

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos. 230 to 232/JP/2020  
निर्धारण वर्ष/Assessment Year : 2005-06, 2006-07 & 2008-09

M/s Rajasthan Patrika Private Limited JLN Marg, Jaipur	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 7856 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 510/JP/2019  
निर्धारण वर्ष/Assessment Year : 2007-08

M/s Rajasthan Patrika Private Limited 1 Keshargarh, JLN Marg, Jaipur	बनाम Vs.	The Asstt. Commissioner of Income Tax, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 7856 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Manish Agarwal, C.A  
राजस्व की ओर से / Revenue by: Sh. A. S. Nehara, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 10/10/2022  
उदघोषणा की तारीख / Date of Pronouncement: 22/11/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are four appeals filed by the assessee which are filed against the respective order of the Commissioner of Income Tax (Appeal)- 2 & 4, Jaipur [ Here in after referred as Ld. CIT(A) ] for the assessment year 2005-

06, 2006-07, 2007-08 & 2008-09 dated 31/12/2019 & 05/02/2019 which in turn arises from the order passed by the ACIT, Circle-06, Jaipur passed under Section 143(3)/254 of the Income tax Act, 1961 (in short 'the Act') dated 30/12/2016 & 31/12/2016.

2. Since the issues involved in the assessee's appeal for all the years are almost identical and the issues are almost common, except the difference in figure of additions disputed, therefore, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter pertaining to M/s Rajasthan Patrika Pvt. Ltd. in ITA no. 230/JPR/2020 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the

purpose of the present discussions, the case of ITA No. 230/JPR/2020 is taken as a lead case of each party. Based on the above arguments we have also seen that for all these appeals are similar, facts are similar and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 230/JPR/2020.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 230/JPR/2020 on the following grounds;

“1. On the facts and in the circumstances of the case the Ld. CIT(A) has grossly erred in confirming the disallowance of Marketing and Survey Expenses legitimately claimed by assessee company at Rs. 60,01,635/- without appreciating the nature of expenses and the business module of the assessee company, thus the expenses as claimed deserve to be allowed.

1.1 That the Id. CIT(A) has further erred in ignoring the fact that Id. AO has not followed the directions of Hon'ble ITAT and not allowed the opportunity to cross examine the persons whose statements were relied upon for making disallowances, thus the consequent order is against the principle of natural justice and deserves to be held bad in law.

1.2 That the Ld. CIT(A) has further erred in disbelieving the submissions made and evidences adduced in the shape of affidavits furnished by recipients (which remained uncontroverted), invoices, tracking sheets, etc., thus the action of the Ld. CIT(A) being unfair deserves to be hold bad in law and consequent disallowance uphold at Rs. 60,01,635/- deserves to be deleted.

1.3 That the Ld. CIT(A) has further erred in ignoring the fact that the recipient has duly confirmed the transactions and also declared the receipts in their income tax returns which were not doubted thus the disallowances made in the hands of the assessee deserves to be deleted.

2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

5. The brief facts of the case as culled out from the records is that in this case the AO vide order u/s 143(3) dated 31.12.2007 assessed total income at Rs. 2,14,20,940/- by making additions on account of various disallowances including disallowance of Rs. 60,01,635/- on account of Marketing and Survey Expenses out of total expenditure of Rs. 2,35,12,583/-. In the original assessment proceeding the Id. AO vide entry sheet dated 24.12.2007 asked the assessee to produce personally the aforesaid parties along with their books of accounts, purchase and sale bills and copies of their return of income for A. Y. 2005-06. The assessee could not produce the said persons and the case was adjourned on 27.12.2007. Simultaneously, summons u/s. 131 of the Act were also issued to the parties and the inspector of the AO went to serve the same. The inspector found that the person concerned were not having any connection at the addresses noted in the bills claimed to have been issued by them. The self-serving statement of the existing residents who were available at the aforesaid premises was taken. The Inspector has also taken the photograph of the place he visited. This information was supplied to the assessee on 27.12.2007. The Id. AO concluded that the two parties/concerns to whom the payments were made, was never existing at the address given by the assessee. Based on these findings the Id. AO concluded that the expenses / payments to both of them as bogus and

added a sum of Rs. 60,01,635/-. In appellate proceedings, the ITAT vide order in ITA No. 519/JP/2012 dated 15.6.2015 deleted additions made on account of various disallowances. However, on the issue of disallowance of Marketing and Survey Expenses the coordinate bench has observed as under :

ITA No. 519/JP/2012

4.15 We have heard the rival contentions and peruse the material available on record. As the facts emerge the record and evidence in this behalf has surfaced in piece meal and from time to time as the assessee attempted to fill in the gaps about inferences drawn by the authorities from time to time. Consequently, a cohesive verification of material appears to be not made. Assessee has produced the income tax record of the survey agencies which in support of its version; there exist no reasoning as to why they are being ignored by the Id. AO & CIT(A). There exist conflicting claim about the existence of such survey agencies coupled with on supply of Inspectors report and non-allowing the customary right of cross examining the denying witnesses. Thus assessee has made out a case of violation of principles of natural justice. In the entirety of facts and circumstances we are inclined to set a side the issue relating to Marketing and Survey expenses back to the file of the AO to decide afresh after considering the entire evidence and giving the assessee an opportunity of being heard.

6. As it is evident that the direction in the set aside proceeding for the disputed disallowance was to peruse the material submitted by the assessee company in the form of income tax assessment records of these survey agencies in support of version that the work have been executed, the claim of the assessee that the report of the inspector was not supplied and cross examination of the denying witnesses, in the entirety of these

facts the matter was a set a side to decide the issue a fresh. In the light of these direction the Id. AO provided copy of statements of Shri Pushpendra Singh and Shri Hanuman Singh dated 14.02.2012. The Id. AO also directed to furnish evidences to prove the genuineness of the expenses.

7. In persuasion of the direction of the ITAT the Id. AO issued a letter dated 11.11.2016 the same is reproduce as under :

“Therefore, as directed by the Hon’ble ITAT, a copy of statements of Shri Pushpendra Singh and Shri Hanuman Singh dated 14.02.2012 is provided to you ( copy enclosed ). Considering the directions of Hon’ble ITAT, an opportunity is provided again to furnish evidences if any, on this issue to prove the genuineness of the expenses.”

8. In response the AO noted that the assessee filed submission dated 02.12.2016 crux of the arguments is that survey was conducted for assessing the choice of readers for increasing the readership. Survey was conducted through two independent parties namely M/s. Perfect N Marketing and M/s. Aneu Marketing of Jaipur. They collected information which helped in increasing the sale of newspaper. Payments were made by cheque. The Id. AR further submitted that the report of the inspector submitted by making spot verification of the address appearing in the bill of the service provider, vide letter dated 17.11.2009 it was submitted by M/s.

Perfect N Marketing that in the statements recorded by the circle inspector the witness Ganeshkumar has just given his thump impression to the statement without even knowing the contents. Fresh statement of Ganesh Kumar were also submitted with this letter duly verifying the existence of the concerns at the given address and furthermore, copy of insurance policy issued by LIC on 28.05.2000 in the name of proprietor at the same address was also submitted to justify the existence of the concerns to whom the payments towards marketing and survey expenses were made. To strength the argument verification letter of two independent person residing near the premises were submitted wherein they have categorically stated that both the firms to whom the payments were made were in existence at the said address and doing the marketing work.

9. The Id. AO noted that the reply of the assessee is revolving around all the arguments and evidences presented during the course of original assessment proceedings, nothing new has been brought on record. Moreover, the Hon'ble ITAT directed to decide the cash afresh after supplying Inspector's report and opportunity to cross examine the denying witnesses. Vide letter dated 11.11.2016, copy of Inspector report have been duly provided to the assessee in connection with proceedings of A. Y. 2006-07. The assessee never asked for opportunity to cross examine the

said witnesses, in fact it is relying on those statements saying that they had never denied that they conducted marketing survey for assessee company. Vide reply dated 02.12.2016 or 23.12.2016 assessee has not requested for opportunity to cross examine anyone. The Id. AO vide order sheet entry dated 23.12.2016 directed the assessee to produce Shri Ganesh Kumar for verification on 26.12.2016. Instead an affidavit of Abhishek Saxena was filed on plan paper and the said person was also not produced before the Id. AO as claimed by the AO. Based on these facts the Id. AO concluded that assessee has not produced any witness in its support but relying only on the evidences filed earlier. The Id. AO noted that the objective of ITAT in setting a side this issue was to provide opportunity to assessee to cross examination the witness and / or rebut the arguments of the department based on evidence which was not supplied to them. The Id. AO further noted that the report of the inspector was given to assessee and the arguments of the assessee are same as given in original assessment proceedings which were duly considered and after considering the same it was concluded by him that the marketing and survey expenses are not genuine and confirmed the same.

10. Aggrieved from the said order assessee preferred an appeal before the Commissioner of Income Tax, Appeals-2, Jaipur in the second round

the relevant findings of the Idl. CIT(A) is recorded at para 2.3 to 2.3.1 the same is reiterated as under:-

"2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. On perusal of overall facts, it is seen that the issue involved in this appeal is outcome of decision of Hon'ble ITAT, Jaipur where issue was set aside for fresh consideration. In A.Y. 2007-08 under identical facts, Hon'ble ITAT, Jaipur set aside the issue for verification. In set aside assessment proceedings, Assessing Officer made the disallowance against which appeal was dismissed by CIT(A)-4, vide appeal no. 451/2018-19 dated 05.2.2019 wherein it was held as under:

"In the present case, it is seen that appellant is a Private Limited Company engaged in the business of printing & publishing of newspaper & periodicals, production of TV serials & documentaries and event management which includes the publishing of flagship product "Rajasthan Patrika", which is one of the accredited as well as a well-known widely read newspaper across the country having one of largest readers base, The appellant company is also actively engaged in event management and organizing exhibitions & conferences at big levels and is known to people of the country at large. specially the Rajasthan.

4.2 The assessment for the year under consideration was completed u/s 143(3) wherein certain disallowances were made out of various expenses claimed in the Profit & Loss Account. Against the said order, an appeal was preferred before the CIT(A) who had partly allowed the appeal of the appellant, therefore, second appeal was preferred before the Hon'ble ITAT, Jaipur bench, Jaipur, who vide order dated 20.11.2015 deleted the disallowances made out of various expenses except the disallowance made out of Marketing and Survey expenses which is set aside as per directions of Hon'ble ITAT for A. Y. 2005-06, 2006-07 and 2008-09 wherein at para 4.15 of the order following observations have been made:

"4.15 We have heard the rival contentions and perused the material available on record. As the facts emerge the record and evidence in this behalf has surfaced in piece meal and from time to time as the assessee attempted to fill in the gaps about inferences drawn by the authorities from time to time. Consequently a cohesive verification of material appears to be not made. Assessee has produced the income tax record of the survey agencies which in support of its version; there exist no reasoning as to

why they are being ignored by Ld. AO &CIT(A). There exist conflicting claims about the existence of such agencies coupled with non-supply of Inspectors report and non: allowing the customary right of cross examining the denying witnesses, Thus assessee has made out a case for violation of principles of natural justice. In the entirety of facts and circumstances we are inclined to set aside the issues relating to Marketing and Survey expenses back to the file of AO to decide afresh after considering the entire evidence and giving the assessee an adequate opportunity of being heard."

4.3 Accordingly, assessment proceedings were taken up by AO. During the course of assessment proceedings, appellant furnished documentary evidences in support of expenses incurred by it under the head "Marketing and Survey, however, AO again disallowed the entire sum of Rs. 67,73,510/- vide order dated 30/12/2016 on account of marketing and survey expenses. In this regard observation of the AO can be seen in para 8 to 8.4 of AO's assessment order.

I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. A/R and those contained in the order of AO. I have also gone through the order of Hon'ble ITAT Jaipur passed in the case of appellant placed at APB page- 78 106. I have gone through the order of AO and CIT(A) in the 1st round of assessment.

6.2 Careful perusal of above, I am of the view that AO has rightly disallowed a sum of Rs. 67,73,510/-. The detailed investigation done with respect to all the parties especially the M/s Perfect N marketing & M/s A neu marketing can be seen at the order dated 30-12-2009. Out of all the parties the appellant could only produce 2 stated parties with dubious credential. Even the 2 parties did not maintain any bill books etc as is also observed by the CIT(A) in the 1st round of appellate proceedings. Only new thing which is now produced before the AO is affidavits which remain uncontroverted as per Ld. A/R. However the affidavit cannot override the overwhelming evidences and results gathered by the AO in the original assessment proceedings nor is controverted on facts by the Ld. A/R. In my view the AO has rightly made a disallowance of Rs. 67,73,510/-. On the facts and in the circumstances of the case, appellant's appeal is dismissed."

2.3.1 Since, the issue is identical and fact and circumstances are similar and assessee has not made any separate claim but made identical submission for all the years, by following the above decisions, since no new arguments were placed before me, disallowance made by the Assessing Officer on account of survey and marketing expense is hereby upheld. This ground of appeal is dismissed."

11. The assessee not finding favour from the lower authorities in the set-aside proceeding again filed an appeal against the order of the Id. CIT(A)-2, Jaipur on the grounds raised and reiterated here in above particularly challenging the disallowance of Marketing and Survey Expenditure of Rs. 60,01,635/- contending that the lower authorities have not followed the direction and ignored the other circumstantial evidence placed on record. The Id. AR appearing on behalf of the assessee submitted that in the second round of litigation the Id. CIT(A) has not considered the revised facts and arguments advanced by the assessee and therefore, the Id. AR of the assessee filed his written submission, the same is extracted in below;

“Briefly stated the facts of present appeal are that the assessee appellant is a private limited company engaged in the business of printing & publishing of newspaper & periodicals, production of TV serials & documentaries and event management which includes the publishing of flagship product “Rajasthan Patrika”, which is one of the accredited as well as a well-known widely read newspaper across the country having one of largest readers base. The assessee company is also actively engaged in event management and organizing exhibitions & conferences at big levels and is known to people of the country at large specially of the Rajasthan.

The assessments for the assessment years under appeal were completed u/s 143(3) wherein certain disallowances were made out of various expenses claimed in the Profit & Loss Account. Against the said orders, appeals were preferred before the Id. CIT(A) who had partly allowed the appeals of the assessee, therefore, second appeals were preferred before the Hon'ble ITAT, Jaipur bench, Jaipur, which were decided vide its common order dated 15.06.2015 for A.Y. 2005-06, 2006-07 and 2008-09 in ITA Nos. 519, 520, 521/JP/12 (APB 79-120) wherein the hon'ble bench was pleased to delete the disallowances made out of various expenses except the disallowance made out of Marketing and Survey expenses which was set aside by making specific directions made in para 4.15 of the order, which reads as under (APB 113):

*“4.15 We have heard the rival contentions and perused the material available on record. As the facts emerge the record and*

*evidence in this behalf has surfaced in piece meal and from time to time as the assessee attempted to fill in the gaps about inferences drawn by the authorities from time to time. Consequently a cohesive verification of material appears to be not made. Assessee has produced the income tax record of the survey agencies which in support of its version; there exist no reasoning as to why they are being ignored by Ld. AO & CIT(A). There exist conflicting claims about the existence of such agencies coupled with non supply of Inspectors report and non-allowing the customary right of cross examining the denying witnesses. Thus assessee has made out a case for violation of principles of natural justice. In the entirety of facts and circumstances we are inclined to set aside the issues relating to Marketing and Survey expenses back to the file of AO to decide afresh after considering the entire evidence and giving the assessee an adequate opportunity of being heard.”*

Similarly, for A.Y. 2007-08, Hon’ble ITAT, vide order dated 20.11.2015 set aside the issue to the file of Assessing Officer following the above common order of Hon’ble ITAT for other three assessment years.

Accordingly, set aside assessment proceedings were taken up by Id. AO. During the course of set aside proceedings, assessee furnished all the documentary evidences in support of expenses incurred by it under the head “Marketing and Survey”, however, Id. AO again by completely ignoring the fact that opportunity for cross examination is to be provided by him as per the specific directions of Hon’ble ITAT and also without appreciating the submission made and evidences adduced in set aside proceedings again repeated the earlier order disallowing the expenses on account of Marketing & Survey for all the Assessment Years i.e. 2005-06 to 2008-09. Aggrieved of such order passed by Id. AO, appellant preferred appeals before Id. CIT(A), who confirmed the order passed by Id. AO solely on the basis of findings in original proceedings and further by observing that cross examination was not allowed as no specific request was made by assessee in this regard even though the same was directed to be allowed in terms of the order of hon’ble ITAT. Aggrieved of the order so passed by Id. CIT(A), assessee has preferred captioned appeals.

With this background, ground wise submission is made as under:

Ground of Appeal No.1 to 1.3:

In all these grounds of appeal for A.Y. 2005-06 to 2008-09, assessee has challenged the action of Id.AO in making disallowance of Marketing & Survey expenses claimed by assessee, details of which is as under:

S.No	Name	2005-06	2006-07	2007-08	2008-09
1.	Aneu Marketing	22,01,385	26,71,854	18,04,380	
2.	A One Marketing	-	11,84,460	2,97,420	5,41,910

3.	Harshit Marketing	-	-	2,19,410	7,65,095
4.	Sharma Marketing	-	-	3,21,855	7,29,480
5.	Lakshay Marketing	-	-	1,68,635	7,44,400
6.	Anoop Marketing	-	-	2,55,810	7,74,485
7.	M/s The Indian Institute of Public Opinion P. Ltd.	-	-	6,00,000	-
8.	Ms Asha Sharma	-	-	2,03,600	-
9.	Perfect "N" Marketing	38,00,250	26,31,770	29,02,400	-
10.	Perfect Requirement and Consultancy	-	-	-	7,81,465
	TOTAL	6001635	6488084	6773510	4336835

In this regard, as submitted above, assessee company is engaged in publishing of the daily newspaper "Rajasthan Patrika – Hindi Daily", which has the highest reader base in Rajasthan and is the No. 1 newspaper of the Rajasthan State as per certificates of the Audit Bureau of Circulation (ABC) and readership data released by the Indian Readership Survey (IRS) from time to time. In order to maintain the present level of readers base and to further increase it and to cope up with the local competition particularly after the publication of another newspaper known as Dainik Bhaskar in the state of Rajasthan, it was felt necessary to find out the readers' choice between two daily newspapers and accordingly service of independent agencies were hired for conducting door to door survey and collect information from the readers about preference between the newspaper published by it and other newspapers in a particular area. This exercise of conducting survey bestows following advantages to the business of assessee company:

1. This survey gives area specific information of the readers base of our newspaper and readers base of other newspapers so as to plan out strategies to convert those readers towards the newspaper published by the assessee company.
2. Having detailed information and profile of the readers which is beneficial to marketing team for increasing the advertisement revenue.
3. Identification of those areas where vigorous marketing and promotion activities are needed to increase the sales and readership of the newspaper.
4. By such door to door survey, the company has information about the readers, their liking of contents and subjects which they preferred in the newspaper.

With the above background, it is submitted that for conducting such surveys, assessee company had appointed certain independent agencies in Jaipur who conducted surveys through their self-hired staff (team of surveyors), who paid visits from door to door in a particular area on a particular day and collected certain information in the nature of following:

1. Number of houses where the newspaper published by the assessee company is read.
2. Number of houses where any other newspaper is read.
3. Number of houses where the newspapers published by the assessee company and other; both are read.
4. Number of houses where no newspaper is read.

Having collected the information pertaining to the above-listed domains, the said firms passed it on to the assessee company, after which, the representatives of assessee company along with the person conducting survey visited the houses where its newspaper is not read and made efforts to persuade them to read its newspaper by giving incentive in shape of free copy of the newspaper for a period ranging between 2 to 10 days. Notably, this marketing technique has shown its positive results to the effect that the total turnover of the assessee company has increased with corresponding increase in sale of newspaper which fact could not be ignored or disbelieved. Therefore, the business expediency of the expenses incurred on account of these surveys cannot be doubted at all.

Ld.AO disallowed the payments made to above concerns by observing as under: (from AY 2005-06)

*“8.3 Thus it is seen that assessee has not produced any witness in the support but relying only on the evidences filed earlier. The objective of Hon’ble ITAT to set aside the case was to provide opportunity to assessee to cross examine the witnesses and / or rebut the argument of the department based on evidence which was not supplied to them. As stated above, the copy of Inspector’s report duly provided to the assessee.”*

.....  
*8.5 In view of above discussion, it is established that assessee was given due opportunity at the time of original assessment proceedings as well as in set aside assessment proceedings to explain the genuineness of the expenses claimed in the name of marketing and survey expenses. However, the assessee could not prove the genuineness. Therefore, as per original assessment it is held that the said marketing and survey expenses amounting to Rs.60,01,635/- are not genuine and are therefore disallowed and added back to the total income.”*

From perusal of above, it is evident that Id. AO disallowed the whole sum solely for the reason that assessee could not produce witness for verification, however so far as main direction of Hon’ble ITAT to provide assessee with the opportunity to cross examine the parties whose statements were relied upon was not complied with. On the contrary, Id. AO has mentioned in the assessment order that assessee has not sought the opportunity of cross examination. Your honour’s would appreciate that when it was specific direction of Hon’ble ITAT, assessee was not required to make such request.

Similarly, Id. CIT(A) confirmed the action of Id. AO in A.Y. 2007-08 (which order was followed in all other years, i.e. A.Y. 2005-06, 2006-07 and 2008-09) by observing as under:

“.....  
*6.2 Careful perusal of above, I am of the view that AO has rightly disallowed a sum of Rs.67,73,510/-. The detailed investigation done with respect to all the parties especially the M/s Perfect Marketing & M/s Aneu marketing can be seen at the order dated 30.12.2009. Out of all the parties the appellant could only produce*

*2 stated parties with dubious credential. Even the 2 parties did not maintain any bill books etc. as is also observed by the CIT(A) in the 1<sup>st</sup> round of appellate proceedings. Only new thing which is now produced before the AO is affidavits which remain uncontroverted as per Ld. A/R. However, the affidavit cannot override the overwhelming evidences and results gathered by the AO in the original assessment proceedings nor is controverted on facts by the Ld. A/R. In my view the AO has rightly made a disallowance of Rs.67,73,510/- on the facts and in the circumstances of the case, appellant's appeal is dismissed."*

From perusal of observations of Id.AO as well as Id. CIT(A), it is crystal clear that though assessee was supplied with the Copy of Inspector's report, no opportunity of cross examination was provided nor were affidavits filed by assessee controverted.

At this juncture, it is submitted that during the course of assessment proceedings u/s 143(3), Id.AO had deputed ward inspector to make spot verification of the address appearing in the bills of these concerns. Copy of such report was neither provided during proceedings u/s 143(3) nor in set aside proceedings and rather statements of residents of such addresses Sh. Bhanwarlal (119/504, Mansarovar) and Sh. Kishan Lal (123/335, Mansarovar) (APB-4) were annexed with Show cause notice dated 11.11.2016. On Statements of Sh. Bhanwarlal, one Mr. Ganesh had signed as witness. Assessee had subsequently furnished a letter duly signed by Mr. Ganesh wherein he has specifically mentioned that he had signed on such statements without proper knowledge of facts. Furthermore, copy of insurance policy issued by LIC on 28.05.2000 in the name of proprietor at the same address was also submitted to justify the existence of the specific concern at that address. Instead of producing both the witnesses, for cross-examination by assessee as was directed by Hon'ble ITAT while setting aside the issue of disallowance, the Id. AO on the contrary, required the assessee to produce Mr. Ganesh vide order sheet entry dated 23.12.2016. Assessee also furnished affidavit of Sh. Abhishek Saxena, another person residing in neighbourhood, who confirmed the fact that marketing activities were being carried out from 119/504 and stated that he had seen marketing people gathering there (APB 10-11). Ld. AO insisted on producing both these persons instead of complying with the observation / direction of Hon'ble ITAT of giving opportunity to assessee of cross-examination of denying witnesses. Consequently, adverse inference so drawn without complying with the direction of Hon'ble ITAT is totally unjust and thereby disallowance so made deserves to be deleted.

Without prejudice to above, it is also submitted that it is a well known fact that common men hesitate in appearing before Income Tax Department due to fear of being interrogated and getting into prolonged litigation. Further, Sh. Ganesh as well as Sh. Abhishek Saxena were neither relatives nor friends of directors and in a scenario they had cooperated to assessee by furnishing their statements, however denied to appear before Id. AO. Your honours would appreciate that assessee could not force them to appear before Id.AO. On the other hand Id.AO has been conferred with wide powers under the Income Tax Act to summon /call for information from any person. In fact, the appellant assessee had clearly established from the details / evidences / documents filed with the Ld. AO and is now a part of the assessment

records that such of the payees, to whom the payments have been made by the assessee, had rendered services and moreover in respect of those services such payees had further incurred expenditure which was allowed by their respective assessing authorities in the hands of such payees and therefore by no stretch of imagination could it be held that the appellant assessee has not incurred expenditure for the purpose of business.

In this regard, the appellant would like to submit before your honours that the Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd., (1986) 159 ITR 78 (SC), had held that it is for the department to pursue a creditor, particularly once the assessee had duly furnished the complete particulars of such creditor. It is respectfully submitted that the powers under section 131 of the Act have been vested with the Ld. Assessing Officer. The Ld. AO has rejected the documentary evidence on arbitrary grounds, and therefore the burden lies upon him to establish that the expenditure incurred by the appellant was not for any service rendered.

In the case of Nathu Ram Premchand v. CIT, (1963) 49 ITR 561 (All), and of EMC (Works) Private Ltd. v. ITO, (1963) 49 ITR 650 (All), it has been held that even in the case of a creditor, burden is on the Assessing Officer to enforce the attendance of the creditor. It is thus respectfully submitted that no adverse inference could be drawn against the appellant assessee in the present case.

Further, it is submitted that the Hon'ble Delhi High Court in the case of CIT v. Genesis Comnet (P) Ltd., (2007) 163 Taxman 482 (Del) has held that an officer if he was not inclined to believe the material placed by the assessee, he could have used coercive powers available to him. Even the similar view has been expressed by the Hon'ble Allahabad High Court in the case of Nathu Ram Premchand v. CIT, (1963) 49 ITR 561 (All), wherein it was held that if the officer was of the opinion that evidence of the parties was necessary then it was for him to have issued the summons.

It is further submitted that assessee furnished vital evidences in the shape Affidavits of Shri Pushpendra Singh (APB 15-16) and Sh. Hanuman Singh (APB 13-14) wherein they have admitted the fact of providing services to assessee. Further their Income Tax Returns, Copies of Assessment orders and copy of bank statement were also furnished before AO. Apart from this, copies of Date-wise survey report, monthly survey reports, consolidated reports generated with such data as well as Field Survey Reports were also furnished. However Ld. AO, without appreciating them and without even making any effort / attempt to go through the details filed by the assessee, had completely brushed aside the same and just repeated the disallowances. Ld. AO failed to carry out any independent inquiry from the parties surveyed to cross verify the same before rejecting rather ignoring such evidences, more particularly when complete address of those parties were mentioned in Field Survey Reports. Further, instead of cross verifying the details mentioned, Ld. AO again resorted to make disallowance solely by drawing adverse inference from statements of Sh. Bhanwar Lal and Sh. Kishan Lal recorded by Inspector without providing opportunity to assessee to cross-examine them and thus violated the

principle of natural justice (which was one of the main reason before Hon'ble ITAT for ordering setting-aside of this issue). In fact, one of the witness who had signed on statements of Sh. Bhanwar Lal Gehlot, subsequently stated that he had signed without understanding the facts in entirety and denied the correctness of original statements recorded by Inspector.

At this juncture, it is submitted that Inspector is not an authority to record statements on oath under any provisions of the Income Tax Act. In fact, as per settled position of law, statements recorded on oath by competent Income Tax Authorities during the course of survey proceedings u/s 133A cannot be the sole basis for making additions unless corroborated with other material brought on record. However, in the instant case neither there was any survey proceedings undertaken nor any notice u/s 131 was issued and inspector has recorded statements on oath without any authority of law.

It is pertinent to note here that Id.AO could not substantiate his presumption that expenses incurred by assessee were not genuine. On the other hand, assessee apart from furnishing evidences in support of expenses claimed, also furnished copies of statements of two other neighbours Sh. Abhishek Saxena and Sh. Jugal Kishore), who acknowledged that Sh. Pushpendra Singh and Sh. Hanuman Singh were carrying out Marketing activities from their respective premises, apart from affidavits of Shri Pushpendra Singh and Shri Hanuman Singh. However, Id.AO disregarded such statements of such persons without pointing out any reason for not accepting the same more particularly when both the service providers have confirmed services being provided, have disclosed such receipts in their respective returns of income and in fact given affidavits in affirmation of such facts. Thus, attitude of Id.AO in not considering such important facts suggests pre-conceived notion of Ld. AO of making disallowance and makes it amply clear that Id.AO has made disallowance on conjectures and surmises and by overlooking documentary evidences.

Not providing the opportunity to cross examine the witness of the department which has been made as basis for repeating the disallowances, despite of specific directions of Hon'ble ITAT, is serious and gross negligence of avoiding the orders of higher appellate authorities which by itself is the sole basis for holding the set aside order as void-ab-initio. Reliance is placed on the decisions of Hon'ble Apex Court in the case of Andman Timber Industries Vs. CCE reported in 281 CTR 241 wherein it has been held as under:

*“Assessment – Natural justice – Denial of opportunity to cross-examine witnesses – Denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity in as much as it amounted to violation of principles of natural justice – Impugned order as passed by the Tribunal is set aside.”*

Hon'ble Apex Court in the case of CIT vs Odeon Builders Pvt. Ltd. in Civil Appeal No. 9604-9605 of 2018 has held as under:

*S. 68/69 Bogus Purchases: Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination.*

Hon'ble Special bench of Mumbai ITAT in the case of ITO Vs. M/s. GTC Industries Limited Tobacco House, ITA No.5996/Mum/1993, ITA 1055 & 1056/Bom/1994 after considering all the aspects of "preponderance of human probabilities" and other issues, has held that :

*"46. .... It is quite a trite law that suspicion how so ever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of 'preponderance of probability' is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee."*

The aforesaid judgement of Hon'ble Special Bench was followed by Hon'ble Kolkatta ITAT in the case of Mahendra Kumar Baid Vs. ACIT dated 18.08.2017 in ITA No. 1236 & 1237/Kol/2017.

It is again submitted that Id.AO has stated that assessee has not requested cross examination. Your honours would appreciate that when Hon'ble ITAT, while setting aside the issue has clearly observed that assessee was not provided opportunity of cross-examination, Id.AO was duty bound to provide such opportunity. Moreover, Id.AO has not commented upon documentary evidences furnished by assessee and thus, Id.AO has not followed the directions of Hon'ble ITAT and therefore disallowances so made, without following the direction of Hon'ble ITAT and without giving opportunity of cross-examination, deserves to be deleted.

In view of above, it is submitted that the payment of Marketing & Survey expenses of Rs.60,01,635/- is duly vouched and backed by necessary evidences in the shape of the bills issued by those parties which were duly authenticated by the supervising staff of the assessee company in relation to the services rendered and have duly been passed by the higher management upto the level of director for such payments is an allowable business expense.

It would not be out of place to mention here that expenses which have been incurred for the purpose of business but are not allowable under any specific section, the same are allowable u/s 37(1) of the Income Tax Act so far as expenses are:

- Incurred wholly and exclusively for the purpose of business

- Not in capital nature
- Not in personal nature
- Not in the nature of penalty for violation of law

In the case of assessee also, Marketing and Survey expenses incurred by assessee fulfil all the above criteria and Ld.AO has miserably failed to prove the same otherwise. It is further submitted that the services rendered by the parties cannot be doubted nor the benefit accruing to the assessee company from such surveys could be denied. It is also a matter of fact that the entire payments were made through account payee cheques duly debited in the bank account of the assessee company in the normal course of business and the payments were subject to the deduction of tax at source as per the law applicable.

It is further submitted that the expenditure of similar nature was also claimed in the preceding assessment years wherein they have been allowed as business expenditure in terms of the order passed u/s 143(3).

Further, as stated above, none of the parties to whom payments were made are related to the assessee company or its directors in any manner and the parties are assessed to income tax independently. The copies of the assessment orders for A.Y. 2006-07 in the cases of both the parties, completed u/s 143(3) by the respective assessing authorities without making any adverse remarks on the income disclosed by them including the payments received from the assessee company were also filed which has not been appreciated by Id.CIT(A).

Furthermore, it is submitted that on the one hand disallowance has been made in the hands of the appellant company holding the expenses incurred as not genuine whereas in the case of the recipients firms / individual, the receipt has been assessed as business income without an iota of dispute regarding the genuineness. It is submitted that once the receipt on account of market and survey has been accepted and assessed in the hands of the respective payees, it is not open to the department to disallow corresponding expenditure in the hands of the appellant holding it be not genuine.

Hence, in light of the evidences placed on record as mentioned above, which remained un-rebutted, it is humbly submitted that the Ld. AO was not justified in drawing adverse inference on the evidence furnished which included the confirmation from the parties in relation to rendering of services.

In the circumstances it is humbly prayed that the "Marketing and Survey Expenses" claimed by assessee deserves to be allowed as an eligible business expenditure u/s 37(1) of the Income Tax Act, 1961 and disallowances so repeated by AO without following the direction of Hon'ble ITAT while passing set-aside order, deserves to be deleted."

12. The Id. AR of the assessee in addition to the written submission filed as above contented that the total expenditure for this marketing and survey is amounting to Rs. 2,35,12,583/- out of that only expenses related to Jaipur Reader Survey conducted through two private marketing agencies i.e. M/s Perfect N Marketing and M/s. Aneu Marketing. He further submitted that the assessee is a Private Limited company having their presence in 20 states 35 locations they are having the offices. In the first-round litigation various disallowances were made and has already been allowed by Hon'ble ITAT and for the impugned addition of Rs. 60,1,635/-. The matter is under 2<sup>nd</sup> round of litigation whereby the Id. AO has ignored the fact that the survey has been duly conducted and the relevant report of the survey agency were placed on record, the same is not disputed. None of reader whose name and other details such as, House No., Name of the person surveyed, their complete address with the street where the survey in the same locality conducted, contact number or cell number, details of the existing newspaper read by the family. The report also consists name of surveyor date of surveyor that time survey report and the survey and on that particular day along with signature of supervisor. All these evidences placed on record is not discussed by the Id. AO and Id. CIT(A). The Id. AO has not taken any efforts to check with any of the reader the veracity of the survey conducted by the assessee. The Id. AR of the assessee further drawn our

attention to the said survey agency report wherein the survey agency has also taken the order of newspaper of the agency that the assessee is publishing this itself shows that even this survey agency has added so many customers in the sales of the assessee which is also not disputed by the Id. AO. He has not taken effort to verify all these records so as to verify the claim of the expenditure made by the assessee. The Id. AR of the assessee further drawn our attention to the comment that readers have made in the survey report this itself proves that the survey has been conducted in the year which mentioned that date of survey and signature of both the survey agency. All these bulky records proves beyond doubt that the survey was duly conducted this has not been discussed in the 2<sup>nd</sup> round of litigation This shows that the Id. AO is not following to the direction in its later and spirit of the direction given by the bench when the bench has specifically directed that cohesive verification of the material in the form of assessment records and report of the survey agency in addition to the Inspector report where subjected to his verification which he did not conducted and he has stated in his order that arguments of the assessee revolving the repetition has done in the original assessment and the cross examination of the witnesses for which the Id. AO instead of giving the opportunity of cross examination blame on the assessee that the same was never asked by the assessee even though there is specific direction of the

bench. Thus, the assessment was completed without conducting any complete verification. The same has been confirmed stating that the argument during set aside proceedings are same as given in the original proceedings and confirmed the addition of Rs. 60,01,635/-. Thus effectively, the Id. AR of the assessee submitted that the AO did not discuss the evidences placed on record and has not undertaken any cohesive verification to consider the genuineness of the claim of the expenditure and merely blame that assessee has not asked for the cross examination the inspector report that the Id. AO relied and based on self-serving statement and that persons were not presented for cross-examination which was the specific direction of the bench and has not been followed out of that two persons, one person has fixed thumb impression. This itself shows that witness of the AO is not educated and did not know about the newspaper published by the assessee. As regards the statement Mr. Ganesh Kumar, he has submitted that he has simply signed and not read the statement and the retraction affidavit of Mr. Ganesh Kumar was filed so in fact none of witnesses have been verified by the AO nor the same were subjected to cross examination to the assessee and therefore, their version cannot be relied upon by the revenue adversely to the assessee. Contrary as per the direction this bench, the AO is supposed to provide the cross examination of the witness relied upon which the Id. AO has simply excused that the

same was not asked by the assessee, whereas the bench has categorically directed for cross examination and the same is not followed by the lower authorities. The Id. AR of the assessee further submitted that AO has not considered the fact that the payments have been made by account payee check to both the agencies TDS as per applicable rate has been deducted their ITRs and assessment orders were also placed on record and there is not a single observation of the AO on the evidences and not only that the detail survey report consisting of various information as per discussed hereinabove. None of this information were used to verify the claim of the assessee. The Id. AO has not appreciated that trading result of the assessee has improved on account of detailed survey conducted at Jaipur. The Id. AR of the assessee further submitted that the claim is disallowed for Jaipur center only and similarly expenditure were considered as allowable in the other centers where the assessee operates merely the persons to whom this payment made for getting the survey conducted were not produced at a particular time may not viewed as seriously so as to disallow the whole claim which is supported by various circumstantial evidences and cannot ignore substantially evidence that the assessee has filed in support of the payment of this marketing and survey expenditure claimed by the assessee. Not only that the Id. AR submitted that the Id. CIT(A) has not given unclear finding and he has summarily rejected all the grounds and

plea of the assessee and therefore, the assessee is before Tribunal in the 2<sup>nd</sup> round to seek the justice.

13. The Id DR is heard who has relied on the detailed findings of the lower authorities particularly the findings of the AO in first round and in second round. The Id. DR submitted that the payment made by the assessee is not genuine both their marketing agencies are not registered and their address are also not confirmed. Merely, the assessment is done in respect of the payment made by the assessee, the correctness of the expenditure and the amount claimed by the assessee cannot be judged based on these records. The Id. DR also read the statement of both this surveyor person their contentions are contradictory and they have also claimed the similar expenditure in the name of wife of these two-marketing agency. The assessee failed to produce all these 9 persons in whose name this expenditure has been claimed in the respective years under appeal were not produced even though the summons were issued. Inspector has also filed his detail report about the fact that these payees are not existed at the address given by the assessee. As regards the claim of the Id. AR that at the other centre the similar expenditures were allowed to the company that there are no serious observation of the AO that these parties were available or not register in the 2<sup>nd</sup> round of the litigation too. The assessee

was also given sufficient opportunity to substantiate its claim but the assessee failed to satisfy the queries raised by the Id. AO. As regards, the cross examination, there is no proof submitted by the Id. AR that they have asked for cross examination of the witness of the department and therefore, they cannot take plea that the cross examination has not been granted, not only that cross examination request after 9 years also not feasible and even the assessee could not produce their witnesses as per the affidavit / self-deposition statement filed. There is sufficient evidence that both the persons were not residing at the address as mentioned in the invoice submitted by the assessee. The Id. DR further drawn our attention that proof in the form of LIC receipt submitted shows that address as 419 Mansarovar but not 199. The Id. DR vehemently submitted that both the persons family members have claimed such type of survey expenditure and these expenditures are on the face of it seems bogus and not genuine and therefore, rightly added by the AO. As regard contentions that both these parties were residing at the address are in the form of self deposition statement and not substantiated by an affidavit therefore, their version submitted that in the statement cannot be relied. The Id. DR further submitted that if the survey agencies are working. They might be registered with the Government Agency for which no necessary proof were submitted to substantiate the claim of the assessee. In this case, the party existence,

itself is disputed and AO has sufficiently recorded and placed on record his findings on this issue. The Id. DR further submitted that their existence no formal agreement for conducting such survey by the assessee with this parties. The survey report does not prove that they have been paid for the services that have rendered. The assessee is having more presence across the country then how such none formalize payment can be allowed. The parties to whom these payments were made have filed their return with negligible profit and claimed refund of TDS. The Id. DR further submitted that in the case of one of the persons address is verifiable and in the case of lady member address given was of hotel named Rajdutt Hotel and that address is also verified and found that no one at the address. The assessee also could not demonstrate that what type of technical survey get conducted and they have employed uneducated persons for this task and therefore, the claim is also not supported on this account.

14. In the rejoinder of the Id. DR submission, the Id. AR of the assessee submitted that survey report is also placed on record and for conducting this survey no technical qualification is required only the details in the format of the survey as per predetermined form is required to be filed and the same is evidently clear from the survey report placed on record. As regards, the registration of the assessee with the Government agencies, the Id. DR did

not demonstrate as to under which law the same is compulsory to get the registration compulsory. The assessee has to comply the income tax law which they did so, As regards the independent evidence submitted in the form of LIC receipt is not fabricated and is third party evidence for the identity of the party and the same is not found to be not genuine. but as the same submitted by those persons who were being contracted by the assessee. Therefore, that evidences cannot be used against the assessee both the agency persons have submitted and confirmed that since in the other years their wife were getting the payment but the work has been executed by them and the same was offered under income tax, the family may decide their tax affairs and for that assessee could not be punished. The similar type of survey has been conducted by other station which is also not under disputed by the Id. AO the relevant evidence for the payment of claim is duly supported by the work done in the form of survey report. The payment has been made by the account payee cheque, TDS has been at the appropriate rate has also been deducted, their ITR computation of income and the assessment records have been placed on record where ever applicable. The parties to whom the payment have been made are not related and work has been done at arm's length price which is not disputed by the AO. The turnover of the assessee is more 700 crores and the assessee being reputed newspaper agency cannot involved themselves for

such petty amount and therefore, the claim made by the assessee which is supported by the other evidence placed on record be considered considering the overall facts placed on record and the revenue failed to substantiate disallowance on the other evidence placed on record. The Id. AR of the assessee also argued that he has placed on record. The fact that both the parties are duly assessed to tax and even the assessment in the case of Sh. Pushpendra Singh and Sh. Hanuman Singh were also completed for A.Y 2006-07 and the relevant assessment orders were also kept on record along with their ITRs. None of fact has been disputed by the Id. AO even in this 2<sup>nd</sup> round of litigation, the direction of the Hon'ble ITAT has not been followed completely. The Id. AO has not verified the report of the survey, the assessment records and ITRs, both the parties the fact that the payment has been made by the account payee cheque. Their assessments are already completed merely that parties are presently not traceable it does not mean that the claim of the expenditure supported by the other evidence be disbelieved and added. The expenditure claimed by the assessee which is supported by the substantial evidence and duly confirmed in the respective parties return wherein the expenditure claimed by the assessee is duly reflected, even the Id. AR of the assessee has also drawn our attention to the respective balance-sheet of the parties wherein the expenditure in respect of this survey under the head salaries and wages

is claimed which is substantially support the survey report placed on record by the assessee and the expenditure which is claimed by the assessee after payment of TDS and supported by the work done fact that the sales have increased after the survey conduct is also not disputed the survey report consist of the details of the news order obtained also.

15. We have heard the rival contentions and perused the material placed on record. The bench noted that the purpose of the setting a side the issue with the file of the AO as the claim of the party that they have not been supplied the Inspector's report and did not allow to cross examine the witness of the revenue. On the other hand, revenue's contention is that the party to whom the payment made is not in existence. As regards the identity of the payee for this expenditure the Id. AR of the assessee placed on record the ledger account specifying that the payment has been made by an account payee cheque and after deducting the TDS at appropriate rate. In addition the ITR and assessment records of the payee was also placed on record to prove the identity of the payee. As regards the work done by the assessee through these agencies the survey and marketing reports in the form of bulky records were placed on record. These survey report consists of the information such as House No., Name of the person surveyed, their complete address with the street where the survey in the

same locality conducted, contact number or cell number, details of the existing newspaper read by the family. The report also consists name of surveyor date of surveyor that time survey report and the survey and on that particular day along with signature of supervisor. All these evidences placed on record is not discussed by the Id. AO and Id. CIT(A) which is very well useful to decide the allowability of the expenditure claimed by the assessee. The assessee is a Private Limited company having their presence in 20 states 35 locations they are having the offices and it is not disputed that other similar expenditure is considered as allowable on the similar line of expenditure. The revenue has not taken efforts to deal with the various aspect placed on record in the form of the circumstantial evidences. In the first-round litigation various disallowances were made and has already been allowed by Hon'ble ITAT and for the impugned addition of Rs. 60,1,635/-, the matter is under 2<sup>nd</sup> round of litigation whereby the Id. AO has ignored the fact that the survey has been duly conducted and the relevant report of the survey agency were placed on record, the same is not disputed. None of reader whose name and other details placed on record were verified are contradicted by the revenue in the form of bulky record. The facts that these survey report consists of the fresh order is also not disputed by the revenue. On account of the survey conducted that sales of the city has reported increase trend which is evident from the records and

thus merely the party to whom identity is proved but they could not be produced the whole expenditure cannot be disbelieved. The DR has already accepted that in the first round both the brother whose family is paid for the years under dispute have appeared and in response to summons they have filed their income tax records and balance sheet is merely disputed that the party has shown meager income and has claimed majority of the income as expenditure this statement itself proves that the work has been conducted. As regards the offering of the meager income their individual assessment has already been made by the revenue and there is no adverse remark in their order that the expenditure claimed by that two agencies were bogus and thus, we believe that the revenue has failed to substantiate their disallowance and even in the second round of litigation the cohesive verification of the evidence is not done and for this inaction of revenue cannot affect the claim of expenditure supported by the various evidences as listed and discussed here in above. The Id. AO has not taken any efforts to check with any of the reader the veracity of the survey conducted by the assessee. The Id. AR of the assessee further drawn our attention to the said survey agency report wherein the survey agency has also taken the order of newspaper of the agency that the assessee is publishing. This itself shows that even this survey agency has added so many customers in the sales of the assessee which is also not disputed by

the Id. AO. He has not taken effort to verify all these records so as to verify the claim of the expenditure made by the assessee. The Id. AR of the assessee further drawn our attention to the comment that readers have made in the survey report this will further strengthen the claim of the assessee that the survey has been conducted in the year which mentioned that date of survey and signature of both the survey agency. All these bulky records proves beyond doubt that the survey was duly conducted this has not been discussed in the 2<sup>nd</sup> round of litigation This shows that the Id. AO is not following to the direction in its later and spirit of the direction given by the bench when the bench has specifically directed that cohesive verification of the material in the form of assessment records and report of the survey agency in addition to the Inspector report where subjected to his verification which he did not conducted and he has stated in his order that arguments of the assessee revolving the repetition has done in the original assessment and the cross examination of the witnesses for which the Id. AO instead of giving the opportunity of cross examination blame on the assessee that the same was never asked by the assessee even though there is specific direction of the bench. Thus, the assessment was completed without conducting any comprehensive verification. The same has been confirmed stating that the argument during set aside proceedings are same as given in the original proceedings and confirmed the addition of

Rs. 60,01,635/-. Thus effectively, the AO did not discuss the evidences placed on record and has not undertaken any cohesive verification to consider the genuineness of the claim of the expenditure and merely blame that assessee has not asked for the cross examination the inspector report that the Id. AO relied and based on self-serving statement and that persons were not presented for cross-examination which was the specific direction of the bench and has not been followed out of that two persons, one person has fixed thumb impression. This itself shows that witness of the AO is not educated and did not know about the newspaper published by the assessee. As regards the statement Mr. Ganesh Kumar, he has submitted that he has simply signed and not read the statement and the retraction affidavit of Mr. Ganesh Kumar was filed so in fact none of witnesses have been verified by the AO nor the same were subjected to cross examination to the assessee. Therefore, their version cannot be relied upon by the revenue adversely to the assessee with allowing to cross examine the same. Contrary as per the direction this bench, the AO is supposed to provide the cross examination of the witness relied upon which the Id. AO has simply excused that the same was not asked by the assessee, whereas the bench has categorically directed for cross examination and the same is not followed by the lower authorities. The bench also noted that though, there was a specific direction to allow the cross examination to the

assessee of the witness of the revenue which was not allowed by the Id. AO stating that the same was not asked by the assessee. The bench further noted that in addition to records showing that the marketing survey was conducted consisting of the detailed marketing survey report, these agencies were paid by account payee cheque, TDS as per applicable rate has been deducted, ITRs and assessment orders were also placed on record and there is not a single observation of the AO on these evidences and not only that the detailed survey report consisting of various information as discussed hereinabove, none of this information were used to verify the genuineness of the claim of the assessee. The Id. AO has not appreciated that trading result of the assessee has improved on account of detailed survey conducted by these agencies. The Id. AO has disallowed the claim for the Jaipur city only and similar expenditure were considered as allowable in the other centers where the assessee operates merely the persons to whom this payment made for getting the survey conducted were not educated, the contract is not formal may not be viewed as seriously so as to disallow the whole claim which is supported by various circumstantial evidences and cannot ignore the other evidence in support that the assessee has filed for this marketing and survey expenditure claimed by the assessee. After considering the at length arguments of both the parties we are of the considered view that the expenditure claimed by the assessee is

duly supported by the required evidence so as to substantiate the expenditure to the extent of Rs. 60,01,635/- and is allowable under section 37(1) of the Act. Based on these observations we vacate the disallowances made by the Id. AO. In the results ground no. 1, 1.1,1.2 & 1.3 raised by the assessee is allowed. The ground no 2 is general and did not require any adjudication.

16. The fact of the case in ITA No. 230/JPR/2020 is similar to the case in ITA No. 231 & 232/JP/2020 & 510/JP/2019 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 230/JPR/2020 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. 230/JPR/2020 for the Assessment Year 2005-06 shall apply mutatis mutandis in the ITA No. 231 & 232/JP/2020 & 510/JP/2019. In the results appeal of the assessee in ITA No. 231 & 232/JP/2020 & 510/JP/2019 stands allowed.

In the result, appeals of the assessee in ITA No. 230/JPR/2020, 231/JPR/2020, 510/JPR/2019 and 232/JPR/2020 are allowed.

Order pronounced in the open court on 22/11/2022.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/11/2022

\*Ganesh Kr.

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

1. The Appellant- M/s Rajasthan Patrika Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-06, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 230 to 232/JP/2020 & 510/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar