IN THE INCOME TAX APPELLATE TRIBUNAL
"RAIPUR" BENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 243 to 249/RPR/2014

A/W.

CROSS OBJECTION Nos. 18 to 24/RPR/2015
(**निर्धारण वर्ष /** Assessment Years : 2006-07 to 2012-13)

The Deputy Commissioner of Income-tax (Central), Aayakar Bhawan, Central Revenue Building, Civil Lines, Raipur (C.G.)	**बनाम**/ Vs.	**Shree Shyam Sponge & Power Pvt. Ltd.** Mahamaya Tower, 3rd & 4th Floor, In front of Anupam Nagar, Near Varun Honda, G. E. Road, Raipur (CG)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECA3704G		
(**Appellant / Respondent**)	..	(**Respondent / Cross Objector**)

राजस्व की ओर से/Revenue by :	Shri P. K. Mishra, CIT.DR
अपीलार्थी ओर से /Assessee by :	Shri Veekaas S Sharma, A.R.

सुनवाई की तारीख **/ Date of Hearing**	09/08/2021
घोषणा की तारीख **/Date of Pronouncement**	21/10/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals are directed at the instance of Revenue in respect of the assessee captioned above, arising from the common and combined orders of the Commissioner of Income Tax (Appeals) ['CIT(A)'] for all assessment years. In counter, the assessee has

also filed cross objections in all Revenue's appeals as tabulated hereunder:

ITA Nos.	Name of assessee	AY	Combined order of CIT(A) dated	Combined order of AO dated	Assessment order passed under Section
243 to 249 /RPR/14 a/w. CO Nos. 18 to 24/RPR/2015	Shree Shyam Sponge And Power Pvt. Ltd.	2006-07 to 2012-13	18.07.14	27.03.14	153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act')

2. The issues being common, interlinked and similar, all the captioned Revenue's appeals in respect of the captioned assessee have been heard together and are being disposed of by this common order.

3. The Revenue has raised several grounds in its appeals some which transcends in various assessments from A.Y. 2006-07 to 2012-13. The grounds are thus consolidated for various years for the sake of convenience of adjudication.

4. As per its grounds of appeal, the Revenue has broadly challenged the relief granted by the CIT(A) three counts; (1) additions of Rs.5,08,90,000/- in A.Y. 2006-07 invoking the provisions of Section 68 of the Act in respect of receipt of share application/share capital; (2) additions of different amounts on account of suppression of yield and unaccounted productions/sales in each assessment year from A.Ys. 2006-07 to 2012-13; & (3) additions of Rs.71,76,306/- on account of excess stock on finished goods/ raw material in A.Y. 2012-13.

5. As per its cross objections for the various assessment years in question spanning over A.Ys. 2006-07 to 2012-13, the assessee has

primarily raised a legal objection that in the absence of incriminating document *qua* the additions/disallowances made, the jurisdiction of the AO gets ousted under s.153A of the Act for making the addition/disallowances unconnected to the incriminating material in respect of unabated and concluded assessments concerning A.Ys. 2006-07 to 2009-10. The assessee has however supported the action of the CIT(A) in reversing the additions/disallowances made by the AO on merits while assailing his opinion in favour of Revenue on legal objections.

6. Briefly stated, the assessee is engaged in the business of production of sponge iron from iron ore, for which, the company was incorporated on 26.02.2003. A search was conducted on the residential/ business premises of the assessee group, namely, Mahamaya Group on 21.06.2011 including the assessee herein. A sum of Rs.20400/- was found in cash in main office at Tatibandh, Raipur and another Rs.89,475/- was found kept in factory premises. Consequent upon search, notices under s.153A of the Act were issued on the assessee. Pursuant thereto, the assessee filed return of income under s.153A of the Act. The assessment was framed under s.143(3) r.w.s. 153A of the Act for A.Ys. 2006-07 to 2011-12, whereas the assessment for A.Y. 2012-13 was passed under normal provisions under s.143(3) of the Act. A common assessment order for A.Ys. 2006-07 to 2012-13 was passed having regard to common issues are involved in all these assessment years.

7. In the course of the search assessment noted above, the AO *inter alia* observed that credits in respect of share application money to the tune of Rs.5,08,90,000/- in the books concerning AY 2006-07 does not satisfy the requirements of Section 68 of the Act. It was observed that the assessee had failed to prove the

genuineness and creditworthiness of the share applicants (subscribers). The AO also observed that the assessee has suppressed the yield of sponge iron *qua* the consumption of iron ore and coal and has thus indulged into unaccounted sales in the all these years under appeals. The books of accounts were rejected and additions were made on account of low yield and consequent alleged suppression of production/ sales of varied amounts were made after comparison of actual yield with a benchmark yield of 60% expected by the AO. Thus, an addition of Rs.1,05,81,079/- was made on account of difference in production while framing the assessment order for AY 2006-07. The directions of the superior authority under s.144A of the Act were taken into account. The income of the assessee was accordingly assessed at Rs.7,01,82,112/- as against loss of Rs.87,11,033/- (AO wrongly treated Rs.87,11,033/- as income) under s.153A of the Act for AY 2006-07 in question. Similar additions towards low yields were made towards low yields in other assessment years also.

8. Aggrieved, the assessee preferred appeal before the CIT(A) challenging the aforesaid additions in all these years.

9. The assessee filed detailed submissions before the CIT(A) and the documentary evidences to substantiate its claim on both issues; namely, (i) additions under s.68 of the Act on account of share application money & (ii) additions on account of low yield of finished product. A legal objection was also raised on jurisdiction under S. 153A in respect of assessments unabated and concluded prior to search. The CIT(A) took note of factual and legal submissions so made and found merit in the plea of the assessee on both issues involved.

10. The CIT(A) addressed the first issue on additions made by the AO under S.68 of the Act on merits in favour of the assessee for which the relevant operative para reads as under:

> *"5. I have carefully gone through the assessment order and submissions of the appellant. As regards allegation of the A.O. regarding non-maintenance of Statutory Records, the appellant was asked to furnish the copy of statements recorded during the course of proceedings u/s 132, it has been submitted by the appellant that the statement of none of the appellant company's representative was recorded at the registered office premises and it has also been submitted by the appellant that none of the Officer of Search Team ever visited the Registered Office premises of the appellant company. With a view to ascertain the facts, during the course of appellate proceedings of other companies covered in the Mahamaya Group of cases and in appeal before the undersigned, namely (1) Mahamaya Steel Industries Limited, (2) Abhishek Steel Industries Limited, (3) Mahalaxmi Technocast Private Limited (4) Devi Iron & Power Private Limited, were asked to furnish copy of statements of all the persons recorded by the Search Team during the proceedings u/s 132. The statements were furnished by the said companies. I have carefully gone through all the statements of all the persons recorded during the proceedings u/s 132 on 21/22.06.2011. I am in agreement with the submissions of the appellant company that no statement of appellant company's representative was recorded during the search proceedings. The statements of other persons belonging to the aforesaid companies also does not, in any way, lead to an inference that the Group companies or the appellant company do not maintain statutory records / Registers. It is also seen that the appellant company had made specific request before the A.O. vide its letter submitted on 14.03.2014 and 18.03.2014 to dispel the doubts of the A.O. regarding non-maintenance of statutory records and registers. From the assessment order, it appears that the A.O. did not take any cognizance of the assertion made by the appellant regarding maintenance of Statutory Records and registers in accordance with the provisions of Companies Act and without verifying the verifiable facts regarding maintenance or otherwise of Statutory records and registers, the A.O simply seems to have found it convenient to remain silent and sit back after making the allegation without any proper basis. I do find considerable force in the submissions of the appellant that the A.O. merely made the allegation, however, the A.O. has not brought on record any basis for such allegation. It is not the case of the A.O. that the search team did visit the Registered Office premises of the appellant company and had asked a specific query to the appellant company's representative with regard to maintenance of statutory records and that the appellant company's representative failed to produce the Statutory Records or registers or expressed their inability to produce the same or had admitted that no such records are being maintained. I find that on one hand, the A.O made the allegation, however, without bringing on records its basis and on the other hand, the A.O. did not also adhere to the appellant company's specific request to verify the statutory records that are being maintained by the appellant company, such an action of the A.O. has made the assessment*

order vitiated by one sided conclusion by the A.O. I have carefully perused the statement of Ms. Jaswinder Kaur Mission recorded on 21.6.2011, from the perusal of said statement, I find that the said employee of group company did show Members Register, share certificates and counterfoils of the appellant company and therefore, the allegation of the A.O appears to be baseless. Neither from the assessment order nor from the statements recorded during search proceedings, it is emerging that there was any attempt to locate such statutory records.

5.2 The discharge or otherwise of the onus u/s 68 has been independently evaluated and examined. The appellant has submitted that Escorts Finvest Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Escorts Finvest Private Limited for the assessment year 2006-07 and 2007-08.

5.3 It is seen that Escorts Finvest Private Limited was assessed u/s 143(3) and the ITO, Ward-1(4), Kolkata recorded a specific finding that the said company had share capital and share premium reserve of Rs.5,64,50,200/- and Rs.44,37,90,000/- as on 31.3.2006 and that the ITO, Ward-1(4), Kolkata had conducted enquiries with the various shareholders of Escorts Finvest Private Limited by issuing notices u/s 133(6) and verifying their responses. I find that ITO, Ward-1(4), Kolkata was satisfied with the genuineness of addition to share capital and reserves of Escorts Finvest Private Limited inasmuch as no adverse inference was drawn by ITO, Ward-1(4), Kolkata with regard to said addition to share capital and reserves of Escorts Finvest Private Limited. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Escorts Finvest Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings.

5.4 The appellant has submitted that Antariksh Commerce Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Antariksh Commerce Private Limited for the assessment year 2005-06 and 2008-09.

5.5 It is seen that Antariksh Commerce Private Limited was assessed u/s 143(3) r.w.s 147 and even as on 31.3.2005, the said company had share capital and reserves of Rs.23.62 crores. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding

identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings and the said company had sufficient means to invest even prior to the period covered under present search proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Antariksh Commerce Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings.

5.6 It is seen that the addition to share application and capital was duly accepted in the scrutiny assessment proceedings of the appellant u/s 143(3) for A.Y 2006-07 and 2007-08, the present action of the A.O is not culminating from any specific finding against the appellant that it was a beneficiary of any racket which has been unearthed as a result of search proceedings nor has the A.O brought on record any other evidence to indicate that the appellant did make undisclosed income and such evidence came on the surface as a result of search proceedings. The A.O has not rebutted the details of tangible net worth submitted by the appellant to demonstrate that the subscribers had sufficient means to invest in the share application/capital of the appellant company, I have perused the details of net worth of the subscribers with reference to the audited financial statements of the subscribers and found satisfactory. In this background, in my considered view, there is no scope and reason to take a contrary view than that taken by the then A.O without there being any documentary evidence against the appellant to demonstrate that the share application money was nothing but undisclosed income of the appellant.

5.7 Furthermore, I am in agreement with the submissions of the appellant that the same A.O has accepted the addition to Preference Share Capital in the case of Mahamaya Steel Industries Limited received from Escorts Finvest Private Limited & Antariksh Commerce Private Limited and therefore, the identity and creditworthiness of Escorts Finvest Private Limited & Antariksh Commerce Private Limited were undisputedly accepted and genuineness of addition was also duly accepted, hence, there cannot be any reason to take a contrary view in the case of appellant. The A.O cannot be permitted to take two divergent views on same set of facts and on same set of evidences, when the same A.O undisputedly accepted the genuineness of addition to share capital of Mahamaya Steel Industries Limited, there was no reason for him to take a contrary view in the case of the appellant.

5.8 It is an undisputed fact that the names, addresses and assessment particulars of the investors, their active status as per the website of Ministry of Corporate Affairs and bank statement of the applicants had been furnished by the appellant before the AO. It is further observed that the share application/capital money has been received by way of

account payee cheques from the investors most of whom are companies and is duly reflected in the bank account of the appellant. I have perused the bank statements of the investors, their audited financial statements and confirmation for making such investments, which clearly establishes the factum of making investments. These facts are clearly establishing the identity of the investors and the genuineness of the impugned transactions.

5.9 It is observed from the records and assessment order that for the purpose of making addition as unexplained cash credits, the AO has heavily relied upon the judicial pronouncements, however, the appellant has made elaborate submissions distinguishing the facts, I am convinced with the explanation of the appellant that the decisions relied upon by the A.O are not applicable in the facts of the present case as there is nothing on record which can indicate that the receipt of share application money was by way of accommodation entries only. It is also not the case of the A.O that the investors have accepted by way of statement that the sums paid to the appellant was in fact received from the appellant and investors merely routed the undisclosed income of the appellant through money laundering process in the form of share application money. On the contrary, the A.O himself has stated in the assessment order that the investors have sent confirmatory letters, I have gone through the confirmatory letters, it is seen that the letters were sent through registered/speed post which cannot be said to be unauthentic mode, secondly, the investors have confirmed having made the investment by way of affidavits which are duly notarized, the investors have also furnished the copies of share application forms, their audited financial statements, ITR, bank statement. In the backdrop of these facts and documentary evidences, in my considered opinion, the identity and creditworthiness of the subscribers has been established and cannot be doubted, it is not justified on the part of the A.O to simply reject the documentary evidences on record and take an adverse view and clothing the case of the appellant with the judicial pronouncements which have been rendered on absolutely different facts and circumstances.

5.10 The appellant has relied upon various judicial pronouncements and correlated the facts in those decisions with the facts in the case of the appellant. I am convinced that the decisions relied upon by the appellant are certainly applicable in the case of the appellant as the facts are not only similar but identical. The appellant has also relied upon the decision of the Hon'ble Supreme Court and jurisdictional High Court which cannot be ignored. The A.O has referred to the notices issued under section 133(6) which have been returned un-served in some of the cases. It is seen that in the subsequent paragraph, the A.O himself has given the particulars of receipt of replies from the investors, therefore, in my considered view, no adverse inference can be drawn against the appellant for mere non service of notices initially, I have carefully perused the explanation submitted by the appellant in respect of cases where the notices remained unserved, the submissions of the appellant are found to be convincing. It is further observed that no further enquiry or investigation has been conducted by the AO to corroborate or support the conclusions drawn in the assessment order so as to assess the share capital money as the undisclosed income of the appellant company. In my considered opinion, apart from drawing

presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the investment in the business has flown from appellant's own money which is an essential pre-requisite for making addition in such cases. I am convinced that the case of the appellant is squarely covered by the the decisions rendered by the Hon'ble Apex Court in the case of the CIT vs. Lovely Exports (P) Ltd. reported in 216 CTR 195 and the jurisdictional High Court viz. the Chhattisgarh High Court in the case of the ACIT vs. Venkateshwar Ispat (P) Ltd. reported in 319 ITR 393 for the reason that the facts in such cases are entirely same, particularly, when no differentiation could be effectively demonstrated and brought on to the record by the A.O. The submissions of the AO that the decision of the Hon'ble Supreme Court in the case of Lovely Exports (P) Limited was rendered in the light of different facts inasmuch as the said judgement was rendered by the Hon'ble Supreme Court in the context of public issue, is devoid of merit because the decision was rendered by the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. which is a Private Limited Company and which cannot bring public issue of shares. I find that the investments made by the share applicants were duly reflected in the audited financial statements of the corporate investors. It is a settled principle of law that reason for suspicion, however grave it may be, cannot be a basis for holding adversity against appellant.

5.11 The Assessing Officer has disregarded the documentary evidences adduced by the appellant such as confirmation from the share applicants, their PAN, certificate of incorporation of subscriber companies, records of the Registrars of Companies (ROC) generated from the website, affidavits filed in support of the fact of advancing share applications monies etc. The subscription for the shares were received through cheques. The Investor-companies were active as per the website of the Ministry of Corporate Affairs and they were duly registered with ROC. Those companies were also having their income tax PAN numbers and regularly filed returns of income. No material was brought on record by the Assessing Officer to show that the affidavits filed by the Directors of the investor- companies were not genuine. No enquiries were conducted about the contents of the affidavits. The A.O did not make any attempt to discredit the affidavits. The result is that the contents of the affidavits have not been disproved. It also shows that the parties (deponents) were present at the given addresses against whom action could have been taken. No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax Department to show that the monies represented the appellant's undisclosed income.

5.12 The Hon'ble Supreme Court in CIT vs. Lovely Export, 216 ITR 198 SC and the Delhi High Court in Divine Leasing and Finance Limited, (2008) 299 ITR 268 have held that in the case of money received towards share capital only the identity of the share holders needs to be proved and once that is established and it is also shown that the money did in fact come from them, it is not for the assessee to prove as to how the share applicants came to be in possession of the money. In the light of the above discussion, I am inclined to agree with

the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the A.O. Which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.

5.13 The case of the appellant finds support from the decision in:

1. *CIT vs. Kamdhenu Steel & Alloys Limited & Ors. (2012) 68 DTR (Del) 38*
2. *In the case of Commissioner of Income-tax v. HLT Finance (P.) Ltd. [2011] 12 taxmann.com 247 (Delhi)*
3. *In the case of Commissioner of Income-tax-IV v. Dwarkadhish Investment (P.) Ltd. [2010] 194 TAXMAN 43 (DELHI)*
4. *In the case of Commissioner of Income-tax v. Winstral Petrochemicals (P.) Ltd. [2011] 10 taxmann.com 137 (Delhi)*
5. *In the case of Commissioner of Income-tax v. Arunananda Textiles (P.) Ltd. [2011] 15 taxmann.com 226 (Kar.)*
6. *In the case of Commissioner of Income-tax v. Creative World Telefilms Ltd. [2011] 15 taxmann.com 183 (Bom.)*

5.14 The A.O has relied upon the decision in CIT v. Nova Promoters & Finlease (P) Ltd. [2012] 342 ITR 169/206 Taxman 207/18 taxmann.com 217 (Delhi). However, on going through the said decision in Nova Promoters & Finlease (P) Ltd. (supra) I find that the facts are clearly distinguishable. In fact, in Nova Promoters & Finlease (P) Ltd. (supra) itself the Hon'ble Delhi High Court has observed, in the context of Lovely Exports (P) Ltd. (supra), as under:-

> *"The ratio of a decision is to be understood and appreciated in the background of the facts of that case.* ***So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec.68 and the remedy open to the revenue is to go after the share applicants in accordance with law.*** *We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made*

available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre- meditated plan - a smokescreen - conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. ***In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec.68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary."***

5.15 The case of the appellant also finds support from the following judicial pronouncements:-

(a) Commissioner of Income-tax-III v. Namastey Chemicals (P.) Ltd. [2013] 33 taxmann.com 271 (Gujarat);
(b) Commissioner of Income Tax v. Kuber Ploritech Ltd. [2010] 2 DTLONLINE 136 (DELHI);
(c) Commissioner of Income-tax v. Tania Investments (P.) Ltd. IT Appeal No. 15 OF 2009, High Court of Mumbai;
(d) Bhav Shakti Steel Mines (P.) Ltd. v. Commissioner of Income-tax [2009] 179 TAXMAN 25 (DELHI);
(e) Commissioner of Income-tax v. Samir Bio-Tech (P.) Ltd. [2010] 325 ITR 294 (DELHI)
(f) Commissioner of Income-tax-I v. Micro Melt (P.) Ltd. [2009] 177 TAXMAN 35 (GUJ.)
(g) Commissioner of Income-tax-V v. Real Time Marketing (P.) Ltd. [2008] 173 TAXMAN 41 (DELHI)
(h) Assistant Commissioner of Income-tax v. Mansarovar Urban Co-Operative Bank Ltd. [2009] 124 TTJ 269(LUCKNOW);
(i) Commissioner of Income-tax –IV v. Empire Buildtech (P.) Ltd. [2014] 43 taxmann.com 269 (Delhi);
(j) Commissioner of Income-tax v. Mulberry Silk International Ltd. [2012] 19 taxmann.com 31 (Kar.);
(k) Commissioner of Income-tax-III v. Nilchem Capital Ltd. [2012] 18 taxmann.com 350 (Guj.);
(l) Commissioner of Income-tax v. Jay Dee Securities & Finance Ltd. [2013] 32 taxmann.com 91 (Allahabad);
(m) Commissioner of Income-tax, Delhi-II v. Kinetic Capital Finance Ltd. [2011] 14 taxmann.com 150 (Delhi);
(n) Commissioner of Income-tax v. VLS Foods (P.) Ltd. [2011] 15 taxmann.com 225 (Delhi);
(o) Commissioner of Income-tax v. Ambuja Ginning Pressing and Oil Co. (P.) Ltd. [2011] 15 taxmann.com 273 (Guj.);
(p) Commissioner of Income-tax v. Rock Fort Metal & Minerals Ltd. [2011] 198 TAXMAN 497 (Delhi);

(q) Commissioner of Income-tax v. Siri Ram Syal Hydro Power (P.) Ltd.[2011] 196 TAXMAN 441(Delhi);

(r) Commissioner of Income-tax v. Orbital Communication (P.) Ltd. [2010] 327 ITR 560 (DELHI);

(s) Commissioner of Income-tax-I v. Himatsu Bimet Ltd. [2011] 12 taxmann.com 87 (Guj.);

5.16 I am convinced that the appellant has been able to establish the identity and creditworthiness of the subscribers as also the genuineness of the transactions. In my considered opinion, the ratio of the aforesaid judgements of the Hon'ble Supreme Court in Lovely Exports and that of jurisdictional High Court are certainly binding in nature on all the revenue authorities and courts etc. and further, the judgement of the jurisdictional High Court as well as that of the Hon'ble Supreme Court in Lovely Exports has been rendered on identical facts. Hence, it is impermissible to deviate from the ratio laid down therein and against the law of judicial precedents. I am convinced that the action of the A.O in making the addition in respect of even those sums which were refunded is illegal as the same is clearly beyond the purview of Section 68. In view of the above and respectfully following the ratio of the binding judgements, the addition of share application/capital money of Rs.5,08,90,000/- as unexplained cash credits under section 68 is uncalled for and hence, deleted."

11. As regards second issue pertaining to low yield and alleged suppression of production and unaccounted sales, the CIT(A) took note of the relevant facts placed before him by the assessee and passed a detailed common and combined order on the issue covering all the assessment years noted above. The relevant operative para of the order of the CIT(A) also extracted hereunder for easy reference:

"9. I have carefully gone through the assessment order and submissions of the appellant. The search operation u/s 132 had taken place in the premises of the appellant including residential premises of the directors. The A.O had issued show cause notice cum query letter inter alia asking the appellant to show cause why addition should not be made as the yield of sponge iron using iron ore as raw material declared by the appellant was less than 60%.

9.2 The A.O has made the addition on account of alleged unaccounted sales based on unaccounted production by estimating the production at 60%. The A.O has reproduced various mathematical calculations and tables containing data of consumption of Iron ore, coal, power, production, average consumption, highest and lowest consumption etc. The A.O ultimately zeroed down to the issue of yield of sponge iron using iron ore as raw material declared by the appellant. The A.O has failed to establish the nexus between the

mathematical calculations of highest and lowest consumption of power, raw material etc with Yield of 60% adopted by the A.O. The A.O has merely stated that the yield being shown by the appellant is quiet low in comparison to the yield shown by other manufacturers of CG, however, wherefrom the A.O derived this figure of 60% is best known to the A.O only. The undersigned made an attempt to work out the average yield in the industry based on data available from the Department itself.

9.3 The appellant has submitted that despite repeated requests made before the A.O, the basis of adopting yield in the case of appellant at 60% was not provided. With a view to make the comparison of yield declared by other assessees engaged in similar line of business, information regarding yield was sought from the office of DCIT-1(2), Raipur vide letter dated 22.04.2014. The information was received from the Office of DCIT-1(2), Raipur vide letter dated 25.04.2014.

9.4 The yield declared by the appellant and information regarding yield declared by other assessees, as received from the DCIT-1(2), Raipur, was compared with reference to the uniform and standard yield adopted by the A.O. The results of the comparison so made are as under:-

Sl No.	*Name of Comparable assessee assessed in Circle 1(2), Raipur*	*F.Y.*	*Yield (%)*	*Benchmark taken by AO*	*Yield (%) of Appellant*
	A.Y. 2008-09				
1	*Gopal Sponge & Power Pvt. Ltd.*	*2007-08*	*48.86*	*60.00*	*54.07*
2	*GR Sponge & Power Ltd.*	*2007-08*	*51.76*	*60.00*	*54.07*
3	*Shri Nakoda Ispat Pvt. Ltd.*	*2007-08*	*52.64*	*60.00*	*54.07*
4	*Rashmi Sponge Iron & Power Industries Ltd*	*2007-08*	*40.35*	*60.00*	*54.07*
	Arithmetical Mean of Yield		***48.40***	***60.00***	***54.07***
	A.Y. 2009-10				
1	*GR Sponge & Power Ltd.*	*2008-09*	*52.77*	*60.00*	*50.68*
2	*Shri Nakoda Ispat Pvt. Ltd.*	*2008-09*	*53.68*	*60.00*	*50.68*
3	*Rashmi Sponge Iron & Power Industries Ltd*	*2008-09*	*52.78*	*60.00*	*50.68*
4	*Gopal Sponge & Power Pvt. Ltd.*	*2008-09*	*51.08*	*60.00*	*50.68*
5	*M/S Sunil Sponge & Private Limited*	*2008-09*	*51.58*	*60.00*	*50.68*
6	*M/S Mahendra Sponge & Power Limited*	*2008-09*	*49.74*	*60.00*	*50.68*
7	*M/S Baldev Alloys Private Limited*	*2008-09*	*53.88*	*60.00*	*50.68*
	Arithmetical Mean of Yield		***52.22***	***60.00***	***50.68***
	A.Y. 2010-11				
1	*Gopal Sponge & Power Pvt. Ltd.*	*2009-10*	*55.14*	*60.00*	*59.40*
2	*GR SPONGE & POWER LTD*	*2009-10*	*53.69*	*60.00*	*59.40*
3	*Shri Nakoda Ispat Pvt. Ltd.*	*2009-10*	*53.09*	*60.00*	*59.40*

	Arithmetical Mean of Yield		***53.97***	***60.00***	***59.40***

The aforesaid Table leads to following inferences:

(a) The Yield declared by different assessees in the same year is not uniform, conversely, every assessee declared different yield.

(b) The yield declared by same assessee in different years is also not uniform, for instance, yield achieved by Rashmi Sponge Iron & Power Industries Ltd in A.Y 2008-09 and 2009-10 was 40.35% and 52.78% respectively.

(c) Not even a single comparable instance was found declaring yield of 60%.

(d) The arithmetical mean of yield declared by other assessees was computed on the basis of data available within the Department. However, the yield declared by the appellant in different years was found to be more than the arithmetical mean of the yield declared by the other assesses except in the F.Y. 2008-09 in which the yield declared by the appellant is marginally less.

(e) From the table above, wherein average yield of the industry has been computed based on data received from DCIT-1(2), Raipur, it is seen that the yield achieved by the appellant in financial year 2007-08 is more than the average industry yield, though, it is marginally low in the F.Y 2008-09.

In view of aforesaid findings, the action of the A.O in adopting uniform and standard yield of 60% appears to be unreasonable.

9.5 Thereafter, with a view to make comparison of financial results of the appellant with other assessees engaged in similar line of business, Letter was issued to DCIT-1(2), Raipur on 28.04.2014. The desired documents were received from the DCIT-1(2), Raipur vide letter dated 26th May, 2014.

9.6 I have carefully gone through the Tax Audit Reports, audited financial statements and assessment orders passed by the DCIT-1(2), Raipur in the case of other assessees referred supra. From the perusal of said assessment orders, it was gathered that no adverse inference was drawn in the case of those assessees that were assessed in the past in the office of DCIT-1(2), Raipur on the issue of lower yield, and in fact declared less yield than that declared by the appellant. In none of the comparable case received from DCIT-1(2), Raipur, such standard yield of 60% was adopted despite of the fact that all the comparable cases declared yield much less than 60% and even less than that declared by the appellant.

9.7 I have carefully analyzed the financial results of the appellant and a comparison of GP and NP rate was drawn between GP and NP rate declared by the appellant and the comparable cases received from DCIT-1(2), Raipur. The result of the comparison is as under:

S.No.	Name of comparable assessee assessed in Circle 1(2), Raipur	F.Y.	Turnover (Rs. In Lacs.)	G.P. (%)	N.P. (%)	YIELD (%)	Turnover of appellant (Rs. In Lacs.)	GP (%) of appellant	NP (%) of appellant	Yield (%) of appellant
1	Rashmi Sponge Iron & Power Industries Ltd	2007-08	9061.33	18.79	4.66	* 40.35	2394.51	18.42	12.88	54.07
	Average Yield For F.Y. 2007-08					*** **40.35**				
1	Gopal Sponge & Power Pvt. Ltd.	2008-09	10668.98	11.15	4.73	51.08	3373.01	13.13	7.84	50.68
2	M/S Mahendra Sponge & Power Limited	2008-09	12790.05	6.71	4.09	49.74	3373.01	13.13	7.84	50.68
3	M/S Sunil Sponge & Private Limited	2008-09	7699.30	4.07	1.42	51.58	3373.01	13.13	7.84	50.68
4	M/S Baldev Alloys Private Limited	2008-09	468.44	** 10.93	** -13.86	53.88	3373.01	13.13	7.84	50.68
	Average Yield For F.Y. 2008-09					*** **51.71**				

***Rashmi Sponge Iron & Power Industries Ltd**

Yield = Production of Sponge Iron/Consumption of Iron Ore		34167.00/84683.42
	Yield	**40.35**

** **M/S Baldev Alloys Private Limited**

Particulars	All Business	Trading Business	Iron ore crushing	Only Manufacturing Business
	A	**B**	**C**	**D= A-B-C**
Sales	468433831.2	140359915	26193426.2	301880490
Purchase	348971102.5	80086986	0	268884116.5
G.P.	119462728.7	60272929	26193426.2	32996373.5
G.P. Ratio	**25.50**			**10.93**
N.P.	44639793.23	60272929	26193426.2	-41826561.97
N.P. Ratio	**9.53**			**-13.86**

The Average Yield of the industry was calculated as under:

Sl. No.	*Name of Comparable assessee assessed in Circle 1(2), Raipur*	*F.Y.*	*Total Production*	*Total Consumption*	*Yield (%)*	*Yield (%) of Appellant*
1	*Rashmi Sponge Iron & Power Industries Ltd*	*2007-08*	*34167*	*84683.42*	*40.35*	
	Average Yield for FY 2007-08	*2007-08*	*34167*	*84683.42*	***40.35***	*54.07*
1	*Gopal Sponge & Power Pvt. Ltd.*	*2008-09*	*48990*	*95910*	*51.08*	
2	*M/S Sunil Sponge & Private Limited*	*2008-09*	*33027.4*	*64035.721*	*51.58*	
3	*M/S Baldev Alloys Private Limited*	*2008-09*	*16959.19*	*31471.605*	*53.89*	
	Average Yield for FY 2008-09	*2008-09*	*98976.59*	*191417.326*	***51.71***	*50.68*

9.8 I have carefully compared the financial results of the appellant company with the financial results of other comparable cases as received from DCIT-1(2), Raipur. As is self explanatory from the details tabulated above, in my considered view, the financial results declared by the appellant are found to be better in comparison to most of the comparable instances in terms of GP rate as well as NP rate and even in terms of yield. It is also observed that there is no direct co-relation between GP rate and yield, for instance, the yield declared by Gopal Sponge & Power Pvt. Ltd. in financial year 2008-09 is 51.08% which is marginally higher than the yield declared by the appellant at 50.68%, however, the GP rate and NP rate of the appellant are found to be much better i.e. 13.13% and 7.84% respectively in comparison to 11.15% and 4.73% respectively declared by Gopal Sponge & Power Pvt. Ltd. Similarly, it is observed that the GP rate declared by M/S Baldev Alloys Private Limited was 10.93% as against 13.13% declared by the appellant company, however, at the same time it is also seen that net loss of 13.86% was declared by M/S Baldev Alloys Private Limited as against NP rate of 7.84% declared by the appellant though the yield was marginally low at 50.68%. Similarly the yield declared by Rashmi Sponge Iron & Power Industries Ltd in financial year 2007-08 is 40.35% which is lower than the yield declared by Gopal Sponge & Power Pvt. Ltd. at 51.08% in F.Y 2008-09, however, the GP rate of Rashmi Sponge Iron & Power Industries Ltd is found to be much better i.e. 18.79% in comparison to 11.15% declared by Gopal Sponge & Power Pvt. Ltd.

I am in agreement with the submissions of the appellant that the variation in Consumption/yield is bound to take place as raw material i.e. iron ore is essentially a mineral which differs in Iron content as obtained from the mines, conversely, being mineral, the quality of ore and coal cannot be expected to be uniform. It needs no reiteration that at a given point of time, rate of iron ore will vary with the variation in iron content in iron ore, furthermore, it is a matter of common knowledge that the quality and quantity of output varies with the quality and composition of inputs. Therefore, in my considered view, yield cannot be said to be sole decisive factor while assessing the reliability of books of account. In other words, merely low yield cannot lead to an irrevocable presumption that the books of accounts of the appellant are unreliable and reasonable profit cannot be deduced therefrom. In my considered view, if a person uses low grade of raw material which will give low yield, yet he may make handsome profit if

he is able to buy raw material at competitive rates, in such a situation, it cannot be said that the books of accounts are not reliable merely due to low yield.

9.9 It is a matter on record that the appellant has maintained quantitative records of raw material consumed and finished product produced. The books of accounts were subjected to tax audit as well as audit under Company Law which were produced before the A.O. together with bills and vouchers and the same were examined by test check. The appellant has furnished the copies of excise returns filed by the appellant on monthly basis in Form ER-1 for finished goods and in Form ER-6 for raw materials, the same are placed in paper book. I had carefully analyzed various columns and details furnished by the appellant on monthly basis to the Central Excise Department. It is gathered that in Form ER-1, the appellant has given the details on monthly basis viz. Chapter heading, Description of goods, Unit of quantity, Opening balance, Quantity manufactured, Quantity cleared, Closing stock, Assessable value, Type of clearance, Excise duty payable etc. In Form ER-6, the appellant furnished the details on monthly basis viz. Description of principal inputs, Quantity code, Opening balance, Receipt, Taken for use in the manufacture of dutiable and exempted finished goods, Removed as such for export or for home consumption, Closing balance, Finished goods manufactured out of input, Quantity code of finished goods, Quantity of finished goods manufactured.

9.10 It is seen that the excise returns in Form ER-1 and ER-6 filed by the appellant on monthly basis are duly acknowledged and bears the seal and signature of the Central Excise Authority. The appellant was asked to produce the excise records maintained on daily basis. The appellant did produce the excise records in Form-IV and RG-1 for raw material and finished goods respectively for all the years under consideration. On test check of excise records maintained on daily basis with the figures of production, consumption of raw material and closing stock of finished goods and raw material shown in Form-ER-1 and ER-6, it was found that the same are tallying and thus, were found to be satisfactory. The entries in the excise records for material inwards was cross checked with reference to purchase bills and on test check, the same was found to be satisfactory and no infirmity was observed. The quantity of finished goods cleared was also verified with the sales invoice/challan issued by the appellant and the same was found to be satisfactory. From the details furnished by the appellant in Form ER-6, the data for calculation of percentage of yield and burning loss is readily available.

9.11 The appellant was asked to submit copies of seized documents and reply / explanation of the appellant thereon. The explanation given by the appellant on seized documents during the course of assessment proceedings before the A.O. was cross checked with reference to the seized documents, excise records, books of account and bill and vouchers and the same was found to be satisfactory.

9.12 The findings of the A.O regarding capacity utilization and other points mentioned on Page no.21 of the assessment order are discussed hereunder:-

(1) Regarding capacity utilization, the appellant had submitted that the Kiln used for manufacturing of sponge iron need to be shut down periodically as the refractory used in side the kiln has a particular life and after that the refractory has to be changed and thus, kiln will have to be shut down. I am in agreement with the submissions of the appellant that it would not be correct to compare actual production with the installed capacity without taking into consideration number of days for which the production operation was shutdown and actual number of days for which production was in operation.

(2) I find that the A.O has not pointed out any infirmity in the details furnished by the appellant regarding number of days plant was shut down, conversely, the actual number of days for which production activities had taken place. It is also seen that the A.O has not rebutted the submission of the appellant that the capacity utilization was as high as 90% also. The details of shut down were cross checked with reference to the letters vide which intimations were given to the Superintendent, Range-Central Excise regarding shut down and restart from time to time and the same were found to be correct. I am convinced with the explanation tendered by the appellant regarding capacity utilization and in view thereof, I am of the considered opinion that the capacity utilization cannot be said to be lower as presumed by the A.O. on the basis of incorrect interpretation of facts.

(3) Regarding variation in consumption of coal and Iron ore, in my considered view, the same may lay foundation for raising suspicion, however, at the same time, it is settled principle of law that suspicion, howsoever grave it may be, cannot take place of the evidence. On an independent appreciation of reasons explained by the appellant for variation in yield i.e. for variation in consumption of coal and iron ore, I find the explanation of the appellant to be convincing, particularly, when the appellant has brought on record certificate from registered valuer which is placed in the paper book at Page no.321 of Volume 3 as well as Page no. 7 of Volume 4 of the Paper Book in the case of appellant.

The A.O. has not brought on record any evidence to disbelieve the certificate of registered valuer who is duly approved u/s 34AB of the Wealth Tax Act, 1957 vide order dated 06.07.2011. As per the said certificate of the registered valuer, the average yield of sponge iron unit using Iron ore and coal as raw material may vary from 40 to 60% and coal consumption may vary from 1.6 to 2.1 MT depending upon fixed carbon in coal. The quantitative details of consumption of sponge iron and coal were found to be within the reasonable range as certified by the registered valuer. Furthermore, in my considered view, it is impractical to presume uniform quality of coal and iron ore, the A.O has not rebutted any submission of the appellant explaining the reasons for variation in coal and iron ore.

(4) Regarding stock, the A.O. has made an addition of Rs.71,76,306/- on account of difference in Sponge Iron. The issue has been elaborately dealt in Para 12 to 15 below. It is seen that, though, the appellant has surrendered the excess stock of Iron ore fines, the appellant has made various submissions against the veracity and correctness of Quantity Assessment Report of the DRV. It is seen that the A.O has not made any addition to total income on account of difference in sponge iron. If the appellant was actually suppressing the yield as alleged by the A.O, in all probabilities, the difference in stock of sponge iron must have been very wide and it cannot be just a sheer coincidence that, the search team did not come across any incriminating document; that no striking discrepancy was observed in stock/inventory. Therefore, I find no merit in the contention of the A.O that the excess stock is leading to an inference regarding unaccounted production.

9.13 The recording of 'reasons' by the AO is a condition precedent for any belief of the A.O, however, in the instant case, the A.O has not stated any reason for his inference regarding standardized yield of 60% in the Sponge Iron unit. Reason must be recorded by the AO that any undisclosed income belongs to the appellant. The material itself should not be vague, indefinite, distinct or remote. If there is no rational or intangible nexus between the material and the satisfaction that a person has 'undisclosed income', the conclusion would not deserve acceptation. Then the satisfaction is vitiated.

9.14 In the instant case, the A.O has completely failed to record the reasons based on material available as the A.O has not referred to even a single seized document which could be regarded as incriminating document and used as an evidence to even remotely support the conclusion of the A.O. The A.O seems to have blown out of proportion merely on the basis of mathematical and mechanical calculations. The A.O has laid too much emphasis on statistics, those statistics which cannot be said to have been gathered as a result of search only. The statistics relied upon by the A.O are those which are quite routinely called for even during the regular assessment proceedings u/s 143(3). The A.O has not stated what according to him should have been the average consumption of coal, iron ore etc.

Another fact noticed is that the case of the appellant was under scrutiny assessment for two consecutive years i.e. in A.Y 2006-07 and 2007-08 where regular assessments were made under scrutiny and the yield was shown by the appellant was not disputed.

9.15 I find that the A.O, in Para 9.1 has stated that the evidences of unaccounted production by suppressing its yield were found and these evidences are discussed in the subsequent paragraphs, from this assertion of the A.O, I am inclined to draw a reasonable inference that apart from what has been stated in the assessment order, the A.O has no other evidence in any form whatsoever.

9.16 Finished goods of the appellant is Sponge Iron which is consumed by its sister concerns namely "Mahamaya Steels Industries Limited" and "Abhishek Steel Industries Limited" as raw material and both the said sister concerns are also part of Mahamaya Group of companies. Even if for the time being contention of the A.O that the appellant has suppressed the yield and indulged into unaccounted sales is accepted, preponderance of probabilities do not suggest this for the reason that the finished product of the appellant is ultimately consumed by the Group companies only, if the appellant starts to sell its finished goods, the Sister concern of the appellant may have to buy the same in higher quantity from the open market, the business sense is not suggesting what has been suspected and inferred by the A.O.

9.17 It is gathered that M/s Mahamaya Steel Industries Limited (Formerly known as Rajesh Strips Limited) was primarily into manufacturing of re-rolled products since its incorporation. It is also gathered that to give effect to the expansion plans, the group had gone into backward integration and as a result, the SMS Division was brought into existence for manufacturing Blooms and Billets using sponge iron as raw material. It is also gathered that to meet the requirement of sponge iron, the Group had made investment in sponge iron units which also fit into the expansion plan by way of backward integration. Thus, from the perspective of the Mahamaya Group, Sponge Iron and Blooms & Billets constitute intermediary products. I find that the total quantity of sponge iron indigenously consumed by the group companies, namely Mahamaya Steel Industries Limited and Abhishek Steel Industries Limited, in their SMS Division was much more than own production of sponge iron by the group companies namely the appellant and Shree Shyam Sponge & Power Limited, in other words, the Group companies had to purchase sponge iron from the open market so as to cater to the raw material requirement in their SMS Division. The preponderance of probabilities suggests that the group companies were always short of sponge iron and therefore, the allegation of the A.O. that the appellant has sold sponge iron appears to be unreasonable in as much as why would a person go for backward integration (Sponge Iron Unit) and then sell its own intermediary product and at the same time buy the same product from the open market. It is a matter of common knowledge that the businessman goes for backward integration when he is able to produce the goods indigenously at a cost lower than the purchase cost from market. The A.O has duly accepted the purchase of sponge iron by the group companies that are recorded in their books of accounts and consumed in SMS Division of group companies, therefore, it is hard to believe that the appellant must have sold its product i.e. sponge iron which, in fact, is an intermediary product from the perspective of the group as a whole.

9.18 I have also carefully perused the statement of Shri Rishikesh Dixit recorded on 21.6.2011 as regards common allegation in case of all the four manufacturing companies i.e. sister concerns of Mahamaya Group that the group is following the system of destroying the initial document i.e. the loose slip in which quantity of production and consumption is recorded. From the statement of Shri Rishikesh Dixit, it is gathered that it was stated in clear terms that the quantity recorded in the loose slips tallies with the quantity recorded in the regular books

of accounts, excise records and excise returns; that as the Excise Return is being filed on monthly basis, therefore, after filing of Excise Return such loose papers become redundant and that is the reason said loose papers are destroyed, at this juncture, I find that neither in the show cause notice nor in the assessment order there is any whisper of any such loose paper which bears the figures of production and which the appellant failed to reconcile with the entries in the regular books of accounts and Excise Records/Returns. In the absence of any specific instance having been brought on record by the A.O, I am constrained to construe the allegation of the A.O as mere bald statement.

9.19 The low yield in comparison to the benchmark adopted by the A.O basis whereof is still in the dark and hasn't come on the surface, in the absence of any cogent reasons could not, by itself, have been a ground to hold that proper income of the appellant cannot be deduced from the accounts maintained by it and consequently, could not have been a ground to reject the accounts invoking section 145(3) of the Act. The variation in yield and consumption of power etc could be for various reasons. There is no finding by the A.O that actual quantity of finished goods sold by the appellant was more than what it was shown in the accounts books on the strength of documentary evidence.

9.20 In the case of ACIT Vs. M/s. Balajee Structurals (I) Pvt. Ltd. (supra), the jurisdictional Bench Hon'ble ITAT had an occasion to decide identical issue and the Hon'ble Tribunal has observed as under:-

> *"……..We find the assessee in his submissions before the A.O. had explained the reasons for variation in the yield. However, the A.O. has not considered the same and merely mentioned that the explanation given by the assessee is not found to be acceptable. We find merit in the submission of the Ld. Counsel for the assessee that when the production results are closely monitored by the Excise Department who has accepted the same and when the department has no other material to prove that the assessee during the impugned assessment year has indulged in unaccounted sales and since the assessee has already disclosed an amount of Rs.396.60 lacs on account of stock and debtors for the assessment year 2008-09, therefore, in view of the office note by the A.O. reproduced earlier, no addition, in our opinion is called for."*

In that case, the assessment year involved was 2005-06 and the assessee had offered additional income in assessment year 2008-09. However, ratio of the principles decided that (i) when the A.O. has not considered the assessee's explanation by merely mentioning that it is not found to be acceptable and (ii) when Excise Department has accepted the yield and when the department has no other material to prove that the assessee has indulged in unaccounted sales no addition is called for, are squarely applicable in this case.

9.21 Similarly in the case of ACIT vs. M/s. Super Iron & Steel Pvt. Ltd., which is one of the comparable cases cited above, in ITA No.139 to 141/ BLPR/2010, the jurisdictional Bench of Hon'ble ITAT had an occasion to decide similar issue and the Hon'ble Tribunal has observed as under:-

"6. After hearing the rival submissions and perusing the material on record we find that the assessee is engaged in the business of manufacturing of MS Ingots with Sponge Iron as the main raw material. According to the AO there was no basic document regarding consumption of raw material and production of finished goods were maintained by the assessee in the factory premises. The AO found that there is no system in place for keeping record of consumption of raw material and production of finished goods, it is apparent that the unaccounted production is evidenced from variation in units of electricity consumed per MT of finished goods so AO made the addition in question. The stand of the assessee was that it is maintaining regular books of account along with all the supporting bills and vouchers. The assessee submitted that the variation in consumption of electricity has been explained during the course of assessment proceedings and the AO has not made any adverse comment on the same. According to the assessee the yield in this A. Y is better in comparison to the preceding assessment years which was also covered by scrutiny assessment under section 143(3) of the Act. The addition in question is not based on such material and the addition has been made only on presumptions and surmises and is not justified. The AO has also not made out any comparable cases. In such situation the addition in question made by AO is not justified same were rightly deleted by reasoned finding, we uphold the same."

9.22 The low yield in comparison to the benchmark adopted by the A.O basis whereof is still in the dark and hasn't come on the surface, in the absence any cogent reasons could not, by itself, have been a ground to hold that proper income of the appellant cannot be deduced from the accounts maintained by it and consequently, could not have been a ground to reject the accounts invoking section 145(3) of the Act. The variation in yield and consumption of power etc could be for various reasons. There is no finding by the A.O that actual quantity of finished goods sold by the appellant was more than what it was shown in the accounts books on the strength of documentary evidence.

9.23 It is seen that the A.O has not pointed out any suppression of production based on any cogent and incriminating material against the appellant. Material showing financial nexus can only be a valid basis for holding suspicion or making the addition. Unfortunately not a single document showing any financial dealings by the appellant has been referred to either in the assessment order, or even during the course of hearing, despite the liberty granted vide this office Letters on 28.04.2014 and 16.05.2014. An order based on unconfirmed or uncorroborated belief of suspicion; even though the suspicion rests on the high pedestal of bona fides cannot stand the scrutiny of law. The facts and circumstances of the present case reveal that the A.O just brushed aside the objections/submissions and contentions raised by the appellant and evidences placed on record. The A.O has made mechanical addition of the difference between the unaccounted production/sales worked out on the basis of 60% yield suspected by the A.O that must have been achieved by the appellant. The assessment order conclusively indicates that the addition has been made out of

some lurking suspicion based either on rumours or on something less serious than that.

9.24 The A.O has merely referred to variations based on mathematical calculations viz_ Variation in coal, iron ore, this may well be the basis of suspicion, however, these cannot per se constitute the basis of the addition, though it can very well be a starting point for further investigation. In ***Lalchand Bhagat Ambica Ram vs. CIT: (1959) 37 ITR 288****, the Supreme Court disapproved the practice of making additions in the assessment on mere suspicion and surmises or by taking note of the "notorious practice" prevailing in trade circles.*

9.25 The significance of "tangible evidence" has been emphasized in various judicial pronouncements. Having test checked the seized documents with reference to submissions of the appellant and books of accounts along with bills and vouchers, having gone through all the statements recorded during the search proceedings, having analysed the results of enquiry conducted regarding yield, I am convinced that there was no tangible material before the A.O nor has the A.O brought any such evidence on record to corroborate his suspicion. The case of the appellant is find support from the case of Income Tax Officer vs. W.D. Estate P. Ltd. (1993) 46 TTJ (Bom) 143 : 45 ITD 473.

9.26 Similar ratio was laid down by the Hon'ble High Court of Delhi in Commissioner of Income Tax Vs. Discovery Estates Pvt. Ltd. vide order dated 18th February, 2013 (2013) 356 ITR 159 (Delhi).

9.27 I do find considerable force in the submission of the appellant that no unrecorded asset/investment was found during the course of search. The significance of tangible disproportionate asset having been found as a result of search was emphasized in ***Mangilal Rameshwarlal Soni (HUF) Vs. Assistant Commissioner Of Income Tax (2004)*** *83 TTJ (Jd) 770 : (2004) 4 SOT 680 (Jd).*

9.28 I find that no unrecorded asset or investment was found during the course of search with which undisclosed income of such magnitude could be correlated i.e. deployment of undisclosed income. This factor was given due cognizance in Bansal Strips (P) Ltd. & Ors. vs. Assistant Commissioner of Income Tax (2006) 100 TTJ (Del) 665 : (2006) 99 ITD 177 (Del) by the Hon'ble ITAT, DELHI 'A' BENCH as circumstantial evidence.

9.29 The Hon'ble Supreme Court had put an embargo on the leeway i.e. flexibility of Assessing Officers in Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax (1954) 26 ITR 775 (SC). The significance of considering the evidences in favour and against the assessee was emphasized by the Hon'ble SUPREME COURT in Omar Salay Mohamed Sait Vs. Commissioner of Income Tax (1959) 37 ITR 151 (SC).

9.30 Undisputedly, the appellant did furnish explanation on all the documents seized during the course of search, the explanation of the appellant was test checked with reference to the seized material, books of accounts, bills/invoices and other evidences placed on record and the explanation was found to be satisfactory and it is also a matter on record that the A.O has also not pointed out any infirmity in the

explanation of the appellant and nor did the A.O bring on record any documentary evidence or reasoning to negate the submissions/explanation of the appellant. It is also an undisputed fact that in the case of the appellant neither any diary or loose paper was found which indicates that the appellant did indulge into unaccounted sales and earned such hefty amount of income. The facts in the case of the appellant are much better than the facts before the Hon'ble HIGH COURT OF GUJARAT in Commissioner of Income Tax Vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj).

9.31 ***I find that even non maintenance of stock register is not fatal as held in Commissioner Of Income Tax Vs. Jacksons House*** *(2010) 39 DTR (Del) 212 : (2011) 198 TAXMAN 385. 11.35 .* ***Similar view was taken in M. Durai Raj Vs. Commissioner Of Income Tax*** *(1972) 83 ITR 484 (KER).*

9.32 On the matter of recording the consumption of raw material going in to klin and quantity of production coming out from klin, in my considered opinion, the mere fact of estimation cannot be made the basis of rejection of books of accounts so long as the financial results are not strikingly lower than the industry average or that the results are not supported by bills/vouchers or that the quantitative details have not been maintained properly. In ***Polisetti Subbaraidu & Co. Vs. Commissioner Of Income Tax*** *SOURCE : (1968) 69 ITR 738 (AP).*

Another decision wherein it was held that non maintenance of daily stock register per se is not sufficient to reject the books of accounts as it is not mandated by law is the decision of the Hon'ble High Court of Delhi in Commissioner Of Income Tax Vs. Smt. Poonam Rani (2010) 326 ITR 223. From the ratio of the aforesaid decision, it is also quite clear that the Courts have taken judicial note of the "estimation" i.e. recording of financial transactions with certain degree of estimation in the books of accounts. Drawing reference from the aforesaid decision, in my considered view, merely because certain transactions are recorded on the basis of estimation will not make the accounts liable for rejection u/s 145, particularly when the estimation is not strikingly high or low either in comparison to past trend or comparable cases, incidentally, none of these facts are prevailing in the case of the appellant.

9.33 The Hon'ble High Court of Delhi laid stress upon the material and evidences and brushed aside adversities held merely on the basis of suspicion and conjectures in ***Commissioner of Income Tax Vs. Ram Pistons & Rings Ltd.*** *vide order dated 16th February 2012 (2012) 80 CCH 055 Del HC.*

9.34 It is settled principle of law that the A.O has to bring on record specific defect in the books of accounts of the appellant as a result of which reasonable profits cannot be deduced. The A.O examined the audited books of account but had not pointed out any specific discrepancy nor has he detected any suppression in sales or inflation in purchases/expenses. No evidence whatsoever was brought on record to prove that, the appellant, in fact, earned more than that returned as per the books of account kept in the regular course of business. The assessment order is evidence to the fact that there was no specific finding given by the A.O to the effect that the method employed by the

appellant was such that correct profits could not be deduced there from. The A.O. has not come across any material defect in accounts so as to hold that any profit has been suppressed. It is also not the case of the A.O that the appellant has not followed the mercantile system of accounting. It is also not the case of the A.O that the appellant has not followed any particular accounting standards which are notified by the Central Government. It is also not in dispute that the appellant has maintained books of account regularly and these are duly audited u/s 44AB of the I.T. Act and the quantitative details were prepared and were duly audited. If the stock register was not maintained by the appellant, that may put the A.O on guard against the falsity of the return made by the appellant and persuade him to carefully scrutinize the account books of the appellant. The low yield in comparison to the benchmark adopted by the A.O, in the absence of any material pointing towards falsehood of the account books, could not by itself be a ground to reject the account books u/s 145(3) of the I.T. Act, 1961 much less a ground to make estimated addition. I find that there is no dispute with regard to the fact that the appellant has maintained quantitative details. In the case of CIT vs. Smt Poonam Rani 326 ITR 223 (Delhi) it was held that where an addition was made because of mere fall in gross profit without any defect in the accounts except for the absence of stock register-deletion of addition was upheld by the High Court. The appellant's case finds support from the following decisions:

a) Ashok Refractories Pvt Ltd. Vs. CIT (2005) 148 Taxman 635 (Cal.).
b) ITO v. Bothra International [2008] 117 TTJ (Jd.) 672
c) Delhi Securities Printers v. Dy. CIT [2007] 15 SOT 353 (Delhi)

Considering the facts and circumstances of the case, as also decisions relied upon by the appellant and those cited above, I am of the view that there was no finding to the extent that the accounts were not correct and complete or that the A.O was of the opinion that the income could not be deduced from the accounts maintained by the appellant.

9.35 The A.O. has not brought any material on record to disbelieve the book result shown by the appellant. If there is no suppression of material facts, the authority cannot embark upon a speculative assessment of notional profits. The assessment should be based on cogent facts and there should be no vindictiveness or arbitrariness in passing the assessment order. The estimated additions made by the A.O. do not bear any relationship with the specific defects in books of accounts and the A.O. cannot be permitted to make arbitrary addition.

9.36 The core thing to be seen is the evidence found which will be the basis for making the assessment. Coming to the facts of the case, the AO estimated the unaccounted production and sales based on benchmark yield of 60% in sponge iron unit. The entire estimated suppressed sale has been treated as profit. I am convinced that the determination of undisclosed income in this case is merely on the basis of presumption and on an estimate basis. Search assessment has to be framed on the basis of some material, which in this case is raw material consumed in Sponge Iron unit for manufacturing of Sponge Iron. No other materials or asset details were found during the course of search.

9.37 The question of best judgment is ruled out and therefore the application of any formula for estimating income does not arise. In the instant case, search had undertaken from 21st June, 2011 to 22nd June, 2011. The statements of various persons associated with the appellant company and Mahamaya Group was recorded and in those statements, no incriminating material was there which could be termed as evidence on the basis of which the undisclosed income could be computed. Certain documents were seized, but there was nothing in those materials relating to sales which could establish that appellant had undisclosed income. Therefore, in my considered view, it is unreasonable to estimate the suppressed sales on the basis of undisclosed yield. It cannot be said that there is always standardized yield during the search period.

9.38 As a matter of fact the Search Team could not come across any evidence of unaccounted sales, in my considered opinion, had there been any unaccounted sales, the same would have been detected by the Search Team. The case of the appellant also finds support from the decision of the jurisdictional Tribunal i.e. ITAT, BILASPUR BENCH in ***Chhattisgarh Steel Casting (P) Ltd. Vs. Assistant Commissioner of Income Tax*** *(2008) 8 DTR (Bilaspur) (Trib) 14.*

9.39 The significance of tangible evidence is indicative from the fact that in ***Commissioner of Income Tax Vs. Vishal Rubber Products*** *(2003) 264 ITR 542 (P&H) : (2004) 136 TAXMAN 151 despite Balance Sheet having been found from the premises searched, no addition was sustained in the absence of tangible evidence.*

9.40 On the contrary, the appellant had provided all the requisite details regarding its production activity. The items of raw material purchased are excisable products, the quantity of raw material purchased as mentioned in Excisable and Commercial Invoice was test checked with the entries in the Excise Record for raw material i.e. RG-1 and the same was found to be in order. The quantity appearing in the Excise Registers was cross checked with the entries in the Excise Returns and the same was found to be in order and tallying with the Excise Records. The inventory appearing in the Excise Records and Excise Returns was found to be the same as in financial records i.e. the books of accounts and Audited financial statements. Undisputedly, the production was meticulously routed through the appellant's daily production register/ Excise Records. The entries therein were definitely co-relatable to the entries in the stock register, enabling an easy stock tally, if one was so required. However, the AO did not deem it fit to carry out the exercise of tallying the stock as per these entries in the two types of books. He merely went by the alleged suppressed yield. Various submissions regarding reasons for variation in consumption of power, furnace oil, yield etc were duly furnished by the appellant. The appellant did furnish the comparable instances and also demonstrated with technical details of production. These copious evidences were wrongly ignored by the AO. ***Commissioner Of Income Tax Vs. Hindustan Tin Works Ltd.*** *(2007) 291 ITR 290 (Del) : (2007) 164 TAXMAN 529*

9.41 A careful reading of the decision in ***Commissioner of Income Tax Vs. R.K. Rice Mills*** *(2009) 319 ITR 173 : (2009) 185 TAXMAN 107 (P&H) the Hon'ble High Court had upheld the deletion of addition and*

it leads to an irresistible conclusion that there cannot be any rejection of books of accounts merely because the yield declared by the assessee is lower in comparison to other assessees engaged in similar line of business.

9.42 The notoriety that appellant suppressed the yield would be merely a background of suspicion and the appellant should not be held to have indulged in such illegal practices without any evidence. The mere possibility of the appellant getting higher yield would be a matter of pure conjecture. ***Commissioner Of Agricultural Income Tax Vs. M.J. Cherian*** *(1979) 117 ITR 371 (KER)*

9.43 I find no merit in the action of the A.O in rejecting the books of accounts merely due to the reason that the yield achieved by the appellant is less than the yield percentage i.e. 60 % which has not been achieved even by other assessees engaged in similar line of business, the A.O has not brought on record the manner in which he worked out the yield of 60%. The A.O has no evidence in his possession to indicate that the quality of raw material used by the appellant in all these 7 years was uniform and standardized one. The Hon'ble Madras High Court took judicial note of such facts in C. ARUMUGASWAMI NADAR vs. COMMISSIONER OF INCOME TAX (1961) 42 ITR 237 (MAD).

9.44 ***The facts in the case of the appellant are akin to the facts before the Hon'ble High Court*** *of Assam in* ***Harakchand Arakchand Radhakisan vs. Commissioner of Income Tax*** *(1962) 46 ITR 196 (ASSAM). The Hon'ble High Court of Delhi has laid down certain principles on rejection of books of accounts in* ***Commissioner Of Income Tax Vs. Paradise Holidays*** *(2010) 48 DTR (Del) 349 : (2010) 325 ITR 13.*

9.45 In ***SUKHADIA JAMNADAS MAGANLAL vs. INCOME TAX OFFICER*** *(2008) 13 DTR (Guj) 149, the Hon'ble High Court of Gujarat elaborately considered the various questions and issues and ultimately decided the question in favour of the assessee, identical issues and questions are present in the instant case.*

9.46 Undisputedly, the case of the appellant was under scrutiny assessment for two consecutive years i.e. in A.Y 2006-07 and 2007-08. It is self evident from the above referred assessment orders u/s 143(3) that the books of accounts of the appellant were accepted in all these years and yield declared by the appellant was also accepted. Even during the survey proceedings, no incriminating document was found which is evident from the fact that no addition was made in the scrutiny assessment, for the year in which survey proceedings took place, on the basis of incriminating document. The case of appellant finds support form decision in ***Sukhadia Jamnadas Maganlal Vs. Income Tax Officer*** *(2008) 13 DTR (Guj) 149, the Hon'ble High Court of Gujarat.*

9.47 The Hon'ble High court of Bombay in ***R.B. Bansilal Abirchand Spinning & Weaving Mills Ltd.. Vs. Commissioner of Income Tax*** *(1970) 75 ITR 260 (BOM) has held that "Merely by comparison of the percentage of losses in a particular year, it is not possible to say with any reasonable certainty that the increase in the percentage of loss*

must be attributable and must lead to a reasonable inference of suppression of production."

9.48 In the instant case also, the ultimate addition has been made on the basis of alleged suppression of yield/ unaccounted production. Except making comparison of yield achieved by the appellant with A.O's own standardized yield percentage of 60%, the A.O has not brought on record any evidence, given the fact that the present proceedings are culminating from the search proceedings, as a matter of fact the search team could not come across even a single document which even indicates of appellant's indulgence into any such suppression of yield or unaccounted sales. It is not the case of the A.O that the buyers of alleged unaccounted sales have given the statements against the appellant, nor any employee uttered any such thing.

9.49 Whether mere variation in yield can even be a ground for rejection of books of accounts was decided by the Hon'ble High Court of Jammu & Kashmir in ***International Forest Co. Vs. COMMISSIONER OF INCOME TAX*** *1975 CTR (J&K) 88 : (1975) 101 ITR 721 (J&K). Where AO had failed to bring on record any cogent material to show quantum of sales of assessee out of books of accounts, then addition made by revenue on estimated basis was not justified, this was held in COMMISSIONER OF INCOME TAX vs. MAHAN MARBLES (P) LTD. by Hon'ble High Court of Rajasthan vide order dated 9th January, 2013 (2013) 354 ITR 238 (Raj).*

9.50 It is not the case of the A.O that the stock records and inventory of the appellant or the quantity of production and sales declared by the appellant in its books of accounts was not accepted by the other Revenue Authorities such as Sales Tax Department or the Excise Department. The case of appellant finds support from the decision of Hon'ble High Court of Gujarat in COMMISSIONER OF INCOME TAX vs. SANJAY OIL CAKE INDUSTRIES (2005) 197 CTR (Guj) 520 : (2005) 149 TAXMAN 190:

9.51 I am convinced with the reasons for variation in power consumed in comparison to the production in different periods which could be on account of furnace condition, quality of raw material used, labour productivity, incoming voltage, breakdown time, etc. Due to the above reasons, monthly consumption of power may vary. Undisputedly, the statistics of power consumption and production and the similar variation existed even during the course of assessment proceedings u/s 143(3), but no adverse inference had been drawn in those assessment proceedings u/s 143(3). It is gathered that the appellant has maintained regular books of account and sales/purchases are verifiable and vouched, recorded and supported by raw material consumption register and finished goods register and was also subjected to excise duty and its production declared for the instant years had duly been accepted by the Excise Department after verification. The case of the appellant certainly finds support from the decision in the case of N. Raja Pullaiah vs. Dy. CTO (1969) 73 ITR 224 (AP).

9.52 As regards variation in Power Consumption and for that matter variation in consumption of other raw material, it has been held that the mere variation in power consumption cannot be construed as

reasonable ground for rejecting the books of accounts and estimation of income. In PONDY METAL & ROLLING MILLS (P) LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX ITAT, DELHI 'B' BENCH (2007) 107 TTJ (Del) 336.

The case of the appellant finds support from the decision ***in the case of Mahabir Prasad Jagdish Prasad vs. CST 27 STC 337 (All) and decision of the Hon'ble*** *High Court of Rajasthan in* ***Kay Polyplast Ltd. vs. Additional Commissioner of Income Tax (2008) 9 DTR (Raj) 163****.*

9.53 I find that no margin for estimation of suppressed sales and income has been allowed even in those cases where instances of suppression of sales has been found on the basis of incriminating material except for the period for which suppression has been unearthed based on cogent and documentary evidence, undisputedly, in the case of the appellant, nothing incriminating has been found, therefore, as held in Deputy Commissioner Of Income Tax Vs. Royal Marwar Tobacco Product (P) Ltd. (2009) 120 TTJ (Ahd) 387 : (2008) 16 DTR 129.

9.54 ***Mere variation in Power cannot be a ground for holding adversity was held in Income Tax Officer Vs. Pragati Fashions*** *vide order dated 12th February, 2010 (2011) 12 ITR 444 (Ahd)(Trib).*

9.55 Under similar facts, the Hon'ble ITAT CHANDIGARH BENCH in ***Assistant Commissioner Of Income Tax Vs. A.K. Alloys P. Ltd.*** *vide order dated 29th February, 2012 (2012) 17 ITR (Trib) 424 (Chandigarh) has decided in favour of assessee. The extrapolation of figures for estimation of income has been held to be unsustainable in Evergreen Bar & Restaurant Vs. Additional Commissioner Of Income Tax (2008) 6 DTR (Mumbai)(Trib) 56.*

9.56 In my considered view, there was no ground for the A.O to reject the books of accounts of the appellant u/s 145, however, even if it is assumed that there was sufficient ground for rejecting the books of accounts, the assessment had to be made to the best of his judgement. As to how the best judgment assessment should be made, the leading decision on the point is the one rendered by the Privy Council in CIT vs. Laxmi Narain Badridas (1937) 5 ITR 170 (PC) : TC11R. 192, reversing Laxmi Narain Badridas vs. CIT (1934) 2 ITR 246 (Nag) : TC11R.201 and approving Abdul Baree Chowdhury vs. CIT (1932) 5 ITC 352 (Rang). In this decision rendered under the provisions of the 1922 Act, it was observed : ***"He (the assessing authority) must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other materials which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guess-work in the matter, it must be honest guess-work."*** *These observations received the imprimatur of the Supreme Court in State of Kerala vs. C. Velukutty (1966) 60 ITR 239 (SC) in the following words : "The Privy Council, while recognizing*

that an assessment made by an officer to the best of his judgment involved some guess-work, emphasized that he must exercise his judgment after taking into consideration the relevant material." Identical observations made by the Judicial Committee in Seth Gurmukh Singh vs. CIT (1992) 194 ITR 507 (All) : TC1R.357 were approved by the Supreme in Dhakeswari Cotton Mills Ltd. vs. CIT (1994) 117 CTR (Gau) 179 : (1994) 205 ITR 45 (Gau) : TC1R.508.

9.57 ***As emphasized by the Supreme Court in State of Kerala vs. C. Velukutty (1966) 60 ITR 239 (SC) though there is an element of guess-work in best judgment assessment, it should not be a wild one and should have a reasonable nexus to the available material and the circumstances of each case.*** *Likewise, it has been laid down by the Supreme Court in the case of State of Orissa vs. Maharaja Shri B. P. Singh Deo (1970) 76 ITR 690 (SC) : TC11R.251 that "The mere fact that the material placed by the assessee before the assessing authorities is unreliable does not empower those authorities to make an arbitrary order. The power of levy assessment on the basis of best judgment is not an arbitrary power; it is an assessment on the basis of best judgment. In other words, that assessment must be based on some relevant material. It is not a power that can be exercised under the sweet will and pleasure of concerned authorities."* ***The basis of estimate or the basis of computation should be disclosed by the assessing authority, or otherwise the best judgment assessment may be quashed.*** *In Anand Rice & Oil Mills vs. CIT (1977) 108 ITR 372 (Cal) : TC11R.254 huge additions were made by the ITO on the ground that the assessee had inflated the purchase prices of goods and a major portion of the addition was sustained by the Tribunal without furnishing any basis of its own estimate. The Calcutta High Court held that the order of the Tribunal being arbitrary, the same could not be sustained. In Ganga Prasad Sharma vs. CIT (1981) 132 ITR 87 (MP) : TC11R.285 the Madhya Pradesh High Court emphasized that while making a best judgment assessment, the basis of computation should be disclosed by the ITO. In CIT vs. Ranicherra Tea Co. Ltd. (1994) 207 ITR 979 (Cal) : TC11PS.3,* ***the ITO rejected the loss return and determined the loss at nil on default of assessee to produce books of account. No basis for computation was disclosed by the ITO. It was held by the Calcutta High Court that the ITO acted illegally.*** *As assessment has to be completed on the basis of records and material available before the AO and personal knowledge and excitement on events and extraneous facts should not lead the AO to a State of affairs where the salient/primary/direct evidences are overlooked and should not influence the AO for resorting to adhoc additions/disallowances. If general/casual/routine observations of the AO are to be considered as material evidence for the purpose of framing an assessment, the AO shall have blanket and arbitrary powers to dispose of the scrutiny assessments according to his whims and fancies which is not the spirit of the circulars issued by the Board on scrutiny assessment. An assessment cannot be made arbitrarily and in order that an assessment can be sustained, it must have nexus to the material on record. (CIT v. Mahesh Chand [1983] 199 ITR 247, 249 (All.). It is the settled position that, though the AO has very wide powers and is not fettered by technical rules of evidence and pleadings, there is one over-riding restriction on his judgement and that is, that, he must act honestly and diligently on the material, howsoever, inadequate it was, and not*

vindictively, capriciously or arbitrarily. "Probability cannot be construed as material evidence to form an opinion by the AO to conclude an assessment and for drawing adverse inference against the appellant unless there is evidence to substantiate such probable inference." Assessment has to be made based on the real income theory, i.e., income to be determined for taxation must invariably be proved to have been the correct quantum of income earned by the appellant during the relevant previous year and the one presumed to have been earned. The presumptions and hypothetical estimations and observations made by the A.O. for making the impugned estimated addition, were extraneous, irrelevant and opposed to the facts obtaining from the record. The fate of the appellant could not be decided by the A.O. on mere surmises or probabilities (Northern Bengal Jute Mills Trading Co. Ltd. v. CIT (1968) 70 ITR 407 (Cal). The mere existence of reasons for suspicion would not tantamount to evidence (Cal. HC in Narayan Chandra Baidya v. CIT (1951) 20 ITR 287 (Cal.).

9.58 It is indeed a case of frivolous addition with facts identical to the facts in the case of Bharti Airtel Limited vs. ACIT (ITAT Delhi). Looking to the facts and circumstances of the case as also decisions cited above, the addition made by the A.O is held to be baseless and without any evidence, hence, the rejection of books of accounts is held to be invalid and ***addition made by the A.O on account of alleged suppression of yield is deleted****."*

The appellant gets relief of Rs. 14,79,46,917/-.

A.Y.	*Amount (Rs.)*
2006-07	*1,05,81,079.00*
2007-08	*16,26,218.00*
2008-09	*2,28,09,349.00*
2009-10	*5,37,43,915.00*
2010-11	*32,19,803.00*
2011-12	*2,57,11,071.00*
2012-13	*3,02,55,482.00*

12. While adjudicating the issues involved in favour of the assessee on factual matrix, the legal objection of the Assessee on jurisdiction under S. 153A concerning AY 2006-07 to 2011-12 was however seen with disfavour and decided against the assessee by the CIT(A).

13. The Revenue is aggrieved by the relief granted to the assessee on merits by the CIT(A) on both the issues of (i) additions under s.68 of the Act towards share application money amounting to

Rs.5,08,90,000/- in A.Y. 2006-07; & (ii) suppression of production based on lower yield and corresponding unrecorded sales in all the captioned appeals. The revenue has also raised objection to the relief granted by the CIT(A) on account excess stock in AY 2012-13 which shall be dealt with at appropriate place in succeeding paragraphs.

14. The Assessee, on the other hand, has filed cross objections challenging the legitimacy of additions/ disallowances dehors any reference to incriminating documents in unabated assessments [AY 2006-07 to AY 2009-10].

15. When the matter was called for hearing, the learned CIT-DR for the Revenue, at the outset, strongly relied upon the factual matrix discussed in assessment orders in question. As regards legal objection of the Assessee, it is the case of the Revenue that discovery of any incriminating document is not a *sin qua non* to make assessment under s.153A of the Act. it was thus contended that the AO and the CIT(A) rightly observed that the issue of warrant of search and seizure under s.132 of the Act sufficiently empowers the AO to initiate the proceedings under s.153A of the Act and to make all consequent additions/disallowances regardless of presence of incriminating documents or otherwise. It was submitted that the only condition for initiation of proceedings under s.153A of the Act is occurrence of search under s.132 of the Act. It was further argued that Section 153A of the Act does not provide that assessment/re-assessment should be based on 'incriminating material' alone and the AO is empowered to assess or re-assess the 'total income' of the six financial years covered under the search regardless of presence of incriminating material. On merits, it was pointed out that the assessee has failed to discharge the onus placed

upon it to prove the creditworthiness and genuineness of the share applicants and consequently, the AO has rightly invoked Section 68 of the Act and added the same to the total income of the assessee in the absence of satisfactory explanation on such credits for the A.Y. 2006-07 in question. As regards low yields, it was contended that the assessee has failed to provide satisfactory explanation for lower yield as demonstrated by the AO in its order. The findings of the CIT(A) was thus assailed on merits.

16. On the other hand, the learned Counsel for the assessee, to begin with, adverted to its legal objection and pointed out that the A.Ys. 2006-07 to 2009-10 stood concluded and completed prior to initiation of search on 21.06.2011 and therefore, in the light of the law expounded by the plethora of judicial precedents, in the absence of any incriminating material found in the course of search *qua* the additions/disallowances made, the action of AO is devoid of legitimacy to embark upon any additions/disallowances without showing its connection to the incriminating material found in the course of search. It was, however, fairly conceded that the assessments for A.Ys. 2010-11 to A.Y. 2012-13 were pending at the time of search and therefore, normal assessments under s.153A r.w.s. 143(3) of the Act would be permissible under the schematic interpretation of the law governing search assessments. Turning to the fact, the learned counsel for the assessee submitted that a search and seizure operation under s.132(1) of the Act was carried out on the residential and business premises of various companies and its Directors on 21.06.2011. However, significantly, no search action was carried out at the registered office of the assessee company where the share certificates, relevant statutory records are kept as required in law. No adverse information in relation to share applicants were found in the course of search. It was further

asserted that no document relating to various assessment years in question were either found or seized which can be branded to be incriminating in nature indicating presence of any undisclosed income. The documents found and seized were of routine nature maintained in the ordinary course of business which naturally will be kept in the business premises. Hence, the assessments for AYs 2006-07 to 2009-10 which stood concluded and remained unabated is barred by principles of finality and could not be disturbed by the AO in the absence of the incriminating material.

16.1 To buttress the legal position that presence of incriminating material discovered in the course of search as a *sine qua non* for additions/disallowances in respect of unabated assessment, the learned counsel for the assessee relied upon the decision rendered in the case of *Kabul Chawla (2016) 380 ITR 573 (Del); Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC)* and large number of other decisions governing the field. It was thus asserted that in the absence of any incriminating material found in the course of search, the action of the AO to make additions is a complete non-starter. It was also submitted that in the light of judicial precedents, in unabated search assessments, no addition is permissible merely on the basis of re-appreciation of regular books and accounts maintained by the assessee. It was thus asserted that the legal position is crystal clear without any ambiguity. It was thus submitted that all additions/ disallowances made in the impunged assessments covering AY 2006-07 to 2009-10 is absolutely without any authority of law and deserves to be quashed at the threshold for want of jurisdiction without going in merits. The time limit for issuance of notice under s.143(2) of the Act is either expired at the time of search or the assessments were concluded under section 143(3), as the case may be and hence could not be disturbed for

making additions of regular & routine nature. Some of the other precedents in this regard as cited is noted hereunder:

(a) Rawal Das Jaswani Vs. Assistant Commissioner Of Income Tax, ITA No. 87/Blpr/2009, ITAT Raipur Bench;
(b) DCIT Vs. R. K. Transport & Constructions Pvt Ltd, ITA Nos. 236 to 242/RPR/2014, ITAT Raipur Bench;
(c) Minda Industries Ltd. Vs. Deputy Commissioner Of Income Tax, (2018) 53 CCH 0287 DelTrib;
(d) Asstt. Commissioner Of Income Tax 1(2), Raipur Vs. Maruti Clean Coal & Power Ltd., ITA.No:187/Raipur/2014& ITA.No:95/Raipur/2012, ITAT Raipur Bench;
(e) DCIT, Raipur Vs R. R. Energy Ltd, ITA Nos.225 to 231/RPR/2014, ITAT Raipur Bench;
(f) Best Infrastructure (India) Pvt. Ltd. &Ors. Vs. ACIT, (2016) 47 CCH 0159, ITAT Delhi Bench;
(g) Moon Beverages Ltd. &Anr vs. ACIT, (2018) 53 CCH 0120, ITAT Delhi Bench;
(h) CIT vs. Sinhgad Technical Education Society, (2017) 156 DTK 0161 SC;
(i) ACIT & Anr. vs. Madhuri Sunil Kotecha &Anr, (2016) 55 CCH 0187, ITAT Pune Bench;
(j) Trilok Chand Chaudhary Vs. ACIT, (2019) 56 CCH 0435, ITAT Delhi Bench;
(k) Commissioner of Income Tax Vs. Deepak Kumar Agrawal & Ors., (2017) 398ITR586(Bom);
(l) PCIT Cental-3 Vs. Anand Kumar Jain, TS-105-HC-2021(Del);
(m) Principal Commissioner of Income Tax Vs. Dipak Jashvantlal Panchal,(2017) 397 ITR 153 (Guj);
(n) Rajat Minerals (P) Ltd. vs. DCIT (2020) 114 taxmann.com 536 (Ranchi)

16.2 On merits, the learned Counsel for the assessee submitted that it is a matter of record that assessee has filed several documentary evidences of subscribers before the AO to support the nature and source of share application money:

(a) PAN, Address, Name
(b) COI, MOA, AOA
(C) Audited Financial Statement
(d) Income Tax Return
(e) Bank Statement
(f) Share Application Form
(g) Payment received through banking channel
(h) Details of payment received

16.3 Moving further, the learned counsel for the assessee adverted to page nos. 151 & 152 of Volume 2 of paper book and submitted that the assessee has made several pro-active requests before the AO during the assessment proceedings some of which are noted hereunder as referred;

> *"(a) To provide the assessee company with the copy of all the letters sent by the Ld. AO to the investors /share applicants regarding investment made in the shares of assessee company.*
> *(b) The assessee company may kindly be appraised with the cases i.e. the name of the company on whom letter sent by the Ld. AO remained un-served.*
> *(c) The assessee company may kindly be made known with the reason communicated by the Postal Department behind non-service of the letters sent by the Ld. AO.*
> *(d) The assessee company may kindly be confronted with the enquiry conducted by the Ld. AO regarding yield of assessee company and basis of inference of 60% in Sponge Iron Unit.*
> *(e) The assessee company may also be confronted with the enquiry conducted by the Ld. AO regarding addition to share application /share capital. "*

16.4 It was next pointed out that assessment of the assessee was duly completed vide order dated 12.11.2008 under s.143(3) of the Act for A.Y. 2006-07 prior to search and the issue of receipt of share application money had already been examined by several rounds of questionnaires in the scrutiny assessment carried out under s.143(3) of the Act. It was after due verification, the nature and source of share application money was found satisfactory by the AO.

16.5 As regards the alleged lower yield and alleged unaccounted production and sales, it was pointed out that the issue was thoroughly examined in the regular assessment as can be seen from the assessment order dated 12.11.2008 passed under s.143(3) of the Act concerning AY 2006-07. It was broadly submitted that while the yield of the Assessee is comparable to its peers, the percentage of yield declared is in sync with use of raw material of inferior

quality which fact has been recorded by the AO in pre-search assessment passed under s.143(3) of the Act. Before us, the learned counsel mainly relied upon the objective analysis carried out by the CIT(A) which is self explanatory. It was thus submitted that no interference therewith is called for on merits.

17. We have carefully considered the rival submissions and perused the materials placed on record and referred to in terms of Rule18(6) of the Income Tax (Appellate Tribunal), Rules 1963.

17.1 Before we deal with additions on merits, it will be desirable to adjudicate the pertinent legal objection of overwhelming nature raised on behalf of the assessee which goes to the root of the matter and affects the very foundation of assessment. The legal question that arises as per cross objection is whether while making assessment under s.153A of the Act, the Revenue is entitled to interfere with the already concluded (and not abated) assessment passed either under s.143(1) of the Act or under s.143(3) of the Act and not pending at the time of search in the absence of incriminating documents unearthed as a result of search or not. As per the aforesaid question, the controversy that arises for adjudication is on the scope and ambit of assessment proceedings in search cases under s.153A of the Act.

17.2 In the first appeal, the CIT(A) dismissed the legal ground of jurisdiction by observing as under:

> *"22. I have carefully gone through the assessment order and submissions of the appellant. Where a search has been initiated u/s 132 of the Act, the A.O. is entitled to issue notice for six assessment years immediately preceding the year in which search has been initiated. As such, the assessment for those six assessment years stands reopened. Once the assessment is reopened, the A.O. has full powers to assess the income which has escaped, whether found as a result of search or otherwise. Accordingly, the additions made by the A.O are within the*

powers assigned to him u/s 153A and for this reason, this ground of appeal is hereby ***dismissed****."*

17.3 We have examined the legal objection on jurisdiction to make additions independent of incriminating material found in the course of search. The issue is no longer res integra and thus does not call for re-examination of the contentions in this regard. As consistently echoed by the Hon'ble Courts of different jurisdiction, the scope of search assessments under s.153A of the Act in respect of concluded and unabated assessments is narrower in its sweep and restricts the right of the AO to examine the issue emanating from some incriminating material.

17.3.1 We shall first refer to the decision of Hon'ble Delhi High court in the case of *Pr.CIT vs. Meeta Gutgutia (2017) 395 ITR 526 (Del).* The Hon'ble Delhi High Court referred to the judgment in the case of *CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del); Pr.CIT vs. Saumya Constructions Pvt. Ltd. (2016) 387 ITR 529 (Guj); Principal Commissioner of Income Tax-1 vs. Devangi alias Rupa 2017-TIOL-319-HC-AHM-IT; CIT vs. IBC Knowledge Park Pvt. Ltd. (2016) 385 ITR 346 (Kar); Pr. CIT-2 vs. Salasar Stock Broking Ltd. 2016-TIOL-2099-HC-KOL-IT* and *CIT vs. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom),* Reference was also made to another two decisions of Hon'ble Delhi Court in *Pr. CIT vs. Mahesh Kumar Gupta 2016-TIOL-2994-HC-Del* and the decision dated 7th February, 2017 in *ITA Nos. 61/2017 and 62/2017* in the *Pr. Commissioner of Income Tax-9 vs. Ram Avtar Verma* where the decision in *Kabul Chawla (supra)* was followed. The Hon'ble Delhi High Court made an exhaustive reference to the decisions noted above and held that invocation of Section 153A of the Act to reopen concluded assessments of earlier assessment years was not permissible in the absence of incriminating material found during

search qua each such earlier assessment years. While holding so, the Hon'ble Delhi High Court also distinguished the co-ordinate bench decision of the same Court in the case of *Smt. Dayawanti Gupta vs. CIT (2016) 390 ITR 496 (Delhi).* It was noted that in *Dayawanti Gupta (supra),* a chart prepared indicated that there had been a year-wise non-recording of transactions. The inferences drawn in respect of undisclosed income were premised on the material found and statement recorded thereon. As stated, there is no such statement in the present case which could be said to constitute admission by assessee on failure to record any transaction in accounts of the assessee for assessment years in question. Eventually, the Hon'ble Delhi High court in *Meeta Gutgutia (supra)* held that additions based on appreciation of facts de hors incriminating material are not sustainable in law. The SLP of the Revenue against the aforesaid decision of the Hon'ble Delhi High court was dismissed by the Hon'ble Supreme Court in *Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC).* Contextually, we also observe that the Hon'ble Supreme Court has stayed the operation of judgment of Hon'ble Delhi High Court in *Dayawanti Gupta (supra)* vide order dated *3rd October, 2017* in *SLP Petition No.20559/2017.*

17.3.2 Similar view that no additions could be made on the basis of material collected after search and in the absence of any incriminating evidence found or seized during search has been endorsed by the Hon'ble Gujarat High Court in *Pr.CIT vs. Sunrise Finlease (P.) Ltd. (2018) 89 taxmann.com 1 (Guj.).*

17.3.3 The Hon'ble Gujarat High Court in *Pr.CIT vs. Saumya Constructions Pvt. Ltd. (2016) 387 ITR 529 (Guj)* also declined to agree with the plea on behalf of the Revenue that the new procedure

provided under s.153A of the Act is different from earlier procedure provided under s.158BC r.w.s. 158BB of the Act and consequently, the plea of the Revenue that there is no condition in Section 153A of the Act that additions should be made strictly on the basis of evidence found during the course of search was not approved. The Hon'ble Gujarat High Court analyzed the position of law and took note of several judicial precedents and concluded that completed assessments can be interfered with by the AO while making the assessment under s.153A of the Act only on the basis of some incriminating material unearthed during the course of search or requisition of documents etc. The Hon'ble Gujarat High Court noted that the trigger point for exercise of powers under s.153A of the Act is a search under s.132 of the Act or a requisition under s.132A of the Act. Once a search or requisition is made, the mandate is cast upon the AO to issue notice under s.153A of the Act and complete the assessment of 6 assessment years. The Hon'ble Gujarat High Court took note of the fact that object of scheme legislated for assessment in search cases is to bring to tax the undisclosed income which is found during the course of or pursuant to search or requisition and therefore additions/disallowances must be linked with search/requisition. It was noted by the Hon'ble Court that additions made on the basis of some materials collected by the AO much subsequent to the search is not permissible.

17.3.4 Similar view has been expressed in catena of decisions *viz; Pr.CIT vs. Deepak J. Panchal (Guj) 397 ITR 153 (Guj); Chetnaben J. shah vs. ITO Tax Appeal No. 1437 of 2007* judgment dated *14.07.2016; CIT vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom.); Pr.CIT vs. Desai Construction Pvt. Ltd. 387 ITR 552 (Guj.); Gurinder Singh Baba 386 ITR 483 (Bom); & CIT vs. Deepak Kumar Agarwal (2017) 398 ITR 586 (Bom.).*

17.3.5 The Hon'ble Delhi High Court in *Pr.CIT vs. Subhash Khattar ITA No. 60/2017* judgment dated *25.07.2017* also held against the Revenue in similar circumstances where search did not result in discovery of any incriminating material qua assessee. It was observed by the Hon'ble Delhi High Court that entire case against the assessee was based on what was found during the search of the premises of other parties and thus, it is apparent on the face of it that notice to assessee under s.153A of the Act was misconceived since the so-called incriminating material was not found during the search of assessee's premises.

17.3.6 On the conspectus of aforesaid judgments of different courts, the position of law is loud and clear that additions/disallowances under s.153A of the Act towards unabated assessments are permissible only where incriminating materials are found in search showing unaccounted income.

17.4 However, at this juncture, we simultaneously take note of various decisions for the proposition that presence of incriminating material discovered during the course of search is not a condition precedent for making additions/disallowances under s.153A of the Act. We do not consider it necessary to re-visit the judgments cited. The objections raised on behalf of the Revenue have been dealt with in the judicial precedents quoted in favour of the assessee. The decision cited in the case of *Canara Housing Development Co.(supra)* as well as *Filatex India Ltd. (supra)* has been taken note of by the Hon'ble Gujarat High Court in *Saumya Constructions Pvt. Ltd. (supra)* while adjudicating the issue in favour of the assessee. *Filatex India Ltd. (supra)* was also considered in *Meeta Gutgutia (supra).* The decision rendered by the Hon'ble Allahabad High Court in *CIT vs. Rajkumar Arora (2014) 52*

taxmann.com 172 (All.) is rendered without taking note of the judicial view expressed by other High Courts prevailing at the relevant time. The decision rendered in *Pr.CIT (Central) vs. Kesarvani Zarda Bhandar, Lucknow ITA No. 270 of 2014 (All.)* is only reiteration of the decision of Hon'ble Allahabad High Court in case of *Rajkumar Arora (supra).*

17.5 In summation, in the light of the aforesaid overwhelming legal precedents as laid down by the Hon'ble Bombay High Court, Delhi High Court & Gujarat High Court as also various benches of Tribunal, the correct legal position in respect of the assessments under s.153A of the Act may be summarized as follows: (i) the scope of assessment under s.153A of the Act is limited to the incriminating evidence found during the search and no further in so far as unabated assessments are concerned; & (ii) unless there is incriminating material qua each assessment years to which additions are sought to be made in respect of concluded assessments, the assessment under s.153A of the Act by making additions/disallowances would be vitiated in law.

17.6 As discussed in length, the issue has been dynamic and a matter of legal interpretation. We are governed by the schematic interpretation given to provisions of Section 153A of the Act by different Hon'ble Courts. In the light of judicial fiat reading down the scope and spectrum of assessment under s.153A of the Act in narrower compass, the position of law is explicitly clear. In the absence of any connection with the incriminating material unearthed in search proceedings of assessee, additions / disallowances in respect of concluded assessment i.e. AYs. 2006-07 to 2009-10 in instant appeals, are not permissible in law. The burden of proof towards existence of undisclosed income discovered as a result of

search is on the Revenue. No evidence has been referred to by AO or brought on record as claimed to be found at search of assessee to suggest existence of undisclosed income as perceived by the AO. The Revenue has failed to rebut the factual assertions made on behalf of the assessee towards non-discovery of incriminating material at the time of drastic action of search on assessee and reference thereto in assessment order. There is nothing on record that information contained in seized documents as per list of inventory, were not recorded or reflected in the books of accounts. found during search. Hence, the action of the AO towards making additions in respect of concluded assessments towards undisclosed income is contrary to the judicial dicta. Accordingly, we are of the view that various additions/disallowances made by the AO are clearly beyond the scope of authority vested under s.153A of the Act owing to absence of any incriminating material or evidence deduced as a result of search in so far as completed assessments are concerned. Additions/disallowances made in assessments framed under s.153A of the Act in respect of captioned assessees pertaining to AYs. 2006-07 to 2009-10 are thus required to be struck down on this score itself. However, the assessments/re-assessments pending on the date of search i.e. AY 2010-11 to 2012-13 which stood abated by operation of law will however be governed by normal assessment powers of assessment under s.153A of the Act.

18. The legal ground of jurisdiction raised by the Assessee as per the cross objections, is thus allowed in respect of AY 2006-07 to 2009-10.

19. Notwithstanding and without prejudice, we shall now advert to the correctness of various additions made in A.Ys. 2006-07 to 2012-13 on merits.

20. As noted earlier, the AO has invoked Section 68 of the Act and made additions on account of share application money received by the assessee in A.Y. 2006-07 as unexplained cash credit. The CIT(A), however, after taking note of observations made in the assessment order and oral & written submissions made on behalf of the assessee, found merit in the plea of the assessee and reversed the additions so made.

20.1 The findings of the CIT(A) dealing with the issue has been reproduced in the preceeding paragraph 10 of this order.

20.2 On perusal of the order of the CIT(A), it is noticed that CIT(A) has recorded a finding on fact that additions on account of share application money has been made without any reference to the incriminating material detected in the course of search. The CIT(A) has recorded various observations on the issue of share application money in A.Y. 2006-07 as summarized hereunder:

> *"The A.O. did not pay any heed to the requests seeking supply of results of inquiry conducted if any for arriving at such conclusions. Furthermore, the Ld. ARs pointed out that assessments in the case of promoters/directors and family members were made in most of the cases but no such view even to support his own passing remarks was offered. Detailed explanations were submitted with respect to the loose papers seized and not even a single document out of it relate to or suggest that any undisclosed income of these persons has been routed back in the form of share application money.*
>
> *(Para 4.4 on page No.8)*
>
> *The present action of the A. O is not culminating from any specific finding against the appellant that it was a beneficiary of any racket which has been unearthed as a result of search proceedings nor has the A. O brought on record any other evidence to indicate that the appellant did make undisclosed income and such evidence came on the surface as a result of search proceedings.*
>
> *In this background, in my considered view, there is no scope and reason to take a contrary view than that taken by the then A.O without there being any documentary evidence against the appellant to demonstrate that the share application money was nothing but undisclosed income of the appellant.*

(Para 5.6 on page No. 14)

In my considered opinion, apart from drawing presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the investment in the business has flown from appellant's own money.

(Para 5.10 on page No. 16)

No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax Department to show that the monies represented the appellant's undisclosed income. "

(Para 5.11 on page No. 17)

20.3. Apart from the factual position on absence of any incriminating material as noted by the CIT(A) reproduced in preceding para, the CIT(A) has also analyzed and delineated the facts and circumstances in proper perspective while dealing on merits of additions. The CIT(A) found that primary onus placed upon the assessee under s.68 of the Act was satisfactorily discharged by the assessee. The CIT(A) has examined the factual matrix in relation to each and every subscriber individually, as extracted in para 10 of this order, and found that the subscribers were duly assessed and payments have come through banking channels. It was further found that the tangible net worth of the subscribers company is sufficiently enough to meet the criteria of creditworthiness envisaged in law. The bank statements, audited financial statement and confirmations were analyzed. The source of the investment was thus found to be explained satisfactorily in the facts of the case. It was further noted that the credit for share application money was accepted in the regular assessment under 143(3) prior to search after making enquiries. The subscriber co. namely Antariksh Commerce Pvt. Ltd. and Escort Finvest Pvt. Ltd. were found to be group cos. The assessments of the subscriber

companies carried out under S. 143(3) / 143(3) r.w.s. 147 were noted. It was further noted the same AO in the case of other group concern accepted the creditworthiness of these cos. for subscription of Pref. share capital. The adverse inference drawn by the AO was found to be unsubstantiated and in the realm of suspicion, surmises and conjectures. On legal position, the CIT(A) has referred to large number of judicial pronouncements. Without reiterating the different facets analyzed by the CIT(A), We find complete force in his view. After detailed examination, the CIT(A) eventually set aside the additions made by the AO under s. 68 in the unabated search assessment without any iota of incriminating material to support the allegation of accommodation entries. We completely endorse his action on merits without *demur*. The objection of the Revenue is found to be unsubstantiated and *dehors* the tell-tale evidences and hence not sustainable. We thus decline to interfere with the view expressed by the CIT(A) on merits of additions.

21. We now advert to the second issue concerning additions on low yield in various assessment years in question.

21.1 The AO made an addition of Rs.1,05,81,079/- on account of low of yield declared by the Assessee in sponge iron division for A.Y. 2006-07 and similar additions were also carried out on the ground of low yield in other assessment years in question. It is the case of the assessee that allegation of the AO is totally unsubstantiated and is wholly in the realm of surmises and conjunctures without any iota of evidence against the assessee.

21.2 The Assessee has raised two fold submissions to defend his stance. One, in the absence of incriminating material, no addition is permissible in law on account of low yield at least in the unabated

assessments from 2006-07 to AY 2009-10 and secondly, yield and book result declared by the assessee is corroborated by the underlying evidences and also comparable with other manufacturers as examined by the CIT(A). On the other hand, the AO has not discharged the burden lay upon him as associated with rejection of books for making artificial estimations.

21.3 Adverting to legal ground, the Assessee contends that no incriminating material were found in the course of search operations showing any unaccounted production or unaccounted sales resulting from alleged low yield on production shown in the books. No documents or sheet showing record of actual production in excess of what is recorded in books were found in the course of search. It was emphasized on behalf of the assessee that each and every seized documents, loose papers found in the course of search was explained and were not incriminating the assessee in any manner. Even though, all the premises of the assessee were thoroughly searched by the search team, not a single piece of paper was found from the premises of the assessee to corroborate and support the allegation of unaccounted production and sale.

21.4 On facts, the broad counters of the multiple contentions of the assessee are that even if it is momentarily assumed that the yield shown by the assessee is less than industrial average, in the absence of any corroborative material, the adverse inference remains unsubstantiated. Even if, it is assumed that production facilities and resources even not utilized optimally or efficiently, this by itself will not entitle the AO to allege unaccounted production by presuming higher yield by some mathematical calculation. With reference to the tabular statement at page nos. 66 to 72 of the paper book in conjunction with first appellate order it was submitted that

despite repeated requests, the AO completely failed to point out any suppression of production based on any cogent and incriminating material in his possession against the assessee. The low yield in comparison to the benchmark adopted by the AO could not be the basis to reject the books of accounts under s.145(3) of the Act without bringing any material on record pointing out towards falsehood in the accounts. The search team could not come across any unaccounted sales as recorded in para 9.38 of the first appellate authority. The inventory appearing in the elaborate excise records and excise returns were also found to be matching with the financial records.

22. We note that after taking note of the facts and circumstances of the case objectively, the CIT(A) rightly concluded that the action of the AO in rejecting the books of accounts merely owing to the reason that yield achieved by the assessee is less than standard yield percentage i.e. 60% which has not been achieved even by other assessee engaged in similar line of business. While concluding in favour of the assessee the CIT(A) also observed that the AO has not brought on record the manner in which he worked out the standard yield of 60%. The basis for determining standard yield @ 60% of input was not given despite repeated request by the assessee either.

22.1 We observe that the CIT(A) has capsulated the findings of the AO and reproduced the tabulated statement wherein year-wise yield of finished goods (sponge iron) shown by the assessee were compared with the an innocuous standard of 60% set by the AO. The AO consequently calculated the difference in the actual production *vis-à-vis* standard production [yield of 60% considered as standard production] and computed the value of difference in actual production versus standard production as unaccounted production/

sales in respective assessment years. We similarly observe that the CIT(A) has also recorded the detailed submissions of the assessee filed in its defense whereby reasons for justification of the actual yield generated by the assessee were given. The CIT(A) also recorded the comparative analysis of the yield of the assessee versus various other companies who are engaged in production of sponge iron and operating in the same field in the state of Chhattisgarh. By this exercise, the assessee has attempted to show that actual production shown by the assessee is either higher than its peers or quite comparable and bracketed in the same range. The standard yield presumed by the AO was thus sought to be demolished on facts.

22.2 Having examined the findings of the AO and the submissions of the assessee in rebuttal, the CIT(A) has made wide ranging observations noted hereunder:

(i) The AO has failed to establish the nexus between the mathematical calculations of highest and lowest consumption of power, iron ore (raw material) etc. with yield of 60% adopted by the AO.

(ii) The basis for arriving at the standard yield of 60% has not been disclosed despite repeated requests on behalf of the assessee. The CIT(A) himself attempted to work out the average yield in the industry based on data available from the department but failed to arrive at this so called standard figure of 60%.

(iii) Comparison of yield declared by the other assessee engaged in the similar line of business was carried out as tabulated in para 9.4 of the appellate order. On the basis of such comparison, arithmetical mean of yield stands at 53.97% in respect of other

parties *vis-à-vis* 59.40% shown by the assessee. It was also found by the CIT(A) that yield declared by the different parties in the same year is not uniform and every party has declared a different yield. Likewise, there is a wide variation in the yield of one year with another year in other cases as well. Not even a single comparable instance was found declaring yield of 60% adopted by the AO. The yield achieved by the assessee is generally more than average industry yield.

(iv) Financial results of the assessee as well as other parties engaged in similar line of business was also compared as discussed in para 9.5 to para 9.8 of the order. On analysis of factual data tabulated in the first appellate order, it was observed that the gross profit & net profit declared by the assessee is stronger than its peers despite marginally lower yield at some instances. It was thus noted by the CIT(A) that the percentage of yield cannot be said to be sole decisive factor while assessing reliability of books of accounts and merely low yield cannot lead to an indefeasible presumption with books of accounts of the assessee are unreliable and true profit earned by the assessee cannot be deduced therefrom. In para 9.9 of its order, the CIT(A) has made reference to the excise records maintained by the assessee and the returns filed with the Central Excise Authority on monthly basis and daily basis. On analysis of such records, it was found to be tallying with the financial records.

(v) The CIT(A) also took cognizance of the fact that capacity utilization in an industry depends on number of working days and in the case of assessee where the kiln used for manufacturing of sponge iron need to be shut down periodically, the production operation consequently halts and effect the yield. The CIT(A), thereafter, observed that no infirmity in the details furnished by the assessee has been found by the AO in this regard.

(vi) The assessee has brought on record the certificate from registered valuer according to which the average yield of sponge iron unit using iron ore and coal as raw material may vary from 40% to 60% and coal consumption may vary from 1.62 to 2.1mt depending upon fixed carbon in coal. The quantitative CIT(A) observed that the quantity details of consumption of sponge iron and coal were found to be within reasonable range as certified by registered valuer. The CIT(A) also noted that it is impractical to presume uniform quality of coal and iron ore.

(vii) The AO has proceeded to estimate higher yield on the basis of mathematical and mechanical calculations. The AO has laid too much emphasis on statistics which cannot be said to have been gathered as a result of search only. The statistics relied upon by the AO are those which are quite routinely called for even during the regular assessment proceedings under s.143(3) of the Act. The AO has not stated what according to him should have been the average consumption of coal iron ore etc.

(viii) The statement of Shri Rishikesh Dixit recorded on 21.06.2011 was taken note of from which it was gathered that the aforesaid Director stated in clear terms that the quantity recorded in the loose slips tallies with the quantity recorded in the regular books of accounts and excise records. These loose slips are destroyed after it becomes redundant with the passage of time. The CIT(A) further observed that neither in the show cause notice nor in the assessment order, there is any whisper of any such loose papers which bears the figure of production and which the appellant failed to reconcile with the entries in the regular books of accounts and excise records/returns.

(ix) The alleged low yield in comparison to benchmark of 60% adopted by the AO is the basis whereof is still in dark and not known, cannot in itself provide a ground to reject the books of accounts without showing any defect in books by tangible evidence.

(x) The AO has merely proceeded on the basis of suspicion and conjunctures. It is trite that suspicion howsoever strong cannot take place of proof.

(xi) The CIT(A) in para 9.20 onwards analyzed the decision rendered by the co-ordinate bench in similar factual matrix to find that addition on account of low yield as made by the AO is not sustainable in law in the absence of tangible material.

22.3 In conclusion, the CIT(A) observed that assessee has furnished explanation on all the documents seized during the course of search and the explanation of the assessee were test checked with reference to seized material, books of accounts, bills/invoices and other evidences and found to be satisfactory. It was further noted that the AO has not pointed out any infirmity in the explanation of the Assessee.

22.4 The CIT(A) in our mind has analysed the factual matrix threadbare. Without repeating all the observations of the CIT(A), we find ourselves in complete agreement with the conclusion drawn by the CIT(A). The CIT(A) has objectively analyzed the factual situation and found complete absence of any adverse material against the assessee which can support the allegation of the AO towards unaccounted production presumed on the basis of alleged low yield declared by the assessee. On facts, the CIT(A) has found that the yield declared by the assessee is neither low nor the book

results could be impeached by some tangible material to indulge in rejection of books of accounts. We see no error whatsoever in the process of reasoning adopted by the CIT(A) while reversing the totally untenable action of the AO. We, thus, decline to interfere with the order of the CIT(A) on this score.

23. In the result, grounds raised by the Revenue challenging the action of the CIT(A) for reversal of additions on the grounds of suppression of yield and unaccounted production and sales are dismissed in AYs. 2006-07 to A.Y. 2012-13 in appeal.

24. Third issue in the combined appeals relates to additions of Rs. 71,76,306 in AY 2012-13 [ITA No. 249/RPR/2014 –AY 2012-13 Revenue appeal] on account of excess stock of finished goods/ raw material stated to be discovered during the search.

24.1 The AO observed that during post search proceedings, the assessee was required to explain the difference in stock found at the time of search *vis-à-vis* the stock as per books of accounts of the assessee. In response, the assessee company disputed the measurement and valuation of stock. It was submitted that Departmental Registered Valuer (DRV) has estimated the stock of sponge iron based on eye measurement and has applied the density of 3.2 MT/Cubic Meter in the case of assessee. The DRV was cross examined by the assessee but the state valuer was unable to provide the basis for applying this density. The AO, however, discredited the submissions of the assessee on the ground that the assessee himself has not been able to conclusively establish the correct density of the iron ore. The AO accordingly adopted the valuation done by the search team at the time of search at the most reasonable estimation of stock.

24.2 The CIT(A) took note of the relevant facts placed before him by the assessee and passed a detailed order on the controversy on account of excess stock of finished goods/raw material. The relevant operative para of the order of the CIT(A) also extracted hereunder:

"13. I have carefully gone through the assessment order and submissions of the appellant. It is seen that the A.O has made the addition of Rs.71,76,306/- mainly on account of alleged excess stock of Coal, Dolomite and iron ore fines worked out on the basis of Quantity Assessment Report of the Departmental Registered Valuer (DRV) namely Mr. Manish Pilliwar as summarized hereunder:-

Product	*Stock as per DRV (in MT)*	*Stock as per Books of Accounts (in MT)*	*Difference (in MT)*	*Quantity Surrendered by the appellant*	*Amount as per Assessment Order (Rs.)*	*Amount of income Surrendered by the appellant (Rs.)*	*Addition by the A.O (Rs.)*
Coal	*5276.600*	*3488.600*	*1788.000*	*---*	*44,70,000.00*	*0.00*	*44,70,000.00*
Dolomite	*134.780*	*123.518*	*11.262*	*---*	*15,203.70*	*0.00*	*15,203.70*
Iron ore/ fines	*6500.620*	*3447.577*	*3053.043*	*3053.043*	*76,32,607.50*	*49,41,505.00*	*26,91,102.50*
Total					***1,21,17,811.20***	***49,41,505.00***	***71,76,306.00***

Firstly, it is seen that the A.O himself admitted that the inventory taken by the Valuer at the time of search has certain deficiencies and discrepancies, as a corollary, the Quantity Assessment Report of the DRV is also vitiated and has deficiencies, it is also seen that the sole basis of addition is the Report of the DRV. It is seen that the appellant had made various submissions before the A.O during the course of assessment proceedings in response to the show cause notice cum query letter issued by the A.O. The appellant had requested for allowing opportunity to cross examine the DRV and the opportunity was afforded to the appellant. The appellant was asked to furnish the copy of statements recorded during the course of cross examination of the DRV namely Mr. Manish Pilliwar and the same was furnished by the appellant. I have carefully perused the statements of Mr. Manish Pilliwar. I find that the appellant has raised a very relevant and serious issue regarding eligibility and competence of Mr. Manish Pilliwar who is registered as a valuer for valuation of immovable properties.

13.2 It is seen that in response to question no.12 of the statement recorded on 13.02.2014, the said DRV admitted that he is registered as Valuer for valuation of immovable properties and he possesses qualifications provided in Rule 8A(2) of Wealth Tax Rules 1957. It is also seen that in response to question no.14 of the statement recorded on 13.02.2014 the said DRV has stated that the work of quantity assessment was carried out as per the competence and qualification

mentioned in Rule 8A(2)(ii)(B)(b). The DRV did state that he prepared the Quantity Assessment Report as per his qualification mentioned in Rule 8A(2)(ii)(B)(b) of Wealth Tax Rules, 1957 which pertains to Quantity surveying in building construction. Undisputedly, the appellant is not engaged in any construction work. I do find force in the submissions of the appellant that the report of the DRV is vitiated as the DRV applied irrelevant knowledge which has no nexus with the business of the appellant and product under consideration.

13.3 I do find considerable force in the submissions of the appellant that different Sub-rules of Rule 8A of Wealth Tax Rule, 1957 are mutually exclusive and there is no overlapping, therefore, the quantity assessment of movable items such as the coal, dolomite and iron ore fines in the present case, cannot be carried out by the Valuer who is registered as a Valuer for valuation of immovable properties, in other words, a person who is registered as a Valuer for valuation of jewellery cannot be engaged for quantity assessment of movable items other than jewellery, similarly, the DRV engaged namely Shri Manish Pilliwar being valuer for immovable properties could not have been engaged for valuation of movable items such as the items of inventory in the instant case. Hence, in my considered view, the reliance placed by the A.O on the said Quantity Assessment Report of the DRV, despite having accepted the deficiencies in the quantity assessment report, is clearly misplaced and not sustainable. Therefore, the addition made by the A.O solely on the basis of said quantity assessment report also cannot be sustained.

13.4 Although, the addition made by the A.O is liable to be deleted for the reasons elaborately mentioned above, the submissions of the appellant on merits have also been considered. The precise submission of the appellant with regard to coal is as under:-

(a) The DRV himself has accepted that he does not have any knowledge about items such as coal / sponge iron and their density with reference to different grades. The statement of the DRV is self contradictory in as much as on one hand he has stated that he has used the standard tables and on the other hand he states that he had collected the details about grades and density from the representative of appellant company.

(b) The DRV has made the valuation by taking the Density of Coal at 1.50 MT/Cu.M. During the course of cross examination, the DRV has provided the Standard Table and as per the response to Q.No.22 of the statement recorded on 29.01.2014, the DRV has adopted the density of Anthracite Coal of Solid State which is 1.506 MT/Cu.m. It has been submitted by the appellant that Anthracite Coal is not available at all in the mines of Chhattisgarh State nor in the nearby States, hence, the question of using Anthracite Coal of solid state does not arise at all and hence, there is no question of such coal available in the appellant's factory. The correct density of coal used by the appellant is 0.83 MT/Cu.M. The appellant company used broken coal for manufacturing of sponge iron and as per the generally accepted norms also, the density of such coal is 0.83 MT/Cu.M, applying the said density, the quantity of coal works out to 2942.050 MT. Under the present circumstances, no adverse action is warranted against the appellant company as the stock as per book records is already on higher side,

which was 3488.600 MT as on 21.06.2011, secondly, the fact that the difference in the quantity of stock is merely owing to the difference in assumptions and mathematical formula applied by the DRV, thirdly, the quantity reported by the DRV is not based on physical weighment which is prone to change with the change in underlying assumptions and variables.

(c) The appellant company requested the A.O. to visit the appellant's factory premises so that the live physical demonstration of density of coal used and its weighment on the weighbridge can be given. The appellant company has made a container of 1 cubic meter size, the quantity of coal in one cubic meter container is much less than 1.506 MT.

(d) In addition to above, the appellant company provided the Certificate dated 18.08.2011 from the Registered Valuer wherein it has been certified that the density of broken coal is 0.800 to 0.960 MT/cu.m.

13.5 I have carefully perused the Quantity Assessment Report of the DRV, submissions of the appellant, statement given by the DRV during cross examination by the appellant and certificate from another Registered Valuer.

13.6 It is seen that in response to Question No. 12 of the statement recorded on 26.12.2013, the DRV admitted that no scientific or mechanical equipment was used by the DRV. It is seen that the DRV himself has stated in Q.No.13 of the statement recorded on 26.12.2013 that no physical weighment was carried out at all. Therefore, the assertion of the A.O in Para 8 of the assessment order that stock was measured physically is found to be incorrect.

13.7 It is seen that in response to question no.5 of the statement recorded on 29.01.2014, the DRV admitted that Mathematical formulas have been used for taking the measurement of heaps and density may be said to be a variable. It is also seen that in response to Question No.23 of the statement recorded on 26.12.2013, the DRV admitted that if the information regarding different grades of coal and iron ore was not correct, then the resulting density used in the report to that extent would vary. It is also seen that in response to question No.11 of the statement recorded on 26.12.2013, the DRV admitted that for measurement of the heaps average height of the heaps was taken.

13.8 From the aforesaid statements of the DRV, I am convinced that the quantity assessment done by the DRV cannot be accepted as sacrosanct nor the quantity arrived at by the DRV can be accepted in toto.

13.9 It is seen that the DRV has applied the density of 1.50 MT per Cu. Meter for valuation of inventory, I have carefully perused the standard table relied upon by the DRV, it is seen that the said standard table referred by the DRV itself contains varied densities viz.

a)	*Coal, Anthracite, solid*	*1506 Kg/Cu. M*
b)	*Coal, Anthracite, broken*	*1105 Kg/Cu. M*

c)	*Coal, Bituminous, solid*	*1346 Kg/Cu. M*
d)	*Coal, Bituminous, broken*	*833 Kg/Cu. M*

13.10 It is seen that the appellant has taken consistent stand that it is using bituminous coal of broken state in its factory premises and density whereof is 0.833 MT per Cu. meter. I find that the standard table relied upon by the DRV is also affirming the contention of the appellant. Now, the issue to be decided is whether the coal used in the factory premises of the appellant is Anthracite coal of solid state with density of 1.50 MT per Cu. meter or Bituminous coal of broken state with 0.833 MT per Cu. meter.

13.11 In this regard, unfortunately, the DRV miserably failed to justify or provide any logical reasoning behind adoption of density of coal at 1.50 MT per Cu. meter and has, in fact, expressed his ignorance about minerals and their different grades and relevant densities.

13.12 On the contrary, the appellant has relied upon certificate from the Registered Valuer namely Mr. Sunil Bhandari wherein he has certified that the density of broken coal is 0.800 to 0.960 MT per Cu. meter.

13.13 I have also taken note of the fact that the appellant had vehemently requested the A.O. to witness the live physical demonstration for ascertaining the density of coal, however, it is seen that the A.O. did not adhere to the appellant's request for live physical demonstration. It remains an undisputed fact that the appellant is not using Anthracite coal of solid state, on the contrary, considering the submissions of the appellant and the circumstantial evidences in the form of the statement of the DRV and acceptance of deficiencies on the part of the A.O. in the quantity assessment report of the DRV, I am inclined to accept the submissions of the appellant that the DRV has grossly erred and in turn, the A.O grossly erred in accepting the vitiated report of the DRV and making it the basis for addition to total income of the appellant.

13.14 The quantity assessment done by the DRV by taking density of coal at 1.50 MT per Cu. meter was re-computed by taking density of 0.833 MT per Cu. meter, the result of the re-computation is as under:-

PARTICULAR OF ITEM	*HEAP SIZE (IN M)*	*VOLUME (IN CU.M)*	*DENSITY (IN TONNE/ CU.M)*	*TOTAL WEIGHT (IN TONNES)*
COAL				
Crushed				
a)	*28 X 23.5 X 2*	*1316.00*	*0.83*	*1092.28*
b)	*18.5 X 13.8 X 3*	*765.90*	*0.83*	*635.70*
c)	*15 X 17.5 X 3*	*787.50*	*0.83*	*653.63*
d)	*10 X 15 X 2.5*	*375.00*	*0.83*	*311.25*
e)	*8 X 12 X 2.5*	*240.00*	*0.83*	*199.20*

Kiln Machine				*50.00*
			TOTAL	***2942.05***

13.15 The result of the re-computation has reduced the stock as per DRV from 5276.600 MT to 2942.050 MT, I am convinced with the submissions of the appellant that the corrected quantity shall work out to 2942.050 MT by change in the variable i.e. density of coal. I find that the total stock of coal as on 21.06.2011 was 3488.600 MT which, in fact, is more than the recomputed stock calculated by taking density of 0.833 MT per Cu. meter. In my considered view, as the stock as per books of accounts of the appellant is more than the re-computed stock, there is no question of any addition to total income on account of unexplained investment and therefore, the addition of Rs.44,70,000/- made by the A.O on account of unexplained investment in stock of coal cannot be sustained. Hence, the addition of Rs.44,70,000/- is deleted.

13.16 As regards the addition made by the A.O in respect of dolomite, I find that the difference in inventory was merely 11.262 MT which is less than 10% of the total inventory i.e. stock held as on 21.06.2011 and therefore, no addition is warranted for such a negligible difference in inventory. Therefore, the addition of Rs.15,203.70 is deleted.

13.17 As regards the addition of Rs.26,91,102.50 made by the A.O on account of unexplained investment in stock of iron ore fines, I find that there is no dispute as regards the total quantity, on the contrary, the subject matter of dispute is the amount i.e. the rate adopted by the A.O. and the rate adopted by the appellant. It is seen that the appellant has offered sum of Rs.49,41,505/- for taxation in respect of excess stock of iron ore fines by 3053.043 MT, thus, the appellant has valued the inventory at an average rate of Rs.1,618.55 per MT of iron ore fines. As against this, it is seen that the A.O has taken the total value of investment at Rs.76,32,607.50 for 3053.043 MT of iron ore fines, thus, the A.O. has valued the inventory at an average rate of Rs.2,500/- per MT. I find that the appellant has offered the income for taxation based on actual sales realization as iron ore fines is not purchased by the appellant, on the contrary, iron ore fines are generated during crushing of iron ore lumps screening of iron ore. I find that the A.O has not rebutted the submissions of the appellant that the payment against sales consideration of iron ore fines was received through proper banking channel and applicable VAT has also been paid by the appellant. In the background of these facts, the addition made by the A.O by applying an average rate of Rs.2,500/- per MT cannot be sustained, particularly, when the appellant has vehemently contested against adoption of density at 2.90 MT per Cu. meter for iron ore and total quantity of iron ore fines as per report of DRV himself is 5734.680 MT [6500.62 – (526.10 + 99.76 + 140) = 5734.680 MT]. I have carefully gone through the Sales Register submitted by the appellant during the course of assessment proceedings before the A.O, from the perusal thereof, I am convinced that the actual sales realization of iron ore fines was Rs.49,41,505/- and therefore, the addition of Rs.26,91,102.50 made by the A.O cannot be sustained, therefore, the addition is deleted."

The appellant gets relief of Rs.71,76,306.20 (4470000+15203.70+2691102.50)

The CIT(A) thus, reversed the additions so made on account of excess stock and accepted the book results.

24.3 The Revenue is aggrieved by the relief granted by the CIT(A).

24.4 We have heard the rival submissions on the issue. Excess stock of inventory has been alleged on account of raw material i.e. coal and iron ore. On perusal of the orders of the lower authorities, we find that AO himself admitted that inventory taken by the valuer at the time of search carries certain deficiencies and discrepancies. As a corollary, the quantity assessment report of DRV is vitiated and carried discrepancies which remained undefined. The solitary basis of additions is the report of the DRV whereby excess stock has been presumed. It is further noticed that on cross examination of DRV (Mr. Manish Pilliwar) by the assessee, the DRV has faltered in defending its valuation report. It is also seen from the perusal of the order of the CIT(A) that the DRV appointed for valuation of stock was not expert in the sponge iron business and was found to be not competent to carry out the valuation in question. It is also noticed that DRV himself accepted that he does not have any knowledge about the items, such as, coal, sponge iron and their density with reference to two different grades. The statement of the DRV was also found contradictory by the CIT(A). It was further noticed by the CIT(A) that the density of coal taken by the DRV relates to anthracite coal, which is not available at all in the mines of Chhattisgarh State nor in the nearby States. Hence, the plea of the assessee towards lesser density of coal used by it could not be discarded. Similarly, the CIT(A) took cognizance of certificate from registered valuer furnished by the assessee showing the density of broken coal which was found to be at par with what has been used by the assessee. We notice that the CIT(A) has adjudicated the issue in favour of the assessee after recording tell-tale facts, such

as, DRV having admitted that no scientific or mechanical equipment was used by him for the purposes of valuation; no physical verification was carried out at all etc.. After having analyzed the facts and circumstances of the case, the CIT(A) has objectively concluded that addition to the total income on account of unexplained investment towards excess stock on account of coal is without any sound basis is patently unjustified. We find that the CIT(A) has arrived at his findings with very logical analysis in sync with factual matrix. Such finding of fact does not call for any interference for any reason.

24.5 With reference to excess stock on account of iron ore or fines, the CIT(A) has observed that the dispute revolves around the rate adopted by the AO and there is no dispute regarding the total quantity. It was noticed by the CIT(A) that the assessee has offered the income for taxation based on actual sales realization as iron ore fines are not purchased by the assessee. The sales register of the assessee was examined and the method was found satisfactory. Thus, having regard to the declarations already made by the assessee, no further additions were found sustainable in the absence of any evidence of adversial nature. In summation, we see no error in the conclusion drawn by the CIT(A) both on account of stock of coal and iron ore, in the absence of any concrete rebuttal thereof. We thus decline to interfere.

25 In the result, appeal of the Revenue is required to be dismissed on this count.

26. Hence all the captioned appeals of the revenue are dismissed.

27. The question of jurisdiction raised by the assessee in respect unabated assessment years in search assessment has been

adjudicated in favour of the assessee and the findings of the CIT(A) are set aside and quashed. Likewise, the supportive plea of the Assessee on the order of CIT(A) on merits has also been affirmed in the preceding paragraphs. Consequently, the cross objections of assessee in respective appeals of revenue stands allowed.

28. Resultantly, all the captioned Revenue appeals are dismissed whereas all the cross objections of the Assessee are allowed.

Order **pronounced on 21/10/2021** by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-	Sd/-
(PAWAN SINGH)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Raipur

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)