

**अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

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

**BEFORE SHRI RAJPAL YADAV HON'BLE VICE PRESIDENT  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A Nos. 114 to 116/Ind/2020  
Assessment Years:2016-17 to 2018-19**

M/s. Great Galleon Ventures ltd. Indore (Appellant)	<b>बनाम/ Vs.</b>	DCIT, Central-2, Indore (Respondent )
P.A. No.AABCK1743N		

**ITA No.67 to 70/Ind/2021  
Assessment Year:2015-16 to 2018-19**

ACIT, Central-2, Indore (Appellant)	<b>बनाम/ Vs.</b>	M/s. Great Galleon Ventures ltd. Indore (Respondent )
P.A. No. AABCK1743N		
Revenue by	Shri Rajeeb, Jain CIT-DR	
Respondent by	S/ Shri Anil Kamal Garg & Arpit Gaur, ARs	

<b>Date of Hearing:</b>	<b>13.10.2021</b>
<b>Date of Pronouncement:</b>	<b>23.12.2021</b>

**आदेश / O R D E R**

**PER MANISH BORAD:**

The above captioned appeals at the instance of Assessee and Cross Appeals by Revenue are directed against the order of Ld.

Commissioner of Income Tax(Appeals), (in short 'CIT(A)'), Indore dated 18.09.2020, which are arising out of the order u/s 153A r.w.s. 143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.12.2019, framed by ACIT/DCIT-Central-2 Indore.

2. As the issues raised in these appeals are common and relate to same assessee, at the request of all the parties all the appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

Grounds of appeal raised by the Revenue for AY 2015-16 in ITA No.67/Ind/2021:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.6,00,00,000/- made by the Assessing officer on account of cash credits u/s 68 of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.18,07,498/- made by the Assessing officer on account of disallowing interest expenses u/s 69C of the Income Tax Act, 1961."*

Grounds of appeal raised by the Revenue for AY 2016-17 in ITA No.68/Ind/2021:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.6,00,00,000/- made by the Assessing officer on account of cash credits u/s 68 of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.80,59,865/- made by*

*the Assessing officer on account of the disallowing interest expenses u/s 69C of the Income Tax Act, 1961.*

*3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs.3,01,97,950/- made by the Assessing officer on account of out of books credit and cash sales.*  
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Grounds of appeal raised by the Assessee for AY 2016-17 in IT(SS)A No.114/Ind/2020:

*1. That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in fully dismissing the Ground No. 2 raised by the appellant on the plea that without having recourse to any incriminating seized material, no addition could have been made while framing assessment under s.153A/ 143(3) in respect of a completed assessment year, instead of allowing the same ground partially for the very reason that while adjudicating the ground, the ld. CIT(A) himself has given a clear finding to the effect that out of the three additions made by the AO, in respect of two additions viz. addition of Rs.6,00,00,000/- and addition of Rs.80,59,885/- respectively made u/s. 68 and 69 of the Act, no recourse to any incriminating material was taken by the AO.*

*2(a). That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in not fully deleting the addition of Rs.3,55,27,000/- made by the AO u/s. 69A of the Act on the allegation of unaccounted sales and instead, confirming an addition to the extent of Rs.53,29,050/- despite giving a specific finding that the AO was not justified in invoking the provisions of s.69A of the Act in the instant case as the addition was related to the finding of some suppressed sales in books of account and not related to any unaccounted money, bullion, jewellery or valuable article or thing.*

*2(b). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.53,29,050/- out of the total addition of Rs.3,55,27,000/- made*

*by the AO in the appellant's income on the allegation of unaccounted sales without first rejecting the books of account by invoking the provisions of section 145(3) of the Act.*

*2(c). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.53,29,050/- out of the total addition of Rs.3,55,27,000/- made by the AO in the appellant's income on the allegation of out of books cash and credit sales effected by the appellant during the relevant previous year without properly considering and appreciating the explanation of the appellant made during the course of the assessment proceedings along with ample of documentary evidences establishing that it had not made any transaction of sales without first recording the same in its regular books of account and stock register.*

*2(d). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.53,29,050/- firstly, by presuming that the appellant had effected out of books sales in respect of traded goods of a sum of Rs.3,55,27,000/- and secondly, by applying a very excessive rate of net profit of 15% thereon.*

*3. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary."*

Grounds of appeal raised by the Revenue for AY 2017-18 in ITA No.69/Ind/2021:

- 1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs.1,19,75,346/- made by the Assessing officer on account of disallowing interest expenses u/s 69C.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs.2,18,04,200/- made by the Assessing officer on account of out of books of credit and cash sales.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs.25,50,000/- made by the Assessing officer on account of unaccounted cash receipt from syndicate.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in allowing the assessee's appeal on the chargeability of the tax as per normal rates instead of the amended provisions of section 115BBE of the Act applicable w.e.f. 1.04.2017 relevant to A.Y. 2017-18 which are clearly attracted in the case of the assessee. ”*

Grounds of appeal raised by the Assessee for AY 2017-18 in IT(SS)A No.115/Ind/2020:

1(a). *That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in not fully deleting the addition of Rs.2,56,52,000/- made by the AO u/s. 69A of the Act on the allegation of unaccounted sales and instead, confirming an addition to the extent of Rs.38,47,800/- despite giving a specific finding that the AO was not justified in invoking the provisions of s.69A of the Act in the instant case as the addition was related to the finding of some suppressed sales in books of account and not related to any unaccounted money, bullion, jewellery or valuable article or thing.*

1(b). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.38,47,800/- out of the total addition of Rs.2,56,52,000/- made by the AO in the appellant's income on the allegation of unaccounted sales without first rejecting the books of account by invoking the provisions of section 145(3) of the Act.*

1(c). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.38,47,800/- out of the total addition of Rs.2,56,52,000/- made by the AO in the appellant's income on the allegation of out of books cash and credit sales effected by the appellant during the relevant previous year without properly considering and appreciating the*

*explanation of the appellant made during the course of the assessment proceedings along with ample of documentary evidences establishing that it had not made any transaction of sales without first recording the same in its regular books of account and stock register.*

*1(d). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming an addition to the extent of Rs.38,47,800/- firstly, by presuming that the appellant had effected out of books sales in respect of traded goods of a sum of Rs.2,56,52,000/- and secondly, by applying a very excessive rate of net profit of 15% thereon.*

*2(a). That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in not quashing the addition of Rs.36,50,000/- made by the AO u/s. 69A of the Act on the allegation of hawala transactions merely by holding that quoting of a wrong section would not make the entire addition as non-genuine.*

*2(b). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.36,50,000/- made by the AO in the appellant's income, without properly considering and appreciating the explanation made by the appellant along with documentary evidences that it had not carried out any Hawala transactions.*

*2(c). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.36,50,000/- made by the AO in the appellant's income, without properly considering and appreciating the explanation of the appellant that the so-called transactions were carried out by its one of the employees in his personal capacity and the same do not have any nexus, directly or indirectly, with the financial affairs of the appellant company.*

*2(d). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.36,50,000/- made by the AO in the appellant's income, merely on*

*the basis of some image datas recovered from mobile of one of the employees of the appellant namely Shri Mukesh Jhanwar, without properly appreciating the retraction furnished by such employee on an affidavit, duly sworn-in before Notary Public.*

*3(a). That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in not quashing the addition of Rs.30,00,000/- made by the AO u/s. 69A of the Act on the allegation of unaccounted cash receipts from syndicates merely by holding that quoting of a wrong section would not make the entire addition as non-genuine.*

*3(b). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming in confirming an addition to the extent of Rs.4,50,000/- out of the total addition of Rs.30,00,000/- made by the AO in the appellant's income, merely on the basis of seized imaged digital documents without properly considering and appreciating the explanation made by the appellant along with documentary evidences that it had not carried out any transaction of sales with the so called syndicates and had also not received any sum of cash, as alleged.*

*4. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary."*

Grounds of appeal raised by the Revenue for AY 2018-19 in ITA No.70/Ind/2021:

*1. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in law in deleting the addition of Rs.82,40,976/- in A.Y. 2018-19 made by the Assessing officer on account of disallowing interest expenses u/s 69C.*

*2. On the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in law in deleting the addition of Rs.10,25,000/- in A.Y. 2018-19 made by the Assessing officer on account of out of books cash sales.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in allowing the assessee's appeal on the chargeability of tax as per normal rates instead of the amended provisions of section 115BBE of the Act applicable w.e.f. 1.04.2017 relevant to A.Y. 2017-18 which are clearly attracted in the case of the assessee."*

Grounds of appeal raised by the Assessee for AY 2018-19 in IT(SS)A No.116/Ind/2020:

1(a). *That, on the facts and in the circumstances of the case, the learned CIT(A) grossly erred in not quashing the addition of Rs.10,00,000/- made by the AO u/s. 69A of the Act on the allegation of hawala transactions merely by holding that quoting of a wrong section would not make the entire addition as non-genuine.*

1(b). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.10,00,000/- made by the AO in the appellant's income, without properly considering and appreciating the explanation made by the appellant along with documentary evidences that it had not carried out any Hawala transactions.*

1(c). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.10,00,000/- made by the AO in the appellant's income, without properly considering and appreciating the explanation of the appellant that the so-called transactions were carried out by its one of the employees in his personal capacity and the same do not have any nexus, directly or indirectly, with the financial affairs of the appellant company.*

1(d). *That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.10,00,000/- made by the AO in the appellant's income, merely on the basis of some image datas recovered from mobile of one of the employees of the appellant namely Shri Mukesh Jhanwar, without*

*properly appreciating the retraction furnished by such employee on an affidavit, duly sworn-in before Notary Public.*

*2. That, the appellant further craves leave to add, alter or amend the foregoing ground of appeal as and when considered necessary.”*

3. The brief facts of the case as culled out from the records are that the assessee is a closely held public limited company engaged in the business of manufacturing Indian Made Foreign Liquor, Country Liquor, Extra Neutral Alcohol, Rectified Spirit etc. The assessee belongs to 'Kedia Group' of Indore. Search & Seizure Operations u/s. 132 of the Income-Tax Act, 1961 (in short "The Act") were carried out on the Kedia Group on 14.11.2017. In pursuance of the Search, notices u/s. 153A of the Act were issued by the AO for the assessment years 2012-13 to 2017-18 and a notice u/s. 143(2) was issued for the A.Y. 2018-19. In response to the notices issued u/s.153A, the assessee furnished its Returns of Total Income for the assessment years under consideration. During the course of the assessment proceedings, the assessee also furnished copies of the Tax Audit Reports u/s..44AB of the Act along with its audited financial statements for the previous years relevant to the assessment years under consideration. Subsequently, notices under s. 143(2) & 142(1) were issued from time to time by the Learned Assessing Officer (In short "Ld.AO") In response to the notices assessee vide its various letters furnished its written replies along with the documentary evidences. As per the assessee, books of account along with the bills, vouchers etc. were also produced before the AO for the necessary verification. After considering the

submissions made by the assessee, Ld. AO framed the assessment for the various assessment years, by passing a common assessment order dated 28.12.2019, by assessing the total income of the assessee company for every year and making certain additions to the returned income of the assessee.

4. Aggrieved assessee preferred separate appeals before Ld. CIT(A) and partly succeeded and now both assessee and revenue are in appeal before this Tribunal. The cross appeals of the assessee and the Revenue involve common issues in different assessment years which can be broadly classified into following five categories:

- a) Unexplained Cash Credits u/s. 68 on account of Unsecured Loans and Disallowance of Interest Paid thereon u/s. 69C
- b) Out of Books Cash Sales u/s. 69A
- c) Unaccounted Cash Receipt from Syndicate
- d) Hawala Transaction u/s. 69A
- e) Applicability of Section 115BBE in respect of additions made in A.Y. 2017-18 and A.Y. 2018-19

5. Since the common issues are involved in various assessment years, it would be appropriate to adjudicate the various grounds taken by the assessee and the revenue in their cross-appeals for the subject assessment years, through this common Order. We will first take the Issue No. (i) which is relating to Unexplained Cash Credits u/s. 68 on account of Unsecured Loans and Disallowance of Interest Paid thereon u/s. 69C.

6. In respect of the Issue No. (i), the Revenue has raised Ground No. 1 for the A.Ys. 2015-16 and 2016-17 challenging the deletion of the entire additions made by the AO u/s. 68 of the Act in respect of the unsecured loans of Rs.6,00,00,000/- each in both the years found credited in the books of account of the assessee for the relevant previous years. Besides, the Revenue's Ground No. 2 for the A.Ys. 2015-16 and 2016-17 and also, Ground No. 1 for the A.Ys. 2017-18 and 2018-19 relate to the disallowance of the interest expenses claimed by the assessee on the unsecured loans which have been added u/s. 68, by invoking the provisions of s.69C of the Act. On the other hand assessee has raised its Ground No. 1 for the A.Y. 2016-17 challenging the action of the Id. CIT(A) in not granting relief on legal ground raised before him to the effect that addition could not have been made without having recourse to any incriminating material.

7. A summary of the year-wise quantum of additions before us on the subject issue along with the respective grounds raised from both sides, as furnished by the assessee, is given as under:

<u>ISSUE- I: Unexplained Cash Credits u/s. 68 on account of Unsecured Loans and Disallowance of Interest Paid thereon u/s. 69C</u>							
Assessment Year	Assessee		Department				TOTAL
	Ground No.	Amount	Ground No.	Unsecured Loans	Ground No.	Disallowance of Interest	
2015-16	-	-	1	6,00,00,000	2	18,07,498	<b>6,18,07,498</b>
2016-17	1	-	1	6,00,00,000	2	80,59,865	<b>6,80,59,865</b>
2017-18	-	-	-	-	1	1,19,75,346	<b>1,19,75,346</b>
2018-19	-	-	-	-	1	82,40,976	<b>82,40,976</b>
<b>TOTAL</b>		-		<b>12,00,00,000</b>		<b>3,00,83,685</b>	<b>15,00,83,685</b>

8. During the course of the assessment proceedings, Ld. AO, on the basis of some loose papers seized as page no. 47 to 63 of GGL-01 and the audit report submitted by the assessee, noted that the assessee had obtained some unsecured loans aggregating to a sum of Rs.6,00,00,000/- in each of the two previous years relevant to the assessment years 2015-16 and 2016-17, from some Kolkata based shell companies and had also paid interest on such unsecured loans during the previous years relevant to A.Ys. 2015-16 to 2018-19. Ld.AO required the assessee company to furnish its explanation on the aforesaid issue and also required the assessee to establish the identity and creditworthiness of the loan creditor companies and as also genuineness of the loan transactions. According to the assessee, in response, it had furnished all the necessary details of the unsecured loan creditors along with the complete supporting documentary evidences for establishing the identity & creditworthiness of loan creditors and genuineness of loan transactions as contemplated under the provisions of s.68 of the Act. However, the ld. AO, by discarding the submissions made by the assessee, made additions in the total income of the assessee for the subject assessment years by holding the lender companies as mere shell companies or paper companies.

9. Being aggrieved with the action of the AO, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee company made detailed written submissions along with the

documentary evidences which were also furnished by it before the AO. The ld. CIT(A), accepting the contentions of the assessee, the facts and circumstances of the case and as also, the various documentary evidences placed on record by the assessee company, granted full relief to the assessee company and deleted the entire additions so made by the AO on the subject issue. For the A.Ys. 2015-16 & 2016-17, the assessee had also raised legal grounds before the ld. CIT(A) to the effect that the additions on the subject issue were made by the AO without having recourse to any incriminating material. The ld. CIT(A), while giving his findings for the A.Y. 2015-16, has granted relief to the assessee on the aforesaid legal ground. However, for the A.Y. 2016-17, the ld. CIT(A) has dismissed such ground of the assessee.

10. Against the legal ground confirmed by the Ld. CIT(A), the assessee is in appeal whereas against the relief granted, the Revenue is in appeal before us.

11. Before us, learned Department Representative [In short 'Ld CIT(DR)'] vehemently argued supporting the observations of the AO on this issue and in particular pointed out that the fact of accepting bogus loans by the assessee is evident from one mobile message, the screenshot which has been reproduced by the AO at page no. 24 of his Order. The ld. CIT(DR) also stressed that the names of the lender companies were included in the list of the shell companies notified by the Department.

12. Per Contra Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

S. No.	Marginal Notes	Submission in Brief	AO's Comments	Relevant Pages of Paper Book	Remarks
1	<i>Addition not based on any incriminating document</i>	<i>Addition in respect of the unsecured loans is <b>not based upon any incriminating document</b> or material found or seized during the course of Search.</i>	-	<i>3 to 11 for A.Y. 2015-16 [assessee's written submission (WS) before CIT(A)]</i>	<p><i>For A.Y. 2015-16, the ld. CIT(A) deleted the entire addition of unsecured loans and interest payment thereon on this legal issue. <b>Relevant findings of the CIT(A) at para (3.2.2) at page no. 15 of his Order for A.Y. 2015-16.</b></i></p> <p><i>For A.Y. 2016-17, the ld. CIT(A), at para (3.3.2) on page no. 16 &amp; 17 of his Order, has, given a categorical finding that the material referred to by the AO was not related to the unsecured loans/interest. However, on other issues, the ld. CIT(A) upheld that for other additions some evidences were found during the course of search. <b>At para (3.3.7) of page no. 105 of the CIT(A)'s order for A.Y. 2016-17, again a finding has been given that loose papers, referred to by the AO in her order, cannot be said to be incriminating.</b></i></p>
2	<i>Documents</i>	<i>The AO, while making</i>	<b>Para (9.3)</b>	<i>Common</i>	<i>The ld. CIT(A) at para</i>

	<p>referred to by the AO are not incriminating in the nature</p>	<p>the impugned addition, has made reference of loose papers inventorized as <b>Page No. 47 to 63 of GGL-01</b> seized from the business premises of the assessee at Kolkata and as also, the Audit Reports of the assessee. The loose papers pertain to the <b>details of the loans</b> obtained by the assessee company from various lender companies and as also, the corresponding <b>details of sources of funds</b> in the hands of the lender companies. The entire loan transactions noted in such loose papers are duly recorded in the regular books of account of the assessee company and the same are <b>not in the nature of incriminating documents</b>. It contain details of amount of loan, period of interest, amount of interest, TDS, etc. Further, the Audit Reports cannot be said to be incriminating in the nature.</p>	<p><b>at page no. 26 –</b> opening line referring page no. 47 to 63 of GGL-01 (seized document)</p>	<p>Additional Paper Book Page No. 771 to 787</p>	<p><b>(3.3.7) on page no. 87 of his Order has given a categorical finding to this effect that these loose papers cannot be regarded as incriminating in the nature.</b></p>
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3	Statements of third parties cannot be regarded as incriminating material – Ruling of the Hon'ble Supreme Court	In the present case, the AO has placed complete reliance on the statements of Shri Mukesh Jhawar and Mr. H.P. Agrawal for making the additions. First of all, such statements were subsequently retracted and secondly, the retracted statements cannot be equated with the incriminating material as held by the Hon'ble High Court of Delhi in the case of Pr. CIT vs. Meeta Gutgutia (2018) 395 ITR 0526 (Del.HC). The SLP filed by the Revenue against such decision got dismissed from the Hon'ble Supreme Court (2018) 102 CCH 0038 (SC).	-	-	Copy of the retracted statement of Mr. Mukesh Jhawar in the form of an Affidavit is placed at page no. 544 to 547 of PB for A.Y. 2015-16 whereas, the retracted statement of Shri H.P. Agrawal in the form of an Affidavit is placed at page no. 554 to 557 of the PB.
4	Full discharge of the onus u/s. 68 by the assessee.	During the course of the assessment proceedings, <b>the assessee had fully discharged its onus of proving, under s. 68, by furnishing all the necessary documentary evidences so as to establish</b> (i) identity of the loan creditors; (ii) genuineness of the loan transactions; (iii) creditworthiness of the loan creditors; (iv) sources of funds in the hands of the loan creditors; (v) relevant documentary evidences regarding the identity & creditworthiness of the sub-creditors.	The AO has admitted furnishing of necessary documentary evidences by giving a finding at first para at page no. 49 of her order. Furnishing of the documents is also evident from Page No. 40 of	Written submission before AO dated 09.12.2019 is placed at PB Page No. 618 to 621 for A.Y. 2015-16 and documentary evidences are placed at page nos. 189 to 540 for A.Y. 2015-16 The details	(i) All the documents were also furnished before the CIT(A) and the CIT(A) has made a reference to this effect at para (3.3.6) at page no. 85 to 87 of his Order for A.Y. 2015-16.  (ii) None of the documentary evidences has been rebutted or contravened or disbelieved by the ld. AO.

		<i>Further, the AO at page no. 49 has also admitted that the lender companies have duly shown the subject transactions with the assessee in their respective Bank Statements, Balance Sheets and Profit &amp; Loss Account and were also having sources of funds.</i>	<i>the AO's Order.</i>	<i>of the loans taken for A.Y. 2015-16 are given at Page no. 148 of Paper Book for A.Y. 2015-16 &amp; at page no. 211-212 of Paper Book for A.Y. 2016-17</i>	
4	<i>Creditworthiness of the lender companies not doubted</i>	<i>All the lender companies were having ample of funds as per their respective Audited Balance Sheets. Further, the AO has also found that investment by such companies are duly getting reflected in their Balance Sheets. The AO has also admitted the sources of making investments by such lender companies.</i>	<i>First para at page no. 49 of her Order.</i>	<i>Audited Balance Sheets are furnished along with other documentary evidences at page nos. 189 to 540 of the PB for A.Y. 2015-16.</i>	<i>The CIT(A) has given a clear finding to this effect at <b>para (3.3.6) page no. 86</b> of his order for A.Y. 2015-16.</i>
5	<i>Interest paid and TDS made had duly been shown</i>	<i>The appellant had paid interest on the subject loans and has also made necessary TDS. The lender companies have duly incorporated such income in their Profit &amp; Loss Accounts and as also in their Returns of Income.</i>	<i>First para at page no. 49 of her Order.</i>	<i>Audited Profit &amp; Loss Accounts &amp; Income-Tax Returns of lender companies are furnished along with other documentary</i>	-

				<i>evidences at page nos. 189 to 540 of the PB for A.Y. 2015-16.</i>	
6	<i>No independent inquiry conducted by the AO</i>	<i>The assessee had specifically <b>requested the AO</b> for either giving the opportunity to produce the creditors or to issue <b>summons u/s. 131(1) or letters u/s. 133(6)</b> to the lender companies.</i>	<i>At second para of page no. 41 of the AO's Order where the written submission of the assessee has been reproduced</i>	<i>Second para at Page No. 621 of the Paper Book for A.Y. 2015-16 being the assessee's reply letter dated 09-12-2019 made before the AO</i>	<i>Despite making specific request, the AO did not conduct any independent enquiry by herself.  The relevant findings of the ld. CIT(A) are at para (3.3.6) on page no. 86 of his Order for A.Y. 2015-16 (last three lines)</i>
7	<i>Wrong Finding by the AO that notices u/s. 133(6) were sent to the lenders</i>	<i>At para (9.11) of page no. 37, the AO has given an incorrect finding that she had issued notices to the lender companies u/s. 133(6) which were either not replied or remained unserved. The fact remained that no such notices were actually issued by the AO.</i>	<i>Para (9.11) at page no. 37</i>	<i>Page No. 621 of assessee's submission before AO dated 09-12-2019.</i>	<i>During the assessment proceedings, the assessee had requested the AO to issue the summons and notices to the lenders u/s. 133(6) at the addresses furnished and as also, to apprise it if any such notice/summon remained uncomplied with/unserved. No such intimation was given to the assessee during the course of the assessment proceedings. It was not also intimated by any of the Notices by the AO to the assessee that which notices remained uncomplied and which notices returned unserved.</i>
6	<i>Opportunity</i>	<i>During the course of</i>		<i>571 to 577</i>	<i>On a perusal of the</i>

	<i>of Cross-Examination not offered to the assessee</i>	<i>the assessment proceedings, the AO had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The <b>opportunity of cross-examination</b> of any of the witnesses of the AO was not given. Non-giving of the opportunity has vitiated the entire proceedings as held by the Hon'ble Apex Court in many cases.</i>		<i>for A.Y. 2015-16 being the Notice u/s. 142(1) dated 17-05-2019</i>  <b><u>AND</u></b> <i>578 to 606 for A.Y. 2015-16 being the Notice Show Cause Notice dated 15-11-2019</i>	<i>Page No. 575 for A.Y. 2015-16 of the Paper Book, it may be gathered that except asking certain details of loans, the AO had not uttered any single word regarding the alleged enquiries and other materials referred to by her in the body of the assessment order. Thus, the question of giving any cross-examination does not arise.</i>  <i>The relevant findings of the ld. CIT(A) are at paras (3.3.7) &amp; (3.3.8) on page no. 87 to 90 of his Order for A.Y. 2015-16.</i>
7	<i>Loans completely repaid off</i>	<i>Loan Transactions from seven lenders out of total nine lenders have got <b>completely repaid during the succeeding previous years through banking channels.</b></i>	-	-	-
8	<i>Awards passed by the Arbitrators in respect of two companies .</i>	<i>In respect of two lenders namely M/s. Arrowlink Stockists Pvt. Ltd. and M/s. Moonview Infrastructure Pvt. Ltd., due to non-repayment of loan within stipulated time, matters were referred to <b>Arbitration</b> and Awards have been passed by the Sole Arbitrators. The passing of the Award in a judicial process establishes the genuineness of the lender companies as</i>	-	<i>157 to 188 of PB for A.Y. 2015-16</i>	<i>Awards passed by the Sole Arbitrator duly furnished before the AO.</i>

		<i>also the genuineness of the loan transactions.</i>			
9	<i>Two companies have been granted registration by the Reserve Bank of India</i>	<i>Out of nine lender companies, two companies viz. M/s. Asha Tradecom Pvt. Ltd. &amp; M/s. SHP Financial Services Pvt. Ltd. are <b>registered NBFCs</b> with RBI. The granting of registration by the RBI, the Apex body for controlling finance in India, clearly proves the genuineness of the companies and as also of their business activities.</i>		258 & 528-A	<i>Copies of the Registration Certificates issued by RBI</i>
12	<i>Loans also taken in earlier years and accepted u/s. 143(3)/147.</i>	<i>In earlier years too, the assessee company had accepted the loans from two of the lender companies namely M/s. Asha Tradecom Pvt. Ltd. &amp; M/s. SHP Financial Services Pvt. Ltd. and the same were <b>duly accepted by the Revenue</b> in the <b>assessments framed pre-search</b> u/s. 143(3)/147.</i>	-	<i>Additional Paper Book Page No. 788 to 793</i>	<i>The Id. CIT(A) has also given a finding to this effect at para (3.3.2) on page no. 82 of his Order for A.Y. 2015-16.</i>
13	<i>Despite specific request, Deponents of the Affidavits were not examined</i>	<i><b>Statements</b> given by Shri Mukesh Jhanwar and CA. Shri H.P. Agrawal before the Search Party u/s. 132(4) were <b>subsequently retracted</b> by them vide their <b>Affidavits</b> submitted before the AO. Both the persons, through their separate letters, requested from the Investigation Wing for providing copy of their statements recorded u/s. 132(4). Request for obtaining</i>		544 to 547 and 554 to 557	<i>The assessee, vide its letter dated 09-12-2019 [PB Page No. 665 &amp; 669], requested the AO to make verification from Shri Mukesh Jhanwar and CA. Shri H.P. Agrawal by issuing summons u/s. 131 or notices u/s. 133(6). However, the AO neither made any independent enquiry from Shri Mukesh Jhanwar and CA. Shri H.P. Agrawal subsequent to filing of</i>

		<p><i>copy of Statement filed at PB Page No. 541 &amp; 542 (by Shri Mukesh Jhanwar) and 548 to 552 (by CA. Shri H.P. Agrawal).</i></p> <p><i>Despite making a specific request, the AO did not examine Shri Mukesh Jhanwar or Shri H.P. Agrawal.</i></p>			<p><i>their Affidavits nor the AO provided any opportunity of cross-examination to the assessee.</i></p>
14	<p><i>Case of the assessee is distinguishable from the case of NRA Iron &amp; Steel</i></p>	<p><i>The case of the assessee is <b>distinguishable from</b> that of the case of PCIT (Central)-1 vs. <b>NRA Iron &amp; Steel Pvt. Ltd.</b> (2019) 412 ITR 161 (SC)</i></p>	-	<p><i>Our written submission before CIT(A) at <b>page nos. 55 to 57</b> for A.Y. 2015-16</i></p>	-
15	<p><i>Interest is allowable on genuine borrowing</i></p>	<p><i>The AO disallowed the claim of the assessee for interest only on the ground that the unsecured loans on which the interest have been paid are not genuine. Once, such loans are considered as genuine, then the entire interest would be allowable u/s. 36(1)(iii).</i></p>			

12.1 Reference was also made by Learned counsel for the assessee to its detailed submission on this issue made before the CIT(A) which is placed at page no. 12 to 69 of the Paper Book for A.Y. 2015-16, Page No. 11 to 89 of Paper Book for A.Y. 2016-17, Page No. 3 to 6 of Paper Book for A.Y. 2017-18 and Page No. 3 to 5 of Paper Book for A.Y. 2018-19.

12.2 Before us, Learned counsel for the assessee contended that the impugned additions u/s. 68 on account of unsecured loans and

additions u/s. 69C on account of interest paid thereon have been made by the AO, without having recourse to any incriminating material seized during the course of the search u/s.132 of the Act. The counsel of the assessee pointed out that in the instant appeals, as per the findings given by the AO at para (9.3) of his Order, the additions have been made merely on the basis of the Audited Financial Statements of the assessee company for the relevant previous year and also on the basis of some documents seized as page no. 47-63 of GGL-01 from office premises of the assessee company. It was submitted that Ld.AO has relied upon certain statements recorded u/s. 132(4) of the Act, but, he failed to appreciate that all such statements had got subsequently retracted by the persons making the statements, by way of Affidavits on oath. The assessee submitted that its audited financial statements, which were already placed on record of the Department, cannot be said to be incriminating in the nature. It has further been submitted that the documents inventorized as page no. 47-63 of GGL-01, which have been made one of the basis for making the impugned additions, can also not be said to be incriminating in the nature. The copies of such seized documents have been placed by the assessee at page no. 131 to 147 of its Paper Book for A.Y. 2015-16 and our attention was invited to such seized documents to demonstrate that page no. 47 contains the details of loans obtained by the assessee company from various lender companies and it further contains the details of interest paid and TDS made thereon which are duly recorded in the regular books of account of the assessee company. The remaining

page nos. 48 to 63 contain the details of sources of the funds, obtained through banking channels, by the lender companies before making loans to the assessee company. It was contended that such documents were seized from the premises of the CA of the assessee company who had gathered such information from the lender companies for the purpose of submitting the same to the Income-Tax Department in any probable assessment proceedings in which the sources of funds in the hands of the lenders are required to be established. Thus, according to Learned counsel for the assessee, such papers by any stretch of imagination, cannot be termed to be incriminating in the nature so as to form the basis for making any addition in an assessment made under s.153A of the Act. Even the list of the alleged shell companies, notified by the Department on the basis of the inputs received from various investigation agencies, as given by the AO at para (9.5) of the assessment order, cannot be said to be an incriminating document recovered during the course of the search and Ld.AO has made the aforesaid additions without having recourse to any material seized during the course of the search . Learned counsel for the assessee further placing reliance on various judicial pronouncements submitted that the additions so made are liable to be deleted on the legal ground, as the assessment years under consideration were non abated assessment years.

12.3 Learned counsel for the assessee on merits of the case, submitted that Ld. AO has made additions of Rs.6,00,00,000/- each in respect of the fresh unsecured loans obtained by it during the two

previous years relevant to the assessment years 2015-16 and 2017-18. The assessee, in its Synopsis, furnished the details of such unsecured loans and has also furnished the details of the interest expenses disallowed by the AO u/s. 69C of the Act, which for a ready reference, are reproduced as under:-

“E. Details of the unsecured loans obtained by the Assessee and Interest paid thereon:

S. No.	Name of the loan creditor	Acronym	A.Y. 2015-16		A.Y. 2016-17		A.Y. 2017-18	A.Y. 2018-19
			Loan Amount u/s. 68	Interest Amount u/s. 69C	Loan Amount u/s. 68	Interest Amount u/s. 69C	Interest Amount u/s. 69C	Interest Amount u/s. 69C
1.	Arrowlink Stockists Pvt. Ltd.	ASPL	1,45,00,000	4,12,891	6,00,000	14,05,041	15,10,005	13,59,002
2.	Asha Tradecom Pvt. Ltd.	ATCPL	25,00,000	76,538	1,01,50,000	6,69,071	12,64,999	2,87,039
3.	Bhagalaxmi Retails Pvt Ltd	BRPL	70,00,000	2,16,864	-	6,65,000	6,99,999	-
4.	Enarzier Commerce Pvt. Ltd.	ECPL	10,00,000	30,576	46,00,000	2,85,615	5,60,001	85,585
5.	Galaxy Retails Pvt. Ltd.	GRPL	45,00,000	1,45,478	-	4,27,500	4,49,998	-
6.	Moonview Infrastructure Pvt. Ltd.	MIPL	1,80,00,000	5,29,520	51,00,000	19,18,470	23,10,001	20,79,002
7.	Sammedshikhar Commerce Pvt. Ltd.	SSCPL	25,00,000	86,056	27,00,000	3,37,828	5,19,998	1,56,896
8.	Sanskriti Vintrade Pvt. Ltd.	SVPL	50,00,000	1,49,178	-	4,75,000	5,00,002	-
9.	SHP Financial Services Pvt. Ltd.	SFSPL	50,00,000	1,60,397	28,50,000	5,72,158	7,85,000	1,81,505
10.	Amber Vyapaar Pvt. Ltd.	AVPL	-	-	23,00,000	86,066	2,29,998	3,403
11.	Auckland Trading Pvt. Ltd.	ATPL	-	-	30,00,000	1,22,131	2,99,999	-
12.	Avishkar Dealers Pvt. Ltd.	ADPL	-	-	10,00,000	32,787	99,998	89,999
13.	Bandana Vyapar Pvt. Ltd.	BVPL	-	-	26,00,000	94,481	2,59,999	19,233
14.	Mercury Deal Trade Pvt. Ltd.	MDTPL	-	-	40,00,000	1,63,388	4,00,004	-
15.	Mohini Dealing Pvt. Ltd.	MDPL	-	-	79,00,000	2,87,787	7,90,003	-
16.	Monalisa Agency Pvt. Ltd.	MAPL	-	-	30,00,000	1,26,776	2,99,999	24,822
17.	Rajgharana Trading Pvt. Ltd.	RTPL	-	-	40,00,000	1,67,213	4,00,004	-
18.	Satabdi Realstate Pvt. Ltd.	SRPL	-	-	42,00,000	1,43,771	4,20,000	-
19.	Sanskar Commosale Pvt. Ltd.	SCPL	-	-	20,00,000	79,782	1,75,339	-
20.	Blackberry Tradecom Pvt.	BTPL	-	-	-	-	-	40,96,026

	<i>Ltd.</i>							
	<b>TOTAL</b>		<b>6,00,00,000</b>	<b>18,07,498</b>	<b>6,00,00,000</b>	<b>80,59,865</b>	<b>1,19,75,346</b>	<b>82,40,976</b>

13. The assessee has further submitted that out of the aforesaid twenty companies, in respect of two companies, namely, Asha Tradecom Pvt. Ltd. and SHP Financial Services Pvt. Ltd., the assessee had also accepted substantial amount of loan in the immediately preceding previous year relevant to A.Y. 2011-12.

13.1 Before the Id. CIT(A), the assessee vide its written submission had dealt with the transactions of unsecured loans accepted by it from the above named companies and had furnished its explanation on the identity of the lender companies, genuineness of the loan transactions and creditworthiness of the lender companies. Learned counsel for the assessee contended that all the lender companies were duly registered under the Companies Act, 1956 and shown as “active” companies on the official portal of the Ministry of Corporate Affairs and all are regularly assessed to Income-Tax and the entire loan transactions had taken place through banking channels only. The assessee company had claimed to have paid interest to such lender companies after deducting necessary TDS. Learned counsel for the assessee further contended that all the subject lender companies have duly confirmed the loan transactions carried out by them with the assessee company and have also shown the interest income in their respective returns of income and claimed TDS for the respective years, filed u/s. 139 of the Act. According to the assessee, all the companies were having sufficient owned funds adequate bank

balances before providing loans to the assessee company. Learned counsel for the assessee stated that the loan transactions with majority of lender companies have got completely squared off during the subsequent financial years relevant to A.Y. 2016-17 and A.Y. 2018-19 through banking channels.

13.2 Learned counsel for the assessee also submitted that assessee company had specifically requested the Ld.AO for either giving the opportunity to produce the creditors or to issue summons u/s. 131(1) or letters u/s. 133(6) to the lender companies. However, despite making a specific request, the AO did not make any independent inquiry in respect of any of the aforesaid companies. The assessee contended before us that Ld. AO has given an incorrect finding that she had issued notices to the lender companies u/s. 133(6) which were either not replied or remained unserved. However, as per the assessee, the fact remained that no such notices were actually issued by the AO. Further, the assessee also contended that during the course of the assessment proceedings, Ld. AO had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The assessee company also contended that no opportunity of cross-examination of any of the witnesses of the AO was given which has vitiated the entire proceedings as held by the Hon'ble Apex Court in many cases including that of CIT Vs.Andaman Timbers Industries Limited (ITA no.721 of 2008).

13.3 Learned Counsel for the assessee submitted that Ld.AO has relied upon the statements of Mr. Mukesh Jhawar and Mr. H.P.

Agrawal for making the impugned additions in the assessee's income but, these statements were subsequently retracted by such persons. Though a specific request was made to Ld.AO to conduct necessary verification from Mr. Mukesh Jhanwar and Mr.H.P. Agrawal by issuing summons u/s. 131 or notices u/s. 133(6) of the Act however, Ld AO neither made any independent enquiry subsequent to their filing of Affidavits retracting the statements nor Ld.AO provided any opportunity of cross-examination to the assessee.

13.4 Learned Counsel for the assessee further submitted that during the course of the assessment proceedings, it was submitted before the AO that in respect of two companies namely Arrowlink Stockists Pvt. Ltd. and Moonview Infrastructure Pvt. Ltd., due to non-repayment of loan by it within the stipulated period of time, matter was referred before the sole Arbitrators, and the sole Arbitrators have passed awards against the assessee company. According to the assessee, the passing of the Arbitration Award, which is quasi to passing of an Order by a competent Court, speaks in volume regarding the genuineness of the loan transactions carried out by the assessee company. The assessee further contended that two of the aforesaid companies namely Asha Tradecom Pvt. Ltd. and SHP Financial Services Pvt. Ltd. were duly registered as Non Banking Finance Company with the Reserve Bank of India. Also in order to support its claim of establishing the identity and creditworthiness of the lender companies and genuineness of loan transactions, assessee has filed various documentary evidences before the lower authorities such as copies of the loan confirmation letters duly given by the loan

creditors, copies of the certificate of incorporation, memorandum and articles of association, PAN card and abstract of the master data as downloaded from the website of the Ministry of Corporate Affairs and as also copies of the certificate of registrations granted by the Reserve Bank of India to two lender companies etc.. The assessee had also furnished the copies of the Arbitration Awards in respect of the loans taken by the assessee company from two lender companies. Besides, the assessee had also furnished copies of the acknowledgement of returns of the loan creditors, copies of their audited financial statements, copies of the relevant bank statements of the loan creditors and as well as of the assessee. In respect of the additions made u/s. 69C of the Act relating to the disallowance of interest on the unsecured loans, the assessee submitted that such interest was claimed by the assessee on the various unsecured loans taken by it from the aforesaid companies, and for which the AO has invoked the provisions of section 68 of the Act. Learned Counsel for the assessee submitted that the loans from the subject companies were genuinely taken and therefore, interest paid by it in respect of such loans was fully allowable under the provisions of s.36(1)(iii) of the Act. It was also contended that in none of the documentary evidences so furnished for establishing the genuineness of the loan transactions, any defect or discrepancy was found by Ld.AO and he did not conduct any independent enquiry from the lender companies and merely on the extraneous considerations, made the impugned additions.

14. We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities, written and oral submissions made from both the sides and the paper books filed under rule 18(6) of the ITAT Rules. We notice that the AO, while making the impugned addition, has made reference of certain loose papers inventorized as Page No. 47 to 63 of GGL-01 seized from the business premises of the assessee at Kolkata and also the Audit Reports of the assessee. On a perusal of these loose papers which have been placed by the assessee at page no. 131 to 147 in its Paper Book for A.Y. 2015-16, we find that such loose papers pertain to the details of the loans obtained by the assessee company from various lender companies such as name of the lender company, amount of loan, period of interest, amount of interest, TDS, etc. and also contain the corresponding details of sources of funds in the hands of the lender companies. The entire loan transactions noted in such loose papers are duly recorded in the regular books of account of the assessee company and therefore the same cannot be regarded as incriminating documents. Ld. CIT(A), vide para (3.3.7) on page no. 87 of his Order for A.Y. 2015-16, has allowed the legal ground no. 2 of the assessee by giving a categorical finding that these loose papers cannot be regarded as incriminating in the nature and accordingly deleted the entire addition so made by the AO on this count in a completed year of assessment without having recourse to any incriminating material. We also notice that the ld. CIT(A), while adjudicating the legal ground of the assessee for A.Y. 2016-17, at

para (3.3.2) on page no. 16 & 17 of his Order for A.Y. 2016-17, has given a finding that the material referred to by the AO on the subject issue was not incriminating in the nature but, the other addition of Rs.3,55,27,000/- was made by the AO in the same A.Y. 2016-17 by making reference of some digital images seized during the search and therefore, the entire legal ground of the assessee for A.Y. 2016-17 inter alia including the subject issue of unsecured loans and interest payment thereon, was dismissed by the ld. CIT(A).

15. As regards the legal ground No. 1 raised by the assessee in its appeal for A.Y. 2016-17, we find that in the instant case, the assessment order has been framed by the AO in pursuance of the search operations carried out u/s. 132 of the Act on 14.11.2017. Further in response to the return of income furnished by the assessee u/s. 139(1) of the Act, no notice u/s. 143(2) of the Act was issued in the case of the appellant and therefore, the income so shown in the return u/s. 139(1) had attained finality prior to the date of the search. Thus, we find that the impugned additions of Rs.6,00,00,000/- and Rs.80,59,865/- respectively on account of unsecured loans and interest payments thereon have been made by the AO in a completed assessment year i.e. A.Y. 2016-17 in respect whereof the time limit for issuance of notice under s.143(2) of the Act had already got expired and as such, no assessment proceedings were pending on the date of search. In such eventuality, the A.Y. 2016-17 cannot be considered as an abated assessment year. We also note that Ld.AO, while making the impugned additions, has also referred to some statements of Mr Mukesh Jhanwar and Mr. H.P.

Agrawal recorded during the course of search but same were subsequently retracted during the course of the assessment proceedings and thus the same cannot be equated to incriminating material and for this proposition we find support from the decision of the Hon'ble High Court of Delhi in the case of *Pr. CIT vs. Meeta Gutgutia (2018) 395 ITR 0526 (Del.HC)* and the Special Leave Petition filed by the Revenue against this decision has been dismissed by Hon'ble Supreme Court in *(2018) 102 CCH 0038 (SC)*.

15.1 Similar view also taken by Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla (2016) 380 ITR 53 (Del HC)* and Hon'ble Court after considering various judgments had dealt with this issue as under:

*"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

*ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

15.2 The above stated ratio laid down by the Hon'ble Delhi High Court again comes from consideration in the case of *Pr. CIT vs. Meeta Gutgutia (supra)* and this Tribunal has applied this ratio in the the case of *Kalani Bros. [IT(SS) No.71/Ind/2015 dated 6.11.15]* observing as follows:-

*"We have heard both the sides. We have also gone through the case laws relied upon by both the sides. We have also considered various relevant facts of the case. It is a settled legal position that once a search and seizure action has taken place u/ s 132 of the Act or a requisition has been made u/ s 132A, the provisions of section 153A triggered and Assessing Officer is*

*bound to issue notice u/ s 153A of the Act. Once notices are issued u/ s 153A of, the Act then assessee is legally obliged to file return of income for six years. The assessment and reassessment for six years shall be finalised by the Assessing Officer. It is also held by various Courts that once notice u/ s 153A of the Act issued, then assessment for six years shall be at large both for Assessing Officer and assessee have no warrant of law. It has been also held that in the assessment years where assessments have been abated in terms of second proviso to section 153A then Assessing Officer acts under original jurisdiction and one assessment is made for total income including the addition made on the basis of seized material. But where there is no abatement of assessments and assessments were completed on the date of search then addition can be made only on the basis of incriminating documents or undisclosed assets, etc. In these cases there was no incriminating document found and seized. No assessment proceedings were abated in these assessees. Thus assessments for these assessment years were completed on the date of search. The assessments were completed u/ s 143(3) of the Act read with section 153A/ 153C of the Act after the search. There was no abatement of any proceedings in these cases for these assessment years in terms of second proviso to section 153A of the Act. There is no seized material belonging to the assessee which was found and seized in relation to additions made. In. a recent decision, Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (supra) has held that completed assessments can be interfered with by the Assessing Officer while making assessment u/ s 153A of the Act, only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which was not produced or not already disclosed or made known in the course of original assessment. In. all these cases no assessments were pending on the date of search for these assessment years. No assessments were abated in terms of second proviso to section 153A of the Act. Hon'ble Delhi High / Court in the case of CIT vs. Kabul Chawla (supra) has considered various High Court decisions relied upon by the learned DR. The Hon'ble Delhi High Court has considered the cases of Canara Housing Development Co. vs. DCfT; Madugula vs. DCIT; CIT vs. Chetandas Laxmandas and CIT vs. Anil Kumar Bhatia (supra). The only decision of the Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Arora; 367 ITR 517 relied on by the learned DR was not considered by Hon'ble Delhi High Court while deciding the issue in the case of Kabul Chawla.*

*The Hon'ble Allahabad High Court has reversed the order of the Tribunal and remanded the issue to the Tribunal to consider the appeal of the department on merits. It is a settled legal position that when two views are possible on a particular issue then the view favourable to the assessee should be followed as held by the Hon'ble Apex Court in the case of CIT vs. Vegetable Products; 88 ITR 192. Respectively following the decision of the Hon'ble Apex Court, we dismiss the ground of appeals of the Revenue. Departmental appeals are disposed accordingly."*

15.3 Similar view also taken in the case of DCIT, Indore vs. Shri Satish Neema (2020) 37 ITJ 308 (Trib. Indore). Relevant extract of the decision is reproduced below:

*"19. We therefore respectfully following the decision referred above and also considering the latest judgement of Hon'ble High court of Delhi in the case of Pr. CIT & Ors. Vs. Meeta Gutgutia (supra) come to the conclusion that since the assessment orders in question were concluded and non-abated assessments no addition can be made in the assessment proceedings u/s 153A of the act unless there is any incriminating material found during the course of search. We find no inconsistency in the finding of Ld. CIT(A) quashing the assessment proceedings u/s 153A of the Act since the additions were not made on the basis of any incriminating material found during the course of search. Thus revenue's appeal for Assessment Years 2005-06, 2006-07 and 2009-10 stands dismissed."*

15.4 Thus respectfully following the settled judicial precedence which are squarely applicable on the instant issue we are of the view that no addition could have been made by the AO in the assessee's income without having recourse to any incriminating material. Accordingly, we are inclined to delete the additions of Rs.6,00,00,000/- and Rs.80,59,865/- so made by the AO for the A.Y. 2016-17 and allow this legal ground raised by the assessee in its

appeal for A.Y. 2016-17. Thus, the Ground No. 1 of the assessee for A.Y. 2016-17 is **Allowed**.

16. Now, coming to the merits of the case, we find that during the course of the assessment proceedings, the AO had required the assessee company to furnish the details and documentary evidences in support of the unsecured loans obtained by it during the previous years relevant to the assessment years under consideration. We also find that the assessee company, vide its letter dated 09.12.2019, had made a detailed written submission along with the complete details of the unsecured loans and necessary documentary evidences before the AO which are duly placed in the Paper Books filed by the assessee for the assessment years under consideration. On a perusal of the documents so filed, we find that the assessee, in order to establish the identity of the loan creditors, the genuineness of the loan transactions and the creditworthiness of the loan creditors, had furnished the necessary documents before the AO. In order to establish the identity of lender companies, the assessee had furnished the copies of the loan confirmation letters duly given by the loan creditors, copies of the certificate of incorporation, memorandum and articles of association, PAN cards and abstracts of the master data as downloaded from the website of the Ministry of Corporate Affairs relating to the lender companies, copies of the certificates of registration granted by the Reserve Bank of India to two of the lender companies. Further, in order to establish the genuineness of the loans and creditworthiness of the lender

companies, the assessee had furnished copies of the acknowledgement of returns of the loan creditors, copies of their audited financial statements, copies of the relevant bank statements of the loan creditors and as well as of the assessee. Further, in order to establish the identity of the lender companies and genuineness of the loan transactions, the assessee had also furnished copies of the Awards of the Arbitration, given by the Sole Arbitrators in respect of two of the lender companies. The assessee, by filing its written submission along with documentary evidences, had claimed to have fully discharged its onus of proving, under s. 68, to establish (i) identity of the loan creditors; (ii) genuineness of the loan transactions; and (iii) creditworthiness of the loan creditors.

16.1 We further find that the AO at first para of page no. 49 of her Order has also admitted that the lender companies have duly shown the subject transactions with the assessee in their respective Bank Statements, Balance Sheets and Profit & Loss Account and were also having sources of funds. We also find that none of the documentary evidences furnished by the assessee company has been rebutted or contravened or disbelieved by the AO. We note that the assessee, after furnishing the documentary evidences, had specifically requested the AO for either giving the opportunity to produce the creditors or to issue summons u/s. 131(1) or letters u/s. 133(6) to the lender companies. Before us, the Id. Counsel of the assessee stated that the AO, at para (9.11) on page no. 37 of her Order, has given an incorrect finding that she had issued notices to the lender

companies u/s. 133(6) which were either not replied or remained unserved. Such averment of the counsel of the assessee has not been rebutted by the Id. CIT(DR). In such circumstances, the documentary evidences so furnished by the assessee company for establishing the genuineness of the unsecured loans so obtained by it cannot be brushed aside without any cogent adverse material on record.

16.2 In our considered opinion, by furnishing the copies of the certificates of incorporation of the lender companies, their copies of memorandum and articles of association, master data extracted from the official website of the Ministry of Corporate Affairs, Government of India and as also copies of the certificates of registration granted by the RBI to two lender companies, the assessee has successfully established the legal identity of the loan creditors beyond all doubts. Further, the genuineness of the transactions gets established from the fact that the entire transactions have been carried out through banking channels and the same are duly reflected in the relevant bank statements of the lenders as well as that of the assessee. Furthermore, the genuineness of transactions also gets established from the letters of confirmation by the lender companies, crediting the account of the loan creditors with the due amount of interest, making of TDS on the interest and the subsequent repayment of the loan by the assessee company to such lender companies. The factum of Arbitration Awards made by the Sole Arbitrators in respect of two of the lender companies establishes not only the identity of the lender companies but, also the genuineness of the loan transactions.

We find merit in the contention of Learned counsel for the assessee that the process of Arbitration is a significant part of our Judicial System and unless disputed by one of the parties to the Arbitration, the Award passed by such Arbitrator becomes a Judicial Order having evidential value in all other legal proceedings. On a perusal of the audited balance sheets of the lender companies, as were also furnished before the lower authorities, we observe that all the lender companies were having ample net owned funds and were having sufficient balances in their bank accounts and no cash was deposited prior to the lending of loan to appellant company, which establishes the creditworthiness of the lender companies. We find that two lender companies namely Asha Tradecom Pvt. Ltd. and SHP Financial Services Pvt. Ltd were duly registered as Non Banking Finance Company with the Reserve Bank of India and their registration with the RBI itself proves the identity and creditworthiness of such lender companies. There is no denial to the fact that no independent enquiry was done by the AO. In such circumstances, we find ourselves in agreement to the Id. CIT(A) that the assessee could be able to discharge its primary onus as contemplated under the provisions of s. 68 of the Act. We find that the AO has failed to discharge the onus of bringing any cogent material or evidence on record for disbelieving the explanation as well as the various documentary evidences furnished by the assessee before her, during the course of the assessment proceedings.

16.3 We find that the Ld AO, at para (9.3) of her Order, has placed reliance upon some loose papers inventoried as 'Page no. 47 -63 of GGL-01' seized during the course of the search carried out in the one of the business premises of the assessee company, situated at Kolkata. On a perusal of the seized loose papers which were filed by the assessee company at page no. 131 to 147 in its Paper Book for A.Y. 2015-16, no adverse inference could be drawn for the very reason that such loose papers do not convey any adverse information against the assessee company. Before us, the ld. Counsel of the assessee company demonstrated that the entire transactions mentioned on these loose papers were fully recorded in the regular books of account of the assessee company. In such circumstances, the loose papers so relied upon by the AO are nothing but the duly recorded loan transactions undertaken by the assessee company with the lender companies.

16.4 We further find that the AO at para (9.1) and (9.2) of the assessment order, has made reference of some mobile message and also some statement of Mr. Mukesh Jhawar, an accountant of the assessee company duly recorded u/s. 132(4) of the Act. On the basis of the mobile message and the statement so recorded, the AO, reached to the conclusion that various shell companies were used as conduit for routing unaccounted cash of the assessee company for procuring subject funds under the garb of unsecured loans. Before us, the ld. Counsel of the assessee company stressed that immediately after the search, as on 07.12.2017, Mr. Mukesh Jhawar

in his request letter dated 06.12.2017 addressed to the ADIT(Inv.)-III, Indore stated that his statement was recorded under duress and he was surrounded by a number of officers with the result that while giving the statement, he got totally scared and confused. In the said letter he also expressed his apprehension that due to the confused state of mind, either he could not make the factual statement or the statement so given by him was not properly recorded. We also notice that Mr. Mukesh Jhawar, vide his Affidavit dated 10.12.2019, had stated that his replies to question nos. 9-17 were not correctly recorded by the search party and he denied to have made any statement as regard to the transfer of unrecorded cash of the assessee company to any other place for procuring accommodation entries. The copy of such Affidavit was also furnished by the assessee before the AO as well as before the Id. CIT(A) and a copy of the same has also been filed before us at page no. 544 to 547 of the Paper Book for A.Y. 2015-16. We also note that the assessee, vide its letter dated 09.12.2019, after filing the affidavit of Shri Mukesh Jhawar, had made a specific request to the AO that if despite retraction, if still she wish to place reliance upon the statement recorded u/s. 132(4), then an opportunity of cross-examination of Shri Mukesh Jhawar be provided. However, the AO neither made any independent inquiry from Mr. Mukesh Jhawar nor, afforded any opportunity of cross-examination to the assessee.

16.5 We further find that the AO, vide para (9.3) of the assessment order, has stated that one Smt. Leela Kalyani, a director of the

assessee company and as also, one Mr. H.P. Agrawal, in their statements recorded u/s. 132(4) of the Act, had accepted that the Kolkata based companies were used as conduits for routing the unaccounted cash as unsecured loans to the assessee company through hawala transactions. The AO has reproduced the relevant abstracts of the statement of Smt. Leela Kalyani, at para (9.6) of the order, whereas, the relevant abstract of the statement of Mr. H.P. Agrawal has been reproduced at para (9.7) of the order. On a perusal of the relevant abstract of the statement of Smt. Leela Kalyani, we observe that Smt. Leela Kalyani never stated that Kolkata based shell companies were used as conduit for arranging unsecured loans for the assessee company. Thus, the statement given by Smt. Leela Kalyani, was a neutral statement from which no adverse inference could have been drawn against the assessee company. Further, as regards the statement of Mr. H.P. Agrawal, we find that he has also retracted his statement by way of filing an Affidavit which was duly submitted by him along with a letter of retraction on 08.06.2019 stating that his statement was recorded till 3AM in the night and at the time of giving the statement, he was quite tired and under a confused state of mind. In the Affidavit , he has clearly stated that his replies to some questions have not been correctly recorded by the search party and he had strongly denied to have got himself engaged in any transaction of arranging unsecured loans for the assessee company against the cash. It is thus evidently clear that the entire addition has been made on the basis of statements and no incriminating documents is on record suggesting nexus of assessee

taking unsecured loan from Kolkata based shell companies. Although a statement recorded u/s. 132(4) is a good piece of evidence, but, if such statement is subsequently retracted, then, merely on the basis of such statement without having any corroborative evidence on record, no adverse view can be drawn. We are also of the considered opinion that the statement once retracted by the person through an Affidavit does not hold any evidentiary value. For such proposition, we find support from the decision of the Hon'ble Gujarat High Court in the case of *Kailashben Manharlal Chokshi vs. CIT (2008) 220 CTR 138 (GujHC)*. In such circumstances, the statements of Mr. Mukesh Jhawar and Mr. H.P. Agrawal so recorded u/s. 132(4) cannot be given much credence. Even otherwise, the AO for the purpose of making addition in the assessee's income has placed reliance on statements recorded u/s. 132(4) of the Act ignoring the specific request made by assessee to provide an opportunity to cross-examine the aforesaid two persons. In view of the settled position of the law, and as held by Hon'ble Supreme Court in the case of *M/s. Kishanchand Chelaram vs. CIT (1980) 125 ITR 713 (SC)* and again in the case of *M/s. Andaman Timber Industries vs. Commissioner of Central Excise, Kolkatta-II 2016 (15) SCC 785 (SC)*, that ,without giving the opportunity of cross examination of the witnesses to the assessee, the statements of such witnesses could not have been utilized against the assessee.

16.6 As regard the mobile message recovered from the personal mobile of Mr. Mukesh Jhawar, which has been reproduced by the AO

at page no. 24 of her Order. Although Mr.Mukesh Jhawar had retracted his statement by filing an Affidavit, but, still we could notice that such message merely contains the details of some bank account of some company and does not convey anything else. Further, even if it is presumed that such message conveys some transfer of funds for obtaining accommodation entry, then too, it cannot be alleged that the assessee company had obtained some accommodation entry for the very reason that the message dated 4/5/2017 pertains to the F.Y. 2017-18 and the assessee company has not obtained any fresh unsecured loan of even a single penny during the financial year 2017-18 relevant to A.Y. 2018-19. In such circumstances, no adverse inference could have been drawn against the assessee company merely on the basis of such mobile message extracted from the personal mobile of Mr. Mukesh Jhawar.

16.7 We also find that the AO has made reference of some list of shell companies which have been notified by the Department and as per the AO's own version, the list was issued by the Department on the basis of the inputs received from the various investigative agencies. In our considered view, such cannot be viewed against the assessee company. First of all, the AO has not mentioned as to what was the source of the list containing the names of the shell companies. Secondly, again, as per the AO's own version, the list is not based upon any concrete evidence but, merely on the basis of inputs received from various investigation agencies. The AO has not brought on record specifically as to what adverse information were

gathered by the Department from the various investigation agencies in respect of the companies for whom the provisions of section 68 have been invoked and in particular, whether any such information pertained to the loans claimed to have been obtained by the assessee company from such companies. In such eventuality, the Revenue cannot be permitted to proceed against the assessee without first confronting the exact information and enquiries to the assessee.

16.8 In the aforesaid facts and circumstances of the case and the various judicial pronouncements as referred to by the assessee in its Synopsis and as also in the light of our detailed findings made in the preceding paras, we are of the considered opinion that the assessee could successfully establish the identity of all the loan creditor companies, the genuineness of the loan transactions carried out with such companies, and as also, the creditworthiness of such loan creditor companies beyond all doubts, by furnishing all the necessary documentary evidences. Further, it is also an undisputed fact that the AO, except relying upon the retracted statements and some list of so-called shell companies, has not brought any positive material on record to discredit the explanation and various documentary evidences furnished by the assessee. In such eventuality, in our view, the ld. CIT(A) was fully justified in deleting the additions of Rs.6,00,00,000/- each for A.Y. 2015-16 and A.Y. 2016-17 on account of unsecured loans and the additions of Rs.18,07,498/-, Rs.80,59,865/-, Rs.1,19,75,346/- and Rs.82,40,976/- respectively for the A.Y. 2015-16, A.Y. 2016-17, A.Y.

2017-18 and A.Y. 2018-19 on account of interest paid thereon. Accordingly, the Ground Nos. 1 & 2 for the A.Ys. 2015-16 and 2016-17 and as also, Ground No. 1 for the A.Ys. 2017-18 and 2018-19, so raised by the Revenue before us are **Dismissed**.

**17. Now, we take the Issue No. (ii) which is relating to Out of Books Cash Sales u/s. 69A**

17.1 In respect of the Issue No. (ii), the Revenue has raised Ground No. 3 for the A.Y. 2016-17 and Ground No. 2 for the A.Ys. 2017-18 and 2018-19. These grounds are pertaining to the action of the Ld. CIT(A) deleting the substantial additions made by the AO on account of unaccounted sales u/s. 69A of the Act. The assessee has also raised its Ground Nos. 2(a) to 2(d) and 1(a) to 1(d) respectively for the A.Y. 2016-17 and 2017-18 challenging the action of the ld. CIT(A) in confirming the partial additions on the subject issue. A summary of the year-wise quantum of additions before us on the subject issue along with the respective grounds raised from both sides, as furnished by the assessee, is given as under:

<b><u>ISSUE- II: Out of Books Cash Sales u/s. 69A</u></b>					
Assessment Year	Assessee		Department		TOTAL
	Ground No.	Amount	Ground No.	Amount	
2015-16	-	-	-	-	-
2016-17	2(a) to 2(d)	53,29,050	3	3,01,97,950	<b>3,55,27,000</b>
2017-18	1(a) to 1(d)	38,47,800	2	2,18,04,200	<b>2,56,52,000</b>
2018-19	-	-	2	10,25,000	<b>10,25,000</b>
<b>TOTAL</b>		<b>91,76,850</b>		<b>5,30,27,150</b>	<b>6,22,04,000</b>

17.2 The brief facts relating to the issue are that during the course of the assessment proceedings, the AO, on the basis of some digital data seized from the computer system of Mr. Mahesh Chandra Verma, Manager of the assessee company, noted that during the previous year relevant to the assessment years 2016-17 and 2017-18, the assessee had made sales aggregating to Rs.3,55,27,000/- and Rs.2,56,52,000/- which were not recorded by it in its regular books of account. Further, the AO, from some documents seized as page nos. 254 & 255 of LPS-1 and page no. 233 of LPS-13, noted that the assessee company had made cash sales aggregating to Rs.10,25,000/- which were also not recorded by the assessee in its books of account. Accordingly, Ld. AO required the assessee company to furnish its explanation on the aforesaid issue. In reply, the assessee company furnished the details in respect of the said loose papers by claiming that the entire sales noted on such loose papers have duly been recorded in its regular books of account and there was no case of suppression of sales. However, ld. AO, by discarding the submissions made by the assessee, made additions in the total income of the assessee for the subject assessment years.

17.3 Being aggrieved with the action of the AO, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee company made detailed written submissions along with the documentary evidences which were also furnished by it before the AO. The ld. CIT(A), accepting the contentions of the assessee, the

facts and circumstances of the case and as also, the various documentary evidences placed on record by the assessee company, granted substantial relief to the extent of Rs.3,01,97,950/- and Rs.2,18,04,200/- out of the total additions of Rs.3,55,27,000/- and Rs.2,56,52,000/- respectively for the A.Y. 2016-17 and A.Y. 2017-18, thereby confirming the remaining additions of Rs.53,29,050/- and Rs.38,47,800/- in the hands of the assessee company for A.Y. 2016-17 and A.Y. 2017-18. Further, the ld. CIT(A) also deleted entire addition of Rs.10,25,000/- for the A.Y. 2018-19.

17.4 Against the additions confirmed by the Ld. CIT(A), the assessee is in appeal whereas against the relief granted, the Revenue is in appeal.

17.5 Before us, the Ld. CIT(DR) vehemently argued supporting the observations of the AO on this issue.

17.6 Per Contra Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

**“D. Key Points of Assessee’s Submission and Relevant Pages of Paper Book:**

S. No.	Marginal Notes	Submission in Brief	AO’s Comments	Relevant Pages of Paper Book	Remarks
1	Section 69A is not applicable on Sales	<b>Sec.69A</b> could not have been invoked by the AO. It applies only to the unexplained money and not any alleged unaccounted receipts.	AO invoked provisions of s. 69A r.w.s. 115BBE at para (6.5) at page no. 17	-	No money, bullion, jewellery or valuable article found unrecorded in the books. <b>No unaccounted cash or stock was found during the course of</b>

					<b>the search.</b>
2	No rejection of books of accounts	Addition by disturbing trading results <b>without rejecting books</b> of account u/s. 145(3) is not legally permissible.	-	-	No defect or discrepancy found in books maintained by assessee. <b>Even during the course of the search, the books of account of the assessee were found correct and complete.</b>
3	Book results accepted in earlier years	<b>Regular Assessments</b> u/s. 143(3) framed in the case of the assessee for earlier years viz. A.Y. 2012-13 to A.Y. 2014-15 where the AO duly examined the books of account and such <b>books were found correct and complete.</b>	-	1006 to 1015 for A.Y. 2016-17	The AO herself while framing the assessment of the assessee u/s. 153A, has not given any finding in the body of the assessment order that even for the earlier assessment years viz. A.Y. 2012-13 to A.Y. 2015-16, the assessee was indulged in any out of books business activities. Thus, there was absolutely no justification for the ld. AO to form the adverse view for the relevant year.
4	No incriminating loose papers or documents found	During the search, <b>except finding some imaged datas</b> , in the form of excel sheets, <b>not a single incriminating</b> loose paper, or document or sales invoices or any other evidence regarding the unrecorded removal of goods from the factory premises and the sales thereof, without making recording in the regular books of account, was found	-	-	The assessee had never ever carried out any transaction of credit sales or cash sales, which remained unrecorded in its regular books of accounts.
5	No suppressed sales found by Commercial Tax Authorities	The assessee company is also required to <b>maintain its books</b> of account under the <b>Madhya Pradesh Vat Act,</b>		-	All the records maintained by the assessee company under the different enactments are subjected to verification, from time to

		<b>2006</b> and as also, under the prevailing <b>Goods &amp; Services Tax Enactments</b> . The assessee is also required to maintain necessary records under the <b>Madhya Pradesh Excise Act, 1915</b> .			time, by the concerning Authorities.
6	An Excisable unit	The assessee company is also under a statutory obligation to submit <b>monthly returns before such excise authorities</b> .		1016 to 1346	-
7	No defect in the books found by the search party	During the search, up-to-date maintenance of books of account and other records was also found by the search party and <b>no defect or discrepancy in the maintenance of any books</b> of account or record was pointed by the search party.		-	-
8	Books of accounts are duly audited	Books of account of the assessee company are <b>duly audited</b> under the Companies Act, 1956 as well as under s.44AB of the Act.		126 to 176	The auditors have issued unqualified reports
9	Excise Authorities issued a Certificate of no discrepancy in last ten years.	The assessee is under the <b>strict vigilance and supervision of the state excise authorities</b> and under the Madhya Pradesh Excise Act, 1915, the appellant company is required to maintain the minutest details of each and every receipt of raw materials, packing materials & incidental goods and as also of each		1347 <b>Copy of Certificate issued by DEO</b>	A team of the state excise authorities, headed by the District Excise Officer, (DEO) remains posted at the gates of the assessee's factory premises. Furthermore, for every vehicle carrying the liquor from the premises of the appellant, one of the Guards from the excise department is compulsorily deputed, so as to ensure that no unauthorized/unrecorded

		and every issue of the sales made by it. For ensuring that there is no evasion of any state excise duty, a 24X7 close vigilance is kept by the excise authorities in the business premises of the assessee. A copy of <b>Certificate duly issued by DEO, Department of Excise, Government of Madhya Pradesh, dated 06-12-2019, was duly submitted before the AO to the effect that the appellant unit is completely under their control and supervision and in the last ten years, no case of any unauthorized/unrecorded removal or sale of goods</b> was noticed by them.			removal of the goods is made from its factory premises.  The AO failed to appreciate that without making unauthorized removal of goods, the suppressed sales cannot be presumed.
10	Affidavit by the Managing Director	<b>Affidavit</b> , duly sworn before the Notary Public by <b>Shri Sunit Madhok</b> , Managing Director to the effect that the assessee company had never been found indulged into either in transporting or in removing any liquor without first making the entries thereof in the regular books of account and stock register.		1348 to 1350	-
11	Creditability of the Digital Data seized could not be proved.	The entire addition has been made by the AO on the <b>sole basis of digital data</b> seized from the computer of Shri Mahesh Chandra Verma.		1351 to 1360	i) whether or not the data, extracted in the digital form, were so extracted after making compliance of the procedures laid down under the Information

		<p>But, the <b>authenticity, credibility and reliability</b> of the subject digital data by themselves were under the clouds of grave <b>doubts</b>. As per section 65-B of the Indian Evidence Act, 1872, the Revenue was duty bound to obtain a Certificate which they failed to and therefore, the digital data cannot be relied upon.</p>			<p>and Technology Act, 2000</p> <p>ii) As per Mahesh Verma, due procedure of noting the hash value of the data was not followed.</p> <p>iii) Shri Mahesh Verma, whose signatures were obtained on seized datas had subsequently retracted vide an Affidavit dated 09-12-2019.</p>
12	Not in the knowledge of the person from whose computer it was allegedly recovered	<p><b>Shri Mahesh Verma never admitted</b> that such excel sheets were prepared by himself or by anyone on his instructions. The <b>assessee company</b> or any of its functionaries, till the date of the search, were <b>not aware of existence</b> of any such excel sheet in the computer system of any of its employees.</p>		-	-
13	Dumb Documents	<p>Subject <b>excel sheets are dumb documents</b>. In such excel sheets, the datas have been written in the form of two digits with decimals figures such as '19.54' , '33.63', '17.22', '34.08' etc. From such noting, it cannot be interpreted that whether the figures are written in their full denominations or in the coded form.</p>		-	-
14	Names of strangers mentioned in	<p>In excel sheets, <b>names of various persons</b> have been</p>		-	All the books of the assessee for all the years under appeal were duly

	the Digital Data	mentioned. But, the <b>assessee never carried out</b> any financial transaction with such persons.			produced before the ld. AO for the purpose of making necessary examination and verification, but, upon such verification, not even at one place, the name of any of the persons, as mentioned in the seized datas was found by the ld. AO.
15	Cheques mentioned in the Digital Data are not reconciling with the books of account of the assessee	In such excel sheets, at some places, there is <b>mention of</b> some amount received through <b>cheques</b> , but, the fact remained that these cheques were <b>never received</b> by the assessee company from any such person.		-	Had the assessee company carried out any transaction, as found noted in the subject excel sheets, atleast the transactions relating to the cheques would have got tallied with the bank transactions recorded in the assessee's books.
16	Retraction of Statement by Shri Mahesh Chandra Verma	The <b>statement of Shri Mahesh Chandra Verma</b> recorded under s. 132(4) during the course of the search i.e. 16-11-2017, as referred to by the ld. AO, was <b>subsequently retracted</b> by him vide an Affidavit on 09-12-2019. Hence, no credence can be attached to his statement recorded by the search party.		1364 to 1367	According to Shri Mahesh Chandra Verma, his statement was not correctly recorded by the search party. The statement was not given by Shri Verma under a healthy state of mind.
17	Retraction made on the reasonable grounds	The <b>reasons for retraction</b> of the statement were <b>duly communicated</b> by the assessee company to the ld. AO vide its written submission letter dated 09-12-2019		-	Despite such submission, the AO at para (6.5) on page no. 14, has leveled a charge against the assessee that it did not offer any explanation for the retraction of statement by Shri Mahesh Chandra Verma.
18	Non affording of opportunity of cross-examination of Shri Mahesh	The AO at page no. 16 of her Order has averted that the onus was on the assessee to		1441	The assessee, vide its letter dated 09-12-2019, has specifically requested the AO that

	Chandra Verma	produce Shri Mahesh Chandra Verma and the assessee has failed to do so. However, the <b>AO</b> herself has <b>not issued</b> any <b>summons</b> u/s. 131 or <b>notice</b> u/s. 133(6) to Shri Mahesh Verma to <b>verify</b> the contents of the Affidavit.			since, she is placing heavy reliance on the statement of Shri Mahesh Chandra Verma, an opportunity of cross-examination be granted.
19	No adverse statement by the MD of the assessee	During the search, statement of Shri <b>Sunit Madhok</b> , MD of assessee company, was also recorded on 17-11-2017 wherein he was <b>confronted</b> with the subject excel sheets.		1370 & 1371	Shri Madhok, in reply to Q. Nos. 5,6,7 & 8, categorically denied of any nexus of the assessee company with such sheets.
20	No variation in the stock or cash found during the search	<b>No case of suppression of production was found during the search.</b> Further, <b>no excess cash or shortage of stock was found.</b> Power charges shown in the audited financial statements fully commensurate with the production shown in such statements.		-	Without there being any collateral evidence, it was highly unjustified to presume any unaccounted sales.
21	If receipts are assumed then, corresponding expenditure has also to be assumed	Even if it is presumed that the assessee made any unaccounted sales, then as a natural corollary, the <b>incurrence of expenses towards purchases and related costs cannot be overruled.</b> For the A.Y. 2016-17, in which the assessee itself has shown a higher amount of Gross Turnover, Gross Profit, GP Margin, Net Profit and NP Margin, there could		-	It is not an allegation that the assessee claimed disproportionately higher expenses in comparison to earlier years. For earlier years, as per AO's own Orders, the assessee was not found to be indulged in any out of books transactions.

		not have been any presumption that any expenditure relating to the alleged unrecorded sales had already got claimed by the assessee in its regular books of account.			
22	Only net profit can be taxed on suppressed sales	Accordingly, in such a situation, only the amount of <b>net profit embedded in such sales</b> , can, at the worst <b>be added</b> to the income of the assessee.		-	CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)
23	Excel sheets are not books of account	Merely on the basis of <b>any loose paper</b> , which is not in the form of a book, without finding any other corroborative evidence, <b>no addition</b> can be made.		-	i) Central Bureau of Investigation vs. V.C. Shukla and Others (1998) 3 SCC 410 ii) Common Cause (A Registered Society) v. Union of India (2017) 30 ITJ 197 (SC)
24	Digital datas are not admissible as evidence	When the entire assessment has been framed only on the basis of the so-called <b>electronic record</b> which are said to be <b>copies of Excel Sheet</b> , Excel work note book etc., <b>non-compliance of Section 65(B)</b> of the Indian Evidence Act renders the document <b>inadmissible</b> in the eye of law.		-	M/s. Vetrivel Minerals and others Vs. ACIT, Madurai (2021) 42 ITJ 55 (MadHC)
25	If Deponents not examined, their Affidavits cannot be disbelieved.	It will <b>not be open to the revenue to challenge the statements made by the deponent in their affidavits</b> later on, if no cross examination with reference to the statements made in the affidavits is done.		-	Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC)

26	Estimation of Net Profit @ 15% is excessive.	The <b>estimation of the net profit @15%</b> by the ld. <b>CIT(A)</b> is on a higher side and is not taken correctly on the basis of average net profit of earlier years. As per the findings given by the ld. <b>CIT(A)</b> , the assessee has not made the suppressed sales of own manufactured goods, but, that of traded goods in which margin of net profit cannot exceed 5%.		-	The average net profit of the assessee for own manufacturing goods (on which the N.P. Rate is higher), for last five years was around 11% only.
27	Cash sales of Rs.10,25,000/- to retailers duly recorded in regular books	The cash sale vouchers inventorized as page no. 254, 255 of LPS-1 and Page no. 233 of LPS-13, as reproduced by AO in the Order, <b>were duly recorded in regular books of assessee.</b>	Cash vouchers were not found recorded in the books.	176 & 177	Statement showing details of vouchers seized and corresponding recording thereof on various dates in the regular books of assessee. Thus, there is <b>no case of suppression of sales.</b>

18. Reference was also made to the detailed submission of the assessee on this issue made before the CIT(A) which is placed at page no. 89 to 113 of Paper Book for A.Y. 2016-17, Page No. 6 to 34 of Paper Book for A.Y. 2017-18 and Page No. 6 to 10 of Paper Book for A.Y. 2018-19.

19. According to the assessee, the additions of Rs.3,55,27,000/- and Rs.2,56,52,000/- respectively for A.Y. 2016-17 and A.Y. 2017-18 u/s. 69A have been made by the AO without any rational basis. The assessee, in its defence, has denied the veracity of the loose excel

sheets, recovered from the computer system of one of its employees namely Mr.Mahesh Chandra Verma.

19.1 The counsel of the assessee also contended that once, one reach to a logical conclusion that the assessee was indulged into out of books trading transactions of sales and purchases of liquor, then as a natural corollary, one has to accept that against the sales found noted in the seized data, some purchases of the liquor were also would have been made by the assessee, which also remained unrecorded in the regular books of account. If the presumption of unaccounted sales is made merely on the basis of intangible material, being the data found stored in one computer of one of the many employees of the assessee, then, on the same theory, it would also have to be necessarily presumed that the record of corresponding purchases were either destroyed or maintained in some different computer system, which could not be accessible to the search party. As per the assessee, it is not the allegation of the AO that the assessee claimed disproportionately higher manufacturing and other expenditure in comparison to earlier years, by making a comparison of the sales shown in the books for various years. The assessee submitted that in the earlier years, as per the AOs own assessment order, the assessee was not found to be indulged in any out of books activities and therefore, even for the assessment year under consideration, in which the assessee itself has shown a higher amount of Gross Turnover, Gross Profit, GP Margin, Net Profit and NP Margin, there could not have been any presumption that any

expenditure relating to the alleged unrecorded sales had already got claimed by the assessee in its regular books of account. In support of its contention, the assessee furnished the assessment year wise details from A.Y. 2012-13 to A.Y. 2018-19, showing the amount of Gross Turnover, Gross Profit, GP Margin, Net Profit before Tax and NP margin. Accordingly, the assessee took an alternate plea before the Id. CIT(A) as well as before us that even if at all, the seized datas are presumed to be pertaining to the unrecorded sales of the assessee company, then the necessary deduction for the corresponding expenditure against such sales would be required to be given while computing the undisclosed income of the assessee and only, the amount of reasonable net profit embedded in such sales, can, at the worst be added to its income. It was submitted by the assessee that in any case, the entire realization from the sale cannot be regarded as an income of the assessee company, for the reason that the scheme of the Income-Tax Act, 1961, contemplates the taxing of only a 'Real Income', and not hypothetical income. For such proposition, the assessee relied upon the decision of the Jurisdictional Hon'ble High Court of Madhya Pradesh in the case of *CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)*.

19.2 After taking into consideration the facts and submissions made by the assessee, the Id. CIT(A) held that since the assessee's unit was under strict vigil of the state excise authorities, it could not be inferred that the assessee effected unaccounted sales of the liquor manufactured by itself. However, the Id. CIT(A) on the basis of date-

wise digital data found, reached to a conclusion that the seized data pertained to the sale of liquor procured by the assessee from some other dealers of the liquor. Thereafter, the Id. CIT(A), by applying a net profit rate of 15% on the total suppressed sales, as determined by the AO, at Rs.3,55,27,000/- and Rs.2,56,52,000/- respectively for the A.Y. 2016-17 and A.Y. 2017-18, confirmed the additions of Rs.53,29,050/- and Rs.38,47,800/- in the assessee's income for the A.Y. 2016-17 and A.Y. 2017-18 thereby deleting the remaining additions of Rs.3,01,97,950/- and Rs.2,18,04,200/- for the aforesaid two years.

19.3 The AO, for the A.Y. 2018-19, has also made an addition of Rs.10,25,000/- on account of cash sales to retailers on the basis of some cash vouchers found during the course of search. According to the assessee, the cash sale vouchers aggregating to a sum of Rs.10,25,000/-, inventorized as page no. 254, 255 of LPS-1 and Page no. 233 of LPS-13, as reproduced by AO in the Order, were duly recorded in regular books of assessee. The assessee, in support of its contention, has also furnished a Statement showing details of vouchers seized and corresponding recording thereof on various dates in the regular books of assessee. Thus, according to the assessee, there is no case of suppression of sales in its case. Considering the submissions of the assessee and documentary evidences placed on record, the Id. CIT(A) has deleted the entire addition made by the AO on this count.

20. We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides. We find that the assessee has raised the Ground Nos. 2(a) & 1(a) respectively for A.Y. 2016-17 and A.Y. 2017-18 against the action of the ld. CIT(A) in not deleting the addition made by the AO u/s. 69A of the Act despite giving a specific finding that the AO was not justified in invoking the provisions of s.69A of the Act in its case as the addition was related to the finding of some suppressed sales in books of account and not related to any unaccounted money, bullion, jewellery or valuable article or thing. We do not find merit in this contention of the assessee and instead, we are in full agreement with the finding given by the ld. CIT(A) in his Order that mere mentioning of a wrong section by the AO would not *ipso facto* render the entire addition as illegal especially in a circumstance that such an addition has been made by the AO on the basis of some incriminating material. In such circumstances, we are not inclined to allow this ground of the assessee. Accordingly, the Ground Nos. 2(a) & 1(a) respectively for A.Y. 2016-17 and A.Y. 2017-18 so raised by the assessee, having no merit, are hereby **Dismissed**.

21. Now, as regard the Ground Nos. 2(b) & 1(b) respectively for A.Y. 2016-17 and A.Y. 2017-18 raised by the assessee agitating the action of the AO in making the trading additions in its income without first rejecting the books of account by invoking the provisions of s.145(3)

of the Act. Again, in our considered opinion, these grounds of the assessee have no merit for the reason that the AO before making the impugned additions, had issued a specific show-cause notice to the assessee requiring it to make its explanation on the subject issue. The AO, after taking due consideration of the reply of the assessee, has made the impugned additions on the subject issue. Thus, in such circumstances, merely because the AO has not quoted the specific section for making the subject additions in the assessee's income, the entire addition cannot be regarded as illegal. Thus, in our opinion, the Id. CIT(A) has rightly dismissed this ground of the assessee and we do not find any reason to interfere with the findings of the Id. CIT(A) on this issue. Accordingly, the Ground Nos. 2(b) & 1(b) so raised by the assessee for A.Y. 2016-17 and A.Y. 2017-18 respectively have no merit and are hereby **Dismissed**.

22. Now, coming to the remaining ground nos. 2(c), 2(d) and 1(c), 1(d) raised by the assessee for A.Y. 2016-17 & A.Y. 2017-18 and also, the ground nos. 3 & 2 raised by the Revenue for A.Y. 2016-17 & A.Y. 2017-18, we find that the AO, while making the impugned additions of Rs.3,55,27,000/- and Rs.2,56,52,000/- for the aforesaid years, has referred to and relied upon some digital data seized from the computer system of Mr. Mahesh Chandra Verma, Manager of the assessee company. From the seized digital data, which has been recovered from the computer system of the assessee company and is reproduced by the AO at page no. 3 to 5 of the Assessment Order, it is seen that it contains the date-wise details of transactions

systematically undertaken at some point of time by the assessee company. Such digital data cannot be disbelieved and discarded merely on the grounds that the assessee company is under close vigilance of the Excise Authorities or the assessee company has maintained regular books of account and no discrepancy was found therein at the time of search or Shri Mahesh Chandra Verma has subsequently retracted his statement. We find ourselves in agreement with the findings of the Id. CIT(A) that the suppressed sales so found noted in the seized digital data was not effected by the assessee company out of the production of liquor from its own factory but, it was made by the assessee out of the purchases made from some other parties. Thus, we do not find any infirmity in the details of suppressed sales aggregating to Rs.3,55,27,000/- and Rs.2,56,52,000/- respectively for A.Y. 2016-17 and A.Y. 2017-18 as determined by the AO at para (6.5) of the Assessment Order. However, we are also of the considered opinion that the entire suppressed sales cannot be regarded as the undisclosed income of the assessee company and the assessee deserves to be granted the credit of unaccounted purchases and expenses made/incurred by it for effecting such suppressed sales. In such an eventuality, only the net profit embedded in such sales transactions could have been added to the total income of the assessee company as held by the Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of *CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)* and as also, in the case of *Man Mohan Sadani vs. CIT (2008) 304 ITR 0052 (MPHC)*. We find that the Id. CIT(A), while adjudicating the subject issue of

suppressed sales, has also referred to the aforesaid decision of the Hon'ble MP High Court and has sustained additions of Rs.53,29,050/- and Rs.38,47,800/- respectively for A.Y. 2016-17 and A.Y. 2017-18 by upholding the net profit of the assessee company on such suppressed sales at an estimated rate of 15% for every year.

23. Before us, the counsel of the assessee has contended that the net profit @15% so adopted by the Id. CIT(A), by taking simple average of the profits shown by the assessee company for the years under consideration, is excessive and the same deserves to be taken into consideration under a circumstance that the net profit in the trading transactions is lesser than the one in that of a manufacturing business. We find sufficient merit in the contention of the counsel of the assessee company that the net profit so derived from trading of liquor is less than the one from a manufacturing business. This Tribunal in the case of *ACIT vs. Avinash Chalana & Co. (2013) 36 CCH 0319 (IndTrib)* has worked out the net profit in the case of liquor trade @ 1.77%. Thus, keeping in view the totality of facts and circumstances of the case, we modify the orders of both the lower authorities and direct the Assessing Officer to work out profit of undisclosed sales transactions from trading business, aggregating to Rs.3,55,27,000/- and Rs.2,56,52,000/- respectively for A.Y. 2016-17 and A.Y. 2017-18, by applying a net profit rate of 3.5% instead of the net profit rate estimated by the Id. CIT(A) at 15%. Accordingly, the ground no. 2(c) & 1(c) of the Assessee and ground nos. 3 & 2 of the

Revenue for A.Y. 2016-17 and A.Y. 2017-18 respectively are hereby **Dismissed** and ground Nos. 2(d) & 1(d) of the assessee for A.Y. 2016-17 and A.Y. 2017-18 respectively are **Partly Allowed**.

24. Now, as regard the ground No. 2 of the Revenue for A.Y. 2018-19 pertaining to an addition of Rs.10,25,000/- made by the AO on account of cash sales to retailers, we find that such addition has been made by the AO on the basis of some cash vouchers inventorized as page no. 254, 255 of LPS-1 and page no. 233 of LPS-13 seized during the course of search from the business premises of the assessee company. We find that the AO, during the course of the assessment proceedings, had required the assessee company to furnish its explanation on such seized cash vouchers and in response the assessee company furnished a statement before the AO containing the details of vouchers seized and corresponding recording thereof on various dates in the regular books of account of the assessee. Before the Id. CIT(A) as well as before us, the assessee company has demonstrated that the entire seized cash vouchers were duly recorded in the regular books of account of the assessee for the year under consideration and therefore, there was no case of suppression of sales on this count. In our view, merely because the sales were made in cash, no adverse cognizance can be made if such sales have been found duly recorded in the regular books of account of an assessee. In such circumstances, we do not find any reason to interfere with the action of the Id. CIT(A) in deleting the entire

addition of Rs.10,25,000/- so made by the AO. Accordingly, the Ground No. 2 of the Revenue for A.Y. 2018-19 is hereby **Dismissed**.

**25. Now, we take the Issue No. (iii) which is relating to Unaccounted Cash Receipt from Syndicate amounting to Rs.30,00,000/- for A.Y. 2017-18**

25.1 In respect of the Issue No. (iii), the Revenue has raised Ground No. 3 for the A.Y. 2017-18 which is pertaining to the action of the Ld. CIT(A) in deleting the substantial addition of Rs.25,50,000/- made by the AO on account of cash receipt from Syndicate. The assessee has also raised its Ground No. 3(a) & 3(b) challenging the action of the ld. CIT(A) in giving partial relief on the subject issue. A summary of the quantum of addition before us on the subject issue along with the respective grounds raised from both sides, as furnished by the assessee, is given as under:

<b><u>ISSUE- III: Unaccounted Cash Receipt from Syndicate</u></b>					
Assessment Year	Assessee		Department		TOTAL
	Ground No.	Amount	Ground No.	Amount	
2015-16	-	-	-	-	-
2016-17	-	-	-	-	-
2017-18	3(a) & 3(b)	4,50,000	3	25,50,000	<b>30,00,000</b>
<b>TOTAL</b>		<b>4,50,000</b>		<b>25,50,000</b>	<b>30,00,000</b>

25.2 During the course of the assessment proceedings, the AO, on the basis of some digital documents seized, noted that during the previous year relevant to the assessment year 2017-18, the assessee had received a sum of Rs.30,00,000/- in cash on account of its share

in some Syndicate. Accordingly, the AO required the assessee company to furnish its explanation on the aforesaid issue. In response, the assessee company furnished its detailed explanation. However, the ld. AO, by discarding the submissions made by the assessee, made an addition of Rs.30,00,000/- in the total income of the assessee for the assessment year 2017-18.

25.3 Being aggrieved with the action of the AO, the assessee preferred an appeal for the subject assessment year before the ld. CIT(A). During the course of the first appellate proceedings, the assessee company made detailed written submissions.

25.4 The ld. CIT(A), accepting the contentions of the assessee, the facts and circumstances of the case and as also, the various documentary evidences placed on record by the assessee company, granted substantial relief to the assessee company and deleted a substantial addition of Rs.25,50,000/- out of the total addition of Rs.30,00,000/- so made by the AO on the subject issue, thereby confirming the remaining addition of Rs.4,50,000/- in the assessee's income.

25.5 Against the addition confirmed by the Ld. CIT(A), the assessee is in appeal whereas against the relief granted, the Revenue is in appeal.

25.6 Before us, the Ld. CIT(DR) vehemently argued supporting the observations of the AO on this issue.

25.7 Per Contra Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

**“D. Key Points of Assessee’s Submission and Relevant Pages of Paper Book:**

S. No.	<i>Submission in Brief</i>	<i>Relevant Pages of Paper Book for A.Y. 2017-18</i>	<i>Remarks</i>
1	<b>Sec.69A</b> could not have been invoked by the AO.	-	No money, bullion, jewellery or valuable article found unrecorded in the books. No unaccounted cash or stock was found.
2	<b>Addition</b> by disturbing trading results <b>without rejecting books</b> of account u/s. 145(3)	-	No defect or discrepancy found in books maintained by assessee. Books
3	During the search, <b>except finding some imaged datas, in the form of excel sheets, not a single incriminating loose paper</b> , or document or sales invoices or any other evidence regarding the unrecorded removal of goods from the factory premises and the sales thereof, without making recording in the regular books of account, was found	-	The assessee had never ever carried out any transaction of credit sales or cash sales, which remained unrecorded in its regular books of accounts.
4	As regard statement of Shri Sunit Madhok, stating that the <b>assessee company was supplying</b>	-	-

	<p><b>Country Liquor to retailers in the various districts</b> including the Alirajpur District, all the supplies and sales of the liquor made by the assessee company, to the various retailers of different Districts including the Alirajpur District, are <b>duly recorded in the regular books</b> of account of the company.</p>		
5	<p>The assessee, vide its letter dated 09-12-2019, had brought to the notice of the AO that <b>some unsocial elements</b> with the criminal mind used to represent their <b>spurious liquor</b>, as manufactured by the assessee company, where as in fact, such liquors were <b>not so actually manufactured</b> by it. These type of criminals do not only manufacture the liquor by using the brand name of the assessee company, but also of other manufacturers having popular brands. In past too, the assessee company had noticed such malpractice and <b>complaints</b> from time to time, to <b>curb this illegal practice</b>, have been <b>lodged</b> by it before the police authorities.</p>	547 to 598	Copies of some complaints lodged by the assessee company before the Police Authorities are enclosed.
6	<p>Probably the above kind of <b>criminals</b> might have <b>sold their own manufactured liquor</b> to the syndicates by ostensibly showing them to be belonging to the assessee company and under such circumstances only, although the payments were made to unsocial elements, but shown in the said excel sheet in the name of the assessee only.</p>	-	It was also submitted before the AO that the said <b>excel sheet was provided to the assessee by some of its well wishers</b> so as to bring the aforesaid malpractice in the knowledge of the assessee and it was therefore, the same was found in one of the computer systems of the assessee.

7	<b>Excel sheets are not the books</b> of account and therefore, <b>no evidential value</b> can be attached to such excel sheets. <b>Merely on the basis of some notings</b> made in some excel sheets, <b>no addition</b> can be made in the income of an assessee <b>without</b> having any other <b>corroborative</b> or cogent material on record.	-	<p>i) Central Bureau of Investigation vs. V.C. Shukla and Others (1998) 3 SCC 410</p> <p>ii) Common Cause (A Registered Society) v. Union of India (2017) 30 ITJ 197 (SC)</p>														
8	Entire amount cannot be added as sales. Only the amount of <b>net profit embedded in such sales</b> , can, at the worst be <b>added</b> to the income of the assessee.	-	CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)														
9	When the entire <b>assessment</b> has been framed <b>only on the basis of</b> the so-called <b>electronic record</b> which are said to be copies of <b>Excel Sheet</b> , Excel work note book etc., <b>non-compliance of Section 65(B)</b> of the Indian Evidence Act renders the document <b>inadmissible</b> in the eye of law.	-	M/s. Vetrivel Minerals and others Vs. ACIT, Madurai (2021) 42 ITJ 55 (MadHC)														
10	The <b>estimation of the net profit @15%</b> by the ld. <b>CIT(A)</b> is on a higher side and is not taken correctly on the basis of average net profit of earlier years.	-	<p>Average Net profit of the five years i.e. from A.Y. 2012-13 to A.Y. 2016-17 arrives at 11.13% which should have been adopted.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">A.Y.</th> <th style="text-align: center;">N.P. Rate</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2012-13</td> <td style="text-align: center;">0.16</td> </tr> <tr> <td style="text-align: center;">2013-14</td> <td style="text-align: center;">7.22</td> </tr> <tr> <td style="text-align: center;">2014-15</td> <td style="text-align: center;">14.57</td> </tr> <tr> <td style="text-align: center;">2015-16</td> <td style="text-align: center;">15.09</td> </tr> <tr> <td style="text-align: center;">2016-17</td> <td style="text-align: center;">18.59</td> </tr> <tr> <td style="text-align: center;"><b>Average</b></td> <td style="text-align: center;"><b>11.13%</b></td> </tr> </tbody> </table>	A.Y.	N.P. Rate	2012-13	0.16	2013-14	7.22	2014-15	14.57	2015-16	15.09	2016-17	18.59	<b>Average</b>	<b>11.13%</b>
A.Y.	N.P. Rate																
2012-13	0.16																
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25.8 Reference was also made to the detailed submission of the assessee on this issue made before the CIT(A) which is placed at page no. 40 to 48 of Paper Book for A.Y. 2017-18.

26. The AO, while making the subject addition, has invoked the provisions of s. 69A of the Act. According to the assessee, the addition is not sustainable on the legal ground as no money, bullion, jewellery or valuable article was found unrecorded in the books and no unaccounted cash or stock was found and therefore, as per the assessee, the provisions of s.69A of the Act could not have been invoked by the AO. Further, as per the assessee, the impugned addition has been made by disturbing trading results without rejecting books of account u/s. 145(3) when no defect or discrepancy was found in books maintained by assessee. According to the assessee, during the course of search, except finding some imaged datas, in the form of excel sheets, not a single incriminating loose paper, or document or sales invoices or any other evidence regarding the unrecorded removal of goods from the factory premises and the sales thereof, without making recording in the regular books of account, was found. The assessee submitted that it had never ever carried out any transaction of credit sales or cash sales, which remained unrecorded in its regular books of accounts. As regard statement of Mr.Sunit Madhok, stating that the assessee company was supplying Country Liquor to retailers in the various districts including the Alirajpur District, all the supplies and sales of the liquor made by the assessee company, to the various retailers of different Districts including the Alirajpur District, are duly recorded in the regular books of account of the company. The assessee, vide its letter dated 09-12-2019, had brought to the notice of the AO that some unsocial elements with the criminal mind used to represent

their spurious liquor, as manufactured by the assessee company, where as in fact, such liquors were not so actually manufactured by it. These type of criminals do not only manufacture the liquor by using the brand name of the assessee company, but also of other manufacturers having popular brands. In past too, the assessee company had noticed such malpractice and complaints from time to time, to curb this illegal practice, have been lodged by it before the police authorities. In support of its claim, the assessee has submitted copies of some complaints lodged by it before the Police Authorities. According to the assessee, probably the above kind of criminals might have sold their own manufactured liquor to the syndicates by ostensibly showing them to be belonging to the assessee company and under such circumstances only, although the payments were made to unsocial elements, but shown in the said excel sheet in the name of the assessee only. It was also submitted by the assessee before the lower authorities that the said excel sheet was provided to the assessee by some of its well wishers so as to bring the aforesaid malpractice in the knowledge of the assessee and it was therefore, the same was found in one of the computer systems of the assessee. The assessee further contended that Excel sheets are not the books of account and therefore, no evidential value can be attached to such excel sheets and merely on the basis of some notings made in some excel sheets, no addition can be made in the income of an assessee without having any other corroborative or cogent material on record.

26.1 The assessee, in its alternate plea, submitted that the entire amount cannot be added as sales and only the amount of net profit embedded in such sales, can, at the worst be added to the income of the assessee and for such proposition, the assessee relied upon the decision of the Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of *CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)*. The assessee also contended that when the entire assessment has been framed only on the basis of the so-called electronic record which are said to be copies of Excel Sheet, Excel work note book etc., non-compliance of Section 65(B) of the Indian Evidence Act renders the document inadmissible in the eye of law. For such proposition, the assessee placed its reliance on the decision of the Hon'ble Madras High Court in the case of *M/s. Vetrivel Minerals and others Vs. ACIT, Madurai (2021) 42 ITJ 55 (MadHC)*.

26.2 The ld. CIT(A), after taking into consideration the facts and submissions made by the assessee, applied a net profit rate of 15% on the total suppressed sales of Rs.30,00,000/-, confirmed an addition of Rs.4,50,000/- in the assessee's income for the A.Y. 2017-18 thereby deleting the remaining addition of Rs.25,50,000/-. The assessee, in its appeals before us, has also taken an alternate plea challenging the action of the ld. CIT(A) in taking an estimated rate of net profit of 15% for computing the income from unaccounted sales.

26.3 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully

gone through the orders of lower authorities and written and oral submissions made from both the sides. We find that the assessee has raised the Ground Nos. 3(a) for A.Y. 2017-18 against the action of the ld. CIT(A) in not quashing the addition made by the AO u/s. 69A of the Act merely by holding that quoting of wrong section would not make the entire addition as non-genuine. We do not find merit in this contention of the assessee and instead, we are in full agreement with the finding given by the ld. CIT(A) in his Order that mere mentioning of a wrong section by the AO would not *ipso facto* render the entire addition as illegal especially in a circumstance that such an addition has been made by the AO on the basis of some incriminating material. In such circumstances, we are not inclined to allow this ground of the assessee. Accordingly, the Ground No. 3(a) for A.Y. 2017-18 so raised by the assessee, having no merit, is hereby **Dismissed.**

27. Now, coming to the merits of the case and as regard the remaining ground no. 3(b) of the assessee and ground no. 3 raised by the Revenue for A.Y. 2017-18, we find that the AO, while making the impugned addition of Rs.30,00,000/- for the aforesaid year, has referred to and relied upon some digital documents seized from the premises of the assessee company. From the seized excel sheet, which is reproduced by the AO at page no. 60 of the Assessment Order, it is seen that it contains the date-wise details of transactions undertaken at some point of time during the relevant previous year by the assessee company. Such excel sheet cannot be disbelieved

and discarded merely on the grounds that the assessee company is under close vigil of the Excise Authorities or the assessee company has maintained regular books of account and no discrepancy was found therein at the time of search. We find ourselves in agreement with the findings of the ld. CIT(A) that the suppressed sales so found noted in the seized digital data was not effected by the assessee company out of the production of liquor from its own factory but, it was made by the assessee out of the purchases made from some other parties. Thus, we do not find any infirmity in the finding of the AO so given by her at para (11.3) of the Assessment Order that sales of Rs.30,00,000/- was made in cash. However, we are also of the considered opinion that the entire suppressed sales cannot be regarded as the undisclosed income of the assessee company and the assessee deserves to be granted the credit of unaccounted purchases and expenses made/incurred by it for effecting such suppressed sales. In such an eventuality, only the net profit embedded in such sales transactions could have been added to the total income of the assessee company as held by the Hon'ble Jurisdictional High Court of Madhya Pradesh in the case of *CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP)*. We find that the ld. CIT(A), while adjudicating the subject issue of suppressed sales, has also referred to the aforesaid decision of the Hon'ble MP High Court and has sustained additions of Rs.4,50,000/- for A.Y. 2017-18 by upholding the net profit of the assessee company on such suppressed sales at an estimated rate of 15% for every year.

27.1 Before us, the counsel of the assessee has contended that the net profit @15% so adopted by the Id. CIT(A), by taking simple average of the profits shown by the assessee company for the years under consideration, is excessive and the same deserves to be taken into consideration under a circumstance that the net profit in the trading transactions is lesser than the one in manufacturing business. We find sufficient merit in the contention of the counsel of the assessee company that the net profit so derived from trading of liquor is less than the one from a manufacturing business. This Tribunal in the case of *ACIT vs. Avinash Chalana & Co. (2013) 36 CCH 0319 (IndTrib)* has worked out the net profit in the case of liquor trade @ 1.77%. Thus, keeping in view the totality of facts and circumstances of the case, we modify the orders of both the lower authorities and direct the Assessing Officer to work out profit of undisclosed sales transactions aggregating to Rs.30,00,000/- by applying a net profit rate of 3.5% instead of the net profit rate estimated by the Id. CIT(A) at 15%. Accordingly, the ground no. 3(b) of the Assessee is **Partly Allowed** and ground no. 3 of the Revenue for A.Y. 2017-18 is hereby **Dismissed**.

**28. Now, we take the Issue No. (iv) which is relating to Hawala Transaction u/s. 69A**

28.1 In respect of the Issue No. (iv), the Assessee has raised Ground Nos. 2(a) to 2(d) for A.Y. 2017-18 and Ground Nos. 1(a) to 1(d) for the A.Y. 2018-19. These grounds are pertaining to the action of the Ld.

CIT(A) in sustaining the additions made by the AO on account of hawala transactions u/s. 69A of the Act allegedly undertaken by the assessee company. A summary of the year-wise quantum of additions before us on the subject issue along with the respective grounds by the assessee, is given as under:

<b><u>ISSUE- IV: Hawala Transaction u/s. 69A</u></b>					
Assessment Year	Assessee		Department		TOTAL
	Ground No.	Amount	Ground No.	Amount	
2015-16	-	-	-	-	-
2016-17	-	-	-	-	-
2017-18	2(a) to 2(d)	36,50,000	-	-	<b>36,50,000</b>
2018-19	1(a) to 1(d)	10,00,000	-	-	<b>10,00,000</b>
<b>TOTAL</b>		<b>46,50,000</b>		-	<b>46,50,000</b>

28.2 The brief facts relating to the issue are that during the course of the assessment proceedings, the AO, on the basis of some digital documents seized from the mobile of Mr.Mukesh Jhanwar, Senior Accountant Manager of the assessee company, noted that during the previous years relevant to the assessment years 2017-18 and 2018-19, the assessee was involved in unaccounted cash transactions i.e. hawala transactions for routing unaccounted cash for procuring unsecured loans. Accordingly, the AO required the assessee company to furnish its explanation on the aforesaid issue. In response, the assessee company furnished its detailed explanation denying all the allegations leveled by the AO on the basis of the messages found in the personal mobile of Shri Mukesh Jhanwar. However, the ld. AO, by discarding the submissions made by the assessee, made additions of Rs.36,50,000/- and Rs.10,00,000/- in the total income of the assessee for the assessment years 2017-18 and 2018-19.

28.3 Being aggrieved with the action of the AO, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee company made detailed written submissions. But ld. CIT(A), rejected the submissions made by the assessee and confirmed the entire additions so made by the AO on the subject issue for the aforesaid assessment years.

28.5 Against the additions confirmed by the Ld. CIT(A), the assessee is now in appeal before us.

28.6 Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

**“D. Key Points of Assessee’s Submission and Relevant Pages of Paper Book:**

S. No.	<i>Submission in Brief</i>	<i>Relevant Pages of Paper Book for A.Y. 2017-18</i>	<i>Remarks</i>
1	<b>Additions</b> have been made by the AO on the <b>basis of some digital messages</b> found in the <b>mobile of Shri Mukesh Jhanvar</b> , senior accounts manager of the assessee company	-	-
2	As regard the statement of Shri Mukesh Jhanvar, recorded u/s. 132(4) during the search, it is submitted that upon confronting <b>Shri Mukesh Jhanvar</b> by the assessee, he <b>completely denied</b> of making any statement that unaccounted cash of the company was routed to Kolkata for procuring unsecured loans.	543 to 546	<i>Copy of Affidavit of Shri Mukesh Jhanvar enclosed.</i>

3	As per the AO, the hawala transactions were carried out during two financial years relevant to A.Y. 2017-18 and A.Y. 2018-19 to obtain unsecured loans. However, the fact remained that <b>during these two years</b> , the assessee has <b>not obtained any fresh unsecured loan of even a single penny</b> .	-	The very foundation of the AO that the subject messages are in relation to the unsecured loans procured by the assessee, through hawala, in such two assessment years is patently wrong and far from truth apparent on record.
4	The <b>messages</b> found from cell phone of Shri Mukesh Jhanvar were <b>never sent or received on the direction or instruction</b> of any of the functionaries of the <b>assessee company</b> .	-	Shri Mukesh Jhawar was not a key functionary but, only one of many accounts managers of the assessee company and the assessee company cannot be supposed to have any say or vigil on the messages sent/received by Shri Mukesh Jhawar from his personal mobile.
5	<b>Shri Mukesh Jhanvar</b> , in his <b>Affidavit</b> dated 10-12-2019 <b>explicitly owned</b> the subject transactions mentioned in the message and has also clearly stated that such messages pertain to the <b>transactions of cash remittance carried out by himself for others</b> (other than the assessee company or its associates), in anticipation of receipt of some commission. When, the concerning person has owned the transactions and consequences thereof, the same cannot be attributed to the assessee without any other cogent material.	543 to 546	-
6	After furnishing the Affidavit, the <b>assessee has specifically requested</b> the AO that an <b>opportunity to produce Shri Mukesh Jhanvar be given</b> . Further, summons u/s. 131 or notice u/s. 133(6) may be issued to Shri Mukesh Jhanvar to verify the contents of his Affidavit.	Page No. 693 of PB for A.Y. 2017-18	Before the AO it was even requested that the assessee can produce Shri Mukesh Jhawar for the examination, but, the AO did not provide opportunity to the assessee to produce Shri Mukesh Jhawar.
7	The action of the AO in attributing the messages communicated by one of the employees of the assessee company to the financial affairs of the assessee is also <b>against the provisions of s.</b>	-	It is not the case of the AO that the subject messages were found stored in any of the electronic devices belonging to the chief

	<b>292C</b> of the Act.		functionaries of the assessee.
8	<b>Absolutely no justification for the AO to level the charge of hawala transactions against the assessee company and particularly, in a circumstance, when Shri Mukesh Jhanvar, on Oath, had admitted that the messages were pertaining to his personal affairs only.</b>	-	-
9	<b>It will not be open to the revenue to challenge the statements made by the deponent in their affidavits later on, if no cross examination with reference to the statements made in the affidavits is done.</b>	-	<i>Mehta Parikh &amp; Co. v. CIT [1956] 30 ITR 181 (SC)</i>

28.7 Reference was also made to the detailed submission of the assessee on this issue made before the CIT(A) which are placed at page no. 34 to 40 of the Paper Book for A.Y. 2017-18 and Page No. 10 to 17 of Paper Book for A.Y. 2018-19.

28.8 Per Contra Ld. CIT(DR) vehemently argued supporting the observations and findings of the AO as well as of the ld. CIT(A) on this issue.

29. We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides. We find that the additions have been made by the AO on the basis of some digital messages found in the mobile of Shri Mukesh Jhanvar, senior accounts manager of the assessee company. It was contended by the ld.

Counsel that upon confronting Shri Mukesh Jhanvar by the assessee, he completely denied of making any statement that unaccounted cash of the company was routed to Kolkata for procuring unsecured loans. We find that the assessee had submitted an Affidavit of Shri Mukesh Jhanvar before the AO retracting the statement given by him before the Search Party. We noted that as per the AO, the hawala transactions were carried out during two financial years relevant to A.Y. 2017-18 and A.Y. 2018-19 to obtain unsecured loans. However, upon perusing the audited financial statements of the assessee company for the aforesaid two years, we note that during these two years, the assessee had not obtained any fresh unsecured loan of even a single penny. The assessee further contended that the messages found from cell phone of Mr. Mukesh Jhanvar were never sent or received on the direction or instruction of any of the functionaries of the assessee company. The Ld. counsel of the assessee pointed out that Mr. Mukesh Jhanvar, in his Affidavit dated 10-12-2019 explicitly owned the subject transactions mentioned in the message and has also clearly stated that such messages pertain to the transactions of cash remittance carried out by himself for others (other than the assessee company or its associates), in anticipation of receipt of some commission. We find merit in the contention of the assessee that when the concerning person has owned the transactions and consequences thereof, the same cannot be attributed to the assessee without any other cogent material. We find that the assessee has specifically requested the AO that an opportunity to cross examine Shri Mukesh Jhanvar be given

and further, summons u/s. 131 or notice u/s. 133(6) may be issued to Mr. Mukesh Jhawar to verify the contents of his Affidavit but, the AO did not provide opportunity to the assessee to produce Shri Mukesh Jhawar. The assessee further contended that the action of the AO in attributing the messages communicated by one of the employees of the assessee company to the financial affairs of the assessee is also against the provisions of s. 292C of the Act. The assessee also submitted that the AO was not justified to level the charge of hawala transactions against the assessee company and particularly, in a circumstance, when Mr. Mukesh Jhanvar, on Oath, had admitted that the messages were pertaining to his personal affairs only.

29.1 We find merit in the contentions of the ld. Counsel of the assessee that mere finding of the messages in the personal mobile of an employee of the company regarding some alleged hawala transactions without bringing on record any corroborative material to establish such transactions cannot lead to any concrete conclusion against the assessee that it had carried out such hawala transactions. Further, we also find that Mr. Mukesh Jhawar had categorically retracted his statement given during the course of search and had explicitly owned the subject transactions mentioned in the message to be pertaining to the transactions of cash remittance carried out by himself for others (other than the assessee company or its associates), in anticipation of receipt of some commission. Furthermore, against such alleged hawala transactions,

no fresh unsecured loans have been found credited in the books of account of the assessee company for the subject assessment years. We also find that no such document or material was found or seized during the course of the search pertaining to the earlier years from which it could have been inferred that the assessee company was involved in such scrupulous activities. We also note that the AO has not conducted any independent enquiry to unearth and correlate the contents of the mobile messages with the financial affairs of the assessee company. In such circumstances, no adverse inference could have been drawn by the lower authorities against the assessee company. We are, therefore, of the view that the entire additions of Rs.36,50,000/- and Rs.10,00,000/- made by the AO for the A.Y. 2017-18 and A.Y. 2018-19 respectively deserve to be deleted and accordingly, the Ground Nos. 2(a) to 2(d) for A.Y. 2017-18 and Ground Nos. 1(a) to 1(d) for A.Y. 2018-19 raised by the assessee are hereby **Allowed**.

**30. Lastly, we take the Issue No. (v) which is relating to the applicability of Section 115BBE in respect of additions made in A.Y. 2017-18 and A.Y. 2018-19**

31.1 In respect of the Issue No. (v), the Revenue has raised Ground No. 4 for A.Y. 2017-18 and Ground No. 5 for the A.Y. 2018-19. These grounds of the Revenue are pertaining to the action of the Ld. CIT(A) in allowing the assessee's appeal on the chargeability of tax as per

normal rates instead of the amended provisions of section 115BBE of the Act.

31.2 During the course of the assessment proceedings, the AO, in respect of the additions made by him in the assessee's income for the A.Y. 2017-18 and A.Y 2018-19, charged the income-tax at the higher rates under the provisions of s.115BBE of the Act.

31.3 Being aggrieved with the action of the AO, the assessee preferred separate appeals for the subject assessment years before the ld. CIT(A). During the course of the first appellate proceedings, the assessee company made detailed written submissions in respect of the chargeability of tax as per normal rates and not as per the provisions of s.115BBE of the Act in its case.

31.4 The ld. CIT(A), by accepting the contentions of the assessee, made a finding that the additions so sustained by him in the assessee's income were chargeable to tax as per the normal rates of income-tax only and the provisions of s.115BBE of the Act shall not be applicable in the assessee's case for the subject assessment years.

31.5 Against the findings of the Ld. CIT(A), the Revenue is in appeal before us.

31.6 Before us, the Ld. CIT(DR) vehemently argued supporting the observations and findings of the AO on this issue.

31.7 Per Contra Learned Counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

**“D. Key Points of Assessee’s Submission and Relevant Pages of Paper Book:**

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	<p>The AO has invoked the provisions of s. 115BBE, in respect of four additions made in the income of the assessee,</p> <p><b>For A.Y. 2017-18 on the grounds of:</b> (i) disallowance of certain interest expenditure at Rs. 1,19,75,346/-; (ii) income from out of book sales at Rs. 2,56,52,000/-; (iii) income from Hawala transactions at Rs. 36,50,000/-; and (iv) income from cash receipts from some syndicate at Rs. 30,00,000/-.</p> <p><b>For A.Y. 2018-19 on the grounds of:</b> (i) disallowance of certain interest expenditure at Rs.82,40,976/-; (ii) income from alleged out of book cash sales of country liquor through vouchers at Rs.10,25,000/- ; and (iii) income from alleged Hawala transactions at Rs. 10,00,000/-</p>	-	As discussed in the preceding paras, since the additions so made, by themselves, are not sustainable, the question of applicability of s. 115BBE of the Act, which provides for charging sum specified income at a higher rate does not arise at all.
2	<p>The AO has invoked the provisions of s.69C (for disallowance of interest) and s.69A (for out of books sales, hawala transactions and</p>	-	For disallowance of interest, Provisions of s.69C could not have been invoked. Sec. 69C can be

	<i>cash receipt from syndicate) for making the respective additions.</i>		<p><i>invoked only if an assessee is found to have incurred any expenditure which is not found recorded in the regular books of account. <b>In the instant case, the entire interest was duly recorded in the regular books of account of the assessee.</b></i></p> <p><i>Further, sec. 69A can be invoked when an assessee is found to be in possession of any unaccounted money or other asset, but, the same cannot be invoked qua the alleged undisclosed receipts or income.</i></p> <p><i>During the course of the search, not even a single penny in the form of cash or stock or any other asset was found unrecorded in the regular books of account and therefore the provisions of s. 69A could not have been invoked in its case.</i></p>
3	<i>Deriving of a special category income is sine-qua-non for invocation of the provisions of s.115BBE of the Act and in the absence of such income, the provisions cannot be made applicable.</i>	-	<i>In the case of assessee, no income could be termed as the special category income.</i>
4	<i>For disallowance of interest expenditure, the appropriate section was s. 36(1)(iii) r.w.s. 37 of the Act.</i>	-	-
5	<i>For alleged unaccounted cash receipts, since no unaccounted</i>	-	-

	<i>money, or other assets or any other investment was found, the provisions of s. 69,69A and 69B could not have been invoked.</i>		
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31.8 Reference was also made to the detailed submission of the assessee on this issue made before the CIT(A) which are placed at page no. 48 to 51 of the Paper Book for A.Y. 2017-18 and Page No. 17 to 20 of Paper Book for A.Y. 2018-19.

32. Before us, the assessee submitted that since the additions so made, by themselves, are not sustainable, the question of applicability of s. 115BBE of the Act, which provides for charging sum specified income at a higher rate does not arise at all. The AO has invoked the provisions of s.69C (for disallowance of interest) and s.69A (for out of books sales, hawala transactions and cash receipt from syndicate) for making the respective additions. The assessee contended that for disallowance of interest, the provisions of s.69C could not have been invoked and Sec. 69C can be invoked only if an assessee is found to have incurred any expenditure which is not found recorded in the regular books of account. As per the assessee, in its case, the entire interest was duly recorded in the regular books of account of the assessee. Further, according to the assessee, sec. 69A can be invoked when an assessee is found to be in possession of any unaccounted money or other asset, but, the same cannot be invoked qua the alleged undisclosed receipts or income. The assessee contended that during the course of the search, not even a single

penny in the form of cash or stock or any other asset was found unrecorded in the regular books of account and therefore the provisions of s. 69A could not have been invoked in its case. The assessee further stated that deriving of a special category income is sine-qua-non for invocation of the provisions of s.115BBE of the Act and in the absence of such income in its case, the provisions cannot be made applicable. The assessee also submitted that for disallowance of interest expenditure, the appropriate section was s. 36(1)(iii) r.w.s. 37 of the Act. The assessee also contended that for alleged unaccounted cash receipts, since no unaccounted money, or other assets or any other investment was found, the provisions of s. 69,69A and 69B could not have been invoked.

32.1 We have heard rival contentions, perused the records placed before us, duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides. We find that the ld. CIT(A) has adjudicated this issue of non-applicability of the provisions of s.115BBE of the Act in the assessee's case. The relevant findings of the ld. CIT(A) for the A.Y. 2017-18 are being reproduced as under:

*“3.6.1 I have carefully gone through the assessment order and as also the written submission made before me. The AO has invoked the provisions of s. 115BBE, which provides for charging of income tax and surcharge on certain specified income at certain rates, qua the additions made on four grounds viz. (i) disallowance of certain interest expenditure; (ii) income from out of book sales; (iii) income from Hawala transactions; and (iv) income from unaccounted cash receipts. The additions have either been made either on account of disallowance of expenditure or on account of unaccounted cash*

*receipts made by the appellant. However, the provisions of section 115BBE of the Act, can be invoked only if the total income of an assessee includes any income referred to in ss. 68, 69,69A,69B,69C or 69D of the Act. Except the income referred to in the ss. 68, 69,69A,69B,69C or 69D of the Act, in respect of the other income, the provisions of s. 115BBE cannot be invoked. The AO has invoked provisions of s. 69C of the Act in respect of the disallowance of interest on unsecured loans, whereas, for making other three additions on account of unaccounted receipts, the AO has invoked the provisions of s. 69A of the Act. As discussed above, the AO was not legally correct in invoking the provisions of either s. 69A or s. 69C of the Act. Thus, none of the additions made, in the total income of the appellant, for the assessment year under consideration, falls under any of the aforesaid six sections and therefore, the provisions of s. 115BBE of the Act, cannot be invoked in respect of such additions. Accordingly, the AO is directed to recompute the tax liability at the normal rates of tax, as applicable to a domestic company for the relevant assessment year. Therefore, appeal on these grounds is Allowed.”*

32.2 In view of the above categorical findings of the Id. CIT(A) and our examination of the fact that additions confirmed by us in the hands of assessee are arising out of the business carried out and do not fall under any of the provisions of as referred in section 115BBE of the act .Thus we do not find any merit in the grounds raised by the Revenue. Accordingly, the Ground Nos. 4 & 3 of the Revenue for A.Y. 2017-18 and A.Y. 2018-19 respectively are hereby **Dismissed**.

33. In the result, the appeals of the Revenue bearing ITANo.67 to 70/Ind/2021 for A.Y. 2015-16 to A.Y.2018-19 are dismissed and that of the assessee bearing IT(SS)ANo.114 to 115/Ind/2020 for

A.Y.2016-17 & A.Y.2017-18 are partly allowed and  
IT(SS)ANo.116/Ind/2020 for A.Y. 2018-19 is allowed.

Order pronounced as per Rule 34 of I.T.A.T., Rules 1963 on  
23.12.2021.

Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 23.12.2021

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**