

**IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT  
AND SHRI PAWAN SINGH, JUDICIAL MEMBER**

I.T.A. Nos. 374, 375 & 455/NAG/2014  
Assessment years: 2007-08 to 2009-10

A.C.I.T., Circle-2(3), Nagpur.	Vs. M/s Bajaj Steel Industries Ltd., 539/540 Road, Imambada Road, Nagpur. PAN:AAACB 5340 H
(Appellant)	(Respondent)

C.O. Nos. 11, 12 & 13/NAG/2014  
(in I.T.A. Nos. 374, 375 & 455/NAG/2014)  
Assessment years: 2007-08 to 2009-10

M/s Bajaj Steel Industries Ltd., 539/540 Road, Imambada Road, Nagpur. PAN:AAACB 5340 H	Vs. A.C.I.T., Circle-2(3), Nagpur.
(Objector)	(Respondent)

Revenue by	Shri Geetesh Kumar, D.R.
Assessee by	Shri Rajesh Loya, C.A.
Date of hearing	21/11/2017
Date of pronouncement	23/11/2017

**ORDER**

**PER P. K. BANSAL, V.P.**

All these appeals as well as the Cross Objections have been filed by the Revenue and the assessee against the respective orders of the CIT(A)-III, Nagpur all dated 28/04/2014 relating to assessment years 2007-08 to 2009-10.

2. In the assessment year 2007-08 to 2009-10 the Revenue has taken the common grounds of appeal except the change in figure in ground No.

1. In ground No. 1 in place of Rs.85,42,957/-, Rs.1,56,55,600/- be read in assessment year 2009-10. The Revenue has taken the following grounds of appeal:

- "1. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in deleting the addition of Rs.85,42,975/- made by the Assessing Officer, towards undisclosed income in the form of unrecorded sales.*
- 2. *The learned CIT(A) ought to have appreciated the fact that if the amounts are discounts to be received by the customers, then in Page Nos. 127, 128 & 129 of the seized Item No. 13 of Annexure-B, they would have been written as "amounts to be paid" and not as "amounts to be received".*
- 3. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in treating the amounts as discounts to be received by the customers, though in the sale invoices, the discounts had already been deducted from the invoice amount, which clearly indicates that nothing more is payable to the customers.*
- 4. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in ignoring the evidence in the seized material at Page No. 126 of Item No. 13 of Annexure-B, as seen from Col. No. 4, wherein several amounts were shown as actually received by the assessee, which were not recorded in the books of accounts.*
- 5. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in not appreciating the fact that, in general practice, discount is reduced from the invoice amount, but it is not passed on to the customer in the form of cash."*



3. The Cross Objections filed by the assessee in each of the assessment years are supportive to the orders of the CIT(A) in respect of the ground taken by the Revenue in its appeals in each of the assessment years.

4. The facts of the case, in brief, are that there has been search & seizure action u/s 132(1) of the I.T. Act at the business premises of the

assessee group as well as residential premises of the Directors on 13/08/2008. During the course of search operation various items of books of account, documents, jewellery and cash were found and seized. In consequence thereof notice u/s 153A was issued for each of the assessment years on 14/05/2009 but the assessee did not file any return. The Assessing Officer, therefore, went on completing the assessment. Loose papers (7 pages in item No. 13) which pertain to the period from June 2008 to July 2008 were found and seized from the premises of Shri Ashish Bajaj, Director of the assessee company. The assessee explained that these contain the record of discounts provided to the customers on sale of low quality master batches which are categorized as 'X' category material. The Assessing Officer did not agree with the assessee but took the view that the discount referred in the impugned seized document and invoices allowed to the customers is in fact the amount collected in cash and which is not recorded in the books of account. Accordingly, the Assessing Officer estimated the unrecorded income on the basis of material found for the month of June and July 2008 for the assessment years 2007-08, 2008-09 and 2009-10 and treated the sales as unrecorded sales in the case of the parties whose names are appearing in the seized documents. Accordingly addition of Rs.85,42,975/-, Rs.1,56,55,600/- and Rs.1,15,64,750/- on account of undisclosed income in the form of unrecorded cash sales was made for the assessment years 2007-08, 2008-09 and 2009-10 respectively. The assessee went in appeal before the CIT(A). In the assessment year 2009-10 an addition of Rs.29,96,942/- and Rs.1,35,372/- on account of undisclosed income from the sale of the waste and sale of the paper bag was also made by the Assessing Officer on the basis of the statement of Shri Chandra Prakash Jijani, proprietor of M/s Jijani Waste Paper Industries but no addition was made on this account in the assessment year 2007-08 and 2008-09. The assessee went in appeal before the CIT(A). The CIT(A) deleted the additions. The ground Nos. 1



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 to 5 in assessment year 2007-08 and 2008-09 while ground No. 1 & 2 in assessment year 2009-10 are common and relate to the deletion of addition made by the Assessing Officer towards the undisclosed income in the form of unrecorded sales. The facts relating to these additions are that following documents have been seized from the residence of Shri Ashish Bajaj being pages 126, 125, 124 and 120 of Item No. 13 of loose bundle of Annexure-B:

Total amount to be received in the month of June 2008

S. No	Name of the party	Quantity	Payment to be received for June 2008	Payment received	Receipt date	CR balance	Payment may 08 balance	Balance	Bal. CR	Adv
1	X-grade material Kavita Entr. Indore	64.00	320000	320000	30.7.08	-				NIL
2	Abhinandan Petropack	Material returned 33 MT @Rs.5000/- pmt. (170000) on 09.7.08)								
3	Klene Pak Ltd.	33.000	165000	205000	14.7.08		40000			
4	Agrasen Ent.	48.000	240000	240000	21.7.08					NIL
5	Bright packaging	32.000	160000				85000			NIL
6	United Chemicals Bangalore	17.000	85000	85000	29.7.08					NIL
7	Hanuman Polypack Bang	17.000	85000	85000	29.7.08					NIL
8	Chakrapani Vyapar Pondi	17.000	85000	170000	31.7.08		85000			NIL
9	Ashok Poly Laminators	55.000	275000	275000	21.7.08					NIL
10	Govardhan (superpack Silvasa)	16.000	80000				41800			121800
11	Dimple Plastic Nagpur	3.500	17500	14000	21.07.08	3500				NIL
12	Superpack Howrah			35000	21.7.08		35000			NIL
Non Prime Grade Materials										
1	A-One Plastics Nagpur (10*8000)	10.000	80000	80000	03.7.08					NIL
2	Kavita Entr. Indore (16*8000)	16.000	128000							128000
3	Agrasen Ent. (9*8000)	9.000	72000	72000	21.7.08					NIL
<b>TOTAL</b>		<b>337.500</b>	<b>1792500</b>	<b>1581000</b>		<b>3500</b>	<b>286800</b>			<b>494800</b>

**TOTAL AMOUNT TO BE RECEIVED IN THE MONTH OF JULY 2008**

SR. NO.	Name of the Party	Qty	Payment to be received for July 2008	Payment Received	Recd. Dt	CR Balance	Payment MAY 08 BALANCE	BAL ANCE	BALADV CR
<b>X Grade Material</b>									
1	Kavita Enterprises Indore	16.000	80000						80000
2	Klene pak Ltd.	17.000	85000						85000
3	Agrasen Enterprises	48.000	240000						240000
4	Bright Packaging United	9.850	49250				245000		294250
5	Chemicals - Bangalore	34000	170000						170000
7	Hanuman Polysack - Bank	10.000	50000						50000
8	Chakrapani Vyapar - Pondi	17.000	85000						85000
9	Ashoka Poly Laminators	53.000	265000						265000
10	Govardhan (Superpack-Silvasa)						41800		41800
11	Color Systems Kanpur	3.000	15000						15000
12	Electroing Plast Chennai	24.000	120000						120000
<b>Non Prime Grade Materials</b>									
1	Kavita Enterprises, Indore (16*8000)						128000		128000
2	D.R. Polymers, Hyderabad (4*8000)	4.000	32000						32000
3	Agrasen Enterprises (47.8000)	47.000	376000						376000
	<b>Total</b>	<b>282.850</b>	<b>1567250</b>				<b>414800</b>		<b>1982050</b>



SR.NO	INV.NO	INV.DT.	PARTY NAME	GRADE	QTY.(KGS)	TOTAL
1	NS/0806	4/7/08	Ashoka Polylaminators - Bareilly	Plast White-X	15000	
2	NS/0807	4/7/08	Ashoka Polylaminators - Bareilly	Plast white Blue - X	3000	
3	NS/0963	28/7/08	Ashoka Polylaminators - Bareilly	Plast White-X	20000	
4	NS/0964	28/7/08	Ashoka Polylaminators - Bareilly	Plast White-X	15000	53000
5	NS/0975	30/7/08	Chakrapani Vyapar- Pondicherry	Plast White-X	7000	

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6	NS-0976	30/7/08	Chakrapani Vyapar- Bangalore	Plast Clear X	10000	17000
7	NS-0932	31/7/08	Colour Systems (P.P.Polyplast)	Plast White-X	3000	3000
8	NS-0979	30/7/08	D.R.Polymers-Hyderabad	Non-prime Grade	4000	4000
9	NS-0787	1/7/08	Electro Engoplast Chennai	Plast Stiff- X	7000	
10	NS-0874	14/7/08	Electro Engplast Chennai	Plast Stiff- X	17000	24000
11	NS-0818	5/7/08	Hanuman Polysack & Jute Bangalore	Plast White-X	10000	10000
12	NS/0797	3/7/08	Kavita Enterprises (Narmada Extrusion)	Plast White-X	16000	16000
13	NS/0893	17/7/08	Klene Pack Ltd. Bangalore (Bannerghata)	Plast White Premium-X	17000	17000
14	NS/0810	4/7/08	Shri Agrasen Enterprises (V.M.Extrusion)	Plast White-X	3000	
15	NS/0811	4/7/08	Shri Agrasen Enterprises (V.M.Extrusion)	Plast Stiff- X	13000	
16	NS/0912	21/7/08	Shri Agrasen Enterprises (V.M.Extrusion)	Plast Stiff- X	10000	
17	NS/0965	28/7/08	Shri Agrasen Enterprises (V.M.Extrusion)	Plast Stiff- X	9000	
18	NS/0809	4/7/08	Shri Agrasen Enterprises- Raipur	Non-prime Grade	16000	
19	NS/0812	4/7/08	Shri Agrasen Enterprises	Plast Stiff- X	3000	
20	NS/0813	4/7/08	Shri Agrasen Enterprises	Plast Fill-X	1000	
21	NS/0821	6/7/08	Shri Agrasen Enterprises	Non-prime Grade	9000	
22	NS/0913	21/7/08	Shri Agrasen Enterprises	Non prime Grade	6000	
23	NS/0935	24/7/08	Shri Agrasen Enterprises	Plast Stiff- X	4000	
24	NS/0936	24/7/08	Shri Agrasen Enterprises	Plast Fill-X	5000	
25	NS/0958	27/7/08	Shri Agrasen Enterprises	Non-Prime Grade	16000	95000
26	NS/0955	27/7/08	Superpack Bangalore(Bright Packaging)	Plast Stiff-X	8850	
27	NS/0956	27/7/08	Superpack- Bangalore(Bright Packaging)	Plast White Green-X	500	
28	NS/0957	27/7/08	Superpack Bangalore(Bright Packaging)	Plast Supreme-X	500	9850
29	NS/0925	22/7/08	United Chemicals- Bangalore	Plast White-X	17000	



30	NS/0895	17/7/08	United Chemicals- Bangalore	Plast Stiff- X	7000	
31	NS/0896	17/7/08	United Chemicals Bangalore	Plast White-X	10000	34000
					<b>282850</b>	<b>282850</b>

SR.NO.	PARTY	Rs.
1.	International Packaging -Silvasa (124*500)	62000
2	Innotech Polyfabrik-Pune (33*500)	16500
3	Ashok Polymers-Sholapur (18*500)	9000
4	Tulisyan Nec-Bangalore (153*500)	76500
5	Jakhota Plastics-Hyderabad+Goa+Sedam (113*500)	56500
6	Geeta Packaging & Surbhi-Nagpur (20*500)	10000
<b>Total</b>		<b>230500</b>

4.1 Subsequent to the search, statement of Shri S. K. Sharma, Manager (Sales) of Super Pack Division of the assessee and that of Shri Ashish Bajaj was recorded. Shri S.K.Sharma stated that in the chart at page no. 124 details of sales of 'X' category master batches are noted. In the chart at page no. 120 cash receipt out of sale of 'X' category master batches to 6 parties @Rs.5/- per kg. or Rs.500/- per mt. ton are noted. Pages 125 and 126 are summary of charts at page numbers 127 to 129. In the chart at page no. 126, total amount to be received in the month of June, 2008 is mentioned. Similarly, in the chart at page no. 125, total amount to be received in the month of July, 2008 is mentioned. At page numbers 125 & 126 in column no. 1 serial number and in column no. 2, name of the parties to whom 'X' category material has been sold is noted. In column no.3, quantity of 'X' category sale is noted. In column no. 4, payment to be received for the month is calculated @Rs.5/- per kg. In column no.5, amount of payment received is noted. In column no. 6 date of receipt is noted. In column no. 7 credit balance is noted. In column no. 8, balance of previous month is noted. Column number 9 is blank. In the last column, credit balance at the end of the current month is noted. When questioned, Shri Ashish Bajaj and Shri S.K.Sharma denied receiving any amount out of 'X' category sales in cash but the Assessing Officer was of the view that from these noting it is clear that M/s Superpack is receiving amount in cash @Rs.5/- per kg. and in some cases @Rs.8/- per kg. Apparently certain



amount is being shown in the invoices as discount but in fact the amount does not represent the discount but has been collected by the assessee in cash not recorded in the books of accounts. The Assessing Officer therefore, computed the total sales of 'X' category master batches for the assessment year 2009-10 at 23,12,950 Kg. and applied thereto a rate of Rs.5/- per kg. which claimed by the assessee to be the discount as being received by the assessee in cash and estimated the cash sales at Rs.1,15,64,750/- for the assessment year 2009-10. Similarly, the addition has been made in each of the assessment years.

5. The assessee went in appeal before the CIT(A) and before the CIT(A) the assessee contended that the seized documents relate only to the period from June 2008 to July 2008. The addition is based on presumption without any evidence and contrary to the facts available on record. All the sales were duly recorded in the books of account. The assessee company is having two divisions. The steel division manufactures D.R. Ginning Machine Bailing Press and allied products. The Super Pack Division manufactures master batches which is raw material for plastic industry. The master batches manufactures by the company many times results into low quality products. Such low quality products are categorized as 'X' category master batches. The company has allowed discounts in the nature of quantity discount, cash discount, quality discount etc. on such 'X' category goods. The seized documents contain the details of the transaction of 'X' category master batches. The investigation wing made hectic enquiries about the contents of the impugned documents. Shri S. K. Sharma, Marketing Manager from whose possession page Nos. 127 to 129 were found, was examined and his statements was recorded during search. Shri Sharma explained in statement that the impugned documents are the records of discount assured by him at the time of booking of sales and while touring for obtaining booking of goods, he used to promise the discounts at varying rates from Rs.5/- to Rs.8/- decided according to the quantity, quantity and



the payment terms. This is also duly recorded in the Soft copy in laptop. Once he agreed with the customer, was passed on this information to the Director Shri Ashish Bajaj for his sanction and thereafter, the goods were supplied and discount was allowed in the bill. Similar enquiries were made from Shri Ashish Bajaj, Director of the company in respect of the impugned documents. He also confirmed having allowed discount on "X" category material on the basis of proposal given by the Marketing Manager Shri S. K. Sharma. During the course of assessment proceedings the seized documents was explained with reference to the books of accounts. The Assessing Officer misinterpreted & misconstrued the impugned documents and held that it is a record of cash receivable/received from the customer. It was further submitted that this fact is also established as the production and sales is accepted by the Excise Department. The presumption by the Assessing Officer that the discount offered in the goods has been received back by the assessee in cash does not have any basis. The assessee submitted copy of the impugned documents before the CIT(A) and contended that the impugned documents contain the details like invoice number, material sold, quantity supplied, name of the party and the discount allowed per ton is mentioned therein. All these details were cross verified by the Assessing Officer and no variation was found in any of the details including the discount mentioned therein. The CIT(A), after hearing the submissions of the assessee, deleted the said addition by observing as under:

*"I have considered the aforesaid submissions of the appellant, the assessment order, evidences available on record and the facts of the case. The impugned documents numbering 120, 124, 125, 126, 127, 128 and 129 of item No. 13 are part of loose paper bundle of Annexure 'B'. There is no dispute about the fact that the transactions recorded in the impugned documents are relating to the sales of 'X' category material to various customers for the months of June, 2008 and July, 2008. These documents are reproduced in the assessment order at Pages 2 to 5 and Pages 6 to 9. On a careful examination, I find that the details like invoice no., date, quantity, description of*




material, name of the party, discount amount etc. are mentioned. There is no dispute either about making the entry of these invoices (mentioned in the impugned documents) as the same are found recorded in the books of accounts. It is mentioned in the assessment order ( para '5.1' & '5.2' on page 6) that statements u/s. 131 were recorded of Mr. Ashish Bajaj, Director and Mr. S. K. Sharma, Sales Manager of the company and they have stated in their statements that the discount allowed to the customers on 'X' category sales have been noted in the impugned seized documents. The assessee was asked to explain why the impugned amounts mentioned in the documents be not treated as unrecorded sales. The explanation of the assessee is mentioned in para 7 and the A.R. of the appellant produced before me, the copy of the letter addressed to the AO. The assessee categorically denied receiving any amount out of 'X' category sales in cash and stated that it is the record of the discount allowed to the customers and also explained the purpose of maintaining such documents. The AO rejected the explanation offered by the appellant and held that impugned documents are the record of the cash received/receivable from the customers. Thus, the case of the AO is that the assessee has indulged into under-invoicing of 'X' category material and treated the same as suppressed sales and made addition as undisclosed income. On the other hand, the appellant has denied of any under invoicing or receipt of cash money from the customers. The counsel for the appellant vehemently argued that there is no evidence with the AO to establish that the assessee received cash from the customers inspite of the search action conducted at the premises of the appellant. Here it is worth noting that enquiries had been carried out by conducting surveys and otherwise on the various customers mentioned in the seized documents. The issue was also passed on by the investigation wing to the Excise Department which also made separate enquiries from the customers and assessee and no adverse evidence has been brought on record in these enquiries and even by the Excise Department also. The A.R. of the appellant has contended that the event of discount for sale of such goods is a natural corollary which the AO should have accepted. It was also claimed that no evidence was found with respect to receipt of any cash in the year under consideration and the addition is made on the basis of conjectures and purely on surmises by the AO.

After thorough examination of the facts available on record, I find considerable force in the contention of the appellant. The assessee has discharged the initial burden by offering an explanation in the statement recorded on oath at the time of search as well as explanation furnished during assessment proceedings. I find that the appellant company is manufacturing master batches which are used as raw material for plastic industry. The explanation of the assessee that the production of finished goods at times results into low quality material and its categorisation as 'X' category material while selling the goods is not denied by AO and is also accepted by the Excise Authorities. These discount entries are found duly recorded in the Sale Invoices as well as in the regular books of accounts of the assessee. On examination of the sale bills, I find that the discount is separately allowed in the bill by deduction from the sale amount and thereafter Excise duty is charged. The assessee was called upon in the post search proceedings to provide the details of all the customers to whom 'X' category material was sold and the assessee furnished the copy of accounts of all such persons to the investigation wing. It is brought on record by the appellant that enquiries were made from the customers by conducting survey and otherwise and this fact is undisputed. The AO has failed to bring on record any material collected from such parties of having paid back any cash in lieu of the discounts availed by such customers. In my opinion, the burden of proving that the assessee had received cash back, lied upon the A.O. and he has clearly failed to discharge the same. The Search was conducted on 13<sup>th</sup> August, 2008 and thereafter the assessee has also received summons dated 2-12-2008 from the Excise Authority, copy of which is placed on record. It is claimed by the appellant that the enquiry of the Excise Department was in consequence to the Search action and at the behest of the investigation wing. In spite of all consequential enquiries, the AO has failed to bring on record or any evidence to establish that the appellant has received cash back from the customers in the garb of discount allowed. Survey and search are an extra-ordinary action under the Income Tax Act and if in such an extra-ordinary actions, no material is found at the time of search or in consequential surveys, I am of the considered view that in such circumstances it cannot be said that there was any undisclosed income. The addition is purely the result of surmises and presumption and based upon whims and fancies of the A.O. It is absolutely devoid of any merits. I have also carefully perused the details of sales and discounts in the Annexure to the



*Assessment Order, which have been considered for the purpose of making addition. It is peculiar to note that the search action was conducted on 13-8-2008 and for the purpose of making addition, the AO considered the discount allowed even in the period after search i.e. 13-8-2008 to 31-3-2009, thereby stretching his presumption that the discounts for such later period (post-search) were also received back by the appellant. The presumption made by the AO on the basis of impugned document is clearly not supported by any corroborative evidence and therefore the addition made by the AO deserves to be deleted. In view of the above, I hold that the action of the AO is arbitrary and notional and the addition on merely assumptions cannot be sustained. Thus it is reasonable to conclude that there is no suppression of sales or under-invoicing in the year under consideration and therefore, the addition of Rs.1,15,64,750/- made by the Assessing Officer is deleted. This ground of appeal is allowed in favour of the appellant."*



5.1 Similar addition has been deleted in the assessment year 2007-08 and 2008-09.

6. Learned D. R. vehemently relied on the order of the Assessing Officer but could not draw out attention or adduce before us any cogent material or evidence which may compel us to reverse the finding of the CIT(A) which are based on the basis of the facts and evidence duly appreciated by the CIT(A) and the Department. It is not denied that the impugned seized documents contain the complete details including date, invoice number, name of party, rate and bill amount etc.

7. Learned counsel for the assessee reiterated the submissions made before the CIT(A) and has also drawn our attention to the seized documents as well as pages 8 & 9 of the assessment order and brought to our knowledge that in respect of each item mentioned therein, the invoice number, invoice date as well as the quantity is duly mentioned. It is a case of giving the discount to the party depending on the quantity, quality and terms of payment. It is not a case where the sales are not found to be

recorded in the regular books of account. For the assessment year 2007-08 and 2008-09, it was submitted that no material relating to these sales were found.

8. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that this is a case where the Assessing Officer made the addition in every assessment year on the basis of the documents found and seized during the course of search relating to the sales of the 'X' category material to various customers for the month of June and July, 2008. These documents are reproduced in the assessment order at pages 2 to 5 and 6 to 9. The Assessing Officer on the basis of these documents presumed as if the assessee has received the cash for the amount which has been shown by the assessee to be the discount given to each of the party mentioned therein. The Assessing Officer, we noted, recorded the statement of Shri S.K.Sharma as well as Shri Ashish Bajaj and both of them stated that the amount of discount allowed to the customer @Rs.5/- per kg or Rs.8/- per kg. represent the discount. The CIT(A), we noted, has given a finding of fact after appreciating the statement of Shri S.K.Sharma and Shri Ashish Bajaj as well as these documents. In absence of any cogent material or evidence being brought to our knowledge, we are of the view that it is not a fit case which warrants our interference. We accordingly confirm the order of CIT(A) in each of the assessment year. This disposes of ground Nos. 1 to 5 in assessment year 2007-08 and 2008-09 and ground Nos. 1 and 2 for the assessment year 2009-10.

9. Now there remain grounds 3 & 4 for the assessment year 2009-10 for our adjudication.

9.1 Ground No. 3 relates to the deletion of addition of Rs.29,96,942/- added by the Assessing Officer as undisclosed sales of the waste. The facts



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relating to this ground are that during the course of search at the residential premises of Shri Vinod Kumar Bajaj, documents at Annexure B-11, pages 29,30,74 and 75 were found which represent the record of sales of scrap by the Super Pack Division of the assessee company to M/s Jejani Waste Paper Industries. The documents are in relation to the transaction in the month of May and July, 2008. The assessee during the course of search as well as during the course of assessment proceedings denied the impugned document belonging to the assessee. Rather it was submitted that the documents seized are in the handwriting of Shri Chandraprakash Jejani proprietor of M/s. Jejani Waste Paper Supplier and belong to the said party. The Assessing Officer reproduced the contents of documents at Page No. 11 to 14 of the Assessment order and noted that the details of sales with date, bill No., name, quality of the product, weight, bill amount, total rate, total amount and TCS are mentioned in the impugned document. The transactions have been accepted by Shri Chandraprakash Jejani in the statement recorded. The Assessing Officer took the view that the assessee has suppressed the sale of scrap by undervaluing the sale price and accordingly, the ratio of sale to bill amount was determined and applied to the sales from 1/4/2008 to 31/8/2008 on sale of scrap to Jejani Waste paper Supplier and accordingly estimated the unrecorded sales which was added in the income of the assessee. The assessee went in appeal before the CIT(A) who deleted the said addition.

10. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the CIT(A) deleted the said addition by observing as under:

*"I have considered the aforesaid submissions of the appellant, the assessment order, evidences available on record and the facts of the case. The impugned documents numbering 29, 30, 74 and 75 of item No. 11 are part of loose paper bundle of Annexure B. There is no dispute about the fact that the transactions recorded in the impugned documents are relating*




to the sale of scrap to Shri Chandraprakash Jejani, Proprietor of M/s. Jejani Waste Paper Supplier for the months of May and July, 2008. These documents are reproduced in the assessment order at Page 11 to 14. Since the documents were found during the course of the Search in the possession of the Director Shri Vinodkumar Bajaj, the explanation was called by the investigation wing as well as by the AO. The appellant claimed that the documents are in the handwriting of Shri Chandraprakash Jejani and the contents are in relation to the business activity of the aforesaid party. According to the appellant, it is a record of sales realisation by the aforesaid party out of the purchases made from the appellant company. The investigation wing conducted survey at the premises of Jejani Waste Paper Supplier and recorded the statement of Shri Chandraprakash Jejani who accepted having purchased waste from the assessee company at the price recorded in the impugned documents which is more than the invoice price. However, he denied that the documents are in his handwriting. According to the AO, the sale bills are prepared for the amount mentioned in column No. 6 of the documents while the goods are sold at the rates mentioned in Column No. 8 of the impugned document. Thus the AO held that the bill is prepared at lower amount and the sales are recorded in the books of account at a lesser figure. The AO discussed in the assessment order about the statements of Shri Ashish Bajaj, Shri Chandraprakash Jejani and Mr. Yerawar. The AO, accordingly, held that the assessee has suppressed sales and by determining a multiplying factor, on the basis of two months documents, applied the multiplying factor to the sales for the period from 1-4-2008 to 31-8-2008 and 1-9-2008 to 31-3-2009 to the aforesaid party and made the addition of the difference amount which was determined at Rs.29,96,942/-.



The AR of the appellant on the other hand has argued vehemently that the presumption u/s.132(4A) against the assessee has been rebutted by proper explanation at the time of search and thereafter in the assessment proceedings. He contended that Shri Vinod Bajaj and Shri Ashish Bajaj have denied the contents of the documents and have also stated in the statement recorded at the time of the Search that the impugned documents are not in their handwritings, but in the handwriting of Mr. Jejani. According to the AR, the impugned documents contains the information regarding purchase of scrap by Mr. Jejani and its onward sale by the aforesaid party, which is the internal information obtained by the assessee. The

*transactions of the appellant according to the AR are supported by sales invoices and the payments which are received by cheque. The AR vehemently objected to the use of statement of Mr. Jejani and Mr. Yerawar in the assessment proceedings in view of the fact that the same were not provided to the assessee before making use of the such statement against the assessee. It was contended before me that the assessee applied for the copy of the statement of the Directors, Employees and all connected persons after the search and also during the assessment proceeding. However, the AO did not respond to such request of the assessee thus violating the principle of natural justice. The AR further drew my attention to the seized document and contented that the AO is grossly unjustified in drawing presumption against the assessee for suppression of sales for the period for which there is no documentary evidence. In short the appellant has denied the suppression of sales and has contested the addition made by the AO. These contentions of the appellant are found to have been containing time and are thus acceptable.*



*The impugned documents Page No. 29, 30, 74 and 75 of Annexure B-11 were found at the residential premises of Shri Vinod Bajaj, Director of the company. Therefore, there is a presumption that the documents belonged to the person from whom they are seized and the contents therein are true. The AO has held in Para 19 that assessee never explained as to how these documents were found from the premises of the Director of the company. The presumption u/s.132(4A) is rebuttable as claimed by the A.R. On careful perusal of the evidences available on record and the assessment order, I find that the AO has himself mentioned and noted in Para 9 of the assessment order that Shri Vinodkumar Bajaj has stated that the papers are in the handwriting of Shri Chandraprakash Jejani, Prop. Of M/s. Jejani Paper Industries. Further, the assessee denied and reiterated the stand taken before the investigation wing, when he was called upon in the assessment proceedings to explain the document. The reply of the assessee is available on record and has been noted by the AO in para 18 of the assessment order. I find that the assessee categorically denied and stated that the document if neither prepared by him nor reflects the transaction of the company. He further reiterated what was explained before the investigation wing in the aforesaid letter and stated that this document is the internal information of Jejani Waste Paper Industry and the amount in column number 8 is the price at which Jejani Waste*

*Paper Industries sold the goods to other parties. It is also placed on record by the assessee that Shri Ashish Bajaj has fully described these documents before the Investigation Wing. Thus, I find that the assessee has successfully rebutted the documents and has discharged the onus cast upon him to prove that the documents did not belong to it. A presumption is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorised to draw a particular inference from a particular fact, until and unless the truth of such inference is disproved by some other evidences. In the instant case, the presumption about the contents of the documents have been disapproved by the Director in the statement recorded on oath at the time of search. Thus in my considered view, this presumption has been displaced and the onus has been shifted upon the AO. Thus, on one side, the document is denied by the person from whose possession it is found and on the other side, there is a statement accepting the contents of the document. Surprisingly, the crucial evidence in this case, being the statement of Shri Jejani which was recorded in the survey proceedings at his business premises, was at all not provided to the assessee before using the same against it. The appellant has placed on record, copy of letter dated 6-4-2009 asking for the copy of the statements. On perusal of the aforesaid letter, I find that such copy was also asked after the Search action. However, the statement of Shri Jejani was not provided to the assessee. Thus, there is a violation of Principles of Natural Justice as the statement of Shri Jejani on which heavy reliance was placed by the AO was neither given to the assessee nor the assessee was given an opportunity of cross-examining Shri Jejani. In such circumstances, the addition could not be made when the presumption is rebutted and there was no other evidence except for the statement the copy of which too was not supplied to the assessee. The enquiries from Shri Jejani were conducted behind the back of the assessee without giving any opportunity to cross examine the statement of Shri Jejani. The Hon'ble Courts in the following have held that no addition can be sustained in such circumstances :-*

*(a)ACIT vs. Govindbhai N Patel. (2013) 215 taxmann 575 (Guj) (b)SMC Share Brokers Ltd. vs. DCIT (2007) 109 TTJ (Del) 700*

*I further find that the AO stretched his assumptions for the period beyond the date of search and made addition which*



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*are purely based on presumptions and surmises. In para 17 of the assessment order, a mention in this regard of the sale for the period from 1/9/2008 to 31/3/2009 on the basis of which the alleged suppression is determined has been mentioned. Thus, the AO was unjustified in presuming that the undisclosed sales of the waste by the assessee during the year under consideration is Rs.29,96,942/-. The Assessing Officer is accordingly directed to delete the addition of Rs.29,96,942/- The ground of appeal is allowed in favour of the appellant."*

11. We noted that this is a fact that the addition has been made by the Assessing Officer on the basis of the statement of Shri Jejani recorded in the survey proceedings at his business premises, the copy of which has not been provided to the assessee, even though the assessee vide his letter dated 06/04/2009 has specifically asked the Assessing Officer to provide him the copy of the statement. The assessee has also asked for the copy of the statement even after the search action but the Assessing Officer did not provide the same to the assessee. Even no opportunity has been given to the assessee to cross examine Shri Jejani. This is a case of violation of principles of natural justice and the addition has been made on the basis of the statement of third party recorded at the back of the assessee. We, therefore, do not find any illegality or infirmity in the order of the CIT(A) deleting the said addition. Thus, ground No. 3 taken by the Revenue stands dismissed.

12. Ground No. 4 in assessment year 2009-10 relates to the deletion of addition of Rs.1,75,372/- added by the Assessing Officer as undisclosed income from the sale of paper bag.

13. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the said addition has been made by the Assessing Officer on the basis of the seized documents Nos. 29, 30, 74 and 75 of Annexure B-11 by holding that the paper bag of calcium carbonate have been sold by the assessee without bills on the basis of the impugned documents and havily relying on the statement of Shri Chandraprakssh Jejani. When the matter went before the



CIT(A), the assessee contended that the paper bags cannot be used in view of the chemical contents therein and therefore, do not have realizable value due which it cannot be sold in the vicinity in factory premises in view of the pollution control. Even otherwise also the addition has merely been made on the basis of the statement of the third party recording during the course of survey, the copy of which was not given to the assessee and accordingly, the CIT(A) deleted the said addition. Keeping in view the facts and circumstances of the case, we are of the view that the CIT(A) has rightly deleted the addition and therefore, we confirm the order of CIT(A) on this issue. Thus, ground No. 4 taken by the Revenue in assessment year 2009-10 stands dismissed.

14. Since we have dismissed all the appeals of the Revenue therefore, the Cross Objections filed by the assessee in each of the assessment year have become infructuous and therefore, the same also stand dismissed as such.

15. In the result, all the appeals and all the Cross Objections of the assessee stand dismissed.

(Order was pronounced in the open court on 23/11/2017)

Sd/.  
**(PAWAN SINGH)**  
Judicial Member

Sd/.  
**( P. K. BANSAL )**  
Vice President

Dated:23/11/2017  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

✓ Guard file

  
Asst. Registrar  
Income Tax  
New Delhi  
110002