

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE MANISH BORAD, ACCOUNTANT
MEMBER AND
HON'BLE MADHUMITA ROY, JUDICIAL MEMBER

ITA No.945 & 946/Ind/2019
Assessment Year 2013-14 & 2015-16

AISECT Limited : Appellant
NH-2, Hoshangabad Road,
Bhaironpur Near Misrod,
Bhopal
PAN : AAFCA7441P
V/s

Income Tax Officer 1(1)
Bhopal : Respondent

ITA No.952 & 953/Ind/2019
Assessment Year 2013-14 & 2015-16

Income Tax Officer 1(1) : Appellant
Bhopal
V/s

AISECT Limited : Respondent
NH-2, Hoshangabad Road,
Bhaironpur Near Misrod,
Bhopal
PAN : AAFCA7441P

Revenue by	Shri Harshit Bari, Sr.DR
Assessee by	Shri S.S.Deshpande, CA
Date of Hearing	06.04.2021
Date of Pronouncement	28.06.2021

ORDER

PER BENCH

The above captioned appeals Cross Appeals for Assessment Years 2013-14 & 2015-16 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Bhopal evenly dated 24.09.2019 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 31.03.2016 and 29.12.2017 framed by ITO-1(1), Bhopal.

2. Assessee has raised following grounds of appeal:-

ITA No.945/Ind/2019 Assessment Year 2013-14

1.That of the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) 1, Bhopal was not justified in confirming the disallowance to the extent of Rs. 91,287.00 towards CSC expenses on adhoc basis.

2.That of the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) 1, Bhopal was not justified in confirming the disallowance to the extent Rs. 7,76,615.00 towards registration expenses.

3.That of the facts and in the circumstances of the case of the assessee the

Learned Commissioner of Income Tax (A) 1, Bhopal was not justified in confirming the disallowance to the extent Rs. 9,12,873.00 towards purchase of course material.

4.That of the facts and in the circumstances of the case of the assessee the Learned Commissioner of Income Tax (A) 1, Bhopal was not justified in confirming the disallowance to the extent Rs. 40,72,135.00 towards training material

5.The assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing.

3. Revenue has raised following grounds of appeal;

ITA No.952/Ind/2019 Assessment Year 2013-14

"On the facts and in the circumstances of the case, the CIT(Appeal) has erred in:

1. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 3,60,465/-, when the assessee has advanced interest free loans and therefore, proportionate disallowance of interest expenses were made."

2. " Whether on the fact and circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 89,96,634/- on account of CSC expenses, by relying on the judgment of International Forest Co. vs CIT(1975) 101 ITR 721 (J&K) and holding that AO cannot make arbitrary addition and base his conclusion purely on guess work and thereafter, restricting the adhoc disallowance to 4 of expenses, when, the AO has clearly held that the assessee was unable to produce any agreement on account of which such registration expenses were incurred (being

expenses of contractual nature) and establish the genuineness of the transaction."

3. " Whether on facts and circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 2,95,16,227/- on account of online material expense, by relying on the judgment International Forest Co. vs CIT(1975) 101 ITR 271 (J&K) and holding that AO cannot make arbitrary addition and base his conclusion purely on guess work and thereafter, restricting the disallowance to 3 of expenses, when, the AO has clearly held that the assessee was unable to establish the genuineness of such expenses incurred (being expenses of contractual nature) as such expense were undertaken with sister concerns and no agreement/ MOU of such expenses incurred was furnished."

4. Whether on facts and circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 7,73,70,565/- on account of training expenses, by relying on the judgment of International Forest Co. vs CIT(1975) 101 ITR 721 (J&K) and holding that AO cannot make arbitrary addition and base his conclusion purely on guess work and thereafter, restricting the adhoc disallowances to 5 of expenses incurred when the AO has clearly held that the assessee was unable to establish the genuineness of such expenses incurred (being expenses of contractual nature). as such expense were undertaken with sister concerns and no agreement/ MOU of such expenses incurred was furnished."

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.

4. Assessee has raised following grounds of appeal:-

ITA No.946/Ind/2019 Assessment Year 2015-16

"On the facts and in the circumstances of the case, the CIT(Appeal) has erred in:

1. "Whether on facts and circumstances of the case, the Ltd. CIT(A) was justified on deleting addition of Rs. 23,00,00,000/-, when the assessee himself declared the expenses incurred on account of purchase of books from vendors at Itarsi amounting to Rs. 23 Crores as non genuine expenses and paid taxes thereon and the Assessing Officer in the assessment order has established the non genuineness of such purchases by highlighting the round tripping of funds through such purchase transactions between assessee and its sisters, concerns, which clearly reflect the non genuine nature of transactions under taken by the assessee."

2. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 3,16,358/- on account of disallowance of interest expenses, when the assessee had advanced interest free loans amounting to Rs. 95,44,174/- and therefore, proportionate interest @12% on interest expenses incurred on borrowed funds was disallowed."

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.

5. Revenue has raised following grounds of appeal:-

ITA No.953/Ind/2019 Assessment Year 2015-16

1. That on the facts and in the circumstances of the case the assessee the proceedings initiated and the order passed are illegal, invalid and contrary to law.

2.That on the facts and circumstances of the case of the assessee learned AO was not justified in making addition of Rs.23,00,00,000.00 holding the purchase made by the assessee as non genuine.

3.That on the facts and in the circumstances of the case of the assessee the Learned AO was not justified in making disallowance of Rs.3,34,204.00 towards disallowance of expenses under various heads on adhoc basis.

4.That on the facts and in the circumstances of the case of the assessee the Learned AO was not justified in making disallowance of Rs.3,16,358.00 towards interest paid on secured loans.

5.That the assessee craves leave to add, alter amend or withdraw any ground of appeal on or before the time of hearing.

6. As the issues are common and pertaining to the same assessee these were heard together on the request of both the parties and being disposed off by this order for sake of convenience and brevity.

7. We will first take up the Cross Appeals for Assessment Year 2013-14.

8. Brief facts of the case as culled out from the records are that the assessee is a limited company engaged in the trading of computer hardware/software, management services, general supplies, selling of educational books, insurance and coaching.

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Assessee also provides services to universities. The assessee company belongs to the AISECT Group. This group runs various businesses. They also run two Universities one in Madhya Pradesh and one University in Chhattisgarh. These Universities are registered u/s 12AA and/or u/s 10(23C). The assessee has more than two thousand study centres established throughout the country which provide the services to the students of the Universities of the Group for a nominal price. The assessee also supplied books to the university for Library and use by Faculty and to be kept at study centre for the purpose of reference by students. No agreement in writing has been entered for this work. Course material is developed and supplied to students of the university through the assessee company at nominal cost. The main work done by the assessee for the Universities is as under:

1. Management of IT portal of the University, mobilization and registration of students for Universities.
2. Maintaining students database for online and distance education programme for Universities. Supply of course material and course kits including the students bags.

Providing e-contract online, etc.

3. Data processing support for result preparation for universities.
4. Provision for learning support through its learning centres and provision of hardware and software and arrangement of skill training centres.

E-Return of income filed on 26.9.2013 declaring income at Rs.4,06,15,880/-. Case selected for scrutiny through CASS followed by serving notices u/s 143(2) and 142(1) of the Act. When the assessment proceeding was undergoing survey was conducted u/s 133A of the Act on 9.10.2015 and 10.10.2015. Statement of Managing Director Mr. Santosh Choubey was recorded where he voluntarily offered Rs.23 crores on account of inflated purchase in the books. The copy of the statement was provided to the assessee on 20.10.2015. On 10.11.2015 retraction of surrender of income was filed through an affidavit dated 7.11.2015. During the course of assessment proceedings Ld. A.O called various information to examine the genuineness of purchase and other expenses. Submissions with documents were filed to explain but were not

found acceptable to some extent by the Ld. A.O. Additions were made totalling to Rs.12,20,19,196/- on account of following:-

1. Disallowance of interest expenses	Rs. 3,60,465/-
2. 20% adhoc disallowance of expenses	Rs. 7,90,297/-
3. Disallowance of Registration Expenses	Rs. 89,96,634/-
4. Disallowance of purchase	Rs.3,04,29,100/-
5. Disallowance of training expenses	<u>Rs.8,14,42,700/-</u>
	<u>Rs.12,20,19,196/-</u>

Aggrieved Assessee preferred appeal before Ld. Cit(A) and partly succeeded.

9. Now both the assessee and Revenue are in appeal before the Tribunal challenging the finding of Ld. CIT(A) decided against them.

10. Ld. Counsel for the assessee apart from relying on the finding of Ld. CIT(A) on the issue decided in favour of the assessee vehemently argued and referring to the submissions made before the lower authorities. The submissions made before this Tribunal are reproduced below (Relevant Extract):-

1. Ground No 1 Deletion of Rs.3,60,465/- u/s 36(1)(iii) :

The Ld. A.O. has disallowed the interest of Rs.3,60,465/- on the ground that the assessee has borrowed funds and paid interest of

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Rs.3,60,465/-. He further observed that the assessee has given loans and advances of Rs.32,68,227/- on which no interest was received. Thus, the assessee has advanced the money for non business purposes.

The assessee had advances money to the staff and others. The interest of Rs.3,60,465/- has been paid for the loan taken for purchase of car. No borrowed funds were advanced and the interest is paid on the borrowings for the business purposes.

The Ld. CIT(A) allowed the assessee's appeal in para 11 pg.21.

It is submitted that no borrowed funds were advanced and the interest is paid on borrowings made for the purpose of business. The Ld. CIT(A) was right in deleting the addition.

2. **Ground No. 2: Deletion of Rs.82,20,019/-(out of disallowance of Rs.89,96,634/-) (wrongly mentioned in the grounds as CSC expenses) for Registration Expenses and assessee appeal Ground No.2 for maintenance of addition of Rs.7,76,615/-.**

1. The Assessee is having various study centres throughout the country through which the students in the local area are provided guidance and counseling of the various courses available in the University. In this process Registration and prospectus fees is collected from the students and forwarded to the University. During this year 76931 students were registered through various centres and the prospectus fess of such students @ 250/- per student = Rs.1,92,32,750/-was collected and remitted to the Dr. C.V. Raman University. Some of the

centre had purchase extra copies of the prospectus and dues of the same was also remitted.

2. The aforesaid details were submitted to the AO on 30.03.2016 in which in reply to a separate query the AO was informed that 41675 students were registered for short term courses. The AO however erroneously concluded that total 41675 students were registered and allowed the expenses for these no. of student and disallowed the balance without appreciating that the total prospectus were issued for 76931 students and only 41675 students were registered for short term courses. The Learned CIT-A observed that the AO has not disputed the fact the assessee has collected the fees and remitted it to the university. The Ld. CIT-A observed that the assessee has explained the complete facts, and concluded that the AO has picked up the number of students for short term courses mentioned in the written submission in some other context and disallowed the expenses which is not justified. Considering the past record of the assessee the disallowance of 4% of expenses Rs.7,76,615/- was confirmed and relief Rs.82,20,019/- was provided.

In this regards it is humbly submitted that the fact that the assessee has collected the said fees from the students for it being remitted to the university is not in dispute and the assessee has remitted such collection to the university and have submitted the receipts from the university acknowledging the receipts of such fees. The disallowance has been restricted by the Ld. CIT(A) on the basis of the earlier assessment. The assessee has collected the fees from the students and has remitted the same to the University. Thus, there was no question of any disallowance on this ground. In view of this, the addition maintained by the Ld. CIT(A) deserves to be deleted.

3. **Ground No 3 disallowance of Rs.2,95,16,227/- for purchase of online material and assessee's appeal ground No.3 for maintenance of addition of Rs.9,12,873/-**

The assessee is in the business of supply of books/course material to the students of various educational institutions. All these books are supplied to the students through postal department of the Government of India on which during the year postage expense of Rs. 46,04,738/- were incurred. Details of dispatch of the books/course material to students and evidence thereof were duly furnished before the AO during the course of assessment proceedings.

The books/course material are supplied free of cost to the students and the sale value of the same is received from the educational institutes to whom these students belong. During the year the assessee has received Rs.4,12,15,433/-towards sale of books/ fees for supply of course material from AISECT Bhopal and Rs. 10,59,50,349/- from AISECT Raipur which has been shown as business receipts in the financial statements. These books have been purchased from the other concerns and were supplied to the students on behalf of the Universities. Thus, the assessee has received sale consideration for sale of books of over Rs. 14 crore from its associate concerns. The assessee has also made purchases from these Universities for the books supplied for other concerns. The assessee has purchased books from the sister concerns of Rs. 3,04,29,100/- and has supplied/sold the books to others. Thus on net basis the assessee has received an income which negates the presumption that these transactions were non genuine or was undertaken with an object of reducing its income.

During the year the assessee has shown course material expense of Rs. 5,14,59,665/- out of which purchase of Rs. 3,04,29,100/- were made from associated concerns which have been disallowed by the AO holding that the assessee has failed to establish the genuineness of the claim of expenses.

The said belief was formed by the AO on the following reasons as mentioned by him in the assessment order:

Sr. No	Reasons mentioned by the AO in the assessment order	Submissions of the assessee
1	The assessee has not furnished copy of MOU with these concerns for purchase of books.	Availability or Non availability of MOU cannot by itself make any transaction genuine or bogus.
2	No justification is given as to why payments are made to AISECT Bhopal for supply of books who are themselves conducting various courses	The assessee is supplying books to the students of the Universities managed by the societies under same management. These societies, with an object to concentrate their focus on the core activity of providing education have off loaded various incidental activities including supply of books/course material to its students to the assessee company. The assessee has supplied books to the students and has received sale consideration of over Rs. 14 crore from the societies. The books required to be supplied are purchased and/or got printed. The purchase are made from market and in cases they are available with the concerned University are procured from that University itself.
3	Bills for supply of books with list of books were not furnished	The details of books supplied along with list of the books supplied were duly furnished before the AO. Bills for purchase from sister concerns were also produced for verification.
4	The assessee has not shown why the job was entrusted to sister concerns and not to others	The assessee has made total purchase of Rs. 514.59 lakh out of which books of only Rs.304.29 were procured from associate concerns. Thus it is not correct to state that the job was entrusted to sister concerns only and not to others. Further these books were procured from

		sources where they were available at the most economical rate.
5	Methodology adopted by sister concern to complete the job was not provided	The assessee had simply purchased the books/course material from the concerns which were required to be supplied to the students for which sale price was received from the sister concerns. Thus no specific modus operandi was required to complete the job.

It may be mentioned that the sister concerns of the assessee are managing two Universities which are having approx. 118 thousand students registered with them. These societies with an object to concentrate their efforts on their core activity of providing education have off loaded various incidental activities including supply of books/course material to its students, to the assessee company. The fees received by these Universities are inclusive of the charges for supply of books/course material to the students. Thus the books are supplied to the students at free of cost by the Universities through the assessee company. The said Universities make payment to the assessee company of the sale price of the books supplied to the students. These books/course materials are supplied by the assessee to the students through its centers and the books are sent by using the services of the postal department.

As the books purchased by the assessee have been sold and the sale proceeds are duly shown as income, there was no occasion to treat the purchase of these books from the associate societies as non genuine. If the purchases are doubted then there cannot be any sale. The corresponding sale should have been reduced from the income.

The Ld. A.O., however, did not consider the arguments of the assessee and disallowed the whole amount paid to the sister concerns on the ground that the assessee has failed to establish the genuineness of the transaction.

The Ld. CIT(A) after considering the submissions of the assessee remarked that the sale of books are not disputed and as such the corresponding purchases cannot be held to be non-genuine. He further observed that the A.O. has not brought anything on record to show that the purchases are made at a higher value. He therefore, restricted the disallowance @ 3% of the total expenses by comparing the same with the earlier years. The Ld. CIT(A) allowed the relief of Rs.2,95,16,227/- and upheld the addition of Rs.9,12,873/-.

It is humbly submitted that the assessee has shown the income of Rs.41.75 crores under the head fees and course material receipts which includes 12.83 crores as the receipt from sale of books and course material. Against these receipts of Rs.12.83 crores the assessee has incurred the expenses for purchase of the books and other incidental expenses. Complete details have been maintained and the disallowance of even 3% is uncalled for.

4. Ground no.4 deletion of Rs.7,73,70,565/- on account of training expenses and assessee's appeal ground No.4 for maintenance of addition of Rs.40,72,135/-

The assessee had incurred an expense of Rs.8,20,31,006/- under the head "Training Expense" out of which disallowance of Rs. 8,14,42,700/- was the payments made to associate concerns as detailed below which were disallowed and added to the income of the assessee:

Name of the sister concern	Amount paid (in Rs)
AISECT Bhopal	3,28,27,000
Sect Info tech Ltd	1,43,15,100
SECT	1,75,94,600

SECT Pvt Ltd	1,67,06,000
Total	8,14,42,700

Details of the expenses are explained herein below:

- i. AISECT Bhopal: The said entity is managing a University in the name of AISECT, Bhopal having a very large infrastructure and the courses conducted for all the subjects. It may be mentioned that the assessee has received Rs. 8,97,87,640/- from AISECT Bhopal for providing training for IGNOU students & Rs. 1,86,79,306/- towards training to students on vocational courses. Rs. 3,28,27,200/- was paid to the same concern towards examination and certification of the students and balance was utilised for providing training to the students. The payment of Rs. 8,97,87,640/- and Rs. 1,86,79,306/- by AISECT Bhopal to the assessee is readily verifiable from the files of the respective concerns
- ii. SECT Info Tech Ltd: The said person is a corporate entity having the same rate of tax applicable to it as is applicable to the assessee company. Thus the allegation that payment has been made to that company to reduce the income is not probable. It may be mentioned that the assessee was having 14900 students for Insurance and Banking courses. The said number is easily verifiable from the details of students submitted during the course of assessment proceedings. M/s SECT Infotech Ltd is approved by IRDA (Insurance regulatory and development authority) for conducting courses on insurance. The said company has been rendering services in insurance sector which will be obvious from the fact that TDS has been deducted by various insurance companies on payments made by them.
- iii. SECT (Society for electronics & Computer Technology): The said society is running college in the name of SECT College of professional education providing courses like BA, B.Com, BBA,

BCA and is affiliated to Barkatullah University, Bhopal. The said society has its own infrastructure and faculty for **training which was provided to students by using the infrastructure and faculty of the college.**

- iv. Significant Electronics & Computer Technology P Ltd (SECT P Ltd): The said person is a corporate entity having the same rate of tax applicable to it as is applicable to the assessee company. Thus the allegation that payment has been made to that company to reduce the income is not probable. M/s SECT Pvt Ltd is approved corporate agent for LIC. The said company has been rendering services for insurance sector which will be obvious from the fact that TDS has been deducted by various insurance companies on payments made by them.

The disallowance was made for various reasons which, as mentioned in the assessment order are summarised here in below:

Para No	Observations of the AO	Submission of the assessee
6.6.3(i)	Details of faculty involved not furnished	During the course of assessment proceedings no such information was required by the AO. Further the faculty is provided by the payees.
6.6.3(ii)	Details of Expert faculty available with AISECT Bhopal not furnished. No supporting evidence of having expert faculty in field of banking and insurance sector furnished.	Faculty was provided by the payees. It may be mentioned that AISECT Bhopal is managing a University which is duly approved by UGC(University Grant Commission) and is naturally having all the faculty and

	<p>Details of students/trainees placed in banking & Insurance sector not furnished</p>	<p>infrastructure required for the training.</p> <p>M/s Sect Infotech Ltd is duly approved by IRDA the regulatory body for regulating the insurance business for providing training in Insurance Sector and accordingly have adequate infrastructure and faculty suited for that job</p> <p>The assessee has only provided training (coaching). Whether the trainee got selected or not is not within the domain of the training and hence no details could have been furnished.</p>
6.6.3(iii)	<p>Trainees belong to state of CG, whereas training expenses are paid to Bhopal based entities and it appears illogical that students of Raipur will come all the way to Bhopal for training</p>	<p>The training was arranged at various places. Further students for IGNOU (Indira Gandhi National Open University) were registered on all India basis and were not restricted to any particular area.</p>
6.6.3(iv)	<p>The students to whom training has been given are not working with any particular organisation</p>	<p>The students are undergoing basic skill development courses.</p>
6.6.3(v)	<p>Details of training given to</p>	<p>The course wise details of the</p>

	students is not furnished	students was furnished and the training given was as required by that specific job.
6.6.3(vi)	Copy of agreement/MOU with sister concerns not furnished	Availability or non availability of MOU will not make any expenses genuine or non genuine by itself.
6.6.4	The assessee has made this arrangement of payment of huge fee on account of training expenses to its sister concerns having exemption u/s 12A and thus entire motive appears to part its funds with these exempted entities.	Fees of Rs. 3,10,21,100/- is paid to corporate entities having same rate of tax as is applicable to the assessee. As mentioned in Para 6.6.1 certification work was done by the respective university. AISECT Bhopal is managing a University in the name of AISECT University. Thus payment of Rs. 3,28,27,000/- was made for training/ certification to students.

Thus it would be appreciated that fees were paid to the institute who were having adequate infrastructure and faculty available with them. Fees were received from the exempted entities itself for providing training to students and part of the receipt was paid back for providing certification/training as required. Thus the allegation that the assessee has made payments to these entities to divert its income is ill founded and not substantiated.

The Ld. A.O. disallowed the whole payment without considering the submissions made by the assessee.

After considering the submissions made by the assessee the Ld. CIT(A) held that part of the payment is made to the companies which are liable to the same rate of tax. He further observed that some of those concerns are approved by IRDA for providing training, complete details of the students were provided by the assessee. The ld. CIT(A) compared the book results and on the basis of earlier disallowances, he restricted the disallowance @5% of the total expenditure and confirmed the addition of Rs. 40,72,135/-and allowed the relief of Rs.7,73,70565/-.

It is humbly submitted that the disallowance upheld by the Ld. CIT(A) is unwarranted for. Complete details and vouchers have been maintained by the assessee and all payments are verifiable. Under these circumstances, no disallowance is called for.

11. Per contra Ld. Departmental Representative supported the order of Ld. A.O as well as the finding of Ld. CIT(A) given against the assessee. Ld. DR also referred to the report of the Ld. A.O along with other documents filed in the form of paper book dated 6.4.2021.

12. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions made by both the sides and decisions relied by Ld. Counsel for the assessee.

13. The first issue relates to disallowance of interest expense of Rs.3,60,465/-. We note that the Ld. A.O has made this addition

observing that the assessee had provided interest free advance to its staff and on the other hand interest was paid on the borrowings. Ld. CIT(A) deleted this addition against which the revenue is in appeal. We however find that the assessee has taken loan for purchase of vehicle which is used for business purposes and interest of Rs.3,60,465/- is the interest paid on the car loan taken from Bank of India. Leger account of interest expenses and ledger account of bank loan account is at page 53 to 55 of the paper book filed by the assessee on 21.5.2020. Thus it remains undisputed fact that the alleged amount has been paid for car loan taken from bank and is an eligible business expenditure. Thus addition of disallowance of Rs.3,60,465/- was rightly deleted by Ld. CIT(A). Accordingly we dismiss Revenue's Ground No.1 for the Assessment Year 2013-14.

14. Now the second issue for Assessment Year 2013-14 relates to disallowance of registration expenses. Brief facts relating to this issue are that the assessee runs various study centres across the country for providing guidance and counselling to students for various courses available in the university. Rs.250/- per student

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was collected for 76931 students of which 41675 were for short term courses and remaining for long term courses and remitted to Dr. C.V. Raman University. During the assessment proceedings Ld. A.O inadvertently took basis of 41675 students being enrolled during the year and disallowed remaining sum of Rs.89,96,634/- When the matter came up before Ld. CIT(A) he was again provided details of all the 76931 students along with the details of collection for fees from the students and its remittances to the universities. Based on these documents and appreciating the facts Ld. CIT(A) deleted the addition for Rs.82,20,019/- but sustained the disallowance at Rs.7,76,615/- as an adhoc disallowance of 4% on the total expenses incurred during the year based on disallowance made in the previous assessment years of the assessee observing as follows:-

Ground No.2: Disallowance of Rs.7,76,615/- towards registration expenses

13. Ground No. 4:- Through this ground of appeal the appellant has challenged the addition of Rs. 89,96,634/- out of registration expenses. The appellant has incurred expenses of Rs. 1,94,15,384/- on registration, renewal & Data Processing expenses and the entire payment was made to AISECT Raipur

an associate concern of the assessee. During the assessment proceedings the assessee has submitted the copy of receipts in support of the payments. The assessee has however not provided any details' of the exact nature of work and has also failed to furnish any agreement/MOU with AISECT Raipur (university) to justify the: payments. During the assessment proceedings the assessee has submitted that the assessee collects fees from the students for registration and prospectus which is forwarded to the University. Number of students and the rate at which such fees was collected and remitted to the university was also submitted. The AO however observed that the details submitted by the assessee is only with regards to 41675 students and not of 76931 students as claimed by the assessee and accordingly restricted the claim of the assessee to such number of students and disallowed the balance payment.

I have considered the facts of the case, contentions raised by the appellant and findings of the AO. It is observed that the assessee has claimed that it has collected fees from the students through its associated centers and has remitted the fees to the concerned University. During. the assessment proceedings the appellant has submitted the details of the fees collected of Rs. 29,55,72,936/- by it on behalf of the University. The AO has not disputed the fact that the assessee has collected the fees and remitted to the University. The appellant has furnished the receipts issued by the University which also confirms that they have received the money under consideration. Thus the only dispute remains with regards to the number of students which have been claimed by the appellant to be 76931 students and allowed by the assessee

*for only 41675 students which was as per the student wise details furnished by the assessee. It is seen that the details furnished by the assessee for 41675 students was with regards to the students registered for short term courses as has been specifically mentioned in the written submissions dated 30.03.2016 in Para 3 which was with reference to the query of the AO with regards to expenses shown under the head "fees paid" and was not with reference to the expenses booked under the head "registration, renewal and data processing fees". The query regarding the expense booked under the head "registration, renewal and data processing fees" was replied in Para 2 of the same reply in which the number of students is mentioned as 76931 students. In Para 5 of the same reply the assessee has mentioned that "as explained earlier a total of 76931(as in 4 above) + 41675(short term certificate programme) = 1,18,606 students joined various programs" Thus it is seen that the AO ' has picked up the number of students of short term courses' mentioned in the written submission in some other context. Thus' the disallowance made by the AO towards difference in the, number of students was not justified. It is however seen that as per the calculation provided, the assessee was required to have paid Rs. 1,92,32,750/-(Rs.250 * 76931 students) as against expenses claimed of Rs. 1,94,15,384/- and the difference is on account of some extra payments made.*

It is further seen that the assessment of various earlier years was completed u/s 263/1481143(3) in various years in which disallowances were made towards data processing expenses as detailed below:

A.Y	Expenses claimed	Expenses Disallowed	Percentage Disallowance
2010-11	11,03,500/-	50,000/-	4.53%
2011-12	8,62,929/-	Nil	-
2012-13	1,03,19,288/-	2,50,000/-	2.42%
Total	1,22,85,717/-	3,00,000/-	2.44%

The AO has not brought out any material on record which suggests that the appellant has incurred the expenses other than business purpose. In the case of International Forest Co. vs. CIT (1975) 101 ITR ,721 (J&K) it is held that AO cannot proceed to make an arbitrary addition and base his conclusion purely on guess work. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if the profits shown by the appellant in his return are not accepted it is for the taxing authorities to prove that the appellant has made more profits than returned. Here the AO failed to bring on record anything which shows that appellant has earned more profit than declared. The AO has not made any enquiry and arbitrarily made the addition.

Considering all the above facts it would be' fair and reasonable to restrict the disallowance to 4.00 of the expenses claimed based on disallowance made in past years in the assessments completed u/s 263/148/143(3). Therefore, the addition made by the A.O. amounting to Rs. 7,76,615/- (Rs.1,94,15,384 x 0.04) is confirmed. The appellant will get the relief of- Rs. 82,20,019/-. Therefore, the appeal on this 'ground is partly allowed.

15. So far as the relief given by Ld. CIT(A) concerned, it is

clearly a factual matter of details of students furnished before the lower authorities and before us showing that the Ld. A.O inadvertently considered the number of students as 41675 though there were 76931 students and therefore the appellant has rightly incurred the expenses of registration realisation of data processing at Rs.1,94,15,384/- . As regards the adhoc disallowance made by Ld. CIT(A) at Rs.7,76,615/- is concerned there is no evidence brought on record and the adhoc disallowance is purely based on the track record of assessment of the assessee in preceding years. All the records pertaining to collection of fees, its remittances of such collection to the university and receipts from the university acknowledging the receipt to the fees are on the record and have not been challenged or found to be incorrect at any stage. Thus such disallowance of Rs.7,76,615/- was uncalled for. Accordingly we are of the considered view that no addition for Rs.89,96,634/- was required to be made by the Ld. A.O. We accordingly allow Ground No.2 raised by the assessee and dismiss Ground

No.2 raised by the Revenue.

16. Now we take up third issue pertaining to disallowance of purchase made from sister concerns wherein Ld. A.O disallowed total purchase of Rs.3,04,29,100/- made from sister/associate concerns but Ld. Cit(A) sustained the disallowance only to the extent of Rs.9,12,873/- out of 3% of the total purchase from sister concerns. The assessee and Revenue are in appeal wherein assessee has raised Ground No.3 challenging the disallowance sustained at Rs.9,12,873/- whereas Revenue has raised Ground No.3 challenging the finding of Ld. CIT(A) deleting the addition of Rs.2,95,16,227/-.

17. Facts in brief pertaining to this issue are that assessee supplied/posted study materials to the students of various educational institutions. Gross receipts for the year includes Rs.4,12,15,433/- received from AISECT, Bhopal towards sale of books/fees for supply of course material and Rs.10,59,50,349/- from AISECT, Raipur.

Ld. A.O has not disputed this course receipts at any stage which includes the receipts from sister concerns. During the year assessee has purchased books worth Rs. 3,04,29,100/- from its sister concerns. Ld. A.O disallowed this purchases for want of copy of Memorandum of Undertaking, justification of payment, bills and list of books, reason for entrusting the job to sister concerns. However Ld. A.O has not given any adverse comments questioning the genuineness of working of sister concerns and the corresponding treatment of sales in their respective books. We also note that Ld. CIT(A) sustained the disallowance of purchase making adhoc disallowance @3% based on the assessments completed in past years observing as follows:-

14. Ground No. 5:- Through this ground of appeal the appellant has challenged the addition of Rs. 3,04,23,100/-. During the year the assessee has incurred an expense of Rs. 5,14,59,665/- on purchase of course material out of which payments of Rs. 3,04,29,100/- was found to have been made to non corporate associate concerns which was considered by

the AO as diversion of funds of the company to AISECT and other society wherein exemption u/s 12AA are available and was accordingly disallowed. The AO also observed that the assessee has failed to provide the invoices for supply of books from sister concern because of which the genuineness of the expense is not established. The assessee also failed to furnish any agreement/MOU with the sister concerns for such apply and could also not explain the reasons for entrusting the job to sister concerns.

It is observed that the main reason for disbelieving the genuineness of the expense is the fact that the payments are made to sister concerns which are enjoying tax exemption and accordingly the exercise is simply done for diversion of funds to exempted entities. The assessee has drawn my attention to the assessment order passed u/s 143(3) in the case of AISECT society for the same year in which the exemption available to said entity has been denied and the reason for such denial as mentioned in the assessment order is that the assessee has purchased as well as sold books to AIS~CT Ltd which have been done with the object of giving direct/indirect benefit to the said company. Thus in the assessment of the payer as well as the payee the respective AO's have alleged diversion of funds to 'the other party. It would have to be appreciated that both the parties cannot provide undue benefits to each other in the same transaction. Thus these observations/allegations in absence of any supporting material on record are required to be ignored. The AO had also doubted the purchase as the assessee has failed to submit copy of MOUI agreement; however availability or 'non availability of MOU cannot be a determinative factor of the genuineness of the transaction.

Further in the case of purchase/sale generally no MOU is prepared and in absence of any such MOU the assessee could not have been expected to produce it. As regards not giving any justification for purchase of books from the sister concerns it is noted that the assessee has been supplying/ selling books' to the students of associated universities for which fees has been received by it from the said Universities and there was nothing unusual in purchasing books from the university for being supplied to the students. The assessee has explained that the University was concentrating its efforts on its core activity of education and in the process have off loaded non core activities including activity of supplying books to its students to the assessee company was a justifiable reason. As regards non submission of the invoices for purchases it is seen that the copy of invoices were filed before the AO on sample basis. The AO has also mentioned in the assessment order itself that copies of some bills were furnished.

It is further seen that the assessee has shown an income of Rs. 41,75,89,138/- from "fees & Course material receipts" and Rs. 9,35,92,168/- from sales. As per the details furnished by the assessee before the AO in its written submission the said receipts include Rs.12,83,43,743/- received by the assessee towards sales of books and course material. This sale has not been disputed by the AO. As against this sale of books and course material the assessee is found to have incurred expenses on purchases of Rs.5,14,59,665/- In view of the fact that the sales of books are not disputed its corresponding purchase cannot be held as non genuine. It is also observed that the AO have not brought on record any material to substantiate that the purchase is made at a higher

value compared .to market rate. Thus the disallowance is made solely on suspicion without any material to support such suspicion.

It is further seen that the assessment for A.Y 2010-11, 2011-12 & 2012-13 have been completed u/s 148/143(3) and the assessed N.P ratio in these years was 7.25, 7.13 & 8.55- respectively as against the returned N.P ratio of 7.94 for the year under consideration. This also negates the 'presumption that the funds have been diverted to the associated concerns.

It is further seen that the assessment of various earlier years was completed u/ s 148/143(3) in various years in which disallowances were made towards purchase of course material as detailed below:

A.Y	Expenses claimed	Expenses Disallowed	Percentage Disallowance
2010-11	2,89,92,487/-	10,00,000/-	3.45%
2011-12	2,55,32,924/-	7,50,000/-	2.94%
2012-13	11,96,66,763/-	30,00,000/-	2.51%
Total	17,41,92,174/-	47,50,000/-	2.72%

The AO has not brought out any material on record which suggests that the appellant has incurred the expenses other than business purpose. In the case of *International Forest Co. vs. CIT (1975) 101 ITR 721 (J&K)* it is held that AO cannot proceed to make an arbitrary addition and base his conclusion purely on guess work. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if . the profits shown by the appellant in his return are not accepted it is for the taxing authorities to prove that the

appellant has made more profits than returned. Here the AO failed to bring on record anything which shows that appellant has earned more profit than declared. The AO has not made any enquiry and. arbitrarily made the addition.

Considering all the above facts it would be fair and reasonable to restrict the disallowance to 3.00 of the expenses claimed based on disallowance made in past years in the assessments completed u/s 148/143(3). Therefore, the addition, made by the A.O. amounting to Rs. 9,12,873/ - (Rs.3,04,29, 100 x 0.03) is confirmed. The appellant will get the relief of Rs. 2,95,16,227/-. Therefore, the appeal on this ground is partly allowed.

18. The above finding of Ld. CIT(A) throws light on the working of assessee and its sister concerns in the field of providing education to the students and that purchase of books is a necessary part in the field of imparting education. All the books purchase have been posted through postal authorities. Revenue receipt from sister concerns has not been doubted. Payment for purchase are made through banking channel. Further when the sales are not doubted how can the purchase be doubtful. Financial statements are duly audited and the books results have been accepted by the Ld. A.O except for the

disallowance made. We further observe that payment to related parties needs to go through the scanner provided under the provisions of Section 40A(2)(a) of the Act which reads as follows:-

(2) (a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him there from, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction:

19. During the course of assessment proceedings Ld. A.O came across such payments made to related parties or sister concerns. He need to first examine the information that whether such expenditure is excessive or unreasonable having regard to the fair market value of the books, for which payment is made or the purchase are made or the legitimate needs of the business of profession. Perusal of records shows that no such activity have been undertaken by the Ld. A.O before concluding that purchases from sister concerns are not

genuine or they are made at an inflated price. Therefore making disallowance of purchase just because they are from sister concerns/ related parties, Memorandum of Undertaking not prepared and “why the job was entrusted to sister concerns” merely shows that the disallowance of purchase made by the Ld. A.O was on surmises and conjectures and without any support of any evidence. The disallowance sustained by Ld. CIT(A) at Rs.9,12,873/- is merely based on the addition made during assessments of preceding years. Had it been a legal issue this would have been different but being a factual matter such disallowance on ad hoc basis should be avoided unless and until supported by evidence and proper finding.

20. We therefore in the given facts and circumstances of the case are of the considered view that no disallowance of purchase from the sister concern at Rs.3,04,29,100/- was called for. The finding of Ld. Cit(A) is set aside to the extent of sustaining the disallowance of purchase at

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Rs.9,12,873/-. In the result total disallowance for Rs.3,04,29,100/- is deleted. Ground No.3 raised by the assessee is allowed and that of Ground No.3 raised by the Revenue is dismissed.

21. Now we take up the fourth issue relating to training expenses incurred by the assessee at Rs.8,14,42,700/-. During the year following amount was paid/due to be paid to the following concerns towards training expenses incurred during the year:-

Name of the sister concern	Amount paid (in Rs)
AISECT Bhopal	3,28,27,000
Sect Info tech Ltd	1,43,15,100
SECT	1,75,94,600
SECT Pvt Ltd	1,67,06,000
Total	8,14,42,700

22. During the course of assessment proceedings Ld.

A.O called for the information to examine the genuineness of the expenditure. Details filed by the assessee were found to be insufficient. Ld. A.O was of the view that assessee has not furnished details of factuality involved in the process, details of the training given to the students, absence of any Memorandum of Understanding and no justification as to why the students of Chhattisgarh came to preparing at Bhopal. Based on these observation Ld. A.O disallowed the total training expense of Rs.8,14,42,700/-. Assessee challenged this before Ld. CIT(A) and almost succeeded except for the adhoc disallowance of 5% of the total expenditure at Rs.40,72,135/- sustained based on past assessment. Now both the assessee and Revenue are in appeal raising Ground No.4 in their respective appeals for Assessment Year 2013-14 challenging the finding of Ld. CIT(A).

23. We note that these training expenses are consistently

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incurred by the assessee and paid to concerns consistently engaged in this field. AISECT, Bhopal to which the payment of Rs.3,28,27,000/- is made is a University with large infrastructure. During the year on one hand the assessee has paid Rs.3.28 crores to AISECT, Bhopal for training expenses but on the other hand it received Rs.8.98 crores for training for IGNOU students and Rs.1.87 crores towards training students of vocational courses. Revenue received from AISECT, Bhopal has been accepted but payment made have not disputed.

24. Similarly SECT Info Tech Ltd to which assessee paid Rs.143,15,100/- is a corporate entity and duly approved by Insurance Regulatory and Development Authority for conducting courses on insurance. On record assessee had 14900 students pursuing insurance and banking courses. The transaction thus seems to be genuine as the payment made through banking channel and tax deducted at source.

25. As regards payment made to SECT for electronics and computer technology at Rs.1,75,94,600/- it is observed that SECT runs the college of professional education providing courses like BA, B.Com, BBA, BCA having its own infrastructure and the facility to train the students.

26. Trading expenses of Rs.1,67,06,000/- incurred and paid to Significant Electronic & Computer Technology Pvt. Ltd (SECT) which is a corporate entity and the revenue received from the assessee is part of the income which is taxed at the same rate as that applicable to the assessee. SECT is an approved corporate agent for LIC.

27. We also observe that the above stated facts were considered by Ld. CIT(A) who scaled down the disallowance to Rs.40,72,135/- and that too of adhoc in nature observing as follows:-

15. Ground No. 6:- Through this ground of appeal the appellant has challenged the addition of Rs. 8,14,42,700/-.

During the year the assessee has incurred an expense of

Rs. 8,20,31,006/- under the head "Training Expenses" out of which payments of Rs. 8,14,42,700/- was found to have been made to associate concerns which also included payments made to societies enjoying exemption u/s 12AA of the Act. The AO also observed that the assessee has failed to provide the details of the training and justification of the work done. The assessee also failed to furnish any agreement/MOU with the sister concerns. The AO also observed that the assessee failed to provide details of the faculty involved in the process of imparting training to the students. On verification of the details of the students to whom training was provided, it was noticed that most of the students belong to the State of Chattisgarh and it would be improbable for these students to have attended the training claimed to have been given by these institutions which are placed at Bhopal.

The assessee could also not explain the reasons for entrusting the job to sister concerns. These payments to associated concerns were accordingly considered by the AO as diversion of funds of the company to AISECT and other society wherein exemption u/s 12AA is available and was accordingly disallowed.

It is observed that the main reason for disbelieving the genuineness of the expense is the fact that the payments are made to sister concerns which are enjoying tax exemption and accordingly the exercise is simply done for diversion of funds to exempted entities. The assessee has drawn my attention to the assessment order passed u/s 143(3) in the case of AISECT society for the same year in which the exemption available to said entity has been denied and the reason for such denial as

mentioned in the assessment order is that the assessee has purchased as well as sold books to AISECT Ltd which have been done with the object of giving direct/indirect benefit to the said company. Thus in the assessment of the payer as well as the payee the respective AO's have alleged diversion of funds to the other party. It would have to be appreciated that both the parties cannot provide undue benefits to each other in the same transaction. Thus these observations/allegations in absence of any material on record are required to be ignored. Further payments are also made to concerns which are assessed in the status of "Company" and liable for tax at the same rate as applicable to the assessee company and thus no allegation of diversion of funds to such entities is justified without clinching evidence; The AO had also doubted the genuineness of the expenses as the assessee has failed to submit copy of MOU / agreement; however availability or non availability of MOU cannot be a determinative factor of the genuineness of the transaction. The contention of the AO that the assessee has failed to provide the details of faculty used is also devoid of any merits as firstly no such information was called from the assessee and secondly it is well established that AISECT Bhopal is operating a University which is" approved by the University Grant Commission which itself establishes that it has adequate faculty to provide training to the students. The assessee has submitted the copy of Form 26AS and ITR of Sect Infotech P Ltd and Significant Electronics and Computer Technology P Ltd which establishes that these entities are-registered with IRDA and LIC for providing training to students in the field of insurance and for appointment of agents and the availability of faculty cannot be questioned. As regards SECT

society it is observed that' the society is colleges for various courses and in that case also availability of faculty is established. The AO has also mentioned that the assessee has failed to provide the details of the students trained who were placed n the banking and insurance sector. In this regards the submission of the assessee that it has provided training to the students and whether -subsequently the student got selected or not was outside their purview also carries weight.

*It is further seen that the assessee has received Rs.10,84,66,946/ - from AISECT University for providing training to students of various streams(which is included in the fees received by the assessee and is also readily verifiable from the assessment order of AI SECT Society also) and the assessee has incurred an expense of Rs. 8,20,31,006/-in arranging training of the students which included Rs. 8,14,42,700/- paid to associated concerns who are all established . to be involved **III** education/training. It is also observed that the assessment of the assessee for A.Y 2010-11, 2011-12 & 2012-13 have been completed u/s 148/143(3) and the assessed N.P ratio in these years was 7.25, 7.13 & 8.55 respectively as against the returned N.F ratio of 7.94) for the year under consideration. This also negates the "presumption that the -funds have been diverted to the associated concerns.*

It is further seen that the assessment of the assessee for A.Y 2014-15 was also completed u/s 143(3) in which the assessee has booked training expenses of Rs. 4,55,18,644/- out of which Rs. 22,75,932/-(5) were disallowed.

The AO has not brought out any material on record which

suggests that the appellant has incurred the expenses other than business purpose. In the case of International Forest Co. vs. CIT. (1975) f01 ITR 721 (J&K) it is held that AO cannot proceed to make an arbitrary addition and base his conclusion purely on guess work. He ought to have related his estimate to some evidence or material on the record as it is now well settled that if the profits shown by the appellant in his return are not accepted it is for the taxing authorities to prove that the appellant has made more profits than returned. Here the AO failed to bring on record anything which shows that appellant has earned more profit than declared. The AO has not made any enquiry and arbitrarily made the addition.

Considering all the above facts it would be fair and reasonable to restrict the disallowance to 5.00 of the expenses claimed based on disallowance made in subsequent year in the assessments completed u/s 148/143(3). Therefore, the addition made by the A.O. amounting to Rs. 40,72,135/-(Rs.8,14,42,700 x 0.05) is confirmed. The appellant will get the relief of Rs. 7,73,70,565/-. Therefore, the appeal on this ground is partly allowed'.

28. The addition sustained by Ld. CIT(A) is again made on the basis of past assessments but no corroborative evidence is placed before us to show that any excessive expenditure was booked. We therefore in the given facts and circumstances of the case are of the considered view that the expenditure incurred towards training expenses at Rs.8,14,42,700/- are genuine and has been rightly

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incurred in the interest of business and thus no disallowance was called for. Accordingly finding of Ld. CIT(A) is confirmed to the extent of deleting the addition of Rs.7,73,70,565/- and the finding of Ld. CIT(A) is set aside confirming the disallowance of Rs.40,72,135/-. Thus the assessee has rightly claimed the deduction for training expenses at Rs.8,14,42,700/-. Thus Ground No.4 of the assessee appeal is allowed and that of Ground No.4 of Revenue's appeal stands dismissed.

29. Accordingly assessee's appeal for Assessment Year 2013-14 is allowed and that of Revenue is dismissed.

30. Now we take up the Cross Appeals for Assessment Year 2015-16. Brief facts of these appeals are that a survey operation u/s 133A of the Act was carried out on 9.10.2015 at the premises of the assessee. During survey Shri Santosh Choubey, Chairman of the company accepted the discrepancy in purchase of books and agreed to surrender Rs.23 crores. This statement was retracted on 10.11.2015 contending that no bogus purchase are made. E-return of income filed on 29.09.2015 declaring income at Rs. 6,04,38,800/- which was subsequently revised on 19.01.2017 declaring same income. During survey operation on going through

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the Voucher Book No.2 BI-1 to 4 it was noticed by the survey team that assessee made purchase from M/s Utsav Collections, Vinayak Prakashan, Maa Durga Books Centre, Patel Books and Saraswati Agencies of Itarsi and there were some inconsistency. In order to verify the purchases, information u/s 133(6) of the Act was called from all, few replied and few remain unanswered which prompted the Ld. A.O to examine the issue. Ld. A.O also noted that registration with VAT authorities and Registration at Nagar Palika were just taken before few months of date of survey and the accounts of the creditors were opened just before making sale to the company. Based on these observations Ld. A.O concluded that the supply of material are bogus and they have been used as a conduit to inflate the purchases. Ld. A.O also observed that related/sister concerns are involved in this round manner of purchases in which sister concern of the assessee has sold study material to various sellers from whom assessee has shown purchase and money received from such supplies is again routed back to sister concern of the assessee. Ld. A.O accordingly considering the material available on record and finding of the case made the addition of Rs. 23 crores being the amount surrendered by the Chairman of the

company during the survey proceedings. Ld. A.O also made adhoc disallowance of certain expenses @10% of Rs.3,34,204/-, Disallowance u/s 40A(1)(a) for non deduction of TDS on commission expenditure at Rs.3,12,513/- and disallowance of interest expenses at Rs.3,16,358/-. Income assessed at Rs.29,14,01,880/-. Aggrieved assessee preferred appeal before Ld. CIT(A) challenging all the additions except for disallowance of commission expenses u/s 40A(1)(a) of the Act and partly succeeded.

31. Now the assessee is in appeal before the Tribunal challenging the disallowance of expenses on adhoc basis at Rs.3,34,224/- raising Ground No.1 and Revenue has raised Ground No.1 for deletion of addition by Ld. CIT(A) at Rs.23 crores on account of purchase of books and deletion of addition of disallowance of interest expenses at Rs.3,16,358/- raising Ground No.2.

32. Ld. Counsel for the assessee vehemently argued referring to the written submissions and the paper book running from page No.1 to 469. Main contention of the Ld. Counsel for the assessee was that the surrender made during the course of survey was retracted within a short duration of two months once the assessee was satisfied that all the purchase are genuine. Since the statement given during the course of survey has no evidentiary value and

nothing incriminating was found during the course of survey and also during the assessment proceedings Ld.A.O has not made the addition referring to any incriminating material or any other evidence gathered during the course of survey and the disallowance of purchase is purely based on a statement given during the course of survey u/s 133A of the Act. Written submissions of the Ld. Counsel for the assessee are reproduced below:-

A survey was conducted in the case of the assessee on 09-10-2015/10.10.2015.

During the course of survey statement of the Mr. Santosh Choubey, the Managing Director of the assessee was recorded u/s 133A on 10.10.2015. In the statement question was raised by the survey team regarding purchase of books made by the assessee company which was duly responded on behalf of the assessee company as under:

“ Q 6. : *During the course of survey operation, voucher book nos BI-1 to 4 have been found from which it is observed that you have made huge purchases of books in financial year 14-15 from firms like Utsav Collection, Vinayak Prakashan, Maa Durga Book Centre, Patel books, Saraswati Agencies etc based in Itarsi. All these bills are serially numbered and the inventory of books attached with all these bills is identical. Field enquiries were made at Itarsi and it is observed that none of these firms are available at the given address. In these circumstances, please explain why these expenses should not be treated as non genuine.*

*Ans. These purchases are duly recorded in the books of account and the payment thereof has also been made through banking channels. **However it is quite possible that some of these parties may not be available at the given address and I may not be able to prove the genuineness of the purchase to the satisfaction of the department.** Considering this fact and in order to buy peace with the department, I voluntarily come forward to declare expenses of Rs. 23.00 crores which may have been inflated in the books of accounts. I offer additional income for A.Y 15-16 and as I have already filed the return of income for A.Y 15-16, I will file revised return declaring the additional income by*

31.12.2015 after paying full taxes on the additional income declared. Today I am paying tax of Rs. 40.00 laks online.

It may be submitted that the survey in the case of the assessee commenced on 09.10.2015 at around 10.30 A.M. and it continued for more than 24 hours in the office of the assessee. There was no stock required to be counted. The assessee was not being allowed any access to his computer system and was informed by the survey team that the suppliers of the assessee are not traceable at the address appearing in their invoices and the purchases are bogus. The assessee was not being provided with any time or opportunity to verify its books of accounts or to trace the suppliers and was continuously being haunted to accept that the suppliers are not traceable and consequently the purchases are not verifiable. Under these circumstances the statement was given which was under duress and tremendous pressure created by the survey team. The assessee was not allowed any opportunity to verify the information being provided by the survey team and any opportunity to verify the books with the alleged incriminating record.

Further the assessee had not accepted that the purchases are inflated or the suppliers are not traceable as would be obvious from the statement itself. The Director stated that-

*“However it is quite possible that some of these parties **may** not be available at the given address and I **may not be able** to prove the genuineness of the purchase to the satisfaction of the department”.*

- a. The copy of the statement of the director of the assessee company was provided to the counsel of the assessee on 20.10.2015 and was received by the assessee on 21.10.2015. The contents of the statement were verified with the books of accounts and other material available and it was found that the purchase of books under consideration did not disclose any inflated purchases or understatement of income and accordingly the counsel of the assessee appeared before the AO on 29.10.2015 and informed the AO that the assessee has not concealed any income and hence has retracted the statement given u/s 133A. The AO however advised that the retraction should be filed through an affidavit. In compliance to the direction of the AO an affidavit was prepared on 07.11.2015 and was filed before the AO on 10.11.2015 retracting the surrender of income made in the statement during the survey.

- b. It may further be mentioned that as the declaration made in the statement recorded u/s 133A has been retracted and the retraction is made within a reasonable time no negative inference can be drawn on account of the surrender made in the statement. It may also be mentioned that it has been held by the Hon'ble Supreme Court in the case of CIT v S Khader Khan Son (2012) 254 CTR (SC) 228 *that Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition.*
2. Subsequently, after the retraction, the assessee was summoned u/s 131 and a statement was taken on 30.11.2015 the detailed information was given in the statement and it was specifically stated that all purchases are genuine and are verifiable from the books of accounts. It was further stated that whatever the details are required, the same would be filed.
3. During the course of assessment proceedings detailed submissions were made before the AO explaining the genuineness of the purchases & the following details were furnished before the AO to substantiate the genuineness of the purchases made by the assessee:
- i. *Copy of ledger account of purchase of books.*
 - ii. *Copy of ledger account of the corresponding sale of books.*
 - iii. *Detail of sale made to associate concern*
 - iv. *Bill wise details of purchase of books made along with corresponding quantity of the books purchase duly reconciled with the books of account the seized record and giving reference to the seized document.*
 - v. *Bill wise details of sale of books made along with corresponding quantity of the books sold duly reconciled with the books of account and giving reference to the seized document*
 - vi. *A summary of purchase and sale value wise and quantity wise to substantiate that the entire books purchased under consideration has been sold and such sales is duly recorded in the books.*
 - vii. *Original invoices for purchases and corresponding sale made were at all times available with the AO being part of the seized records. Photocopy of seized record along with books of accounts were also produced for ready reference.*
 - viii. *Copy of audited financial statements, and ITR of Utsav Collection, Vinayak Prakashan, Maa Durga Book Centre, Patel books, Saraswati*

Agencies, which are the parties mentioned in the statement recorded u/s 133A from whom the alleged bogus purchases were made.

- ix. Copy of sales tax orders of the aforesaid entities duly confirming the purchase/sales made by suppliers.*
- x. Copy of sales tax order of the assessee company duly confirming the sale of the assessee.*
- xi. Names of all the suppliers, address of the suppliers, name of the contact persons, their telephone Number along with documentary proof of the address.*
- xii. Bank statement of the assessee from where the payments were made for the books purchased by the assessee. It may be submitted that all the payments for purchase were made by the assessee through account payee cheque*
- xiii. Bank statement of the suppliers of the books wherein the payments received by them from the assessee were deposited was also obtained from the respective suppliers and submitted. (It may be mentioned that in none of the bank statements any cash is found withdrawn which may raise a possibility that the amount paid by the assessee company was routed back to it in a clandestine manner*
- xiv.** The party wise detail of the purchase made for Rs. 43.53 crore
- xv.** Copy of ITR, Computation of income, Audited financial statements and audit report for the relevant period, copy of sales tax order and copy of bank statement with respect to all the suppliers namely.

MAA DURGA CENTER

VINAYAK PRAKASHAN

SARSWATI AGENCIES

UTSAV COLLECTION

PATEL BOOKS

Books world

Kadambry Book Trading

Kushal Trading

Darsh enterprises

Paras publishers

- xvi. Copies of ledger accounts of the suppliers who have supplied the books under consideration to the assessee during the year are enclosed.
- xvii. Quantitative details of the books purchased/sold from the suppliers under consideration

Thus, all possible information was furnished to substantiate the genuineness of the purchases made. Information with regards to corresponding sales was also furnished. Quantity wise details of sales and purchase were also furnished (Pg. 120-135 of PB). No deficiency or inaccuracy was found by the AO in any of the details furnished by the assessee.

During the course of assessment proceedings the AO issued notice to all the 10 suppliers u/s 133(6) out of which 5 suppliers had made the compliance whereas notice in the case of other 5 suppliers returned back. The assessee apprehends that in all the five cases where the notices returned unserved, the notices were issued by the AO at the incorrect address. It is submitted that the assessee had provided the AO the latest address of these suppliers along with copies of address proof. Thus, there was no scope for the notices to have been returned back, had they been sent to the correct address. The assessee requested the Ld. CIT(A) to get verified the fact whether the un-served notices were issued at the correct address as provided to the AO.

Further all the information required by the AO from the suppliers in the notices issued was already placed on record. The assessee also informed the AO that all the suppliers can be produced before the AO if the AO desires.

4. The AO was also informed that the books purchased of Rs. 43.53 crore under reference are already sold for Rs. 44.51crore to the associate concerns and are included in the total sales of books made by the assessee at Rs. 61.01 crore. Quantitative reconciliation of the books purchased and sold was furnished in the manner desired by the AO. Details of purchase of Rs. 43.53 crore (pg. 95-107 of PB) and sale of Rs. 44.51 crore (Pg109-119 of PB) were also produced for verification to substantiate that the books purchase under consideration has been sold. The sales made by the assessee have not been doubted by the AO.

5. Submission were also made with reference to various deficiencies noticed by the AO in the statement recorded u/s 133A explaining the reason why they cannot be considered as reason for holding the purchase as non genuine. However all the submissions made by the assessee and the fact that the books have also been sold were ignored by the AO and addition were made after making the following observations:

a. The above parties have taken TIN from sales tax department of Madhya Pradesh after making such sales to the assessee

In this regard it is submitted that the books were provided by the suppliers from time to time along with invoice and inventory details. On subsequent verification of records it was observed that the invoice do not carry any mention of TIN Number. This deficiency was brought to the notice of the suppliers who thereafter obtained TIN NO and have put a seal of their TIN No(s) on the invoices previously issued. Thus there is no occasion to doubt that the invoices received are back dated. Further during the course of assessment proceedings the assessee has furnished the copy of sales tax returns/assessment orders of these suppliers which duly establish the genuineness of the purchase. Further obtaining sales tax number was a statutory procedure and even if it is presumed that the supplier failed to follow the procedure, the failure would not make any purchase non genuine. Thus the observation made was duly explained and was otherwise also not very relevant for the purpose of determination of the genuineness of the purchases.

b. In case of two creditors i.e Books World and Kadambary Book Trading, even gomasta certificate from Naga Palika was taken on 28.01.15

It is submitted that goomasta is a license which every person is supposed to take from the municipal authorities before commencing any commercial activity within the municipal limits. However in practice this is a default which is most commonly done by the businessman. Moreover the activity of sale/purchase of the supplier is duly established and simply failure to obtain the required permission from the municipal authorities (which admittedly has been regularized by the supplier in the year itself) would not be a factor to be considered in determination the genuineness of the purchase.

c. The accounts of the creditors are opened just before making sale to the assessee company.

The observation of the AO is not very relevant as the supplier would be opening the account as per their convenience and the date of opening of the bank account does not have any effect on the genuineness of the purchase.

d. On verification of the bank statements of the creditors it is noticed that in all cases, at every moment of sales, the payment of sales received first from Assessee Company and thereafter purchase payments were made to sister concerns of the assessee company.

The assessee had made payment to the suppliers for purchase of books. These suppliers have also made payments to entities from whom they have procured the books which in some cases happened to be the associated concerns of the assessee. However no negative inference can be drawn from this fact as the books purchased and sold by the assessee is duly accounted and explained as detailed above.

e. All the creditors shown to have made only the requisite sale from Assessee Company and not from others except nominal.

This observation of the AO only confirms that the purchase made by the assessee is duly confirmed by the suppliers and does not make out any reason to suspect the genuineness of the purchases.

f. The assessee specifically surrendered income of Rs. 23 crore.

The assessee was put under tremendous pressure by the survey team and was made to believe that the suppliers were not traceable and consequently the genuineness of the purchase is not established and consequently he should make a declaration. No opportunity was provided to him to verify the correctness of the information being given to him and to verify his records.

Further the same was retracted within a reasonable time. More so once the purchases are established to be genuine, its corresponding sales are not questioned there cannot be any occasion to make any addition on the basis of a retracted statement.

It may also be mentioned that it has been held by the Hon'ble Supreme Court in the case of CIT v S Khader Khan Son (2012) 254 CTR (SC) 228 that *Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no*

evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition.

g. The assessee filed retraction on 01.12.2015 that is almost two months after the survey.

This observation of the AO is factually incorrect as detailed below.

The copy of the statement of the director of the assessee company recorded on 10.10.2015 was provided to the counsel of the assessee on 20.10.2015 and was received by the assessee on 21.10.2015. The contents of the statement were verified with the books of accounts and other material available and it was found that the purchase of books under consideration did not disclose any inflated purchases or understatement of income and accordingly the counsel of the assessee appeared before the AO on 29.10.2015 and informed the AO that the assessee has not concealed any income and hence has retracted the statement given u/s 133A. The AO however advised that the retraction should be filed through an affidavit (Pg.62 of PB which is an affidavit of the director which is not contraverted). In compliance to the advice of the AO an affidavit was prepared on 07.11.2015 and was filed before the AO on 10.11.2015 retracting from the statement made during the survey. Thus the retraction was made in less than one month from the date of survey and within a week of providing the copy of the statement recorded.

h. The assessee was confronted with the fact that the parties from whom purchases are made are not traceable.

During the course of survey proceedings the statement of the director of the assessee company was being recorded u/s 131 during which the assessee was informed that the suppliers are not traceable at the stated address. The assessee had no reason to disbelieve the information.

Thus once it was brought to the notice of the assessee that the suppliers are not available at the last known address, there was no way the assessee could have presented these suppliers before the AO. Under the circumstances the assessee had no option but to express its inability to produce the suppliers.

However subsequently the assessee had made enquiries and has found out the addresses of the suppliers, the details of which were duly furnished before the AO during the assessment proceedings. Copies of proof of address like Aadhar Card, Rent agreement, bank pass book were also furnished. The AO was also specifically informed

that the suppliers can be produced for examination of the AO should he so desire.

Thus no negative inference regarding the genuineness of purchase could have been drawn from this observation.

- i. The assessee was confronted with the fact that the amount paid to the parties for purchases made are coming back from such parties to the assessee's other concern.**

The assessee had made payment to the suppliers for purchase of books. These suppliers have also made payments to entities from whom they have procured the books which in some cases happened to be the associated concerns of the assessee. However no negative inference can be drawn from this fact as the books purchased and sold by the assessee is duly accounted and explained as detailed above.

- j. It is settled position that statement taken on oath during survey or search will be treated as final for surrender undisclosed income. Reliance in this regards was placed on the judgments of Supreme Court in the case of Surjeet Singh Chhabra v UOI, Punjab & Haryana High Court in the case of Rakesh Mahajan vs CIT and Chennai bench of the ITAT in the case of DCIT v B.K.Muralikrishna.**

The observation of the AO does not portray the correct legal and factual position and the cash laws relied upon by him are not relevant to the issue under consideration.

It would be appreciated that the assessee had not accepted that the purchases are inflated or the suppliers are not traceable.

Further the facts of the case of the assessee are directly covered by the decision of the Hon'ble Supreme Court in the case of CIT v S Khader Khan Son (2012) 254 CTR (SC) 228 that *Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition.*

As regards the case laws relied upon by the AO it is submitted that

1. Surjeet Singh Chhabra V UOI in SLP (C) NO 14028/96

This case is with reference to seizure of gold under FERA and Custom Act. The issue for consideration before the court was whether any order can be passed ignoring the request of the

accused to grant an opportunity to cross examine a witness in the case of gold seized. In that case gold was seized from the accused who has admitted to this fact at the time of recording of his statements. The department also had a witness who testified that the gold was seized from the possession of the accused and the accused was not provided any opportunity to cross examine the witness, which was claimed by the accused to be violation of natural justice.

However the court held that once the accused has accepted in his statement that the gold was seized from him, this confessional statement is binding on him and denial of an opportunity to cross examine the witness does not constitute any violation of natural justice. Thus, the act under which the judgment was passed and the question being addressed by the court were distinctly different from the case of the assessee

2. Rakesh Mahajan V CIT (2008) 214 CTR 218 judgment date 24.09.07.

In this case the statement was given in contemplation of death and it was held by the court that a person expecting to die will have no fear and will not give a false statement. Further a opportunity was provided to the person to negate the contents which he failed to negate. Thus the facts of that case are also not having any relevance to the case of the assessee.

The ld. A.O. did not accept the contention of the assessee as indicated above. Merely on the basis of declaration made in the statement recorded u/s 133A, he concluded that Rs. 23 crores is an undisclosed income of the assessee.

After considering all submissions the ld. CIT(A) allowed the assessee's appeal. The ld. CIT(A) discussed all the submissions made before him and *held in para 11 pg.29 that during the survey, no incriminating material or undisclosed income or investment were found. It is stated by the appellant that under the mental pressure, the amount of 23 crores was surrendered. It is undisputed fact that statement recorded u/s 133A has a evidentiary value but it is a settled position of law that addition cannot be sustained merely on the basis of statement without any corroborative material to support the statement. The A.O. failed to bring any material or correlate the disclosure made with any incriminating material gathered during the survey.*

ARGUMENT

It is humbly submitted that the addition has been made merely on the basis of statement recorded. There is no material found during the course of the survey that the assessee has concealed any income. Complete details were filed before the Ld. A.O. including the addresses, income tax returns, balance sheet, bank statement of the suppliers. No cognizance has been taken about the quantitative details filed before the ld. A.O. If it is presumed that the purchases are bogus, i.e. no purchases are made then how can there be any sale of that material. Undue importance is given about the TIN number of the registration under the Gumasta Act. No cognizance has been taken that all the transactions have been undertaken through the banking channel. Even the bank accounts of the seller show that purchases and sales have been affected through banking channel. The Ld. A.O. did not comment upon the income tax returns and assessments of the seller which clearly proves that the transaction is genuine. The addition has been made purely on the basis of the statement recorded during the survey. In this connection, it is humbly submitted that the statement is not binding on the assessee in view of the decision of the Hon'ble Supreme Court in the case of CIT v/s. S. Kadar Khan 352 ITR 480. The assessee further relies on the following decisions.

k. Mahesh Ohri v/s. ACIT 154 TTJ 33 U.O. (Delhi)

Addition on the basis of statement during survey in absence of any material connected during the course of survey, no addition can be made on the strength of the statement.

**ACIT v. Kishan Lal Jewels (P.) Ltd. (2012) 147 TTJ 308 (Del.)
(Trib.)**

The assessee while furnishing necessary information regarding the transactions and the aforesaid parties like purchase bills issued against goods purchased, sales- tax registration numbers of the parties, PANs, their confirmations and Bank statements showing the debit of the amount paid through Account payee Cheques to them in the account of assessee and credited in the Bank Account of sellers, had discharged its primary onus, thereafter the onus shifted on the department to rebut the same.

Addition under section 69C was held to be not justified.

**CIT v. Nikunj Eximp Enterprises (P.) Ltd. (2013) 216 Taxman 171
(Mag.) (Bom.)(HC)**

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Sale to government department-Alleged bogus purchases- Sales not doubted, merely because suppliers not appeared before the Assessing Officer or Commissioner (Appeals), purchases cannot be disallowed.

DCIT v Shri. Kanakmal Sanghavi (2006) 6 ITJ 760(Indore)

“Examination on oath- amount surrendered during survey proceedings-later on retracted- material produced to justify the claim- HELD- It is well settled that admission may be relevant and is an important evidence but is not conclusive and may be proved to be untrue or having been made under mistake of facts or law-retraction of disclosure is therefore valid.”

Ground No.2Deletion of addition of Rs.3,16,358/-.

The ld. A.O. had disallowed interest of Rs.3,16,358/- on the ground that the assessee has advanced interest free loan of Rs.95,44,174/-. The said interest is paid on the car loan which is for the business purposes. The Ld. CIT(A) has allowed it on this ground. It is humbly submitted that the borrowing has been done for the business purposes and the interest free loan has not been advanced from the borrowed funds.

In view of the above, it is humbly submitted that the additions deleted by the ld. CIT(A) may please be upheld.

33. Per contra Ld. Departmental Representative apart from supporting the finding of Ld. A.O also referred to the paper book dated 8.4.2021 running from page 1 to 61 and contended that the alleged purchase transactions with various concerns as mentioned in the assessment order are not genuine sellers and the transactions with these concerns are merely in the nature of accommodation and routing of purchase and the Chairman of the company having sensed that the purchases are not genuine has rightly accepted and surrendered Rs.23 crores and the statement

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was not under any stress or coercion and thus should have been honoured by the assessee.

34. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions and paper book filed by both the parties. We will first take up Ground No.1 raised by the revenue challenging the deletion of addition of Rs.23 crores by Ld. CIT(A) which was made by the Ld. A.O on account of non genuine expenses incurred for purchase of books.

35. We observe that during the course of survey Voucher Book No.BI-1 to 4 was found showing that during Financial Year 2014-15 huge purchase of books were made from some concerns placed at Itarsi. Bills were serially numbered and inventories book attached with these bills. During the survey Chairman of the assessee company was confronted so as to show that these purchases are genuine. To this it was *stated* *“it is quite possible that some of these parties may not available at the given address and may not available to prove the genuineness of the purchase to the satisfaction of the department. Considering this fact and in order to buy peace from the department has voluntarily come forward to declare expenses of Rs.23 crores which may have been inflated in the books*

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of accounts". It was claimed by Ld. Counsel for the assessee that survey commenced on 9.10.2015 at 10.30 AM and continued for 24 hours and there was no stock to be counted and assessee was not allowed to access to its computer system and survey team merely informed that suppliers of the assessee are not traceable at the address appearing in the invoices and purchases are bogus. Under these circumstances, the assessee has claimed that the statement was given under duress and tremendous pressure. The copy of the statement was given on 21.10.2015. Retraction statement with an affidavit was prepared within a short span of 2 weeks on 7.11.2015 and filed before the Ld. A.O on 10.11.2015 submitting that the surrender of Rs.23 crores made during the course of survey is retracted as all the purchases recorded in the books are genuine.

36. We further note that during the course of assessment proceedings detailed submissions were made to explain the genuineness of purchases and to substantiate the same has filed leger account of purchase of books corresponding to sale, bill wise details of purchase along with quantity, audited financial statements and Income Tax Return of the vendors, copy of Sales Tax orders of these entities from whom assessee purchased.

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Assessee has also provided the details of contact person and telephone number and bank account details of all the suppliers. The purchases made by the assessee during the year have been sold during the year. Quantitative details of books purchased and their corresponding sale are available on record. Sales have not been disputed by the Ld. A.O. Further the addition of Rs.23 crores is only the figure of surrender. Ld. A.O has not made the addition specifically with regard to the purchase made from various vendors which are alleged to be bogus.

37. We further note that Ld. CIT(A) after appreciating the facts and settled judicial precedents decided in favour of the assessee observing as follows:-

*11. **Ground No. 2:-** Through this ground of appeal the appellant has challenged the addition of Rs. 23,00,00,000/-.*

The appellant had purchased books of Rs. 43.53 crores during the year under consideration. The appellant had submitted the details of the suppliers, their address proof, balance sheets, bank statements, sales tax orders returns etc to establish the genuineness of the suppliers/purchases. The AO however noted that the suppliers could not be traced during the survey and notices issued during assessment proceedings also returned unserved in some cases. He also noticed various

discrepancies in the details submitted and held the purchases to be non genuine to the extent of Rs. 23 Crore.

I have considered the facts of the case, contentions raised by the appellant and findings of the AO.

The key factors to be determined are:

a. Whether the appellant has submitted adequate documents to establish the genuineness of the purchases.

b. Whether the deficiencies noted by the AO are material enough to suspect the genuineness of the purchases.

c. If the purchases are not otherwise found to be non genuine can addition be made solely on the basis of statement recorded u/ s 133A especially when it has been retracted through an affidavit.

1. The appellant had submitted various documents for establishing the genuineness of the purchase :

i. The appellant has provided the Name, addresses and telephone numbers of the suppliers along with their address Proof during the course of assessment proceedings. Vide written submission dated 04.10.2017 filed before the AO, the appellant had submitted the complete details of the suppliers along with address proof in the shape of Aadhar Card/Rent agreement/bank pass book etc.

ii. During the assessment proceedings the appellant has also submitted the copy of ITR, financial statements, Bank statements of the suppliers, copy of sales tax order/returns of

the suppliers. It is evidenced from the bank statement of the Suppliers that all the payments made by the appellant are duly received by them. Further the sale reported by the suppliers is either equal to or more than the purchases shown by the appellant from the respective supplier. It is noted that in most of the cases the accounts are audited under the Income Tax act and ITR IS furnished. No material is brought on record by the AO to substantiate that the sale shown by these suppliers in their ITR/sales tax return have been questioned/doubted by any of the authorities. No cash is found withdrawn in the bank accounts of any of the suppliers which may create doubt about the end Use of the funds in the hands of the suppliers. The AO had not doubted the correctness or genuineness of any of the documents submitted.

iii. Copy of bank statement of the appellant wherein all payments made to the suppliers are found to have been made through account payee cheques.

iv. Invoice wise details of purchase made of Rs. 43,53,28,040/_ and invoice wise details of its subsequent sales of Rs. 44,51,49,705/ -along with quantitative details of the sales and purchase. All the sales/purchases are duly linked to the seized material. Thus the entire purchases made by the appellant is already sold and that too on a higher value. It is also noted that the sales made by the appellant has not been doubted by the AO. Thus once the sales is not doubted, it would not be justified to doubt its corresponding purchase.

v. Copy of sales tax order of the appellant company which duly confirms the sale of the appellant.

vi. Copy of sales account, purchase account, suppliers account.

vii. Copies of invoices of sales/purchase

It is also observed that the AO had not doubted the sales of the appellant. The Department during the course of survey and post survey proceedings have also accepted that the books purchased by the appellant were later on sold also and the sale/purchase is duly recorded in the books of account which is inferred from Question 27 of the statement of the M.D. recorded u/s 131 on 30.11.2015 where after discussing the non genuine purchases in Q-22-23 of the statement the Director was queried about the sales made. The question asked is reproduced herein below:

*Q-27: "on. examination of your books of accounts it is seen that AISECT Ltd has **later made sale to** following sister concerns in F. Y. 2014-15 Rs.44,51,49, 705/-*

The question raised itself establishes that the books purchased under consideration of Rs. 43,53,28,040/- were found to be subsequently sold for Rs. 44,51,49,705/- .

It is also seen that no unexplained stock in hand or cash in hand was found during survey.

Thus the purchases recorded are duly confirmed by the suppliers, the payments are made by account payee cheques, the same are duly received by the suppliers, the suppliers have shown the sales made by them to the appellant in their ITR/ sales tax returns which have been accepted by the Income Tax Department and the sales tax department. No cash

is found withdrawn from the bank accounts of any of the suppliers. The quantitative details of the sale and purchases were submitted and no deficiency is noticed by the AO in these details. It has to be appreciated that no sales could have taken place without corresponding purchases. All these facts establish the genuineness of the purchases beyond doubt.

2. The A.O has however raised doubt about the genuineness of the purchase on the basis of various observation which are discussed herein below:

i. The A.O has stated that the notices issued to the suppliers returned un served. However in view of the fact that the appellant had claimed that the notices were sent to incorrect address and have submitted the address proof/telephone numbers and have also submitted all the details required by the AO in the notice issued and the AO have not doubted the correctness and genuineness of the information submitted. It is also seen that the appellant during the assessment proceedings have offered that the suppliers can be produced before the AO. Reference is made to the written submissions dated 5.4.2017 in Para 1.f.a wherein it is mentioned that "the appellant has already provided the complete details of the suppliers and is prepared to produce them before you if you so direct»

Under the circumstances no adverse inference was warranted for non serving of the notices.

ii. The A.O was also doubt full of the genuineness of the purchase as some suppliers have taken TIN from sales tax department of Madhya Pradesh after making sales

to the appellant

It is seen that it is not disputed that the suppliers were duly registered with the sales tax authorities and any delay in making compliance of any statutory liability by the supplier cannot be taken as a ground of doubting the genuineness of the transaction specially when the transaction has been duly reported to the tax authority in the periodic return/assessment order.

iii. The AO also observed that In case of two creditors i.e Books World and Kadambary Book Trading, even gumasta from Nagar Palika was taken on 28.01.15

It is held that taking of Gumasta or failure to take Gumasta is not relevant for determining the genuineness of any transaction.

iv. The AO also observed that the accounts of the creditors are opened just before making sale to the appellant company. It is seen that opening of a new bank account or continuing with the old one is a discretion of the supplier and the genuineness of the transaction cannot be affected by the date on which the bank account is opened.

The observation of the AO is not very relevant as the supplier would be opening the account as per their convenience and the date of opening of the bank account does not have any effect on the genuineness of the purchase.

v. The AO On verification of the bank statements of the

creditors noticed that in all cases, at every moment of sales, the payment of sales received first from Appellant Company and thereafter purchase payments were made to sister concerns of the appellant company.

It is observed that it is an admitted fact that the suppliers have purchased the books sold by them from the associated concerns also and thus any payments made by them to their suppliers cannot result in any negative inference being drawn against the genuineness of the transaction.

vi. It was also observed by the AO that all the creditors shown to have made only the requisite sale from Appellant Company and not from others except nominal.

It is seen that the fact that suppliers have shown sales made to the appellant company in their accounts and have filed there ITR along with audited accounts is not disputed. Thus once the purchase shown by the appellant is reciprocated by the supplier f{~~ who is a regular tax appellant and the transactions are done through banking channels. The initial onus casted upon the appellant to establish the genuineness of the transaction stands discharged.

I have also gone through the various judgmenu, relied upon by the appellant.

a. In the case of ACIT v. Kishan Lal Jewels (P.) Ltd. (2012) 147 TTJ 308 (Del.) (Trib.) it was held by the Tribunal that in case where the appellant while furnishing necessary information regarding the transactions and the aforesaid parties like purchase bills issued against goods purchased) sales- tax registration

numbers of the parties} PANs} their confirmations and Bank statements showing the debit of the amount paid through Account payee Cheques to them in the account of appellant and credited in the Bank Account of sellers} had discharged its primary onus} thereafter the onus shifted on the department to rebut the same.

The facts of the case are squarely applicable to the case of the appellant as the appellant has also furnished the all the details of the transaction including the purchase bills, sales tax return/ order, ITR and bank statements.

b. In the case of CIT v. Nikunj Eximp Enterprises (P.) Ltd. (2013) 216 Taxman 171 (Mag.) it was held by the Bombay High Court that in case where the appellant is found to have made Sale to government department which were not doubted purchases cannot be held to be non genu me merely because suppliers have not appeared before the Assessing Officer or Commissioner (Appeals)

C. In the case of Rajesh P. Soni v. ACIT (2006) 100 TTJ 464 (Ahd.) (Trib.) it was held by the Tribunal that Addition under section 69 was not justified merely because suppliers could not be located and were not produced for examination.

Considering the facts of the case and the judicial pronouncements relied upon by the appellant it cannot be said that the purchases made by the appellant were unexplained or non genuine.

The AO also drew support from the fact that the appellant specifically surrendered income of Rs. 23 crore.

In this regards reference is made to the statement recorded during survey in which the declaration was made. It is seen that the appellant has made a declaration of Rs. 23 crore. However the appellant has not accepted that the purchases are non genuine or the suppliers are not traceable or the purchases are inflated. The relevant question raised and the answer given is reproduced herein below:

"Q 6. :During the course of survey operation, voucher book nos BI-1 to 4 have been found from which it is observed that you have made huge purchases of books in financial year 14-15 from firms like Utsav Collection, Vinayak Prakashan, Maa Durga Book Centre, Patel books, Saraswati Agencies etc based in Itarsi. All these bills are serially numbered and the inventory of books attached with all these bills is identical. Field enquiries were made at Itarsi and it is observed that none of these firms are available at the given address. In these circumstances, please explain why these expenses should not be treated as non genuine.

Ans. These purchases are duly recorded in the books of account and the payment thereof has also been made through banking channels. However it is quite possible that some of these parties may not be available at the given address and I may not be able to prove the genuineness of the purchase to the satisfaction of the department. Considering this fact and in order to buy peace with the department, I voluntarily come forward to declare expenses of Rs. 23.00 crores which may have been inflated in the books of accounts. I offer additional income for A. Y 15-16 and as I have already filed the return of income for A. Y 15-16, I will file revised return declaring the additional income by 31.12.2015 after paying full taxes on the additional income declared. Today I am paying tax

of Rs. 40.00 laks online.

It is observed that in the statement recorded, the appellant had not accepted that the purchases are inflated or the suppliers are not traceable as is noted from the statement itself wherein it is mentioned by the Director that

*"However it is quite possible that some of these parties **may** not be available at the given address and I **may not be able** to prove the genuineness of the purchase to the satisfaction of the department".*

On the facts it cannot be said that the appellant accepted any transaction as non genuine.

It is also seen that genuineness of the purchases were also doubted as no transportation expenses were found to have been incurred. The appellant has explained that the books were purchased by the suppliers from various concerns at the office site of the appellant and were converted into sets and supplied to the appellant at that site and consequently no transportation expenses were required to be incurred. On the facts of the case the explanation of the appellant cannot be called as improbable and cannot be ground to consider the purchases as non non genuine.

Thus it is seen that the various reasons mentioned by the AO to doubt the genuineness of the purchases are not relevant and as the appellant had submitted all required records including quantitative and monetary details of sales and purchase and the sales having not been doubted, its corresponding purchase cannot be termed as non genuine.

It is also seen that the AO has held that the appellant has made non genuine purchase of Rs. 23 Crore. No specific details of the invoices which are found to be non genuine or any other fact from which the details of bogus purchase could be ascertained is mentioned in the order. Thus the only inference that can be drawn is that the addition is made on the basis of the declaration made u/s 133A. The AO has held that addition can be made on the basis of statement itself and have relied upon decisions of the Honble Supreme Court of India in the case of Surjeet Singh Chabra v UOI, the Punjab & Haryana High Court in the case of Rakesh Mahajan V CIT and that of the ITAT Chennai in the case of DCIT V B K Murlikrishna. All these decisions are referred by me and it is found that none of them are applicable to the case of the appellant. In the case of Surjeet Singh Chabra gold was seized under the FERA & Customs Act from the accused who on statement accepted that the gold was seized from him. In the case o the appellant no such seizure is made from the appellant and the FERA act has also no applicability in the case of the appellant.

In the case of Rakesh Mahajan the statement was given in contemplation of death by a person expecting to die making a distribution of his wealth amongst his family. The court held that once a person is expecting to die he has no fear and he will not make any incorrect statement. The facts of the case of the appellant are not comparable.

Further the dispute regarding the validity of the declaration made in the statement recorded during survey u/s 133A of the Act has now been finally settled by the Hon'ble Supreme Court in the case of CIT v S Khader Khan Son (2012) 254

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CTR (Se) 228 wherein it was held by the court that Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition.

The Hon'ble ITAT, Indore while deciding the appeals of Shri Sudeep Maheshwari in ITA No. 524/Ind/2013 and 299/Ind/2017 for A.Y. 2010-11 and A.Y. 2008-09 dated 13.02.2019 held as under:-

"It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.3 crores in personal name. It is also stated that the case laws as relied by the A.o. are not applicable on the facts of the present case. The assessee has relied on the decision of the Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect. However, reliance is placed on the judgment of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any [ITA 5241Ind12013 & ITA No.2991Ind12017] [Shri Sudip Maheshwari, Bhopal] corroborative evidence in support of such evidence. It was further urged by the assessee that admission should be based upon certain

corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. In the absence of such material, coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs. 69,59,000/- and Rs.75,00,000/- in A.Y 2008-09 and 2009-10 [ITA 5241Indl2013 & ITA No.299/Ind/2017 (Shri Sudip Maheshwari, Bhopal) respectively. The A.O failed to co-relate the disclosures made in the statement material gathered during the search. Therefore, no inference is called for in the finding of the Ld.CIT(A) and is hereby affirmed. Ground raised by the revenue is dismissed.”

During the course of survey, no incriminating material or undisclosed income or investments were found. It is stated by the appellant that he was under mental pressure. In order to buy the peace of the mind, he made declaration of Rs. 23,00,00,000/-. It is disputed fact that the statement recorded u/s 133A was having a evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There have to be some corroborating material to support the statement. The A.O. failed to bring any material which supports the contents of the statement. The A.O. failed to correlate the disclosure made with the incriminating material gathered during the survey. Therefore, the addition made by the A.O. amounting to Rs. 23,00,00,000/- is Deleted.

Therefore, the appeal on this ground is Allowed.

38. The above finding of Ld. CIT(A) is well supported by settled judicial precedents of which few of the decision are of this Tribunal also wherein it has been consistently held that if the Ld. A.O fails to corroborate the disclosures made in the statement given during the course of survey with the incriminating material gathered during the course of such survey, additions cannot be made purely on the basis of statement. Hon'ble Apex Court in the case of *CIT v/s S Khader Khan Son (supra)* has specifically held with regard to survey action u/s 133A of the Act that "*Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition*". Hon'ble Delhi High Court in the case of *Mahesh Ohri V/s ACIT 154 TTJ 33* held that "*addition on the basis of statement during survey in absence of any material connected during the course of survey, no addition can be made on the strength of the statement.*"

39. The statement given by the assessee during the course of survey u/s 133A of the Act and offering Rs.23 crores to tax for inflated purchases was not a statement on oath and thus has no evidentiary value. The material in this case should have been the evidence gathered by the survey team questioning the genuineness of the suppliers and further finding any information during the

course of assessment proceedings. The assessee has filed various details of documentary evidence with regard to the alleged suppliers of books which includes copies of bills, quantity details, bank account, audited financial statement, Income Tax Return, VAT registration, Gumasta certificate and copy of ledger accounts. Details of corresponding sales of the items of the various purchases during the year have also been filed. Sales of the assessee has not been disputed at any stage. Out of notices sent u/s 133(6) of the Act by Ld. A.O to 10 suppliers, five made due compliance but for remaining 5 suppliers it is stated by respondent that wrong address was mentioned and the latest address was provided but no further action was taken by Ld. A.O. However, Ld. CIT(A) got necessary verification done.

40. Looking to the above stated facts we are of the view that Ld. A.O was not able to pin point any irregularity in the purchase made by the assessee during the year, providing or laying hand on any contrary material to those filed by the assessee, no new information was gathered which could indicate that the alleged suppliers are non genuine. Even while making addition no reference is given to

the purchases made from different suppliers and the additions is made only for the amount of surrender made during the course of survey which in view of the settled judicial precedents was uncalled for. Further Ld. A.O also failed to take note of the fact that when the sales have been accepted then there has to be corresponding purchases. Hon'ble Gujarat High Court in the case of *CIT V/s President Industries 258 ITR 654 (Gujarat)* has held that "*amount of sales itself cannot represent the income of the assessee who has not disclosed sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales*".

41. So when the Ld. A.O had accepted the sales then he ought to have given the benefit of purchase against the sales. Without rejecting the book results and without finding anything contrary to the claim of the assessee and not referring to any incriminating material found during the course of survey the addition for income offered to tax during the course of survey at Rs.23 crores but retracted soon, was thus uncalled for. We therefore in the given

facts and circumstances of the case and respectfully following the judgments/decisions stated herein above fail to find any inconsistency in the finding of Ld. CIT(A) deleting the addition of Rs.23 crores made by the Ld. A.O made purely on the basis of statement given u/s 133A of the Act. Accordingly Ground No.1 of revenue stands dismissed.

42. As regards Ground No.2 of the Revenue's appeal relating to deletion of disallowance of interest expenses at Rs.3,16,358/-, perusal of records shows that this amount was paid on the car loan taken from Bank of India and is purely business expenses as the car is used for purpose of business. Giving of interest free loan/advance to staff/sister concern needs to be examined on the facts of particular case and the commercial expediency of the transaction but it can no way lead to disallowance of genuine business expenditure. We thus find no infirmity in the finding of Ld. CIT(A) deleting the disallowance of Rs.3,16,358/-. Thus Ground No.2 of the Revenue is dismissed.

43. Now we are left with the sole ground raised by the assessee for Assessment Year 2015-16 for the *ad hoc* disallowance of

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Rs.3,34,205/- sustained by Ld. CIT(A). We observe that this disallowance was made for want of verification of various expenses incurred under the head Exhibition expenses, Repair & Maintenance, Meeting expenses, Miscellaneous expenses and General expenses. Though opportunity was granted to the assessee to get these expenses verified but during the verification it was noticed that some of the expenses debited under the head are not verifiable, most of the vouchers are self made and payments incurred in cash. We therefore looking to the totality of facts we are of the view that Ld. CIT(A) has rightly confirmed the disallowance at Rs.3,34,204/-. Accordingly Ground No.1 raised by the assessee is dismissed.

44. The other grounds are general in nature which needs no adjudication.

45. Thus Appeal of the assessee and Revenue for Assessment Year 2015-16 are dismissed.

46. In the Result for Assessment Year 2013-14, Assessee's Appeal ITA No.945/Ind/2019 is allowed and that of Revenue in ITA

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No.952/Ind/2019 is dismissed. For Assessment Year 2015-16 for both assessee's appeal ITA No.946/Ind/2019 and that of Revenue in ITA No.953/Ind/2019 are dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 28.06.2021.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 28.06.2021

/Dev

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

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