

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

Sl. No.	ITA/CO No.(s)	Name of Appellant	Name of Respondent	Asst. Year
1-7.	331/RPR/2014 332/RPR/2014 333/RPR/2014 334/RPR/2014 335/RPR/2014 336/RPR/2014 337/RPR/2014	The DCIT, Central Circle, Raipur (C.G.)	Mahavir AshokEnterprises Pvt. Ltd.; Halwai Lane, Sadar Bazar,Raipur (C.G.) PAN :AABCM5742M	2006-07 2007-08 2008-09 2009-10 2010-11 2011-12 2012-13
8-14.	CO No.(s) 101/RPR/2015 102/RPR/2015 103/RPR/2015 104/RPR/2015 105/RPR/2015 106/RPR/2015 107/RPR/2015	Mahavir Ashok Enterprises Pvt. Ltd. Halwai Lane, Sadar Bazar,Raipur (C.G.) PAN :AABCM5742M	The DCIT, Central Circle, Raipur (C.G.)	2006-07 2007-08 2008-09 2009-10 2010-11 2011-12 2012-13

Assessee by
Revenue by

:Shri Amit M Jain, Advocate
:Shri P.K Mishra, CIT-DR

सुनवाईकीतारीख / Date of Hearing

:28.07.2022

घोषणाकीतारीख / Date of Pronouncement

: 29.08.2022

आदेश/ ORDER**PER BENCH :**

The captioned appeals filed by the revenue are directed against the consolidated order passed by the CIT(Appeals), Raipur, dated 26.08.2014, which in turn arises from the respective orders passed by the A.O under Sec. 153A r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act') for assessment years 2006-07 to 2011-12 AND u/s.143(3) of the Act for the assessment year 2012-13. Also, the assessee is before us as a cross-objector for the aforementioned years. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall take up the appeal filed by the revenue in ITA No.331/RPR/2014 for the assessment year 2006-07 as the lead matter and, the order passed as regards the common issues therein involved and permeating over the other years before us,

shall, apply mutatis mutandis to those years i.e AY 2007-08 to AY 2012-13. Before us the revenue has assailed the impugned order on the following grounds of appeal:

- "1. On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.36,32,610/- made on account of gross profit on unrecorded sales.
2. The CIT(A) has overlooked the fact that the entire purchases and sales were not recorded resulting in discrepancy in stock, which is a good evidence of unrecorded sales.
3. On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.34,79,761/- made on account of initial unaccounted investment.
4. On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.1,66,70,000/- made on account of share application/capital received an unexplained cash credits u/s.68 of the Income Tax Act, 1961.
5. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the facts that the creditworthiness and the genuineness of the transactions has not been established by the appellant. There are evidence to the contrary produced by the department which establishes that the investors did not have the income earning apparatus and hence did not have creditworthiness.
6. The CIT(A) has erred in passing the appellate order wherein he has stated in a perverse manner while passing the order which has been made in haste without giving reasonable opportunity to the AO to give his submissions on the issues."

On the other hand the assessee on certain common grounds which permeates in the years under consideration before us i.e AY 2006-07 to AY 2012-13, has objected to the order of the CIT(Appeals) before us, as under :

- "1 "On the facts and in the circumstances of the case, the Ld. Assessing Officer is quasi-judicial authority who did not act independently in making the inquiries and in framing the impugned assessment which is a quasi-judicial act; but was greatly influenced and carried away by the directions /instructions issued by the authorities of Investigation Wing as contained in their appraisal report and instructions not to

deviate therefrom. The impugned assessment orders being at the behest of some other authority are vitiated in law being illegal and liable to be struck down."

2. "On the facts and in the circumstances of the case, the addition made in this assessment is beyond the scope of second proviso to section 153A(1) and therefore bad in law."

2.1 As the revenue has assailed the order of the CIT(Appeals) on certain common and overlapping grounds for AY 2006-07 to AY 2012-13, therefore, the same for the sake of brevity are not being separately culled out.

3. Succinctly stated, the assessee company is primarily engaged in the business of a jeweler and is also running a hotel under the name and style of Hotel Madhuban at Sadar bazar, Raipur. Search and seizure proceedings were conducted at the residential/business premises of the assessee and its associate concerns u/s.132 of the Act on 21.03.2012. Also, survey u/s. 133A of the Act was conducted at the premises of M/s. Hotel Madhuban, Raipur. As is discernible from the orders of the lower authorities, certain books account, documents, loose papers etc. were seized from the business premises of the assessee during the course of search and seizure proceedings. Also, certain books

of accounts, loose papers, documents etc. were impounded in the course of survey action.

4. Consequent to the search proceedings, notices u/s.153A of the Act dated 02.09.2013 were issued to the assessee calling upon it to file its returns of income for A.Y.2006-07 to A.Y. 2011-12. In compliance, the assessee company filed its returns of income for the AY2006-07 to AY2011-12, as under:

A.Y.	Date of filing of return u/s.139(1)	Returned income (in Rs.)	Date of filing of return by the assessee against notice u/s.153A	Declared return u/s.153A in income	Additional income offered by the assessee in (Rs.)
2006-07	30.11.06	Nil (Rs.936124 as per 115JB)	15.10.2013	NIL	NIL
2007-08	31.10.07	9,26,820/-	15.10.2013	9,26,820/-	NIL
2008-09	30.09.08	15,63,190/-	15.10.2013	15,63,190/-	NIL
2009-10	30.09.09	1,93,28,480/-	15.10.2013	1,93,28,480/-	NIL
2010-11	10.01.10	74,94,110/-	15.10.2013	74,94,110/-	NIL
2011-12	31.12.11	94,36,170	15.10.2013	1,39,36,170/-	45,00,000/-

Also, the assessee in compliance to the notice issued u/s.142(1) of the Act, dated 01.11.2013 filed its return of income for the A.Y 2012-13 on 17.10.2013, declaring an income of Rs.2,64,99,750/- . In its return of income for the aforesaid year i.e. A.Y.2012-13,

the assessee had come forth with a disclosure of an undisclosed income of Rs.2,25,67,400/-, as under:

A.Y.	Head	Amount (Rs.)
2011-12	Advance for land	45,00,000/-
2012-13	Stock	1,79,75,154/-
2012-13	Cash	92,246/-
	Total	2,25,67,400/-

5. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had during the period relevant to A.Y.2006-07 and A.Y.2008-09 received share application money from various Kolkata/Mumbai based paper companies and an in-house associate concern, viz. M/s. Jewelers Mahavir Ashok Pvt. Ltd., as under:

Share Application money detail for F.Y.2005-06

Name and Address	PAN	Amount	Mode of receipt
Vinayak Tie Up Pvt. Ltd. 164, Regent Estate, Kolkata	AAACV9003D	2000000	Cheque
Sampark Consultant Ld. 132, Connon Streeet, 1 st Floor, Kolkata	AADCS5312B	2200000	Cheque

ShivarpanVanijyaPvt. Ltd. 132, Connon Street, 1 st Floor, Kolkata	AAECS1088D	800000	Cheque
Ranjana Comotrade Pvt. Ltd. 132, Connon Street, 1 st Floor, Kolkata	AABCR3855J	1000000	Cheque
Exim Scrips Services Pvt. Ltd. 9/12, Lal Bazar Street, Block-E, 4 th Floor, Kolkata	AAACE5996J	2000000	Cheque
Times Tracon Pvt. Ltd. 2, Lal Bazar Street, Block-E, 2 nd Floor, Kolkata	AABCT0266B	800000	Cheque
Shakti Traders Pvt. Ltd. 9/12, Lal Bazar Street, Block-E, 4 th Floor, Kolkata	AADCS5600A	1500000	Cheque
Chitravali Barter Pvt. Ltd. IB, H/35, Dumdum Road, Kolkata	AABCC0913B	200000	Cheque
Bhagyashree Trading Pvt. Ltd. 12, Cotton Street Kolkata	AABCB9538N	500000	Cheque
Red Rose Supply Pvt. Ltd. 14-C, Maharshi Devendra Road, 4 th Floor, Kolkata	AACCR0638N	2470000	Cheque
Nivedita Commercial Pvt. Ltd. 132, Connon Steeet, 1 st Floor, Kolkata	AAACN9720D	700000	Cheque
Upkar Merchants Pvt. Ltd. 9, Rajnisen Road, Ground Floor, Kolkata	AAACU7970Q	1250000	Cheque

Orchid Consultancy Pvt. Ltd. DBS-212, 2 nd Floor, Raheja Chamber, Mumbai	AAACO5211E	550000	Cheque
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Share application money detail for F.Y 2007-08

Name and Address	PAN	Amount	Mode of receipt
Anika Tie Up Pvt. Ltd. 52/1, College Street, 1 st Floor, Kolkata	AACCA5232B	2000000/-	Cheque
Easter Credit Capital 27, Weston Street, 5 th Floor, Kolkata	AAACE4526A	500000/-	Cheque
Kusum Vanijya Private Limited 137/12, NarikelDanga Main Road, Kolkata	AADCK1895P	1500000/-	Cheque
Krishna Dealers Private Limited 137/12, NarikelDangaMain Road, Kolkata	AADCK1893M	1500000/-	Cheque
Jewellers Mahavir Ashok Pvt. Ltd. 126/128, Trimurti Estate, Zaveri Bazar, 2 nd floor, Mumbai	AAACJ1938K	10500000/-	Cheque

Consolidated year-wise receipt of share capital money by the assessee company, as culled out by the AO in the body of his assessment order reads as under:

A.Y.	Share capital money received	Remarks
2006-07	1,66,70,000/-	Received from Kolkata based paper companies

2008-09	1,60,00,000/-	Rs.1,05,00,000/- received from in-house company, Jewellers Mahavir Ashok Pvt. Ltd., rest from Kolkata based paper companies
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The A.O called upon the assessee to substantiate the authenticity of the aforesaid receipt of share application money for the years in question i.e. A.Y. 2006-07 and A.Y.2008-09. In reply, it was submitted by the assessee that in so far the share application money that was received during the period relevant to A.Y.2006-07 was concerned, the same had earlier been scrutinized by the A.O while framing assessment u/s.143(3) for the said year. It was the claim of the assessee that the A.O while framing the regular assessment had after vetting the supporting documentary evidence which were filed before him to substantiate the genuineness of the share application money, had after exhaustive deliberations accepted the same. Also, it was the claim of the assessee that as no adverse material was found during the course of the search proceedings which would justify dislodging the genuineness of the transactions in question, therefore, the assessee could not be called upon to prove the same again in

terms of section 68 of the Act. Apropos, the share application money that was received during the period relevant to A.Y.2008-09, it was submitted by the assessee that an amount of Rs.1.05 crore was received by the assessee company from its associate concern, viz. M/s. Jewellers Mahavir Ashok Pvt. Ltd. Apart from that, the assessee in order to substantiate the identity and creditworthiness of the share applicants a/w. genuineness of the transactions filed before the A.O certain supporting documentary evidences, viz. (i). certificates of incorporation of the share applicant companies; (ii). PAN Nos. of the share applicants.; (iii). audited balance sheets and P & Loss accounts of the share applicants; (iv). income-tax returns a/w computation of income of the share applicants; and (v). bank statements of the share applicants. It was stated by the assessee that it had issued shares to the share applicants at Rs.500/- per equity share, which included a premium of Rs.400/- per equity share. Justifying the share premium of Rs.400/- per equity share that was charged, it was the claim of the assessee that considering its present net

worth, the value of one equity shares worked out at Rs.2165/- while for the same was issued for Rs.500/- (inclusive of premium of Rs.400/-). Accordingly, it was claim of the assessee that the share premium so charged was duly justified.

6. Alternatively, it was the claim of the assessee that even if the share applicants were to be held as bogus, then, as their complete credentials had been provided, no addition as regards the share application money received from them could be validly made in its hands. In support of its aforesaid contention the assessee had placed reliance on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC) and that of the Hon'ble High Court of Chhattisgarh in the case of M/s. Venkateshwar Ispat Pvt. Ltd., IT Appeal No.24/2006 dated 01.05.2009. Observing, that the assessee had duly discharged the onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the transaction of having received share application money from its group company, viz. M/s. Jewellers Mahavir Ashok Pvt. Ltd., Mumbai,

the A.O accepted its claim to the said extent. However, the AO not finding favor with the explanation of the assessee that it had received genuine share application money from the Kolkata/Mumbai based companies, thus, rejected the same. Reasons given by the A.O for drawing adverse inferences as regards the share application money that was claimed by the assessee to have been received from Kolkata/Mumbai based companies was summed up by him as under:

“(i) The entire investment by these companies had been made in unquoted and private companies.

(ii) The net income is shown either nil or very low which clearly suggests that these companies are accommodation entry providers only.

(iii) The common feature which emerges from the perusal of the balance sheets and profit and loss accounts of all these companies is that these companies has entire investments in unquoted shares from which no income is being earned.

(iv) The turnovers of these companies are not commensurate with the net worth of the company. Further, there is either loss or negligible profit.

(v) It is also notable here that the reserves & surplus are many times higher than share capital which in turn suggest that these companies have also raised share capital on substantial premium from dummy share holders/ accommodation entries. Their share premium is also not justified considering the fact that all these companies have no profitability. Therefore, it can be inferred that these companies are only paper companies.”

Accordingly, the A.O held the share application money that was claimed to have been received by the assessee from

Kolkata/Mumbai based companies as unexplained cash credit u/s. 68 of the Act, as under:

A.Y.	Share capital money received
2006-07	1,66,70,000/-
2008-09	55,00,000/-

It was further observed by the A.O that during the course of search and seizure proceedings at the shop of the assessee company at Sadar Bazar, Raipur, certain pieces of torn papers were retrieved from a dustbin by the search team. It was observed by the A.O that the said pieces of paper were found to be torn parts of a computer printout titled as "Product Sales Summery" wherein there was a reference of various months of FY 2011-12 till February, 2012. It was observed by the A.O that one of the torn piece of paper stated total sales of Rs.67,98,08,604.90 (rounded to Rs.67,98,08,605/-). It was observed by the A.O that the aforesaid torn pieces of paper were during the course of search proceedings placed in an envelope that was stapled and signatures of the witnesses were obtained on the same. It was

also observed by the A.O that the aforesaid envelope was made part of the statement of Shri Kamlesh Burad. It was further observed by the A.O that Shri Kamlesh Burad (supra) had in his statement informed that Shri Pradeep Jain (Accountant) and Shri Chandrakant Rajput occupied the cubicle from where the aforesaid torn pieces of paper were retrieved. It is the claim of the A.O that the aforesaid persons could not be contacted because the directors of the assessee company had refused to divulge their residential addresses on one pretext or the other. It was observed by the A.O that the contents of the aforesaid torn papers was in fact the actual data of sales that were carried out by the assessee company till February, 2012. Reasons for inferring that the torn pieces of documents contained correct sales of the assessee company till February, 2012, had been culled out by the A.O in his assessment order, as under:

"1. These pieces of papers have been reviewed by a responsible person who had placed notings on them in his own hand writing.

2. Shri Kamlesh Burad agreed that items mentioned in the pieces of papers are sold from his shop at Sadar Bazar.

3. The unaccounted stock was found at the time of search which has also been duly admitted by the assessee in its returns of income filed under section 153A of the Act. As per the admission of the assessee in returns of income filed under section 153A

the stock of gold and diamond was in excess during the assessment year 2012-13. Thus, the assessee has itself admitted the fact of unaccounted stock and unaccounted sales during the A.Y.2012-13.

4. During the course of search action, estimate/approval slips were found and seized. This approval slips have been stated to be used for sale of various items. In his statement Shri Praveen Burad stated that after making sale, estimate slips were destroyed by them. The relevant portion of his statement is scanned below for ready reference.

5. The shop is installed with a CCTV camera which records all the details of day to day activities of shop. During the course of search and seizure action, Shri Kamlesh Burad was unable to explain properly as to how a customer who makes purchases from his shop on approval basis could come and return the item or replace the item.

6. In his statement given on 27.03.2012, Shri Pravin Burad has accepted that there are transactions which are left to be included in the books of accounts and hence after understanding the transactions he was making a voluntary disclosure.”

On the basis of his aforesaid observations, the A.O was of the view that the assessee company was engaged in out of books sales of jewellery and various other valuable items. It was observed by the A.O that the admission by the assessee company that many of their sale transactions are not recorded in the books of account fortified his aforesaid conviction. Observing, that the aforesaid facts revealed beyond doubt that the books of account of the assessee company did not reveal the true and correct affairs of its business activities, the A.O called upon the assessee to put forth an explanation as to why the same may not be rejected and its correct turnover a/w. the profit arising therefrom

be not estimated on the basis of the contents of the torn papers of the computer printout document, as under:

"Average turnover for one month= 67,98,08,605/9
=Rs.755,34,290/-

Average turnover for 17 days = 75534290*17/30
=Rs.4,28,02,764/-

Corrected Turnover till March 17,2012=67,98,08,605+4,28,02,764
=Rs.72,26,11,370/-

b. Turnover Reflected in the Trial balance as on 17th March 2012
=Rs.248599411/-

c. Difference in actual turnover and the turnover reflected in the Trial balance as on 17th March 2012= Rs.47,40,16,959/-

The amount of Rs.47,40,16,959/- is considered as the unaccounted turnover of the assessee for the FY 2011-12 till 17th March 2012. This is besides the regular turnover of Rs.24,85,99,411."

Also, the A.O called upon the assessee to explain as to why on similar lines its sales for the six years preceding the year of search i.e. A.Y.2006-07 to AY.2011-12 may not be estimated in the following manner:

"Total turnover (actual) found during the course of search: Rs.72,26,11,370/-
Total turnover depicted in the books of accounts: Rs.24,85,99,411/-

Ratio of Total turnover to the accounted turnover: 2.90 Times

The ratio of 2.90 times is being applied on the declared turnover of the concern Mahavir Chand Ashok Kumar Jewellers, a division of Mahavir Ashok Enterprises private limited to arrive at the correct figures of income of the concern:

Sr. No.	Financial Year	Accounted Sales (In Rs.)	Unaccounted sales (in Rs.)	Total sales
1	2005-06	21603390	41046441	62649831
2	2006-07	249772167	474567117	724339284

3	2007-08	253814302	482247174	736061476
4	2008-09	279721254	531470383	811191637
5	2009-2010	393026025	746749448	1139775473
6	2010-2011	267649905	508534820	776184725
7	2011-12	272846518	518408384	791254902
Total unaccounted sales		330,30,23,767		

Further, the AO referring to the GP rate that was disclosed by the assessee for the year of search i.e AY 2012-13 a/w those of the preceding six years i.e AY 2006-07 to AY 2011-12, as under:

Mahavir Ashok Enterprises Pvt. Ltd.						
Sadar Bazar, Raipur, Chhattisgarh						
S. No.	Financial year	Net sales	Income from hotel	Total	Gross profit	Gross profit %
1	2005-06	21603390.00	693751.00	22297141.00	3119176	13.99
2	2006-07	249772167.00	734265.00	250506432.00	12643478	5.05
3	2007-08	253814302.00	1550741.00	255365043.00	14662936	5.74%
4	2008-09	279721254.00	2210320.00	28193574.00	33701400	11.95%
5	2009-2010	393026025.00	3211896.00	396237921.00	22422749	5.66%
6	2010-2011	267649905.00	3302657.00	270952562.00	25394169	9.37%
7	2011-12	276722956.00	3876438.00	280599394.00	28187514	10.19%

,thus, called upon the assessee to explain as to why its unaccounted income w.r.t the undisclosed sales may not be determined by applying the mean/average GP rate of the aforesaid seven years i.e @8.85%. Also, the AO called upon the assessee to put forth an explanation as to why addition towards initial unaccounted investment that would have been involved

towards seed money for carrying out the aforesaid undisclosed turnover may not be taken at Rs.34,79,761/- in AY 2006-07.

7. In reply, the assessee assailed the very basis relying on which the A.O had inferred its undisclosed sales and the unaccounted income arising therefrom a/w. the addition towards initial unaccounted investment. It was the claim of the assessee that as the alleged torn pieces of computer printout that was claimed by the department to have been retrieved from a dustbin lying in its shop at Sadar Bazar, Raipur did not find place in the list of seized loose papers/documents that were inventorised during the course of search proceedings, therefore, it had not been able to obtain a photocopy of the same. Once again, the assessee requested for a copy of the seized document, if any, which was being relied upon by the department for inferring undisclosed sales etc. It was further the claim of the assessee that if there was no evidence of seizure of alleged torn papers from its premises, then, there was no justifiable basis for drawing of adverse inferences in its hands. Alternatively, it was submitted

by the assessee that as the alleged torn papers referred to “Product Sales Summery” of Rs.67.98 crore (approximately) for the period April, 2011 to February, 2012 (as claimed by the department), then, there was no justification on the part of the department to extrapolate the said turnover and compute the income by so doing for the period relevant to the preceding six years, i.e, AY 2006-07 to AY 2011-12.

8. Confronted with the objection of the assessee as regards the adverse inferences which were sought to be drawn by referring to the torn pieces of computer-generated printout, the A.O vide his letter dated 05.02.2014 called upon the assessee to remain present during the course of opening of the envelope containing the aforesaid torn papers on 26.02.2014. On 26.02.2014, the DDIT (Inv.)-II and an Income-Tax Inspector in the presence of the director of the assessee company and two independent witnesses opened the envelope which was stated to have contained the torn pieces of papers that were retrieved from a dustbin in the course of search proceedings conducted at the assessee’s premises. On

opening of the envelope, it was therein noticed that hundreds of torn pieces of papers were therein lying. Although, the departmental officials for six hours tried their level best to put up the torn pieces of papers together to reconstruct the original sheets and pasted on certain portions of a partly constructed sheet a transparent cello tape so that the contents of the same could be read, but the entire exercise was possible only in few cases and that too partly. In other words none of the sheets could be reconstructed in entirety.

9. As observed by the AO, the departmental officials after carrying out the aforesaid exercise till 5 O'clock in the evening, having failed to reconstruct the original sheets of which the torn papers were claimed to have formed part of, thus, sealed the said envelope in the presence of the aforesaid persons. For the sake of clarity the contents of the panchnama dated 26.02.2014 in respect of closing of the envelope is culled out as under:

"Panchnama dated 26.02.2014 in respect of closing of envelope forming part of statement Shri Kamlesh Burad recorded on 25.03.2012

As detailed in the panchnama of even date, 11:00 AM (for opening of closed envelope under reference), the closed envelope under reference was opened in presence of Shri Kasturchand

Burad and Shri Gaurav Burad along with the witnesses and other persons. The envelope contained hundreds of torn pieces of paper which apparently formed parts of sheets containing accounting statements. It was extremely difficult to put the torn papers together to reconstruct the original sheets, of which these torn papers formed part of. After nearly six hours of continuous effort, portions of the sheets, to which the torn pieces apparently belonged originally, were put, together. These were pasted with transparent cello-tape so that it was possible to read the printed content of these torn papers. It was possible only in few cases, that too partly. In other words, none of the sheets could be reconstructed in entirety. The exercise was carried out till five 'o' clock in the evening. Finally the envelope was sealed in the presence of the two witnesses and the rest of the persons present as detailed in the panchnama.

The following other persons were present during this exercise, who have also signed this panchnama in token of their presence and correctness of the content of this panchnama.

1. Shri KasturchandBurad, s/o late Shri Khetmal Ji Burad, aged 76 yrs, r/o Sadar Bazaar, R.aipur (CC)
2. Shri Gaurav Burad, s/o Shri Praveen Burad, aged 26 yrs, r/o Sadar Bazaar, Raipur (CG)
3. Shri Ram Tiwari, DDIT (Inv.)-II, Raipur (CG)
4. Shri Dheeraj Arya, ITI, 0/0 the DCIT (Central), Raipur (CU)

Sd/- (RituparnNamdeo) Sd/- (KasturchandBurad) Sd/- (Gaurav Burad) Sd/- (Ram Tiwari) Sd/- (Dheeraj Arya)

DCIT (Central)
Raipur

DDIT (Inv.)-II,
Raipur

Witness : Sd/-
(Anil Jain)

Sd/-
(Gajendra Sahu)"

At this stage, we may herein observe that though it is the claim of the department that the closing of the envelope formed part of the statement of Shri Kamlesh Burad (supra) that was recorded on 25.03.2012, however, the same as observed by us hereinabove had throughout been rebutted by the assessee.

10. As regards the claim of the A.O that Sh. Kamlesh Burad (supra) had in his statement recorded on 25.03.2012 had therein stated that the copy of the torn pieces of the computer printout which were retrieved in the course of the search proceedings from a dustbin lying in the assessee's shop at Sadar Bazar, Raipur, were thereafter kept in an envelope, was rebutted by the assessee on the ground that a perusal of the statement of Shri Kamlesh Burad (supra) nowhere revealed that he had ever so stated. It was the claim of the assessee before the AO that the inventory of the seized documents/loose papers did not bear any reference about the torn papers which were allegedly claimed by the department to have been retrieved in the course of the search proceedings from a dustbin lying in the its premises.

11. On the basis of the aforesaid facts as regards the opening of the envelope and the futile attempt on the part of the officials of the department to reconstruct the original sheet of which the aforesaid hundreds of torn pieces of paper apparently belonged, the assessee had in the course of the assessment proceedings

submitted before the A.O that now when the department had failed to reconstruct the torn papers, and thus, not provided a photocopy of the alleged document, therefore, no adverse inferences on the basis of the same could thereafter be drawn in its hands. Apart from that, the assessee objected to the drawing of the adverse inferences by the department without making available the copy of the torn papers. It was further stated by the assessee that neither the aforesaid torn papers that were allegedly claimed to have been retrieved from a dustbin formed part of the inventory of seized loose papers/documents, nor there was any mention of the same in the statement of Shri Kamlesh Burad (supra) that was recorded on 25.03.2012. Referring to the photocopy of the envelope which on request was provided to the assessee, it was therein stated that the said envelope unlike other bundles of seized loose papers was not sealed and was simply closed by a staple pin. It was further stated that the marks of staple pins on the envelope revealed that the same had been opened few times before 26.02.2014 i.e. in the absence of the

assessee. Also, the assessee objected to the fact that the envelope in question did not bear the signature of the authorized officer who had allegedly seized and sealed it. It was, thus, the claim of the assessee that the aforesaid torn papers had no evidentiary value.

12. Alternatively, it was claimed by the assessee that as on the date on which search proceedings were conducted i.e. on 21.03.2012, the respective assessments in its case for assessment years 2006-07 to 2010-11 had not abated, therefore, in absence of any incriminating materials found in the course of the search proceedings for the said respective years no addition could have been validly made u/s.153A of the Act. Elaborative contentions a/w. supporting judicial pronouncements were pressed into service by the assessee to drive home his contentions that where as on the date on which search proceedings are conducted on an assessee, the assessments in its case are not pending, and thus, are unabated, then, in the absence of any incriminating material found during the course of such

proceedings no addition in the case of unabated assessment could validly be made u/s.153A of the Act.

13. The A.O not finding favour with the aforesaid objections that were filed by the assessee before him, therein, relying on the aforesaid torn pieces of the computer printout document titled as “Product Sales Summary” estimated the undisclosed sales of the assessee for the A.Y.2006-07 to A.Y.2012-13, as under:

S. No.	Financial year	Unaccounted sales (in Rs.)	Unaccounted Gross profit @8.85%
1	2005-06	41046441	3632610
2	2006-07	474567117	41999190
3	2007-08	482247174	42678875
4	2008-09	531470383	47035129
5	2009-2010	746749448	66087326
6	2010-2011	508534820	45005332
7	2011-12	518408384	45879142
		3303023767	292317604

On the basis of his aforesaid deliberations and considering the undisclosed income that was declared by the assessee in his return of income for two years i.e. A.Y.2011-12 and A.Y 2012-13,

the A.O worked out the undisclosed income of the assessee for the aforementioned years, as under:

A.Y.	Undisclosed income earned by the assessee	Undisclosed income shown by the assessee in its books of account (in Rs.)	Undisclosed income to be added to the total income of the assessee
1	2	3	4=2-3
2006-07	3632610	Nil	3632610
2007-08	41999190	Nil	41999190
2008-09	42678875	Nil	42678875
2009-2010	47035129	Nil	47035129
2010-2011	66087326	Nil	66087326
2011-2012	45005332	45,00,000	4,05,05,332
2012-13	45879142	1,80,67,400	2,78,11,742

Also, the A.O as earlier proposed made an addition of Rs.34,79,761/- towards initial undisclosed investment in the hands of the assessee for the A.Y.2006-07. Apart from that, the A.O taking cognizance of the fact that in the course of the search proceedings the physical stock taking of watches revealed a deficit stock of Rs. 8,50,431/-, thus, made an addition of Rs. 86,659/- i.e profit @ 1.19% of the amount of undisclosed sales of Rs.8,50,431/-. Accordingly, the A.O on the basis of his aforesaid deliberations vide his respective orders passed u/s.153A r.w.s. 143(3) of the Act determined the income of the assessee for the

A.Y 2006-07 to A.Y.2011-12 and u/s. 143(3) of the Act for the A.Y.2012-13, as under:

A.Y	Amount
2006-07	Rs.2,37,82,370/-
2007-08	Rs.4,29,26,010/-
2008-09	Rs.4,97,42,070/-
2009-10	Rs.6,63,63,610/-
2010-11	Rs.7,35,81,440/-
2011-12	Rs.5,44,41,500/-
2012-13	Rs.5,43,98,150/-

14. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As regards the addition of Rs.1,66,70,000/- (A.Y2006-07) and Rs.55,00,000/- (A.Y2008-09) that was made by the A.O by treating the share application money received by the assessee from certain companies as an unexplained cash credit u/s. 68 of the Act, it was observed by the CIT(A) that the receipt of amounts by the assessee company towards share application/share capital was duly accepted by the A.O while framing the original assessment its case under Sec. 143(3) for

A.Y.2006-07. Observing, that the A.O had neither come forth with any allegation that the assessee was a beneficiary of certain accommodation entry providers nor had placed on record any evidence which would rebut the documents that were submitted by it to substantiate the creditworthiness of the share applicants to make the respective investment towards share application/share capital of the assessee company, the CIT(A) was of the view that the A.O had failed to disprove the claim of the assessee of having received genuine share capital/share premium from the share applicants. Also, it was observed by the CIT(Appeals) that the audited financial statements of the share applicant companies revealed their creditworthiness to make investments under consideration. Considering the fact that the assessee company had in the course of the assessment proceedings furnished the names and addresses, income-tax credentials, PAN Nos., certificates of registration from ROC and bank statements of the share applicants, the CIT(A) was of the view that there was no justification on the part of the A.O to have

summarily drawn adverse inferences as regards the authenticity of the respective transactions of receipt of share application money without rebutting the aforesaid documentary evidences that were filed by the assessee before him. It was observed by the CIT(A) that the A.O as a matter of fact had not brought on record any material/evidence and had merely acted upon the information that was received by him from the Investigation Wing of the department. After drawing support from the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Export (P) Ltd., 216 CTR 195 (SC) and that of the Hon'ble High Court of Delhi in the case of CIT Vs. Divine Leasing and Finance Limited (2008) 299 ITR 268 (Del), the CIT(Appeals) was of the view that now when the assessee had duly discharged the onus that was cast upon it as regards proving the authenticity of the transactions in question, therefore, the A.O without placing on record any material proving to the contrary was not justified in dubbing the same as unexplained cash credits u/s 68 of the Act. Accordingly, the CIT(Appeals) on the basis of his aforesaid

observations vacated the respective additions of Rs.1,66,70,000/- and Rs.55,00,000/- for the A.Y.2006-07 & 2008-09 that were made by the A.O u/s.68 of the Act.

15. Adverting to the addition that was made by the A.O on the basis of the torn papers that were allegedly stated to have been retrieved in the course of the search proceedings on the assessee company from a dustbin lying in its shop at Sadar Bazar, Raipur, it was observed by the CIT(Appeals) that as stated by the assessee, and rightly so, the torn pieces of paper did not find place in the inventory of seized documents. Also, the CIT(Appeals) concurred with the claim of the assessee that the statement of Shri Kamlesh Burad (supra) did not make any reference to the torn papers. Referring to the Panchnama dated 26.02.2014, it was observed by the CIT(Appeals) that though the department had tried its level best to put hundreds of torn papers together and reconstruct the original sheets, however, even after carrying out such exercise for six hours none of the sheets could be reconstructed and read in entirety. It was further observed by the

CIT(Appeals) that the torn pieces of papers were thereafter put back in the envelope and the same was finally sealed, and photocopy of the torn papers were never made available to the assessee company. Considering the aforesaid facts, the CIT(Appeals) after exhaustive deliberations on the issue in hand, was of the view that no credence could be given to such torn papers which could not be reconstructed in its entirety by the department even after exhausting six hours and were not readable. The CIT(Appeals) was of the view that now when the contents of the torn papers could not be read therefore, it was beyond comprehension that the A.O by referring to the same could have inferred that the assessee had indulged in carrying out unaccounted sales in all the years under consideration. It was observed by the CIT(Appeals) that the A.O except for harping upon the torn pieces of documents, had however not placed on record any such material which would evidence that the undisclosed sales of the aforesaid magnitude were carried out by the assessee over the years. It was observed by the CIT(Appeals)

that an addition that is merely based on suspicion could by no means be held to be justified. Also, it was observed by the CIT(Appeals) that the A.O had brushed aside the objections/submissions that were advanced by the assessee a/w. supporting evidences that were placed on his record in the course of the assessment proceedings. In order to fortify her aforesaid conviction, it was observed by the CIT(Appeals) that as no unrecorded asset or investment with which the undisclosed income of a substantial magnitude worked out by the A.O could be co-related had surfaced during the course of search proceedings, thus, the said fact in itself fortified the assessee's claim that the additions made by the AO were in thin air and baseless. Alternatively, it was observed by the CIT(Appeals) that there was no justification in the extrapolation of the alleged undisclosed sales of the assessee for A.Y.2012-13 to the other years i.e. A.Y.2006-07 to A.Y.2011-12. Also, it was observed by the CIT(Appeals) that no photocopy of the torn pieces of paper which had been acted upon by the A.O for drawing adverse

inferences as regards the alleged undisclosed sales of the assessee were despite repeated requests made available to it in the course of the assessment proceedings. It was, thus, observed by the CIT(Appeals) that the failure on the part of the A.O to make available copy of the torn pieces of paper which were pressed in service by him for making additions in its hands was clearly in violation of the basic tenements of the principles of natural justice. Accordingly, the CIT(Appeals) being of the view that as the A.O had failed to bring on record any evidence which would prove that the assessee had indulged into unaccounted sales, which in turn would had have triggered estimation of profit in its hands, thus, vacated the addition so made by him on the said count.

16. Adverting to the claim of the assessee that as on the date of search i.e. on 21.03.2012 the assessments in its cases for A.Y.2006-07 to A.Y.2011-12 were unabated, therefore, in absence of any incriminating evidence found in respect of the said years no addition could have been made u/s.153A of the Act, the same

did not find favor with the CIT(Appeals). Observing, that as pursuant to a search initiated u/s.132 of the Act, the assessment of the assessee for six years stands reopened, the CIT(Appeals) was of the view that the A.O had full power to assess the income which has escaped assessment, whether or not the same was found as a result of search or otherwise. Accordingly, the CIT(Appeals) was of the view that addition made by the A.O for the aforementioned years i.e. A.Y.2006-07 to A.Y.2011-12 were well within the powers which were assigned to him u/s.153A of the Act. On the basis of her aforesaid observations the CIT(Appeals) partly allowed the assessee's appeal.

17. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

18. Also, the assessee company by way of cross-objections had, inter alia, assailed the very validity of the jurisdiction that was assumed by the A.O for making additions u/s.153A of the Act in A.Y.2006-07 to A.Y.2010-11, on the ground that no such addition could have validly been made in the absence of any incriminating

evidence found in the course of the search proceedings in a case where as on the date of search the assessments in the case of the assessee are unabated.

19. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his aforesaid contentions.

20. As the Ld. Authorized Representative (for short 'AR') for the assessee has assailed before us the validity of the jurisdiction that was assumed by the A.O for making the impugned additions u/s.153A of the Act i.e. with respect to unabated assessments for A.Y.2006-07 to A.Y.2010-11, therefore, we shall first deal with the same. It is the claim of the Ld. AR before us that now when no incriminating material for the aforesaid years in question i.e. A.Y.2006-07 to A.Y.2010-11 was found in the course of the search proceedings, therefore, as per the settled position of law no addition could have been made by the A.O in respect of

unabated assessments for the said years while framing the respective assessments u/s.153A of the Act.

21. Per contra, the Ld. Departmental Representative (for short 'DR') rebutted the aforesaid claim of the assessee's counsel. It was submitted by the Ld. DR that now when the case of the assessee was reopened pursuant to the search proceedings, therefore, the A.O was well within his jurisdiction to have made additions in respect of the undisclosed income of the assessee, whether or not the same was based on any incriminating material found during the course of search proceedings or otherwise.

22. We have given a thoughtful consideration to the aforesaid issue and find substance in the claim of the Ld. AR that where on the date of search the assessment in the case of the assessee are unabated, then, in absence of any incriminating material surfacing in respect of the said year, no addition could validly be made by the A.O while framing the assessment u/s.153A of the Act. Our aforesaid view is fortified by the order of the Income Tax Appellate Tribunal in the case of Smt. Sanjana Mittal Vs. DCIT,

CC-2, Jalandhar, ITA No.487/ASR/2018, dated 11.03.2019 (to which one of us, the JM was a party). In its aforesaid order, the Tribunal after drawing support from the judgment of the Hon'ble High Court Delhi in the case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del) and that of the Hon'ble High Court of Bombay in the cases of CIT vs. Murli Agro Product (ITA No. 36/2009) (Bom) and Commissioner of Income-tax Vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom), had observed, that where as on the date of the initiation of search and seizure proceedings under section 132 of the Act, no assessment proceedings for the year under consideration were pending, then, in the absence of any incriminating evidence found during the course of search and seizure proceedings no addition/disallowance could have been made in respect of the unabated assessment of the assessee for the said year. The relevant observations of the Tribunal are culled out as under:

"9. We have deliberated at length on the issue under consideration, and find that our indulgence in the present appeal has been sought for adjudicating as to whether in the case of the assessee where the assessment proceedings had not abated at the time when the search and seizure proceedings were conducted, any addition could validly be made in the absence of any incriminating material found during the

course of the search and seizure proceedings. Admittedly, in the case before us no incriminating material was found during the course of the search and seizure proceedings conducted under section 132 of the I.T. Act on 11.02.2016. Apart therefrom, the fact that the assessment proceedings in the case of the assessee were not abated at the time when the search and seizure proceedings were conducted has also not been controverted by the learned D.R in the course of the proceedings before us.

10. We have deliberated at length on the issue under consideration, and are of the considered view that in a case where no assessment proceedings are pending on the date of the search and seizure proceedings, the assessment under section 153A can be carried out only on the basis of seized material. In a case, where no incriminating material is unearthed during the course of search proceedings and the assessment proceedings remain unabated as on the said date, no additions can be validly made in the hands of the assessee. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Delhi in the case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del). Apart therefrom, a similar view had also been taken by the Hon'ble High Court of Bombay in the case of CIT vs. Murli Agro Product (ITA No. 36/2009) (Bom) and Commissioner Of Income-tax Vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom). In the aforementioned cases, it has been observed by the High Court that as on the date of the initiation of search and seizure proceedings under section 132 of the IT Act, as no proceedings for the year under consideration were pending, therefore, in the absence of any incriminating evidence found during the course of search and seizure proceedings no addition/disallowance could have been made in respect of the unabated assessment of the assessee for the said year. In the backdrop of the aforesaid settled position of the law, we are of the considered view that as on the date of the search and seizure proceedings no assessment proceedings were pending in the case of the assessee, therefore, in the absence of any incriminating material having been found in the course of such proceedings no addition could have been validly made in the hands of the assessee. We thus not being able to persuade ourselves to subscribe to the view taken by the CIT(A) who had upheld the order of the A.O, thus set aside his order and vacate the addition of Rs.1,00,000/- that was sustained by him.

11. The appeal of the assessee is allowed in terms of our aforesaid observations."

On the basis of our aforesaid observations, we concur with the claim of the Ld. AR that now when as on the date of the initiation of search and seizure proceedings under section 132 of the Act

as no assessment or reassessment proceedings for the years under consideration were pending in its case for AY 2006-07 to AY 2010-11, therefore, in the absence of any incriminating evidence found during the course of search and seizure proceedings for the said years, no addition/disallowance could have been made in respect of the unabated assessment of the assessee for the said respective years. We, thus, in terms of our aforesaid observations vacate the additions made by the A.O while framing the respective assessments vide his order passed u/s.153A r.w.s. 143(3), dated 21.03.2014 for the A.Y.2006-07 to A.Y.2010-11. The **Cross-Objection No. 2** is allowed in terms of our aforesaid observations.

23. Although, we have pursuant to the aforesaid settled position of law vacated the addition made by the A.O for want of valid assumption of jurisdiction on his part, however, for the sake of completeness, we herein proceed with and deal with the merits of the case. Our aforesaid view that in order to avoid multiplicity of litigation the Tribunal is obligated to dispose off all the issues

raised before it and cannot confine itself to the fact that the addition/additions had been vacated on one ground, is fortified by the judgment of the Hon'ble High Court of Madras in the case of CIT vs Ramdas Pharmacy [1970] 77 ITR 276 (Mad).

24. We shall now deal with the grievance of the Revenue that the CIT(Appeals) had erred in deleting the addition made by the A.O of Rs.1,66,70,000/- and Rs.55,00,000/- for A.Y.2006-07 and A.Y.2008-09, respectively. As the facts and issues leading to the respective additions made by the AO and subsequent deletion of the same by the CIT(A) remains the same, therefore, we shall herein deal with it by way of a common order.

25. As observed by us hereinabove, the A.O being of the view that the assessee had failed to prove the identity and creditworthiness of the creditors a/w. genuineness of the transactions in respect of the share application money which was claimed to have been received from certain Kolkata/Mumbai based companies, thus, had dubbed the respective transactions

as bogus and made addition of the aforesaid amounts by treating the same as unexplained cash credits u/s.68 of the Act, as under:

A.Y.	Share capital money received
2006-07	1,66,70,000/-
2008-09	55,00,000/-

26. On appeal, the CIT(A) being of the view that not only the assessee in the course of the assessment proceedings u/s.143(3) of the Act had duly substantiated the authenticity of its claim of having received the share application/share capital from the aforementioned companies on the basis of documentary evidences, which was accepted as genuine by the A.O, but also in the course of the assessment proceedings pursuant to the search conducted on the assessee had once again placed on record the supporting documentary evidence, viz. names and addresses of the share applicants, income-tax credentials of the investors, certificates of registration of ROC, bank statements of the investors a/w the audited financial statements and confirmations of the respective investors, and thus, discharged the primary

onus that was cast upon it for proving the authenticity of the aforesaid transactions. However, the A.O without disproving the claim of the assessee on the basis of any concrete material had most arbitrarily dubbed the same as unexplained cash credits u/s.68 of the Act. In fact, the CIT(Appeals) after perusing the bank statements a/w. the audited financial statements and confirmations of the investor companies, had observed, that the same duly established the factum of making of the respective investments by the share applicants. Accordingly, the CIT(Appeals) on the basis of exhaustive deliberations in her order had vacated the respective additions of Rs. 1,66,70,000/- for A.Y.2006-07 and Rs.55,00,000/- for A.Y.2008-09 that were made by A.O. For the sake of clarity the relevant observations of the CIT(Appeals) are culled out as under:

"13. I have carefully gone through the assessment order and submissions of the appellant. The discharge or otherwise of the onus u/s 68 has been independently evaluated and examined. It is also seen that the appellant was assessed in the past and the case of assessment year 2006-07 was under scrutiny assessment u/s 143(3) and in the said assessment proceedings, the addition to the share application / share capital was duly accepted as genuine. The present action of the A.O is not culminating from any specific finding against the appellant that it was a beneficiary of any racket which has been unearthed as a result of search proceedings; nor has the A.O brought on record any other evidence to indicate that the appellant did make undisclosed income and such evidence came on the surface as a result of search proceeding The A.O has not rebutted the evidences submitted by the appellant to

demonstrate that the subscribers had sufficient means to in in the share application/capital of the appellant company. I have evaluated the creditworthiness of the subscribers with reference to the audited financial statements of the subscribers and found satisfactory. In this background, in my considered view, there is no scope and reason to take a contrary view than that taken by the then A.O without there being any documentary evidence against the appellant to demonstrate that the share application money was nothing but undisclosed income of the appellant.

13.2 It is an undisputed fact that the names, addresses and assessment particulars of the investors, certificate of registration from the ROC and bank statement of the applicants had been furnished by the appellant before the AO. It is further observed that the share application/capital money has been received by way of account payee cheques from the investors most of whom are companies and is duly reflected in the bank account of the appellant. I have perused the bank statements of the investors; their audited financial statements and confirmations for making such investments, which clearly establish the factum of making investments. These facts are clearly establishing the identity of the investors and the genuineness of the impugned transactions.

13.3 It is observed from the records and assessment order that for the purpose of making addition as unexplained cash credits, the AO has heavily relied upon the judicial pronouncements, howsoever, the appellant has made elaborate submissions distinguishing the facts. I am convinced with the explanation of the appellant that the decisions relied upon by the A.O are not applicable in the facts of the present case, as there is nothing on record which can indicate that the receipt of share application money was by way of accommodation entries only. It is also not the case of the A.O that the investors have accepted by way of statement that the sums paid to the appellant was in fact received from the appellant and investors merely routed the undisclosed income of the appellant through money laundering process in the form of share application money. In the backdrop of these facts and documentary evidences, in my considered opinion, the identity and creditworthiness of the subscribers has been established and cannot be doubted. It is not justified on the part of the A.O to simply reject the documentary evidences on record and take an adverse view and clothing the case of the appellant with the judicial pronouncements which have been rendered on absolutely different facts and circumstances.

13.4 The appellant has relied upon various judicial pronouncements and correlated the facts in those decisions with the facts in the case of the appellant. I am convinced that the decisions relied upon by the appellant are certainly applicable in the case of the appellant as the facts are not only similar but identical. The appellant has also relied upon the decision of the Hon'ble Supreme Court and jurisdictional High Court which cannot be ignored. It is further observed that no further enquiry or investigation has been conducted by the AO to corroborate or support the conclusions drawn in the assessment order so as to assess the share capital money as the undisclosed income of the appellant company. In my considered opinion, apart from drawing presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the

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

13.5 The Assessing Officer has disregarded the documentary evidences adduced by the appellant such as confirmations from the share applicants, their PAN, certificate of incorporation of subscriber companies. The subscription for the shares was received through cheques. The , Investor-companies are duly registered with ROC. Those companies were also having their income tax PAN numbers and have regularly filed the returns of income. No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax Department to show that the monies represented the appellant's undisclosed income.

13.6 The Hon'ble Supreme Court in CIT vs. Lovely Export, 216 ITR 198 SC and the Delhi High Court in Divine Leasing and Finance Limited, (2008) 299 ITR 268 have held that in the instances of money received towards share capital, only the identity of the share holders needs to be proved and once that is established and it is also shown that the money did in fact come from them, it is not for the assessee to prove as to how the share applicants came to be in possession of the money. In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the A.O which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.

13.7 The case of the appellant finds support from the decisions in:

1. CIT vs. Kamdhenu Steel & Alloys Limited &Ors. (2012) 68 DTR (Del) 38.

2. In the case of Commissioner of Income-tax v. HLT Finance (P.) Ltd. [2011] 12 taxmann.com 247 (Delhi)

3. In the case of Commissioner of Income-tax-IV v. Dwarkadhish Investment (P.) Ltd. [2010] 194 TAXMAN 43 (DELHI)

4. In the case of Commissioner of Income-tax v. Winstral Petrochemicals (P.) Ltd. [2011] 10 taxmann.com 137 (Delhi)

5. In the case of Commissioner of Income-tax v. Arunananda Textiles (P.) Ltd. [2011] 15 taxmann.com 226 (Kar.),

6. In the case of Commissioner of Income-tax v. Creative World Telefilms Ltd. [2011] 15 taxmann.com 183 (Born.)

7. CIT vs. Gangeshwari Metal (P) Ltd. (2013) 214 Taxman 423, Delhi.

8. CIT Vs.Abdul Aziz (2012) 72 DTR 220 (C.G).

13.8 The A.O has relied upon the decision in CIT v. Nova Promoters &Finlease (P) Ltd. [2012] 342 ITR 169/206 Taxman 207/18 taxmann.com 217 (Delhi). However, on going through the said decision in Nova Promoters &Finlease (P) Ltd. (supra), I find that the facts are clearly distinguishable. In fact, in Nova Promoters &Finlease (P) Ltd. (supra) itself the Hon'ble Delhi High Court has observed, in the context of Lovely Exports (P) Ltd. (supra), as under:-"The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec.68 and the remedy open to the revenue is to go after the share applicants in accordance with law. We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assessee bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre- meditated plan - a smokescreen - conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec.68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the

same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary."

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

(a) Commissioner of Income-tax-III v. Namastey Chemicals (P.) Ltd. [2013] 33 taxmann.com 271 (Gujarat);

(b) Commissioner of Income Tax v. KuberPloritech Ltd. [2010] 2 DTLOLINE 136 (DELHI);

(c) Commissioner of Income-tax v. Tania Investments (P.) Ltd. IT Appeal No. 15 OF 2009, High Court of Mumbai;

(d) Bhav Shakti Steel Mines (P.) Ltd. v. Commissioner of Income-tax [2009] 179 TAXMAN 25 (DELHI);

(e) Commissioner of Income-tax v. Samir Bio-Tech (P.) Ltd. [2010] 325 ITR 294 (DELHI)

(f) Commissioner of Income-tax-I v. Micro Melt (P.) Ltd. [2009] 177 TAXMAN 35 (GUJ.)

(g) Commissioner of Income-tax-V v. Real Time Marketing (P.) Ltd. [2008] 173 TAXMAN 41 (DELHI)

(h) Assistant Commissioner of Income-tax v. Mansarovar Urban Co-Operative Bank Ltd. [2009] 124 TTJ 269(LUCKNOW);

(i) Commissioner of Income-tax —IV v. Empire Buildtech (P.) Ltd. [2014] 43 taxmann.com 269 (Delhi);

(j) Commissioner of Income-tax v. Mulberry Silk International Ltd. [2012] 19 taxmann.com 31 (Kar.);

(k) Commissioner of Income-tax-III v. Nilchem Capital Ltd. [2012] 18 taxmann.com 350 (Guj.);

(l) Commissioner of Income-tax v. Jay Dee Securities & Finance Ltd. [2013] 32 taxmann.com 91 (Allahabad);

(m) Commissioner of Income-tax, Delhi-II v. Kinetic Capital Finance Ltd. [2011] 14 taxmann.com 150 (Delhi);

(n) Commissioner of Income-tax v. VLS Foods (P.) Ltd. [2011] 15 taxmann.com 225 (Delhi);

(o) Commissioner of Income-tax v. Ambuja Ginning Pressing and Oil Co. (P.) Ltd. [2011] 15 taxmann.com 273 (Guj.);

(p) Commissioner of Income-tax v. Rock Fort Metal & Minerals Ltd. [2011] 198 TAXMAN 497 (Delhi);

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

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

(s) Commissioner of Income-tax-I v. HimatsuBimet Ltd. [2011] 12 taxmann.com 87

(t) Commissioner of Income-tax - I, Jaipur v. A.L. Lalpuria Construction (P.) Ltd. [2013] 32 taxmann.com 384 (Rajasthan);

(u) Luminant Investments (P.) Ltd. v. Deputy Commissioner of Income-tax, Central Circle 40, Mumbai [2014] 42 taxmann.com 14 (Mumbai - Trib);

13.10 Overall, I am convinced that the appellant has been able to establish the identity and creditworthiness of the subscribers as also the genuineness of the transactions. In my considered opinion, the ratio of the aforesaid judgements of the Hon'ble Supreme Court in Lovely Exports and that of jurisdictional High Court are certainly binding in nature on all the revenue authorities and courts etc. and further, the judgement of the jurisdictional High Court as well as that of the Hon'ble Supreme Court in Lovely Exports has been rendered on identical facts. Hence, it is impermissible to deviate from the ratio laid down therein and against the law of judicial precedents. In view of the above and respectfully following the ratio of the binding judgements, the addition of share application/capital money as unexplained cash credits under section 68 is uncalled for and hence, deleted.

The appellant gets relief of Rs.1,66,70,000/- and Rs.55,00,000/- in A.Y 2006-07 and 2008-09 respectively."

27. Having given a thoughtful consideration to the issue in hand, we concur with the observation of the CIT(A) that now when the assessee had duly discharged the primary onus that was cast upon it as regards proving the identity and creditworthiness of the share applicants, and also the genuineness of the respective

transactions in question, therefore, there was no justification on the part of the A.O in treating the respective amounts in question as unexplained cash credits u/s.68 of the Act. Also, we are in agreement with the view taken by the CIT (Appeals) that now when the assessee had duly placed on record complete details i.e. names and addresses of the investor companies, then, it was not for the assessee to prove as to how the share applicants came to be in possession of the money that was invested with the assessee company. At this stage, we may herein observe that the amendment made available to Sec.68 of the Act i.e by way of insertion of the "1st proviso" vide the Finance Act, 2012, w.e.f 01.04.2013, which therein casts a statutory obligation upon a company (not being a company in which public is substantially interested) which is in receipt of share application money, share capital, share premium or any such amount by whatever name called; to offer an explanation about the nature and source of the sum credited in the books of the investor company, had been made available on the statute w.e.f. A.Y.2013-14, and thus, did

not hold the ground during the years under consideration in the case of the assessee before us i.e. A.Y. 2006-07 and A.Y.2008-09. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) that now when the assessee had discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the share applicant companies, as well as the genuineness of the transactions in question, therefore, no addition of the amounts so received from them could have been made by dubbing the same as unexplained cash credits u/s.68 of the Act, uphold his order to the said extent. The **Grounds of appeal No. 4 & 5** raised by the revenue in its appeal for AY 2006-07 AND **Grounds of appeal No. 3 & 4** for AY 2008-09 are dismissed.

28. We shall now deal with the grievance of the department that the CIT(A) had grossly erred in law and on the facts of the case in vacating the two fold additions made by the A.O, viz. (i) addition on account of gross profit on unrecorded sales : Rs.36,32,610/-;

and (ii) addition on account of initial unrecorded investment for making unrecorded sales : Rs. 34,79,761/-.

29. As observed by us hereinabove, the controversy in hand finds its roots in the adverse inferences that were drawn by the A.O in the hands of the assessee company for the A.Y2006-07 to A.Y2012-13 by relying on the torn pieces of papers which are allegedly stated to be a printout of a document titled as "Product Sales Summary" that were retrieved in the course of search and seizure proceeding conducted on the assessee from a dustbin lying in his shop located at Sadar Bazar, Raipur. As observed by us hereinabove, the A.O had claimed that the aforesaid torn pieces of paper referred to total sales of Rs.67,98,08,604.90/- (rounded to Rs.67,98,08,605/-) for various months of F.Y.2011-12 i.e till February, 2012. It was therein stated that the aforesaid torn pieces of papers were placed in an envelope, which was stapled and signatures of the witnesses were obtained on the same. Also, the aforesaid envelope was stated to have been made a part of the statement of Shri Kamlesh Burad

(supra). After considering and in fact rejecting the explanation of the assessee, the A.O had thereafter claimed that the aforesaid amount of Rs.67,98,08,605/- (supra) represented the undisclosed sales of the assessee for the financial year 2011-12 i.e upto February, 2012. Accordingly, on the basis of his aforesaid observation, the A.O had worked out the undisclosed sales of the assessee for F.Y.2011-12 at an amount of Rs.72,26,11,370/- (supra). The A.O had while extrapolating the impugned unaccounted sales of the assessee for AY 2012-13 to the preceding years, had observed, that the facts and figures that had emerged as regards the undisclosed sales of the assessee for AY 2012-13, revealed, that the same were 2.90 times of its disclosed turnover. On the basis of his aforesaid observation, the AO adopted the aforesaid ratio i.e undisclosed sales/disclosed sales i.e 2.90 times as a yardstick and on the said basis worked out the undisclosed sales of the assessee for the preceding six years i.e. A.Y2006-07 to A.Y 2011-12. Applying the average GP rate i.e@8.85 % to the estimated unaccounted sales for A.Y 2006-07

to A.Y2012-13, the A.O, therein, worked out the addition towards unaccounted income of the assessee pertaining to its undisclosed sales for all the said preceding six years.

30. On appeal, the CIT(A) had on the basis of her exhaustive deliberations vacated the adverse inferences that were drawn by the A.O by relying on the torn pieces of papers which were allegedly stated to have been retrieved during the course of the search proceedings from a dustbin lying in the shop of the assessee at Sadar Bazar, Raipur for multiple reasons, viz. (i) as hundreds of torn papers which apparently formed part of the sheets containing accounting statements despite efforts put in by the department could not be reconstructed in entirety, and thus, were not readable, therefore, adverse inferences as regards the undisclosed sales of the assessee based on the same were absolutely ill-founded.; (ii) that even otherwise, as the department despite specific requests by the assessee for supplying the copy of the aforesaid torn pieces of paper that were being relied upon for inferring undisclosed sales, had failed to do so, thus, the same

as per the principles of natural justice could not have been acted upon for drawing adverse inferences at the back of the assessee; (iii) that as the aforesaid envelope containing torn pieces of paper did not form part of the seized documents that were inventorized in the course of the search proceedings, therefore, the same did not carry any evidentiary value; (iv) the fact that the copy of the envelope made available by the department to the assessee revealed that the same was stapled more than once, therefore, the fact that the same had been opened at the back of the assessee could not be ruled out; (v) that contrary to the claim of the department in the statement of Shri Kamlesh Burad (supra) it was nowhere stated by him that the torn papers which were retrieved in the course of the search proceedings were kept in an envelope; and (vi). that as the torn pieces of paper were kept in an envelope which was neither sealed by wax nor contained any signature of the authorized official, therefore, the same on the said count too lost its evidentiary value.

31. Apart from that, it was observed by the CIT(A) that the very fact that as no unrecorded asset or unexplained investment had surfaced in the course of the search proceedings, which otherwise on a correlation with the substantial undisclosed income worked out by the A.O would have supported his claim, thus, ruled out any such deployment of undisclosed income by the assessee. On the basis of her aforesaid observations, the CIT(A) was of the view that now when the aforesaid torn pieces of papers could not be held to have been seized during the course of search proceedings, therefore, the presumption u/ss.132(4A)/292C as regards the contents of the same would also not be available to the department. Accordingly, on the basis of her aforesaid observations the CIT(Appeals) had vacated the adverse inferences that were drawn by the A.O by relying on the torn pieces of paper which were allegedly stated to have been recovered in the course of search proceedings conducted on the assessee. Also, the CIT(Appeals) was of the view that the extrapolation of the alleged undisclosed sales of the assessee for A.Y.2012-13 to the

preceding six years i.e. A.Y2006-07 to A.Y2011-12 was totally unjustified and baseless. Relying on a host of judicial pronouncements wherein such extrapolation of undisclosed sales as had emerged and surfaced during one year, to other years, had been deprecated by various courts, the CIT(Appeals) vacated the impugned additions that were made by the A.O in the preceding six years i.e. A.Y2006-07 to A.Y2011-12. For the sake of clarity the relevant observations of the CIT(Appeals) on the basis of which she had vacated the adverse inferences as regards the alleged undisclosed sales of the assessee and the consequential addition; a/w the vacating of the extrapolation of the alleged undisclosed sales of A.Y2012-13 to the preceding six years i.e. A.Y2006-07 to A.Y 2011-12, are culled out as under:

"9. I have carefully gone through the assessment order and the submission of the appellant. It is gathered that during search action, for pieces of papers were found from dustbin and were placed in an envelope; stapled and signatures of witness have been taken in the envelope. It remains an undisputed fact that these torn papers do not find place in the inventory of seized documents. According to the AO, the envelope has been made part of the statement of Kamlesh Burad. I have carefully perused the statement of Shri Kamlesh Burad, however, perusal of the said statement of Shri Kamlesh Burad does not in any way lead to an inference that the torn document was part of the statement or was otherwise referred in the said statement. I find that based on the said torn papers, the A.O. had raised query no.5 part B of questionnaire dated 07.10.2013 which has been discussed at para 8.4 to para 8.8 of the assessment order. Thereafter, the A.O has worked out the quantum of unrecorded sales for the period from

01.04.2007 to 17.03.2012 i.e. date of search and also the gross profit and initial investment.

9.2 I have carefully perused the panchnama dated 26.02.2014. It is seen that, even according to the A.O, the torn papers were hundreds in number and it was extremely difficult to put the torn papers together to reconstruct the original sheets. This exercise continued for six hours, but none of the sheets could be reconstructed and read in entirety. Finally, the envelope was sealed. Photocopy of the torn papers also could not be furnished to the appellant. The issue that needs consideration is whether or not any credence can be given to such a material which could not be reconstructed in entirety even after exercise of six hours and was not readable. The AO raised a query on 17.10.2013 describing that these pieces of papers have been reviewed by a responsible person who has placed notings on them in his own handwriting and the turnover reflected in torn pieces of papers being computer printout documents titled product sales summary Rs.67,98,08,605/- till February 2012. In my considered view, when the contents of the torn papers could not be read, it could not have been possible for the A.O to draw an inference that the appellant has indulged in to unaccounted turnover in all these years under consideration.

9.3 In the instant case, the A.O has completely failed to record the reasons based on material available, except referring to the torn pieces of document, as the A.O has not referred to even a single seized document which could be regarded as incriminating document and used as an evidence to even remotely support the conclusion of the A.O. It appears that the AO is carried over by the torn pieces of papers and seems to have blown out of proportion merely on the basis of mathematical and mechanical calculations. It is seen that the A.O has not pointed out any suppression of profit based on any cogent and incriminating material against the appellant. Material showing financial nexus can only be a valid basis for holding suspicion or making the addition. Unfortunately, not a single document showing any financial dealings by the appellant has been referred to either in the assessment order, or even during the course of hearing, despite the liberty granted vide these office Letters. An order based on unconfirmed or uncorroborated belief of suspicion; even though the suspicion rests on the high pedestal of bona fides cannot stand to the test of scrutiny of law. The facts and circumstances of the present case reveal that the A.O just brushed aside the objections/submissions and contentions raised by the appellant and evidences placed on record. The assessment order conclusively indicates that the addition has been made out of some lurking suspicion based on torn pieces of papers which may have some evidentiary value, but would lead to at best suspicion and not a tangible material evidence to draw logical conclusions.

9.4 The loose paper seized during search proceedings may well be the basis of suspicion, however, these cannot per se constitute the basis of the addition, though it can very well be a starting point for further investigation. In Lalchand Bhagat Ambica Ram vs. CIT: (1959) 37 ITR 288, the Supreme

Court disapproved the practice of making additions in the assessment on mere suspicion and surmises or by taking note of the "notorious practice" prevailing in trade circles.

9.5 The significance "tangible evidence" has been emphasized in various judicial pronouncements. I am convinced that there was no meaningful and tangible material before the A.O nor has the A.O brought any such evidence on record to corroborate his suspicion. The case of the appellant finds support from the decision in Income Tax Officer vs. W.D. Estate P. Ltd. (1993) 46 TTJ (Born) 143: 45 ITD 473. Similar ratio was laid down by the Hon'ble High Court of Delhi in Commissioner of Income Tax Vs. Discovery Estates Pvt. Ltd. vide order dated 18th February, 2013 (2013) 356 ITR 159 (Delhi).

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

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

9.8 I find that no margin for estimation of suppressed sales and income has been allowed even in those cases where instances of suppression of sales has been found on the basis of incriminating material except for the period for which suppression has been unearthed based on cogent and documentary evidence, undisputedly, in the case of the appellant, nothing incriminating has been found, therefore, as held in Deputy Commissioner Of Income Tax Vs. Royal Marwar Tobacco Product (P) Ltd. (2009) 120 TTJ (Ahd) 387 : (2008) 16 DTR 129. The Hon'ble ITAT CHANDIGARH BENCH in Assistant Commissioner Of Income Tax Vs. A.K. Alloys P. Ltd. vide order dated 29th February, 2012 (2012) 17 ITR (Trib) 424 (Chandigarh) has decided in favour of assessee. The extrapolation of figures for estimation of income has been held to be unsustainable in Evergreen Bar & Restaurant Vs. Additional Commissioner Of Income Tax (2008) 6 DTR (Mumbai)(Trib) 56. In LAXMAN DASS KESHWANI vs. ACIT vide order dated 18th January, 2013 (2013) 35 CCH 381 Agra Trib it has been held that: "During the course of search unaccounted cash and unaccounted stock were found which were not recorded in the books of account. Some torn bills were also found relating to sale of the assessee from the premises of the Accountant. Those torn bills were not accounted for in the books of account. These are sufficient material

to hold that the A.O. has rightly invoked section 145(3) of the Act to reject the books of account.

The torn bills found from the residence of the Accountant pertaining to business activities of the assessee, therefore, the A.O. has correctly held that these torn bills pertained to the business of the assessee. However, A.O. was not justified in multiplying and estimating the sale for the entire year on the basis of these torn bills found only for one month i.e. Much as there is no evidence or material found at the time of search that the assessee was indulged in making sales out of books of account throughout the year. In the absence of such material found at the time of search the sale cannot be estimated on the basis of torn bills found for a month at the time of search. At the most the unaccounted sales can be taken as Rs.18,49,000/- and applying 2 percent profit rate on which the calculation of profit comes to Rs.36,980/-. The order of CIT(A) was accordingly modified"

9.9 If general/casual/routine observations of the AO are to be considered as material evidence for the purpose of framing an assessment, the AO shall have blanket and arbitrary powers to dispose of the scrutiny assessments according to his whims and fancies which is not the spirit of the circulars issued by the Board from time to time on scrutiny assessment. An assessment cannot be made arbitrarily and in order that an assessment can be sustained, it must have nexus to the material on record. (CIT v. Mahesh Chand [1983] 199 ITR 247, 249 (All.)). It is the settled position that, though the AO has very wide powers and is not fettered by technical rules of evidence and pleadings, there is one over-riding statutory requirements follow and restriction on his judgement and that is, that, he must act honestly and diligently on the material, howsoever, inadequate it was, and not vindictively, capriciously or arbitrarily. "Probability cannot be construed as material evidence to form an opinion by the AO to conclude an assessment and for drawing adverse inference against the appellant, unless there is evidence to substantiate such probable inference." Assessment has to be made based on the real income theory, i.e., income to be determined for taxation must invariably be proved to have been the correct quantum of income earned by the appellant during the relevant previous year and the one presumed to have been earned. The presumptions and hypothetical estimations and observations made by the A.O. for making the impugned estimated addition, were extraneous, irrelevant and opposed to the facts obtaining from the record. The fate of the appellant could not be decided by the A.O. on mere surmises or probabilities (Northern Bengal Jute Mills Trading Co. Ltd. v. CIT (1968) 70 ITR 407 (Cal)). The mere existence of reasons for suspicion would not tantamount to evidence (Cal. HC in Narayan Chandra Baidya v. CIT (1951) 20 ITR 287 (Cal.)).

9.10 It is an admitted fact that the photocopy of torn pieces of papers was not furnished to the appellant, in spite of his repeated requests during the course of assessment. Such an action of the A.O, in my considered view, is not in accordance with settled position of law. Principles of natural justice are those rules which have been laid down by the Courts as being the

minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. The rules of natural justice require that all material on which the Department places reliance is made available to the affected party. In catena of cases, it has been consistently held by the Apex Court as well as by the High Courts that any order passed in violation of the rules of natural justice is void and is nullity. It is needless to emphasize that failure to comply with the principles of natural justice renders the action non est as well as the consequences thereof.

9.11 No evidence has been brought on record by the A.O to prove that the appellant did indulge into unaccounted sales to warrant such estimation of profit. Looking to the facts and circumstances of the case as also decisions cited above, the additions made on the basis of torn papers on account of unaccounted gross profit for A.Y. 2006-07 to 2012-13 and addition on account of unexplained initial investment in A.Y. 2006-07 cannot be sustained. Hence, the additions are deleted.

The appellant gets relief as tabulated below:

A.Y.	Profit on suppressed sale	Initial investment for suppressed sale
2006-07	36,32,610/-	34,79,761/-
2007-08	4,19,99,190/-	---
2008-09	4,26,78,875/-	---
2009-10	4,70,35,129/-	---
2010-11	6,60,87,326/-	---
2011-12	4,05,05,332/-	---
2012-13	2,78,98,401/-	---

32. After having given a thoughtful consideration to the issue in hand before us, we, in terms of our aforesaid observations, concur with the view taken by the CIT(A) that no adverse inferences could have validly been drawn by the A.O on the basis of hundreds of torn pieces of papers which were allegedly stated to have been retrieved in the course of search proceedings from a

dustbin lying in the shop of the assessee at Sadar Bazar, Raipur. Also, we are in agreement with her that the extrapolation of the alleged undisclosed sales of the assessee for A.Y.2012-13 to the preceding six years i.e. A.Y.2006-07 to A.Y.2011-12 being devoid and bereft of any substance could not be sustained and was in light of the settled position of law liable to be struck down. Apart from that, the addition of Rs.34,79,769/- that was made by the A.O towards undisclosed investment in the hands of the assessee for A.Y.2006-07, also on the basis of our aforesaid observations had rightly been vacated by the CIT(Appeals).

33. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(A) who by way of a well-reasoned order vacated the additions made by the A.O towards unaccounted income arising from the alleged undisclosed sales for AY 2006-07 to AY 2012-13; as well as the addition of the unexplained investment for carrying out undisclosed sales in A.Y.2006-07 to A.Y.2012-13, uphold her order to the said extent. The grounds of appeal raised by the revenue as regards the

aforesaid common issue permeating over the respective years are disposed off as under :

Assessment Year	ITA No.	Ground of Appeal (raised by revenue)	Decision
2006-07	ITA No. 331/RPR/2014	Grounds of appeal Nos. 1 to 3	Dismissed
2007-08	ITA No. 332/RPR/2014	Grounds of appeal Nos. 1 &2	Dismissed
2008-09	ITA No. 333/RPR/2014	Grounds of appeal Nos. 1 &2	Dismissed
2009-10	ITA No. 334/RPR/2014	Grounds of appeal Nos. 1 &2	Dismissed
2010-11	ITA No. 335/RPR/2014	Grounds of appeal Nos. 1 &2	Dismissed
2011-12	ITA No. 336/RPR/2014	Grounds of appeal Nos. 1 &2	Dismissed
2012-13	ITA No. 337/RPR/2014	Grounds of appeal Nos. 1 to 4	Dismissed

34. We shall now deal with the grievance of the revenue that the CIT(Appeals) while disposing off the appeals of the assessee for AY 2006-07 to AY 2012-13 had failed to give a reasonable opportunity to the AO to place his submissions on the issues involved in the respective appeals.

35. We have heard the Ld. Authorized Representatives for both the parties on the aforesaid issue and perused the order of the CIT(Appeal). After giving a thoughtful consideration to the

aforesaid grievance of the department we find no substance in the same. On a perusal of Para 2.1 of the order of the CIT(Appeals), it transpires that he had in the course of the proceedings forwarded the written submissions of the assessee to the AO for his comments. Initially the AO had requested for one months time for necessary compliance. However, as can be gathered from the order of the CIT(Appeals), the AO had despite lapse of the aforesaid period of one month failed to effect the necessary compliance. Further, the AO had vide his letter bearing No. F.No. DCIT (Central)/RPR/Tech/Misc/2013-14, dated 23/05/2014 sought exemption from personal appearance in the course of the proceedings before the first appellate authority. Considering the aforesaid facts, wherein it is clear beyond doubt that though the CIT(Appeals) had afforded sufficient opportunity to the AO to put forth his case, it was the latter who despite having been allowed a substantial time of one month, as requested by him, had not only failed to file his comments/rejoinder to the written submissions of the assessee,

but had thereafter sought an exemption from personal appearance in the course of the proceedings before the CIT(Appeals). It was, thus, under the aforesaid circumstances that the CIT(Appeals) after affording sufficient opportunity to the AO, which the latter chose not to avail, had therein proceeded with the hearing of the appeal. In our considered view, as the CIT(Appeals) had afforded sufficient opportunity to the AO to put forth his case, which the latter had failed to avail, thus, there is no merit in his claim that the CIT(Appeals) had disposed off the respective appeals without affording him a reasonable opportunity to give his submissions on the issues. We, thus, finding no merit in the aforesaid claim of the department dismiss the same. Accordingly the grounds of appeal raised by the revenue as regards the aforesaid common issue permeating over the respective years are disposed off as under :

Assessment Year	ITA No.	Ground of Appeal (raised by revenue)	Decision
2006-07	ITA No. 331/RPR/2014	Ground of appeal No. 6	Dismissed
2007-08	ITA No. 332/RPR/2014	Ground of appeal No. 3	Dismissed
2008-09	ITA No. 333/RPR/2014	Ground of appeal No. 5	Dismissed
2009-10	ITA No. 334/RPR/2014	Ground of appeal No. 3	Dismissed
2010-11	ITA No. 335/RPR/2014	Ground of appeal No. 3	Dismissed
2011-12	ITA No. 336/RPR/2014	Ground of appeal No. 3	Dismissed

2012-13	ITA No. 337/RPR/2014	Ground of appeal No. 3	Dismissed
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36. We shall now deal with the objection of the assessee that as the A.O while framing the assessment had not acted independently and had framed the impugned assessment as per the directions and instructions issued by the Investigation Wing of the Department, therefore, the same could not be sustained and was liable to be struck down on the said count itself.

37. On a perusal of the assessment order, we find that the same is accompanied with an enclosure, viz. **“Office Note (not for the assessee)”**, which reads as under:

Office Note (not for the assessee)

In this case, a deviation note was filed before the Investigation Wing, Raipur in respect of difference in the opinion regarding additions to be made as proposed in the Appraisal Report. A joint meeting was held with the Investigation Wing, Raipur, however, the proposal of deviation note was not approved / accepted by the Investigation Wing, Raipur. The assessment order is being passed keeping in view the above stated fact.



Rituparn
 (Rituparn Namdeo)
 Deputy Commissioner of Income-tax (Central),
 Raipur (CG)

On a perusal of the contents of the aforesaid “Office Note (not for the assessee)”, it transpires that the respective assessments have

been framed by the A.O subject to the approval /acceptance of the Investigation Wing, Raipur. In fact, it emerges that though the A.O had intended to deviate from the additions which were proposed in the appraisal report of the Investigation Wing, Raipur, but as such deviation note of the A.O was not accepted by the Investigation wing, therefore, the same did not see the light of the day. On the basis of the aforesaid facts as are emerging from the “Office Note (not for the assessee)” that has been filed by the department in its appeal before us as an enclosure to the assessment order, we find substance in the claim of the Ld. AR that the assessment in the present case is not based on an independent application of mind by the A.O, but is clearly as per the dictates of the Investigation Wing, Raipur. Although, as per the mandate of Section 153D of the Act, no order of assessment or reassessment shall be passed by the A.O below the rank of a Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of Sec. 153A or the assessment year referred to in clause (b) of sub-section (1) of Section 153B,

except with the prior approval of the Joint Commissioner, however, we are unable to comprehend that as per the mandate of which statutory provision; or in fact authority, the assessment had been framed by the AO subject to approval/acceptance from the Investigation Wing of the department. As is discernible from the aforesaid "Office Note (not for the assessee)", the AO had categorically admitted of having given up his own view as regards the additions which as per him were to be made in the hands of the assessee, and had allowed the view of the Investigation wing on the said issue, which was contrary to his view, to prevail. In our considered view, the manner in which the impugned assessment had been framed is nothing but a clear reflection of absence of an independent application of mind by the AO for framing the same, which in our considered view is not as per the mandate of law. Our aforesaid observation that the impugned assessments were framed by the AO on the basis of the appraisal report of the Investigation Wing, Raipur and not on the basis of his independent application of mind is also supported by a fact

that was brought to our notice in the course of hearing of the appeal by the ld. AR. As stated by the ld. AR, and rightly so, though the envelope containing the torn pieces of papers which were stated to have been retrieved in the course of the search proceedings from a dustbin lying in the shop of the assessee at Sadar Bazar, Raipur was for the very first time opened by the department on 26.02.2014 in the presence of certain persons, viz. the assessee, two independent witnesses, representative of the investigation wing and the Assessing Officer, Page 18 – Para 8.10 of the assessment order, however, very strangely the AO had vide his Notice u/s 142(1), dated 07.10.2013, Page 11 – Para 8.8 of the assessment order, after referring to the impugned contents of such torn papers had way back i.e prior to the opening of the aforesaid envelope called upon the assessee to explain as to why its books of account may not be rejected and its undisclosed sales and the consequential unaccounted income be not estimated. On a perusal of the aforesaid facts, it can safely be concluded that the impugned assessments for the AY 2006-07 to AY 2012-13

have been framed by the AO not on the basis of his independent application of mind, but as per the approval/acceptance; or in fact at the instance of the Investigation Wing.

38. Be that as it may, as we have dismissed the appeal filed by the revenue and have upheld the order of the CIT(Appeals) wherein the impugned additions had been vacated by him, therefore, we refrain from adverting to and therein adjudicating the issue as regards the validity of the assessment that had been framed by the A.O after obtaining the aforesaid approval/acceptance of the Investigation Wing, Raipur, which, thus, is left open. The **Cross-Objection No. 1** filed by the assessee in all the years i.e AY 2006-07 to AY 2012-13 is disposed off in terms of our aforesaid observations.

39. In the result, the appeals filed by the Revenue in ITA No.331 to 337/RPR/2014 for the A.Y.2006-07 to A.Y 2012-13 are dismissed while for the cross-objections filed by the assessee in CO No.101 to 107/RPR/2015 for the A.Y.2006-07 to A.Y.2012-13 are allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

ARUN KHODPIA
(ACCOUNTANTMEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th August, 2022

**SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G.)
4. The CIT (Central). Bhopal
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	10.08.2022	Sr.PS/PS
2	Draft placed before author	11.08.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		