

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and**

SHRI AMIT SHUKLA , JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

**ITA Nos.1162, 1252 to 1256 & 1327 /Del./2018
(ASSESSMENT YEARS : 2009-10 to 2015-16)**

M/s. Rathi Bars Limited, vs. ACIT, Central Circle 16,
A – 24/7, Mohan Cooperative Inhl. Estate, New Delhi.
Mathura Road,
New Delhi – 110 044.

(PAN : AAACR0737N)

**ITA Nos.1163, 1258 to 1261 & 1264/Del./2018
(ASSESSMENT YEARS : 2009-10 to 2014-15)**

M/s. Rathi Special Steels Limited, vs. ACIT, Central Circle 16,
A – 24/8, Mohan Cooperative Inhl. Estate, New Delhi.
Mathura Road,
New Delhi – 110 044.

(PAN : AAACR80978H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aditya Chhajed,CA

REVENUE BY : Shri T. Kipgen, CIT DR

Date of Hearing : 24.02.2022

Date of Order : 28.02.2022

ORDER

PER BENCH :

All the aforesaid appeals filed by the above-named assesseees are against the separate orders passed by the Id. CIT (APPEALS)-XXVI, New Delhi for the quantum of assessment passed under section 153A/143(3) of the Income-tax Act, 1961 (for short 'the Act') for the Assessment Years 2009-10 to 2015-16.

2. In various grounds of appeal, the assessee has mainly challenged the following additions:-

RATHI SPECIAL STEELS LTD.

ITA No.	Assessment Years	Addition made by the Ld. AO	Amount (in Rs.)
1163/Del/2018	2009-10	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	31,61,395/-
1258/Del/2018	2010-11	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	4,84,675/-
1259/Del/2018	2011-12	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	4,96,572/-
1260/Del/2018	2012-13	1. Undisclosed income on sales made to M/s. Hari Iron India Ltd. 2. Undisclosed Income on sales made out of Books on the basis of information received from Excise Department	5,27,142 9,39,813/-
1261/Del/2018	2013-14	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	5,91,847/-
1262/Del/2018	2014-15	Undisclosed income on sales made to M/s. Hari Iron India Ltd. Assessee has also taken ground no.14 to allow claim of brought forward depreciation	2,66,423/- 59,38,469/-

RATHI BARS LIMITED

ITA No.	Assessment Years	Addition made by the Ld. AO	Amount (in Rs.)
1162/Del/2018	2009-10	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	77,54,676/-
1252/Del/2018	2010-11	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	8,83,084/-
1253/Del/2018	2011-12	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	3,13,433/-
1254/Del/2018	2012-13	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	3,20,727/-
1255/Del/2018	2013-14	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	4,64,264/-
1256/Del/2018	2014-15	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	2,01,310/-
1327/Del/2018	2015-16	1. Undisclosed income on sales made to M/s. Hari Iron India Ltd. 2. Undisclosed income on sales made out of books 3. Difference in stock found during the course of search and as per books	23,735/- 2,45,856/- 17,67,071/-

3. Since, in all the years in the case of both the assesseees, issues are identical arising out of similar facts and similar findings of the AO and ld. CIT (A), therefore, the same were heard together and are being disposed off by way of this consolidated order.

4. The facts in brief are that, a search and seizure operation was conducted on 20.01.2015 at different premises of the assessee and

accordingly, proceedings u/s 153A were initiated for the AYs 2009-10 to 2015-16. Admittedly, at the time of search, assessments for the AYs 2009-10 to 2013-14 were unabated assessments, i.e., the assessments were completed and not pending on the date of search in view of Second Proviso to section 153A. Only the AY 2014-15 was pending assessment and AY 2015-16 is the assessment for the year of search.

5. On merits, the entire controversy revolves around addition on account of undisclosed income on sales made to one party, M/s. Hari Iron India Limited. As culled out from the assessment orders, a separate search u/s 132 took place in the case of unrelated party, M/s. Hari Iron India Limited, wherein statement of Sri Amit Gupta, Chief Operating Officer of M/s. Hari Iron India Limited was recorded. This entity was one of the distributors of assessee companies. In his statement recorded Sri Amit Gupta he allegedly admitted that 30% of the total sales affected by M/s. Hari Iron India Limited was out of books. Assessing Officer has incorporated certain relevant questions and answers of Amit Gupta in the assessment order which for the sake of ready reference is reproduced hereunder :-

“Q.1 Please identify yourself?

Ans. My name is Amit Gupta S/o Sh. Ram Kishan Gupta R/o 95, Espace, Nirvana Country, Sec.50, Gurgaon (Aadhar No.661688102028).

Q.5 Please give details of your source of income.

Ans. I am deriving income from business of trading of cement and steel. Apart from these, I also get rental income in the form of interest from savings.

Q.7 Give details of assessment particulars of company / concern you own.

Ans. I don't own any company. Neither I am director of any company. I work in Hari Iron (India) Ltd company in the capacity of chief operating officer. I draw salary of Rs.One lakh per month.

Q.14 Please give details about the nature of business of the company Hari Iron (India) Ltd.

Ans. M/s Hari Iron India Ltd. is a channel development partner of M/s Lafarge Cement Ltd. for Gurgaon and Mewet district taking care of the dealers and motivating them for enhancing the sale. Apart from this we are the distributors of Rathi Steel and maintain their dealers end motivate them to enhance sales. We are also responsible for enhancing sale of Monnet Ispat Ltd., for Lafarge Cement Ltd. and Monnet Ispat Ltd. we are sole channel partners of these two companies.

Q.24 What is 'W' and do you deal in 'W'?

Ans. 'W' is without bill it refers to transfer of good without bill. When a client approaches for products in 'W' we sell the goods in 'W'. Here, I am only a distributor. I don't stock goods. I simply forward the request to Rathi Bars Ltd. and Rathi Special Steel Ltd. They sell the goods directly to the clients. I receive my commission. If the sale is through bill i.e. no 'W' the client makes the payment to my company which in turn pays to either Rathi Bars Ltd. or Rathi Special Steels Ltd. after deducting my commission. But in case if the sale is made in 'W' i.e. without bills I receive my commission in cash from the client and Rathi Bars/Rathi Special Steels Ltd. either takes the cash directly from the client or Sh. Anurag Rathi requests me to tell the client to make payment directly to ingot supplier like Munna Rathi, Jhanardhan Beriwal, Alok Goenka amongst others. At other times, Sh. Anurag Rathi requests me to ask the client to make the cash payment directly to scrap supplier like Vijay Pal, Sandeep, Mahavir amongst others.

Q.25 How much is your commission as a distributor?

Ans. My commission is usually around Rs.150 per metric ton.

Q.26 Which are the companies to whom you are a distributor of Iron & Steel Bars?

Ans. I am the distributor for the following companies in the field of Iron & Steel Bars :

- 1. Rathi Bars Limited**
- 2. Rathi Special Steels Limited**
- 3. Vinayak Rathi Steel Rolling Mills Pvt. Ltd.**
- 4. Monnet Ispat Limited**

Q.28 What is the turnover of your company M/s. Hari Iron India Limited?

Ans: During the last 2-3 years, it has revolved around 30 crores.

Q.29 What is the quantum of sales in 'W' during the year?

Ans: The total 'W' is nearly 30% of the total sales that is nearly 9 crores.

Q.32 Where do you keep your record of Kachcha Bills or 'W'?

Ans. I destroy the pages same day and don't keep records of it.

In view of the above facts, as the chief operating officer has admitted that 30% of total sales effected by the company remains out of books, and in reply to question No.24 he has clearly mentioned the name of your company, it can be safely inferred that you have only offered 70% of sales in the return of income arising out of sales through M/s. Hari Iron (India) Ltd. One of your directors Mr. Anurag Rathi was also confronted with this fact during the course of assessment proceeding. Hence, you are requested to explain why suitable additions arising involving such sales should not be made to your total income. You are further requested to file ledger of Hari Iron (India) Ltd. as appearing in your books of account for the relevant previous year."

6. When this was confronted to the assessee by the AO in the show-cause notice dated 23.12.2016, assessee gave its detail rebuttal and given its reply vide letter dated 27.12.2016 which, for the sake of ready reference and assessee's explanation, is reproduced as under :-

“On behalf of the above captioned assessee, we acknowledge the receipt of the above notice and in this regard, we hereby submit that the assessee company has made sales to M/s Hari Iron (India) Ltd during these years under consideration, however all the sales made by the assessee company has been properly booked in the regular books of accounts and no any sales have made by assessee company to the said party or any other party that has not been recorded in its books of accounts. Further, in this regard, we hereby submit that assessee is required to prepare various records as per the Sales Tax Law as well as Excise laws prevailing and all the details such as Sales Tax Returns as well as Excise Returns have already been submitted before your goodself further each and every sales entry has to be entered in the excise records and the documents are in possession of your goodself being part of the seized records whereby gram by gram quantity of sales made by the assessee company has been recorded and by perusal of the same, your goodself will find that no any sales has been made by assessee company without bills and not booked in the books of accounts of the assessee company

In this regard, we hereby further submit that search action u/s 132 of the act was made by the Income Tax Department at the office premises of Assessee Company and not a single iota of documents was found during the course of search which can indicate that Assessee Company has made sales out of book of accounts i.e. without bills to the said party. Further with regards to the statement of Amit Gupta we hereby submit that the statement in the absence of any incriminating material found during the search may be based on the dictates of the search officials In absence of any incriminating material such statement could not be treated as genuine and could not be used against the assessee company. Further coming to the statement of Amit Gupta, he has stated that the word 'W' has been written where sales have been made without bills but during the course of search, not a single entry/sales have been found which states the word 'W and it is seems that the same is only the story scripted during the course of search and without corroborating the same with any documentary evidence

found during the course of search from the premises of the assessee as well as Hari Iron India Ltd.

Further we hereby submit that the party statements could not used against the assessee without confronting the same with the assessee and without not based on any corroborative evidence found during the course of search. Further, various High Courts in the judicial pronouncements has held that third party statements could not be used against the assessee without confronting the same with the assessee and without any documentary evidence in this regard. Further, your goodself has stated that the statement of Amit Gupta was confronted with the assessee company in this regard. it is hereby submitted that the statement of Amit Gupta was never confronted with any of the directors of the assessee company except of the following questions asked during the course of search from Sh. Anurag Rathi stated as under :-

Q. Do you know Mr Amit Gupta? How is he related to your Business?

Ans He is a distributors of M/s Rathi Bars Ltd. and M/s Rathi Special Steels Ltd. in North India.

Q. How do you deal with Mr Amit Gupta in business and /or business activities?

Ans. Mr Amit Gupta is a distributor of my companies.

From the perusal of the above, your goodself will find that directors of assessee Company were never confronted with the statement given by Amit Gupta during the search proceedings as well as post search investigation and it clearly proves that even the search team does not found the statement of Amit Gupta reliable and realistic.

In view of the above, we again submit before your goodself that all the sales made by the assessee company has been duly recorded in the books of accounts and the assessee company has not made any sales without bills i.e. outside books of accounts and therefore, no any adverse inference

should be taken against the assessee company in this regard. However, as required by your goodself, ledger accounts of M/s. Hari Iron India Ltd. in the books of Assessee Company for each of the assessment year have been enclosed herewith for your kind perusal.

Further, it is event form the perusal of the Show Cause notice that your goodself intends to make estimated additions to the income of the assessee company by relying on the statement of Amit Gupta without corroborating the same with any incriminating material found during the course of search relating to these transactions. Without prejudice to the submission made above, we hereby submit that no any addition could be made in case of the assessee as the assessee has not entered into any such transactions during the years under consideration and even otherwise no any purchases in this regards, has been entered into the books of accounts of the assessee company, no any expenses relating to such sales have been entered into the books of accounts of assessee company; then in such circumstances, any addition to the income of the assessee company, without any corroborating evidences, without any incriminating material found during the course of search in this regard and without confronting the statement of Amit Gupta with the assessee company.”

7. Ld. AO however held that the statement of Amit Gupta has huge evidentiary value as the same was recorded u/s 132(4) and in support, he has cited various decisions in his assessment order. Thereafter, he has proceeded to make the estimate of sales outside the books of account in the ratio of 30%/70% and applied profit rate as disclosed by the assessee and worked out the undisclosed income out of sales. In the initial year, he has also taken undisclosed capital which might have been employed including share premium for rotation of such undisclosed sales. For the sake of ready reference, the observation and finding of AO as incorporated in AY 2009-10 is reproduced hereunder as exactly similar finding has been given in all the years

except in the AYs 2010-11 to 2015-16 he has just made addition on account of net profit :-

“ Moreover, it is also a fact that some torn papers were also recovered from the chamber of one of the directors of the assessee company Sh. Anurag Rathi situated at A-24/7 and A-24/8 at Mohan Co-operative Industrial Estate, Delhi and inventorised under Annexure A-22, page 09 to 17 having clear evidences of sales out of books. Thus, the statement of Amit Gupta is getting corroborated with the seized material also. Hence it is held that the assessee has shown only 70% of its sales to M/s. Hari Iron India Ltd. and at least 30% of the sales remained outside the books, on which the assessee has suppressed its income. The assessee has also held as suppressed its capital which was used for affecting such unaccounted sales income arising out of such sales as well as capital deployment is being calculated as under :-

Asst. Year	Sales to Hari Iron India Ltd. recorded in books (A)	Sales remained out of books (B) [A x 30%/70%]	Profit earned (taking N.P. as disclosed in regular books for relevant previous year (C)	Total Sales made during the year (D)	Capital Employed (including share premium) (E)	Undisclosed Capital (F) [B/DxE]
2009-10	13,05,95,264	5,59,69,399	3,63,801	258,89,40,790	34,18,74,995	73,90,875

Thus, total addition on account of undisclosed capital and income arising out of sales comes to Rs.77,54,676/-.”

8. For the sake of ready reference, the addition made by the AO in the case of Rathi Special Steels Ltd. for the AYs 2009-10 to 2014-15 is reproduced hereunder :-

Assessment Years	Addition made by the Ld. AO	Amount (in Rs.)
2009-10	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	1,66,325/-
2010-11	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	4,84,675/-
2011-12	Undisclosed income on sales made	4,96,572/-

	to M/s. Hari Iron India Ltd.	
2012-13	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	5,27,142
2013-14	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	5,91,847/-
2014-15	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	2,66,423/-

9. Similarly, in the case of Rathi Bars Limited, the AO has made addition on account of undisclosed income on sales in the following manner :-

Assessment Years	Addition made by the Ld. AO	Amount (in Rs.)
2009-10	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	3,63,801/-
2010-11	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	8,83,084/-
2011-12	Undisclosed income on sales made to M/s Hari Iron India Ltd.	3,13,433/-
2012-13	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	3,20,727/-
2013-14	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	4,64,264/-
2014-15	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	2,01,310/-
2015-16	Undisclosed income on sales made to M/s. Hari Iron India Ltd.	23,735/-

10. Before the ld. CIT (A), assessee had given various submissions and filed all the details which have been incorporated in the impugned appellate orders right from pages 3 to 32. Before the ld. CIT (A), one of

the legal arguments which was taken by the assessee that none of the additions made by the AO are based on any incriminating documents found during the course of search in the case of assessee, *albeit* the additions have been made on third party statement in different search which has no correlation with the assessee. However, the Id. CIT (A) has rejected the assessee's contention and has upheld the addition made by the AO. For the sake of ready reference, finding of the Id. CIT (A) is reproduced as under:-

5. Findings

I have considered the above pleadings and submissions made by the Ld. Counsel of the appellant and the order of the A.O passed u/s 153A/143(3) of the Act for the instant Assessment Year and the facts available on record for the year under consideration. The grounds are disposed off issue wise as below. The findings are as below-

Action u/s 132 was undertaken in respect of the appellant assessee on the assessee & its associates, on 2010112015. It has been contended on behalf of the appellant that-

"Because no incriminatory materials/documents/information's were found and the assessment u/s 153A were made without any seized material and documents found during search, the addition made were outside the search materials as fresh assessment or reassessment are against the -provision of section 153A of the Act itself as such the assessment passed making additions outside search materials changing his opinion from the earlier orders passed by the Department is illegal and bad in law."

The issue of existence of incriminating material has to be considered in totality. The assessee cannot hide behind seizure or non seizure of documents. The same has to be construed with the trade practices and the expected action on part of an independent entity in normal circumstances. The AO and this appellate forum too have to construe the

incriminating material in a harmonious fashion. Hon'ble Delhi High Court has also reiterated in many rulings that action u/s 153A is bound to be initiated in such situations. Therefore, this action of the AO is in tune with judgment of Hon'ble Delhi High Court in CIT (C)-III v. Kabul Chawla (Delhi) [2015] 380 ITR 573. The same is further strengthened by the judgment of Hon'ble Delhi High Court in the case of Dayawanti Gupta v. CIT in ITA Nos.357, 358, 359/2015 and other dated 27.10.2016. Having considered the detailed and be laboured submissions of the ld. AR and the material on record, I am drawn to the conclusion that the action of the AO does not go at variance with the provisions of law and the available concerned. The AO was well within his powers to invoke section 153A of the Act on prima facie finding about information that surfaced during the search. Certain documents were found and which lead the AO to conclude that the assessee has made sales out of books. Further, there was a survey on the premise of M/s Hari Iron India Limited a dealer of the assessee company. Statement of Mr. Amit Gupta, the Chief Operating Officer of M/s Hari Iron India Ltd., was recorded whereby he admitted on behalf of his company that they used to make 30% of the sales outside books of accounts on products acquired from parties including the appellant Rathi Bars Ltd. A statement of Mr. Anurag Rathi, Director of M/s Rathi Bars Ltd. was also recorded. The appellant has refuted the above referred statement of Sh Amit Gupta same. The appellant has contended that there was no incriminating material to prove the admission made by the COO of Hari Iron. The contention of the appellant lacks force. For in cases of unaccounted sales, the likely hood of specific documentary evidence being kept is too absurd a possibility. The tax evasion exercises are so structured so as not to leave any verifiable trail.

It has been contended on behalf of the appellant as under-

"On behalf of the above captioned assessee we acknowledge the receipt of the above notice and in this regard, we hereby submit that the assessee company has made sales to M/s Hari Iron India Ltd During these years under consideration; however J all the sales made by the assessee company has been properly booked in

the regular books of accounts and no any sales have been made by assessee company to the said party or any other party that has not been recorded in its books of accounts. Further, in this regard we hereby submit that assessee is required to prepare various record as per the sales tax law as well as excise laws prevailing and all the details such as sales tax returns as well as excise returns have already been submitted before your goods self, further each and every sales entry has to be entered in the excise records and the documents are in possession of your good self being part of the seized records whereby gram by gram quantity of sales made by the assessee company has been recorded and by perusal of the same your goodself will find that no any sales has been made by assessee company without bills and not booked in the books of accounts of the assessee company. In this regard we hereby further submit that search action u/s 132 of the act was made by the income tax department t the office premises of assessee company and not a single iota of document was found during the course of search which can indicate that assessee company has made sales out of books of accounts I.e. without bills to the said party, further with regards to the statement of Amit Gupta we hereby submit that the statement in the absence of any incriminating material found during the search may be based on the dictates of search officials in absence if of any incriminating material such statement could not be treated as genuine and could not be uses against the assessee company .Further coming to the statement of Amit Gupta he has stated that word 'w' has been written where sales have been made without bills but during the course of search .not a single entry/sales have found which states the word 'w' and it is seems that the same is only the story scripted during the course of search and without corroborating the same with any documentary evidence found during the course of search from the premises assessee as well as Hari Iron India Ltd. Further, we hereby submit that the third party statement could not used against the assessee without confronting the same with the assessee and without not based on any corroborative evidence found

during the course of search further, various high courts in the judicial pronouncements has held that third party statement could not be uses against the assessee without confronting the same with the assessee and without any documentary evidence in this regard Further, your good self has states that the statement of Amit Gupta was confronted with the assessee company, in this regard it is hereby submitted that the statement of Amit Gupta was never confronted with any of the directors of the assessee company except of the following questions asked during the course of search from Sh. Anurag Rathi stated as under.

Q. Do you know Mr. Amit Gupta? How is he related to your business?

Ans. He is a distributor of M/s Rathi Bars Ltd and M/s. Rathi Special Steel Ltd in north India.

Q. how do you deal with Mr. Amit Gupta in business and non- business activities?

Ans: Mr. Amit Gupta is a distributor of my companies.

From the perusal of the above your good self will find that directors of assessee company were never confronted with the statement given by Amit Gupta during the search proceedings as well as post search investigation and it clearly proves that even search team does not found the statement of Amit Gupta reliable and realistic. In view of the above we again submit before your good self that all the sales made the assessee company has been duly recorded in the books of accounts and the assessee company has not made any sales without bills i.e. outside books of accounts and therefore no any adverse inference should be taken against the assessee company in this regard. However as required by your good self ledger, accounts of M/s. Hari Iron India Ltd. In the books of assessee company for each of the assessment year have been enclosed herewith for your kind perusal. Further, it is evident from the perusal show cause notice that your good self intends to make estimated additions to the income of assessee company by relying on the statement of Amit

Gupta without corroborating the same with any incriminating material found during the course of search relating to these transactions without prejudice to the submission made above. We hereby submit that no any addition could be made in case of the assessee has not entered into any such transactions during the years under consideration and even otherwise no any purchases in this regards .has been entered into the books of accounts of the assessee company .no any expenses relating to such have been entered into the books of accounts of assessee company; then in such circumstances any addition to the income of assessee company, without confronting the statement of Amit Gupta with the assessee company.

The learned AO while rejecting the above submission has made the follow observations and has cited the case laws in support of his contention. Your honour, the case laws cited by the ld AD are not applicable to the facts & legality of the case."

The third party has made admission on this count and it is unlikely that the assessee appellant would concede this pint. The AO has also dealt with stock variations in other assessment orders. The unaccounted sales have rarely any paper or material trail, but a bonafide statement of a key functionary lends sufficient credence to the imputation about such action of the assessee appellant and it gets further reinforced when we see the differences in stock as we shall see in case of the assessee group entities. In view of the accounting principles, the addition of Rs.3,63,801/- on account of profit arising out unrecorded Sales and Rs.73,90,875/- on account of undisclosed capital deployed for such unrecorded sales to MIs Hari Iron is, therefore, confirmed."

Similar findings have been given in all the years, therefore same not to be discussed.

11. Before us, ld. counsel for the assessee, Shri Ved Jain, after retreating the facts as stated above, submitted that admittedly, the

assessments for AYs 2009-10 to 2013-14 were unabated assessments on the date of search in terms of **Second Proviso** to section 153A. Further, it is undisputed fact that no iota of evidence or material was found during the course of search in relation to undisclosed sales alleged to have been made outside the books of M/s. Hari Iron India Limited. The entire addition is based on the statement given by Amit Gupta which was recorded during the course of search in the case of M/s. Hari Iron India Limited and, therefore, same cannot constitute an incriminating material found during the course of search in the case of assessee. Otherwise also, no corroborative material or evidence was however found either in the search of M/s. Hari Iron India Limited or in the case of assessee which can substantiate the statement of Sri Amit Gupta. Independently also, nowhere it has been said by him that the assessee companies have been making any unaccounted sales outside the books. He further submitted that on the contrary, as stated by the assessee before the AO and Id. CIT (A), all the sales made by the assessee to M/s. Hari Iron India Limited has been properly accounted in the regular books of account and no sales have been made outside the books. The assessee has to maintain statutory records under the sales-tax as well as excise law and all the details, such as, sales-tax returns and excise returns were submitted before the AO wherein each and every entry of the sales have been recorded in the excise records which were in the possession of the AO as part of the seized records, whereby gram by gram quantity of sales made by the assessee has been duly recorded. He further submitted that the AO who was in possession of entire books of account including excise record of the assessee, and no discrepancy has been found or detected which could have been remotely correlated with the statement of Amit

Gupta. In absence of any rejection of books of account, neither the sales can be estimated nor can any profit rate be applied. Once the trading account has been accepted including the figures of debit and credit side, there is no scope for estimating any GP or NP rate.

12. Ld. Counsel further submitted that the AO nowhere has rebutted any of the contentions raised by the assessee in his reply (which has been incorporated supra) and not a single incriminating document was found in any of the year relating to M/s. Hari Iron India Limited. He has also not cross verified from M/s. Hari Iron India Limited nor given any opportunity to cross-examine Sri Amit Gupta. Regarding one of the documents which has been mentioned by the AO in his concluding paragraph as incorporated above with regard to papers recovered from chamber of Director of the assessee company, Shri Anurag Rathi situated at A-24/7 & A-24/8 inventorised as Annexure A-22 pages 9 to 17 wherein AO has alleged that the sales were out of books of account. This document in fact pertains to AY 2015-16 and the AO in his assessment order for AY 2015-16 in fact has accepted the contention of the assessee at the said document wherein duplication of figures and the actual figure comes down to only Rs.41,95,493/- instead of Rs.4,20,85,846/- as initially proposed by him in the show-cause notice. The relevant observation and conclusion of the AO in this regard as made in AY 2015-16 is reproduced hereunder :-

“Observation and Conclusion :

Submission of the assessee is considered In the light of information available on record. While reconciling the sales figures. the assessee is claiming that the figures have been taken multiple times while calculating the amount of Rs.4,20,85,846/- due to the fact that the pages 09 to 11

and,14 to 17 consists of the details of sales made and page 12 and 13 consists of the summary of the figures as mentioned on other set of pages whereas the amount of Rs.4,20,85,846/- cumulatively consists figures of all the details stated in pages ranging from page 09 to 11 and 14 to 17 of Annexure A-22. On final reconciliation, the assessee claimed that the sate figure as appearing these papers aggregates to Rs.1,84,65,175/- instead of Rs.4,20,85.846/-. It is further claimed on the basis of copies of sales bills, transporter copies and sales ledger that out of sales of Rs.1,84,65,175/-, the assessee has already recorded Rs.1,42,69,681/- in the regular books of account and balance sales of Rs.41,95,493/- remained out of books. The contention of the assessee that the sales amounting to Rs.41,95,493/- has not been entered by the assessee company as the material has not been delivered to the parties could not found any favour as the details stated on these papers clearly mentioning the name of party, name of brokers alongwith the details of vehicles through which the material must have been delivered to these parties In view of the above, it can be safely concluded that sales of Rs.41,95.493/- has been made and not accounted for in the books of accounts. The assessee has also held as suppressed its capital which was used for affecting such unaccounted sales. Income arising out of such sales as well as capital deployment is being calculated as under:

Asst. Year	Sales remained out of books (A)	Profit earned (taking manufacturing GP i.e. 5.86% as disclosed in regular books for relevant previous year) (B)	Total sales made during the year (C)	Capital Employed (including share premium) (D)	Undisclosed Capital (e) [A/C x D]
2015-16	41,95,493	2,45,856	2,64,49,254	34,18,74,995	5,41,963

Thus, total profit on undisclosed sales comes to Rs.2,45,856/- and total undisclosed capital required to affect the sales calculated at Rs.5,41,963/- but as an addition has already been made during the last years on account of

undisclosed sales and capital to the extent of Rs.99,37,494, no further addition lie on account of capital. So, addition on account of income arising out of sales comes to the extent of Rs.2,45,856/- is added to the total income of the assessee.”

13. Thus, he submitted that the sales as appearing in the seized documents were duly recorded in the books of account. Regarding the balance amount of Rs.41,95,493/- on which AO has drawn an adverse inference, he clarified that it pertains to where material has not been delivered and, therefore, the sales have not been booked or recorded in the books of account. This was clearly demonstrated in the assessee's reply wherein it was categorically stated that this figure recorded from pages 9 to 17 of Annexure A-22 and the orders received by the assessee company from various parties through its brokers. The assessee company delivered the material only in case the material has been asked for delivery by the party and the payment of the same has been guaranteed by the broker concerned. This paper contains both sales of material delivered and material not delivered and the figure of material delivered is Rs.1,42,69,681/- which has been recorded in the books of account whereas the figures wherein material has not been delivered is Rs.41,95,493/- which in absence of final sales has not been booked. Thus, no adverse inference can be drawn from the so-called seized document.

14. In support of his contention that assessee's income is to be assessed on the basis of incriminating material and not on the basis of statement of third party unless and until there is a material to corroborate that statement. He strongly relied upon the judgment of **Hon'ble Punjab & Haryana High Court in the case of CIT vs. Balbir Singh Mohinder Singh, ITA 203 of 2009 (O&M)**. Apart from that, he

relied upon various judgments of Hon'ble High Courts that no addition can be made in the absence of any incriminating material in the case of unabated assessments. His primarily reliance was on the **judgements of CIT vs. Kabul Chawla - 380 ITR 173 (Del.), CIT vs. Best Infrastructure (India) Pvt. Ltd. in ITA No.13/2017 dated 01.08.2017, Pr.CIT, Central -3 vs. Dharampal Premchand Ltd. 2017 (8) TMI 958 Delhi High Court and Pr. CIT, Central 2, New Delhi vs. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals 2017 (5) TMI 1224 - Delhi High Court.** He also relied upon the judgement of **Hon'ble Delhi High Court in case of PCIT (Central) -3 vs. Anand Kumar Jain(HUF) 2021 (3) TMI 8 - Delhi High Court** for the proposition that statement recorded in search against the third person cannot be used for making the additions in the hands of the assessee on the assessment made u/s 153A.

15. On the other hand, ld. CIT DR for the Revenue though did not rebut the assessee's contention that no incriminating material found during the course of search in the case of the assessee, however, he submitted that the statement recorded u/s 132(4) even though in a different search has a great evidentiary value and AO can utilize such information gathered from the statement to use against the assessee. In his statement, he has categorically stated that he has been making sales to parties through the assessee companies partly without bills. Therefore, AO has rightly concluded that the assessee was making undisclosed sales to various parties for which AO has estimated the profit rate as disclosed by the assessee on its disclosed sales. In support of his contention that statement recorded u/s 132(4) has a great evidentiary value, he has referred to **Hon'ble Allahabad High Court in case of Sterling Machine Tools vs. Commissioner Of**

Income-Tax 122 ITR 926 (All.) and various other judgments. For the Finally, he strongly relied upon the order of the AO.

DECISION

16. We have heard the rival submissions, perused the relevant findings given in the impugned orders as well as the material referred to before us. As discussed in the foregoing paragraphs, the major addition in all the years pertains to estimation of undisclosed income on sales made to M/s. Hari Iron India Limited. The entire premise of the Assessing Officer is based on a statement of Sri Amit Gupta who was Chief Operating Officer of M/s. Hari Iron India Limited, who was distributor of various companies dealing with iron and steel bars including the assessee companies, namely, Rathi Bars Ltd. and Rathi Special Steel Ltd. From the reading of entire assessment order as well as appellate order, it is an uncontroverted fact that during the course of search, no incriminating material or evidence was found in the course of search in the case of the assessee relating to any of the AYs i.e. 2009-10 to 2013-14. The assessment of these years had attained finality on the date of search on 20.01.2015. Thus, in terms of **Second Proviso** to section 153A, they cannot be reckoned as abated assessments. Now, it is well established law that especially the law laid down by Hon'ble jurisdictional High Court in catena of judgments, no addition can be made over and above the assessee's income which had completed prior to the date of search without any incriminating material or documents found during the course of search. This has been categorically held so by the **Hon'ble jurisdictional High Court in the case of CIT vs. Kabul Chawla, Pr. CIT, Central 2, New Delhi**

vs. Meeta Gutgutia Prop. M/s. Ferns 'N' Petals (supra) and in the following judgments :-

- (i) **Pr. CIT (Central)-2 vs. M/s. Jaypee Financial services Ltd. – 2021 (8) TMI 200 – Delhi High Court 0 dated July 20, 2021;**
- (ii) **Pr. CIT-04, Delhi vs. M/s. Jaypee Capital services Ltd. – 2021 (8) TMI 229 – Delhi High Court – dated August 3, 2021;**
- (iii) **Pr. CIT vs. M/s. Bhadani Financiers Pvt. Ltd., M/s. Pragati Tradecom Pvt. Ltd. M/s. Swastik Exports 7 Imports Pvt. Ltd. – 2021 (9) TMI 902 – Delhi High Court dated September 9, 2021;**
- (iv) **Pr. CIT vs. Best Infrastructure (India) Pvt. Ltd. (2017) 397 ITR 82 (Del.);**
- (v) **Pr. CIT, Central 3 vs. Baba Global Ltd. 2017 (2) TMI 346 – Delhi High Court;**
- (vi) **Pr. CIT, Central 3 vs. Dharampal Premchand Ltd.**
- (vii) **CIT, Central I vs. Jakson Engineers Ltd. 2015 (12) TMI 1523 – Delhi High Court;**
- (viii) **Smt. Jami Nirmala vs. The Pr.CIT, Bhubaneswar and Ors. dated August 10, 2021 – 2021 (8) TMI 594 – Orissa High Court; and**
- (ix) **Pr. CIT vs. Gahoi Dal 7 Oil Mills – 2019 (7) TMI 1050 – Madhya Pradesh High Court.**

17. Thus, at the threshold, the additions which have been made by the AO right from AYs 2009-10 to 2013-14 are beyond the scope of assessment u/s 153A and, therefore, the same are directed to be deleted.

18. Now, coming to the adverse inference drawn on the basis of the statement of a third party in a different search, the same cannot be considered to be an incriminating material found during the course of search in the case of assessee. It is not a case here that any

incriminating statement of any of the Director or any of the employee of the assessee company was recorded u/s 132(4) based on which any adverse inference has been drawn, albeit it is a statement of different person unrelated to the assessee during the course of another search of a third party, M/s. Hari Iron India Limited. Thus, his statement solely cannot be the basis for any addition in the case of the assessee. Otherwise also, from a bare perusal of his statement as incorporated by the AO, nowhere it is seen that assessee companies, namely, Rathi Bars Ltd. and Rathi Special Steel Ltd., had made any unaccounted sales to the parties. What he is referring is that he is a distributor of these two companies who sell material of these parties to the companies on which he received commission. In his statement, he has stated that **“W”** means without bill and that certain goods are sold without bills to the parties of their insistence. One very important fact which is to be noted here is that, neither during the course of search in the case of assessee nor it has been brought on record that in the case of search of M/s. Hari Iron India Limited, any such document was found with the nomenclature of ‘W’ which signifies that it is without bill. The statement as incorporated above does not implicate the assessee that the assessee was involved in any unaccounted sales. On the contrary, here in this case admittedly the assessee has been maintaining regular books of account and all statutory records under the sales-tax and excise laws and each and every entry of steel and iron has been recorded as well as the corresponding sales. AO was in possession of all the records including the books of account wherein he has neither found any defect or has rejected the books of account which can at least empower him to make any estimation of any profit. The entire manufacturing and trading account including the sales

have not been rejected or commented upon. Therefore, in these circumstances, the sales cannot be estimated and consequently any GP or NP rate. Accordingly, all the additions made by the AO on account of undisclosed income on sales to M/s. Hari Iron India Limited in case of both the assessee companies are directed to be deleted. Further, in the case of Rathi Bars Ltd, there is addition of Rs.2,45,856/- on account of undisclosed income on sales outside books, will also be deleted in view of our aforesaid reasoning. Accordingly, Rs.2,45,856/- is deleted.

19. In the case of Rathi Bars Limited, there was an another addition made in AY 2015-16 in ITA No.1327/Del/2018 on account of difference in stock found during the course of search of Rs.17,67,071/-.

20. The AO has noted that during the course of search, certain discrepancies were noted in stock as per the books of account vis-à-vis physical inventory. The assessee in response to show-cause notice vide letter dated 22.12.2016 has filed the entire explanation and also reconciliation and the summary sheet of stock valued at the time of search which has been incorporated in the assessment order wherein various errors were pointed out. However, the ld. AO has made addition of Rs.58,40,136/- after observing and holding as under :-

“Observation and Conclusion

The submission of the assessee has been considered but found to be devoid of merits. The assessee has submitted that the survey team has not taken the inventory of stock on actual basis instead it has been argued that the stock has been inventorised on estimation basis only. This contention of the assessee could not be accepted as the survey team has

inventorised the stock in the presence of the employees of the assessee company. Further, the assessee has submitted a detailed calculation of stock based in the ISI standards defined for a certain description of Steel Bars and has submitted that difference between the inventory of Finished Stock of Steel Bars on the basis of such standards and the Inventory of Stock of Finished Goods as per the Stock register has been reduced, This contention of the assessee could not be accepted as no documentary evidence substantiated its claim could have been furnished by the assessee during the course of assessment proceedings. Moreover, it is also found that the assessee has neither raised the issue during the course of search/ survey proceedings nor this issue was raised at post search proceedings before the Directorate of Investigation. Hence, the excess slack of Raw Material found physically is being treated as unexplained investments as per the provisions of Section 69 of the LT. Act. 1961 and the value of Excess-Stock in respect of Raw Material has been calculated at Rs.40,73,065/- (138.07 MT x Rs.29,500).

Further, with regard to the less stock found in respect of Finished Stock, Miss Roll and Scrap. It can be safely concluded that sales out of the books of accounts has been made by the assessee and due to the same, the stock found during the course of search/ survey has been less in comparison to the Inventory as per the Stock register. The amount of suppressed sales and Income arising out of such sales is being calculated as under:

S.No.	Item of Stock	Difference in Stock (MT)	Rate per MT as per purchase/ Sales bills for January 2015	Amount of Suppressed Sales	Income earned (taking manufacturing G.P. I.E. 5.86% as disclosed in regular books)
1	MS Scrap (Bi-product)	154.55	29,500	45,59,225	2,67,171
2	Steel Bars	305.953	34,600	1,05,85,974	6,20,338
3	Miss Roll	134.445	29,500	39,66,127	2,32,415
4	Sponge Iron & Scrap	3,74,355	29,500	1,10,43,472	6,47,147
	Total (Rs.)			3,01,54,798	17,67,071

Thus, the amount of Rs.40,73,065/- in respect of excess stock of Raw Material and amount of Rs.17,67,071/- as

income earned on suppressed sales has been added to the income of the assessee.

(Addition : Rs.58,40,136/-)”

21. Before the Id. CIT (A), the assessee submitted the entire reconciliation on alleged difference in stock and accepted the calculation and reconciliation filed by the assessee. His relevant finding and observation for the sake of ready reference is reproduced hereunder :-

“The appellant has submitted in ground 4 that the AO erred in making addition of Rs.58,40,136/- on account of difference in stock calculated based on estimation basis applying universally the different diameter goods as having the same length and weight. The appellant premises was covered in search and inventory was taken. The physical inventory has been taken by weighing item of one dimension and projecting the same on other similar items the appellant maintains inventory basis weight of the produce in specific category and there are small variations in diameters of the product being process based variations. The excise record and the sale bills etc are all as per the weight of the lot in transaction and it may have variations at times. The margin of error is not ruled out but based on submissions and the material placed on record, it is clear that the inventory variations cannot be determined precisely by only projecting the dimensions and weight of one item on other similar products. The AO made the additions on dual premises of physical inventory differences and backward projection of unaccounted projected sales into inventory manufactured out of books, the appellant has submitted thus:

"As such your honour, your goodself will find that the addition of Rs.40,73,065/- (138.07 MT x 29500/-) so made by the Id AO for difference in the value of excess stock in respect of raw material is illegal on facts so liable to be deleted.

In support of our claim we submit herewith the following documents

1. **Copy of Stock Register RG-23 Part I**
2. **Copy of Sales Bill (Random)**
3. **Copy of Balance Sheet with valuation of stock**
4. **Copy of Excises Returns**

For your kind perusal & doing the needful

Further, the ld. AO has observed "further, with regard to the less stock found in respect of Finished Stock, Miss Roll and Scrap, it can be safely concluded that sales out of the books of accounts has been made by the assessee and due to the same, the stock found during the course of search/survey has been less in comparison to the inventory as per the Stock Register. The amount of suppressed sales and income arising from such sale is being calculated as under". The same was calculated at Rs.17,67,071/- therefore, made addition on this account of Rs. 17,67,071/-."

In view of the discussions supra, the addition based on projected physical inventory per stock statement cannot be sustained for the margins of variation are there in products due to lax production standards and then the primary factor for invoicing the items is 'weight based' and not 'dimension based' alone. The addition on this count amounting to Rs.40,73,065/- is therefore directed to be deleted.' The AO has also made addition based on unaccounted production based on computation of unaccounted sales (relying on the admission statement as discussed above).' This component is sustainable basis the factum of unaccounted sales having been confirmed by- me in the case of the appellant and its sister concerns. Therefore the appellant gets partial relief on the terms as above in respect of ground 4. This ground is partly allowed."

22. Before us, ld. counsel pointed out that ld. CIT (A) has duly appreciated the fact, however, while deleting the addition he has mentioned the figure of Rs.40,73,065/- instead of Rs.58,40,136/- therefore, this addition should also be deleted.

23. However, from the perusal of the assessment order, we find that AO has made addition of Rs.40,73,065/- on account to excess stock of raw material and Rs.17,67,071/- on account of different items of stock as incorporated above. The ld. CIT (A) has deleted the addition of Rs.40,73,065/- and regarding the amount of suppressed sales and income from such sales of Rs.17,67,071/-, he has not given any separate finding *albeit* has held that unaccounted sales has already been confirmed by him. However, there is no clarity on this addition of Rs.17,67,071/-, therefore, we are of the opinion that ld. CIT (A) should decide this issue clearly and assessee may substantiate this issue before the ld. CIT (A). Accordingly, this ground relating to Rs.17,67,071/- is remanded back to the file of the ld. CIT (A).

24. Lastly, in the case of M/s. Rathi Special Steel Ltd., the assessee has raised an issue of Rs.9,39,813/- which is an addition on undisclosed income on the sales made out of books on the information received from Excise Department for AY 2012-13 pertaining to ITA No.1260/Del/2018.

25. First of all, it is an admitted fact that the assessment in AY 2012-13 was not abated and this addition is not based on any incriminating document or seized material albeit it is information received from Excise Department during the course of assessment proceedings. Therefore, such an addition is beyond the scope of statement u/s 153A and is directed to be deleted.

26. In ground no.14 for AY 2014-15 in the case of Rathi Special Steel Ltd. in ITA No.1262/Del/2018, the assessee has taken the ground that the AO has not allowed brought forward depreciation of Rs.59,38,469/-. Accordingly, we direct the AO to verify the claim of

brought forward depreciation and allow the same in accordance with law after giving an opportunity of being heard to the assessee to substantiate the figures of brought forward depreciation.

27. In the result, the appeals for the AYs 2009-10 to 2013-14 in the case of Rathi Special Steels Ltd. is allowed and appeal for AY 2014-15 in case of Rathi Special Steels Ltd. is allowed for statistical purposes. The appeals of Rathi Bars Limited for AYs 2009-10 to 2014-15 are allowed and for AY 2015-16, the appeal is partly allowed for statistical purposes.

Order was pronounced in open court on 28th day of February, 2022.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated: 28.02.2022
TS**

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.