

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

(Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri Aby T. Varkey, Hon'ble Judicial Member)

ITA No. 131/Kol/2018
Assessment Year: 2013-14

Deputy Commissioner of Income Tax, Circle-4(2), Kolkata.....Appellant

Vs.

M/s. Sudarshan Paper & Board Pvt. Ltd.....Respondent
27, Brabourne Road
Room No. 311
Kolkata - 700 001
[PAN : AAHCS 1241 F]

C.O. No. 33/Kol/2018
Assessment Year: 2013-14

M/s. Sudarshan Paper & Board Pvt. Ltd.....Appellant
27, Brabourne Road
Room No. 311
Kolkata - 700 001
[PAN : AAHCS 1241 F]

Vs.

Deputy Commissioner of Income Tax, Circle-4(2), Kolkata.....Respondent

ITA No. 836/Kol/2018
Assessment Year: 2014-15

Deputy Commissioner of Income Tax, Circle-4(2), Kolkata.....Appellant

Vs.

M/s. Sudarshan Paper & Board Pvt. Ltd.....Respondent
27, Brabourne Road
Room No. 311
Kolkata - 700 001
[PAN : AAHCS 1241 F]

Appearances by:

Shri S.M. Surana, Advocate, appeared on behalf of the assessee.

Shri Manish Kanoria, CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : February 11th, 2021

Date of pronouncing the order : April 1st, 2021

ORDER

Per J. Sudhakar Reddy, AM :-

Both these appeals are filed by the revenue and are directed against separate but identical orders of the Id. Commissioner of Income Tax (Appeals) - 2, (hereinafter the "Id. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 07/11/2017 & 22/02/2018, for the Assessment Years 2013-14 and 2014-15 respectively. The cross-objection has been filed by the assessee in ITA No. 131/Kol/2018 for the Assessment

Year 2013-14. As the issues arising in both these appeals are common, for the sake of convenience, they are heard together and disposed off by way of this common order.

2. The assessee is a company and is in the business of trading in paper and board. It filed its return of income for the Assessment Year 2013-14 on 26/09/2013 and for the Assessment Year 2014-15 on 29/11/2014. The Assessing Officer passed a best judgment assessment u/s 144 of the Act for both the Assessment Year determining the total income of the assessee at Rs.13,14,75,970/- for the Assessment Year 2013-14 and Rs.21,52,86,940/- for the Assessment Year 2014-15.

2.1. Aggrieved the assessee carried the matter in appeal disputing the passing of *ex-parte* order without giving adequate opportunity to the assessee and also disputing the manner in which the assessment was completed ignoring the past records of the assessee and violating various principles of law based on which best judgment assessments were to be passed. The Id. First Appellate Authority called for a remand report. The Assessing Officer submitted the remand report on 9th August, 2017, claiming that the assessee showed no inclination to comply with the statutory notices and hence the assessment was completed u/s 144 of the Act. He justified the passing of order u/s 144 of the Act. In the second remand report, called for by the Id. CIT(A) on the arguments of the assessee that the addition made in the assessment were unjustified, the Assessing Officer at para 4 justifies the additions on the ground that there was no compliance from the assessee on 28/01/2016. Thereafter, the Id. CIT(A) considered the submissions of the assessee, the material brought on record by the assessee before the Assessing Officer, the past record by way of previous assessment orders as well as the subsequent assessment orders in the assessee's case and granted relief to the assessee.

3. Aggrieved, the revenue is in appeal before us.

4. The grounds of appeal for the Assessment Year 2013-14, reads as follows:-

"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting Rs.3,12,66,706/- on account of trade payables which could not be established by the assessee in original assessment proceedings and remand proceedings.

2. That on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting a sum of Rs. 4,93,01,115/- on account of unsecured loan which could not be explained by the assessee in assessment proceedings.
3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting of Rs. 11,14,396/- on account of unexplained cash credit.
4. That on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting a sum of Rs. 84,47,086/- on account of commission paid which was not explained by the assessee in assessment proceedings.
5. That on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting a sum of Rs. 1,68,80,801/- as other income.
6. That on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting a sum of Rs. 2,53,82,407/- as additional net profit.
7. That the appellant craves for leave to add, delete, amend or modify any ground before or at the time of appellate proceedings."

4.1. The grounds of appeal for the Assessment Year 2014-15, reads as follows:-

- "1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the proceedings u/s 144 of the Act without going through the fact of the assessee's non-compliance in original proceedings.
2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting Rs. 92,20,409/- on account of unexplained cash credit.
3. Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting Rs. 4,36,97,031/- on account of unexplained trade payables without appreciating the facts of the assessee's failure to prove or substantiate the same.
4. Whether on the facts and in circumstances of the case the Ld. CIT(A) has erred in deleting Rs. 11,86,90,207/- on account of current liabilities without appreciating the facts of the assessee's failure to prove or substantiate the same.
5. Whether on the facts and in circumstances of the case the Ld. CIT(A) has erred in allowing commission payment of Rs. 69,20,273/-.
6. Whether on the facts and in circumstances of the case the Ld. CIT(A) has erred in deleting Rs. 1,48,827/- u/s 14A read with Rule 8D.
7. Whether on the facts and in circumstances of the case the Ld. CIT(A) has erred in deleting Rs. 2,96,05,303/- as net profit @ 2% of gross receipts.
8. Whether on the facts and in circumstances of the case the Ld. CIT(A) has erred in deleting Rs. 69,70,413/- as other income.
9. Whether the appellant craves for leave to add, delete, amend or modify any ground before or at the time of appellate proceedings."

4.2. The grounds of appeal of the cross-objections, reads as follows:-

"1. For that on the facts and circumstances of the case the Ld. CIT(A) was justified in deleting all the additions after allowing the AO an opportunity of being heard on all the issues raised in the appeal.

2. For that the assessee craves leave to add, alter or amend any ground before or at the time of hearing."

5. The Id. D/R submitted that the assessee had not co-operated during the course of assessment proceedings. He filed photocopies of the letter written by the Id. CIT(A) to the Assessing Officer calling for the remand report and submitted that the Id. CIT(A) has not directed the Assessing Officer to examine the evidences filed by the assessee or to give an opportunity to the assessee and thereafter gave his report on the submissions made by the assessee before the Id. CIT(A). He referred to the remand report wherein, the Assessing Officer has given the instances where the assessee has not appeared before him and justified the passing of the order u/s 144 of the Act. He submitted that the Id. CIT(A) has passed an order without giving proper opportunity to the Assessing Officer to examine the claims of the assessee and under these circumstances, these appeals should be set aside to the file of the Assessing Officer for fresh adjudication, in accordance with law. He submitted that the assessee should be directed to cooperate with the Assessing Officer in the set aside assessment proceedings

5.1. The Id. Counsel for the assessee, on the other hand, strongly objected to the setting aside of the matter to the file of the Assessing Officer and submitted that the assessee had in fact appeared before the Assessing Officer on various occasions and filed all the details called for and that this fact is clear from both the assessment order as well as the remand report of the Assessing Officer. He submitted that the Assessing Officer has in a very arbitrary manner, without considering any of the papers or evidences filed before him during the assessment proceedings made high pitched and highly unjustified additions which cannot be sustained in law.

5.2. He submitted that the Id. CIT(A) had called for a remand report not only on the issue of violations of principles of natural justice but also on the issue of additions made in the assessment proceedings. He pointed out that the Assessing Officer had issued

notices to the assessee to appear before him during the remand proceedings and that the assessee had again appeared before the Assessing Officer and drew the attention to all the papers filed on record but the Assessing Officer did not refer to any documents and simply supported his orders passed u/s 144 of the Act. He relied on the following judgments for the proposition that repeated opportunities need not be given to the Assessing Officer, when the Assessing Officer does not avail all the opportunities granted to him during the course of assessment proceedings as well as in the remand proceedings:-

- *Veto Electropowers [2012] 20 taxmann.com 279 (Jaipur)*
- *Rajesh Babubhai Damania [2002] 122 taxamn 614 (Guj.)*

6. On merits, the ld. Counsel for the assessee took this Bench through the submissions of the assessee, for each of the additions, which are brought out at pages 9 to 10 of the ld. CIT(A)'s order, for the Assessment Year 2013-14 and the findings of the ld. CIT(A) on each of these arguments, from pages 10 to 18 of his order. For the Assessment Year 2014-15, the submissions of the assessee and findings of the ld. CIT(A) are at pages 9 to 27 of his order. He also relied on the order of the Tribunal in the assessee's own case for the Assessment Year 2010-11 and 2011-12 in ITA No. 1266/Kol/2016 and ITA No. 316/Kol/2016, order dt. 09/11/2018 and such another cases, which we would be dealing as and when necessary. He submitted that the Tribunal may dispose off the case on merits after considering the material on record the submissions of the assessee made before the ld. CIT(A) as well as before the Tribunal and the factual findings of the ld. CIT(A).

7. On the cross-objections, he submits that it was filed only in support of the order of the ld. CIT(A).

8. The ld. CIT D/R, in reply, could not contradict the factual findings of the ld. CIT(A) on each of the additions. On the issue of opportunities given to the Assessing Officer, on a query from the Bench, he submitted that the Assessing Officer had in fact conducted the hearing during the remand proceedings in which, the assessee had appeared, and filed information and thereafter the Assessing Officer submitted his remand report.

9. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

10. A perusal of the remand report demonstrates that the Assessing Officer acknowledges that the assessee had filed details on 25/08/2015 and 27/01/2016. It is not the case of the Assessing Officer that no details, whatsoever, were filed by the assessee in response to the queries raised by the Assessing Officer during the course of assessment proceedings. In fact, the Id. CIT(A) has recorded that all the facts necessary for assessment were on records. The Assessing Officer did not refer to any of these documents and information and completed the assessment u/s 144 of the Act. The Id. CIT(A) had called for a remand report and directed the Assessing Officer to examine all the information and documents filed and report on the submissions of the assessee. In this remand report, the Assessing Officer in a very cryptic manner stated as follows:-

“5. In course of hearing dated 12.01.2018, the A.R. of assessee could not substantiate as to how the assessment order dated 09.03.2016 was devoid of natural justice and merit.”

11. The assessment orders, apparently, show arbitrariness and lack of judicious approach by the Assessing Officer. When the Id. CIT(A) has called for a remand report, the Assessing Officer was provided sufficient opportunity to substantiate the additions made by him in the assessment order. This is not done. The Assessing Officer neither during the assessment proceedings nor during the remand proceedings examined the information or documents filed by the assessee. Under these circumstances, and on examination of the facts of the case, we are of the considered opinion that this is not a fit case for being set aside to the file of the Assessing Officer for fresh adjudication, in accordance with law.

12. Now, we consider the additions on merits for both the Assessment Years.

13. **Disallowance of commission:**

The Assessing Officer disallowed the commission payments claimed by the assessee based on the assessment order for the Assessment Year 2011-12. On appeal,

the ld. CIT(A) deleted the additions made in that year. The Kolkata 'A' Bench of the Tribunal in the assessee's own case for the Assessment Year 2010-11 and 2011-12 in ITA Nos 1266 & 316/Kol/2016, order dt. 09/11/2018, had considered this issue and had held as follows:-

"5. We first take up the issue of disallowance of claim of payment of commission on sales. The Assessing Officer for the Assessment Year 2010-11 has allowed the claim of payment of commission made by the assessee amounting to Rs.1,14,51,971/-, paid to 11 parties. Only in the case of one party i.e. Sugam Vinimay P. Ltd., the commission paid was disallowed. For the Assessment Year 2011-12, the Assessing Officer chose to disallow the very same claim of the assessee of having incurred expenditure towards sales commission. The assessee has filed, in our view, all the required evidence to discharge the burden of proof that lay on its. The ld. CIT(A), in our considered opinion has rightly appreciated the factual position and at para 7.4. of his order for the Assessment Year 2011-12 (supra) has rightly decided the issue in favour of the assessee.

In the case of Sugam Vinimay P. Ltd., the ld. CIT(A) for the Assessment Year 2011-12 at para 7.5. has held as follows:-

*"7.5. So far as Sugam Vinimay Pvt. Ltd. is concerned, AO issued summon U/s. 131 and the same came back unserved. The assessee also could not produce the party before the AO. However, like other agents, it also responded to the AO's notice issued u/s. 133(6) of the Act and filed all details asked for by the AO viz., (i) Nature and amount of transaction made with the above assessee company during the relevant year. (ii) Name of the parties for whom sales were arranged with quantity and consideration of sales, (iii) Opening and closing balance and payment made during the year, (iv) Ledger copy of accounts with the assessee company, (v) Bank Account details in which transactions is reflected and (vi) Copy of acknowledgement or filing of Income Tax Return and PAN. By filing these details, the assessee and M/s. Sugam Vinimay Private Ltd. had squarely discharged the primary onus cast on them. In this case also, bill was raised by including service taxes etc. and assessee made the payments through account payee cheque after deduction of TDS. There was an agreement also between the assessee company and its agent Sugam Vinimay Pvt. Ltd by which the agent had the right to receive commission and Sugam Vinimay also filed the return showing the commission income. The AO also has not alleged that assessee company and Sugam Vinimay are related to each other or that the payments were not genuine or that the payments having been made by the assessee to the recipient have found their way back to the assessee some way or the other. This being the case, AO cannot summarily reject the commission payment to Sugam Vinimay as 'shyam transaction', even though the agent did not respond to his summon. It is well settled law that once the assessee has discharged the primary onus, AO cannot hold a transaction bogus without bringing any material evidence on record to the contrary. **In view of such, balance addition of Rs.21,90,181/- is also deleted.**"*

5.1. The ld. D/R, could not point out any infirmity in these findings of the ld. CIT(A). hence we uphold the same. For similar reasons for the Assessment Year 2010-11, the disallowance of Rs.9,05,612/-, made for the sole reason that the party has not been produced before the Assessing Officer, is hereby deleted. The assessee filed all the requisite details referred above in support of the genuineness of the claim and identity of the party. No disallowance can be made merely because the party has not appeared in person before the Assessing Officer.

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5.2. *The Kolkata 'D' Bench of the Tribunal in ITA No. 141/Kol/2016 & C.O. No. 11/Kol/2016; Assessment Year 2012-13; Madhusudan Rungta & Sons (HUF) vs. ITO at para 6, held as follows:-*

"6. We have heard the rival submissions. We find that the primary reason for disallowance of this commission by the Ld. AO is due to the fact that the Ld. AO was of the opinion that the assessee had not proved the nature and factum of services rendered by these three commission agents to the assessee. Hence, according to the Ld. AO, the payment of commission, though subjected to deduction of tax at source is merely a book entry to reduce the taxable profit of the assessee. But we find that the assessee had duly furnished the bill raised by those commission agents on the assessee which clearly contained the list of parties i.e. customers of the assessee, to whom sales were made by the assessee. This clearly proves that these parties were introduced to the assessee by the concerned commission agents. We also find that the assessee had furnished the details of sales above Rs 50,000/- before the Ld. AO for the whole year which admittedly contained sales made to the various parties mentioned in the commission bill raised by commission agents. We have also cross verified from the details of sales furnished by the assessee before the Ld. AO with the commission bill raised by commission agents wherein the total sales made to these parties also tally. We also find that the said commission agents even though did not respond to the summons issued by the Ld. AO by making their personal appearance, but had furnished the requisite details to the Ld. AO and had also given confirmation that they had indeed included the subject mentioned commission in their returns and paid taxes thereon. All these facts clearly proved the services rendered by the commission to the assessee achieving the payment of commission. There could be more than one justifiable reason for commission agents for not appearing before the Ld. AO in response to the summons issued thereon. The Ld. AO is empowered under the law to take necessary action against these commission agents for non-compliance to the summons issued to [Section 131](#) of the Act. The Statute provides for relevant remedial measures thereon. The Ld AO without resorting to such measures, cannot proceed to disbelieve the claim of commission paid by the assessee when the same are supported by various documents and confirmed by the said parties. In the instant case, the primary onus has been duly discharged by the assessee proving the claim of commission payments made by the assessee. There is absolutely no reason for the Ld AO to doubt the veracity of the said transactions. Admittedly none of the commission agents were relatives of the assessee or interested parties with the assessee so as to allege some mala fide on the part of the assessee. Hence, in our considered opinion, there is no case made out by the Ld AO to treat the commission transactions as ingenuine transactions in these facts and circumstances. We hold that mere non-appearance of the said commission agents in person before the Ld. AO would not make the transaction of payment of commission as ingenuine. Hence, we hold that the Ld. CIT(A) had rightly deleted the disallowance of commission made by the Ld. AO. Accordingly, ground nos. 2 to 4 raised by the Revenue are dismissed."

6. *Applying the propositions of law in this case law to the facts of the case, we dismiss the revenue's appeal on this issue for the Assessment Year 2011-12 and allow the ground of appeal of the assessee for the Assessment Year 2010-11.*

13.1. The ld. CIT(A) had deleted the addition based on the findings of his predecessor for the Assessment Year 2011-12. The ld. D/R could not distinguish these case law on facts. Hence we find no infirmity in the order of the ld. CIT(A) on the issue of addition of commission payments and uphold the same and dismiss this ground of the revenue for both the Assessment Years.

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14. **Unsecured loans:-**

The assessee, in this case had borrowed money both from body corporates, as well as directors and the relatives of the directors. For the Assessment Year 2013-14, the Assessing Officer made addition of all the loans taken from body corporates. He did not make additions of the loans taken from the directors and their relatives during the Assessment Year 2013-14 and accepted them as genuine. On the contrary, for the Assessment Year 2014-15, the Assessing Officer accepted all the loans taken from body corporates as genuine and had not made any addition of the same. On the other hand, the loans received from the directors and their relatives during the Assessment Year 2014-15 were added as unexplained cash credit u/s 68 of the Act.

The Id. CIT(A) considered these additions. At para 5 of his order for the Assessment Year 2013-14, he held as follows:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AR of the appellate has submitted that in adding back Rs. 4,93,01,115/- as unexplained cash credit when there is no adverse comments about Beefin commodities limited, Jit Finance Pvt. Ltd. and Kandoi Transport Limited and further the AO did not proceed to enforce the attendance of three other parties on whom notices u/s. 131 were duly served particularly while completing the assessment u/s. 144 and further should have looked into the past records of the assessee. The AO has also added back Rs. 4,93,01,115/- as unexplained cash credit in the name of Bluemotion Logistic Ltd, Beefin Commodities Ltd, JIT Finance Pvt Ltd, Kono Transport Ltd, Prime Rose Commonages Pvt Ltd and Trust Worthy Vinimay Pvt Ltd. The confirmation letters and details in respect of all the aforesaid 6 parties were submitted to the AO. The AO says that the details of three parties were not submitted to him. The Assessing Officer also states that he issued notice u/s. 131 to these parties on whom these notices were duly served. When the details were not furnished, it is not understood as to how the AD was able to issue notice u/s 131 to these three parties. Further, the Assessing Officer also states that notice was served on them. When notice were served, then the AO should have proceeded further to enforce their attendance specially in an ex-parte assessment order. The Assessing Officer did not proceed further to make enquiry or force the attendance of these three parties. It was more essential when the assessment was being completed u/s. 144. When the Assessing Officer did not precede further in spite of the fact that the assessee filed the confirmation letters and other details and the notices were duly served on the parties the addition was not justified in view of the judgment of the Hon'ble Supreme Court in the case of Orissa Corpn. Ltd. reported in 159 ITR 78. The AO himself has accepted the loans from these parties in Asst. Year 2014-15 (although addition has been made but it pertains to director and relatives only) wherein in the ex-parte assessment also the loan from these parties have been accepted.

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Furthermore, in spite of all the details having been filed along with the written submissions and the AO having been given the opportunity to look into the submissions made the AO has not examined the same and has not adversely commented on the same.

I find that the AO added back Rs. 4,93,01,115/-as unexplained cash credit when there is no adverse comments about Beefin commodities limited, Jit Finance Pvt Ltd, Kandoi Transport Limited and Trust Worthy Vinimay Pvt Ltd. The AO has mentioned that notice u/s 131 was issued to three parties but I failed to understand why addition was made for other four parties and no addition was made for Mira Commosales Pvt Ltd when the notice u/s 131 was issued to that party. **I find that the notice u/s 131 was issued on 13.03.2016 to these parties for 16.03.2016 and assessment order was passed on 18.03.2016.**

The assessee during the assessment proceeding confirmation letters and details in respect of all the aforesaid 6 parties were submitted to the AO. The AO says that the details of these parties were not submitted to him. The AO also states that he issued notice u/s. 131 to these parties on whom these notices were duly served. When the details were not furnished, it is not understood as to how the AO was able to issue notice u/s 131 to three parties. Further, the AO also states that notice was served on them. When notices were served, then the AO should have proceeded further to enforce their attendance especially in an ex-parte assessment order.

The AO himself has accepted the loans from these parties in Asst. Year 2014-15 (although addition has been made but it pertains to director and relatives only) wherein in the ex-parte assessment was made on 09.03.2016 and this assessment order was passed on 18.03.2016. Furthermore, in spite of all the details having been filed along with the written submissions and the AO having been given the opportunity to look into the submissions made the AO has not examined the same and has not adversely commented on the same.

The matter was also sent back to the AO for remand report and the AD again did not availed the opportunity to examine these parties on merit. No adverse comments/finding has been given by the AO in the remand report. **The AO in the remand report has mentioned that details were filed but since nobody appeared for hearing, to explain and or reconcile various issues involved.** Keeping in view of above, the AO is directed to delete addition.”

For the Assessment Year 2014-15, at page 10 & 11, the ld. CIT(A) held as follows:-

“I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the Assessing Officer during the assessment proceedings.

The AR of the appellant has submitted that there was increase in unsecured loans from Directors and their relatives and full details were filed before the A.O. even though the same were received by all the directors were having brought forward balances and such loans were duly accepted in earlier years. During the relevant year, all the transactions relating to the loan (whether fresh infusion or repayment of the same) has been done the banking channels. Further, the assessee has been regularly paying interest on the above-mentioned loan. The same is evident from the loan confirmations. Moreover, the assessee had filed the Tax Audit Report before the A.O. from which it is clearly evident that the Directors granted loans in earlier years and the names of the Directors to whom interest was paid was also

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available in the details of interest and schedule enclosed with the Audited balance sheet. The AO should have enquired the same by making reference or issuing notices to the Directors particularly when the assessment was being completed exparte. Having not done so the addition was not justified since particularly in the assessment U/s. 144 the AO was duty bound to act reasonably and make enquiries which were necessary before jumping to make the addition. The assessment should be based on adequate material. The AO was aware of the directors of the assessee company, yet no notice was issued to directors nor was any notice issued to the auditors to find out the truth. If the assessment is not based on adequate enquiry and material the assessment is not proper. The details and confirmations of the unsecured loans from Directors and their relatives were filed and were before the AO at the time of submissions of both the remand reports. The Directors or the relatives were old, the loans from them were also accepted in earlier years. All of them were assessed to tax and PAN were submitted. No enquiry at all was made at the time of assessment nor has any adverse comment been made in the remand reports. No notice was issued to anyone of them in the course of assessment proceedings or remand proceedings.

I find that the confirmation and details chart were filed before the AO at the time of both the remand proceedings. The AO did not make any specific addition on unsecured loans and only addition of difference of opening and closing balance were made by him. There is no adverse comments made by the AO on merit on the loans and no specific negative observation were made on the addition as made by him in the assessment order. In view of above; the AO is directed to delete the addition. This ground of appeal is allowed."

14.1. The ld. D/R, could not factually controvert these findings of the ld. CIT(A). Hence, we uphold the same and dismiss this ground of the revenue for both the Assessment Years.

15. **Unexplained cash deposits in banks:-**

The ld. CIT(A) has given a factual finding that all these cash deposits in bank, were recorded in the regular books of accounts and the details of the same furnished to the Assessing Officer. As these deposits are part of the regular books of accounts, the addition was deleted by the ld. CIT(A). We find no infirmity in the same. Thus, we uphold this factual finding of the ld. CIT(A), which is not controverted by the ld. D/R and dismiss this ground of the revenue for both the Assessment Years.

16. **Unexplained trades payable:-**

Trade payables arise on account of credit purchases of goods or services. The purchases and sales of the assessee were not disturbed. The arbitrary addition has been made of the trade creditors. Even credit purchases made from ITC Limited, amounting to Rs.2.23 Crores and Rs.1.83 Crores for the Assessment Year 2013-14, were added. This is

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highly arbitrary. The ld. CIT(A) has given the following findings of fact for the Assessment Year 2013-14:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AR of the appellate has submitted that the AO was wrong in adding back Rs.3,12,66,706/- as unexplained trades a able when the details of such purchases were filed vide letter date 04.02.2016 The assessee has disputed the addition made by the AO of Rs.3,12,66,706/- on the ground that Sundry Creditors were not established. There is no dispute over the fact that the list of sundry creditors were filed. The assessee is dealer in paper and all these sundry creditors are appearing from year to year and every year. The sundry creditors named by the AO in the assessment order also appeared in the list of sundry creditors for the A.Y. 2011-12 for, which he himself passed the assessment order and accepted the sundry creditors for that year. The details of the sundry creditors for A. Year 2011-12 is enclosed herewith. In the said year the names and complete address of the parties were also available, even if for argument sake the AO felt that complete addresses were not available. The AO did not even issue any notice U/s.133(6) to the sundry creditor to prove that any of the sundry creditors were not genuine. Therefore the addition made by the AO without bringing any evidence on record to prove that the creditors were not genuine, was not justified in making the addition. The AR of the appellate has further submitted that the addition for trade payable is concerned the AO states that for address of certain parties like MAP Limited, Mutilal Paper and Board Mill, Nextgen Printers Pvt Ltd, Spast Marketing Ltd., the assessee furnished incomplete addresses and therefore the AO added back the entire trades payable of Rs. 3,12,67,706/- as income of the assessee. Firstly, when no proper address of only 4 parties was given, why addition is made of the entire trades payable. The AO could have enquired from the parties Whose full address was given and if no discrepancy was found therein, then the natural presumption is that all the trades payable were genuine. It is further submitted that the AO has not looked into his own records and has not properly applied his mind. In the assessment year 2011-12 the AO himself has accepted all trades payable and Sundry creditors. The list of trades payable/sundry creditors for the A. Year 2011-12 along with assessment year 2013-14 is enclosed herewith, which shows that there appeared credit in the name of Multiwal Paper and Board Mill Limited in assessment year 2011-12 too. The credits in the name of Spast Marketing Ltd. was only Rs.3741/- in the name of NAP Limited the credit was Rs.11,83,393/- and Rs. 613625/- and said credit has been accepted in Assessment Year 2014-15. The credit in the name of Nextgen Printers Pvt. Ltd. was only Rs.1,52,541/-. The major increase in the Sundry creditors was Rs.2.34 Crores in ITC (BCM), Rs. 1.8 Croes in ITC Ltd (Geeta Press) and S. Murli Industrial Rs. 40 lakh credits in Asst. year 2011-12 were duly accepted including credit in the name of MAP Paper and MAP Shilpa. The AO has made the addition only on the ground that proper address, furnished. However, all the addresses were available with the AO in the assessment year 2011-12 for which he himself completed the assessment on 11.3.2016 and duly accepted all these trades payable.

I find that the AO made three assessments of the appellate company in nine days. The assessment order for the asstt year 2014-15 was passed on 09.03.2016, the assessment order for the asstt year 2011-12 was passed on 11.03.2016, the

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assessment order for asstt year 2013-14 i.e. the year under consideration was passed on 18.03.2016. The accepted the all these trade creditors in the asstt year 2011-12 and 2014-15 (although the addition on account of trade creditors has been made in 2014-15 but no specific party addition has been made and only difference of opening and closing balance has been made) and both these two orders were passed prior to this order. I find from the assessment record that the complete address of these parties were available in these assessment folders. I also failed to understand, when the appellate did not provide address of these four parties than why the AO made addition of entire trade payable amount.

The sundry creditors named by the AO in the assessment order also appeared in the list of sundry creditors for the A.Y. 2011-12 for which he himself passed the assessment order and accepted the sundry creditors for that year. In the said year the names and complete address of the parties were also available.

The AO has not looked into his own records and has not properly applied his mind. In the assessment year 2011-12 the AO himself has accepted all trades payable and sundry creditors. The list of trades payable/sundry creditors for the Asstt Year 2011-12 along with assessment year 2013-14 shows that there appeared credit in the name of Multiwal Paper and Board Mills Limited in assessment year 2011-12 too. The credits in the name of Spast Marketing Ltd was only Rs. 3741/-, in the name of NAP Limited the credit was Rs. 11,83,393/- and Rs. 613625/- and said credit has been accepted in Assessment year 2014-15. The credit in the name of Nextgen Printers Pvt Ltd was only Rs. 1,52,541/-. The major increase in the Sundry creditors was Rs. 2.34 Crores in ITC Ltd (BCM), Rs. 1.8 Crores in ITC Ltd (Geeta Press) and S. Murli Industrial Rs. 40 lakhs. All the credits in Asst year 2011-12 were duly accepted including credit in the name of MAP Paper and MAP Shilpa. The AO has made the addition only on the ground that proper address was not furnished. However, all the addresses were available with the AO in Assessment Year 2011-12 for which he himself completed the assessment on 11.3.2016 (This order was passed on 18.03.2016) and duly accepted all these trades payable.

The Assessing Officer made the addition of difference of trade payables as per balance sheet and no specific party wise addition has been made by the AO. The notice u/s 131 was issue to ITC for the year 2011-12 and reply was received to the AO but the AO while making the addition for the year under consideration made the addition even trade payable relating to ITC. The AO was not bother to see his own record and even when all these three assessment were made in only nine days.

*The matter was also sent for remand report to the AO and even than the AO did not look into his own record and his other two assessment orders which were passed in nine days i.e. from 09.03.2016 to 18.03.2016. **The AO in the remand report has mentioned that details were filed but since nobody appeared for hearing. to explain and or reconcile various issues involved.** Keeping in view of above, the AO is directed to delete the addition. **This ground of appeal is allowed.**"*

For the Assessment Year 2014-15, he held as follows:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

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The AR of the appellate has submitted that the list of sundry creditors was available in the schedule to the balance sheet which was duly filled before the AO. The details were also filed before the AO, a copy of which is enclosed herewith. The A.O. ought to have verified the names of the creditors from the details already available with him in the balance sheet before completing the assessment U/s. 144. The AO had the assessment records for AY. 2011-12 as well as 2013-14. Further, all these creditors were paper mills whose names and addresses were available in the assessment records for Asstt. Yr. 2011-12 as well as 2013-14 and thus, the A.O. could had easily verified the creditors. The above-mentioned addition was not called for also in view of the fact that the purchase has duly been accepted, all the creditors have been accepted in earlier years after making due and proper enquiry and the AO has not brought on record any evidence to suggest that the creditors were not genuine.

*I find that the details with name and addresses were again filed along with the written submissions twice at the time of remand report stage. These creditors also appeared in earlier years and their addresses were available in the list for the assessment year 2011-12 and 2013-14 yet no verification was made it the time of assessment and no adverse comment have been made in the remand report. The AO did not made any specific addition on trade payables and only addition of difference of opening and closing balance were made by him. There is no adverse comment-s made by the AO on merit on the trade payables and no-specific negative observation were made on the addition as made by him in the assessment order. In view of above, the AO is directed to delete the addition. **This ground of appeal is allowed.***

16.1. The ld. D/R could not controvert this factual finding of the ld. CIT(A). Thus, we uphold the same and dismiss these grounds of the revenue.

17. **Addition on account of estimation of profit:-**

The ld. CIT(A) at pages 17 & 18 gave the following findings of fact for the Assessment Year 2013-14:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AO while making the addition has mentioned that considering the facts of the case it is apparent that the assessee failed to satisfied the assessing officer about the correctness or completeness of the accounts of the assessee that whether the method of accounting provided in section 145(1) has been following by the assessee or income, has been computed in accordance with the standard notified under section 145(1) of the act or not. Hence, addition of 2% GP was made. The AO has further added Rs 1,68,80,801/- in the final computation of income as last item.

The AR of the appellate has submitted that the AO was wrongly added back Rs.2,53,82,407/ - as net profit at 2% of the gross receipts without any basis ignoring the past records and the books of accounts duly audited in accordance with law. The AO has estimated the net profit at 2% of the turnover and further

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separately added the other items of income as other income in this process the AO has estimated the business income at 2% at Rs. 2,53,82,407/- and separately added Rs. 1,68,80,801/- as income from other sources which was part of the business receipts and so considered in earlier years. In fact, the in comparative statement filed before the AO as called for by him, the computation of net profit and gross profit have been made by including such income. The net profit and gross profit rate was quite fair and reasonable in comparison to earlier years. . But the AO has raised the net profit 3.33% on the turnover of Rs. 1,26,91,20,332/- which is much more than the earlier years. The comparative chart of the net profit of last 3 years have also been filed in the written submissions which has not been controverted by the AO. In fact, the comparative figures were also given to the AO in the course of assessment proceedings and he himself wanted the same. He has not given any reason as to why the earlier years comparative figures were not acceptable to him. Therefore, the AO was not justified in ignoring the past records and estimate the net profit as much higher figure. The AO while completing the assessment of the assessee u/s 144 cannot ignore the past records which can be the best guide for estimating the income, even if he considered that the assessee's income is to be estimated.

I find that the AO while making the addition has mentioned that considering the facts of the case it is apparent that the assessee failed to satisfied the Assessing Officer about the correctness or completeness of the accounts of the assessee that whether the method of accounting provided in section 145(1) has been following by the assessee or income has been computed in accordance with the standard notified under section 145(1) of the Act or not. The Assessing Officer at the same time did not mention in his order what are the mistakes in the books of accounts of the appellant company.

The AO has also not pointed out the issues of deviation from the method of accounting provided in section 145 (1) or income has not been computed in accordance with the standard notified under section 145(1) of the act. There was nothing on record to show that the assessing officer come to the conclusion that the books of accounts maintained by the appellate were incorrect, incomplete, unreliable and consequently liable for rejection.

*The gross profit of the appellate company for the year under consideration was 4.30 % as against the gross profit of 4.08% in the preceding year i.e. -2011-12 and there was not addition by the same AO while making the assessment for the preceding year. It was 4.10% in the year 2014-15. The gross profit in the year under consideration is higher in these three years. The AO has also separately added Rs. 1,68,80,801/- as income from other sources which was part of the business receipts. In fact, in the comparative statement filed before the AO as called for by him, the computation of net profit and gross profit have been made by including such income. The AO should have started his computation of the return income and further add all the addition /disallowance made by him in the assessment order. Keeping in view of above, the AO is directed to delete these addition. **These grounds of appeal are allowed.**"*

Similarly, for the Assessment Year 2014-15, he held as follows:-

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"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before assessing officer during the assessment proceedings.

The AO while making the addition has mentioned that considering the facts of the case it is apparent that the assessee failed to satisfied the assessing officer about the-correctness or completeness of the accounts of the assessee that whether the method of account provided in section 145 (1) has been following by the assessee or income has been computed in accordance with the standard notified under section 145(1) of the act or not. Hence, addition of 2% GP was made. The AO has further added Rs. 69,70,413/- in the final computation of income as last item.

The AR of the appellate has submitted that the first addition which has been taken by the assessee i.e., on account of estimate of profit at Rs. 2,96,05,303/-. During the relevant year, the turnover of the assessee was Rs. 1,48,02,65,126/-, the profit declared by the assessee during year was 0.80% which was inclusive of the other income of Rs. 69,70,413/-. The net profit of the assessee on similar method was accepted between the A.Y. 2010-11, and A.Y. 2012-13 therefore, even if the AO wanted to complete the assessment u/s. 144 he should have estimated the profit in a fair and justifiable manner. Needless to say that the assessee's own past records can be the best guide for such estimate particularly when the AO has not brought on record of any comparable case to justify the net profit estimated him. When the earlier year's comparative figures of the rate of profit is taken into account and keeping in mind the increase in the turn over the net profit declared by the assessee was quite fair and reasonable. No addition of any nature in the trading account was called for and such addition was not justified.

The addition is by estimating the net profit. The AO has estimated the net profit at 2% of the turnover and further separately added the other items of income as other income in this process the AO has estimated the business income at 2% at Rs. 2,96,05,303/-, and separately added Rs. 69,70,413/- as income from other sources which was part of the business receipts and so considered in earlier years. In fact the in comparative statement filed before the AO as called for by him, the computation of net profit and gross profit have been made by including such income. The net profit and gross profit rate was quite fair and reasonable in comparison to earlier years. But the AO has raised the net profit 2.5% on the turnover of Rs.1,48,02,65,126/-, which is much more than the earlier years. The comparative chart of the net profit of last 3 years have also been filed in the written submissions which has not been controverted by the Aa. In fact the comparative figures were also given to the AO in the course of assessment proceedings and he himself wanted the same. He has not given any reason as to why the earlier years comparative figures were not acceptable to him. The AO while completing the assessment of the assessee u/s. 144 cannot ignore the past records which can be the best guide for estimating the income, even if he considered that the-assessee's income is to be estimated particularly when the AO has not brought on record of any comparable case to justify the net profit estimated by him. When the earlier year's comparative figures of the rate of profit is taken into account and keeping in mind the increase in the turn over the net profit declared by the assessee was quite fair and reasonable. No addition of any nature in the

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trading account was called nor made in any earlier year when regular assessment was made. The assessee has already cited judgements in the written submissions.

The elaborate submissions have been made in written submissions filed. The issue is covered by the order of Ld. CIT (A) for the assessment year 2011-12 and 2013-14. The Assessing Officer has also not made any adverse comment in the remand report submitted by him. The rate of profit was quite fair and reasonable in comparison to earlier years. Hence, no separate addition was called for since the same was part of the business income for which submissions have been separately made here above.

The issue is covered by the order of the CIT(A) for Assessment Year 2011-12 and 2013-14. No adverse comment has been made in the written submissions filed.

*I find that the AO while making the addition has mentioned that considering the facts of the case it is apparent that the assessee failed to satisfied the assessing officer about the correctness or completeness of the accounts of the assessee that whether the method of accounting provided in section 145 (1) has been following by the assessee or income has been computed in accordance with the standard notified under section 145(1) of the act or not. The AO at the same time did not mentioned in his order what are the mistakes in the books of accounts of the appellate company, The AO has also not pointed out the issues of deviation from the method of accounting provided in section 145 (1) or income has not been computed in accordance with the standard notified under section 145(1) of the act. There was nothing on record to show that the assessing officer come to the conclusion that the books of accounts maintained by the appellate were incorrect, incomplete, unreliable and consequently liable for rejection. The gross profit of the appellate company for the year 2013-14 was 4.30 % as against the gross profit of 4.08 % in the preceding year i.e. 2011-12 and it was 4.10 % in the year 2014-15. The AO has also separately added Rs. 69,70,413/- as income from other sources which was part of the business receipts. In fact, in the comparative statement filed before the AO as called for by him, the computation of net profit and gross profit .have been made by including such income. The AO should have started his computation or the return income and further add all the addition/disallowance made by him in the assessment order. Keeping in view of above, the AO is directed to delete these addition. **These grounds of appeal are allowed.**"*

17.1. These factual findings are not controverted by the ld. CIT D/R. Hence, we uphold the same and dismiss this ground of the revenue for both the Assessment Years.

18. **Addition on account of current liabilities:- (only for Assessment Year 2014-15)**

The ld. CIT(A) while disposing Ground No. 7 for the Assessment Year 2014-15, held as follows:-

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"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AR of the appellate has submitted that the AO has added back Rs. 11,86,90,207/- (taken in ground No. 7) as other current liabilities. The list of other current liabilities were available in the schedule to the balance sheet duly filed before the AO. The details were filed before the AO, a copy of which is enclosed herewith. From the details it is evident that the amount of Rs. 11,86,90,207/- can be bifurcated into two parts Le Rs. 1,28,09,245/- which is against the advances from customers and Rs. 11,05,01,600/- which is against various other liabilities. As against the outstanding balance of Rs. 1,28,09,245/- it is submitted that the same are the money advanced by various customers with whom the assessee is doing regular business. The A.O. ought to have conducted independent queries from the customers when the details were available with him in the balance sheet filed before him. As regards to the standing balance of Rs. 11,86,90,207/- it is submitted that the said amount represents the Electricity expenses Rs.17,274/-, Telephone expenses Rs. 7,677/-, Other maintenance charge Rs. 35,532/-, Security deposit against Rs. 11,00,00,000/- warehouse, Salary payable Rs. 1,94,083/- and Others Rs. 2,47,036/-. From the above it is can be seen that a sum of Rs. 5,01,600/- is against the dues which are, obligatory in nature and were even paid in the next year. As far as the security deposit of Rs. 11,00,00,000/- against the warehouse is concerned, the assessee during the relevant year had entered into an agreement with Sujaji Fashion Pvt Ltd wherein as per the terms of the agreement the other party would had to pay a sum of Rs. 11 crores to the assessee for the purpose of acquisition of land and construction of the warehouse. Copy of the agreement is enclosed herewith for your kind perusal. Thus, the said amount of Rs. 11 crore being the amount received as per agreement cannot be added. It is further submitted that all the details relating to the other current liabilities was there before the A.O. The A.O. even had the individual names of the parties and thus he ought to have verified the same independently before completing the assessment u/s 144. The elaborate submissions have been made in the written submissions filed twice and all the details and evidences were filed. No adverse comment has been made in the two remand reports. Details of each and every item and head wise detail of the current liabilities was filed. Each and every head of the current liability was explained in the written submissions filed twice. There is no adverse comment of the AO. No such additions were ever made.

I find that the details of other current liabilities were again filed along with the written submissions twice at the time of remand report stage. The AO did not made any specific addition on trade payables. There is no adverse comments made by the AO on merit on the other current liabilities and no specific negative observation were made on the addition as made by him in the assessment order. In view of above, the AO is directed to delete the addition. This ground of appeal is allowed."

18.1. These factual findings are not controverted by the ld. CIT D/R. Hence, we uphold the same and dismiss this ground of the revenue.

19. **Foreign Exchange Loss :- (only for Assessment Year 2014-15)**

The Id. CIT(A) while disposing off the Additional Ground 1 for the Assessment Year 2014-15, at page 26 & 27, held as follows:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AR of the appellate has submitted that the assessee has taken additional ground relating to the disallowance of Rs. 50,43,859/- being foreign exchange loss by the AO treating the same as speculation loss. The assessee is an exporter and has to make provision for rate difference of the foreign currency at the time of export and fluctuations afterwards. It was categorically mentioned in the profit and loss account that there was fluctuation on the purchase of goods in respect of foreign currency at the time of placement of order and at the time of actual payment. Such loss on foreign currency was debited the trading account under cost of goods sold and the same was duly certified by the Auditor as the foreign currency loss on purchase of goods therefore in these circumstances it cannot be said to be speculation loss. The AR of the appellate has further placed his reliance on the judgment of the Hon'ble Supreme Court has in the case of Sulej Cotton Mills Ltd. vs. Commissioner of Income Tax 1979 AIR, 5 1979 SCR (1) 976 wherein it was held that the foreign exchange loss arising in the course business was allowable as deduction u/s 37(1) of the Act.

*I find that the A.O. in the assessment has nowhere doubted the genuinity of the loss incurred by the assessee. the Assessing Officer has not adversely comment on the same at the time of sending the remand report in the matter. Keeping in view of above, the AO is directed to delete the addition. **This ground of appeal is allowed.**"*

19.1. The Id. CIT D/R, could not controvert these factual findings of the Id. CIT(A). Hence, we uphold the same and dismiss this ground of the revenue.

20. **Depreciation :- (only for Assessment Year 2014-15)**

The Id. CIT(A) while disposing off the Additional Ground 2 for the Assessment Year 2014-15, at page 27 & 28, held as follows:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings.

The AR of the appellate has submitted that the assessee has taken another additional ground relating to the admissibility of depreciation denied by the AO on addition of the new assets. The assessee during the 'relevant year had shown net purchase of plant and machinery amounting to Rs. 5,46,645/- and computers worth Rs. 2,76,990/-. The addition of the assets were duly reflected in Tax Audit Report and was certified by the Auditor. The A.O. has not brought any material evidence to reject the claim of the assessee or to disbelieve the Tax Audit Report. Thus, the A.O. was not correct in disallowing the claim of depreciation on the assets purchased during the relevant year.

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The elaborate submissions have been made in the written submissions filed along with the evidence of the purchase of the plant and machinery on which depreciation was claimed. No adverse comment have been made either in the bills of purchase or in the claim for depreciation.

*In view of above, the AO is directed to verify the claim of the appellate being factual issue and as mentioned in the tax audit report. The Appellate has directed to file all relevant papers before the AO. The Appellate may be given an opportunity before deciding the issue to file his submission in the matter. **This ground of appeal is allowed for statistical purposes.***

20.1. The ld. CIT D/R, could not controvert these factual findings of the ld. CIT(A). Hence, we uphold the same and dismiss this ground of the revenue.

21. In the result, both the appeals filed by the revenue are dismissed. The cross-objection is only supporting the revenue appeals and is dismissed as such.

Kolkata, the 1st day of April, 2021.

Sd/-

[Aby T. Varkey]
Judicial Member

Dated : 01.04.2021
{SC SPS}

Copy of the order forwarded to:

1. M/s. Sudarshan Paper & Board Pvt. Ltd
27, Brabourne Road
Room No. 311
Kolkata - 700 001

2. Deputy Commissioner of Income Tax, Circle-4(2), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches