

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MEETHA LAL MEENA, AM

आयकर अपील सं./ITA No. 396/JP/2015
निर्धारण वर्ष / Assessment Year : 2010-11

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
उद्घोषणा 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 Id. CIT(A), Ajmer dated 31-03-2015 for the assessment years 2010-11 wherein the assessee has raised the following grounds of appeal.

ITA NO. 396/JP/2015 – A.Y. 2010-11

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

1. Rs.42,988/- for prior period expenses for interest & telephone as claimed in profit & loss account.
2. Rs.20,28,74,955/- being advance received from customer against sales.
3. Rs.2,16,000/- being alleged excess commission paid and thus disallowed.”

2.1 First of all, we take up the appeal of the assessee in Ground No.1, wherein the Disallowance of Rs. 42,988/- on account of Prior Period Expenses is under challenge.

2.2 Brief facts of the case are as noted by the AO are that on perusal of statement (I) of 3CD (**PB-23**), it is seen that Prior Period Expenses of Rs.42,988/- pertaining to A.Y. 2008-09 on account of Interest and Telephone expenses were claimed. When asked, the assessee submitted the details (**PB 26**) but allegedly did not explain the same and hence the AO disallowed the same.

2.3 In the first appeal the ld. CIT(A) also confirmed the disallowance vide order dated 31.03.2015 in appeal no. 09/2013-14, alleging that there is no evidence showing that such liability crystalized this year.

2.4 The ld. AR of the assessee submitted the following arguments

*“1. Firstly, we strongly rely upon our **written submission filed before the ld. CIT(A)** reproduced at Pg- 3 to 4 of his order at Pr. 4.2 The same is reproduced hereunder for the sake of convenience:*

“(1) PRIOR PERIOD EXPENSES OF RS. 42,988 00.

The A.O. noticed that a sum of Rs. 42,988.00 (Schedule I to Form 3CD) has been debited to Profit and Loss account details below:-

(a) Interest Rs 12,696 00 (Pertains to Asst. Year.2008-09)

*(b) Telephone expenses Rs. 30,292 00 (Pertains to Asst. Year 2008-09
(Page 2)*

Since these expenses do not pertain to the current assessment year, hence not allowed. No other reason given by A.O for his disallowances.

Whereas the facts are:-

*(1) That certain expenses and Income being in the nature of prior period were claimed for expenses (net) in normal accounting norms and prudence on the belief that certain expenses **though belonging to the previous year are only admissible in the year in which it crystallized and accounted for** on the basis of system of accounting regularly followed by the assessee.*

(2) Merely since assessee following “MERCANTILE SYSTEM OF ACCOUNTING” and thus no previous year expenses are to be allowed in the year under consideration is a wrong fallacy.

Since accounting standard (AS-5) relating to "PRIOR PERIOD AND EXTRAORDINARY ITEMS AND CHANGES IN ACCOUNTING POLICES" states that:-

“PRIOR PERIOD ITEMS ARE DEFINED AS MATERIAL CHARGES OR CREDIT WHICH ARISE IN THE CURRENT PERIOD AS A RESULT OF ERRORS OR OMISSIONS IN THE PREPARATION OF THE FINANCIAL STATEMENTS OF ONE OR MORE PRIOR PERIODS” “EXTRAORDINARY ITEMS” are gains or losses which arise from events or transactions that are distinct from the ordinary activities of the business and which are both material and expected not to recur frequently and regularly.”

*“2. It is submitted that under mercantile system, the expenditure may pertain to the earlier year but liability having crystalized during the year the same, has to be booked in that year only. The ld. CIT(A) rejected the contention saying that there was no evidence in support however, **he ignored that the accounts were audited** by the Statutory Auditor under the Companies Act and has certified the accounts showing true and fair view. Though as per tax audit requirement, the auditor has reported prior period expenses but the statutory auditor nowhere opined that the liability relating to such expenditure was not ascertained or quantified and hence did not crystalized in this year. Thus claim of the assessee directly supported by statutory audit report and in absence of any contrary evidence AO should not have disallowed.*

3. Kindly refer-

3.1 In the case of *Bharat Earth Movers v/s CIT (2000) 162 CTR 325/245 ITR 428 (SC)*, it was held that

*“The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.—[Metal Box Co. of India Ltd. vs. Their Workmen](#) (1969) 73 ITR 53 (SC) and [Calcutta Co. Ltd. vs. CIT](#) (1959) 37 ITR 1 (SC) : TC 16R.197 **applied.**”*

3.2 In the case of *CIT vs. Indian Transformers Ltd. (2004) 192 CTR 0216/270 ITR 0259 (KerHC)*

Business expenditure—Allowability—Provision for warranty—Both the appellate authorities came to the conclusion that the provision created was towards a definite liability which had accrued at the time of supply of transformers by the assessee—Two instances of defects came to the notice of

the assessee where in one case all the ten transformers supplied by assessee failed within one year of purchase—Also, Tribunal found that the actual expense incurred in one year was Rs. 7,98,958, as against the provision of Rs. 3,50,000—Thus, the Tribunal found as a fact that the liability towards after sales services is an ascertained liability—No illegality in said finding—Provision is made on a reasonable basis—Hence, the provision cannot be treated as a contingent liability—Same allowable as deduction

3.3 In the case of CIT vs. Vinitec Corporation (P) Ltd. (2005) 196 CTR 0369/ 278 ITR 0337 (DelHC)

Business expenditure—Allowability—Provision for warranty—Warranty clause is a part of sale transaction and, therefore, liability for warranty expenses is a committed liability at the very initial stage of sale—Figures of past years exhibit a direct nexus between the claim for provision made by the assessee and the obligation arising under the warranty clause—It is a liability which has arisen in the relevant year though its actual quantification and discharge is deferred to a future date—There is nothing on record which can even remotely suggest that the change in accounting system effected by assessee was motivated or improper—It has been accepted as bona fide even by the AO and the CIT(A)—Thus, assessee was entitled to deduction of provision made by it—No substantial question of law arises

3.4 The difficulty in the estimation of value would not convert an accrued liability into a conditional one - Calcutta Co. Ltd. v/s CIT (1959) 37 ITR 1 (SC).

3.5 In the case of an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid. Just as actual receipts as well as those accrued due are brought in for income - tax assessment, so also liabilities accrued due would be taken into account while working out the

profits and gains of the business - Metal Box Co. of India Ltd. v/s Their Workmen (1969) 73 ITR 53 (SC).

3.6 Chambal Fertilisers & Chemicals Ltd. v/s ACIT (2014) 112 DTR 140 (JP)

Hence the disallowance kindly 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. There is no dispute that in the accrual basis of accounting the expenditure may pertain to an earlier year but corresponding liability relating thereto has crystallized during the current year, wherein such expenditure can be booked and claimed. However, the evidence supporting the fact of crystallization of the liability in a particular year has to be produced by the assessee. But in the instant case, there appears no evidence placed on record to support this contention and therefore, we are in agreement with the CIT(A) who rightly confirmed the disallowance. Thus Ground No. 1 of the assessee is dismissed.

3.1 As regards Ground of Appeal No.2 of the assessee wherein the Unexplained customer Advanced of Rs.20,28,74,955/-is under challenge.

3.2 Brief facts of the case are that during the assessment proceedings, the AO noticed that as per Schedule-6 of current liability and provisions in the balance sheet, there are advances of Rs.44,87,96,115/- outstanding from customers. The assessee was asked to file details of the same i.e. name and addresses etc. in response to which the assessee filed ledger accounts for the year under consideration of 1449 customers to whom advances were taken along with Bills of the customers. On verification of ledger accounts of the customers for the end sale bills, the AO noticed that in majority of the cases cash and cheques were received as advance and entry regarding sale of vehicles was made in the ledger account. In the list 80% of the customers, there are opening balance and part payments were also shown to have returned by way of cash. There apart the assessee was asked to file ledger accounts of last year i.e. For AY 2009-10 and cash book, which assessee failed to furnish. The AO vide order sheet dated 19.03.2013 asked the assessee to produce receipt book for verification and Temporary Registration Certificate Book issued by the RTO, which the assessee failed to furnish. With regard to the Temporary Registration Certificate the assessee submitted that no such certificates are compulsory. The AO finally, issued show cause dated 25.03.2013, in response to which the assessee filed addresses of 253 customers however, the AO alleged

that the assessee intentionally not submitted the same earlier and now the assessment is **getting time barred so no enquiry can be made**. Accordingly, the AO applying the case of McDowell **added the advances of Rs.20,28,74,955/-** (Closing balance of Rs.44,87,96,115/- less Opening Balance Rs.24,59,21,160/-) to the total income of the assessee alleging that assessee has failed to furnish any evidence except sale bills which are also defective, to prove the actual sale was taken place and advances were actually received from customers. Assessee has failed to bi-furcate financial year wise advances received.

3.3 In the first appeal the ld. CIT(A) confirmed the action of the AO vide order dated 31.03.2015 in appeal no. 09/2013-14 holding as under:

“I have considered the contentions of the appellant as well as assessment order. It is seen that assessee had claimed to have received advances from customers off Rs. 20,28,74,955/- (opening balance being Rs. 245921160/- and closing balance being Rs. 448796115/-) during the year against the sale of cars. This amount has been shown as ‘advance from customers’. The AO required the assessee to furnish names, details and addresses of the customers from whom advances were shown to have been received by letter dated 22.10.2012 and 22.02.2013. Further the confirmations as well as the ledger accounts of the said creditors were called for by questionnaire dated 17.03.2013 along with the copy of cash book and bills regarding the sale of vehicles claimed to have been sold against the said advances.

In response to above queries, assessee has only filed ledger accounts of the customers and sale bills. The AO noted that there was no such heavy demand for the Maruti Vehicles that such substantial amount of advances will be given by the customers for booking of the vehicles.

The assessee has not produced receipt book as well as the cash book in support of having received the above amount as the 'advance from customers'. The AO also noted that incomplete address were submitted in 253 cases out of total customers shown at 1449 as reproduced on the page 7 of the assessment order. Hence it was not possible to make any enquiry from the customers and assessee has not furnished any conformations from the said customers.

The AO also noted that assessee has earned commission income from insurance. So the address and ID proof should have been available with the assessee. Further the similar details are also required for the registration of the vehicles. In spite of above, assessee has not submitted the complete addressees of such customers.

The AO mentioned that the sale bills produced by the assessee contains various deficiencies regarding buyers order and date, terms of delivery, mode and terms of payment etc. and engine no. and chasis no. of the vehicle are also not mentioned on the bills.

The AO sent such five bills submitted by the assessee to the RTO for verification regarding the registration of the vehicles. However the RTO mentioned that above vehicles have been registered in the said names of the customers.

From above facts, it is apparent that for the amount shown to have been received during the year as 'advance from customers', assessee has not been able to establish the identity, creditworthiness of the customers and genuineness of the transactions in spite of repeated opportunities given to the assessee by the AO. In fact assessee has not even submitted the receipt book and cash book for verification of the advance claimed. At the same time, as per the enquiries made from the RTO, it was found that vehicles claimed to have been sold were not found to have been registered with RTO and the bills of the assessee suffer from various defects.

During appeal, assessee has not been able to show that the advances from customers are genuinely advances and it has not been explained as to why the details as required by the AO regarding the identity of the said

customers and proof of having received the advance in the form of receipt book and cash book was not submitted to the AO. Obviously the assessee has not been able to discharge onus which lies on him regarding the advances shown in the books of accounts.

The assessee's claim that AO's view is that there is deferment of sales is not correct as AO has added the advances from customers claimed to have been received during the year of Rs. 202874955/- due to the inability of the assessee to prove the source of advances as well as sale of the goods against the said advances as is in the contention that GP rate may be applied in respect of above advances is without any basis.

Further the assessee's claim that in the later assessment year i.e. A.Y. 2011-12, the AO has held that assessee has indulged in deferment of sales and GP has been applied. In this context, it may be mentioned that findings of the later assessment year which is based on enquiries and evidences gathered during that year can not be applied in the case of assessee in the earlier year. The every assessment year is separate unit for taxation purposes and conclusions have to be drawn based on the facts gathered by the AO in the year concerned. The assessee has submitted a chart claiming the deferment of sales. However no such claim was made before the AO of any such deferment of sales. The quantification made in the said chart is without any supporting evidences. As such the claim regarding the deferment of sales rejected.''

3.4 During the course of hearing, the Id. AR of the assessee placed following arguments.

"1. In the present case, the impugned addition has been made by considering the advances from customers received this year as **unexplained credits** by comparing the closing balances in the account head Advance from Customers, as on 31.03.09 (AY 09-10) with the opening balances as on 31.03.10 (AY 10 -11). Accordingly, the AO **made the addition of the differential amount of Rs. 20,28,74,955/-** (though not specified but u/s 68

only) after making certain allegations which have been dealt with individually.

2. Only initial onus to be discharged:

2.1 *At the outset it is submitted that the way the impugned addition has been made is a result of the **purported misconception and ignorance** assumed by the AO.*

*The law u/s 68 are well settled that it is **only initial onus which lay upon the assessee** and once, it is discharged the same shifts to the AO. In other words, the assessee is not required to prove the source of the credits till the hilt. Kindly refer **CIT vs. First Point Finance Ltd 286 ITR 477 (Raj.) (DPB- 31-35)**, **holding that once the initial burden has been discharged** in respect of the identity of investors, about their existence, and the confirmation from such investors has been obtained, the burden shifts to the Revenue to prove otherwise not only that the invested amount did not belong to the creditors but further it has to prove the said amount belonging to the assessee only.*

*However, in this case the facts and material available on record clearly prove that the **assessee has discharged the initial burden** but the AO completely failed to discharge the burden when shifted to him.*

2.2.1 *The case of the assessee is that it is in the line of automobile trade and acted as a dealer of Maruti Suzuki in Ajmer District where under, as a matter of practice, such advances were received from various customers towards the booking of vehicle and ultimately to whom vehicles were sold. **The identity of the creditor (the customer) and the nature and the source both, were evidently available before the AO** when the sale bills were raised and ledger accounts containing the details of the receipts (which was in cash and cheque both). The AO clearly admitted that:*

“it is noticed that in majority of the cases cash and cheques were received as advance and entry regarding sale of vehicles was also made in the

ledger account.” Therefore, the fact behind receipt of such advances was **self-explanatory**. Trade creditor cannot be treated like cash creditors which being loans are separate (schedule 2) **(PB-8)**.

2.2.2 3 S.68 can be applied w.r.t a particular sum. Receipt by cheque could not be covered u/s 68.

2.2.2 On this aspect direct decision and very relevant in the present context was in the case of **Smt. Harshila Chordia vs. ITO (2008) 298 ITR 0349 (Raj.) (DPB 1-8)**.

“Apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract s. 68 because the cash deposits become self-explanatory and such amount was received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise. Therefore, no addition was required to be made in respect of the amount which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.**(Paras 15 & 16)**

2.2.3 Kindly refer **CIT vs. Suretech Hospital & Research Centre Ltd. (2007) 211 CTR 360 (Bom)** held that:

“ Income-Cash credit-Genuineness-Addition made on the basis that the amount in the name of D was unexplained loan-Assessee has established that it has not taken any loan from D but is liable to pay the impugned amount to D for the project consultancy work done by him-Addition rightly deleted by the Tribunal.”

2.2.4 Also refer **CIT vs. Navendram Ahuja (2007) 290 ITR 453 (MP) (DPB-47-53)**

2.2.5 In the case of **CIT vs. Jai Kumar Bakliwal(2014) 101 DTR (Raj) 377 / 366 ITR 217 (Raj)** it was held that:

“There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee himself. Action of the AO appears to be based on mere suspicion”

2.2.6 *In the case of Pr.CIT vs. Kulwinder Singh (2018) 99 taxmann.com 449 (P & H) (DPB 62-64) it was held that:*

“Section [68](#) of the Income-tax Act, 1961 - Cash credit (Scope of provision) - Assessment year 2009-10 - Provisions of section 68 are not attracted to amount representing purchases made on credits [In favour of assessee] ”

2.3 *During asst. proceedings, the assessee **admittedly filed copies of the ledger account and the copies of the invoices in all the cases** vide letters dated 12.03.2013 & 15.03.2013 (AO Pg. 5 - middle). Having analyzed the same, the AO recorded a categorical finding of fact in the assessment order that in the cases of 80% customers, there were opening balances coming from the preceding year/s. The assessment for the current year was framed on 28.03.2013 and by that time, assessment for the immediately preceding year i.e. A.Y. 2009-10 was only processed u/s 143(1) accepting the declared income as such. (The scrutiny assessment was made later on vide order dated 30.03.2015 u/s 143(3)/147 of the Act, after passing of the impugned asst. order dated 28.03.2013 of the current year). **Thus, the 80% of the customers who continued from the preceding year/s were found genuine and existing** in as much as no addition was made in that year (kindly refer AO Pg-10 Last Para) then how suddenly they could be considered unexplained for want of their confirmations, cash receipts, cash book, etc. In any case, such a large number of Creditors-Customers (1449 customers) whose credit balance of advances are under consideration, could not be treated as unexplained. The AO even examined the invoices (AO pg. 8 Last).*

2.3.2 *Pertinently, during the course of the assessment proceeding for AY 2011-12, the assessee submitted the various supporting evidences being the copy of the temporary registration certificate (TRC), copy of insurance etc.*

with respect to the particular amount of the advance received in AY 2010-11 but booked as a sale in AY 2011-12 and onwards.

3. All advances adjusted in sales: 3.1 Otherwise, the various allegations raised by the authorities below is nothing but a suspicion over the identity of the customers booking the vehicle and providing advance of Rs. 20.28 Cr. and as regards the genuineness of the transaction, **the AO and Id. CIT(A) has completely ignored the detailed charts** submitted by the assessee, (during assessment proceedings) showing the fact that **the advances received in A.Y. 2010-11 were adjusted in sales in 3 different years i.e. A.Y. 2011-12, 2012-13/so on, shown as under:**

Year to which advance relates(A.Y)	New Advances Received (Rs.)	Amount adjusted in sales in A.Y.	Amount (Rs.)	Balance (Rs.)	PB
2010-11	41,60,50,781/- (PB 66)	2011-12 Add: Less:	Sale: 32,48,11,944/- VAT: 4,53,06,789/- Other: 5,39,95,654/- ----- ----- Total 42,41,14,487/- Credits 5,95,82,008/- ----- ----- Net: 36,45,32,379/-	5,15,1840 2/-	66- 67

2012-13	Rs.5,15,18,402 /-	2012-13	Sale: 1,87,91,841/- Add: VAT: 28,18,776/- Other: 52,76,177/- Less: ----- ----- Total 2,68,86,794/- Credits 2,05,528/- ----- -----Net: 2,66,81,266/-	2,48,37,13 6/-	67
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*Explanation given by the assessee has to be considered objectively and a good proof cannot be converted into no proof. Kindly refer **Sreelekha Banerjee vs. CIT (1963) 49 ITR 112 (SC)***

3.2 The charts also show the complete details viz the Name of the customer, the Amount of advance, the Chassis no. & Engine no. of the vehicle sold to the customer, Billing Date and Amount of invoice, so on. (PB 66 to 162). In other words, thus, the details relating to each and every customer from whom advance was received in A.Y. 2010-11 (PB 111 to 162), the respective sales has been booked in different years showing the details of chassis no. and engine no. of the vehicle etc.. Unfortunately, however, the ld. CIT(A) completely ignored such details. He neither applied his mind on such vital details nor did he obtain comments of the AO. The assessee did discharge the initial burden onus cast upon.

3.3 The AO doubts sale as forged but also considered as deferred sale (AO pg. 10).

4.1 Different approach in other years: Interestingly, the **AO himself did not believe the line of action** he adopted in this year and proceeded with different approach. In the assessment made **for AY 2009-10** vide order dated 30.03.2015 u/s 143(3)/147 (that is later to the assessment of this year) the AO adopted an altogether different approach by **considering such advances as a case of deferred sale** and only trading addition was made by applying adhoc GP rate but entire amount was not added, in the manner it has been made this year. Similar is the position with the assessment framed **for AY 2011-12** vide order u/s 143(3) dated 28.03.2014.

4.2 Notably, these chart shows that the amount of advances received in the other years also, were adjusted in sale but in different years then the year of receipt. Even the AO admitted this fact and that is why, he alleged deferment of sale in other years.

4.3 Rule of consistency cannot be violated. Please refer case laws cited in ITAT w/s Pg 24 Pr. 2 of A.Y. 2011-12 in ITA No. 397/JP/15, Kindly refer **SardarKehar 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)**.

5. Though the lower authorities alleged that on making inquiries form the RTO with reference to the subjected advances of the customers, it was found that no sales were registered in the name of such customers (AO Pg. 9-10). However, it was for the simple reason that the assessee as per the consistent policy of recognizing sale, has accounted for / converted the subjected advances of this year in the sale of the subsequent year/s. Notably, the five cases selected on random basis at Pg. 9 when sent to RTO it was replied that they did not find any registration in those cases. Whereas, the appellant had already booked/ adjusted the advance in sales in all the five cases in later years (kindly refer chart PB 114-116).

Thus, the initial burden lay upon the assessee to prove the identity, genuineness of the transaction and creditworthiness stands proved and the onus then shifted to the AO to discharge the same by making requisites

inquiries and by bringing cogent contrary evidences. Unfortunately, however, the AO completely failed to discharge such burden and he went on making suspicion, leveling allegation and allegation upon the assessee and Id. CIT(A) also did not do better.

6. Double / Multiple additions: *The facts cannot be denied that the impugned addition made in relation to the same amount of the advances of Rs. 20.28 cores was the opening balance in the immediate succeeding year (i.e. A.Y. 2011-12)*

wherein, the AO considered the aspect of advances but he considered the amount of Rs. 8.50 Cr. to be a part of the deferred sale for the reason that instead of considering the net Rs. 21.96 Cr. (Rs. 30.46 Cr. Of A.Y. 2011-12 less Rs.8.50 Cr. of A.Y. 2010-11), he considered the entire amount of Rs. 30.46 Cr. and by applying 60.97% thereon computed the deferred sale of Rs.18.57 Cr. Thus, the possibility of double addition to that extent cannot be ruled out in as much as in A.Y. 2010-11 the entire amount of Rs. 20.28 Cr including Rs. 8.50 Cr., was already added. Whereas, in A.Y. 2011-12 again, it was considered as a case of suppressed / deferred sale where upon GP rate has been applied. In AY 09-10 advance of Rs. were treated sale.

*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.***

7. No such addition was ever made in the past nor in later years: *Pertinently in A.Y. 2008-09 also, the assessee was in receipt of the advance of Rs. 20,28,74,955/- from the customers in a similar manner and the assessment was also completed under scrutiny vide order dated 29.12.2010 u/s 143(3) (PB 60-63 of A.Y. 2011-12) yet however, such advances were*

never disbelieved u/s 68 of the Act so far as the aspect of identity, creditworthiness and genuineness of the transaction were concerned. No new material or reason has been assigned by the AO to take a departure from the settled history in the subjected year.

In view of these unrebutted facts such, the credit on account of the advances received, are self-explanatory and no addition u/s 68 of the Act or otherwise, was called for.

8. *The AO and CIT(A) both has unwarrantedly stressed upon the point that the cash book and cash receipt were not produced however, they did not deny that the accounts of the company were duly audited not only under the provisions of the Companies Act 1956 as also under Tax Audit u/s 44AB of the Act. Notably, the Statutory Auditor has given a clear certificate and finding that in their opinion proper books of accounts as required by the law were kept by the company and showing True and Fair in the Auditor's Report dated 04.09.2010 (PB-3). There apart, in form 3CB of the Tax Audit Report, the Tax Auditor has examined the Cash Book, Bank Book, etc. as mentioned in clause 9 (PB-14). In any case, the authorities below admitted that in the ledger account, it is found that cash and cheque received were entered as admitted by the AO at pg. 5 pr. 8.1.*

9. No adequate and reasonable opportunity of hearing and cross examination/ cross verification was given:

9.1 *The fact coming out of the assessment orders are that the AO proceeded to verify the subjected amount of the advance received from customers from as many as 1449 customers. The AO at one place alleged that addresses of the customers were not provided however, again at pg-7 he states that incomplete addresses in 253 cases were submitted. He further states that assessee furnished addresses to 253 customers on last working day i.e. 28th March, 2013 where is the addresses were asked on 31st January, 2013 and alleged that it was knowingly done so that no inquiry could be made from the customers.*

Thus, the AO himself admitted that in such a short time no inquiry could be made from the customers therefore, showing his inability on the plea of time barring assessment, he made the impugned addition of a huge amount in a single stroke.

*Further, a bare perusal of Pg-1 of the assessment order shows that he commenced the hearing on 08.02.2013 and concluded the assessment of 28.03.2013 i.e. **within a period of 2 months only**. Though there is a change in incumbent as stated by him but the queries relating to the advances from customer was first made by him vide letter dated 22.02.2013 only followed by another questionnaire dated 07.03.2013 (AO pg-4 pr-8) and a final show cause was given only on 25.03.2013 (AO page 6) and the assessment was completed on 28.03.2013 itself when the addresses of 253 customers were admittedly submitted.*

On the other hand, the return of income was filed as early as on 08.11.2011 (Refer AO Pg-1). If the AO wanted to make inquiry in large number of cases viz 1449, it was not the proper time to wake up at the fag end and even assuming he asked the assessee on 30.01.2013 it could not have improved the situation. Thus, raising a query demanding voluminous details in so many cases in a short time, was a clear case of not providing adequate and reasonable opportunity of being heard. Secondly, making a huge addition without hearing the assessee, is nothing but a nullity and the impugned addition deserves to be deleted in full.

9.2 Material used- not confronted: *There apart, it is also apparent from the impugned assessment order that the AO made direct enquires from the office of the RTO/DTO and the reply so received were used against the assessee (AO pg 8 & 9), drawing an adverse inference that the assessee did not account for the sale of the advance amounts received from the customers. The AO also sent 5 bills to RTO on random basis. But neither the terms of the enquiry made u/s 133(6) nor the reply and print shots of the investigation made, were ever confronted to the assessee before passing the impugned assessment order (though it is reproduced in the assessment order now at pg 9 & 10 but was not confronted earlier).*

Hence it is a case of gross **violation of principle of natural justice** which has vitiated the assessment proceedings. Consequently, the impugned assessment should be quashed.

9.3. 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 audialterampartem 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 audialterampartem 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.”

9.4. The A.O proceeded in a great haste and the appellant could not have had the opportunity to properly clarify and makes explanation on the doubts of the AO nor he provided any opportunity of cross examination of the documents though he relied upon for making huge additions totalling to Rs.20.29 Cr. in a few days only.

The law clearly prohibits the AO to use of material gathered at the back of assessee. Kindly refer Vimal Chandra Golecha v/s ITO &Anr. (1982) 134 ITR 119 (Raj.), ITO &Anr. v/s GargidinJwala Prasad Maholi& Ors. (1980) 124 ITR 203 (All). Hence any addition based on the basis of the material collected and not confronted to the appellant, has to be deleted altogether on this short ground alone. Also kindly refer Andaman Timber vs CCE (2015) 281 CTR 241 / 127 DTR 241 (SC) (DPB 12-16), wherein it was held that “Conclusion: Not allowing Assessee to cross-examine witnesses by Adjudicating Authority though statements of those witnesses were made as basis of impugned order, amounted in serious flaw which make impugned order nullity as it amounted to violation of principles of

natural justice". This way, the honourable courts have held that such attempts by the AO results in a nullity only and erring officer need not be given second chance to make good of its lapses without any fault of the assessee-citizen.

10. *Lastly, we strongly rely upon our written submission filed before the ld. CIT(A) reproduced at Pg-11 to 13 of his order at Pr. 8.2. The same is reproduced hereunder for the sake of convenience:*

"Advances from Customers: -

The A.O. ongoing though "SCHEDULE – 6" "CURRENT LIABILITIES & PROVISIONS" as per balance sheet observed that these are advances from customers for the year Rs. 44,87,96,115.00 against outstanding as on 31.03.2009 for the year Rs. 24,59,21,160.00 details with respect to these advances were asked to submit in form of the name, addresses of such customers and to file confirmations cum copies of bill and ledger account.

In compliance the assessee has submitted ledger account of such customers and sale bill issued for vehicles sold to such customers; from whom advances received.

*The advances are from the customers for booking of "MARUT VEHICLES" on going through the copy of ledger account & most of the parties have made cash payments and cheque payment for vehicles. **Most of the customers have preferred to take loans** from the financial institutions for purchase of vehicles and till the paper formalities of finance are not completed the vehicle is not delivered and the money as received against sale of vehicles remain "ADVANCES FROM CUSTOMERS"*

The facts can be verified from the ledger account copy of all these parties and copies of bills issued to them. The A.O. has alleged that the assessee should have filed form no. 20,21 as per RTO's office norms which contain complete detail of customers his pan card and photo. Whereas as these are requirements to RTO office and not to

assessee. Since the assessee is not acting as an agent of RTO nor providing such services and hence do not require to maintain form no. 20,21,22 Of RTO. However the bills and other documents as submitted to A.O. contain complete details for identity, genuineness of transaction, source of deposited being credit worthiness and thus it cannot be alleged that these advances remain unexplained. Rather when the complete amount received and all legal formalities have been fully filled, the sale bill issued & advances adjusted.

“FOUR WHEELER” is such a product which cannot be sold without bill nor can be retained by customer without registration with RTO and thus it cannot be alleged that the advances are unexplained. When the A.O. has considered complete books of accounts, accounting system acceptable and has also verified the stock register quantity wise, quality wise and no defects there in found. Further against total sales as on 31.03.2009 was Rs. 40.48 Crores and as 31.03.2010 the same has gone upto 58.60 Crores and as 31.03.2011, the sale has touched to Rs. 114.86 crores and no objection, thereon has been raised by A.O. then how these advances can be considered as unexplained. The A.O. has only raised-the issue of "SHORTAGE OF TIME" whereas the first query letter itself was issued in February 2013 for year ended 31.03.2010 and all the queries raised from time to time have been complied.

A bare reading of section 68 suggests that there has to be credit of amounts in the books maintained by the assessee, that such credit has to be of a sum during the previous year, and that the assessee offers no explanation about the nature and source of such credit found in the books or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then the sum so credited may be charged to income - tax as the income of the assessee of that previous year. The expression "THE ASSESSEE OFFERS NO EXPLANATION" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true that the opinion of the Assessing Officer for not accepting the explanation

offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion-CT V.P. Mohanakala (2007) 161 Taxman 169/291 ITR 278 (SC).

Thus the A.O. has only apprehended that advances are not explained. For verification of such advances to bills raised the A.O. has also made enquiry u/sec. 133(6) of Income Tax Act, 1961 for verifying the facts details as per A.O's order page 9 where the A.O. has selected few sales bills for reference to DTO (District Transport office) to ascertain the date of registration etc of said bills.

*The DTO in his reply dated 25.03.13 (Letter & detail's forming part of A.O.'s order as per annexure "A") has asserted that no vehicles for the period 01.04.2010 to 31.03.2011 of bills mentioned u/sec. 133(6) have been registered and thus were unable to furnish the details. **No question of "CROSS VERIFICATION" to assessee granted to cross verify the facts and information gathered by AO and thus in haste manner the additions made.***

The A.O. as per para 4 page 10 of his order have a'so calculated that "SALE HAVE BEEN POSTPONED" the resultant closing stock has not been arrived at properly otherwise the figure of closing stocks appears improper and arbitrary. Looking to the brand sale ability, registration requirement, turnover etc of the goods dealt by the assessee company so the whole picture of the accounts have been made up to avoid & evade and postponed the taxes.

Thus the logic & discussion as made by A.O. clears that A.O. is also not sure & justified for considering these advances as unexplained; rather the A.O. is the view that "SALE has been deferred.

Even if A.O's view of "DEFERRING THE SALES" is accepted than only on this amount of Rs. 20,28,74,955.00 (Advances presumed to raised during the year as per A.O. the "GROSS MARGIN%" can be applied considering them as sales deferred. on the analysis of Gross Margin for last 3 years if made is as under;-

<i>F.Y</i>	<i>SALES IN RS.</i>	<i>GROSS MARGIN</i>	<i>GROSS MARGIN %</i>
<i>2007-08</i>			
<i>2008-09</i>	<i>40,48,20,629.00</i>	<i>2,04,269.00</i>	<i>.05%</i>
<i>2009-10</i>	<i>58,60,77,936.00</i>	<i>17,97,028.00</i>	<i>.31%</i>

Further since sales bills actually raised in succeeding year & adjusted to these advances than due credit for 'NET PROFIT' in succeeding year is requested."

Hence the addition so made kindly be deleted in full. "

3.5 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 upheld the addition/disallowance.

3.6 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. The impugned addition has been made of the amount credited and shown under the head '*advances from customers*' by making a comparison between the opening balance and closing balance, mainly for the reason that the assessee has failed to prove genuineness of the advances received and also because the details as required by the AO regarding the identity of the customers and proof of receipt of advance in the form of receipt book and cash book were not submitted before the authorities below and therefore, the assessee failed to discharge onus which lay on him.

3.6.1 On the other hand, the assessee has strenuously assailed the findings of the lower authorities and the addition so made through detailed submissions and arguments. After a careful consideration of the material placed on record and on serious consideration of rival contentions and available judicial principles, we are convinced that there was no valid ground for making the impugned addition for more than one reasons. Though the AO has not specifically mentioned S.68, at the same time however, he has not cited the provision of law conferring jurisdiction in absence of which he was not legally justified to make the addition. But otherwise also considering the issue in the light of the provision of S.68, no doubt the law is well settled it is that only initial onus lay upon the assessee, but he is not required to prove to the hilt and the moment such initial onus is discharged the same then gets shifted to the AO, as held in the case of **CIT V First Point Finance 286 ITR**

477 (Raj.), copy of which is placed on record. The facts are not disputed that the assessee acted as a dealer of Maruti Suzuki for Ajmer District and as per usual practice, it was in receipt of advances towards booking of various vehicles of Maruti Suzuki. We find the advances so received have been adjusted towards the sale of the vehicle, sometime within the year or sometime in the later year/s. In some cases, it is claimed that the advance was refunded back to the customer. Looking to nature of transaction, thus, it the case of trade creditor but not a case of cash creditors hence, to prove the capacity of the customer is neither practicable nor desirable under law. But otherwise also we are satisfied that the identity, the capacity of the creditor and also the genuineness of the transactions in the facts of the present case, are fully established and evident from the material available on record in as much as copies of the ledger accounts and sales bill raised against the customer, were submitted in more than 1400 cases. The provisions of Motor Vehicle Act essentially require registration by the registering authority in the name of the customer, further mandating insurance which are not possible without establishing identity of the owner. Moreover, in 80% cases such advances were coming from the preceding year AY 2009-10 hence there was no question to raise doubt in this year. A categorical finding has been recorded by the AO somewhere in the Assessment Order that in majority of the cases cash and cheques were received as advance and entry regarding sale of vehicles was also made in the

ledger account. During the course of the hearing the Id. AR drew our attention to a detailed chart showing summary of advances received from customer's vis a vis the accounting treatment given in different years, available at the assessee's Paper Book at page 66-162, with a view support his contention that all such advances, like the one received during the year, were received in the preceding and succeeding year also and as per the prevailing trade practice. The advances so received were later or sooner got adjusted towards the invoices raised and were ultimately booked in the sales either in the year of receipt itself or later year/s. A careful perusal of the chart placed at page 66 shows that for the relevant AY 2010-11, there was a year wise breakup given of the total opening balance of Rs. 24.59 crore, the billing done against such opening balance, the amount of advance received during the year of Rs. 41.60 crore and the balance carried over to next year. The chart also shows the break up, opening balance of advance relating to AY2008-09 being Rs. 58,33,195/-, which after raising bills and adjustments reduced to only Rs.17,73,092/- at the end and similarly the opening balance of advance of Rs. 24,00,87,965/- relating to AY 2009-10 after raising bills and adjustments stood reduced to Rs.3.09 crore, the balance of which was carried forward in the next years for adjustments. The amounts of advance of Rs. 41.60 crore received during this year was not adjusted against invoices but carried forward similarly in the next year AY 2011-12 where, bills/invoices were raised

and after adjustment only Rs. 5.15 crore remained in the balance which was further carried over to the next year as evident from the chart shown at page 66, 67 of the Paper Book. He also drew our attention to PB pages 85, 86, 105, 106, 108, 140 to support the contention that the advances received in the preceding year and/or in the current year, were got adjusted in the later years and invoices were raised (duly considered in the sale). The chart contains the information like the name of the customer, amount of advance, the chasis no., engine no of the vehicle, the invoice date and amount and other details with reference to each customer from whom advances were received. Thus, what we find is that it was not a case of ingenuine credits shown by the assessee in his books of accounts but it was a case of advance received towards the sale of the vehicles in normal course of business whether adjusted against the sale during the year or deferred in the later years. The assessing officer selected 5 cases on random basis discussed on pg 9 of the Assessment Order with regard to whom inquiries were made from the registering authority who replied that they did not find any registration of those vehicles. However, the Id. AR strongly opposed the reply and submitted that in all those 5 case, where advance was received, invoices were raised the amount were adjusted towards the sale, as we also noticed from pages 114-116 of the Paper Book. We find that the fact of filing such chart and details before the CIT(A) are admitted by him but his objection that the quantification made in the charts was without any

supporting evidences is not justified for such finding is found incorrect from the facts available on record. To take an example a vehicle M-Alto Lxi (M) was sold to Capt. Dr. P.S. Virdi for Rs. 2,58,275/- vide invoice no. 384 dated 15.05.2010 (which is a part of the Assessment Order), a perusal of chart at assessee's PB page 114 shows chasis no. 1469042 and Engine no. 3726466 Alto Lxi and other details of the invoice which duly reconcile with the ledger account of this customer placed at assessee's PB page 77 and a perusal of which shows the payment of registration charges to the RTO (Rs. 12,700/-) and insurance (Rs. 9,303/-) through cheque apart from payment of sale consideration of Rs.2,58,275/-. These facts clearly prove that it was a case of genuine receipt of advance followed by sale and thereafter of the registration and insurance. The AO strongly relied upon the reply of the registering authorities but cannot be believed blindly because such inquiries were made at the back of the assessee and despite drawing adverse inference, no opportunity appears to have been granted. Neither the terms of the enquiry made u/s 133(6) nor the reply and print shots of the investigation made, were ever confronted to the assessee. The Id.CIT(A) neither confronted the appellant nor demanded a remand report from the AO on this aspect but confirmed a huge addition in a single stroke. Such approach on his part cannot be approved. Thus, we find it is a clear case, where the credits are self-explanatory being the advances against the sale of vehicles, on which S.68 has no applicability we find support from the case of **Smt.**

Harshila Chordia vs. ITO (2008) 298 ITR 0349 (Raj.), wherein it was held as under:

“15. So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of accounts of the assessee would not attract s. 68 because the cash deposits become self-explanatory and such amount was received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.

16. We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.”

Some other cases cited by the Id.AR also support the assessee. It is pertinent to note that despite similar type of receipt of customer advances in AY 2009-10 and 2011-12, were not treated similarly. From the copies of scrutiny assessment for AY 2009-10 vide order dated 30.03.2015 and vide order dated 28.03.2014 for AY 2011-12 u/s 143(3)/147 (both of which are also under appeal in ITA No.929/JP/16 and ITA No.397/JP/15 respectively), after passing of the impugned assessment order dated 28.03.2013 for this year it is noticed that no addition of the entire customer advances was made in this manner. Thus, interestingly, the assessing officer himself was not sure of this approach of disbelieving the amount of the

customer advances in other years. However, the Id. DR could not dispute the fact. It is also noticed that the authorities below on one hand have disbelieved the genuineness of the advances but at the same time also alleged deferment of the sale, which is self-contradictory. The very contention of the revenue of deferment of sale implicitly admits that sales were not suppressed but merely deferred. We also find that there is no merit in the allegation of deferring the sale of the current year to the later years for the reasons that though such allegation has been made by the AO in all the three years however, the figures were arrived at in other two years only. Such working could not be considered as full proof or beyond reasonable doubts, because mostly such working has been done merely on estimate basis and the assessee was never confronted of estimations made of the figures towards deferment of sale. Therefore, the conclusion that the sales of the current year were deferred in later years cannot be accepted on the face value. At the same time however, the facts are not disputed that the assessee has been deferring the sale even prior to AY 2010-11 and that sale consideration received in one year has been booked as sale in later year/s. Hence, there is a consistency and there is no loss to the revenue. More so, when the revenue has utterly failed to establish any sale effected but not shown in the accounts on account of deferment except making estimations without any justified basis. The contention of the assessee that in some cases proper documentation was lacking and in some cases total finance value was

not available hence sales were booked in later year, could not be ignored. Moreover, because of the changing stand of the revenue in different years, the possibility of double or multiple addition raised as contended by the Id.AR also, cannot be ruled out completely. For all these reasons, we are not inclined to accept this contention of the revenue and hence rejected. It is also noticed, that the assessment was made hastily as apparent from the record that even though return of income was filed on 08.11.2011, the assessment proceedings were commenced sometime in January 2013 and assessment was completed on 28.03.2013 which means that within a short span of 3 months only the AO completed the assessment. It appears difficult as to how one can make enquiries w.r.t. 1500 customers from whom advances were received. And reach to a just conclusion to burden the assessee with a huge tax liability. Such approach on part of the AO cannot be approved. We are therefore of the considerate opinion that the subjected amount of advance receive from the customers cannot be considered in-genuine and the lower authorities erred in making addition of the entire amount. Therefore, the impugned addition of Rs.20,28,74,955/- is directed to be deleted. Thus Ground No. 2 of the assessee is allowed.

4.1 In Ground of Appeal No.3 by the assessee, the Disallowance of Rs.2,16,000/- on account of commission expenses is under challenge.

4.2 Brief facts of the case are that during the year under consideration, the AO noticed that as per ledger account of commission, it is seen that commission expenses of Rs.3,76,000/- was claimed out of which an amount of Rs.3,20,000/- was paid to Smt. Kamlesh Devi. However, on inquiry u/s 133(6) she has filed computation of income vide reply dated 21.03.2013, wherein the commission was shown at Rs.1,04,000/- only. Therefore, the AO alleged that the assessee claimed excess commission of Rs.2,16,000/- (Rs.3,20,000/- less Rs.1,04,000/-) and accordingly, disallowed the same.

4.3 In the first appeal the ld. CIT(A) confirmed the action of the AO vide order dated 31.03.2015 in appeal no. 09/2013-14 holding as under:

“I have considered the contentions of the appellant as well as assessment order. It is seen that the assessee has not filed any affidavit of Smt. Kamlesh Devi or details of vehicles sold by her on commission basis. As regarding the payments, the only payment of Rs.82,800/- and Rs.10,800/- is by cheque and rest payments have been claimed on cash basis. As such the commission payment of Rs.2,16,000/- as well as the services rendered by the above person for earning above commission are not proved. Accordingly, the disallowance made by the AO from the commission expenses of Rs.2,16,000/- is confirmed. “

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

“Firstly, we strongly rely upon the submissions filed before the CIT(A) and those reproduced at Pg. 22 & 23 of CIT(A) order. The same are been reproduced hereunder:

“The A.O. has observed that out of total commission expenses claimed of Rs. 3,76,000.00 details below:-

<i>1. Smt. Kamlesh Devi</i>	<i>Rs. 3,20,000.00</i>
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2. *Anil Kumar Tiwari*

Rs. 56,00.00

Based on enquiry u/sec. 133(6) of Smt. Kamlesh Devi since has confirmed for commission received Rs. 1,04,000.00 only hence has preferred to disallow the balance of Rs. 2,16,000.00 (3,20,000.00-1,04,000.00) doing commission expenses; no care for following facts granted.

a. That the computation sheet as forming part of AO's order (Annexure H) is neither signed by any one nor has any cross verification been made by assessee.

b. That on going through the account statement of party (Smt. Kamlesh) complete TDS of Rs. 32,648.00 on total commission paid Rs. 3,20,000.00 has been deducted & almost all payments made by account payee cheques as evident from account statement.

c. That TDS has also been deducted under the PAN AOC PD0688R of Smt. Kamlesh Devi; copy of sworn affidavit of Smt. Kamlesh Devi & details of vehicles sold under her agency & total commission chart are as enclosed. (Page 79 to 82)

Thus without making any cross – verification of facts or granting opportunity of justification (for shake of natural justice) no addition should be sustained.”

- 1. The vital fact that TDS of Rs. 32,648/- on the total amount of the commission paid of Rs. 3,20,000/- has not been denied by the authorities below. This very fact prove the genuineness of the transaction and also the fact of the payment made to the payees. There apart, most of the payments have been made by A/c payee cheques. It is not denied that the subjected expenditure has been incurred exclusively for business purposes. Hence the same deserves to be allowed in full.”*

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

4.6 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 find that the disallowance under challenge was rightly made in view of the contradictory facts in case of Smt. Kamlesh Devi, hence the authorities below were justified in making the disallowance.. Thus Ground No. 3 of the assessee is dismissed.

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

Order pronounced in the open court on 9 /11/2022

Sd/-
(डा० मीठा लाल मीना)
(Dr. Meetha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 9 /11/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / 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 Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 396/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar