

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No.1822/Mum/2021  
(निर्धारणवर्ष /Assessment Year: 2018-19)

<b>M/s Nickunj Eximp Enterprises Pvt. Ltd.</b> 4 <sup>th</sup> floor, Sri Joravar Bhavan, 93, M. K. Road, Marine Lines, Mumbai-400 020	<b>बनाम/ Vs.</b>	<b>ACIT Cen. Cir,- 2(4),</b> R. No. 802, Pratistha Bhavan, Old CGO Annexe, M. K. Marg, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCN0991K		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकरअपीलसं./ I.T.A. No. 1870/Mum/2021  
(निर्धारणवर्ष /Assessment Year: 2018-19)

<b>ACIT Cen. Cir,- 2(4),</b> R. No. 802, Pratistha Bhavan, Old CGO Annexe, M. K. Marg, Mumbai- 400 020	<b>बनाम/ Vs.</b>	<b>M/s Nickunj Eximp Enterprises Pvt. Ltd.</b> 4 <sup>th</sup> floor, Sri Joravar Bhavan, 93, M. K. Road, Marine Lines, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No AABCN0991K		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Anuj Kisnadwala, Ld. AR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri Samual Pitta, Ld. DR
सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	28.10.2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	23.11.2022

आदेश / O R D E R

**Per Amit Shukla, Judicial Member:**

The aforesaid cross appeals have been filed by the assessee as well as by the revenue against the separate impugned order dated 05.08.2021, passed by Ld. PCIT (Appeals)-48 Mumbai for the quantum of assessment passed u/s 153A r.w.s. 143(3) for the AY 2018-19.

2. Since the issues involved in both the appeals are common arising out of identical set of facts, therefore the same were heard together and is being disposed of by way of this consolidated order.

3. In various grounds of appeal, assessee has raised the following issues:-

Ground no. 1 & 2: Overall addition of Rs. 19,36,96,457/- in absence of incriminating material found during the course of search (**however this ground has not been pressed**).

Ground no. 3 & 4: Addition on account of alleged bogus purchases of Rs. 5,39,15,841/-.

Ground no. 5: Addition on account of discrepancy in stock of Rs. 13,76,21,050/-.

Ground no. 6: Estimated addition of Rs. 8,05,495/- on account of alleged unaccounted stock of Graphite.

Ground No. 7: Addition of Rs. 13,94,071/- in respect of alleged labour job payments.

Ground No. 8: Incorrect invocation of provision of section 115BBE of the Act, levying tax @ 60% on the addition made u/s 69 and 69C in respect of ground no. 5 to 7.

4. In the department appeal, the only issue raised is that, Ld. CIT (A) has erred in restricting the addition to 10% of the total alleged purchases as against the entire purchases added by the AO.

5. Ground no. 1 & 2 have not been pressed by the assessee; therefore the same is dismissed as not pressed.

6. In so far as addition on account of alleged bogus purchases of Rs. 5,39,15,841/- and the similar ground raised by the department whereby revenue has challenged that Ld. CIT(A) should not have restricted the addition to the extent of 10% of gross profit rate.

7. Both the parties are agreed that these grounds are identical to the issue involved in the appeals for AY 2014-15 to 2017-18 which was heard on 13.09.22 & 14.09.22. Thus, it was submitted that the view taken therein will apply *mutatis mutandis* in this year also.

8. The brief facts qua the issue of purchases in this year are that during the previous year relevant to the assessment year under consideration, the assessee has traded in food grains and HR plates and has earned profit which has been offered to tax. The Assessing Officer has held purchases from the following parties as non-genuine:-

- i) Daman Oil Industries (Purchase of foodgrain)
- ii) Maxgrow Agri Commodities Ltd. (Purchase of foodgrain)
- iii) Maxgrow Overseas Ltd. (Purchase of HR plates)

9. In this year also like in the appeals for the AY 2014-15 to 2017-18, one of the main contentions raised was that there was one to one nexus between the purchase and sale of goods. The complete bill wise quantitative details of purchase from all the parties and the corresponding sales made during the year was submitted before the lower authorities. It was further submitted that details such as purchase order, invoice, delivery challan, material receipt stamp, confirmation, ledger accounts, bank statements etc were submitted before the lower authorities. Further, the assessee has produced all the documents to prove that the purchases from the above parties are genuine. It was further submitted that the Assessing Officer has

not conducted any independent inquiry to verify the purchase or sale from the parties. The Assessing Officer has not issued summons to any parties. Apart from that, it was submitted that this not a case where the purchase parties have been found to be non-genuine on account of inquiry conducted by sales tax authorities, DIT(Inv.) or where the parties have admitted in course of search or statement that the sales made by them are non-genuine. In respect of two parties, the Assessing Officer has relied upon the information received from DIT 10(2)(2). On perusal of the information, it is quite evident that the same pertains to the proceedings for A.Y. 2011-12 and 2012-13 and does not pertain to the year under consideration. The assessee has never admitted during the course of search that purchases from these parties are not genuine. It was further submitted that the assessee has not blocked its own capital for making the purchase. The assessee has first received sales consideration from which it has paid for purchases. During the relevant previous year, the assessee has traded in food grains and HR plates and Food grains are exempt from GST. In respect of HR plates, GST is chargeable at 18%. However, the assessee has traded in HR plates hence GST has been levied both on purchases and

sales and no benefit has been availed by the assessee. Hence there is no question of any savings in GST.

10. The objection of the AO was that, *firstly*; assessee has not produced the purchase party, *secondly*; invoices were submitted only on simple basis despite the details, ITR, balance sheet of the parties was not produced, *thirdly*; SOP was not filed in respect of purchases made from the said third parties; and *lastly*; assessee had traded any items other than regular business items of these 3 parties.

11. To controvert these objections, *firstly*; the assessee had submitted that AO has not conducted any inquiry while coming to the conclusion as the parties are not genuine. *Secondly*; the AO has asked for invoices only on simple basis which is evident from para 12.5 of the assessment order at page 5 and this fact has also been noted by Ld. CIT(A) in para 6.18 at page 28 of his order. Apart from that it was also submitted that delivery challan were submitted before the lower authorities and AO had not issued any notices despite getting all the details to the parties. Regarding SOP not filed, it was submitted that during the course of search, it was stated that relevant and specific documents are not available since

the section of the office was undergoing renovation and documents have been shifted. However, later on all these details were submitted before the authorities below. Lastly; assessee has traded any items other than regular business items of these 3 parties. All along assessee in various assessment years have been stating that assessee apart from other items has also traded in edible oils and food grains and HR Plates, but that itself does not mean purchases are not genuine when all the documents have been produced.

12. This issue of bogus purchases on similar set of facts had come for consideration before us in the appeals for AY 2014-15 to 2017-18, in our order dated 31.10.2022, wherein we have observed and held as under:-

*13. We have heard the rival submissions, perused the relevant finding given in the impugned orders as discussed above and the material referred to before us. Before us Ld. Counsel for the assessee submitted that, one of the strong reasons given by the AO is the statement of Shri Manohar Balkrishna Pai, Executive Vice President of the assessee. However, from the perusal of the said statement it can be seen that, nowhere he has stated in his statement that purchases are bogus. He has mentioned only about the SOP followed for purchases. Before us, Ld. Counsel has submitted that nothing incriminating has been found during the*

course of search which show that these purchases are bogus. AO has mainly relied on outside information and which cannot be treated as incriminating material found during the course of search and AY 2014-15 being the non-abated year. He further submitted that here in this case there is one to one nexus between the purchase and sale of goods. The copy of which has also been placed before us vide covering letter dated 13<sup>th</sup> September 2022, where assessee has given bill wise, date wise purchases which shows the exact quantity and amount and also corresponding sales of the same quantity and same amount which are duly recorded in the books of account. This fact has also been noted by Ld. CIT (A) also. This detail has been filed in response to query raised by us during the course of hearing by us to furnish the date wise detail of trading account showing the gross profit percentage in respect of alleged bogus purchases and other purchases and apart from that, details of bill wise sales against such alleged bogus purchases for the above captioned assessment years.

14. From the perusal of the same, we find that there is one to one co-relation of exact quantity of purchases as well as sales and also the corresponding GP on such sales. Apart from that, details of purchase order, invoice, delivery challan, material receipt stamp, confirmation, ledger accounts of the bank statements have been submitted before us which has also been filed before the lower authorities and which fact we find that, Ld. CIT (A) has also noted and in the assessment order also which are mentioned from pages 6-8 of the assessment order. Ld. Counsel before us filed item wise

*registers showing purchases and sales of goods which have also placed in the paper book. Once the source of purchases are from the books of accounts and the payment have been made through banking channel and there is a corresponding sales which matches with the quantitative bill and purchases recorded in the books of account, then it cannot be said that purchases have been made outside books which could lead to any inference that all purchases have been made outside the books or are bogus.*

*15. With regard to inference drawn in respect of one party, i.e., Ramka Silk House, Ld. Counsel submitted that assessee has provided new address of the party and AO has issued summon u/s 131 on ITBA portal on 16.12.2019 and the assessment order has been passed on 18.12.2019. Thus, the time given was only 2 days and no adverse inference could be drawn that party could not be produced. There is no information from any outside agency that this party is non-genuine or engaged in any accommodation entries. Thus, we agree with the prima facie observation of Ld. CIT(A) that the purchases cannot be held to be bogus.*

*16. Ld. DR submitted before us that Ld. AO has analyzed each and every party based on conclusion drawn by Investigation Wing during the course of search in the case of Nickunj Group. The details which were filed by the assessee have been found lacking which facts have been brought on record by the AO. Thus, it cannot be held that purchases were genuine.*

17. *The contention of Ld. DR cannot be accepted in the light of the evidences which itself have been noted by Ld. CIT (A). In support of purchases, we have discussed in the foregoing paragraphs. One of the most vital and important factor going in favour of the assessee that there is one to one co-relation of purchases and sales not only quantity wise but also bill wise details. All these purchases and sales are duly recorded in the books of account and AO has not distributed the sales at all. Once the sale of the same quantity has been accepted, then it cannot be said that the entire purchases are bogus. Accordingly, we are of the opinion that the entire purchases cannot be added.*

18. *With regard to assessee's appeal that Ld. CIT (A) has not justified in importing gross profit of 10% on such alleged bogus purchases. Before us, Ld. Counsel has demonstrated that the assessee before placing the purchase order had buyers and based on the demand of buyer assessee use to place the order. Thus, after getting the sales order, assessee has made the purchases on credit and immediately after the purchases received, assessee makes the corresponding sales on the same day or next day, which fact has been noted by Ld. CIT(A) and has also been demonstrated and filed before us. Thus, there was no working capital or investment which has been blocked for alleged bogus purchases. From the details furnished before us and also before Ld. CIT(A), it is seen that assessee has received sale consideration and immediately from such sale assessee had made purchases and this fact has been noted by Ld. CIT(A) in para 6.27 as noted above.*

*In any case assessee is trading in fabrics which items are exempt from VAT, Octroi etc., therefore, it cannot be presume that assessee has taken accommodation entries of purchases to save VAT of 10% or 12%. Assessee has filed justification for GP rate on these items which is ranging 1.36% to 2.34% and looking into the fact that there is minimum movement of the stock right from the moment purchase to sales and it is in consistent with its gross profit margins showed by the assessee in the earlier and in subsequent years, therefore it cannot be held that assessee's GP rate on these items are low. It is brought on record that overall assessee's GP in trading of all items are ranging between 26.14% to 36.14% and overall GP shown in the trading account is far higher and therefore, no adverse inference should be drawn. Thus, we do not have any justification of such adhoc estimation of GP of 10% for each and every purchases made from these parties and estimate corresponding GP, when overall GP and the trading account has been accepted. Accordingly, the addition sustained by Ld. CIT(A) by applying adhoc GP rate 10% is also deleted. Resultantly, the appeal of the assessee is allowed on merits.*

13. Since same details and similar facts are permeating in this year and the findings of the AO and Ld. CIT (A) is also same, therefore, our findings given in the aforesaid appeal will apply mutatis mutandis. Accordingly, we hold that none of the purchases can be held to be bogus. Therefore, no addition can be made nor any addition on account of estimated gross profit because all the

purchases and corresponding sales have been fully tallied and verified and no discrepancy has been found. Hence, ground no. 3 & 4 raised by the assessee are **allowed** and ground raised by the revenue in this regard is **dismissed**.

14. In so far as addition on account of discrepancy of stock as raised in ground no. 5, the break-up of the addition of discrepancy of various kinds of stocks are as under:-

<b>Break-up of the Additions made</b>	<b>Amount of Addition</b>
u/s. 69 - For alleged discrepancy in stock value of Graphite division	Rs. 4,94,25,295/-
u/s. 69 - For alleged discrepancy in stock value of Carbon of America	Rs. 3,19,21,996/-
u/s. 69 - For alleged discrepancy in stock value of Carbon of America, ZIRCAR, local graphite, etc.	Rs. 3,17,90,089/-
u/s. 69 - For alleged discrepancy in stock value of Graphite division	Rs. 2,44,83,670/-
<b>TOTAL</b>	<b>Rs. 13,76,21,050/-</b>

15. The brief facts qua the issue are that, a survey action u/s 133A of the Act was carried out in case of assessee and M/s. Nickunj EDM Wires and Consumables P. Ltd. at the Rabale Godown, Navi Mumbai on 16.11.2017. Statement of Shri Vithal

Gopal Patil was recorded u/s 133A of the Act on 16.11.2017.

During the course of survey, details of stock of raw material and finished goods and tally data extract of stock register were provided.

16. During the course of assessment proceedings, the Assessing Officer issued a notice dated 01.10.2019, wherein he stated that physical verification of stock was done in presence of Shri Vithal Gopal Patil and he also provided the tally data from the system. He further stated that there is huge discrepancy in stock and in the closing balance maintained in computer accounting system as against actual calculation of closing balance. He pointed out following discrepancies in the data taken from the tally accounting system in respect of the period from 01.04.2016 to 31.03.2017 i.e. A.Y. 2017-18 [table (a) and (b) on Pg no 16 of assessment order]:

Pg no 16 of A.O.	Particulars	Opening balance	Inward	Outward	Closing balance
Table (a)	Total stock	9,62,97,239	4,03,86,542	8,78,10,868	9,82,98,208
Table (b)	Carbon America	6,01,87,448	1,38,72,061	4,97,44,801	5,62,36,704

17. The Assessing Officer was of the view that the value of closing balance has to be calculated by applying the formula; opening

balance + purchases -sales. He contended that, if the said formula is applied then the value of closing balance would be;

- i) Rs. 4,88,72,9137- (Rs. 9,62,97,239 + Rs. 4,03,86,542 - Rs. 8,78,10,868) in respect of table (a) and;
- ii) Rs. 2,43,14,7087- (Rs. 6,01,87,448 + Rs. 1,38,72,061 - Rs. 4,97,44,801 in respect of table (b).

AO was of the view that the difference of Rs. 4,94,25,295/- (Rs. 9,82,98,208 -Rs. 4,88,72,913) and Rs. 3,19,21,9967- (Rs. 5,62,36,704 - Rs. 2,43,14,708) should be added u/s 69 of the Act.

18. He further pointed out certain discrepancies in the data taken from the tally accounting system in respect of the period from 01.04.2017 to 17.11.2017 (date of search/survey) i.e. for A.Y. 2018-19 (Total of table (c) on Pg no 16 of assessment order)

Particulars	Opening balance	Inward	Outward	Closing balance
Total	3,31,61,314	1,31,35,820	4,45,95,295	3,34,91,927

The Assessing Officer was of the view that the value of closing balance has to be calculated by applying the formula; opening balance + purchases -sales. He held that, if the said formula is applied then the closing balance should be Rs. 17,01,8397- (Rs. 3,31,61,314 + Rs. 1,31,35,820 - Rs. 4,45,95,295). Thus AO was of

the view that the difference of Rs. 3,17,90,089 (Rs. 3,34,91,927 - Rs. 17,01,839) should be added u/s 69 of the Act.

19. The assessee, vide letter dated 12.12.2019, submitted that Shri Vithal Gopal Patil Was working as supervisor in store division and was not from the accounts field. He was only in charge of inward and outward of physical stock and was given limited access to tally data in respect of inward and outward of goods. It was further submitted that the formula applied by Assessing Officer to arrive at the closing balance is applicable only to quantity of stock and not while arriving at the value of stock. It was submitted that the value of closing stock is calculated as per the applicable accounting standards. It was further submitted that the sales amount would also contain the profit element hence the said formula cannot be applied. The assessee also submitted that the closing balance as on 31.03.2017 i.e. A.Y. 2017-18 of graphite division as per seized tally data was Rs. 9,82,98,208/-, however as per the audited financial it was Rs. 7,38,14,644/-. It was submitted that the data was pending to be updated as on date of search and was subsequently updated post search. It was further submitted

that tax audit was under process and was not finalized as on the date of search.

20. The Assessing Officer did not agree with the contention of the assessee. He stated that the assessee has not given any scientific way to calculate the correct valuation of stock and has not reconciled the difference in stock. He further stated that the gross profit of assessee is 10.97% and even if stock is adjusted for, still the discrepancy is much higher, hence the argument of assessee is not acceptable. He concluded that the assessee has not been able to explain discrepancy in stock. Accordingly, the Assessing Officer added Rs. 13,76,21,050/- (Rs. 4,94,25,295/- + Rs. 3,19,21,996/- + Rs. 3,17,90,089/- + Rs. 2,44,83,670/-) as discrepancy in stock u/s 69 of the Act.

21. The detail reasoning of the AO have been given from pages 20 to 25 of the assessment order.

22. Before the Ld. CIT (A), assessee has filed detail written submission explaining each and every items and objections raised by the AO and have been pointed out that addition aggregating to Rs. 10,58,30,961/- did not pertain to the present assessment year

2018-19, albeit pertain to AY 2017-18 and hence, the same could not have been added in the current year u/s 69. However, the Ld. CIT (A) had simply upheld the order of AO.

23. Before us, Ld. Counsel for the assessee submitted that one very important fact to be noted that survey team has not found any discrepancy in the physical quantity of stock. During the course of assessment proceedings, assessee had submitted the stock register and the reconciliation of the physical stock which has been accepted by the AO. In so far as addition of Rs. 10,58,30,961/- , it was submitted that addition could not have been made for the year under consideration had same pertain to the earlier year. Explaining the facts, Ld. Counsel submitted that during the course of survey conducted at Rabale Godown, Navi Mumbai Navi Mumbai tally data of the assessee was seized. The said tally data contains a stock summary of graphite division for the period 01.04.2016 to 31.03.2017 (copy already on record). The figures appearing in the row of 'Grand Total' in the said stock summary match with the figures as mentioned by the Assessing Officer in table (a) on Pg no. 16 of the assessment order. During the course of hearing, the

assessee submitted a chart showing data as per seized tally stock statement for the period 01.04.2016 to 31.03.2017

24. From the said chart, it was pointed out that the entire business of addition of Rs. 10,58,30,961/- is based on data pertaining to 01.04.16 to 31.03.17 i.e. AY 2017-18. The AO also stated that data for the period from 01.04.16 to 31.03.17, the so called alleged discrepancy in the stock does not pertain to the year under consideration, therefore no addition can be made in the current year u/s 69 of the Act.

25. Before us, Ld. Counsel had filed a chart which is as per the seized tally stock statements:-

Sr. No.	Particulars	Opening Balance			Inwards			Outwards			Closing Balance		
		Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value
1.	ALB SALES							402 kgs	3,759	15,12,997	-402 kgs		
2.	Bay Carbon	20 Nos	724	2,480				1000Nos	753	1,53,000,	-980 Nos	2	2,480
3.	CARBONE LORRAINE			78,487									78,487
4.	CARBON OF AMERICA			6,01,87,448			1,38,72,061			4,97,44,801			5,62,36,704
5.	CARR REINFORCEMENT			28,532	750 mtrs	7472	10,59,581	1005 mtrs	2,024	20,34,450			-3,24,661
6.	Ce Tech Co. Ltd			2,25,834			70,800			3,01,361			2,33,737
7.	CHINA UNION			1,77,845			83,264			91,800			1,81,156
8.	CZ-Carbon	14 mtrs	79495	2,88,534	2 Nos					17,371			2,88,534
9.	Euro Carbon							1 5 mtrs	476	6,240	-15 mtrs		
10.	FMI INC			21,41,294			1,05,18,175			2,13,60,706			18,92,562
11.	Formosa	635 kgs	584	3,71,078	1750 kgs	2702	47,28,593	124 kgs	7,974	2,44,855	2261 kgs	2799	49,74,153

**I.T.A. No. 1822 & 1870/Mum/2021  
M/s Nickunj Eximp Enterprises Pvt. Ltd.**

12.	G. Angeloni SRL	190 mtr					70,663			1,64,640	190 mtr		
13.	Gansu Hoshi - China	4 Nos	5740	22,963							4 Nos	5740	22,963
14.	Gaode Equipment				112 sq.mtr	232	26,091	101 sq.mtr	446	45,100	11 sq.mtr	794	2,134
15.	Graphite Carbon Technology			5,93,386									5,93,386
16.	Graphite - Import			19,071			1,99,052			2,76,609			1,33,486
17.	Haoshi Carbon				6 Nos			8 Nos	15,516	1,24,135	-2 Nos		
18.	H.RANGEL GR	1369 kgs	599	8,20,639							1 369 kgs	599	8,20,639
19.	Hysung Corporation			5,48,039						2,39,260			4,17,822
20.	Kanbo	2 Roll	0.03	0.06							2 Roll	0.03	0.06
21.	LEALAGI			1,35,954	6 Nos	269	1,615	6 Nos	377	2,265			1,35,954
22.	Local - Graphite			2,77,51,545			31,19,720.			35,42,065,			2,86,87,723
23.	MEGABYTES INTL.			2,25,335	5 Nos	5000	25,000			1,60,000			2,40,335
24.	Proserv - Graphite			4,69,807									4,69,807
25.	Russcarb Materials			56,631						19,200			56,629
26.	Sigmatex	2253 sq.mtr	189	4,27,440	5 Sq.mtrs.	1500	7,500	10 Sq.mtrs.	2,650	26,500	2248 sq.mtr.	786	4,20,227
27.	Wuxi Jiebo	21 Nos			2 Nos						23 Nos		
28.	Zibo Ouzheng Carbon				31 Nos	5153	1,59,767	11 Nos	3,186	35,049	20 Nos	4558	91,172
29.	ZIRCAR			8,84,245			58,78,757	191 Nos	30,298	57,86,942			25,19,543
30.	Zoltex			19,313			4,91,953			17,35,000			-6,88,736
31.	Collar Type Crucibles	28Nos	91	2,560							28 Nos	91	2,560
32.	Machined Graphite Blocks	390 pcs	2059	8,03,114							390 pcs	2059	8,03,114
33.	UD Carbon Fabric	20 sq.mtr	720	14,413	100 sq.mtr	739	73,950	113 sq.mtr	1,610	1,81,940	7 sq.mtr	720	5,044
34.	Without Collar Type Crucibles	5 Nos	248	1,244							5 Nos	248	1,244
35.	Total			9,62,97,239			4,03,86,542			8,78,06,289			9,82,98,208
36.	As per audited accounts			9,63,07,017			6,99,81,806			13,70,37,927			7,38,14,644

**Additions made by the Assessing Officer on the basis of the above data**

i) On the basis of all the items of the above table

a) Rs. 9.82 cr. - Rs. 4.87 cr. (Rs. 9.62 cr. + Rs. 4.03 cr. - Rs. 8.78 cr.) = Rs. **4.95 cr.**

b) Rs. 9.82 cr.-Rs. 7.38 cr. = Rs. **2.44 c**

ii) On the basis of figures at Sr. no. 4

c) Rs. 5.62 cr- Rs. 2.43 cr (Rs. 6.01 cr. + Rs. 1.38 cr. - Rs. 4.97 cr.) = Rs. **3.19 cr.**

26. From the said chart, Ld. Counsel pointed out that the figures appearing at sr. no. 4 of the chart in respect of 'Carbon of America' are same which have been reproduced by the Assessing Officer in table (b) on Pg no 16 of the assessment order. The manner in which addition of Rs. 3,19,21,996/- is made has been explained on pg no 2; para (ii) of the chart. The addition of Rs. 4,94,25,295/- is the difference between Rs. 9,82,98,208 - Rs. 4,88,72,913. The addition of Rs. 3,19,21,996/- is difference between Rs. 5,62,36,704 - 2,43,14,708. It is evident from the chart that the amount of Rs. 5,62,36,704 [closing value of 'carbon of america' (sr. no. 4)] is included in Rs. 9,82,98,208 (total closing value). Hence, amount of Rs. 3,19,21,9967- has been added twice by the Assessing Officer. It is further evident from Pg no 2; para (i) of the chart that the Assessing Officer has added Rs. 4,94,25,2957- and Rs. 2,44,83,6707-. The manner in which the said additions have been made has been explained in the chart. It is evident that the Assessing Officer could either have added Rs. 4,94,25,2957 or Rs. 2,44,83,6707- since starting point of both additions is the total closing stock value appearing in the seized tally statement i.e. Rs. 9,82,98,2087-.

27. He further pointed out that the Assessing Officer has arrived at the value of closing stock by applying the formula; opening balance + purchases - sales. It is submitted that the formula adopted by Assessing Officer for arriving at the value of closing stock is incorrect. The value of closing stock is arrived at after reducing the profit element from the sales made by assessee. Further, the value of closing stock is to be adjusted as per the relevant Accounting Standards regarding valuation of closing stock applicable to the assessee. The formula used by the Assessing Officer is generally adopted for calculating quantitative details of stock and not for valuation of stock.

28. Lastly, he submitted that the Assessing Officer has relied upon the seized tally data for making addition u/s 69 of the Act. He submitted that the seized tally data is incomplete and consists of numerous mistakes hence cannot be relied for making addition. By way of example he pointed out that in sr. no. 1 of the above chart, there is no opening balance or purchases, however there is outward quantity of 402 kgs having value of Rs. 15,12,997. In the closing balance there is negative quantity with no value. Similarly in Sr. No. 2 also the closing stock quantity is negative. In respect of Sr. No. 8,

the value of opening balance and closing balance is same even though there is an outward value of Rs. 17,371. It is evident from the above that the seized tally data was incomplete and consists of several mistakes. It was submitted before the Assessing Officer that the accounts were not complete.

39. On the issue of addition of Rs. 3,17,90,089/-, which was tallied data of the stock summary of Graphite division for the period 01.04.2017 to 17.11.17, he submitted the following chart:-

Sr. No.	Particulars	Opening Balance			Inwards			Outwards			Closing Balance		
		Quantity	Rate	Value	Quantity	Rate	Value	Quantity	Rate	Value	Quantity — »	Rate	Value
1.	CARBON OF AMERICA			8,18,695			10,51,075			1,70,06,146			7,99,300
2.	Ce Tech Co. Ltd	-31mtrs	7	242						36,72,600			242
3.	CHINA UNION	200mtrs			415 mtrs	15	6,590	320 mtrs	41	13,125	295 mtrs		
4.	FMI INC			9,27,781			52,38,818			91,96,754			16,35,059
5.	Formosa	2175 kgs	2191	47,67,463				6 kgs	1,272	7,950	2169 kgs	2,197	47,67,463
6.	Gaode Equipment	11 sq.mtr	194	2,134				3 sq.mtr	720	2,160	8 sq.mtr	177	1,423
7.	Graphite - Import			82,858						74,856			61,901
8.	Hysung Corporation			3,39,085						15,150			3,30,536
9.	JSC Polotsk	1000 mtrs			960 mtrs	436	4,19,411	1955 mtrs	778	15,22,500	5 mtrs		
10.	Local - Graphite			2,41,65,411			62,18,272			1,11,17,284			2,40,93,516
11.	Sichuan Aerospca Tuo Xin						2,01,654			1,20,215			1,73,972

**I.T.A. No. 1822 & 1870/Mum/2021  
M/s Nickunj Eximp Enterprises Pvt. Ltd.**

12.	ZIRCAR	85 Nos	24207	20,57,641	30 Nos		51 Nos	36,206	18,46,554	64 Nos	25,445	16,28,510
13.	Total			3,31,61,314			1,31,35,820		4,45,95,295			3,34,91,927

**Addition made by the Assessing Officer on the basis of the above data**

Rs. 3.34 cr. - Rs. 0.17 cr. (Rs. 3.31 cr. + Rs. 1.31 cr. - Rs. 4.45 cr.) = Rs. 3.17 cr.

30. Ld. Counsel pointed out that the figures appearing in the row of 'Grand Total' in the said stock summary match with the figures as mentioned by the Assessing Officer in table (c) on Pg no. 16 of the assessment order. He submitted that the seized tally data is incomplete and incorrect. For eg. in sr. no. 1 the opening balance is Rs. 8,18,695, inward of Rs. 10,51,075, outward of Rs. 1,70,06,146. However, the closing value is Rs. 7,99,300/-. In sr. no. 5, the opening value and closing value is same even though there is an outward value of Rs. 7,950/-. Thus, he submitted that seized data can be relied for making addition provided the contents of the seized data are true and correct. In the present case, it is evident that the seized data relied upon by the department for the period 01.04.2016 to 31.03.2017 and 01.04.2017 to 17.11.2017 is incomplete and incorrect. Hence, the seized tally data cannot be relied upon for making addition. He further submitted that the addition of Rs. 3,17,90,089/- is not based on mismatch in physical stock but is on the basis of formula adopted by Assessing Officer to

calculate the value of closing stock. The addition for mismatch in physical stock has already been done by the Assessing Officer which has been challenged by the assessee in ground no.6 of the present appeal. The present addition has been made on account of difference arising in value of closing stock as per tally data without any reference to the physical stock found during the course of search (18,612 kgs) and stock as per books (17,378 kgs). He further submitted that the gross profit of 10.97% referred to by the Assessing Officer is of the entire company and not of graphite division for which addition has been made. In view of the above, he humbly prayed that the addition of Rs. 13,76,21,050/- may kindly be deleted.

31. On the other hand, Ld. DR strongly relied on the order of AO and Ld. CIT(A) and submitted that nowhere the assessee has raised the issue that these discrepancy of the stock is pertaining to earlier year. Further, no reconciliation was furnished before the AO. Thus, all those issue which has been raised by the Ld. Counsel cannot be accepted and in any case the matter should be restored back to the file of AO for proper reconciliation.

32. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us at the time of hearing. We find that AO has made addition on the ground that during the survey statement of Shri Vithal Gopal Patil was recorded and the details of stock of raw materials are taken out from the tallied data which are extracted from the stock register provided by him. The relevant show cause notice reads as under:-

*Tally extract taken from computer for the period 1.4.2016 to 31.03.2017 showed following figures:- (Figures in Rs.)*

<i>Particulars</i>	<i>Opening Balance</i>	<i>Inward</i>	<i>Outward</i>	<i>Closing Balance</i>
<i>Grand Total</i>	9,62,97,239	4,03,86,542	8,78,10,868	9,82,98,208

*The grand total of closing balance should be 4,88,72,913. However computer accounting system is showing the closing balance at Rs. 9,82,98,208.*

*b) Following Discrepancy was found ©Figures in Rs.)*

<i>Particulars</i>	<i>Opening Balance</i>	<i>Inward</i>	<i>Outward</i>	<i>Closing Balance</i>
<i>Carbon America</i>	6,01,87,448	1,38,72,061	4,97,44,801	5,62,36,704

*However the correct closing balance should be Rs.2,43,14,708. Kindly explain this difference. C) Following Discrepancy was found:- (figures in Rs.)*

<i>Sr. NO.</i>	<i>Particulars</i>	<i>Opening Balance</i>	<i>Inward</i>	<i>Outward</i>	<i>Closing Balance</i>	<i>Actual Figures of closing balance</i>
1	<i>Carbon of America</i>	81695	1051075	17006146	799300	(-)15136376

4	FMI Inc	927781	5238818	9196754	1635059	(-)3030155
10	Local Graphite	24165411	6218272	11117284	24093516	19266399
11	Sichuan AerospcaTuo Xin		201654	120215	173972	81434
12	ZIRCAR	2057641		1846554	1628541	211087
	Total	3,31,61,314	1,31,35,820	4,45,95,295	3,34,91,927	17,01,839

33. From the aforesaid extract, AO has found that the value of the closing balance has to be calculated by applying the formula i.e. opening balance (+) purchases (-) sales applying that formula. According to him, the closing balance would be;

- i) Rs. 4,88,72,9137- (Rs. 9,62,97,239 + Rs. 4,03,86,542 - Rs. 8,78,10,868) in respect of table (a) and;
- ii) Rs. 2,43,14,7087- (Rs. 6,01,87,448 + Rs. 1,38,72,061 - Rs. 4,97,44,801) in respect of table (b).

He was of the view that the difference of Rs. 4,94,25,295/- (Rs. 9,82,98,208 -Rs. 4,88,72,913) and Rs. 3,19,21,9967- (Rs. 5,62,36,704 - Rs. 2,43,14,708) should be added u/s 69 of the Act.

34. Similarly, he has pointed out certain discrepancy in the tally data taken with respect to period 01.04.2017 to 17.11.2017, i.e., pertaining to the present AY 2018-19 in the following manner:-

Particulars	Opening balance	Inward	Outward	Closing balance
Total	3,31,61,314	1,31,35,820	4,45,95,295	3,34,91,927

35. Thus, the value of the closing balance have again being calculated by applying the same formula and held that closing balance should be Rs. 17,01,839/- (Rs. 3,31,61,314 + Rs. 1,31,35,820 - Rs. 4,45,95,295). He was of the view that the difference of Rs. 3,17,90,089 (Rs. 3,34,91,927 - Rs. 17,01,839) should be added u/s 69 of the Act.

36. First of all, the entire inference which has been drawn by the AO is based on seized tally data which has been demonstrated before us, by Ld. Counsel could not have been relied due to various discrepancies and the figures could not tallied due to entry errors. Nowhere there is any defect or discrepancy in the physical stock found and the entries in the regular books of account. The tally data prepared by Vithal Gopal Patil at a rabale godown who was working as a supervisor and keeps record of stock and had made the entire entry without any verification whether the figures entered therein are factual or any discrepancy in physical stock. From the given chart, it is seen that there are inherent discrepancy, for example, there are instances where purchases have not been

entered and yet there is discrepancy in opening and closing balance and there is no reconciliation of inward or outward, opening and closing balance. Similarly, there are instances where outward quantity is more than the opening balance and inward. All this shows that certain purchases have not been entered. There are certain other entries where the closing balance is same as opening balance despite there has been outward. This shows that the tally data was not at all reliable and AO should have been verified or asked the assessee to reconcile from the actual books of accounts or physical stocks. The non-application of mind of AO is more glaring looking to the fact and he has made the addition of Rs. 10,58,30,961/- which he himself has noted that, it pertains to period 01.04.16 to 31.03.17. Even if same tally data is considered to be the premise for addition made by AO, then the addition of Rs. 10,58,30,961/- could not have been added u/s 69 as the same did not pertain to AY 2018-19. Accordingly, the addition of Rs. 10,58,30,961/- is directed to be deleted.

37. Apart from that, there are various double additions as pointed out by Ld. Counsel which itself goes to show that the tally data is not reliable which is evident from the submission of Ld. Counsel as

incorporated herein above. Further AO has adopted a formula by applying balance (+) purchases (-) sales. The value of the closing stock has to be arrived at after reducing the profit element from the sales made by the assessee and further the value of closing stock has to be adjusted as per the relevant accounting standard applicable for valuation of closing stock. The AO is adopting formula for calculating quantitative details and not the valuation of stocks. This itself shows the error in working of the AO.

38. In so far as the tally data of the stock summary of the graphite division for the period 01.04.2017 to 17.11.17, as noted above, which is also evident from the submission of Ld. Counsel that there are various defects in the entry in the said tally data or were incomplete or incorrect which has been demonstrated by him as incorporated above. Here the addition of Rs. 3,17,90,089/- is not based on mismatch of physical stock, but purely on the basis of formula adopted by AO and thus, the entire manner in which AO has arrived at valuation for making is fully erroneous, which he has neither verified from the physical stock nor the books of accounts produced before him. Simply relying on incomplete tally data which suffers from various discrepancies, cannot be the basis for making

addition. Therefore, all the addition made under the head undisclosed stock added u/s 69 is directed to be deleted.

39. In ground no. 6, assessee has challenged the addition of Rs. 8,05,495/- u/s 69 on account of difference in physical stock of graphite.

40. The facts in brief are that during the course of survey, physical stock weighing to 18,612 kgs was found. Mr. Vithal Patil had given stock working of 17,378 kgs as per the excel sheet maintained by him. It was submitted that the weight of physical stock was on approximate basis. The Assessing Officer did not agree with the submission of the assessee and concluded that there is discrepancy in stock of 1303 kgs (18612kgs - 17,378kgs). The Assessing Officer applied the rate of Rs. 618.01 per kg and added Rs. 8,05,495/- (1303kgs \* Rs. 618.09) u/s 69 of the Act. Ld. CIT (A) has upheld the addition made by AO.

41. Before us, Ld. Counsel submitted that in the case of graphite block, it is practically impossible to conduct physical verification of 18 Metric Tonne of material available in various shapes and sizes within a day or two. The survey team had done verification on

approximation basis without actual weighing of physical stock. The weight is usually arrived at by using the input, 'Length x Breadth x Height x Density'. However, the dimension can be accurate the bulk density varies from grade to grade and also within the block itself from one corner to another depend on the method of manufacture of graphite blocks. It is only done on approximation basis. The assessee has recorded the actual stock position of the graphite block at 17,309.268 kg and these stocks were given to machining division for shape works as per the customer's requirement. Thus, he submitted that such difference for huge stock should be ignored as it is based on pure approximation.

42. Ld. DR strongly relied on the order of AO and Ld. CIT(A) and submitted that once there is a physical difference and employees of the assessee company had himself done weighing and provided details, therefore the same cannot be treated as falls or incorrect.

43. After considering the aforesaid submission and on perusal of the impugned orders as well as details of stock, it is seen that survey team has taken the quantity of graphite block of 18612.637 kg approximately, whereas assessee has recorded the stock in the books at 17317.8 kg. Before the AO and Ld. CIT (A), assessee

contended that it is very difficult to measure actual weight and it has been done purely by taking the length, breadth and height of the blocks which cannot be accurate basis. We agree with the contention of the Ld. Counsel because even if the dimension may be accurate, however the density and the weight may vary depending on grade to grade and the quality. Nowhere it has been brought on record that these stocks was actual weighed but the weight was taken on approximation by calculating length and breadth without factoring into density and it would not be possible for physical verification of almost 18 Mt. of graphite depending upon various shapes and sizes, therefore such estimation based on approximation cannot be basis for making addition on account of unaccounted stock. Therefore, the same is directed to be deleted.

44. In so far as addition of Rs. 13,54,071/- made u/s 69C as raised in ground no. 7, the facts are that, assessee had made payment to M/s. Whiton Chem P. Ltd. of Rs. 4,72,206/- up to 17.11.2017 on account of labour charges as per the books of accounts. M/s. Whiton Chem P. Ltd is the sister concern of the assessee and had shown income of Rs. 4,72,206/- up to 17.11.2017 as per its books of accounts. The machining register

maintained by Mr. Prakash Rao shows that labour job work of Rs. 18,26,177/- has been done. The Assessing Officer, relying on the statement given by Mr. Prakash Rao, held that the payment to M/s. Whiton Chem P. Ltd is Rs. 18,26,277/-. However, the assessee has booked expenses of Rs. 4,72,206/- which shows that the assessee is making out of book payment to M/s. Whiton Chem P. Ltd for labour job work of Rs. 13,54,0717- (Rs. 18,26,277 - Rs. 4,72,206). It was submitted before the CIT(A) that M/s. Whiton Chem P. Ltd had done the machining work so the addition cannot be made in case of assessee. The assessee had availed services of M/s. Whiton Chem P. Ltd and paid them as per the invoices raised by them. The Assessing Officer has made addition u/s 69C of the Act without bringing anything on record that payment has been made to M/s. Whiton Chem P. Ltd.

45. After considering rival submissions and on perusal of the impugned orders as well as material placed on record. We find that assessee had made following submissions which are as under:-

*The accounting entries in the books of accounts of Whiton Chem P Ltd were pending to be recorded till the date of search/as on the date of search.*

*The pending entries were recorded and updated subsequently post search. There were sales of Rs 3,29,10,916/- and labour income of Rs. 4,72,206/- up to 17/11/2017 as per the audited books of Whiton Chem P Ltd.*

*The amount of labour charges of Rs.18,26,177 as stated by Mr. Rao is value estimated according to him and not by the company (Whiton Chem P Ltd), the labour cost as estimated by him is not final till approved by the company.*

*The labour cost also depends on quantum of material sold therefore labour charges are recalculated considering discounted prices so that the sales could be pushed and accordingly the said sales was achieved at Rs 7,28,21,146/- for PY 2017-18 and was achieved at Rs 32910916/- up to 17/11/2017.*

*We have enclosed here the Profit & Loss account of Whiton Chem P Ltd for the period 01/04/2017 to 17/11/2017 as per audited books. Annexure- "M"*

46. Further it was submitted that assessee had made purchases of raw materials and finished products and also avails machining services from Whiton. Therefore, it cannot be said that whether the details given by the Whiton pertains to labour charges only. The assessee has made payment as per the invoices raised by Whiton from whom assessee has availed services. As nothing on record or any enquiry of Whiton that assessee has made payment over and

above recorded in the books nor can it be inferred that payment has been made in cash to Whiton. Another point which has been raised is that, the accounts of Whiton were not finalized and many other expenses of stock vouchers and general entries were pending to be recorded at the time of search and also due roll over GST regime w.e.f. 01.07.2017. Thus, simply relying on accounting entries in the books of Whiton, no addition can be made. Therefore, the same is directed to be deleted.

47. In so far as ground no. 8 for levy of tax @ 60% on additions made u/s 69 and 69C. This ground is purely consequential and academic as we have already deleted the additions made by AO. Accordingly, this ground is dismissed as infructuous.

48. In the result, the appeal filed by the assessee is **allowed** and the appeal filed by the revenue is **dismissed**.

*Orders pronounced in the open court on 23<sup>rd</sup> November, 2022.*

*Sd/-*  
(S. Rifaur Rhman)  
Accountant Member

*Sd/-*  
(Amit Shukla)  
Judicial Member

मुंबई Mumbai;दिनांक Dated : 23.11.2022  
Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**