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. 397/JP/2015
निर्धारण वर्ष/Assessment Year : 2011-12

M/s. Raj Auto Wheels (P) Ltd 424/24, Ravan Bahici, Kaiser Ganj Ajmer	बनाम Vs.	The JCIT Range-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 31-03-2015 for the assessment years 2011-12 wherein the assessee has raised the following grounds of appeal.

ITA NO. 397/JP/2015 – A.Y. 2011-12

Under the facts and circumstances of the case, the ld. CIT(A) has erred in confirming the addition for:-

1. Rs.2,26,41,521/- by estimating gross profit at 3.25% and sales at Rs.1,19,84,41,281/- against declared gross profit at 0.20% (Recasted at 1.68%) and against sales at Rs.1,14,86,38,878/-.

2. Rs.62,98,437/- by estimating and considering advance from customers as ''SALES'' & applying ''GROSS PROFIT %'' thereon.

3. Rs.6,96,201/- u/s 40(a)(ia) considering ''FINANCE CHARGES'' as interest & liable for TDS u/s 194A; specifically when book results estimated; no further disallowances can be made.''

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 issued summon u/s 131 to one of the customers namely Shri Sunil Bhutani on 24.03.2014. In compliance thereto he attended and filed details. The assessee sold him a car Versa DX15S-BSIII on 02.12.2009 for a sum of Rs.3,69,000/- as per the invoice issued to the said customer against which he had paid Rs.4,01,000/- (Rs.5,100/- on

02.12.2009 for booking and balance amount of Rs.3,95,900/- was paid by cheque) which included road tax, registration and insurance. However, the assessee has shown the sale of the said vehicle on 10.08.2010 for a sum of Rs.3,62,069/- including VAT as per Annexure B-1 to B-7 of the assessment order. Therefore, the AO inferred that the assessee has suppressed the sales from 0.25% to 0.5% and thus, the assessee has shown only 99.5% of sale. Further in 12 cases (as per table at Pg-9 & 10 of the assessment order) in which the AO analyzed the detail filed by the assessee, it was noticed that there is a difference of Rs.1,35,337/- of sale amount as appeared in the Registration Certificate&Performa invoice. Sale Bill shown in the leger A/c of the assessee of Rs.31,27,663/- and the Bill amount Rs.32,63,000/- shown in the ledger. Thus the difference in terms of percentage was of 4.1476**%.** Therefore, the AO inferred that the assessee might have suppressed his sale to this extent.Accordingly, the AO rejected the Books of Account u/s 145(3) and as per calculation at pg 6 of the impugned order, worked out the alleged suppressed sale and enhanced the declared sale of Rs.1,14,86,38,878/- to Rs.1,19,83,41,281/- and after applying the G.P. of 3.25% as per comparable case [3.92% declared in the case of M/s Relan Motors (P) Ltd.] as against 1.68% declared by the assessee, finally, he estimated trading addition of Rs.2,26,41,520/-.

2.3 In the first appeal the ld. CIT(A) confirmed the action of the AO vide order dated 31.03.2015 in appeal no. 431/2013-14 holding as under:

"I have considered the contention of the appellant as well as the assessment order. It is seen that assessee`s contention is that assessee`s own GP rate as in earlier year may be applied instead of GP rate of Relan Motors Pvt Ltd. Further there is no under billing in the case of the assessee and enhancement in the sales is without any basis.

The assessee`s contention that assessee`s own GP rate in earlier years may be applied is liable to be rejected as in the earlier year also the assessee has shown advance from the customers against the sales which have been shown to be bogus by the AO. Further in last year, the various defects have also been pointed out in the books of the assessee regarding arbitrary closing stock as well as defects in the bills raised by the assessee for the sale of the cars. As there were various discrepancies in the books of the assessee regarding the sales claimed by the assessee, the said results cannot be the basis for application of the GP rate during the current year.

The AO has clearly demonstrated that assessee is indulging in suppression of sales by gathering the various evidences from the customer i.e. specific case of a customer i.e. Shri Sunil Bhutani and other cases as noted in his number 9 and 10 of the assessment order which shows that there was suppression of sales to the extent of 4.1476%. So the increased the sales of the assessee from Rs.1,14,86,38,878/- to Rs.1,19,83,41,281/-. The assessee has not given any explanation as to why the said sales were suppressed by the assessee. In view of above, it is apparent that assessee has indulged in suppression of the sales.

Further it is evident that assessee has indulged in delayed invoicing of the sales as evident from the instances pointed out by the AO in Page No. 9 and 10 of the assessment order and case of the assessment order and case of the Sunil Bhutani as discussed above. This also shows that assessee`s closing stock is not reliable.

As regarding the application of the GP rate, it is pointed out that Relan Motors who is a dealer of Maruti Udyog Ltd. in A.Y. 2013-14 has shown the GP rate of 3.92% while the assesse has shown the GP rate of 1.68% only even after considering all the payouts received by the assessee. This is a substantial variation in the GP rate while both the companies were dealing in the sale of various brands of Maruti cars as dealers of the Maruti Udhyog Ltd. The AO has pointed out that there has been consistent profit margin in

the sale of the cars of the above company. Further the AO has also mentioned that it was initial phase of the Relan Motors as dealer of Maruti Udhyog Ltd as compared to established market presence of the assessee who has been established dealer of the said company. Further the AO has applied GP rate of 3.25% only after considering all the contentions of the appellant. In view of above circumstances, the GP rate applied by the AO is held to be reasonable and is confirmed.

In view of above discussion, the books have been appropriately rejected u/s 145(3) of the I.T. Act and sales have been enhanced based on the enquiries and details available in the assessment order. The application of the GP rate of 3.25% is also confirmed in the case of the assessee as discussed above.

In view of above discussion and findings of the AO, the addition made by the AO is confirmed and this ground of appeal is dismissed."

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

"A. Invalid application of Sec.145 (3): 1. *The AO in this case, invoked S.145(3) 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) 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 Sec. (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 statement, Ledger, Purchases Bill and Sales Bills, Voucher of expenses debited in P&L account, information / details as required (refer AO Pg-1 & 2 Last para). The entire*

sales, purchases and expenses are fully vouched. The accounts are audited u/s 44AB of the Act ***(PB 23-54)*** *as also under the Companies Act* ***(PB 2-22)*** *and Rajasthan VAT Act. The same were produced before the AO also along with other details from time to time. The AO at some places alleged that Cash Book and Cash Receipts were not produced before him. However, such allegation is factually wrong because firstly, the assessee did maintain Cash Book & Cash Receipts and based on such primary record only, entries have been made in the ledgers of the assessee. The AO himself mentioned at pg-10 Pr-5.1* ***…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.*** *Therefore, the finding of the AO are contradictory on this aspect.*

3. *With regard to the allegation of suppression / deferment of the sale w.r.t. some examples like Shri Sunil Bhutani and others, we have made our submissions separately. Hence kindly refer para 8.1 to 8.2 of this written submission at pg. 11 to 13.*

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 Sec. 145 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 Sec.145(3), 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 Sec.145 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 Sec.145 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.Past History-Best Guide: *We may submit that past history has been held to be the best guide in the cases of fair estimation. However, the past history must be shown to be comparable with the present.* ***Kindly refer CIT v/s Gupta K.N. Construction Co. (2015) 116 DTR 377 (Raj), Vaibhav Gems 112 DTR 84 (Raj) it was held:***

> ***"****Accounts-Rejection-Estimation of GP rate-While the past history becomes relevant basis in a case like this but if the AO wishes to tinker with the basis of past records, then some flaw has to be found by the AO in making some addition-Tribunal has come to a conclusion that in the immediate past assessment year, the Tribunal itself had applied GP rate of 2.60 per cent whereas in the present year under consideration the GP rate has been declared as 4.85 percent-AO was unable to point out as to what are the distinguishing features in between the two assessment years-No substantial question of law arises."****,*

In the case of ***CIT v/s Inani Marbles P. Ltd. (2009) 316 ITR 125 (Raj) (DPB 36-37)****, it was held that:*

"Accounts—Rejection—GP rate—Assessee's own result of immediately preceding assessment year at 2.51 per cent having been accepted upto the level of Tribunal, Tribunal was justified in applying the same GP rate for the assessment year in question as against 15 per cent applied by the AO and 2.30 per cent declared by the assessee"

CIT v/s Popular Electric Co. Pvt. Ltd (1993) 203 ITR 630 (Cal), MA Rauf v/s CIT (1958) 33 ITR 843 (Pat).

Also refer ***M/s Rishab Construction (P) Ltd. 38 TW 8 (JP)*** *wherein it has been held that trading result should not be disturbed in a case wherein these are better than last year results even if provision of S. 145(3) are applicable.*

3.Better Results: 3.1 *We may submit that past history has been held to be the best guide in the cases of fair estimation. The appellant, this year declared G.P. rate of 1.68% on total turnover of Rs.1,14,86,38,878/- as compared to 1.01% on total turnover of Rs.58,60,77,936/- last year and 0.70% in the year on total turnover of Rs.40,48,20,629/- before last (as per table at pg-4 of the ld. CIT(A) order in A.Y. 2011-12). Kindly refer chart below:-*

COMPARATIVE G.P. CHART FOR LAST THREE YEARS

Particulars	*A.Y. 2009-10*	*A.Y. 2010-11*	***A.Y. 2011-12***
Sales (Rs.)	*40,48,20,629/-*	*58,60,77,936/-*	***1,14,86,38,878/-***
Gross Profit (Rs.	*2,04,269/-*	*17,97,028/-*	***23,35,701/-***
G.P. rate	*0.05%*	*031%*	***0.20%***
(a) Other Income (Dealer margin in DRF) (Rs.)	*23,67,931/-*	*39,95,739/-*	***1,69,64,723/-***
(b) Warranty Income & Incentives (Rs.)	*26,29,391/-*	*41,35,015/-*	***1,69,64,723/-***
Revised G.P. (Rs.)	*28,33,660/-*	*59,32,043/-*	***1,93,00,424/-***
Revised G.P. rate	*0.70%*	*1.01%*	***1.68%***

3.2 Thus, the trading results this year are the best as compared to the last two *years. In any case, the appellant's turnover this year* ***jumped 196%*** *at Rs.114.86 Crores from 58.60 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* ***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.* ***However, in the case of the assessee the GP and sale both, are is much better than last years.***

4. Comparable Cases- Distinguishable and cannot be applied:

4.1 *The AO made a comparison of G.P. declared by the assessee during the year under consideration i.e. A.Y. 2011-12 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%. 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).***

4.2 *Further when the assessee has its own past history and this is not the first year, then the assessee`s own past history is the best guide and there was* ***no justification at all to rely to the comparable case****. Kindly refer****Ajay Goyal VS. ITO 99 TTJ 164 (JD)****, It was held that:*

> *"Accounts—Rejection—GP rate—Best guide for estimation of the trading results after rejecting the books is either the past history of the assessee or any other comparable case—****The past history of the assessee takes preference over a comparable case****—Assessee having*

declared higher GP rate than the preceding year, its trading results require acceptance and trading addition requires deletion"

Also refer ***Madan Lal VS. ITO 99 TTJ 538 (JD), CIT vs. Ashok Behi Bharat Sethi & Party (2013)35 taxmann.com 214 (Raj.)(DPB 43-46)***

4.3 Justifiable reason behind non-considering comparable case: *The comparison so made with the G.P. declared two years later by a third party, is not a good basis for making addition. The justification behind the trading results of the current year are always to be examined in the light of the past history but not in the light of the later years.*

4.4 *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:*

"Thus the Gross profit overall is low but after including the pay-outs of company (Various schemes & incentives). The overall Gross profit percentage is up.

1. *Retails and wholesale target achievement which constitutes incentive schemes, discounts and bonuses passed on to customer for sales booster.*

Heavy dumping of stock by manufacturer attracts heavy interest which directly hits the viability of the company; therefore it was necessary to maintain the stock. Difference in amount of few cases is negligible ranging from Rs.1000 to Rs.4000 in unit size of Rs.4,00,000.00 to 8,00,000/-, the sample case was that the customer got his vehicle registered through Performa invoice, the petty amount is in no way extensively beneficial to our business rolling.

2. *That the dealer are to provide form 21, form no. 22 of invoice to the customer & than the customer is free to get his vehicle registered at his own cost and time.*

3. With regard to comparison of gross profit from M/s Relan Motors (P) Ltd. *the present dealer; the reason for variation in gross profit are mainly due to*

(a) The dealer Relan Motors operated business as on exclusive trade for Maruti Suzuki in Beawar, Kishangarh and entire Dist. of Nagour ***(monopoly business), which covers 60% of total business sales.*** *In other words no multiple dealer existence to threat competition on same product line. Therefore it enhance the gross profit.*

(b) Compare to Financial year 2010-11 the automobile market changed to diesel driven market in 2012-13. ***There was huge gap in demand and supply with waiting period to potential customers of diesel variant.*** *There was no discount demand by customers. This proves that* ***no CONSUMER OFFER*** *was proposed during the entire financial year by manufacturer as well as by the dealer in 2012-13. While in Financial year 2010-11 the market was based on small segment petrol cars such as M-800, Alto, Van, Wagon-R. Needless to mention that there was huge consumer offer shared by dealer and the cut throat competition among two dealer in same territory is proven fact.*

The ***opening stock of General motors product was also sold by M/s Relan Motors Ajmer on higher values*** *even at full dealer margins, because there was no existence of another dealer for 4 months in Ajmer, Bhilwara and Nagour market. Thus there was fine gap of product availability which directly influenced the gross profit and net profit of Relan Motors (2012-13). The comparison with above dealer is not justified, can be compare with the than multiple dealer of same market.*

Therefore request to consider our gross profit based and calculated on market situation of product demand/supply.

But the AO without analysed the facts have simply considered that since the trade trend in the automotive company has been consistent especially in the case of Maruti Suzuki as the same is leading and established brand of the automotive industry. Therefore, the margins for the dealers and the other market forces are almost the same in this company from the long period of time. Thus, considering the gross profit rate declared by the comparable case may be made as basis for the purpose of applying the gross profit rate in the assessee`s case. Further, considering the quantum of turnover of the assessee and the reply of the assessee; I deem fit that the gross profit rate in the case be applied in the instant case. And considering the fact that the year of operation of the comparable case was only the intial phase; therefore, there ought to be element of more competition for that party in order to stand in the market. In view of the same, rather the higher rate of gross profit ought to be there in the assessee`s case.

x x x x x

Thus it is requested to kindly consider the facts; gross profit percentage of financial year 2010-11 cannot be compared with gross profit percentage of financial year 2013-14 that too of other party. Whose area of sales, product segment quantum of sales is all together difference"

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

The AO raised querries vide order sheet entry dated 25.03.2014 only (AO Pg-3) whereas the assessment was completed on 28.03.2014, hardly providing, two days' time.

4.6 *The CIT(A) wrongly declined to consider the past history because nothing wrong was found w.r.t the declared GP Rate. It is not the case that the assessee inflated the direct expenses to reduce GP and whatever suppression is alleged, the sale has been enhanced. Moreover, closing stock cannot be found fault because it matches with the accounting of the sales accounted for by the assessee.*

4.7 GP Better than M/s Relan Motors: *Even otherwise, if at all a comparison is to be made with the case of Relan Motors, in AY 2013-14, where they declared GP of 3.92%, it cannot be ignored that the appellant itself had* ***declared 4.% in AY 2013-14, which is more than what Relan Motors has declared****.*

5. *It is* ***alternatively*** *submitted that even if application of G.P Rate of 3.25% is held justified, the authorities below have not been fair by applying ad-hoc GP rate of 3.25% on the entire enhanced sale of Rs.1,19,83,41,281/- as against declared sale of Rs.1,14,86,38,878/-. However, by completely ignoring the fact that out of the total sale of Rs.1,14,86,38,878/- declared of this year, the sale booked in relation to the advances received and adjusted in this year pertaining to various preceding assessment years being A.Y. 2008-09 to A.Y 2010-11 were not reduced. In fact, as per chart submitted to the authorities below* ***(PB 68 of AY 2010-11)****,* ***out of the total sale declared of Rs. 114.86 cr, it is only Rs. 82.10 cr which was the sale relating to the advances received in the current year*** *whereas the balance sale related to advance received in the earlier years. Therefore, even assuming, though not admitting, the application of higher GP rate was required, the same could have been only with reference to the current year sale and not with reference to the entire sale of Rs. 114.86 cr.*

6. No suppression of Sale transaction / Sale Consideration as alleged:*/

[Note: All references made to PB is to paper book separately filed whereas all references made to Annexures are the Paper annexed with the assessment order by the AO.]

6.1.*The authorities below have made a much hue and cry alleging this a case of suppression of sale consideration. For this purpose, the AO made inquiry from one of the customers, namely Sunil Bhutani to whom, the appellant claimed to have sold a Maruti Versa DX-2 car for a consideration of Rs.3,62,069/- vide bill dated 10.08.2010* ***(Annexure B-2*** *to the assessment order). In response to summon issued u/s 131 on 24.03.2014 for 25.03.2014* ***(Annexure A-1)****, Shri Bhutani appeared and furnished the reply on 25.03.2013* ***(Annexure A-2*** *to the assessment order) and also reproduced at Page 2-3 of the assessment order. From such reply the AO drew adverse inference that The assessee has been in receipt of the full and final payment as per the Quotation for the sum of Rs.4,01,000/-... andon the other hand, as per the Performa / VAT invoice generated and given to Shri Bhutani on 02.12.2009 along with insurance were submitted by Shri Bhutani to the AO. Although the AO did not mention the figure but he meant Rs.3,69,000/- (AO page 2 & 3).*

From these facts the AO (page at 3 para 5) also inferred that the assesse was engaged in the practice of deferment of sale and the assesse was also engaged in the practice of suppression of Sale which is evident from the amount of difference of billing which, the AO found on a comparison made between the RC and the Bill book and the over and above amount of such difference has been allegedly taken away in the form of cash when compared with the entries made in the customer ledger account. The AO also referred to the 12 cases of the customers, which has been discussed at page 9-10 in relation to the advances received from the customers (however, the same is being discussed later on).

6.2. *At the outset, there is no hesitation to say that the* ***authorities below, in this case, has proceeded in highly unjustified and arbitrary manner*** *and a wild exercise has been made. It was a purported misconception assumed by the authorities below who, did not want to properly understand the explanation tendered to them and in avoiding proper appreciation of the evidences, though admittedly available before them and they themselves referred such evidences.*

***7. Material used, not confronted- No addition permissible**: **7.1** As apparent from the impugned assessment order that the AO made direct enquires u/s 133(6) from the offices of the RTO/DTO (Ajmer, Beawer, Jhunjhunu) and also from a customer Sh. Bhutani (AO pg. 3 & 12) and the material so gathered were used against the assessee, drawing an adverse inferences that*

***i)** the assesse did not fully account for the sale out of the advance amounts received from the customers.*

***ii)** The assessee is engaged in the practice of delayed invoicing and under invoicing of sales in its books of accounts.*

*Unfortunately, however, the assessee was never confronted with the terms of the enquiry made and response received thereto directly but even than adverse inference was drawn nor he provided **any opportunity of cross examination of the documents** Hence it is a **clear case of gross violation of principle of natural justice** which has vitiated the assessment proceedings. Consequently, the impugned addition must be deleted. 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).***

***7.2**. 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."

*7.3. **No adequate and reasonable opportunity of hearing: Here also it is a case of hasty assessment** without adequate opportunity. The AO raised queries vide order sheet entry dated **25.03.2014** only (AO Pg-3) whereas the assessment was completed on **28.03.2014**, hardly providing, two days' time. The ld. CIT(A) at Pg-6 without appreciating, alleged that there was no explanation thereto. Similarly the assessee was asked regarding the advances received from customer vide order sheet entry 21.03.2014 and thereafter he himself states that the assessee furnished the details in parts on daily basis till the date of the order (AO Pg-12). This clearly shows that neither the AO was fully satisfied nor the assessee could furnished its explanation upto its own satisfaction. Yet then the AO acted hastily and made a huge addition running into crores.*

*7.4 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.*

Case of Shri Bhutani:

***8.1.1** In the case of Shri Bhutani itself, the **AO has not at all mathematically worked out as to what was the precise amount of suppression**, he apprehended, if it was really so. On the contrary, if he alleged the difference of Rs.38,931/- between Rs. 4,01,000/- and Rs. 3,62,069/- than the AO did not want to understand the things in as much as **Shri Bhutani in his reply clearly stated that Rs.4,01,000/- was a mere quotation only** (and not the final bill) which was towards the sale consideration as also road tax registration insurance expenses. It is a matter of common knowledge that*

almost all the buyers before enter into a final deal, make enquiries and get quotation to obtain loan or to decide if they wish to buy product or not and it is only when discussion is finalised and commitment are made by both the sides, they finally enter into the transaction. Therefore such quotation could not have been compared with the final bill.

***8.1.2** Although alleged but the revenue could not prove from the reply of Shri Bhutani, that the assessee, in fact, sold the product and received Rs.4,01,000/- but in his Books of account recorded lesser amount towards the sale consideration. On the contrary, a perusal of the ledger a/c of Bhutani **(Annexure B-1** to the assessment order) clearly shows the breakup of the total receipt of Rs.4,13,720/- (Rs.4,01,000/- as per AO but actually received by the assessee) as under:*

Date	***Particulars***	***Amount***	***Remark***	***PB***
10.08.2010	*Sales Including VAT*	*3,62,069/-*	*Sales Bill Issued*	*Annex B-2*
16.08.2010	*RTO Expenses including Incidental*	*15,100/-*	*Rs.14,760/- Life Time RT Expenses incurred by Assessee as per RC*	*Annex A-5*
17.08.2010	*Insurance*	*12,431/-*	*Expenses incurred by Assessee*	*Annex A-7*
21.08.2010	*Extended Warranty*	*4,582/-*	*Paid by assessee to the Maruti by Cheque*	*Annex B-1*
25.08.2010	*Accessories Purchased*	*6,818/-*	*Expenses incurred by Assessee*	*Annex B-5*
31.08.2010	*Other Expenses including other Accessories*	*12,720/-*	*Expenses incurred by Assessee*	*Annex B-7*

	Total (Rs.)	***4,13,720/-***		

8.1.3 The above chart clearly shows that there was no suppression of the total amount of sale consideration *so received. The assessee, on one hand received Rs. 4,13,720/- on different dates and adjusted the same towards the agreed sale consideration and towards various expenses incurred on behalf of the customer. The supporting vouchers of expenses incurred, were issued to the said customer as evident from his reply and the fact that with his reply he also submitted that copies of supporting evidences in response to the summon u/s 131.*

8.2. Surprisingly, the authorities below are completely silent on this factual aspect *and did not comment anything adversely. The facts coming out from a perusal of the reply of Bhutani and these evidences enclosed by the AO himself as Annexure A & B are that after negotiation the product was sold to Sh. Bhutani for Rs. 3,62,069/- after discount and including VAT. The purchaser made the payment of the various amounts towards various services rendered and towards the reimbursement of the expenses incurred by the appellant on behalf of the said customers as evident from the ledger account and detailed herein above.*

The facts emerging are that the cash and cheque received by the assesse, are duly accounted for and even official receipts were also given to the customers. ***This evidently shows that the assesse was in the habit of recording all the receipts*** *whether by cheque or even by cash. In addition, the AO himself has given a categorical certificate at AO pg 10 Pr. 5.1 on this aspect in the following words:*

…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.

8.2.1 These admitted facts itself dispelled the suspicion and allegation of the AO *that there was a suppression of sale consideration which was taken away by the assessee in cash. In fact, the* ***AO miserably failed*** *even to compute the precise amount of the suppressed sales taken away by the*

assessee in cash. On the contrary, ***this example rather evidently proved that each and every customer is given all the documents*** *which are necessary for a transaction and interestingly Bhutani in his reply Para 4 (AO pg. 2) has admitted receiving these documents because he himself submitted to the AO the copies of the same being copy of Performa Invoice* ***(Annex A-3, A-4)****, Registration Certificate* ***(Annex A-5)****, Insurance Policy* ***(Annex A-6, A-7)****, Quotation* ***(Annex A-8)****, Copies of Receipts* ***(Annex A-9, A-10)****, Copy of Ledger Account* ***(Annex B-1)****, Copy of Invoice* ***(Annex B-2)****, Copies of Payment Vouchers* ***(Annex B-3 to B-7)****.*

8.2.2 *Thus, when the* ***AO made enquiry at the back of the assesseeeven on a random basis****, it was found that the customer has been given all the primary documents based on which, the assessee has accounted for the transaction to the full extent and all the receipts by way of cash and cheque are entered in the accounts.* ***The AO failed to point out a suppression of a single penny****. In such a state of affairs one surprise as to how this was considered to be a case of suppression of the sale consideration and then it has been repeatedly cited by the AO in this very year while making addition of suppression of sale i.r.t the advance received from customer and not only in this year but also in other years, this was made as a basis.*

Other 12 customer's cases w.r.t advance received from customers:

9. Suppression of 4.1476% is unjustified:

9.1 Against theory of statistics: The AO analysed the details submitted by the assessee (AO pg. 9-10) *by considering sample cases of 12 customers by way of a chart based on the details submitted by the assessee and alleged a difference between the sale consideration mentioned in the RC (based on the Performa/VAT Invoice) and those entered in the books of accounts. He worked out a difference of Rs. 1,35,337/- (Sales amount as per books Rs.31,27,663/- and as per RC- Performa/VAT Invoice Rs. 32,63,000/-) and drew adverse inference based thereon that assessee was indulged in the* ***suppression of sales to the extent of 4.1476%.*** *In other words, the theory of statistics has been applied. However, where the total declared sale itself was of Rs.114 Crores (and thereafter enhanced upto Rs.119 Cr. by the*

*department), the **size of the sample is too small** to be believed. As per the theory of statistics, a reasonable size of the sample has to be taken representing the population and then only any inference can be drawn based thereon. Out of the total customers around 1500 to take example of meagre 12 cases only, could have hardly provided any justifiable basis to reach to any prima fascie belief even what to talk of a conclusion. Therefore, this basis and also the sample so relied upon is liable to be rejected.*

The adverse inference of suppression has been thereafter, applied by the ld. CIT(A) on the declared sale of Rs.114 Cr and accordingly, the sale has been enhanced to Rs.119 Cr. in this year. There apart, in other years also this has been taken help.

***9.2 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 in all the 12 cases cited by the AO at Pg. 9-10. To explain, in case of Virendra Kumar Sharma who purchased Alto Lxi, as per RC and Performa invoice total amount shown is Rs. 2,83,000/- as against the ledger account showing Rs. 2,56,953/- with a difference of Rs. 26,047/-. However, if the amounts of RTO expenses Rs. 12,514/-, insurance expenses 9255/- and price of accessories Rs. 4278/- are also added, the total comes Rs. 283000/-, **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.*

Chart clarifying the difference alleged by AO at Pg. 09-10.

(Regarding Difference found between Bill Details as Per Ledger & Bill Details as Per Registration Certificate)

S. No	***Customer Name***	***Bill Details as per Registration Certificate (A)***	***Bill Details as per Ledger Account (B)***	***Difference Amount as Per AO Order Rs. (C)*** *(A-B)*	***R.T.O exp. Amt. Rs. (D)***	***Insurance Exp. Rs. (E)***	***Price of Accessories Rs. (F)***	***Total Debits Rs. (G)*** *(D+E+F)*	***Difference Rs. (C-G)***
1	*Raj Kumar Swami (Alto)* ***PB-84-85***	*2,17,000/-*	*1,98,994/-*	*18,006/-*	*8,382/-*	*8,438/-*	*990/-*	*17,810/-*	*196/-*
2	*Virendra Kumar Sharma (Alto Lxi)* ***PB-82-23***	*2,83,000/-*	*2,56,953/-*	*26,047/-*	*12,514/-*	*9,255/-*	*4,278/-*	*26,047/-*	*0*
3	*Ram Chandra Verma (Alto Lxi)* ***PB-86***	*2,73,000/-*	*2,70,900/-*	*2,100/-*	*7,100/-*			*7,100/-*	*(-) 5,000/-*
4	*Udai Ram Prajapati (ECCO 5 siter)* ***PB-87-88***	*3,17,000/-*	*3,03,161/-*	*13,839/-*	*19,855/-*			*19,855/-*	*(-) 6,016/-*

5	*Ashok Kumar Sharma (Alto Lxi)* ***II PB- 72-73***	*2,63,000 /-*	*2,62,842 /-*	*158/-*				*0*	*158/-*
6	*Deep Singh Tanwar (Alto Lxi)* ***PB-74-75***	*2,38,000 /-*	*2,37,843 /-*	*157/-*				*0*	*157/-*
7	*Kapil Parihar (Wagon-R Lxi)* ***PB-76-77***	*3,61,000 /-*	*3,57,077 /-*	*3,923/ -*	*23,045/-*	*13,295/-*	*8,970 /-*	*45,310/-*	*(-) 41,387/ -*
8	*Laxmi Swaroop Dholkheriya (Alto Lxi)* ***PB-78-79***	*2,76,000 /-*	*2,48,713 /-*	*27,287/-*	*17,150/-*	*9,971/ -*	*0*	*27,121/-*	*166/-*
9	*Mahendra Singh Shekhawat (Omni)*	*2,20,000 /-*	*1,92,559 /-*	*27,441/-*				*0*	*27,441/ -*
10	*Manju Shukla (Alto Lx)*	*2,51,000 /*	*2,50,878 /-*	*122/-*				*0*	*122/-*
11	*Mohammad Husain (A-Star Lxi)* ***PB-80-81***	*3,44,000 /-*	*3,39,946 /-*	*4,054/ -*			*1,895 /-*	*1,895/ -*	*2,159/-*
12	*Om Prakash Omni*	*2,20,000 /-*	*2,07,797 /-*	*12,203/-*				*0*	*12,203/ -*

	TOTAL	***32,63,000/-***	***31,27,663/-***	***1,35,337/-***	***88,046/-***	***40,959/-***	***16,133/-***	***1,45,138/-***	

9.3 *Similarly, the AO initially alleged that copies of Temporary Registration Certificate (TRC), insurance certificate etc. were not furnished but later on himself admitted the submission of the same at pg. 12 as under:*

> *"In compliance thereto, the assessee furnished the details in parts on daily basis till the date of order either in the form of the Temporary Registration Certificates or Insurance Certificates or the Financer's Cover note for the actual sale of the vehicles."*

9.4 *Unfortunately however, the ld. CIT(A) completely ignored all these facts and figures though available on record. Hence the enhancement of the sale by 4.1476% is highly unjustified without any basis and only being a result of suspicion, deserves to be ignored and deleted in full.*

10. 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 the authencity 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."*

11. All the requisite details and accounts produced: *The repeated allegation of the AO that the assessee did not submit the required details viz the complete address, Identity proof of the customer, Cash Book and cash receipts were not submitted or other details though required were not furnished, is nothing but aimed to create a false impression in as much as the authorities below themselves have time & again recorded findings of fact that the assessee submitted the same.*

To take an example, the ld. CIT(A) at Pg-11 of his order for A.Y. 2011-12 in pr-4.21 has recorded that some details were furnished by the assessee based on which AO drew inference. Similarly AO at Pg-9 in the assessment order for A.Y. 2011-12 has recorded that Reply to the questionnaire was furnished on 25.02.2014 along with the copies of the Ledger accounts and the either print out of the Invoice as per Boos of accounts or the Registration Certificates of the vehicles in support of the claim of sale

The AO further recorded at Pg-10 that the assessee has also submitted details of stock. At Pg-10 Pr-5.1 On verification of ledger accounts of the customers and sale bills, it is noticed that in majority…. .

The AO at pg. 11 states that "The assessee vide letter submitted on 25.02.2014 gave the 'Summary Chart" of the "Customer Advances"; which incorporated the Chasis Number, Engine Number and Date of Selling the Vehicle as per its books of accounts along with the location from where, the vehicle was sold. "

The AO at pg. 1-2 states that " A/R of the assessee attended from time to time and produced books of accounts consisting of Cash Book, Bank Detailed, Ledger, Purchases Bill and Sales bills, vouchers of expenses debited in P/L account information/details as required were filed and examined on test check basis."

Thus, the assessee submitted various documents and ledger accounts and also a detailed chart which contains so many details.

12. *Lastly, we strongly rely upon our written submission filed before the ld. CIT(A) reproduced at Pg- 3 to 5 of his order at Pr. 3.2. The same has not been reproduced for the sake of brevity.*

Hence, the impugned addition 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.Coming to the correctness of the application of the GP rate of 3.25% by the AO based on one M/S Rellan Motors for AY 2013-14 stated by the revenue to be a comparable case, we find the law is settled that in the matters of estimation of income assessee's own history is the best guide unless facts are not the same. Various decisions of Hon'ble Rajasthan High Court and other Courts were cited in support of the contention. Hence instead of looking into others'cases, the past history of the assessee, where available shall take preference. Hence when we first look into the past history of the case, from a perusal of the chart submitted by the ld.AR in its written submissions it is noticed that the declared sales in AY 2010-11 was Rs. 58.61 which lakh sharply increased to Rs. 1.15 cr in AY 2011-12

under consideration and thus registered an increase of 196%. Similarly, the GP declared was 1.01% in AY 2010-11 and that also increased to 1.68% in this year. We are in complete agreement with the ld.AR that to achieve huge sales, the assessee is bound to reduce its profits. Yet however, there is an increase in the sale as also in the GP rate. The assessments for AY 2010-11 was completed under scrutiny u/s 143(3) on dated 28.03.2013 however, there appears no addition made by applying a higher rate of GP than declared. In other words, the AO was satisfied with the declared trading results. Thus, the overall results are better than the preceding year. Though the ld. CIT(A) has rejected the past history simply saying that the accounts were defective and hence the GP declared therein could not be relied upon, and advance received from customers were treated bogus however, the fact is that no trading addition was made in AY 2010-11. Coming to the case of Rellan Motor firstly, we find that it was a case of AY 2013-14 which is later to the year under consideration. Needless to say that generally the result of the subsequent year cannot be applied in the preceding (current) year. Interestingly, whereas Rellan Motors declared GP of 3.92% in that year, the assessee declared (revised) GP rate of around 4%. Secondly 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 so called comparable case. Before the CIT(A), we find that the assessee has furnished detailed reason at pages 4 onwards pointing out

several facts making the said case of Rellan Motors as completely distinguishable. On the other hand 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 GP rate as declared by the assessee at 1.68% is hereby accepted. Therefore, the authorities below were completely unjustified in applying higher GP rate of 3.25%.

2.6.1 Now 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 strong contentions. It is noted that the AO made enquiries from one of the customers namely Shri Sunil Bhutani and drew inference of suppression of sale to the extent of 0.25% to 0.50%. A perusal of the record shows that Rs.4,01,000/- which was considered by the AO to be the sale consideration received but not declared, was not a final sale bill but as per statement of Shri Bhutani itself, as also from a perusal of record, it was only a quotation towards the sale consideration, road tax, insurance expense etc. From a perusal of the ledger

account of Shri Bhutani it is noticed that the assessee, in fact, declared total receipts of Rs.4,13,720/- on account of the sales including VAT, RTO expenses, insurance, extended warranty, cost of accessories and other expenses etc which is much more, hence, therecannot be any question of suppression. The papers related to the enquiry were annexed with the assessment order and show receipts by way of cash and cheque both, which have been duly accounted for hence it was not a case of suppression. The AO, so as to justify the enhancement of sale, also considered a sample of 12 cases. By way of a chart based on the details submitted by the assessee the AO alleged a difference between the sale consideration mentioned in the RC (based on the Performa/VAT Invoice) and those entered in the books of accounts. And worked out a difference of Rs. 1,35,337/- (Sales amount as per books Rs.31,27,663/- and as per RC- Performa/VAT Invoice Rs. 32,63,000/-) and drew adverse inference that assessee was indulged in the suppression of sales to the extent of 4.1476%, which was applied on the declared sale of Rs.1.14 cr and actual sale was assumed at Rs.1.19 cr by making enhancement of Rs.5 cr (app). At the outset we find that the sale of Rs.114 cr and 1500 customers (app), the sample size of 12 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 almost around Rs.5 cr. 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. Thus, the enhancement of the sale (due to suppression) 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 uphold 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 No. 1 of the appeal is therefore partly allowed.

3.1 In Ground of Appeal No.2 of the assessee, the Addition of Rs.62,98,437/- is under challenge.

3.2 Brief facts of the case are that during the year under consideration, the assessee has shown advance from customers shown as on 31.03.2011 of Rs. 30,46,50,118/- as against Rs. 44,87,96,115/- shown last year i.e. in A.Y. 2010-11. After making various allegations, the AO noted that out of total confirmed advances for sum of Rs. 10,79,64,236/-, the sales affected/registered during the year are for a sum of Rs. 6,58,31,919/- and sales registered/effected during the subsequent year are Rs. 4,21,33,045/- so it can be inferred that 60.97% of the sales have been affected during the current year and 39.02% must have been affected during the subsequent year. Thus, out of total advances of Rs. 30,46,50,118/- shown as advance from customers, sales in 60.97% cases i.e. amounting to Rs. 18,57,60,104/- would have been affected during the year under consideration.Accordingly, the AO considering the amount of advance from customers shown by the assessee and sale affected in respect of these advances, estimated the total sales against these advances at Rs. 30 crore on which GP rate

3.25% was applied as in (GOA-1) and gross profit of Rs.97,50,000/- on such deferred sales was determined and added to the income of the assessee.

3.3 In the first appeal the ld. CIT(A) restricted the estimation of sale upto Rs. 18.58 Cr. only but after confirming the application of G.P Rate of 3.25%, he partly confirmed the addition upto Rs.62,98,437/- vide order dated 31.03.2015 in appeal no. 431/2013-14 holding as under:

> *"I have considered the contention of the appellant as well as the assessment order. it is seen that though the assessee has accepted that assessee has deferred the sales but the assessee`s contention that assessee has deferred sales since proper documentation or total finance value was not received by the assessee till the year end is without any basis as no documents in support of such a claim have been submitted. The vehicle sold have already been registered as per Registration Certificate. Further the assessee`s claim that AO had no basis for determining sales effected during the year at Rs.60.97% of the advances from customers is liable to be rejected as the AO has determined from the evidences submitted by the assessee in form of TRC , Insurance cover notes, financers delivery order (third party evidences) that out of advances from customers of Rs.10,79,00,000/-, sales have been registered / effected for 6.58 crores during the year which constitute 60.97% of such advance from customers and for the balance amount of Rs.4.21 Crores (i.e. 39.02%) sales have been booked in the subsequent year. So the AO has determined the sales against the advance from the customers on the basis of details furnished by the assessee itself.*
>
> *The AO has mentioned that out of total advances from customers of Rs. 30,46,50,118/-, sales have been effected to the extent of 60.97% during the year and balance 39.02% sales have been effected in the subsequent year. So the AO determined the sales made during the year at Rs. 18,57,60,104/-. However later, the sales from advance from customers were estimated at Rs. 30 crores.*

It may be mentioned that in the Ground No. 1 addition was made only in respect of the sales recorded in the books of accounts and not sales against the advances from customers for which addition has been made in Ground No. 2. As regarding the assessee's contention that as the assessee has offered these sales in subsequent year, it will amount to double addition it may be mentioned that AO has only taxed the sales affected during the current year only i.e. in respect of 60.97% of the advance from customers. The assessee is free to claim the credit for these sales in subsequent year, if appellant proves that these same sales have been again offered by him in subsequent year. For that claim, onus squarely lies on the appellant to prove the claim in subsequent year.

As regarding the VAT component of 15% in the advance from customers taxed during the year, no such actual payments have been made by the appellant. So no deduction thereof is available to the assessee as per provisions of the Act.

The AO has determined the sales at Rs. 18,57,60,104/- being 60.97% of the sales against advances from customers during the year under consideration based on the information submitted by the assessee during the assessment proceedings. Further it has been already brought on record that assessee is suppressing the sales by 4.14%. So the sales of the assessee are estimated at Rs.19,37,98,072/- and as against the sales estimated by the AO at Rs. 30 crores. No specific reason has been given by the AO for quantifying such sales at Rs. 30 crores. In view of above discussion, the GP rate on the sale of Rs.19,37,98,072/- is applied @ 3.25% on the same reasoning as in Ground No. 1, thereby giving the Gross Profit of Rs.62,98,437/-. The addition made by the AO to above extent is confirmed."

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

"1. Contradictory approach of the AO w.r.t. the Advances from customers: 1.1 *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:

***1.1.1** 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).*

***1.1.2** 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.*

1.1.3** 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 cases 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).*** *Use of words "might" and "appears" support this contention.*

2. Settled Past Practice: 2.1 *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".*

2.2 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)*** *andACIT vs.* ***Dow Agrosciences India P. Ltd. (2016) 53 ITR_TRIB 590 (Mum) (DPB 54-61).***

Case of Virendra Sharma support this (PB-82-83).

3. 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.*

4. 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.****Kindly refer Jain Brother & other and UOI and other 77 ITR 107(SC).*

The AO and ld. CIT(A) both have admitted the fact of deferred sale. Kindly refer Pg-11 Pr. 4.3 of ld. CIT(A) order. *However, the CIT(A) has shifted the onus upon the assessee which is not justified because the computation of deferred sale made by the AO is not correct with a mathematical precision.*

Regarding GP rate please refer our submission in GOA 1.

Hence the impugned addition be deleted in full."

3.4 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.

3.5 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. We find that ld. CIT(A) restricted the estimation of sale upto Rs.18,57,60,104/- being 60.97% of the sales against the advances from the customers received during this year but also enhanced the same by 4.14% as the suppression of sale on the same reasoning as was adopted by the AO in ground of appeal no. 1 and this way estimated the deferred sale related to this year at Rs.19,37,98,072/-. However, further estimation of sale at Rs.30 cr by the AO, was rejected being without any basis/reasoning. Finally applying the GP rate of 3.25%

on the same reasoning as in ground of appeal no. 1, the CIT(A) partly confirmed the addition upto Rs.62,98,437/-, which is under challenge. Before us, the ld.AR vehemently contended the contradictory approach by the AO in different years 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. He also strongly contended that is was not a case of deferred sale and further contended that because of the different approach adapted by the AO in the years under consideration, it has resulted into distorted picture of the income of not only of the given year but also of the other years and also resulted into multiple additions because suitable credit of the sale already booked has not been given. We are in agreement with these contentions however, the ld. CIT(A) rejected the contentions mechanically. It is noticed that similar allegation of deferment of sale was made by the AO in AY 2010-11 also though no quantification was made however, in our order dated 09-11-2022 in ITA no.396/JP/15,we have rejected such contention and the approach. Similarly, the allegation of suppression of sale and enhancement made of 4.14% and application of GP rate of 3.25% have also been rejected by us deleting the resultant addition for the reasoning given in ground of appeal no.1. Since the facts of the case are identical in this year also hence, our findings and the decision therein shall equally

apply here also. Accordingly, the impugned addition of Rs.62,98,437/- is hereby deleted. This ground No. 2 of the appeal is therefore allowed.

4.1 In Ground of Appeal No.3 of the assessee, the Disallowance of Interest of Rs.6,96,201/- u/s 40(a)(ia) is under challenge.

4.2 Brief facts of the case are that during the assessment proceedings, the AO at Pg-15 Pr-6 noted that the assessee made payment of Rs.6,96,201/- on account of interest expenses for repayment of loanto M/s Maruti Udhyog Ltd., Sundaram Finance, AU Finance and Mahindra & Mahindra Finance as detailed in the assessment order. The AO observed that the assessee has not deducted TDS on the payments made to the said parties. Thus, there is violation of Provisions of S. 194A of the I.T. Act, 1961. Accordingly, he disallowed entire amount of Rs.6,96,201/- u/s 40(a)(ia) and added to the total income of the assessee.

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. 431/2013-14.

> *"5.3 I have considered the contentions of the appellant as well as assessment order. It is seen that the interest has been claimed in respect of interest accruing to Maruti Udhyog Ltd. and M/s Sundaram Finance, M/s AU Financer and M/s Mahendra & Mahendra. The assessee has claimed that M/s Sundaram Finance, M/s AU Finance M/s Mahindra & Mahindra are non-banking financial corporation (NBC) and provision of Sec. 194A are not applicable to them in view of Sec. 194A(3)(iii)(a) of the I.T. Act. It may be mentioned that assessee's contentions are not acceptable as the*

exemption is applicable only in respect of interest paid to a banking company to which Banking Regulation Act, 1949 applies or to Cooperative Society engaged in carrying on the business of banking. It has not been shown that the above institutions are the banking companies as prescribed by the Act. Further it has not been shown that the payment by the assessee is under a hire purchase agreement and no such hire purchase contract has been put on record.

Further the assessee's claim that no addition can be made since profit has been estimated after rejecting books of accounts, is liable to be rejected as the said interest claim is not part of the Gross Profit which has been estimated by the AO.

It may be mentioned that it has been held in the case of Kanha Vanaspati Ltd, vs. CIT 17 SOT 160 (Delhi) that where the assessee has borrowed money from the financers for making payment to its suppliers and had paid financial charges to the financiers and debited the same under the head 'Discounting Charges, the said discounting charges are in nature of interest and are liable for tax deduction at source u/s 194A of the I.T. Act.

In view of above discussions and findings of the AO, the addition made by the AO is confirmed."

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

"1. No Tax deductible as per S.194A(3)(iii) (a): *The facts are not disputed that all the payees to whom the total amount of interest of Rs.6,96,201/- was paid as listed (at Pg-12 Pr-5.1 of the ld. CIT(A) order) are the non-banking financial corporation (NBFC) and therefore, the provisions of S.194A is not applicable in view ofS.194A(3)(iii)(a) which provides that any payment of interest to a banking company to which the Banking Regulation Act, 1949 (BRA) is applicable. Further as per provisions of RBI Act-1934 such NBFC`s are banking companies and therefore S.194A is not applicable.*

Also kindly refer a CBDT Instruction No. 1425 dated 14.11.1981, the contents of the Circular are as under:

> ***"1.*** ** ** ** **
>
> ***2.*** *In a hire-purchase contract the owner delivers goods to another person upon terms on which the hirer is to hire them at a fixed periodical rental. The hirer has also the option of purchasing the goods by paying the total amount of agreed hire at any time or of returning the same before the total amount is paid. It may be pointed out that part of the amount of the hire purchase price is towards the hire and part towards the payment of price. The agreed amount payable by the hirer in periodical instalments cannot, therefore, be characterised as interest payable in any manner within the meaning of section 2(28A) of the Income-tax Act, as it is not in respect of any money borrowed or debt incurred. In this view of the matter it is clarified that the provisions of section 194A of the Income-tax Act are not attracted in such transactions."*

2.1 No disallowance u/s 40(a)(ia) when books rejected and income estimated: *Another aspect of the matter is to be considered is that the accounts of the assessee has been rejected and S.145 has been applied. Once income of the given a year has been estimated by the AO the fact of claim of individual expenditure loses its identity and only net income i.e. Gross Receipts (less) all expenditure, is estimated. The facts are not denied that the AO in this case applied adhoc GP rate 3.25% by rejecting the accounts therefore, the income for the current year has been estimated and does not require any further disallowance. Kindly refer:*

2.2 ACIT vs. Salauddin (2019) 414 ITR 335 (Patna)(DPB- 38-39)*holding as under:*

*"Business expenditure—Disallowance under s. 40(a)(ia)—Accounts rejected and income estimated—****Once the books of account were rejected and the profit was estimated @ 8 per cent of turnover, then, the same books of account cannot be relied upon for the purpose of making addition under***

the provision of s. 40*—No substantial question of law arose out of order of Tribunal deleting addition made by CIT(A) under s. 40(a)(ia)"*

2.3 *The Hon'ble Andhra Pradesh High Court in* ***Indwell Constructions v CIT (1998) 232 ITR 776 (AP) (DPB- 40-42)*** *held that*

> ***"4.*** *The pattern of assessment under the IT Act is given by s. 29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in ss. 30 to 43D. Sec. 40 provides for certain disallowances in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under s. 29 is to be made under s. 145 on the basis of the books regularly maintained by the assessee.* ***If those books are not correct or complete, the ITO may reject those books and estimate the income to the best of his judgment. When such an estimate is made it is in substitution of the income that is to be computed under s. 29.*** *In other words, all the deductions which are referred to under s. 29 are deemed to have been taken into account while making such an estimate. This will also mean that the* ***embargo placed in s. 40is also taken into account****."*

Moreover, there are several decisions in support of this contention though rendered under other provisions of the Act but the underline principle is the same. Similar view has been taken in the cases of disallowance made u/s 40A(3) & S. 68 in the cases of :
CIT Vs Banwari Lal Banshidhar (1998) 229 ITR 229, 232 (All.), CIT vs. G.K. Contractor (2009) 19 DTR 305 (Raj.),

Also refer ***Maddi Sudarsanam Oil Mills Co. v/s CIT (1959) 37 ITR 369 (AP), ECI Engineering & Construction Co. Ltd in ITA No. 2048/Hyd/2011, Samurai Techno Trading Co. (P) Ltd. v/s CIT (2010) 37 DTR 386 (Ker).***

3. *The ld. CIT(A) however, rejected such contentions without considering the legal position. He simply held that NBFC is not a banking company ignoring*

the written submission and provisions of the RBI Act. His further contention that only gross profit rate has applied which does not take care of the direct expenses like interest expenses etc. is again ignoring the settled legal position. What has been held is only an estimation of income after rejection of the accounts which takes care of all the expenditure. There is no distinction made by the Hon`ble courts whether a GP rate has been applied or NP rate has been applied. But the moot question is whether any estimation of income has been made or not. Since in this case business income has already been estimated. All the incoming / outgoings related to the business, must be taken as already considered.

4. No TDS – When payee already paid taxes: 4.1 *It is submitted that S.40(a)(ia) is not applicable in this case, for the reason that the payee company i.e. M/s Maruti Udhyog Ltd. is the Public Limited Companies. Moreover M/s Sundaram Finance, AU Finance and Mahindra & Mahindra Finance are Non-Banking Finance Corporation. All these corporation / companies are the renowned and must have already filled the return of income and paid tax due thereon considering the subjected amount paid to them of Rs.6,96,201/-. Therefore, in view of the ratio laid in the* ***binding decision*** *of the Hon'ble Supreme Court in the case of* ***Hindustan Coca Cola Beverage (P) Ltd. v/s CIT*** *(2007) 211 CTR (SC) 545: (2007) 293 ITR 226 (SC)which, has very categorically held and* ***rather prohibited the department to make recovery of the taxes again****, in case where the recipient (the buyer) has already paid the taxes.****In that case*** *it was held as under:*

> *"It is required to note that the* ***Department conceded before the Tribunal*** *that the recovery could not once again be made from the tax deductor where the payee* ***included the income*** *on which tax was alleged to have been short deducted in its taxable income and* ***paid taxes thereon****. There is no dispute whatsoever that P Corpn. had already paid the taxes due on its income received from the appellant and had received refund from the Tax Department. The Tribunal came to the right conclusion that the* ***tax once again could not be recovered from the appellant (deductor-assessee) since the tax has already been paid by the recipient of income****. The order passed by the*

Tribunal to reopen the matter for further hearing as regards ground No. 7 has attained its finality. In the circumstances, the High Court could not have interfered with the final order passed by the Tribunal. Be that as it may, the Circular No. 275/201/95-IT(B), dt. 29th Jan., 1997 issued by the CBDT should put an end to the controversy. In the circumstances, it is not necessary to go in detail as to whether the Tribunal could have at all reopened the appeal to rectify the error apparent on the face of the record.—CIT vs. Hindustan Coca Cola Beverages (P) Ltd. (2007) 207 CTR (Del) 119 set aside."

4.2** In the case of **CIT vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (2006) 287 ITR 354 (Raj), which is also binding upon the ITO,** it was held that**:

"When the payee has paid more tax than the tax payable by it and refund is due to it as a result of TDS by the assessee, interest under s. 201(1A) cannot be charged."

***Not only the tax can be recovered by the Revenue twice but even no interest can be charged** by the revenue from the payer (assessee here) where the payee has already paid tax more than the tax payable by it and the refund is due, which is also a fact in the cases of various buyers. (except) a few buyers only"*

5. Supporting Case laws:

***5.1** In the case of **ACIT v/s Girdhari Lal Bargoti in ITA No. 757/JP/2012 on dated 10.04.2015** wherein, the entire impugned disallowance was deleted at the level of ITAT itself **without sending it back** to the AO. It was held as under*

*"11. We have heard the rival contentions of both the parties and perused the material available on the record. X x x x x x Further **the recipient are NBFC, therefore, not possible to not be assessed to tax, these payments were related for A.Y. 2009-10 and return for A.Y. 2009-10 already might have been filed by these NBFC by including***

these interests receipts as their income*. Therefore, we do not find any reason to interfere in the order of the Ld. CIT(A)."*

5.2 *On identical factsand circumstances, the Hon'ble ITAT Jaipur bench, Jaipur in the case of* ***ACIT vs M/s. Vastuvedik Colonizers & Developers Pvt. Ltd. In ITA No. 320/JP/2015 dated 24/10/2018*** *has set aside the matter holding as under:*

"4.1. The second disallowance was made by the AO in respect of Interest payment to M/s. Tata Motor Finance. The ld. A/R of the assessee has submitted that the recipient has considered the said amount in its total income and paid the tax, however this issue requires verification of fact as the assessee did not file the requisite certificate to the extent that the recipient has considered this amount in the total income and paid tax on the same. Accordingly, we set aside this issue to the record of the AO for verification of the fact and then deciding this issue in the light of the decision of Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd., 234 Taxman 825 (Delhi) wherein it was held that the amendment brought in section 40(a)(ia) of the Act is curative in nature and, therefore, it is applicable retrospectively."

5.3 *Also, in the case of* ***Shri Mahesh Khanwani vs ITO in ITA No. 879/JP/2017 dated 27/11/2018*** *has held as under:*

"Thus it is now settled proposition of law as per the various decisions of Hon'ble High Courts that the second proviso to section 40(a)(ia) is curative in nature and is applicable retrospectively. Having held that the benefit of second proviso is available to the assessee if the recipient of interest has already taken this amount in its total income and filed the return of income, we direct the AO to verify this fact and decide the I ssue in the light of the above observations and decisions."

5.4 *It is submitted that, the Hon'ble ITAT Jaipur has remanded the matter to the AO in view of CA certificate filed later in the case of* ***Doon Valley V/s ITO in ITA No. 668/JP/2017 Date 05.01.2018.***

5.5 Also kindly refer *Kanhiyalal Kalyanmal v/s DCIT in ITA No. 172/JP/16 on dated 02.08.2016, G.G. Associates v/s ITO in ITA No. 1963/PN/2014 on dated 28.06.2016, Shri Azmath Ulla v/s ACIT in ITA No. 144/Bang/2017 dated 24.05.2017, Shri Shekhar Ghagwan Gore v/s ITO in ITA No. 184/PN/2015 dated 25.07.2016 and Vasai Roller Flour Mills (P) Ltd. v/s DCIT in ITA No. 5437/Mum/2015 dated 26.07.2016.*

Therefore, the entire disallowance, so made may kindly be deleted in full or alternatively, the issue may be restored to the file of the AO."

4.5 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.

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 have also gone through the judicial pronouncements cited by the parties.Though various contentions have been raised to convince that it was not a case of making disallowance u/s 40(a)(ia) r/w S.194A however we shall confine ourselves to only one argument that where the payee had already paid the taxes, no further disallowance can be made. It is noticed that all the payees are public limited companies or corporations being M/s Maruti Udhyog Ltd. is the Public Limited Companies. Moreover, M/s Sundaram Finance, AU Finance and Mahindra & Mahindra Finance are Non-Banking Finance Corporation, which are

renowned companies of their field. They must have already filled the return of income and paid tax due thereon considering the subjected amount paid to them of Rs.6,96,201/- in their respective declared income. Therefore, no disallowance should have been made in view of the binding decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P) Ltd. v/s CIT (2007) 211 CTR (SC) 545: (2007) 293 ITR 226 (SC) which, has very categorically held and rather prohibited the department to make recovery of the taxes again. Similar view has been taken in the case of CIT vs. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (2006) 287 ITR 354 (Raj). Now, the second proviso to S.40(a)(ia) has taken care of a situation where payee has already paid taxes, no disallowance should be made. The coordinated Bench of ITAT Jaipur in the cases of ACIT v/s Girdhari Lal Bargoti in ITA No. 757/JP/2012 on dated 10.04.2015, Shri Mahesh Khanwani vs ITO in ITA No. 879/JP/2017 dated 27/11/2018, Doon Valley V/s ITO in ITA No. 668/JP/2017 Date 05.01.2018 has taken similar view. Without going into other merits of the case we are satisfied that the authorities below were not justified in making the impugned disallowance hence the same is directed to be deleted. This ground No. 3 of the appeal is therefore allowed.

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

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

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, JCIT, Range-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. 397/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar