आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा॰ मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MEETHA LAL MEENA, AM

आयकर अपील सं./ITA No. 929/JP/2016
निर्धारण वर्ष/Assessment Year : 2009-10

M/s. Raj Auto Wheels (P) Ltd 424/24, Ravan Bahici, Kaiser Ganj Ajmer	बनाम Vs.	The ACIT Circle-1 Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCR 3896 B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Mahendra Gargieya, Advocawte
राजस्व की ओर से/Revenue by: Shri P.R. Meena, C IT-DR

सुनवाई की तारीख/Date of Hearing : 18/08/2022
उदघोषणा की तारीख/Date of Pronouncement: 9 /11/2022

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This is an appeal filed by the assessee against order of the ld. CIT(A), Ajmer dated 22-08-2016 for the assessment year 2009-10 raising therein following grounds of appeal.

ITA NO. 929/JP/2016 – A.Y. 2009-10

The ld. CIT(A) has erred in confirming the addition for:-

1. Rs.2,06,46,489/- by estimating gross profit percentage at 3.25% on estimated sales at Rs.69,99l,20,191/- against declared gross profit at 0.52% and against sales at Rs. 40,67,17,076/-.

2. Rs.3,03,000/- by considering advance received from customer for sales as unexplained and making the addition.

3. Disallowance a sum of Rs.2,14,731/- being 10% of expenses claimed of Rs.21,47,731/- for non-verification.

4. Disallowance of Rs.26,095/- for delay in deposit of employees contribution for PF and ESI.''

2.1 In Ground of Appeal No.1 of the assessee, the Addition of Rs.2,26,41,521/- is under challenge.

2.2 Brief facts of the case are that during the assessment proceedings, the AO alleged that the assessee is engaged in the practice of delayed invoicing and under invoicing of sales in its books of accounts. The assessee is taking advance from customers against the sale of vehicles. In most of the cases the delivery of goods has been given to the customers, the vehicles are also registered with RTO, delivery memo have been issued for the year under consideration. However, the sales bills are prepared in the subsequent years and recorded the sale in its books of account in the subsequent years but not in the subjected year. The AO alleged that there is a difference of Rs.43,35,138/- in the sale amount as appeared in the delivery memo / sale bill issued by the assessee of Rs.3,56,72,909/- and purchase amount Rs.4,00,08,047/- stated by the customers in reply to notices issued u/s 133(6). Such difference in term of percentage was of 12.15%. Therefore, he inferred that the assessee might have suppressed the sale to that extent. (AO pg. 6)Thereafter, he worked out the advances of Rs.21,92,72,275/- for which the

assessee booked sales in A.Y. 2010-11 to 2013-14 i.e. in subsequent years and considering the amount of Rs.21,92,72,275/- (out of new advances of Rs.24,00,87,965/- during the year) as turnover, added the same to the declared turnover of Rs.40,48,200,629/- and thereafter enhanced the same by applying 12.15% (alleged suppressed sale as per his calculation) on total turnover of Rs.62,40,92,904/- (Rs.21,92,72,275/- + Rs.40,48,200,629/-) and worked out the alleged suppressed sale of Rs.7,58,27,287/- in addition to Rs.62.41 Cr. as stated above. Thus, as per AO the total sale should have been Rs. 69,99,20,191/- (Rs.40.48 Cr. + Rs.22 Cr. + 12.15% being Rs. 7.58 Cr.). Finally, the AO rejected the Books of Account u/s 145(3) and as per calculation at Pg 6 of the impugned order, he applied G.P. rate of 3.25% [as per 3.92% declared in the case of M/s Relan Motors (P) Ltd.] as against 0.05% (but correctly revised GP rate at 4.20%) declared by the assessee], on 69.99 Cr. so worked out and made the resultant trading addition of Rs.2,06,46,689/-. vide assessment order passed u/s 143(3) / 147 dated 30.03.2015.

2.3 In the first appeal the ld. CIT(A) confirmed the action of the AO vide order dated 22.08.2016 in appeal no. 29/2015-16 holding as under:

> *"**4.3** I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the book results of the appellant have been rejected by the AO mainly on the ground that at the assessee was engaged in the practice of delayed invoicing and under invoicing*

of sales in its books of accounts. The assessee after taking advances from the customers against the sales of vehicles, in most of the cases, delivered the vehicle to the customer, the vehicles were also registered with RTO and delivery memo were also issued in the previous year relevant to A.Y 2009-10 but sales bills were prepared in the subsequent years and sales was also recorded in the books in the subsequent years. Further, there was difference in the sales amount appearing in the delivery memo/sales bills issued by the assessee and purchase amount shown by the customers. The assessee either during the course of assessment proceedings or appellate proceedings could not controvert the above finding of the AO. The assessee has contended that since it has already declared the sales of the vehicle sold in the previous year relevant to A.Y. 2009-10 (the assessment year under consideration) in the subsequent years, therefore, the same cannot be taken into account in the A.Y. 2009-10. I do not find this argument of the appellant acceptable. The assessee cannot choose the year in which he wants to show the sale. The sale has to be shown in the year in which the vehicles have been sold by the assessee. As the vehicles have been sold by the assessee in the previous year relevant to A.Y. 2009-10, hence, the assessee was required to show the entire sale in the previous year relevant to A.Y. 2009-10 only. Therefore, the action of the AO estimating the turnover at Rs. 69,99,20,191/- as against the sale of Rs. 40,48,20,629/- shown by the appellant in the books of accounts, is held to be fully justified and in accordance with the provisions of law. The AO has estimated the GP @3.25%, citing the comparative case of Relan Motors Pvt. Ltd., who was also engaged in the same line of business and dealer of Maruti Car. The GP rate shown by M/s Relan Motors Pvt. Ltd. Ltd. was 3.92%. Hence, I am of the considered view that the AO had been more than reasonable by estimating the GP of the appellant @ 3.25%. In view of the above discussion, the action of the AO rejecting the book results u/s 145(3) and estimating the profit at Rs. 2,27,47,406/- is held to be fully justified and in accordance with the provisions of law. Accordingly, addition of Rs.2,06,46,689/- made by the AO is hereby confirmed."

2.4 During the course of hearing, the ld. AR of the assessee placed following submissions.

> ***"A. Invalid application of S.145 (3) of the Act: 1.*** *The AO in this case, invoked S.145(3) of the Act mainly alleging the case of suppression and deferment of sale as also low GP declared by the assessee in comparison to M/s Relan Motors (P) Ltd. The dispute appears w.r.t. the basis to invoke the S.145(3) of the Act i.e.* ***(i)*** *Where the AO is not satisfied about the correctness/completeness of the accounts and* ***(ii)*** *where the method of accounting provided in Sub S. (1), is not followed. The AO though alleged some deficiencies however, none of them are such so as to be based for invoking S.145 and more particularly when they are contrary to facts and the submissions of the appellant were not considered judiciously.*
>
> ***2.*** *It is not disputed that the appellant has maintained all the books of account consisting of Cash Book, Bank Book, Bank, Journal, Sales Book (Generated by Computer System) (refer audit report u/s 44AB* ***PB-11****). The entire sales, purchases and expenses are fully vouched. The accounts are audited u/s 44AB of the Act* ***(PB 10-28)*** *as also under the Companies Act* ***(PB 2-9)*** *and Rajasthan VAT Act* ***(PB 39-51)****. The same were produced before the AO also along with other details from time to time.*
>
> ***3.*** *With regard to the allegation of suppression of the sale w.r.t. certain examples, the of which is given by the AO at Pg. 3 to 6 based on the notices issued u/s 133(6) of the Act and replies thereto, we have made our submissions separately. Hence kindly refer para 5 at Pg. 9-10 of this written submission.*
>
> ***4.****Minor irregularities, even assuming were there, cannot be made a basis of the rejection of the books of accounts or of trading addition.* ***Kindly refer Padampath Ramgopal 76 ITR 719 (SC).***
>
> *Thus,* ***there was no valid basis at all to apply S. 145*** *of the Act in this case. Hence the same may please be quashed and the entire trading addition be deleted here itself.*

B. On merit: *Alternatively, on merits also, there was no case with the AO to have made this addition, as submitted herein below:*

1. Fair estimation required - Legal Position:1.1*In these circumstances a pertinent question arise whether after the rejection of account and invoking of S.145(3) of the Act, is there any scope of again referring to the same books of account finding various deficiencies, defects and faults and then to estimate the income on that basis. Although after rejecting the account it is not disputed that what is all required is a fair estimation. However, invoking of S.145 of the Act does not confer blind powers upon the AO and he is not at liberty to assess the income at whatever figure he wants. He is bound to make an honest estimation of income, keeping in view of the material available on record, past history of the case, local knowledge and repute of the assessee. He is also supposed to collect necessary material for the purpose, if so required.*

The law is settled that in making fair estimation, one needs some cogent material to justify estimations. An arbitrary, capricious and wild estimation, as done in the present case, is not at all permitted in the eyes of the law. The AO however, did not conform to its settled requirement. Kindly refer ***Jotram Shershing vs. CIT 2 ITR 119 (All).***

1.2 Addition Need Not Be Made, Even if S.145 of the Act Invoked: *In the case of* ***CIT v/s Gotan Lime Khaniz Udyog 256 ITR 243(Raj),*** *it has been held that mere rejection of books of account need not necessarily lead to additions to the returned income. It was also held that the books of account, together with past history of the case as also material collected by the AO should be considered for estimation of income.*

2.1 Better Results: *It is submitted that the correct andrevised G.P. rate declared this year* ***by the appellant stands at 4.20%*** *(and not 0.05% only) in as much as the assessee has been consistently in the practice of considering the target incentives, turnovers, cash discount and warranty income, etc. which are directly related to the trading activity only as a part of its gross*

profit. Based on the same, ***the correct and revised working*** *of the G.P. comes to 4.20%, as per the following chart:*

S. No.	***Particulars***	***Year ended on 31.03.2009***
1.	*Sales (Rs.)*	*40,48,20,629/-*
2.	*Gross profit (Rs.)*	*2,04,269/-*
3.	*Gross profit (percentage)*	*0.05%*
4.	*(a)Other direct income as credited profit and loss but relates to gross profit. (Rs.)*	*1,67,96,088/-*
5.	*Revised G.P. (2+4) (Rs.)*	*1,70,00,357/-*
6.	***Gross profit (Sales / revised gross profit)*** *(Wrongly written 3.05% in ld. CIT(A) order Pg-7)* ***(percentage)***	***4.20%***

Pertinently, the AO has also accepted the working of revised GP Rate made similarly in AY 2011-12. It were given to AO vide letter dated 11.03.2015 (CIT(A) pg. 6-7). Further GP rate of 1.01% accepted in asst. u/s 143(3).

Thus, even considering the case of Relan Motors at 3.92% G.P. rate, ***the assessee had already declared much higher rate*** *of 4.20% this year which did not call for any addition at all.*

2.2 *Another aspect which may be considered in the matters of fair estimation is that instead of considering G.P., the N.P. rate declared this year may be compared with the average of 5 years. The assessee has declared N.P. rate of 0.41% this year and considering the average N.P. rate from A.Y. 2008-09 to 2012-13 at 0.47%. Thus****, the overall results declared this year are almost at par with the average N.P. rate of 5 years****. The Hon'ble Rajasthan High Court had already been considering average of 5 years as a benchmark in the cases of estimation. Kindly refer the following chart:*

S.N.	***F.Y***	***A.Y***	***Sale Turnover (Rs.)***	***Net Profit (Rs.)***	***N.P. Rate %***
1.	*2007-08*	*2008-09*	*16,28,99,694/-*	*19,21,477/-*	*1.18*

2.	*2008-09*	*2009-10*	*40,48,20,629/-*	*16,62,771/-*	*0.41*
3.	*2009-10*	*2010-11*	*58,60,77,936/-*	*21,64,150/-*	*0.37*
4.	*2010-11*	*2011-12*	*1,14,86,38,878/-*	*18,56,947/-*	*0.16*
5.	*2011-12*	*2012-13*	*95,78,71,977/-*	*19,76,245/-*	*0.21*

2.3 other comparable case: *It is further submitted that a better comparable case could be of one* ***M/s Ajmer Auto Agencies Pvt. Ltd.*** *for F.Y. 2009-10 (A.Y. 2010-11) which is also engaged in the same line of business and the G.P./ N.P. declared by the* ***said concern stood at (-) 3.66% as against 4.20%*** *as above declared by the assessee as per re-casted trading account* ***(PB-58)****. It was cited before the AO also (CIT (A) order pg. 6-7).*

2.4 A.Y. 2008-09 not comparable:*It is submitted that the law is well settled that the like has to be compared with a like therefore, the facts and circumstances of the two years to be compared must be similar and must be identical for a fair comparison.*

Firstly, A.Y. 2008-09 was the first year of the business wherein, the assessee started its business of selling Maruti Cars in Feb-2006. Hence, there was no target given for the dealers in first year of business and therefore, the assessee had no cut-throat competition, meaning thereby, the assessee had a free hand and was selling its product at his will without giving any/much discount to the customers. But in the next year i.e. in A.Y. 2009-10, the Maruti Company had fixed the sale targets of the assessee and therefore, the assessee had to pass heavy discounts to its customer to attract and to advertise its company. This certainly resulted in lower GP Rate.

Secondly, the results of A.Y. 2008-09 cannot be a good comparable case for the simple reason that the turnover in that case was hardly of ***Rs. 16.29 Cr. only as against 40.48 Cr.*** *this year and there was a huge increase of the turnover* ***jumped by 149.51%*** *this year.*

Moreover, in A.Y. 2008-09 the situation of demand and supply was favouring the assessee in as much as the demand of Maruti vehicle was on peek as against the current year.

***2.5** In any case, the appellant's turnover **jumped 149.51%** at Rs.40.48 Crores this year from 16.28 Crores last year. Needless to say that to achieve such abnormal increase in the turnover, one has to compromise on its margins and such a fact certainly deserved consideration in the matters of fair estimation **Suresh Chand Nahata 45 TW 164 Para 9 (JP),CIT v/s Amrapali Jewels (P) Ltd. (2012) 65 DTR 196 (Raj)** and ITAT order of M/s **Singhal Builders Contractor in ITA NO.904/JP/2012**& ITA No.896/JP/2012 vide order dated 20.08.2013.*

3. Comparable Cases- Distinguishable and cannot be applied: 3.1** The AO made a comparison of G.P. declared by the assessee during the year under consideration i.e. A.Y. 2009-10 with the G.P. rate of 3.92% declared by M/s Relan Motors in A.Y. 2013-14 and straight away applied GP rate of 3.25% (as against 4.20% as above). Unfortunately,however, the relevant **details of which was never confronted** to the assessee hence, it is difficult to make a comment and to make a comparison. Therefore, the comparison made and drawing adverse inference against the assessee by the AO as regards the application of G.P., was fully unjustified. More particularly when the material so gathered was never confronted and hence such material i.e **the so called comparable cases, could not be considered even**. Kindly refer **Vimal Chandra Golecha v/s ITO & Anr. (1982) 134 ITR 119 (Raj.), ITO & Anr. v/s Gargidin Jawla Prasad Maholi & Ors. (1980) 124 ITR 203 (All).

***3.2 Justifiable reason behind non-considering comparable case:** The comparison so made with the G.P. declared three years later by a third party, is not a good basis for making addition. It is a matter of common knowledge that in three years the scenario has changed altogether. Therefore, the comparison made by the AO is arbitrary. The justification behind the trading results of the current year are always to be examined in the light of the facts and circumstances of the present case.*

3.3 *The reasons of low G.P. (if compared with* ***M/s Relan Motors (P) Ltd.****) and* ***reason behind non-considering the said case,*** *were submitted before the lower authorities in great detail. The relevant extract from the submission of the ld. CIT(A), reproduced at Pg-4 & 5 are reproduced hereunder:*

> *"2. That he also made an addition of Rs.7,58,27,287/- on suppressed sale @ 12.155% on above total turnover of Rs.62,40,92,904/- which includes the sale of Rs.21,92,72,275/- also which was assessed in A.Y. 2010-11. No proper opportunity of being heard was given for cross examination from various parties on account of which he has made such addition in sales in complete turnover on the basis of alleged difference found in various parties reply for Rs. 43,35,138/- as such he presumed suppressed sales on estimation basis without actual enquiry or verification of records &/or D.T.O records for actual invoice value. No such estimation can be made on sample basis which was also not correct and based on parties information without giving opportunity for cross examination from them. Accordingly no such addition can be made on random basis till actual sale found suppressed after making an independent enquiry.*
>
> *3. That the GP rate taken &/or considered @3.25% is on higher side in view of actual G.P rate shown by us and reply filed for such GP rate. The actual sale presumed for Rs.69,99,20,191/- is quite wrong and accordingly GP rate also calculated on such sale is also wrong. In our own case GP rate 3.25% considered after re-casted trading results i.e. addition of other income directly related to business and as considered in the case of Relan Motors and in our own case for A.Y 2010-11 accordingly GP rate comes to 2.995 as our results shown and difference only even otherwise without prejudice to above should have been added which comes to Rs.18,19,792/- only as against Rs.2,06,46,489/- only on such alleged higher sales shown above even because of 2.99 already shown as per reply dated 11-03-2015 to A.O.*

In view of increasing trend of turnover no such addition is warranted."

***3.4** It is unfortunate that the CIT(A) blindly and that too in absence of any supporting evidence followed whatever the AO said but the submission of the assessee have been completely ignored even he did not consider that however result of a later year can be applied in the preceding year, which is against the settled law.*

***4.** Inquiries were made at assesse's back without opportunity of cross examination though demand. CIT (A) order pg. 8. The law is well settled that in a case where there is a **violation of Principles of natural justice** and a party has been deprived of its valuable rights of being heard effectively yet, an order has been passed containing huge additions, such an action has to be considered as having been done without jurisdiction and vitiating the entire order which, results into as nullity and is not case of mere irregularity. Kindly refer **Colonisers vs. ACIT [1992] 41 ITD 57 (Hyderabad) (SB)/[1993] 45 TTJ 114** (Hyderabad) (SB) **(DPB-17-30)** holding that:*

> *"In the preceding paragraphs it has been indicated why the assessee's version cannot be rejected as regards the credits appearing in his books. Perhaps the only justification, if at all it can be called a justification, for the ITO to reject the credits as not genuine is the failure of the assessee to produce the creditors when called upon to do so by the ITO. At this stage it is but necessary to state the circumstances in which the assessee was unable to produce the creditors. We are concerned with the asst. yr. 1985- 86. For the first time the ITO called upon the assessee to produce the creditors by his letter dt. 7th March, 1988 which was served on the assessee on 9th March, 1988.*
>
> *The rules of natural justice operate as implied mandatory requirement, non-observance of which amounts to arbitrariness and discrimination. The principles of natural justice have been elevated to the status of fundamental rights guaranteed in the Constitution of*

India as is evident from the decision of the Full Bench of the Hon'ble Supreme Court in the case of Union of India vs. Tulsiram Patel & Ors. reported in AIR 1985 SC 1416 at 1469, holding that the principle of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 of the Constitution of India because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject-matter of that Article and that violation of principles of natural justice by a State action is a violation of Article 14. A quasi-judicial or administrative decision rendered or an order made in violation of the rule of audi alteram partem is null and void and the order made in such a case can be struck down as invalid on that score alone (Maneka Gandhi vs. Union of India AIR 1978 SC 597; Gangadharan Pillai vs. ACED: (1980) 126 ITR 356 (Ker) : (1978) 8 CTR (Ker) 352 at pp. 365 to 367). In other words, the order which infringes the fundamental principle, passed in violation of audi alteram partem rule, is a nullity. When a competent Court or authority holds such an order as invalid or sets it aside, the impugned order becomes null and void. (Nb. Khan Abbas Khan vs. State of Gujarat AIR 1974 SC 1471 at 1479) . In the light of these decisions, we do opine that the addition made by the Assessing Officer in violation of the principles of natural justice has to be set aside as void only in so far as the additions by way of cash credits alone are concerned, which are separable from the other additions in the order that are not challenged and consequently becoming thus non est in the eye of law."

5. Suppression of 12.15% is unjustified:

5.1 No suppression as such: *The lower authorities failed to appreciate that there was no under invoicing/suppression of sale as such in as much as the Performa/VAT invoice and the RC referred to/mentioned the consolidated amount i.e. sale consideration, Road Tax, Registration & Insurance expenses whereas in the ledger account seen by the AO contained separate details of the sale consideration, Road Tax, Registration & Insurance expenses.* ***Hence, if all the debit items are added to the sale consideration, there will be no***

difference as such. *This has been explained by way of the following chart w.r.t the illustrations given below. To explain, in case of Akshay Jain (Kapoor Chand Jain)who purchased Wagonr Lxi* ***(PB-88 A.Y. 2010-11)****, as per Customer total amount shown is Rs.3,14,702/- as against the ledger account showing 3,01,442/-* ***(PB 97-98)*** *with a difference of Rs. 13,260/-. However, if the amounts of RTO expenses, insurance and other accessories Rs. 39,296/- are also added, the total comes Rs. 3,40,738/- which was more than the amount given by the customer. (The excess amount of 26,036/- received by the assessee from the customer in cash / Finance Company)* ***(PB 97-98)****,* ***leaving no differenceas alleged****. Similar is the position w.r.t. other cases also. In some cases, there may be still some meagre difference but negligible and may be because of various reasons beyond control. At the same time however, in some cases the assessee has shown more amount than the alleged difference.* ***Thus, factually there was no difference*** *between the total amount as accounted for by the assessee and those paid by the customer there is no suppression at all.*

S. No	***Customer Name***	***Sales Amt As Per Assessee [Rs.]***	***Purchase Amt As Per Customer[Rs.]***	***Net Suppression of Sales As Per A.O Order***	***Other Debits amt Not Considered by A.O***	***Total Purchase Amt As Per Assesse After Debit Adjustment***	***Net Suppression of Sales As Per Assesse after Debit Adjustment***	***Chart PB AY. 2010-11***
1	*Akhilesh Chandra Pachoree*	*315803*	*356326*	*-40523*	*42697*	*358500*	*2174*	*88*
2	*Akshay Jain (Kapoor Chand Jain)*	*301442*	*314702*	*-13260*	*39296*	*340738*	*26036*	*88*
3	*Alka Mathur*	*293751*	*327100*	*-33349*	*33349*	*327100*	*0*	*88*
4	*Anil Kumar Mathur*	*209087*	*231966*	*-22879*	*23723*	*232810*	*844*	*88*
5	*Anoop Kumar Goond*	*300940*	*359000*	*-58060*	*40760*	*341700*	*-17300*	*88*

6	*Arvind Kumar Nahta*	*598567*	*619144*	*-20577*	*53021*	*651588*	*32444*	*88*
7	*Ashutosh Shrivastav*	*275509*	*321059*	*-45550*	*45550*	*321059*	*0*	*89*
8	*Babu Lal Chipa*	*200836*	*226000*	*-25164*	*25164*	*226000*	*0*	*89*
9	*Badri Prasad Baser*	*358560*	*382126*	*-23566*	*29236*	*387796*	*5670*	*89*
10	*Bhagwnat Kaur*	*268874*	*302640*	*-33766*	*0*	*268874*	*-33766*	*89*
11	*B.L Meena*	*257193*	*288204*	*-31011*	*44735*	*301928*	*13724*	*89*
12	*Chiranji Lal Keer*	*302291*	*320000*	*-17709*	*19126*	*321417*	*1417*	*90*
13	*Cicil Pervaz Jonathan*	*291538*	*336300*	*-44762*	*26081*	*317619*	*-18681*	*90*
14	*Com.Islamia Intezamia Oqaf (Tech.Eng)*	*238676*	*260871*	*-22195*	*8218*	*246894*	*-13977*	*90*
15	*Deepkamal Choudhary*	*235941*	*274560*	*-38619*	*38742*	*274683*	*123*	*90*
16	*Dev. Karan Choudhary*	*269446*	*302640*	*-33194*	*21371*	*290817*	*-11823*	*90*
20	*Gopal Khanna*	*195801*	*218620*	*-22819*	*22819*	*218620*	*0*	*91*

Also please refer chart & ledger a/c in some cases (PB 99-147).

5.2 *Unfortunately however, the ld. CIT(A) completely ignored all these facts and figures though available on record. Hence the enhancement of the sale by 12.15% is highly unjustified without any basis and only being a result of suspicion, deserves to be ignored and deleted in full.*

5.3 *it is wrong to say that the assessee admitted suppression of sale. It is only w.r.t. some minor variation of negligible amounts due to cash discount, less recovery or mistakes in the mathematical calculations that some difference may be there however, it cannot be admission of suppression.*

6. Declared Sales accepted by the Commercial Tax Department: *It cannot be denied that the Commercial Tax Authorities (Value Added Tax) are directly concerned with the determination of the correct amount of the sale in as much as, VAT is collected only withy reference to the amount of sale and therefore, stack of the Commercial Tax Department are much, much more than of the Income Tax Department, which is concerned only the income element, coming*

out of the sales. Therefore, once the VAT Authorities have accepted and assessed the sale ***(PB 29-30-38)*** *the authenticity of the assessed figures of the sale cannot be doubted under normal circumstances. Pertinently, the sales as declared by the assessee was duly accepted by the VAT / Commercial Tax Department. Unfortunately, the lower authorities did not pay any attention to this vital facts going to the root of the issue and therefore, Income Tax Authorities could not have made any addition on this account as was held by the Hon`ble Karnataka High Court in the case of* ***Shree Shankar Khandsari Sugar Mills v. CIT (1992) 193 ITR 669 (Cal) (DPB 9-11)****,it was held that.*

> *"Income is estimated on the basis of the assessee's turnover furnished by the CTO. Income of the assessee is only from the sale of sugar; there can be no dispute on this. Therefore, the 'turnover' which is the basis for estimating the income, shall be proximate or relatable, to the turnover of sugar. If on the face of it, the 'turnover' of the assessee furnished by the CTO is not confined to the turnover regarding sugar, then, out of the turnover furnished by the CTO a fair percentage should have been excluded before estimating the 'turnover' regarding sugar. But, if the entire turnover of the assessee is the sole foundation for estimating the income of the assessee from sale of sugar, that estimate would not be a fair and proper estimate; the resultant guess work would partake the character of a wild guess work. It will be a case of relying on a partly relevant and partly irrelevant material to make an order of assessment, if it is established that conclusive material was available to show the turnover from sugar distinctly from the gross turnover of the assessee. It is also true that the assessee could have produced the sales-tax assessment order. But, here, we are concerned with the propriety and fairness of the estimate made by the ITO, who ventured upon an investigation, which on the face of it is found to be incomplete.* ***ITO should have in fairness sought the details of sales-tax assessment order, so that he could have obtained the real figures of turnover regarding sales of sugar. In view of Item 31B of Sch. V of Karantaka Sales-tax Act, 1957, turnover relatable to sugar is not taxable under the said Act. If so, taxable turnover under the Sales-tax Act would not disclose the real***

turnover pertaining to sugar. *The appellate authority should have accepted the material produced by the assessee, as clarificatory in nature and consider the same to test the fairness and propriety of the estimate of income made by the ITO. Though it was a belated production of a very relevant material, no prejudice (in its legal sense) would have resulted to the Revenue by considering the material produced by the assessee. A consideration of such a material by the appellate authority would have rendered the best judgment assessment, a fair proceeding and the resultant assessment order would have been a most rational one."*

6.2 *Moreover sale already assessed & enhanced in AY 2010-11 & 2011-12.*

7. Contradictory approach of the AO w.r.t. the Advances from customers:
7.1 *At the outset it is submitted that a bare perusal of the assessment orders of three years i.e. A.Y. 2009-10, 2010-11 and the current year A.Y. 2011-12, the AO has looked upon the things in an altogether different & contradictory manners even though the facts & circumstances are the same and the method & manner of the receipts of the sale proceeds and accounting thereof, are same being consistently followed by the assessee. The same is being explained hereunder:*

7.1.1 *The assessment for* ***A.Y. 2010-11*** *was completed first, wherein the entire amount of the advances received in that year of Rs.20,28,74,955/-, were added as unexplained credits disbelieving the genuineness of such credits, vide the assessment order dated 28.03.2013 passed u/s 143(3) (the same is under challenge vide ITA No. 929/JP/2016 before the Hon'ble ITAT).*

7.1.2 *In the current year i.e.* ***A.Y. 2011-12****, the assessee has shown advances from customers as on 31.03.2011 of Rs. 30,46,50,118/- as against Rs.44,87,96,115/- shown last year. Thus, Rs.14,41,45,997/- being the amount of new advances were introduced during the year. Further, as per AO from the verification of confirmed advances of Rs.10,79,64,236/-, it is revealed that sales effected / registered was to the extent of Rs.6,58,31,191/- in the current year, which is 60.9749% (or 61%) in terms of percentage*

whereas the amount of advances to the extent of Rs.4,21,33,045/- were the amount of the sale effected / registered in the later year/s which is 39.0251% (or 39%) in terms of percentage. Thus, as per AO out of the total advances Rs.30.47 Cr., the sales effected / registered was to the extent of 61% and accordingly, he determined the sales out of the advances received to the extent of Rs.18,57,60,105/- (Rs.30,46,50,118/- x 60.9749%), which, the assessee should have offered in this year. But making further addition the AO estimated the sale to the extent of Rs.30 Cr. and applied GP rate of 3.25% on the same, resulting into trading addition of deferred sale of Rs. 97,50,000/- vide assessment order passed u/s 143(3) dated 28.03.2014. The ld. CIT(A), in principle approved the theory applied by the AO but rejecting the over estimation of Rs.30 Cr., confirmed the sale to the extent of Rs.18.58 Cr. only.

***7.1.3** In **A.Y. 2009-10**, when the assessee's case was reopened u/s 148, the AO changed the approach and took an **altogether different view as was taken by his predecessors earlier.** He firstly, worked out the advances of Rs.21,92,72,275/- for which the assessee booked sales in A.Y. 2010-11 to 2013-14 i.e. in subsequent years therefore, he considered the entire amount of Rs.21,92,72,275/- (out of new advances of Rs.24,00,87,965/- during the year) as turnover and added the same to the declared turnover of Rs.40,48,200,629/- and thereafter enhanced the same by applying 12.15% (alleged suppressed sale as per his calculation) on total turnover of Rs.62,40,92,904/- (Rs.21,92,72,275/- + Rs.40,48,200,629/-) and worked out the alleged suppressed sale of Rs.7,58,27,287/- in addition to Rs.62.41 Cr. as stated above. Thus, **as per AO the total sale should have been Rs. 69,99,20,191/-** (Rs.40.48 Cr. + Rs.22 Cr. + 12.15% being Rs. 7.58 Cr.). Finally, he applied G.P. rate of 3.25% on 69.99 Cr. so worked out and made the resultant trading addition of Rs.2,06,46,689/-. vide assessment order passed u/s 143(3) / 147 dated 30.03.2015.*

*Thus, **the AO himself adopted three altogether different approaches** in respect of same very aspect of the amount of advances received from the customers in three different assessment years viz (i) considering the entire advances as unexplained cash credit u/s 68, (ii) considering a part of the*

advances as the case of deferred sale but not disbelieving such advances as unexplained credits, (iii) considering the entire amount of advances as a part of turnover. Therefore, the prime question arises as to which approach of the AO should be believed. If the approach adopted in the later two years is considered fully or partly acceptable then his case of disbelieving the entire amount of the advances u/s 68 in A.Y. 2010-11 completely goes away. If his approach of considering the advances as deferred sale is accepted as good, his case of considering the entire amount of the advances as a case of deferred sale also goes away. It is not the caves of the revenue that the facts and the circumstances are altogether different in three years and there was new material and some special reasons assigned to take departure from the earlier approach. ***The entire amounts of the addition made in three different years are liable to be quashed and deleted on this ground alone*** *in as much as such contradictory approach established that* ***the AO did not dealt as a quasi-judicial authority.*** *He merely proceeded on his own whims and fancies. The ld. CIT(A) completely ignored this vital aspect going to the root. Kindly refer* ***Dhakeshwari cotton Mills 26 ITR 775 (SC).***

8. Settled Past Practice: 8.1 *It is submitted that* ***the assessee has been carrying on the same business in the same setup and under the same facts and circumstances. Even the manner and method*** *of recording the transactions has also been the same since beginning. The same books of account and the other ancillary record showing details maintained in a similar manner as in the past. Therefore,* ***there appears no special reason*** *as to why the revenue has departed from the settled position on facts and on law between the parties and to unsettle the settled position. In these circumstances therefore the doctrine of res judicata certainly applies on the facts of the present case, so far as this aspect is concerned.*

It has been held that though the doctrine of res judicata do not apply to Income Tax proceeding yet however, unless there is a change in the facts and circumstances, the ***view taken earlier should normally be taken consistently.*** *For this kindly refer* ***Sardar Kehar Singh v/s CIT (1991) 92 CTR 88/(1992) 195 ITR 769 (Raj)****, and a recent decision in* ***CIT v/s Excel Industries Ltd. (2013) 358 ITR 295 (SC)****.*

*It is a **judicially accepted principle that when the facts are same, a uniform view should be adopted** for the subsequent years in the income tax proceedings unless there is a material change in the facts, which has not been established by the AO. Kindly refer **Radhasoami Satsang v/s CIT (1992) 193 ITR 321 (SC),** on the theory of consistency, has held as under:*

> *" ..Strictly speaking, res judicata does not apply to the income tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following, year, where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and parties have allowed that position to ne sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year".*

***8.2 Not a case of deferred sale:** It is submitted that the assessee is a Pvt. Ltd. Company and has been consistently following the same method and manner of accounting the sale proceeds. The revenue is being recognize in accordance with the applicable Accounting Standards issued by ICAI. Moreover, in some cases proper documentation was lacking and in some cases total finance value was not available. Kindly refer **Dutta Automobiles P. Ltd vs. ACIT (2016) 180 TTJ (Kol) 128 (DPB 65-69) [and ACIT vs. Dow Agrosciences India P. Ltd. (2016) 53 ITR_TRIB 590 (Mum) (DPB 54-61)].** No working provided how figure of Rs. 21.93Cr. has been worked by AO.*

***9. Case of multiple additions:** From a bare reading of the orders of the authorities below the fact cannot be denied and easily ascertainable **that it is case of multiple addition** in as much as firstly, the **AO while considering the outstanding advances of Rs.30.46 Crores as on 31.03.2011 (A.Y. 2011-12)** considered a part of it (i.e. 60.97% thereof) as a sale which **has not been disclosed by the assessee this yearthough it has beendeferred and shown in the later years** and accordingly, worked out at Rs.18,57,60,105/-. At the same time however, the **AO has completely ignored the fact that in the immediately preceding year** (i.e. A.Y. 2010-11)the AO compared the opening and closing balances of the advances received from customer*

account which was Rs.20,28,74,955/- at Pg-10 of the assessment year for that year and ***made an addition u/s 68 on account of unverified advance****. On the other hand, in the present year the AO at Pg. 13 Pr. 5.5 has clearly admitted that the sale to the extent of Rs.8.50 Cr. (Rs.5.81 Cr. and 2.68 Cr.) are the cases of such advances of customers* ***which wereoutstanding as on 31.03.2010 and continued as on 31.03.2011*** *also, meaning thereby, the advances to the extent of Rs.8.50 Cr. approx. constituted a part of the advances of Rs.20.29 Cr., which was already added by the AO in A.Y. 2010-11.* ***Thus, on one hand the AO has added this entire amount of Rs.8.50 Cr. in A.Y. 2010-11 as a part of Rs.20.29 Cr. addition and again in the current year, he considered the same amount of Rs.8.50 Cr. to be a part of the deferred sale*** *(in as much as instead of considering the net of 21.96 Cr. (Rs.30.46 Cr. less Rs.8.50 Cr.) he considered entire 30.46 Cr. and by applying 60.97% thereon, he computed the deferred sale of Rs.18.57 Cr).* ***Going by AO`s own theory, the AO could have applied 60.97 or 61% on the amount of Rs. 21.96 Cr only which comes to Rs. 13.64 Cr. only but not on Rs. 30.46 Cr. (which included Rs.8.50 Cr. relating to the A.Y. 2010-11).***

Again in A.Y. 2009-10, the AO considered the amount of advances of Rs.21,92,72,275/- as deferred sale of the current year (and applying G.P. rate of 3.25% made trading addition) as against shown as sale by the assessee in subsequent year in A.Y. 2010-11 to 2013-14 (AO Pg-6 of A.Y. 2009-10). ***On one hand the AO made the trading addition in this year whereas the assessee itself has declared profits in the later three years.*** *Thus, to this extent there is multiple addition.*

The opening balance of advances Rs. 14,91,98,410/- adjusted in sale in later years (PB 59) must be reduced this year.

10. Double addition: *The authorities below have not denied that the cases of advance received from customers was nothing but a case of sales and all advances were received on account of sale only. These were not received by the assessee for any other purpose. It is also not denied that if not in the current year, in the later year/s, part of these advances stood considered as sale. The very term deferred sale implies though the sale accounted for but not in the relevant year however in the later year. In other words, in view of the authorities below, though the assessee has declared the sale out of these*

advances, but instead of declaring such sale in the relevant year, the same were deferred to the later years.

Hence, the very fact of recording the income arising from the sale stood accepted by the authorities below. *The only dispute remained is the correct year of declaration and taxing of the income. On the other hand it is not disputed that the* ***tax rate in block period of three years i.e. A.Y. 2009-10, 2010-11 and 2011-12*** *was the same therefore, even if an item of sale which remained to be declared in A.Y. 2010-11 but declared in A.Y. 2011-12 or remained to be declared in A.Y. 2009-10 but same declared in later years, the* ***revenue was not going to lose any tax.*** *Hence, the assessee has declared the sale in the current year as well as in subsequent year/s with respect to the advances received from customers. Thus, addition made by the AO during the year for the sale effected in subsequent year amounted to a double addition as the assessee has already declared the same in the subsequent year and paid taxes thereon.* ***Double taxation of the same income is not permissible, is a settled law.***

11. *Lastly, we strongly rely upon our written submission filed before the ld. CIT(A) reproduced at Pg- 4 to 11 of his order at Pr. 4.2. The same is reproduced hereunder for the sake of convenience:*

> *"(1) That the sales has been shown as per sale register & / or invoice issued by the us & the sales has been duly assessed by Commercial Taxes Deptt, also, the Copy assessment is enclosed herewith. As per reply dated 11-03-15 we have explained that there is an increasing trend of turnover and other income & our GP rate comes to 2.99% as against assessed by AO @ 3.25% but he has assessed 3.25% on exaggerated turnover of Rs.69,99,20,191/- as against actual sales of Rs. 40,48,20,632/- as shown in audited accounts & also as assessed by Commercial Taxes Deptt also. The sale actually assessed by C.T.O Anti Evasion as per books of accounts duly examined by him & order passed dated 14-03-11 for A.Y. 2009-10 i.e. relevant to our assessment in dispute for financial year 2008-09 (01-04-2008 to 31-03-2009) and AY 2009-10* ***(PB 29-38)****. In support of our actual sale*

there is audited accounts under Tax Audit 2009-10. In support of our actual sale there is audited accounts under Tax Audit u/s 44AB & also VAT Audit report dated 29-12-2009 of M/s P.K Audit report dated 04-09-2009 ***(PB 39-51)****& Audit as per Company law dated 04-09-2009* ***(PB 2-9)*** *enclosed herewith along with VAT Act Both the Audit reports i.e. Tax Audit report dated. 04-09-2009* ***(PB 10-28)*** *enclosed herewith along with VAT Audit report dated. 29-12-2009 of M/s P.K. Khandelwal & Associates C.A enclosed herewith As per all auditor's report the total turnover as per books were Rs. 40,48,20,632/- & not as assessed merely on presumption &/ or suspicion considered by AO for Rs.69,99,20,191/- i.e. much more higher side i.e. even more than 17.5% of actual sales which is not at all possible. The mistake &/or irregularity of some bills cannot be considered for complete sales & especially when no opportunity of being heard was given to Cross examine the parties as per list shown in assessment. Order showing difference for Rs.43,35,138/- the difference found in all invoices might have been due to charging for registration & other Exp. from customers. However in the interest of justice the maximum enhancement of sale could have been made as per actual difference found in all invoices checked by him but no more as assessed by AO to the tune of Rs.7,58,27,287/- as against Rs.43,35,138/- thus the increase sales for Rs.7,14,92,149/- is quite wrong & unjustified. There is no provision to enhance sales on estimation basis as against found in excess actual sale of Rs. 43,35,138/- only. As decided by Higher Courts, no multiplication can be made for whole years on the basis of suppression of sale for 10-15 days observed &/or found if any and as per definition of sale there must be consideration which is to be proved by AO for determination of such higher sales for assumption of sale, there must be sale consideration to be proved and as decided in following cases no enhancement of sale can be made without proving actual sale:*

(2013) 49 page 105 (RHC) *CIT vs Mohan Marble (P) LTD.*	*It is unlawful to make increase in sales without bringing cogent material to prove sales out of books of accounts.*

	Further held GP Companies made with another is also not justified.
(1973) (P-19)87 ITR 349 (SC)	
(2007) 18 TUD 184 (Raj.) *AC AE Udaipur vs Bilas Udhyog*	*tax can be levied only on actual sale considerable and not assessable value.*

As per law of accounting purchases always followed sales and accordingly when there is no enhancement in purchases, how sales can be made and our purchases are fully from M/s Maruti Udhyog Ltd. Gurgaon and not from any other firms because of authorized agent of Maruti vehicles. Accordingly when there is no difference cannot be an enhancement in sales as made by AO without consideration of all these true facts which are universally truth. Maruti Udhyog Ltd Gurgaon and you will found total purchases duly accounted for in our books of accounts in all respective years.

Similarly the sale of subsequent year shown in our books & duly assessed by Commercial Taxes Deptt. As per VAT Act & also assessed by AO in A.Y. 2010-11 vide order dtd. 28-03-13 cannot be also considered for A.Y. 2209-10 to avoid double taxation on same turnover i.e. in A.Y. 2008-09 &also again in 2009-10. As such the turnover of Rs.219272275/- sale of F.Y. 2009-10 i.e asstt. Year 2010-11 cannot be added in this year. As admitted the enhanced sale of Rs. 219272275/- + 12.15% i.e. 245913856/- which has already been assessed in income tax also in AY 2010-11 and sales tax in FY 2009-10 cannot be taken into account for addition of GP rate @ 3.25% i.e. Rs. 7992200/- is quite illegal and unjustified. The GP rate @ 3.25% if any taken it should have been only on actual sales as shown in books of accounts duly audited by Chartered Accountant Firm and also assessed by Commercial Taxes Officer Anti Evasion Ajmer after

enclosing herewith all these documents submitted in time, the sales shown in records and audited statements. Accordingly enhancement of turnover and addition of subsequent sales in this year is also wrong and illegal and specially when that turnover already considered and taxed in subsequent year. The same turnover should have been reduced from subsequent year if it would have been taxed during this year. As decided by supreme court and other high court the same turnover cannot be assessed in two years simultaneously. As per law the GP rate should also have been as per past history of the case and GP of immediately previous year as also asked by Raj. High Court as shown below.

In view of above the actual sale Rs. 40,48,20,629/- only should have been taxed as against Rs. 69920191/- as assessed against the audit reports. The addition of sale of Rs. 21,92,72,275/- and presumed suppression sales of Rs.7,58,27,287/- is quite wrong and without any basis and the same should have been reduced from total turnover assessed by AO against the books &/or records shown. The subsequent sale has been fully assessed as shown by us as per records and audited balance sheet and profit and loss account and nothing was reduced. It was also tallied as per returns and assessed two times i.e. in AY 2009-10 and also in AY 2010-11 as cleared from assessment orders of income tax for AY 2009-10 and 10-11. It is therefore requested to kindly reduce the turnover i.e. sale of Rs.21,92,72,275/- and subsequent addition of Rs. 35,56,581/- being 12.15% on account of suppression added on hypothetical assumptions for subsequent year also. As per definition of sale as per vat act there must be consideration for such sale for which AO failed to prove. The burden to establish and/or prove the sale and consideration obtained from such sale lies on deptt. i.e. AO for which he completely failed.

In view of all above the presumed sale of Rs. 21,92,72,275/- on account of billing shown from FY 2009-10 to 12-13 i.e. AY 2010-11 to AY 2013-14 subsequent year sales, which has been already assessed in our hands in AY 2010-11, 2011-12 and 2012-13 by sales tax Deptt.

The copy of orders enclosed in confirmation of sales assessed sale given to us by income tax deptt. In any year, meaning thereby same sale assessed twice i.e. in AY 2009-10 and as presumed by AO from 2010-11 to AY 2013-14 which is ab- initio void and illegal and comes in the purview of double taxation which is voilative as per article of constitution. We are enclosing herewith the copy of sales tax assessment orders for AY 08-09 i.e., our relevant Asstt year 09-10. Our turnover is duly verified by CA firm. The sales assessed by Sales Tax Deptt. Should have been accepted because they are best judge to assess sales tax liability and to determine total turnover. (As decided by supreme court in 10 VAT Reporter 101 (SC) State of AP vs Larson & Toubro – Double taxation is voilative as per Art. 14 (19) (1) (g) and 265 Constitution of India.

217 Taxman 80 (RHC) sec 145 CIT vs Ashok Bhehi Bharat Sethi & Party	*Addition in GP Rate of the assessee with reference to case of another assessee is not justified when assessee's past history in available and there is no material difference in facts pertaining to relevant astt. Year and past history year.*

The AO has wrongly mentioned in para 4.5 on page 7 of his order that "G.P. at the rate of 3.25% on actual sale as worked out as per his order" but actually it was not actual sale but it was working of his own ideas &/or presumption basis without any proof &/or presumption basis without any proof &/or evidence in support of such sales, which has already been assessed in subsequent years as admitted by AO and also as per our replies also. We reproduce herewith the detailed reply given to AO dtd. 11-03-2015 according to which there is an increasing trend of turnover as well as other income also. Kindly look into the reply as under.

The Astt. Commissioner of Income- Tax

Circle I, Ajmer

Dear Sir,

Reg: M/s Raj Auto Wheels (P) Ltd., Ajmer

Ref: Submission in reply to queries for F.Y. 2009-10.

With reference to above & in continuation to our previous submission & data provided, we have further submit as under:-

That it is true fact that our annual turnover is on increasing trend since last year i.e. F.Y. 2007-08 to subsequent years. We give below details of turnover as under:-

F.Y.	*Turnover*	*Other Income*	
2007-08	*162899694*	*9616088*	
2008-09	*404820629*	*16796088*	*Now copy of assessment order, vat audit report, tax audit report all enclosed herewith*
2009-10	*586077936*	*22413352*	
2010-11	*1148638878*	*16964723*	

In view the increasing trend in sales & also of other income as compared to other traders of similar business i.e. M/s Ajmer Auto Agencies Pvt. Lid. Our results should have been accepted as per G.P. rate declared by us. However, in view of your objection for showing sales in subsequent period out of advances taken from customers, we have to submit that during this year no such sales shifted & we have shown sale of Rs. 404820629 as against last year turnover of Rs. 162899694/- which give rise percentage of 250% on last year turnover & hence our other income also increased accordingly. As you know there is no addition in G.P during the asstt. Year 2010-11 made u/s 143(3) of IT Act & books results accepted by AO &

accordingly also the result can be accepted by AO & accordingly also the result can be accepted as per our own history of case shown by us on such increased turnover. However we give recasted trading account as considered by AO in F.Y. 2010-11 comes & accepted @ 3.25% of turnover. We are showing good results as compared to M/s Ajmer Auto Agencies (P) Ltd. for the same period. As such GP Rate comes in our case as under:-

F.Y.	*AY*	*Turnover*	*Other Income*	*G.P Rate*
2008-09	*2009-10*	*404820629*	*16796088*	*3.05%*
2009-10	*2010-11*	*586077936*	*22413352*	*2.99%*
2010-11	*2011-12*	*1148638878*	*1694723*	*3.25%*

On the basis of above results you may consider maximum 3.25% GP on our actual sales shown above found duly audited by CA. As regards transfer of sale as alleged by you it is not out of place to mention here that the next year sale also already been assessed by AO & further year sale also assessed by increasing 3 crores of sales & profit estimated @3.25% in A.Y. 2011-12. As such our subsequent sales in which you presume transfer of sale from every deposits, already been assessed & there cannot be a presumption of same sale twice.

Hence the impugned addition be deleted in full."

2.5 On the other hand, the ld. DR strongly relied upon the findings recorded by the authorities below and justified the additions made and confirmed by the ld. CIT(A) and prayed to uphold the addition/disallowance.

2.6 We have carefully considered the facts of the case, finding recorded in the impugned orders, the rival contentions raised by both the parties as also the

material placed on record. We have also gone through the judicial pronouncements cited by the parties. As can be seen, the subjected addition is a result of consideration of advances received from the customers this year but declared as sale in AY 2010-11 to 2013-14 of Rs.2,19,27,275/- and the enhancement made of 12.15% (of the declared sale of Rs. 40.48 cr and of the deferred sale as deemed sale of Rs. 21.93 cr totaling to 62.41 cr) which comes to Rs.7.58 cr. Thus, total sale was estimated atRs.70 cr(69,99,20,191/-) and application of GP rate of 3.25% thereon has resulted into the subjected impugned addition of Rs. 2,06,46,689/- which is under challenge. Coming to the aspect of suppression of sale, it is seen that such an enhancement was not justified which is not based on any cogent material placed on record and in the light of rival contentions. At the outset, we find that looking to the quantum of sale of Rs.40 cr and no. of customers 1459, the sample size of 113 cases, is grossly insufficient so as to draw a justifiable inference to be applied on all the cases. The basic contention of the assessee was that there was no suppression of sale because Performa/VAT invoice and the RC referred to/mentioned the consolidated amount i.e. sale consideration, Road Tax, Registration & Insurance expenses whereas in the ledger account seen by the AO contained separate details of the sale consideration, Road Tax, Registration & Insurance expenses. Hence, if all the debit items are added to the sale consideration, there will be no difference as such. We have carefully pursued the

chart submitted before us and also the related material and find that except a minor variation, there is no case successfully made out by the AO of suppression of sale. Behind the minor variations there may be various reasons however, merely based on some small cases, without anything more, the AO was not justified in enhancing the sale to a huge Rs. 7.58 cr. During the course of hearing, our attention was drawn towards a chart in the written submission explaining the above contention by way of various examples. This has been explained by way of the w.r.t the illustrations given therein. We have carefully pursued the chart submitted before us and also the related material. It is noticed that in case of Akshay Jain (Kapoor Chand Jain) who purchased Wagonr Lxi (Assessee's PB-88 A.Y. 2010-11), as per Customer total amount shown is Rs.3,14,702/- as against the ledger account showing 3,01,442/- (Assessee's PB 97-98) with a difference of Rs. 13,260/-. However, if the amounts of RTO expenses, insurance and other accessories Rs. 39,296/- are also added, the total comes Rs. 3,40,738/- which is much more hence there is no suppression as alleged. Similar is the position w.r.t. other cases also. At the same time however, in some cases the assessee has shown more amount than the alleged difference. Thus, factually there was no difference between the total amount as accounted for by the assessee and those paid by the customer hence there is no suppression at all. We find that except a minor variation, there is no case successfully made out by the AO of suppression of sale. Behind the minor variations there may be various reasons

however, merely based on some small cases, without anything more, the AO was not justified in enhancing the sale. We find nothing on the record to justify the case of suppression of sale i.e., though amount was received but was not recorded. Moreover, to effect the sale to such an extent, corresponding purchases of the vehicles are also required by the assessee, however, neither the claimed purchases have been discussed nor it is alleged so. At the best, it was a case of mere suspicion which was not substantiated with the help of strong evidences, wherein the revenue has completely failed. The authorities below this year also alleged the deferment of the sale which is not justified. On this aspect, we have rejected such contention and approach of the revenue for the detailed reasonings in the appeal of the assessee for AY 2010-11 vide ITA no.396/JP/15and the same hold good for this year as well as because the facts & circumstances are the same in this year also. In other words, our findings in that year shall apply mutatis mutandis. Coming to the correctness of the application of the GP rate of 3.25% by the AO, we find that the AO in this year, taking the declared GP rate at 0.05% and considering the case of Rellan Motors Pvt. Ltd for AY 2013-14 which has declared GP rate of 3.92%, applied 3.25%. Firstly, we find that it was a case of AY 2013-14 which is later to the year under consideration. Needless to say that the result of the subsequent year cannot be applied in the preceding year. Otherwise also the case of Rellan Motors could not be used against the assessee because a perusal of the orders does not show that

the assessee was ever confronted with the material used against him hence no reliance can be placed on the so called comparable case. Secondly, we find force in the contention of the ld. AR that the correct and revised GP rate stood at 4.20% and not mere 0.05% because the assessee has been consistently considering the target incentives, turnovers, cash discounts, warranty etc. as a part of the receipts directly related to the trading activities and accordingly such direct income credited to the P/L account should have been considered with the declared turnover resulting into the revised gross profit of Rs.1,70,55,357/- and 4.20% in terms of percentage to Sales. A chart to this effect was provided in the written submission. We find that that such claim of the revised GP rate of 3.25% was made before the AO also vide letter dated 11.03.2015 refer pg 6-7 of CIT(A) order but no adverse comments were made thereon. These facts could not be rebutted by the ld. DR also. Whether it is 4.20% or 3.25% as the case may be, the same compares favorably with the cited case of M/s Rellan Motors, even though not applicable. Further the GP rate declared is fully justified also in view of the sharp increase in the sale from Rs.16.29 cr to Rs.40.48 cr this year being 250%, calling for no interference in the declared trading results. On the other hand, the comparable case of M/s Ajmer Auto Agency Pvt. Ltd for AY 2010-11 was cited before the authorities below which had declared GP rate of (-3.66%) i.e. at loss however, there appears no rebuttal in relation thereto. Moreover, the trading results as

declared in AY 2010-11 were accepted. The Hon'ble Rajasthan HC in the case of CIT v/s Gotan Lime Khaniz Udyog 256 ITR 243, has held that where the accounts are rejected, it is not always necessary for the AO to make addition over and above the declared income, if considering the books of accounts, past history and material collected by the AO, no interference is warranted. Thus, we don't find any justification on the application of enhanced GP rate of 3.25% which is completely without furnishing any justified grounds hence, the trading results as declared by the assesseeare hereby accepted. Therefore, the authorities below were completely unjustified in applying higher GP rate of 3.25%. Thus, the enhancement of the sale (due to suppression and deferment) and application of GP rate of 3.25% is not approved and the resultant addition to the extent of Rs.2,26,41,521/- is hereby deleted. However, in the peculiar facts of the case and the reasoning adopted by the authorities below, we upheld the rejection of the accounts and taking an overall view of the entire matter it is felt justified that an ad hoc addition of Rs. 2,00,000/- shall cover up the possible leakage of the income, if any. This ground of the appeal No. 1 is therefore partly allowed.

3.1 In Ground of Appeal No.2 of the assessee, the Addition of Rs.3,03,000/- is under challenge.

3.2 Brief facts of the case are that during the year under consideration the AO on verification of details noticed that the assessee has taken advances from customers of Rs.3,03,000/- as per list at Pg-8 of the impugned assessment order, however, no corresponding sale have been shown either in the current year or in the subsequent years. When asked, the assessee submitted that the advances from these customers were taken for sale of vehicles however, the deal was cancelled by the buyers and advances were returned back to the customers as they were not intending to purchase. However, rejecting assessee`s contention the AO held that the onus is on the assessee to prove the identity, credit worthiness and genuineness of amount credited in its Books of Account. Finally, the AO added the same to the total income of the assessee as unexplained income.

3.3 In the first appeal the ld. CIT(A) also confirmed the action of the AO vide order dated 22.08.2016 in appeal no. 29/2015-16 holding as under:

> *"I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that either during the course of assessment proceedings or appellate proceedings, the assessee has not able to furnish even the confirmatory letter from the persons from whom the credit of Rs.3,03,000/- was shown to have been received by it. Therefore, the addition of Rs.3,03,000/- made by the AO in respect of the unexplained credit is hereby confirmed."*

3.4 During the course of hearing, the ld. AR of the assessee placed following submissions

"1. *Firstly,we strongly rely upon* ***our written submission filed before the ld. CIT(A)*** *reproduced at Pg-13 to 14 of his order at Pr 5.2 The same is reproduced for the sake of convenience:*

"*That the addition made for Rs.3,03,000/- on account of unexplained income on account of advance taken from customers for purchase of vehicle for which details were fully made available in books of accounts and we provided full address and other details required by AO. The identity creditworthiness are not required for such advances against purchase of vehicle. There is no requirement to ask from customers for his creditworthiness and worth to purchase vehicle. We have to sold vehicle and we may accept cash payment even for sale of vehicle and it does not require any confirmation also because of not covered in cash credits. We have replied vide letter dated 11.03.2015 and we have verified that these are not covered in cash credit and also loans and advances but these were received against sale of vehicle and covered in trade creditors on which section 68 not applicable.* ***The amount received were amanat for purchase of car by customers without interest. As no sale were effected to these persons the sums lying as an amanat returned back as and when demanded*** *by them. We have* ***shown name and addresses of persons*** *from when amount received for purchase of vehicle and amount returned to them because of no delivery of vehicle taken by* ***them for which AO could have made an enquiry by issuance of notice u/s 131 of IT Act.*** *We have provided name and addresses of all the seven persons for 303000/- as per law there is no provision to take PAN and source of deposit made by them for purchase of vehicle. As replied and admitted by AO name and address have been provided. In such case no onus cast upon us to prove identity, credit worthiness and genuineness of transaction for such small advances taken from customers to purchase vehicles as the same is not covered in cash credits and/or not applicable because we have to sale vehicle and if we harass them for such documents, he will go to the other dealer to purchase other car. In such competitive market we have to accept advance to capture the customer without any enquiries there are no loans and advances but are trade creditors on which such requirements were not applicable. The copy of account of all these accounts are enclosed herewith for the year ended 31.03.09."*

2. *In fact and in law, if the AO doubted he was bound to have enquired from such customers once he was having complete name and address, failing which he could not make addition. The same deserves complete deletion."*

On the other hand, the ld. DR strongly relied upon the findings recorded by the authorities below and justified the additions made and confirmed by the ld. CIT(A) and prayed to uphold the addition/disallowance.

3.5 We have carefully considered the finding recorded in the impugned orders, the rival contentions raised by both the parties as also the material placed on record and have also gone through the judicial pronouncements cited by the parties. The facts are not undisputed that the amount received from 7 persons of Rs.3,03,000/- was credited in the accounts as advance from customers towards the sale of vehicles. Admittedly vide letter dated 11.03.2015, the assessee had furnished the complete name and address of all the 7 persons. However, as stated, no sale of vehicle could be effected to these customers and ultimately the amount had to be refunded back. It is not uncommon in this trade that some of the customers for one reason or other take back the amount of advance. Looking to the declared turnover which is of more than Rs.40 cr, the advances are of very small amount simply because the amount had to be refunded in absence of sale, could not have been considered as undisclosed income of the assessee, more particularly, when admittedly complete name and address of all such customers are already on record and no contrary material has been brought on record by the AO after making enquiries. Hence, all the advances are to be considered as trade advances.

Moreover S.68 uses the word 'may' which confers a discussion to be exercised judiciously the amount received. The AO was having some doubt, he could have made enquiries, which he has not done therefore, we do not find any justifiable reason and the subjected addition is directed to be deleted. This ground No. 2 of the appeal is therefore deleted.

4.1 In Ground of Appeal No.3 of the assessee, the Disallowance of Expenses Rs. 1,07,366/- (wrongly typed as Rs.2,14,731/-) is under challenge. In this case, it is noted that . AO has dealt with the issue at pg-2 of the impugned order and onwards. A bare perusal of the impugned order shall reveal that the various disallowances have been made **simply on surmises and conjectures**. The objections, taken in almost all the cases, are that no proper bills / vouchers have been maintained therefore, the expenses are not verifiable.

4.2 In the first appeal the ld. CIT(A) restricted to the same at Rs.1,07,366/- vide order dated 22.08.2016 in appeal no. 29/2015-16 by observing as under:-

> ''6.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submissions carefully. In view of the facts discussed by the AO in the assessment order, I am of the considered view that some disallowance out of various expenses was required to be made by the AO. However, the disallowance made by the AO appears to be on higher side. I am of the considered view that it would be fair and reasonable to restrict the disallowance out of these

expenses to Rs.1,07,365/-. Accordingly, the disallowance out of above expenses is restricted to Rs.1,07,365/- and the appellant gets relief of Rs.1,07,366/-‘’

4.3 During the course of hearing, the ld. AR of the assessee placed the following submissions.

> ***“1.1 Mere suspicion:*** *A bare reading of the order of lower authority shall reveal that in almost all the cases the disallowances have been made on ad hoc basis, simply on mere suspicion, surmises and conjectures. No specific instance of any nature whatsoever has been given by the AO in the impugned order to support his contention with the documentary evidence that the expenditures were incurred for non-business purposes, element of personal user was there. An allegation remains a mere allegation unless proved. Suspicion can-not take the place of reality, are the settled principleskindly refer* ***Dhakeshwari cotton Mills 26 ITR 775 (SC).***
>
> ***1.2 Businessman is the best judge:*** *It is settled that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Here, whatever decisions were taken by the assessee, has to be understood as taken out of commercial expediency. Kindly refer* ***T.T. (P) Ltd. v/s CIT (1980) 121 ITR 551 (Kar), CIT v/s Udhoji Shrikrishnadas (1983) 139 ITR 827 (MP) JK Woolen Manufacturers 72 ITR 612 (SC).***
>
> ***1.3 No basis at all:*** *It is further submitted that the ld. AO has not at all provided any basis whatsoever for making the estimated disallowance.*
>
> ***1.4 Reasonable Claim made:*** *It is submitted that looking to a huge turnover of more than Rs.40.48 crores (approx), claim of expenditure is otherwise* ***very meager****. Thus such a meager claim to achieve such a huge turnover is*

not at all unjustified. All these expenses were incurred exclusively for businesses purpose and are under the provisions of the Act.

Therefore, also the entire disallowance, so made may kindly be deleted in full."

4.4 On the other hand, the ld. DR strongly relied upon the findings recorded by the authorities below and justified the additions made and confirmed by the ld. CIT(A) and prayed to upheld the addition/disallowance.

4.5 We have carefully considered the finding recorded in the impugned orders, the rival contentions raised by both the parties as also the material placed on record and have also gone through the judicial pronouncements cited by the parties.We find that the AO made the disallowance of various expenses of Rs.2,14,731/-. However, the ld. CIT(A) has restricted the same to Rs.1,07,366/-. After considering the totality of facts and circumstances no interference is called for.Hence the disallowance sustained by the ld. CIT(A) is hereby confirmed.

5.1 In Ground of Appeal No.4 of the assessee, the Disallowances of Rs.26,095/- is under challenge.

5.2 During the course of hearing the ld.AR did not press the above ground hence the same is dismissed as not pressed. This ground No. 4 of the appeal is therefore dismissed.

6.0 In the result, the appeal of the assessee is party allowed.

Order pronounced in the open court on 09/11/2022

Sd/-	Sd/-
(डा॰ मीठा लाल मीना)	(संदीप गोसाई)
(Dr. Meetha Lal Meena)	(Sandeep Gosain)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 9 /11/2022

*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- M/s. Raj Auto Wheels (P) Ltd., Ajmer
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-1, Ajmer
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 929/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar