumstances of the case.*

*7. That in any view of the matter a part sum of Rs. 5,749/- out of the disallowance of Rs. 11,498/- made under the head general expenses as maintained by the Commissioner of Income Tax Appeal is highly unjustified and illegal in the facts and circumstances of the case, hence the maintained part of the sum also deserves to be deleted.*

8. *That in any view of the matter a part sum of Rs. 4,136/- out of the disallowance of Rs. 8,273/- made under the dispensary expenses as maintained by the Commissioner Income Tax (Appeal) is unjustified and incorrect in the facts and circumstances of the case, hence the same is liable to be deleted in interest of justice.*

9. *That in any view of the matter assessment framed and Assessing Officer's actions as partly confirmed are abinito void, unlawful and bad in law, without appreciation of facts and utter disregard of the submissions tendered by the appellant, the lower authorities based on unwarranted presumptions, surmises, conjectures and imagination only without any evidence, therefore the additions/disallowance under different head so made and maintained are unwarranted hence the same are liable to be deleted.*

10. *That in any view of the matter no reasonable opportunity was provided to the assessee before making the additions/disallowances under different heads which is highly unjustified and illegal.*

11. *That in any view of the matter the penal interest charged under various provisions of the Income Tax Act is highly unjustified and illegal in the facts and circumstances of the case.*

12. *That in any view of the matter the assessee reserves his right to take any further ground of appeal, before hearing of the appeal.”*

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of agricultural equipment's such as chaff-cutter machine, Osai-fan, cane-crusher and thresher etc., and sale of these agricultural equipment's.

4. Before we proceed further , it will be important to deal with a legal jurisdictional ground raised by assessee in all these appeals, which legal jurisdictional issue raised by assessee goes to root of the matter and need adjudication at the first stage itself before we proceed to decide issues arising in appeals/C.O. on merits. There was a search and seizure operations carried out by Revenue on 27<sup>th</sup> August, 2009 u/s 132(1) of the Income-Tax Act, 1961 in business and residential premises of group cases of M/s Kesarwani Zarda Bhandar, Sahson Allahabad and its partners. Pursuant to aforesaid search operations carried out by Revenue , notices u/s 153A of the 1961 Act were issued by Revenue on 07<sup>th</sup> July, 2010 and served on the assessee through registered post, inter-alia, for ay's 2007-08 and 2009-10. The assessment proceedings for ay: 2010-11 were conducted u/s 143(3) read with Section 143(2) and 142(1) of the 1961 Act, while the additions have been made based on seized material found during the course of Search and Seizure operations conducted by Revenue on 27<sup>th</sup> August 2009 , u/s 132(1) of the 1961 Act. The common legal jurisdictional ground raised by assessee in all these appeals is that the whole assessment proceedings conducted by Revenue pursuant to alleged search and seizure operations u/s 132(1) of the 1961 Act , allegedly on 27.08.2009 are null and void as there was no search and seizure operations

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conducted by Revenue against the assessee u/s. 132(1) of the Income Tax Act, 1961, on 27<sup>th</sup> August 2009. Since this legal jurisdictional ground raised by assessee goes to the root of the matter, the Bench on the earlier occasion when these appeals came up for hearing before the Bench, directed learned CIT-DR to file copies of warrant of authorization issued by Revenue against the assessee and Panchanama's prepared during the course of search operations claimed to be carried out by Revenue u/s 132(1) of the 1961 Act, on 27.08.2009 against the assessee. Pursuant to such directions issued by the Bench, now learned CIT DR has filed copies of warrant of authorization which were issued by Revenue against the assessee in connection with the aforesaid search and seizure operations conducted by Revenue against the assessee u/s 132(1) of the 1961 Act, on 27<sup>th</sup> August, 2009. The copies of Panchnama's prepared during the course of search operations on 27.08.2009 are also filed by Revenue with the tribunal. The counsel of the assessee was also given copies of Warrant of Authorisation drawn by Revenue against the assessee and also copies of Panchnama prepared during the course of Search operations conducted by Revenue against the assessee on 27.08.2009 , u/s 132(1) of the 1961 Act . The aforesaid warrant of authorization and Panchanama are placed on record in file. At the opening of the hearing before the Bench, the learned counsel for the assessee at the outset conceded that he has gone through the documents furnished by Revenue in connection with Search and Seizure operations conducted by Revenue against the assessee u/s 132(1) of the 1961 Act, on 27.08.2009 and it was

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accepted by learned counsel for the assessee that admittedly warrant of authorization were issued against the assessee by Revenue authorizing conducting of Search and seizure operations against the assessee u/s 132(1) of the 1961 Act, and Panchnamas were also prepared against the assessee during the course of search and seizure operations conducted by Revenue on 27.08.2009, u/s 132(1) of the 1961 Act against the assessee. The learned counsel for the assessee conceded and accepted that there was a search and seizure operation carried on by the Revenue u/s 132(1) of the 1961 Act, on 27<sup>th</sup> August, 2009 against the assessee and prayers were made to dismiss this legal jurisdictional ground raised by assessee challenging legality and validity of search and seizure operations conducted by Revenue u/s 132(1) of the 1961 Act, on 27.08.2009, in all the appeals which are before the Bench for ay: 2007-08, 2009-10 and 2010-11 respectively. The Revenue has no objections if the aforesaid legal challenge raised by assessee challenging legality and validity of search conducted by Revenue against the assessee u/s 132(1) of the 1961 Act, on 27.08.2009 is dismissed by the tribunal. After hearing both the rival parties and perusing the document filed by Revenue, we now hold that a search and seizure operations u/s 132(1) of the Act were validly conducted by Revenue against the assessee on 27.08.2009 and this legal jurisdictional ground challenging legality and validity of search and seizure operations conducted by Revenue against the assessee u/s 132 of the 1961 Act on 27.08.2009, does not hold any merit and is hereby dismissed, for all the ay's before the

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Bench viz. ay: 2007-08, 2009-10 and 2010-11. We order  
accordingly.

**ITA No. 632/ALLD/2014 (Asstt. Year- 2007-08)-Assessee's  
Appeal**

5. Now coming to the merits of the additions made by AO which were later sustained by learned CIT(A). The learned CIT(A) has allowed part relief to the assessee against the additions made by the AO. The assessee being aggrieved by additions as were sustained by learned CIT(A) for ay:2007-08 has come in appeal before the tribunal by filing second appeal , while The Revenue has not come in appeal for ay: 2007-08 against relief granted by learned CIT(A) to the assessee while adjudicating first appeal. At the outset, learned counsel for the assessee submitted before us that ground no. 1 to 4 , and 6 to 11 raised by assessee in memo of appeal filed by assessee with tribunal are not being pressed and prayers are made for dismissal of these grounds as not being pressed. The learned CIT DR raised no objection to dismissal of ground no. 1 to 4 and 6 to 11 raised by assessee in memo of appeal filed with tribunal , as not being pressed. After considering contentions of both the parties, we dismiss ground numbers 1 to 4 and 6 to 11 raised by assessee in memo of its appeal filed with tribunal , as not being pressed. We order accordingly.

6. This leaves us with ground number 5 raised by assessee in memo of appeal filed with tribunal, which is vehemently argued by assessee , and which requires adjudication by us on merits of

the issue raised in the appeal filed with the tribunal. During the course of search and seizure operations conducted by Revenue u/s 132(1) of the 1961 Act against the assessee on 27.08.2009 , the Revenue seized a document ( numbered as LP-19, page number 41) from the business premises of the assessee . The said seized document is reproduced by AO in its assessment order dated 28.12.2011 passed u/s 153A(b) of the 1961 Act, at page number 2 ( also placed in paper book filed by assessee at page number 52) , which is a letter dated 29.11.2006 written by one Mr. Hulas Sharma of 'Sudama Singh & Sons' , of Purani Gurhati, Chapra,, Saran which is written to the assessee by said Mr. Hulas Sharma, and reference is made to a bank draft of Rs. 1 lac , bearing number TEU 617290(0091/2006) drawn on PNB Chapra dated 29.11.2006 being sent to the assessee and request was made to acknowledge the receipt and send proper accounts . There is also mention of payment of Rs. 1 Lac in cash in the said letter to assessee , and said Mr. Hulas Sharma has asked for receipt of said cash payment of Rs. 1 lacs made by them to assessee . The assessee has explained that payment of Rs. 1 Lac by bank draft is accounted for in its books of accounts . There was a sale of Rs. 2,06,204/- made to said M/s Sudama Singh & Sons , vide bill no. 125 dated 28<sup>th</sup> November, 2006. The copy of ledger account of said M/s Sudama Singh and Sons and bank statement of the asssee maintained with Allahabad Bank, Civil Lines, Allahabad reflecting receipt of draft of Rs. 1 lacs were filed . This was disbelieved by the AO and addition were made by the AO even with respect to payment made by M/s Sudama Singh & Sons

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to assessee by Bank draft to the tune of Rs. 1,00,000/- . The learned CIT(A) was pleased to accept contentions of the assessee and deleted this addition to income of the assessee of Rs. 1 Lac with respect to payment of Rs. 1 lacs made by M/s. Sudama Singh & Sons to assessee by Bank draft to the tune of Rs. 1,00,000/- , which deletion of addition to income has now attained finality as it is not shown to us by either of the party that the Revenue has come in appeal against the said relief of Rs. 1 lacs granted by learned CIT(A).

7. Regarding other transactions of Rs. 1 Lac in cash payment made to assessee as is recorded in aforesaid seized material number LP-19/page 41 against which said Mr. Hulas Sharma of M/s Sudama Singh & Sons asked for receipt of Rs. 1 Lac, was disbelieved by AO and also by learned CIT(A) who was pleased to confirm the addition to income of the assessee. Before us, similar contentions were made as were made earlier by assessee before learned CIT(A) and the AO, that bill no. 126 dated 28<sup>th</sup> November, 2006 for Rs.1,00,002/- for supply of chaff cutter machine and spare parts, was raised in favour of Mr. Mukesh Kumar Singh, Purani Gurhati, Chhapra, Bihar , which bill is placed at paper book page no. 51. The copy of ledger account of M/s Mukesh Kumar and Company in the books of the assessee for financial year 2006-07 is also placed in paper book at page number 49. It is submitted that both 'M/s Sudama Singh & Sons' and also 'M/s Mukesh Kumar and Company' were related parties of the same group and even their addresses are same. It is submitted that invoice of Rs.1,00,002/- for supply of chaff cutter

machine and spare parts, was raised in favour of Mr. Mukesh Kumar Singh, Purani Gurhati, Chhapra, Bihar and cash of Rs. 1,00,000/- was received against the said bill, which is duly accounted for in books of accounts of the assessee. We have observed that in the said letter dated 29.11.2006 written by Mr. Hulas Sharma of M/s Sudama Singh and Sons which was seized by Revenue, there is a mention of 'Mukesh' which was later stuck off by said Mr. Hulash Sharma. In this seized letter, Shri Hulash Sharma has asked for receipt of cash of Rs. 1 Lac. It is also observed

that assessee is regularly dealing with M/s Mukesh Kumar & Company and payments were also received by cheque during the year under consideration from said M/s Mukesh Kumar and Company. The assessee has raised invoice of Rs. 1,00,002/- bearing number 126, dated 28.11.2006 for supply of chaff cutter and spare parts in favour of Mr. Mukesh Kumar Singh of Purani Gurhatti, Chhapra, Bihar. The said bill is entered into books of accounts of the assessee. The assessee has clarified that both the parties M/s Sudama Singh and Sons and M/s Mukesh Kumar and Company are related parties, having even the same address. It is submitted that Mr. Sudama Singh and Mr. Mukesh Kumar Singh are related to each other. The assessee has shown that cash of Rs. 1,00,000/- was received by it against invoice number 126, dated 28.11.2006 which receipt of cash is entered in its books of accounts on various dates from 08.11.2006 to 5<sup>th</sup> December 2006 and offered for taxation. The assessee might not have accounted for Rs. 1 Lac allegedly received from said Mr. Mukesh Kumar and

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Company ( claimed to be Group concern of M/s Sudama Singh & Sons) in one go but fact as recorded in books of accounts ( ledger account of M/s Mukesh Kumar & Company filed in paper book, which is placed on record) remains that Rs. 1 Lac has been duly entered in the books of accounts to have been received in cash on various dates from 8<sup>th</sup> November 2006 till 5<sup>th</sup> December 2006. Mr. Hulas Sharma mentioned about 'Mukesh' in his letter dated 29.11.2006 but later struck it off. The assessee has discharged its onus and now it was for the Revenue to have made enquiries with these parties by invoking powers u/s 133(6) , 131 and other provisions of the 1961 Act to verify and unravel the truth of assertions made by the assessee. The powers of learned CIT(A) are *co terminus* with the power of the AO and the learned CIT(A) could have made direct enquiries from relevant persons by issuing summons under section 131 of the Act or could have called for information by issuing notice under section 133(6) of the Act or by invoking other provisions of the 1961 Act, which the authorities below failed to do so . We have also observed that the total sale of the assessee in the year under consideration was Rs. 4,08,34,195/. The bill no. 126 dated 28.11.2006 in favour of Mr. Mukesh Kumar Singh, Purani Gurhatti, Chhapra, Bihar ( which is the same address as of M/s Sudama Singh and Sons )was issued on 28.11.2006 for Rs. 1,00,002/- for sale of chaff cutters machine and spare parts which was issued much prior to the date of search carried on by Revenue against assessee u/s 132 of the 1961 Act, on 27.08.2009. The assessee raised bill no. 125 dated 28.11.2006 for Rs. 2,06,204/- in favour of M/s Sudama Singh &

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Sons and both the parties has same address. Further, the bills raised are printed one with bill number pre-printed on the invoice. Further, in the said invoice even the Lorry/truck number is mentioned in which the goods were transported by assessee viz.MP 17/7917 to said Mr. Mukesh Kumar . No enquiry whatsoever was made by Revenue even at first appellate stage. Further Hulash Sharma is seeking for receipt of Rs. 1 Lac paid by them in cash and name of 'Mukesh' is

struck off in the said seized letter dated 29.11.2006, which also strengthen our view that this Rs. 1 Lac received by assessee is against the bill no. 126. There are other dealings of the assessee with the said party M/s Mukesh Kumar and Company during the year under consideration and even payments vide cheque was received ( see ledger account of M/s Mukesh Kumar and Company), hence we accept the contention of the assessee on the touchstone of preponderance of probabilities. The assessee has discharged its primary onus and it was for the Revenue to have brought evidence to demolish the story set up by assessee in order to unravel the truth, which Revenue failed to do so. Thus, in the result, we allow the appeal of the assessee because on touchstone of preponderances of probability , we are of the considered view that the assessee has accounted for sale of Rs. 1 Lacs and also cash of Rs. 1 lacs as is mentioned in the seized documents was received by assessee and was duly recorded in the books of accounts of the assessee and offered for taxation, thus , we accept the contention of the assessee to this effect. The

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assessee's appeal is allowed on this ground. We order  
accordingly.

8. In the result, appeal of the assessee in ITA no. 632/Alld/2014  
for ay: 2007-08 is allowed, as indicated above.

**ITA No. 633/ALLD/2014 (Asstt. Year- 2010-11)**

9. At the outset, learned counsel for the assessee submitted that ground of appeal nos. 1 to 4 and 7 to 12 raised by assessee in memo of appeal filed with tribunal are not pressed and they are to be dismissed as not being pressed. The learned DR raised no objection to the dismissal of ground of appeal nos. 1 to 4 and 7 to 12 raised by assessee in memo of appeal filed with the tribunal. After hearing both the parties and perusing the material on record,

we dismiss ground of appeal nos. 1 to 4 and 7 to 12 raised by assessee in memo of appeal filed with the tribunal , as not being pressed. We order accordingly.

10. The only grounds of appeal which are pressed before us and which requires adjudication by us are ground of appeals nos. 5 and 6 raised by assessee in memo of appeal filed with tribunal. As we have already held in preceding para's of this appellate order that search and seizure operations were validly conducted by the Revenue under section 132(1) of the 1961 Act against the assessee on 27.08.2009 , we are proceeding to adjudicate ground of appeal nos. 5 and 6 raised by assessee in memo of appeal filed with tribunal. Vide ground of appeal no. 5, the assessee is

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contending that there was seizure of the stock registers of the assessee by Revenue marked as Annexure R-9 and there was a bonafide error in the said stock register , wherein there were 125 numbers of chaff cutter machines sold to M/s Raj Machinery Store , Rajendra Path, Patna , Bihar, vide bill no. 68 dated 24<sup>th</sup> June, 2009 (challan number 64 dated 24<sup>th</sup> June 2009) , but due to human error entry was made in the stock register of 135 chaff cutter machines on 24<sup>th</sup> June 2009, which was a bonafide human error and the same was later corrected by the assessee *suo moto* after the conclusion of search proceedings , on 31<sup>st</sup> August, 2009. The AO and learned CIT(A) disbelieved the contentions of the assessee and made addition to the income of the assessee to the tune of Rs. 25,750/- on account of allegations of making sales outside books. Before us , similar contentions were made by the learned counsel for the assessee who submitted that there was a human error in posting made in the stock register wherein the sales were made of 125 chaff cutter machines to M/s Raj Machinery Store, Rajendra Path, Patna , Bihar, vide bill no. 68 dated 24<sup>th</sup> June, 2009 ( challan number 68 dated 24.06.2009), but due to human error entry was made in the stock register (which was seized by Revenue during search operations ) as 135 Chaff Cutter Machines, and this error was a bonafide human error which was later corrected by assessee suo motu on 31<sup>st</sup> August, 2009 , after the conclusion of search operations. The learned CIT-DR objected and submitted that the addition be confirmed as the assessee has sold 10 chaff cutter machines out of books and this is an undisclosed income which was rightly brought to tax by

Revenue. It was submitted that said undisclosed income was detected only due to search conducted by Revenue against the assessee. We have heard both the parties and perused the material on record. We have gone through the stock register which was seized by Revenue during the course of search operations, which is placed at paper book page no. 56 to 61. We have observed that this is only one error in the said entire stock register which was detected/pointed out by Revenue, while there are large number of entries for movement of stock of Chaff Cutter Machine , starting from 1<sup>st</sup> April, 2009 onwards till 25<sup>th</sup> August 2009. The assessee was searched by Revenue on 27<sup>th</sup> August 2009. There is no other error detected by Revenue in postings of stock entries with respect to Chaff Cutter Machines in the stock register , apart from error in posting of invoice number 68 dated 24<sup>th</sup> June 2009 raised in favour of Raj Machinery Stores, Patna . The assessee corrected this mistake in the stock register on 31<sup>st</sup> August 2009, after conclusion of search operations. In our considered view this is a plausible and genuine human error in posting of entry in the stock register and based upon material on record, we do not find any mala fide or malice on the part of the assessee to defraud Revenue by posting this entry wrongly in stock register , rather it is a genuine human error . Under these circumstances on touchstone of preponderance of probabilities, we hold that this is a genuine and bonafide human error in posting of stock in the stock register while posting sale invoice, and the assessee cannot be saddled with tax liability merely on the ground that there was some human error while making

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postings in the stock register. There is no malice and malafide evident based on material on record on the part of the assessee to evade taxes or defraud Revenue. The assessee has already corrected the said mistake in posting of stock covered by sale invoice by reversing the said error / entry on 31<sup>st</sup> August 2009. The assessee is a private limited company and the accounts of the assessee are subject to audit. We have also observed that the turnover of the assessee during the year under consideration was to the tune of Rs. 8.38 Crore and the only discrepancy in the stock register which is found by Revenue for the year under consideration was to the tune of Rs. 25,750/- which is a very small fraction of total sales declared by assessee. Thus, on totality of circumstances and on touchstone of preponderance of probabilities, we hold that this is a genuine and bonafide error made by the assessee while posting stock covered by sales in the stock register and we order deletion of addition of Rs. 25,750/- as was made by the AO which was later confirmed by Id. CIT(A). We order accordingly.

11. Now coming to ground of appeal no. 6 raised by assessee in memo of appeal filed with tribunal, we have observed that several loose papers (marked as Annexure LP-6) were seized by the Revenue from assessee during the course of search operations conducted by Revenue against the assessee u/s 132(1) of the 1961 Act , on 27.08.2009 , the details of the seized material have been given in the orders of the authorities below . It is observed that there are cash receipt / payments which are

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recorded in these seized material, and an amount to the tune of Rs. 1,31,880/- is under dispute as is recorded in several loose papers. We have carefully gone through all the said cash receipts / payments as are found mentioned in seized document marked as Annexure LP-6 , and it is observed that these are all Kaccha receipts/payments. We have also observed that these cash receipts / payments were not entered in the cash book as is produced before us. The assessee has not chosen to file seized cash book and other financial records. If the evidence which is available with the person but the same is withheld and not produced, the presumption can be drawn that evidence if produced by the person will be against that person(Section 114(g) of the The Indian Evidence Act,1872). No doubt there is a possibility that cash book may not be completed when the search operations took place, but on the perusal on these Kaccha receipt, we are of the considered view that the assessee is not able to justify and/or connect these receipts / payments as are found mentioned in loose documents seized by Revenue, with the transactions sought to be explained by assessee as are recorded in its books of accounts , and the explanation which is made by the assessee are merely an after thoughts to wriggle out of tax ambit.

- a) There is a loose document in Annexure LP-6, dated 22.06.2009. There is a mention of total supplies of Rs. 87523.75 and Rs. 70000/- is written beneath it and balance amount of Rs. 17523/- is mentioned in the

seized document. There is no name of party mentioned but the items mentioned are iron, coal, Burada, Kiwad etc. in the seized document. The assessee has explained that this loose slip represents transactions with M/s Baijnath and Sons, Gazipur and Rs. 70,000/- was sought to be explained to have been received from said M/s Baijnath and Sons, Gazipur. Thus, explanation offered is that the assessee has sold these items as mentioned in seized material to M/s Baijnath and Sons, Gazipur and purportedly cash was received by assessee from said party. Thus, we have perused the ledger account of M/s Baijnath and Sons which is filed by the assessee and placed in paper book., and it is observed that the assessee is selling material to this party. The assessee is engaged in the business of manufacturing of agricultural equipment's such as chaff-cutter machine, Osai-fan, cane-crusher and thresher etc., and sale of these agricultural equipment's. The assessee is not selling coal, Kiwad, Iron etc. which is found mentioned in the seized document, rather the assessee is buying these items. Thus, explanation of the assessee cast serious doubts and is against the normal conduct of the business of the assessee. This amount of total material value of Rs. 87,523.75 is not reflected in books of accounts by sale / purchase invoice on 22.06.2009. The amount of Rs. 70,000/- shown to have been received in cash by assessee on 22.06.2009 is not demonstrated to

be reflected in cash book. We are of the considered view that the assessee is not able to justify and/or connect these receipts / payments as are found mentioned in loose documents seized by Revenue, with the transactions sought to be explained by assessee as are recorded in its books of accounts , and the explanation which is made by the assessee are merely an after thoughts to wriggle out of tax ambit. Thus, we reject the contention of the assessee on this issue and uphold /sustain the addition as was made by AO and which was later sustained / upheld by learned CIT(A). We order accordingly.

- b) There is a loose document in seized Annexure LP-6, where the name of party M/s Saroj Enterprises , Naini is mentioned and there is a mention of amount of Rs. 5000/- and Rs. 9500/- in the said loose document, along with date 30.07.2009. There is also a mention of '3.700' in the said loose document The assessee has stated that the amount of Rs. 14,500/- was received from Saroj Enterprises, Naini as sale proceed on behalf of one Ms Garib Das Jaiswal, Karvi. There is no nexus proved by the assessee between M/s Saroj Enterprises and M/s Garib Das Jaiswal. There are no sales made by assessee to said M/s Garib Das Jaiswal during the entire financial year. There is no entry of cash receipt on 30.07.2009 in the ledger account of M/s Garib Das

Jaiswal. We are of the considered view that the assessee is not able to justify and/or connect these receipts / payments as are found mentioned in loose documents seized by Revenue, with the transactions sought to be explained by assessee as are recorded in its books of accounts, and the explanation which is made by the assessee are merely an after thoughts to wriggle out of tax ambit. Thus, we reject the contention of the assessee on this issue and uphold /sustain the addition as was made by AO and which was later sustained / upheld by learned CIT(A). We order accordingly.

- c) There is a loose document in Annexure LP-6 which is dated 23.07.2009 and 25.08.2009 in which name of one 'Santosh' is written. There were some material sale of Moti, silica sand, Majhali, Bhura, Mitti is recorded. There are two supplies mentioned of value Rs. 35,658/- and Rs. 9,250/- in this loose document. The amount of Rs. 25,000/- was shown to have been paid in Advance against the first supplies of material of Rs. 35,658/- and balance of Rs. 10,658/- is shown to be outstanding. The assessee is engaged in the business of manufacturing of agricultural equipment's such as chaff-cutter machine, Osai-fan, cane-crusher and thresher etc., and sale of these agricultural equipment's. These appears to be purchases made by assessee. The assessee is explaining these transaction to be cash payment made against

purchases made of Silica Sand from Badri Prasad Amar Nath on 30.06.2009 vide invoice number 21 for Rs. 12,869.90 and invoice number 22 dated 01.07.2009 for Rs. 13,238.90, and it is explained that the payments were made of Rs. 12,869.90 on 02.07.2009 and Rs. 13,238.89 on 07.07.2009. The document clearly speaks that there was a total transaction of Rs. 35,658/- on 23.07.2009 and an advance was already paid of Rs. 25,000/-. This transaction of Rs. 35,658/- of supplies is not demonstrated to have been recorded in books of accounts. Further addition of Rs. 9,250/- on account of transaction of Rs. 9,250/- for material supplies on 25.08.2009, the corresponding invoice is not shown to have been reflected in books of accounts for both the above supplies of material. Further, no connection/nexus between 'Santosh' as mentioned in seized document and M/s Badri Prasad Amar Nath is brought on record. We are of the considered view that the assessee is not able to justify and/or connect these receipts / payments as are found mentioned in loose documents seized by Revenue, with the transactions sought to be explained by assessee as are recorded in its books of accounts, and the explanation which is made by the assessee are merely an after thoughts to wriggle out of tax ambit. Thus, we reject the contention of the assessee on this issue and uphold /sustain the additions as was made by AO and which was later

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sustained / upheld by learned CIT(A). We order accordingly.

d) Payment of Rs. 13130/- made on 08.07.2009 as per seized Annexure LP-6 to M/s Shree Harikrishna Road Carriers as advance freight, as is mentioned in the said seized document . The assessee is contending that this payment is reflected in cash book as being made on 16.05.2009, while seized document clearly refers to payment being made on 08.07.2009 by assessee as advance freight to M/s Shree Harikrishna Road Carriers. We are of the considered view that the assessee is not able to justify and/or connect these receipts / payments as are found mentioned in loose documents seized by Revenue, with the transactions sought to be explained by assessee as are recorded in its books of accounts , and the explanation which is made by the assessee are merely an after thoughts to wriggle out of tax ambit. Thus, we reject the contention of the assessee on this issue and uphold /sustain the additions as was made by AO and which was later sustained / upheld by learned CIT(A). We order accordingly.

**ITA No. 152/ALLD/2013 (Asstt. Year-2009-10)-Assessee's Appeal**

ITA NO. 152/A/2013, 179/A/2013, 632/A/2014, 633/A/2014 & C.O. 16/A/2013  
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**ITA No. 179/ALLD/2013 (Asstt. Year-2009-10)-Revenue**

**Appeal**

**CO No. 16/ALLD/2013 (Asstt. Year-2009-10) filed by assessee  
arising out of Revenue's Appeal**

12. As we have already held in preceding para's of this common appellate order that search and seizure operations were validly conducted by Revenue under section 132 of the 1961 Act against the assessee on 27.08.2009. Now , we proceed to adjudicate these cross appeals filed by assessee and Revenue as well C.O. filed by the assessee against the Revenue appeal.

13. At the outset, learned counsel for the assessee submitted that the assessee is not pressing ground of appeal nos. 1 to 3 and 8 to 11 raised by assessee in memo of appeal filed by assessee with tribunal in ITA No. 152/Alld/2013 for ay: 2009-10, and they should be dismissed as not being pressed. The learned CIT-DR did not object to the dismissal of ground of appeal nos. 1 to 3 and 8 to 11 raised by assessee in memo of appeal filed by assessee with tribunal as not being pressed. After hearing both the parties , we dismiss ground of appeal nos. 1 to 3 and 8 to 11 raised by assessee in memo of appeal filed by assessee with tribunal in ITA no. 152/Alld./2013 for ay: 2009-10, as not being pressed. We order accordingly.

14. Now in cross appeals filed by Assessee as well by Revenue, the issue in dispute vide ground of appeal number 4 to 7 in assessee's appeal and ground of appeal number 1 and 2 in

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Revenue's appeal, are with respect to the additions being made on account of purchases being made by the assessee. The learned CIT(A) has granted part relief to the assessee while adjudicating first appeal filed by assessee, and against the part relief so granted by learned CIT(A), the Revenue has come in appeal before the tribunal, while the assessee being aggrieved by additions sustained by learned CIT(A) has come in appeal before the tribunal for the additions sustained by learned CIT(A). The Cross Objections are filed by assessee in support of learned CIT(A) appellate order granting relief to the assessee, against which Revenue is in appeal before the tribunal.

15. So now coming to the merits of the issue. There was a search and seizure operations conducted by Revenue against the assessee u/s 132(1) of the 1961 Act, on 27.08.2009. There was also an simultaneous survey operations carried on by Revenue u/s 133A of the 1961 Act against the assessee's Chartered Accountant namely M/s. Gupta Sanjay & Associates on 27.08.2009 wherein some documents were impounded by Revenue during the course of survey operations from the premises of aforesaid CA of the assessee. The AO during the course of assessment proceedings observed that there is a difference in purchases, consumption, closing stock of raw materials and finished goods shown in audit report and as per Annexure P-6 impounded from the premises of the aforesaid assessee's Chartered Accountant namely M/s Gupta Sanjay & Associates during the course of survey operations under Section

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133A of the Act. The AO observed that the weight of items in quantity of purchases, consumption and closing stock shown in loose paper found in Annexure P-6 and weight in quantity shown in Audit report are the same. The relevant impounded paper and audit report showing quantitative detail of raw material, consumption , purchases and stock were scanned and reproduced by AO at page no. 2 to 5 of the assessment order. The comparative chart of quantitative details of purchases, consumption and closing stock of raw material and closing stock of finished goods as is reproduced by AO in its assessment order at page 4 and 5 , are extracted below:

**Comparative Quantitative details of raw materials for F.Y.  
2008-09 (A.Y. 2009-10)**

Sl No.	Name of item as per para 28 of the Audit report dt. 02.09.09	Weight (in MT) of item in column No. 2	Value (in Rs.) of Weight column No. 3	Name of the item as per Annexure P-6 impounded	Weight in (MT) of item in Column No.5	Value (In Rs.) of weight in Column No.6	Difference (4-7) (In Rs.)
1	2	3	4	5	6	7	8
1.	Purchases during the previous year i) Pig Iron & Scrap ii. Coal	771.630  No Mentioned	53146621  1075511	Purchases i) Pig Iron & Scrap ii) Coal	771.630  142.025	21428923  1014301	31717698  61210
2.	Consumption during the previous year i) Pig Iron & Scrap ii) Coal	697.380	50740182	Issue Production + Wastage i) Pig Iron & Scrap ii) Coal	697.380	19837535 1615575	29287072
3.	Closing Stock i) Pig Iron & Scrap  ii) Coal  iii) Work in Progress	80.225  Not Mentioned	13094470  1023890 1611520	Closing Stock i) Pig Iron & Scrap  ii) Coal  iii) Work in Progress	80.225  143.840 Nil	1750514  1023890 Nil	11343956  Nil 1611520
4.	Closing Stock of	144.146	6777040	Closing Stock	144.146	8388555	1611515

	<i>finished goods</i>			<i>of finished goods</i>			
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The AO had observed that weight of items in quantity as are mentioned of purchases, closing stock and consumption(see chart above) are tallying in document impounded from CA during survey operations and the audit report , but the values are varying. The assessee was asked by the AO to explain the difference in the figures of purchase , consumption and stock of raw material and finished goods between the document impounded during survey operations conducted by Revenue u/s 133A on CA M/s Gupta Sanjay and Associates and the figures certified in the audit report by the CA. The assessee explained that said document impounded from the premises of M/s Gupta Sanjay & Associates was with respect to raw material namely Pig Iron and Coal , as is mentioned in the impounded document, but there are several other materials, consumables etc. which were purchased by the assessee and which are used in manufacturing activities carried on by assessee , which are not included in the aforesaid impounded document , while the same are duly accounted for in the books of accounts and consequently in the audit report . The assessee also explained that it is mentioned in the document itself that this document concerns itself with Pig Iron and Coal , and it was explained by assessee that there are other raw material and consumables which are used for manufacturing activities carried on by assessee of agricultural equipment's such as chaff cutters machine, Osai fan, cane crusher and thresher etc. . The explanation offered by assessee was

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disbelieved by the AO as AO was of the view that when quantity in weight are tallying between the document impounded from the office of CA during survey operations and in the audit report, there is no justification offered by the assessee for variation in the amount of purchase, consumption and stock recorded in the impounded document and the books of accounts. The AO observed that the assessee has manipulated its stock and inflated its purchases of material, and it is only because of Survey carried out by Revenue that this fact has come into light . The AO, thus , re-casted the manufacturing and profit and loss account of the assessee and made additions to the income of the assessee to the tune of Rs. 3,08,98,592/-, vide assessment order dated 28.12.2011 passed u/s 153A(b) of the 1961 Act.

16. The AO further observed that there is no mention of purchases of pig iron from M/s Benaras Steel Traders , Motiakhan , Mandy , Gobindgarh , Punjab to the tune of Rs. 1,03,27,195/- in the ledger account impounded from the premises of CA , Gupta Sanjay and Associates during survey operations carried on by Revenue u/s 133A of the 1961 Act. The said ledger account impounded by Revenue is reproduced by AO at page 10 of the assessment order. The assessee was asked to explain the same. The assessee submitted that ledger account impounded from office of CA is related to Pig Iron , while no pig iron was purchased from said M/s Benaras Steel Traders , Motiakhan , Mandy , Gobindgarh , Punjab and it is only MS Angles, MS Rounds and MS flats etc. which were purchased from said concern , and

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these purchases are duly reflected in ledger, books of accounts and audit report and these are recorded transactions of the assessee duly declared to Revenue. The AO disbelieved the contentions of the assessee and made additions to income of the assessee to the tune of Rs. 1,03,27,195/- as unexplained purchases, vide assessment order dated 28.12.2011 passed u/s 153A(b) of the 1961 Act..

17. The assessee being aggrieved by assessment framed by AO filed first appeal with learned CIT(A), which was partly allowed by learned CIT(A). The learned CIT(A) accepted the contentions of the assessee so far as purchases made by assessee from M/s Benaras Steel Traders, Motiakhan, Mandy, Gobindgarh, Punjab to the tune of Rs. 1,03,27,195/- and additions stood deleted to that effect by learned CIT(A) by holding that purchases made by assessee from M/s Benaras Steel Traders are genuine and duly supported by purchase invoices, transport bills, confirmation of account from M/s Benaras Steel Traders, payments being made by cheque/draft which are sufficient evidences to hold that purchases from this party M/s Benaras Steel Traders are genuine. The learned CIT(A) confirmed the additions with respect to purchases to the tune of Rs. 3,08,98,592/- on the grounds that the assessee failed to brought on record evidences for purchases such as purchase invoices, vouchers, details of payment, confirmation from relevant parties and evidences in support of transportation of material and stock records, vide appellate order dated 10.01.2013 passed by learned CIT(A).

18. Now, Both assessee and Revenue being aggrieved by the appellate order passed by learned CIT(A) have filed cross appeals before the tribunal. Similar contentions were made by learned counsel for the assessee as were made before lower authorities. It was submitted by learned counsel for the assessee that there was a search and seizure operations conducted against the assessee by Revenue on 27.08.2009 , u/s 132(1) of the 1961 Act and simultaneously there was a survey operations conducted by Revenue against the CA of the assessee namely Gupta Sanjay and Associates , u/s 133A of the 1961 Act. There was a document impounded from CA during survey operations conducted on 27.08.2009 u/s 133A of the 1961 Act, marked as Annexure P-6. It was submitted that the said impounded document only carried details of purchase, consumption and stock of Pig Iron and Coal which is a principal and main raw material required by assessee for its manufacturing activities. It was submitted that the assessee is in the business of manufacturing of agricultural implements such as chaff cutters machine, osai-fan, cane crushers , threshers etc. and there are several other raw materials and consumables such as MS Angle, iron sheets, bearings, nut bolts and other machinery parts which are required by assessee for its manufacturing activities, while pig iron and coal are the main principal raw materials required by assessee. It was submitted that the assessee's CA has given quantitative details in audit report of pig iron , but there are several other raw material and consumables which are required by assessee for its

manufacturing activities. Our attention was drawn to page 56 of the paper book to show stock, purchases and consumption as per books of accounts and as per impounded annexure P-6. Our attention was also drawn to page 58 of the paper book to show that there are large number of items in closing stock as on 31.03.2009 apart from Pig Iron and coal. Our attention was also drawn to Purchases Ledger which is placed in paper book at page 234 to 287, where ledger account of Purchases and of Store and consumables is placed. It was submitted that books of accounts of the assessee were accepted for both the preceding year as well for succeeding year. It was submitted that there was no suppressed income / stock. It was submitted that if the additions are sustained then GP ratio will be as high as 180% which is in the realm of impossibility. Our attention was also drawn to page 102-103 of the paper book wherein details of stock, purchases, production and consumptions are placed. It was submitted by Id. Counsel for the assessee that the assessee is carrying on same business for last several years and no such addition has been made by Revenue in any of the earlier years. It was submitted that stock has been accepted in earlier years and only for this year the addition has been made . The learned CIT-DR has submitted that the assessee has inflated its purchase in books of accounts and unexplained purchases were added rightly by AO. The learned CIT-DR relied upon the appellate order passed by learned CIT(A) so far as additions were sustained by learned CIT(A) and on assessment order of the AO on the issue on which learned CIT(A) has given relief to the assessee.

19. We have heard rival contentions and perused the material on record. We have observed that the assessee is engaged in the business of manufacturing of agricultural equipment's such as chaff-cutter machine, Osai-fan, cane-crusher and thresher etc., and sale of these agricultural equipment's. there was a search and seizure operations conducted against the assessee by Revenue on 27.08.2009 , u/s 132(1) of the 1961 Act and simultaneously there was a survey operations conducted by Revenue against the CA of the assessee namely Gupta Sanjay and Associates , u/s 133A of the 1961 Act. There was a document impounded from CA marked as Annexure P-6. The authorities below had observed that there is a difference in purchases, consumption, closing stock of raw materials and finished goods shown in audit report and as per Annexure P-6 impounded from the premises of the aforesaid assessee's Chartered Accountant namely M/s Gupta Sanjay & Associates during the course of survey operations under Section 133A of the Act. The AO observed that the weight of items in quantity of purchases, consumption and closing stock shown in loose paper found in Annexure P-6 and weight in quantity shown in audit report are the same. The relevant impounded paper and audit report showing quantitative detail of raw material, consumption , purchases and stock were scanned and reproduced by AO at page no. 2 to 5 of the assessment order. The comparative chart of quantitative details of purchases, consumption and closing stock of raw material and closing stock

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of finished goods as is reproduced by AO in its assessment order  
at page 4 and 5 , are extracted below:

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2008-09 (A.Y. 2009-10)**

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1.	Purchases during the previous year i) Pig Iron & Scrap ii) Coal	771.630  No Mentioned	53146621  1075511	Purchases i) Pig Iron & Scrap ii) Coal	771.630  142.025	21428923  1014301	31717698  61210
2.	Consumption during the previous year i) Pig Iron & Scrap ii) Coal	697.380	50740182	Issue Production + Wastage i) Pig Iron & Scrap ii) Coal	697.380	19837535 1615575	29287072
3.	Closing Stock i) Pig Iron & Scrap  ii) Coal  iii) Work in Progress	80.225  Not Mentioned	13094470  1023890 1611520	Closing Stock i) Pig Iron & Scrap ii) Coal iii) Work in Progress	80.225  143.840 Nil	1750514  1023890 Nil	11343956  Nil 1611520
4.	Closing Stock of finished goods	144.146	6777040	Closing Stock of finished goods	144.146	8388555	1611515

The authorities below had observed that weight of items in quantity as are mentioned of purchases, closing stock and consumption(see chart above) are tallying in document impounded from CA during survey operations and the audit report , but the values are varying. The assessee on its part had explained that said document impounded from

the premises of M/s Gupta Sanjay & Associates was with respect to raw material namely Pig Iron and Coal , as is mentioned in the impounded document, but there are several other materials, consumables etc. which were purchased by the assessee and which are used in manufacturing activities carried on by assessee , which are not included in the aforesaid impounded document , while the same are duly accounted for in the books of accounts and consequently in the audit report . The assessee had also explained that it is mentioned in the document itself that this document concerns itself with Pig Iron and Coal , and it was explained by assessee that there are other raw material and consumables which are used for manufacturing activities carried on by assessee of agricultural equipment's such as chaff cutters machine, Osai fan, cane crusher and thresher etc. . The explanation offered by assessee were disbelieved by authorities below as they were of the view that when quantity in weight are tallying between the document impounded from the office of CA during survey operations and in the audit report, there is no justification offered by the assessee for variation in the amount of purchase, consumption and stock recorded in the impounded document and the books of accounts. The AO observed that the assessee has manipulated its stock and inflated its purchases of material, and it is only because of Survey carried out by Revenue that this fact has come into light . The AO, thus ,

recasted the manufacturing and profit and loss account of the assessee and made additions to the tune of Rs. 3,08,98,592/- to the income of the assessee. The learned CIT(A) upheld/sustained the additions with respect to purchases to the tune of Rs. 3,08,98,592/- on the grounds that the assessee failed to brought on record evidences for purchases such as purchase invoices, vouchers, details of payment, confirmation from relevant parties and evidences in support of transportation of material and stock records. We have observed that the assessee has again reiterated its contentions before us that there are several other purchases made by assessee apart from pig iron and coal , to undertake its manufacturing activities. The assessee has drawn our attention to chart showing quantity and value of closing stock as on 31.03.2008(pb/page 57-60) , to contend that there are several other material apart from Pig iron and coal which is consumed/used by assessee for its manufacturing activities. We have observed that the total sale of the assessee during the year was Rs. 5,97,13,607/-, which sale has been accepted by the Revenue, while purchases reported by assessee in its books of accounts were to the tune of Rs. 5,42,22,132/-. We have also observed that impounded document marked as Annexure P-6 from the office of CA, has written Pig iron and Coal mentioned on the said document and then quantitative and value details of materials are mentioned. It is also observed that in tax-

audit report para 28, quantitative details are given which tallied with the quantitative details in the impounded material , but in tax-audit report there are no mention of the description of material such as Pig Iron and Coal. The assessee has explained that this quantitative details in tax-audit report is also concerning Pig Iron and Coal but there is no mention of the same in tax-audit report. The counsel for the assessee has stated that if these additions are sustained , then the GP ratio will go upto 180%. It is also claimed by ld. Counsel for the assessee that same business was carried on by assessee as was conducted in earlier years and no such addition was made by Revenue in preceding years and it is for only this year, the additions have been made. The assessment order dated 19.12.2011 (pb/page 352) passed under VAT is also placed on record. There is a prima-facie merit in the contentions of the assessee , but the grievance of the Revenue is that the assessee has not such as purchase invoices, vouchers, details of payment, confirmation from relevant parties and evidences in support of transportation of material and stock records before the authorities below, which fact is emerging from appellate order passed by learned CIT(A). These details require verification as to whether the expenses were incurred for business of the assessee or not. The assessee is claiming deduction from income towards purchases of raw material and consumables and the onus is on the assessee to prove that deductions are claimed in

accordance with provisions of the 1961 Act . The assessee has to justify that these purchases/consumables are used for its business . The manufacturing process is to be brought on record by assessee with respect to manufacturing activities carried on by the assessee and details of raw material and consumables required in connection with the manufacturing process carried on by assessee or for other business needs of the assessee is required to be brought on record. Thus based on material on record, in the interest of justice and fairness to both the rival parties, we restore the matter back to the file of the AO for fresh consideration and denovo determination of the issues on merits in accordance with law. The AO is directed to provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law and evidences/explanations filed by assessee in support of her contentions shall be admitted by the AO and adjudicated on merits in accordance with law. We clarify that we have not commented on the merits of the issue in appeal. Thus, the appeals of the assessee for ay: 2009-10 is allowed for statistical purposes. We order accordingly.

20. The issue in Revenue appeal for ay: 2009-10 is concerning itself with the relief granted by learned CIT(A) to assessee with respect to purchases made by assessee from M/s Benaras Steel Traders which is an integrated issue to issue of purchases of various material and

consumables other than Pig Iron and Coal made by assessee during the year under consideration , as is dealt by us as above in the preceding para of this order and since we have restored the issue of purchases in assessee's appeal to the file of AO for fresh adjudication in preceding para's of this order , the issue in Revenue appeal concerning purchases made by assessee from M/s Benaras Steel Traders is also set aside and restored to the file of denovo adjudication, in the same manner as decided by us in assessee's appeal. The C.O. filed by assessee against Revenue's appeal is in support of learned CIT(A) appellate order. Since, we have restored the issue in Revenue's appeal concerning purchases to the file of the AO for fresh adjudication, the C.O. has become infructuous and is dismissed . We order accordingly.

21. There is another issue in Revenue appeal for ay: 2009-10 which concerns itself with relief granted by ld. CIT(A) to assessee by deleting additions to income made by AO by disallowing expenses towards freight charges of Rs. 81,015/- claimed by assessee, which stood allowed by ld. CIT(A) in the first appeal filed by assessee. The learned CIT-DR relied upon order of the AO , while ld. Counsel for the assessee relied upon the appellate order passed by ld. CIT(A). We have heard rival contentions and perused material on record. It is observed that the assessee has claimed to have paid freight expenses of Rs. 40,547/- and Rs. 40,469/- to Super Fast Transport Company, which was

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BALAJI AGRICULTURAL INDUSTRIES PRIVATE LIMITED

claimed to be against purchases made of pig iron to the tune of Rs. 9,60,187/- and Rs. 9,62,278/- from M/s Indocom Industrial Corporation. The assessee has also claimed to have deducted income-tax at source while making aforesaid freight payments. The learned CIT(A) has given finding that there was an inadvertent mistake mentioned of date of 25.02.2009 , instead of correct date 25.03.2009. The learned CIT(A) has also mentioned that form no 16A was produced before him. The assessee has not filed proof of payment of TDS as well no Form No. 16A is filed before us. Thus, under these circumstances , we are restoring the matter back to file of AO for limited verifications of facts contended by assessee before learned CIT(A), such as correct date, payment of TDS, form no. 16A . We order accordingly.

22. In the result, the appeal filed by assessee and Revenue for ay: 2009-10 are allowed for statistical purposes, while CO filed by assessee stand dismissed. We order accordingly.

23. In the result, the appeal filed by assessee in ITA no. 632/Alld/2014 for ay: 2007-08 is allowed, assessee's appeal in ITA No. 633/Alld/2014 for ay: 2010-11 is partly allowed, while both cross appeals filed assessee (ITA No. 152/Alld/2013) and Revenue (ITA No. 179/Alld./2013 ) for ay: 2009-10 are allowed for statistical purposes, while CO being No. 16/Alld/2013 filed by assessee stand dismissed. We order accordingly.

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Order pronounced on 13/01/2021 at Allahabad in open court  
through video conferencing.

Sd/-  
[VIJAY PAL RAO]  
JUDICIAL MEMBER

Sd/-  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 13/01/2021  
sh

Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A) -
4. CIT
5. DR -

By order  
Assistant Registrar

