

**In the Income-Tax Appellate Tribunal,  
Amritsar Bench, Amritsar**

**Before : Shri Laliet Kumar, Judicial Member And  
Dr. Mitha Lal Meena, Accountant Member**

**ITA Nos.588to590/Amr/2019  
Assessment Year's 2009-10 to 2011-12**

<b>Shri Sardari Lal</b> 9/436/4, Adarsh Nagar, Banga Distt. S.B.S. Nagar Pin-144505 <b>PAN:AADPL3612L</b> <b>(Appellant)</b>	V.S.	<b>ITO Ward</b> <b>Nawanshahar</b>  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Sudhir Sehgal, Adv.
<b>Respondent by</b>	Smt. Jatindra Kaur, D.R.

<b>Date of Hearing</b>	15.07.2021
<b>Date of Pronouncement</b>	16.08.2021

**ORDER**

**Per Laliet Kumar, J.M.**

These are three appeal filed by the assessee feeling aggrieved by the order passed by the CIT(A) for the assessment year 2009 – 2010 to 2011 – 2012 onthe grounds/ revised grounds mentioned in the memo of appeals/ revised grounds dated 12/7/2021 .

**BACKGROUND**

1. The assessee is an individual and is a senior citizen having aged 74 years have been filing the returns of income originally declaring only 'salary income' from one partnership concern, namely M/s. Aggarwal Chemical Industries, in which, HUF is a partner and some interest income. That firm is being assessed to tax separately in all the years under consideration.
2. The assessee had been maintaining in his individual capacity, certain bank accounts with IDBI Bank and HDFC Bank Ltd. and those accounts had not been disclosed to the department and the modus operandi of the assessee was that he used to purchase 'Rubber Chemicals' and which was sold to various parties and the sale proceeds was received on account of such sales through banking channel and deposited in the above said bank accounts in various years. It is also a fact as borne out from the copies of the bank account, which has been placed in the paper book for all the years that immediately after the sale proceeds are credited in the bank account of the assessee, the amount is withdrawn by self and that cash was utilized for making further purchases and, corresponding sales again were credited in the bank account in all the three years. It is also a fact that bank account, where there is a credit, the name of the parties is invariably mentioned in the bank account which were in the possession of the Assessing Officer and copies of the same are placed in the paper book.
3. The Assessing Officer based on such bank accounts and the various credit entries recorded the 'identical reasons' for reopening of case u/s 148 for the Assessment Year 2009-10, 2010-11 & 2011-12 and the

reasons for the Assessment Year 2009-10 at page no. 6 of the paper book, for the Assessment Year 2010-11 & 2011-12 at page no. 8 of the paper book respectively. We are reproducing the reasons for the Ay 2009-10, for the completeness of record , as mentioned in the assessment order , which are as under:-

*"As per information available with the this office, there are large number of credit transactions of heavy amounts, during the financial year 2008-09, in the bank accounts of Sh. Sardari Lal, the assessee, which are summarized below:-*

*(Transactions in Rs.)*

<i>Mode of transaction</i>	<i>A/c No. 00310200001 5570 of IDBI Bank Ltd.</i>	<i>A/c No. 00310200003 407 of IDBI Bank Ltd.</i>	<i>A/c No. 003520000048 15 Of HDFC Bank Ltd.</i>	<i>A/c No. 137925600002 76 Of HDFC Bank Ltd.</i>	<i>A/c No. 117402000004 985 of HDFC Bank Ltd.</i>
<i>Cash</i>	<i>NIL</i>	<i>-</i>	<i>40000</i>	<i>-</i>	<i>-</i>
<i>By clearing</i>	<i>15168448</i>	<i>165000</i>	<i>31780</i>	<i>-</i>	<i>8941906</i>
<i>Cheque</i>	<i>50000</i>	<i>-</i>	<i>3235866</i>	<i>444922</i>	<i>100000</i>
<i>Others</i>	<i>997600</i>	<i>-</i>	<i>-</i>	<i>821329</i>	<i>200000</i>
<i>Total</i>	<i>16216048</i>	<i>165000</i>	<i>3307646</i>	<i>1266251</i>	<i>9241906</i>

*In KYC forms filed with the banks the assessee has declared himself as proprietor of 31/s Aggarwal Chemical Industries, 173, Industrial Area, Phase-2, Chandigarh, whereas no business income has been shown by him in the return of income filed for the assessment year 2009-10. In the return, the assessee has declared income under the heads "Salaries".*

***The transactions in the aforesaid bank accounts clearly indicate that assessee is carrying out business, and income from such business has not he disclosed in the return of income.***

*Thus, in view of the foregoing facts, I have reasons to believe that assessee has understated his income and income exceeding Rs.1,00,000/- has escaped assessment for the assessment year 2009-10, within the meaning of section 147 of the Income tax Act, 1961. Therefore, it is a fit case for the issuance of notice under section 148 of the Income*

*Tax Act, 1961. Approval to issue notice u/s 148 is therefore, solicited as required under section 151(1) of the Income Tax Act, 1961."*

4. In the reasons so recorded, the Assessing Officer has mentioned that assessee is carrying on the business which is not being disclosed by him in the returns of income and as mentioned herein above it was mentioned by the AO as under :-

**"The transactions in the aforesaid bank accounts clearly indicate that assessee is carrying out business, and income from such business has not he disclosed in the return of income."**

5. During assessment proceedings, the assessee reiterated that he had been carrying on the business of retail trading of 'Rubber Chemicals' and, though, he had not disclosed the income from such business in his original return of income, but in the return filed in response to notice u/s 148, he had declared the following income on estimation basis from such business of trading of 'Rubber Chemicals' as under:

Sr. No.	Assessment Year	Income declared from the trading of Rubber Chemicals	Relevant page no of the paper book
1	2009-10	1,20,000	3-4
2	2010-11	6,00,000	4-5
3	2011-12	6,00,000	4-5

6. During the course of assessment proceedings, the Assessing Officer asked the assessee to justify the said credit entries in the bank account and the assessee replied that he is in the business of sale of 'Rubber Chemicals' and such receipts are business receipts and no record is available with the assessee and further the assessee has no VAT

number and he had been carrying on the business as proprietor of M/s. Aggarwal Chemical Industries and neither he has any books of accounts.

7. The assessing Ofc wide show cause notice dated 2 December 2016, had asked the assessee to submit the reply on the following points:

“4. Vide your reply dated 23.11.2016 it has been stated that your business activities are trading in rubber chemicals. It has further been stated that you have lost all your books of account including the data put on computer due to virus and now you does not have any books of account to be produced for verification.

In the light of your above reply and non explanation of the bank credits, the following points are required to be clarified:

1. Please produce original purchase/sale bills to substantiate your claim regarding business activity of trading in rubber chemicals.
  2. Provide your VAT Number and VAT return filed for the year 2008-09 and other registration number with other State/Centre Govt. Departments required for business purpose.
  3. Produce complete books of accounts along with bills/ vouchers for verification w.r.t. business of trading in rubber chemicals.
  4. Complete name and address from whom sale/purchase above Rs.1 lacs has been made during the year.”
8. The assessee had filed the reply to the show cause notice and in the reply to the show cause notice was reproduced by the assessing officer in the assessment order, wherein it was mentioned as under

*"That as regards deposits in bank accounts except bank account No.00352000004815 relates to the firm, are business receipts against sale of Rubber Chemicals.*

*Order sheet entry dated 23.11.2016 for reply on 02.12.2016 it was informed by the counsel that the bank credits relates to business transaction against sale of rubber chemicals for which no record is available with the assessee.*

*As regards original purchase/sale hills with reference to the business activity of trading in rubber chemicals it is submitted that it has already been intimated personally that the assessee has lost all his records and has nothing to produce. The assessee can file only affidavit on oath for the same. The assessee has not obtained any VAT number as proprietor of Aggarwal Chemicals Industries hence the relevant information is NIL.*

*In the absence of books of accounts complete name and address from whom sale/purchase has been made during the year is not available.*

*In the absence of any record and your goodself version on the basis of bank statements as to from where the credits has been received cannot be considered as income from undisclosed sources as these are not cash entries. In fact, all the credits are against sale of rubber chemicals and photocopies of the certain bills as available with the assessee are attached herewith for your good self-perusal. It is again submitted that to meet the end of justice and settlement the assessee is ready to offer additional tax subject to no penalty."*

9. However the assessing officer was not convinced with the explanation given by the assessee, the assessing officer had issued the notices under section 133 (6) of the Act, at the address given in the bills however of, as no reply was received by the assessing officer till date passing of the assessment order, the assessing officer had treated the entire deposit in the Bank as unexplained cash deposit and had made the additions of Rs.2, 55, 18, 858/- ( for AY 2009-10 ), 3,54,20,958 ( for AY 2010-11) and

Rs 3,51,92,970/- (for AY 2011-12) in the hands of the assessee, however the AO had accepted the returned income disclosed by the assessee in pursuance to notice under section 148 of the ACT. The assessing officer is mentioned in paragraph 4.2 as under

4.2 In the absence of any confirmation from the customer, the claim of the assessee that he was trading in rubber chemicals and the credits are on account of sales made does not prove the contention. Especially, the assessee has admitted that he has no books of accounts to be produced for verification. No purchase/sale bills produced for verification. The name and address from whom sale/purchase has been made during the year were not provided. The assessee has not obtained VAT number though the item traded comes under the purview of VAT. Assessee has even denied to have the name & address of the creditor/debtor. Simply saying by the assessee that these credits are his business transactions from trading of rubber chemicals without any corroborating documentary evidence does not prove the nature and source of the credits.”

10. Feeling aggrieved by the order passed by the assessing officer the assessee preferred the appeal before the Commissioner appeal, the Commissioner appeal vide order dated 20 June 2019 had granted the part relief to the assessee. During the appellate proceedings, notices under section 133(6) were issued to various parties, however the reply was only received from one person in the order it was noticed as under :

“5.3 In this regard to verify the copy of bills filed by the assessee, on 27.12.2018, information was called for u/s 133(6) of the Income Tax Act 1961 from the following parties to whom the assessee has issued sale bills:-

- (i) M/s Anand Nishikawa Co. Ltd., Rudrapur, Uttarakhand.
- (ii) M/s Superking Mfg. Tyre Pvt. Ltd., Ghaziabad.
- (iii) M/s Thakur Das Co (P) Ltd., Rajasthan.
- (iv) M/s Mewat Tire & Rubber Pvt. Ltd., Rajasthan.
- (v) M/s Azam Rubber Products Ltd., Gorakhpur.
- (vi) M/s Aspsealing Products Ltd., Gajeaula (U.P)
- (vii) Superintend, GST, Chandigarh.

Response was received from M/s Azam Rubber Products Ltd. vide their letter dated 13.01.2019, who supplied copy A/c of Aggarwal Chemical Ind., Chandigarh, for F.Y.2009-10, F.Y. 2010-11 and F.Y. 2011-12. In other cases, letters were received back or no reply was received.”

11. The CIT(A), though, allowed the part relief in order dated 20.06.2019 but later on, the assessing officer had filed the rectification application before the CIT(A), the CIT(A) passed the rectification order whereby, she has confirmed the addition as made by the Assessing Officer, by treating the entire Bank deposit as the income of the assessee.
12. The assessee had filed two separate set of appeals against the order passed by the CIT(A) on 20 June 2019 as well as the rectification order passed by the CIT(A) on 25 September 2019.
13. The assessee is in appeal against the confirmation of the total addition as made by the CIT(A). Beside the above assessee had filled amended/

revised grounds of appeal filed on 12.07.2021. the revised grounds filled by the assessee on 12.7.2021 are admitted, being legal in nature.

### **SUBMISSIONS ON MERITS**

14. The Ld.AR for the assessee had submitted that assessee is in the retail trading of 'Rubber Chemicals' and which fact has been mentioned by the Assessing Officer in the reasons recorded for all the years as mentioned below:

***“In KYC forms filed with the banks the assessee has declared himself as proprietor of M/s. Aggarwal Chemical Industries, 173, Industrial Area, Phase-2, Chandigarh, whereas no business income has been shown by him in the return of income filed for the assessment year 2009-10. In the return, the assessee has declared income under the head “Salaries” only. The transactions in the aforesaid bank accounts clearly indicates that assessee is carrying out business, and income from such business has not be disclosed in the return of income.”***

15. Ld.AR had submitted,during the course of assessment proceedings and before the CIT(A) also, it has been reiterated in the written submission reproduced at page no. 3 of the order of the CIT(A) and further explained in detail that the credit entries represented sales to the customer, based at various places of the country and it is not a case of cash deposits.
16. It has also been submitted that separate “current bank accounts” showing proprietor had been maintained and the assessee had declared the business income in response to notice u/s 148 and which has been accepted by the Assessing Officer as is apparent from the Assessment

Order and, thus, the fact of is carrying on of the business cannot disputed.

- 17.** There are cash withdrawals from the Bank accounts for making purchases and, the sale receipts have majorly been credited in his bank accounts and, thus, the mode and the manner of earning the income is quite evident and reliance is being placed on the Gujarat High Court judgment in the judgment report in 221 Taxmann.com 436. The facts are the same in that judgment as in our case and in this judgment the decision of the Delhi Bench of the ITAT have been followed. Please refer to page no. 120 to 124 of the judgment Set Part-II.
- 18.** Ld.AR had submitted, even, from the copies of the bank accounts, which have been enclosed in the paper book, it is very clear that various names of the parties are there, where the credits entries are there and such credit entries are not in round figures and, therefore, under such circumstances, the total sale proceeds credited in the bank account, cannot be taxed as income of the assessee.
- 19.** The CIT(A) carried out herself verification u/s 133(6) as stated in the para no. 5.3 of her order and one party namely "Azam Rubber" replied and have confirmed about Rubber Chemical being purchased from the assessee in all the assessment years i.e.; 2009-10, 2010-11 & 2011-12 and this has been recorded by CIT(A) at the last paragraph of page no. 7 and that party had even sent copy of account for all these years which has been placed at page no. 93 to 95 of the paper book and such entries match with the bank statements, where that remittance of the Rubber

Chemical supplied to that party had been credited in the bank accounts of the assessee. Please refer to page no. 125, 126 & 127 of the paper book. The entries are self-explanatory.

- 20.** Having verified such transactions, coupled with the other facts as mentioned above, and further, the assessee had made purchases from his sister concern which is a partnership concern and such payments have been made to the M/s. Aggarwal Chemical Industries for purchases, for which a chart has been placed at paper book page no. 125 to 127 for all the years, submitted on 12.07.2021 and, thus, purchase & sale transaction are proved, beyond any iota of doubt and for that, the assessee had declared the income on 'estimated basis' as stated above and, thus, the addition of the total 'sale proceeds' in the bank account of the assessee u/s 68 is totally uncalled for, as only resultant profit could be charged to tax and which is not much in this trade. The chart at pages 125 to 127 is self-explanatory and, therefore, the addition of the total deposits cannot be made and the CIT(A) has wrongly mentioned at page no. 8 of the order, that these are cash deposits, which are incorrect finding.
- 21.** Another submission is that no addition could be made u/s 68 of the Income Tax Act, 1961 as made by the Assessing Officer and confirmed by the CIT(A), because addition u/s 68 can be made only, if the assessee is maintaining books of accounts and bank account of the assessee is not the books of accounts and, as such, the very basis of making the addition is uncalled for. The reliance is being placed in the judgment of Bombay High Court in the case of 'Bhai Chand' and others relevant judgment at

serial no. 8 to 12 of the judgment Set-II and, thus, the very basis of addition made by the AO and confirmed by the CIT(A) is void-ab-initio and, therefore, the addition on this account is uncalled for.

- 22.** It will be worthwhile to mention for sake of clarification that the CIT(A) at page no. 8 of the order dated 20.06.2019 has after giving some benefit had made an addition of 40% of the sale turnover initially, but, in the order u/s 154 dated 25.09.2019, since she has confirmed the entire addition as made by the Assessing Officer u/s 68 to the tune of Rs. 2,55,18,858/-, therefore, this taxation of 40% of the profit will not survive at all. At best, notwithstanding the above said facts, only addition of the net profit as per section 44AF as was there at that time @5% of the total deposit, could be made and, after giving the credit of the amount already declared as profit in the return filed u/s 148 from the business, the balance addition could be sustained. This is being submitted only for the sake of arguments. Lastly, the business income as declared in the return of income has been accepted by the AO and, thus, it is prayed that these are purchase & sales only. Thus, in nutshell, the proceedings u/s 148 is to be quashed and on merits, no addition is liable to be made u/s 68 as stated above, since the assessee is not maintaining the books of accounts and alternatively only 5% of net profit could be charged to tax on the total deposits of each year.

### **Submissions of DR**

- 23.** On the other hand, the Ld. DR for the Revenue, had submitted that the assessee is not disclosed the bank accounts in the return of income filed

by the assessee in his individual capacity, wherein, he had only declared that he was a salaried person. DR submitted that on account of reopening the case, the bank accounts that the assessee did not disclose were surfaced and therefore the entire cash deposit was required to be treated as income of the assessee. D.R. submitted that the notices were issued to various persons under section 133(6) of the act, were return unserved, except one person. It was also submitted that the assessee had categorically admitted during the assessment proceedings that the assessee was not subjected to any VAT return and had wrongly filed the invoices showing the VAT No. of another concern. It was also submitted that the reopening made by the assessing officer and the sanction given by the appropriate authority as per law. It was submitted that the Bank passbook is akin to the books of account therefore the addition made by the lower authorities is by law.

## **Findings**

24. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the hearing by both parties. During the argument, by the Ld.AR for the assessee, the only emphasis laid down by the Ld.AR was that the assessing officer/the CIT(A) took the entire Bank deposits as income of the assessee. He submitted that the assessing officer had provided “reasons for reopening”, wherein AO categorically admitted that the assessee was carrying out the business activities. The deposits were made in these undisclosed bank accounts. The perusal of these five bank

accounts shows that besides the cash deposit, the assessee was also receiving the amount by way of cheques from various persons. Similarly, the assessee was also withdrawing the amount by cash and issuing the cheques to multiple persons. The officer in the reasons to reopen had given the tabulation of the various bank account, and it was categorically mentioned that

<i>Mode of transaction</i>	<i>A/c No. 00310200001 5570 of IDBI Bank Ltd.</i>	<i>A/c No. 003102000003 407 of IDBI Bank Ltd.</i>	<i>A/c No. 003520000048 15 Of HDFC Bank Ltd.</i>	<i>A/c No. 137925600002 76 Of HDFC Bank Ltd.</i>	<i>A/c No. 117402000004 985 of HDFC Bank Ltd.</i>
<b>Cash</b>	<b>NIL</b>	<b>-</b>	<b>40000</b>	<b>-</b>	<b>-</b>
<b>By clearing</b>	<b>15168448</b>	<b>165000</b>	<b>31780</b>	<b>-</b>	<b>8941906</b>
<b>Cheque</b>	<b>50000</b>	<b>-</b>	<b>3235866</b>	<b>444922</b>	<b>100000</b>
<b>Others</b>	<b>997600</b>	<b>-</b>	<b>-</b>	<b>821329</b>	<b>200000</b>
<b>Total</b>	<b>16216048</b>	<b>165000</b>	<b>3307646</b>	<b>1266251</b>	<b>9241906</b>

25. From the perusal of the table, it is abundantly clear that only a small amount of cash was deposited in the Bank; however, the remaining amounts were debited to the assessee's accounts either by cheque, or clearing, or any other mode. When the assessee had received the deposits through the banking channels, than names and bank accounts of the persons from whom amounts were received and paid by the assessee, could be retrieved by the assessing officer by using his powers under section 133(6) of the Income Tax Act however, the notices were only issued 7 persons to verify the transactions, whose details were

provided by the assessee, out of 7 persons, only one person had responded and acknowledged that it was in a business relationship with the assessee. However, nothing was brought on record concerning the remaining 6 persons. No efforts were made by AO , to find out the real nature of transactions by issuing the summons to the Banks officials of these five Bank accounts.

26. Undoubtedly, the Revenue has unbridled power to summon, examine, and collect the evidence to prove its case and enforce the attendance of six people to whom the lower authorities issued the notices under section 133.
27. In our opinion once the assessing officer had reopened and examined the case of the assessee by treating the receipt deposited in the bank accounts as the business receipts, then the assessing officer has two options either to reconcile the bank entries by drawing the trading account based on bank entries and compute profit of the assessee or treat the entire bank deposits as turnover of the assessee and apply gross profit over that.
28. The AR had drawn attention to trading account prepared for the assessee for all the three assessment years, which are as under

**Trading Ac/ as on 31.03.2009**

Particulars	Amount		Particulars	Amount	
<b>To Purchase (As Per Bank)</b>		<b>24648355.00</b>	<b>By total Sales (as Per bank)</b>	588 to 590/Amr/201	<b>25518858.00</b>
<b>To purchase aggarwal chemical (as per Submission)</b>	2678597.00		aggarwalche	205869.00	
<b>To Purchase others</b>	21969758.00		<b>Azam Rubber (as per Submission)</b>	1828933.00	
			Chaddha Rubber	377684.00	
			Navyug India	364027.00	
			ThakarDass& CO.	350085.00	
			Other Sales through Bank	22392260.00	
<b>Gross Profit</b>		<u><b>870503.00</b></u>			
		25518858.00			25518858.00

**Trading Ac/ as on 31.03.2010**

Particulars	Amount		Particulars	Amount	
<b>To Purchase (As Per Bank)</b>		34791599.00	<b>By total Sales (as Per bank)</b>		35420958.00
<b>To purchase aggarwal chemical (as per Submission)</b>	1036499.00		<b>Azam Rubber (as per Submission)</b>	6279890.00	
<b>To Purchase others</b>	33755100.00		ThakarDass& CO.	849245.00	
			Other Sales through Bank	28291823.00	
<b>Gross Profit</b>	-	<u><b>629359.00</b></u>			
		35420958.00			35420958.00

**Trading Ac/ as on 31.03.2011**

Particulars	Amount		Particulars	Amount	
<b>To Purchase (As Per Bank)</b>		32792980.00	<b>By total Sales (as Per bank)</b>		35192970.00
<b>To purchase aggarwal chemical (as per Submission)</b>	1453222.00		<b>Azam Rubber (as per Submission)</b>	4821763.00	
<b>To Purchase others</b>	31339758.00		ThakarDass& CO.	161382.00	
			Other Sales through Bank	30209825.00	
<b>Gross Profit</b>	-	<u><b>23,99,990.00</b></u>			
		35192970.00			35192970.00

29. Based on the trading account, it was submitted that the lower authorities can tax only the profit earned by the assessee for the assessment years. Both credit and debit entries in the Bank were required to be considered and thereafter, the gain is needed to be taxed. In our considered opinion, once the assessment is made based on the undisclosed bank accounts, the debit and the credit in the bank accounts were required to be considered for making the addition under section 68 of the Act. The income that has accrued to the assessee is taxable as per law. What income has really occurred to be decided based on material available with the AO, not by reference to physical receipt of income (credit entry in Bank ), but by also giving the benefit/ adjustment of debit entry ( in the bank account ), the difference would solely represent the income of the assessee, in the present case.
30. It may be for the relevant to mention here that provisions of section 115BBE of the Act was inserted in the Statute with effect from 1 April 2013, whereas the assessment years under consideration are 2009-10 to 2011-12. Therefore the said provision cannot invoke by the Revenue to deny the debit entries in the past book.
31. However, the above said fact, being the amount paid were on account of business connections, required to be verified by the lower authorities either from the bank account or from the bank authorities or from the beneficiaries. Further assessee had failed to produce various persons with whom he had the financial transactions for the purchases/sale of goods. Nothing had been brought on record to substantiate that

invoices produced by the assessee were not genuine or that the assessee had not made business transactions from the above noted seven entities.

32. In the light of the above, we have only left the second recourse, whereby the assessee's income was required to be computed by treating the entire deposits in the Bank as business receipts and applying the G P rate over that. As mentioned by the assessing officer, the assessee was not maintaining any books of account in respect of the business carried out by the assessee nor was the assessee able to show that he was registered with the VAT department. In other words the books of account as required under section 2(12A) were not maintained by the assessee, in our view it is this requirement of invoking section 68 of the act that the assessee should have maintained the books of account and the entries have not been shown in the books of account. Section 68 is a deeming provision, which provides that if any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation..... then the sum so credited may be charged to income tax as the income of the assessee.
33. For the purpose of invoking section 68, it is essential to have the existence of the books of account, In other words when a deeming fiction like section 68 here is applied, it is not allowable for the AO to presume or deem the existence books of account or credit of amount in the said deemed books of account, especially when the books of account otherwise lack ex-facie. AO order had categorically mentioned non-maintenance of books of account by the assessee, nor it is the case of

AO that Bank accounts of the assessee would be treated as books of account.

34. Having stated the above, we may record that during argument, Ld.AR had submitted chart for computing the GP rate by taking the 5% of turnover, however the Ld. DR for the Revenue disputed that and submitted a higher rate should be applied to compute the assessee's profit. the Chart of AR provides as under

<b>SH. SARDARI LAL</b>						
<b>CHART SHOWING PROFIT EARNED FROM TRADING OF CHEMICAL AS PER SECTION 44AF</b>						
Sr. No.	Particulars	Undisclosed Sales as per assessment order	GP as per 44AF	Profit	Amount disclosed in return u/s 148	Balance undisclosed income on estimate basis
a	sales from 09.07.2008 to 31.03.2009	25518858.00	5%	1275942.90	120000	1155942.90
b	sales from 01.04.2009 to 31.03.2010	35420958.00	5%	1771047.90	600000	1171047.90
c	sales from 01.04.2010 to 31.03.2011	35192970.00	5%	1759648.50	600000	1159648.50
<b>Total</b>				<b>4806639.30</b>	<b>1320000</b>	<b>3486639.30</b>

35. From the perusal of the Chart, it is a clear that the assessee had applied 5% rate by relying upon section 44AF of the Act. Section 44AF for the relevant year

**44AF.** (1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an assessee engaged in retail trade in any goods or merchandise, a sum equal to five per cent of the total turnover in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum as declared by the assessee in his return of income shall be deemed to be the

profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession" :

**Provided** that nothing contained in this sub-section shall apply in respect of an assessee whose total turnover exceeds an amount of forty lakh rupees in the previous year.

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed :

**Provided** that where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed under sub-section (1) subject to the conditions and limits specified in clause (b) of section 40.

36. For applying section 44 AF, it is clear that the total turnover of the assessee must be less than 40 lakhs of rupees. In the present case as mentioned hereinabove turnover the assessee, as per the case of the assessee as well as of the assessing officer was more than 40 lakhs, therefore the rate of 5% cannot be applied as claimed by the assessee. The assessing officer has not brought on record that the assessee is having any other source of income other than doing the business, as mentioned by the assessing officer in the reasons to reopen the assessment. Therefore, only the GP addition can be made on the bank deposits, treating it as a business turnover.

37. In our opinion the best rate which can be applied in the given set of facts would be 8% GP on the turnover in all the assessment years. This will be tune with the 44AD of the IT Act. The profit for all three years, after applying GP rate of 8% would come to Rs 76,90,622.88/-, however, if we compute the profit based on trading accounts for all three years, it will come to Rs 38,99,852/-. Further, we are supported by the decision in the matter of M/S BANSAL STRIPS PRIVATE LTD in ITA 103/2021, CM

APPLs. 12292-93/2021 held by Delhi High Court vide order dated 26.3.2021asunder

“10. However, what the CIT(A) did, [which, in the given circumstances, insofar as the Revenue is concerned, was the best way forward] is to sustain a part of the addition by taking recourse to the methodology adopted in the assessee’s case in an earlier AY i.e. 2006-2007. In that AY, concededly, addition had been made to the assessee’s gross income by applying a GP rate of 5%. It is the same methodology that the CIT(A) has adopted and, accordingly, sustained the addition to the extent of Rs.71,55,837/-.”

38. We may also rely upon the decision in the matter of ITA No.1652/Ahd/2011Shri PavankumarBhagatram Sharma decided by Ahmedabad Tribunal wherein it was held as under :-

“9. If this finding is weighed in the light of the finding recorded by the Id.AO, then scale would tilt in favour of this finding. The AO has not made detailed analysis of the account as well as other details submitted by the assessee. According to the Id.CIT(A) aggregate cash deposits in the said bank account is only of Rs.21,23,800/-. The AO, on the other hand, observed that the cash deposits was of Rs.50,48,055/-. The Id.CIT(A) thereafter made reference to other materials produced before the AO to point out that this bank account was used for the purpose of business and sale proceeds were deposited in this bank account. On the other hand, the Id.AO did not make any such investigation. He simply treated the deposits made in the bank account as unexplained cash credits. Contrary

to this, the Revenue has not brought any evidence on record to demonstrate the fact that opinion formed by the Id.CIT(A) is with contrary to the details available on record. In words, it has not brought to our notice that inference drawn by the Id.CIT(A) are factually incorrect. The Id.CIT(A) has rightly observed that total amount appearing as a deposit in the account was not cash credits, rather sale proceeds of the assessee. Turnover of the assessee is to be computed on the basis of all these details and at the most, an estimated net profit can be computed as an income of the assessee. Accordingly, the Id.CIT(A) has confirmed an addition of Rs.3,50,208/-. We do not find any error in the detailed reasoning of the Id.CIT(A), and accordingly, the appeal of the Revenue is dismissed. For dismissal of this appeal, we do not require the presence of the assessee.”

39. Undoubtedly the assessing officer in the assessment order, had accepted the return of income, declaring business income, filed by the assessee after receipt of the notice under section 148 and had given the credit while computing the income of the assessee based on the bank deposits. Income of the assessee shall be as under for all three assessment years after giving the benefit of the amounts declared by the assessee during all these assessment years and after applying 8% GP on the turnover for all these assessment years:-

Sr. No.	Particulars	Undisclosed Sales as per assessment order	GP as per 44AF	Profit	Amount disclosed in return u/s 148	Balance undisclosed income on estimate basis
a	sales from 09.07.2008 to	25518858.00	8%	2041508.64	120000	1921508.64

	31.03.2009					
b	sales from 01.04.2009 to 31.03.2010	35420958.00	8%	2833676.64	600000	2233676.64
c	sales from 01.04.2010 to 31.03.2011	35192970.00	8%	2815437.6	600000	2215437.6
<b>Total</b>				<b>7690622.88</b>	<b>1320000</b>	<b>6370622.88</b>

40. We have not decided any other legal grounds/grounds raised before us as we are deciding the issues on merit in terms of the above findings. All the legal grounds are left open to be decided on the appropriate proceedings.

41. As a result, all the appeals of the assessee are partly allowed.

**Order Pronounced in the Open Court on 16/08/2021.**

**Sd/-**  
**(Dr. Mitha Lal Meena)**  
**Accountant Member**

**Sd/-**  
**(Laliet Kumar)**  
**Judicial member**

Copy of order forwarded to:

- |                                 |                    |
|---------------------------------|--------------------|
| (1) The appellant               | (2) The respondent |
| (3) Commissioner                | (4) CIT(A)         |
| (5) Departmental Representative | (6) Guard File     |

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Agra Bench, Agra