

*M/s. Kesarwani Marketing Private Limited, Allahabad U.P. v. JCIT (OSD), Central Circle, Allahabad*

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.:154/Alld/2013 & 373/Alld/2013

Assessment Year(s):2009-10 & 2010-11

M/s. Kesarwani Marketing Private Limited Sahson, Allahabad U.P.	v.	Joint Commissioner Of Income Tax (OSD), Central Circle, Allahabad.
<b>PAN:AACCK2094H</b>		
(Appellant)		(Respondent)

Appellant by:	Shri. Praveen Godbole, C.A. & Shri Utkarsh Gupta, Adv.
Respondent by:	Shri Ramendra Kumar Vishwakarma CIT DR.
Date of hearing:	11.08.2022 & 09.11. 2022
Date of pronouncement:	01.02.2023

**ORDER**

**PER Bench:**

These two appeals are filed by assessee, being aggrieved by separate appellate order(s) passed by learned Commissioner of Income-tax(Appeas)-Allahabad, U.P. , for assessment year(s)(ay) : 2009-10 and 2010-11.

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2. The assessee has raised following Grounds of Appeal with Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, U.P. (hereinafter called “ the tribunal”), with respect to the respective appeals filed with tribunal:-

**ITA no. 154/Alld/2013-Grounds of Appeal for ay:2009-10**

*“1. That in any view of the matter assessment order dated 28.12.2011 passed u/s 153A(b) of the income tax act is bad and illegal both on facts and in law and by such order income as determined is not correct nor the same can be called real income of the appellant hence the declared income should have been accepted.*

*2. That in any view of the matter entire action u/s 132 of the income tax act and in consequence to which notice issued u/s 153A of the income tax act is illegal and without jurisdiction and also determined income is not based on any incriminating material nor undisclosed income related to the appellant found in the course of search therefore the assessment framed is illegal and the income so determined at Rs. 1,61,24,452.00 for the year under consideration as against the returned income of Rs. 19,40,350.00 is highly unjustified and against the provision of the income tax act hence such order is a nullity, void and liable to be declared illegal.*

*3. That in any view of the matter a sum of Rs. 1,85,800.00 out of the addition of Rs. 10,13,575.00 made by the assessing officer and as maintained by the learned Commissioner of Income Tax (Appeals) as per Para 5.2 of his order is highly unjustified and incorrect in the facts and circumstances of the case in so far as the books of accounts was maintained on computer and the department had also taken back-up and found that the entries are tallying with the seized annexure LP-1/4 which indicates complete details and payments made through cheques which was duly verified also and found in order, hence in such situation a part of the addition as maintained is highly objectionable and unwarranted.*

*4. That in any view of the matter the part of the addition of Rs. 1,85,800.00 as maintained by the Commissioner of Income Tax (Appeals) after scrutinizing the issue in the light of his observation in Para 5.2 at page 11 of his order is at all not correct hence the addition as maintained is liable to be deleted.*

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5. *That in any view of the matter addition of Rs. 13,55,232.00 as per Para 7 of the assessment order by saying bogus liabilities is incorrect and the entire discussions in the relevant Para are contrary to the actual facts of the case when the appellant furnished documents and proofs also but the two lower authorities failed to consider the issue in appropriate manner hence the addition as made and confirmed is incorrect in the facts and circumstances of the case.*

6. *That in any view of the matter a sum of Rs. 13,64,337.00 out of the addition of Rs. 19,74,401.00 made by the assessing officer as per Para 8 of the order and as maintained by the Commissioner of Income Tax (Appeals) as per Para 10.2 of his order is highly unjustified and incorrect in so far as the part of the addition has been maintained on irrelevant consideration by ignoring the true facts when the amount was debited in profit and loss account as the said amount relates to business expenditure paid to distributor for business promotion therefore the provision of TDSare at all not applicable hence the addition as maintained is unwarranted in the facts and circumstances of the case.*

7. *That in any view of the matter addition of Rs. 13,64,337.00 was maintained by the Commissioner of Income Tax (Appeals) by considering the provision of section 40(a)(ia) of the act in wrong manner and also by ignoring the nature of payment and circumstances hence the addition is liable to be deleted.*

8. *That in any view of the matter a sum of Rs. 2,40,428.00 out of the assessment order, as maintained by the Commissioner of Income Tax (Appeals) as per Para 11.2 of his order on the basis of incorrect allegation of inflating of expenses is totally incorrect in so far as the disallowances was made in adhoc manner without pointing out any specific item which was unvouched hence the addition maintained is unwarranted.*

9. *That in any view of the matter a sum of Rs. 2,40,428.00 out of the disallowance of Rs. 4,80,855.00 as maintained by the Commissioner of Income Tax (Appeals) as per Para 11.2 of his order is wrong and incorrect because in the income tax act there is no provision to disallow the expenses on percentage basis, when the expenditure as claimed are vouched and incurred in normal cause of business hence the disallowance as maintained is unwarranted and incorrect.*

10. *That in any view of the matter the entire observations and findings of both the lower authorities in their orders for making and confirming/maintaining*

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*the additions/disallowances are incorrect, away from the truth and contrary to the actual facts of the case hence the additions/disallowance are liable to be deleted.*

*11. That in any view of the matter interest as charged under different sections of the income tax act is highly unjustified.*

*12. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”*

### **ITA no. 373/Alld/2013-Grounds of Appeal for ay:2010-11**

*“1. That in any view of the matter income as declared in the return on the basis of closed books of accounts should have been accepted hence partly addition maintained by the Commissioner of Income Tax (Appeals) under two heads are unwarranted.*

*2. That in any view of the matter addition of Rs. 10,23,076.00 as maintained by the Commissioner of Income Tax (Appeals) on the allegation that there was non deduction of tax at source on payment relating to marketing expenses is highly unjustified and in this regard the provision of section 40(a) (ia) as invoked is not correct as the said provision is not applicable at all hence the action of two lower authorities are incorrect.*

*3. That in any view of the matter the nature of expenditure is marketing expenses incurred by the assessee company is towards reimbursement of payment made by distributors appointed by the company hence provision of TDS is not applicable therefore the addition sustained to the extent of Rs. 10,23,076.00 is illegal and unwarranted.*

*4. That in any view of the matter addition of Rs. 2,46,894.00 as maintained by the Commissioner of Income Tax (Appeals) as per Para 8.4 is highly unjustified in so far as the disallowance made on adhoc basis and no specific item of expenditure which was unvouched or not related to the business not pointed out hence the addition maintained is unwarranted.”*

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3. First , we shall take up appeal of the assessee for ay: 2009-10. The brief facts of the case are that the assessee company is engaged in the business of purchase and sale of spices and masala and other food items manufactured by Bhola Food Products Private Limited. In pursuance to authorization issued u/s 132 , a search and seizure operations were carried out by Revenue on 27.08.2009 in the Business and Residential premises of group cases of Kesarwani Zarda Bhandar , Sahson, Allahabad and its partners and directors. The assessee company is sister concern of M/s Kesarwani Zarda Bhandar. Notice u/s 153A was issued by AO, on 07.07.2010, which was claimed by AO to have been duly served on Director of the assessee company. In compliance thereof, the assessee company filed return of income disclosing returned income of Rs. 19,40,350/- on 18.10.2010. Thereafter , the AO issued notice u/s 143(2) on 19.10.2010 , which was claimed by AO to have been duly served on the assessee. Statutory notices u/s 142(1) were issued by AO, from time to time. The assessee participated in assessment proceedings. The AO had observed in his assessment order, that no books of accounts were found during the course of search, but during assessment proceedings books of accounts were produced by the assessee, which were perused and examined by the AO. The assessment proceedings culminated into an assessment order dated 28.12.2011 passed by AO u/s 153A(b) , wherein income of the assessee assessed by AO was Rs. 1,61,24,450/- as against returned income of Rs. 19,40,350/-. The assessee being aggrieved filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A) vide appellate order dated 30.01.2013(510/JCIT/CC/Alld/11-12). Aggrieved by appellate order dated 30.01.2013 passed by Id. CIT(A), the assessee has filed an appeal with tribunal. Both the rival parties advanced their

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arguments before the Division Bench of ITAT, Allahabad Bench, in the proceedings conducted in Open Court hearing through physical hearing mode. Now, we propose to dispose of the appeal filed by the assessee on merits in accordance with law for ay: 2009-10, ground wise.

4. At the outset Id. Counsel for the assessee stated before the Bench, that the assessee does not want to peruse grounds of appeal number 1-2 and 10-12, raised by assessee in memo of appeal filed with tribunal, and prayers were made before the Bench by Id. Counsel for the assessee to dismiss ground number 1-2 and 10-12 raised by the assessee before tribunal, as not being pressed. The Ld. CIT-DR has no objection, if Ground No. 1-2 and 10-12 are dismissed, as not being pressed. After hearing both the parties, we dismiss Ground No. 1,2,10,11 and 12 raised by assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

5. Ground No. 3 and 4 raised by assessee in memo of appeal filed concerns itself with disallowance of Rs.10,13,575/- as was made by the AO which disallowance stood reduced by Id. CIT(A) to Rs. 1,85,800/- . This disallowance concerns itself with the alleged expenditure and payments made by the assessee towards furniture and fixture and renovation at Nayaganj Office which were not allegedly recorded in books of accounts maintained by the assessee, but were found recorded in the page 155 of seized document Annexure LP-1/4 of Panchnama dated 27/28.08.2009 of 51/47, NayaGanj, Kanpur. On perusal of seized Annexure LP-1/4 of Panchnama dated 27/28.08.2009 of 51/47 NayaGanj, Kanpur, it was observed by the AO that it contains the party ledger account of distributors of the

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assessee. The AO observed that on page 155 of this annexure , there is a details of expenditure and payments thereof in Furniture and Fixtures and renovation at Nayaganj office, Kanpur. The AO observed that as per this seized document , total expenditure was incurred amounting to Rs. 12,57,303/- against which Rs. 9,71,888/- have been paid , and balance of Rs. 2,43,728/- has been shown to be paid. In addition to above, Rs. 41,687/- has been further incurred and balance has been shown at Rs. 2,79,415/- to be paid. Since, no books of accounts had been found during the course of search proceedings , the assessee was required to explain as to why these expenditure should not be treated as unexplained. The assessee explained before the AO, that the expenditure recorded in seized Annexure LP-1/4 page 155 is all recorded in books of accounts of the assessee. The books of accounts for the year were maintained in computer. It was submitted that the back-up of the data in the computer had been taken by department. The assessee submitted that books of accounts are with department, and no adverse view be taken against the assessee. Copy of ledger accounts wherein the above expenditure was recorded was enclosed by the assessee, along with its reply filed before the AO. The AO rejected the contentions of the assessee and observed that the assessee has not explained the sources of said expenditure with the seized books of accounts and the documents as stated in the seized documents. It was held by AO that Ledger account copy furnished along with the reply has not been reconciled with that of the seized documents. Thus, the AO treated expenditure of Rs. 10,13,575/- (Rs. 9,71,888 + Rs. 41,687) remained unexplained and were added to the income of the assessee by the AO, vide assessment order dated 28.12.2011 passed by AO u/s. 153A(b) of the 1961

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Act. Aggrieved by assessment order passed by the AO, the assessee filed first appeal with Id. CIT(A). The assessee submitted before Id. CIT(A) that the expenditure mentioned in Annexure LP-1/4 page 155 is all recorded in the books of accounts of the assessee. It was submitted that books of accounts were maintained in computer, and the back up of the data was taken by the department. It was submitted by assessee before Id. CIT(A) that the books of accounts completed till the date of search are with department ( as claimed by assessee to be maintained in computer and back up data taken by department). The assessee submitted that the AO erred in making additions to the income of the assessee, as the entire expenditure was recorded in books of account which was examined by the AO during assessment proceedings. The assessee enclosed copy of ledger account of Furniture and Fixtures and other ledger accounts of parties to whom payments had been made as per Annexure LP-1/4 page 155. The Id. CIT(A) allowed part relief to the assessee by accepting payments stated to be made by assessee through cheque, while he upheld the additions to the tune of Rs. 1,85,800/- which were paid in cash. The chart of such payments made by the assessee through cheque as well by cash are reproduced by Id. CIT(A) in its appellate order. The Id. CIT(A) observed that these cash payments are claimed by assessee to be recorded on various dates under different heads, but on perusal of the details of cash payments, the Id. CIT(A) held that these cash payments are not supported by invoices. Therefore, Id. CIT(A) confirmed additions to the tune of Rs. 1,85,800/- , while Id. CIT(A) deleted the additions to the tune of Rs. 8,27,775/-, vide appellate order dated 30.01.2013. Still aggrieved , the assessee filed second appeal with tribunal. The Id. Counsel for the assessee submitted that the additions

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were made with respect to unexplained expenditure, on account of expenditure incurred and payments thereof towards furniture and fixture and renovation at Nayaganj Office. Our attention was drawn towards the relevant para's of the assessment order as well appellate order passed by Id. CIT(A). Our attention was drawn to the seized material LP-1/4 page number 155, which is placed at paper book filed by the assessee at page 26. Our attention was also drawn to page 27-59 of the paper book filed by the assessee, and it was submitted that these are ledger accounts of the parties from whom the material was purchased towards furniture and fixtures and renovation at Nayaganj Office. It was submitted that the AO made additions to the tune of Rs. 10,13,575/- (Rs.9,71,888+Rs.41,687/-) which is the entire amount of payments made as mentioned in this seized document LP-1/4 page 155, which is placed at page 26 of the paper book filed by the assessee. It was submitted that details were filed for all the payments recorded in this seized material. It was submitted that the Id. CIT(A) accepted the payments made by cheque, which are recorded at page 10 of the appellate order passed by Id. CIT(A). It was submitted by Id. Counsel for the assessee that cash payments to the tune of Rs. 1,85,800/- as are recorded in the seized material, were not accepted by Id. CIT(A) and additions were confirmed to the extent of Rs. 1,85,800/- by Id. CIT(A). It was submitted that even cash payments are also recorded in books of accounts and our attention was drawn to page 57/58 of the PB, and it was submitted that like this all other cash payments are duly recorded in books of accounts, and Id. CIT(A) erred in sustaining addition of Rs. 1,85,800/- on the grounds that these are cash payments and not supported by the invoices. It was submitted that the entire cash payments were recorded in the cash book. On

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the other hand , Id. CIT-DR relied upon the appellate order passed by Id. CIT(A). We have observed that as per ledger account filed by the assessee in the paper books, there are certain cash payments which are recorded in the ledger accounts produced in the paper book at page 27-59, on different dates. The seized material is placed at page 26(LP-1/4 page 155), paper book filed by the assessee. The said seized material reflects various payments made to different parties, aggregating to Rs. 9,71,888/- and a further amount incurred to the tune of Rs. 41,887/- towards hardware. This seized material records that out of the above total payments, cash payment of Rs. 1,85,800/- has been made . We have observed on the perusal of the ledger account filed by the assessee that these payments both as well by cheque and cash, as are recorded in the ledger account filed by the assessee, begins from last quarter of financial year 2008-09 and runs through financial year 2009-10. The AO made additions of the entire amount as reflected in the seized material. The assessee filed details before Id. CIT(A) specifying and reconciling the payments made through cheques and reflected in the seized material, which explanation was accepted by Id. CIT(A), but so far as cash payments to the tune of aggregate amount of Rs. 1,85,800/- as recorded in the seized material LP-1/4 page 155, the Id. CIT(A) did not accepted the contentions of the assessee on the grounds that these payments are not supported by the invoices, and the said amount was confirmed by Id. CIT(A) by sustaining the additions. After considering the material on record and after hearing both the parties, we are of the considered view, in the interest of justice, that the matter need to be restored to the file of the AO for adjudication afresh on merits, as one more opportunity needs to be granted to the assessee. We have observed that

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there are certain cash payments which are recorded in the ledger accounts produced in the paper book at page 27-59, on different dates , but it requires verification by the AO vis-à-vis amount recorded in the seized material LP-1/4 page 155 and also need to be correlated and reconciled with the entries recorded in the seized/impounded books of accounts during search and survey operations( survey u/s 133A was conducted by Revenue on Gupta Sanjay and Associates, CA of the assessee and books of accounts by way of Cds of back up date of CPU were impounded by department) conducted by Revenue on 27.08.2009, and it is for the assessee to substantiate , co-relate and reconcile these cash payments with the amount recorded in books of accounts including impounded/seized books of accounts during search and survey operations conducted by Revenue on 27.08.2009 ,to unravel truth and to prove that the entries in the ledger account so claimed are not mere an afterthought to wriggle out of tax liability when cornered. The department has impounded Cds being back up of the CPU containing books of accounts of the assessee ,during survey conducted u/s133A on Gupta Sanjay and Associates,CA( statutory auditor of the assessee who signed audit report and accounts for financial year 2008-09 vide audit report dated 03.09.2009) and co-relation/reconciliation is required to be done with these impounded books of accounts to find out whether these cash payments were recorded prior to survey conducted by Revenue, in the impounded books of accounts and is not merely an afterthought to wriggle out of tax liability, and presumption u/s 292C shall apply to documents impounded during survey u/s 133A . The AO needs to verify contentions of the assessee and co-relation/reconciliation of these cash payments as recorded in the seized

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document LP-1/4 page 155 , which is also required to be made with the seized/impounded books of accounts during search/survey operations conducted by Revenue. The seized material is placed at page 26(LP-1/4 page 155), paper book filed by the assessee. This document has been seized from the assessee, during the search conducted by Revenue. Even for books of accounts impounded during survey u/s 133A, presumption u/s 292C shall apply. These presumption stipulates that the contents of the seized/impounded documents shall be presumed to be true, and it is now for the assessee to rebut the same by cogent evidences/explanations. The presumption u/s 132(4A) and 292C is that the documents belong to the assessee, and the contents of the documents are true . This presumption is rebuttable , but onus is squarely on the assessee to rebut the same by credible evidences and explanations. The authorities below also have not given categorical finding whether these cash payments were found mentioned in the seized/impounded books of accounts during search and survey operations conducted by Revenue, to unravel truth. Thus, in our considered view, in the interest of justice, one more opportunity be provided to the assessee to reconcile and co-relate the cash payments as are recorded in the seized material LP-1/4 page 155 with the seized/impounded cash book/ledger of the assessee to prove that these cash payments allegedly recorded in the seized document LP-1/4 page 155 are infact recorded in the seized/impounded books of accounts of the assessee , and further to substantiate the payments with credible evidences to prove its genuinity .Thus, we are setting aside and restoring the matter to the file of the AO for denovo determination of the issue on merit , after giving proper and

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adequate opportunity of being heard to the assessee. We clarify that we have not commented on the merits of the issue. We order accordingly.

6. Ground No. 5 raised by assessee in memo of appeal filed with tribunal concerns with allegation of bogus liabilities raised to the tune of Rs. 13,55,232/- by introducing cash , based on seized material Annexure A-5/ page 28 seized from 9B, Dada Nagar, Kanpur and as per page 26 of KMPL/9B/KNP/CPU 1 and 2, which led to the additions to the tune of Rs. 13,55,232/- made by the AO to the income of the assessee, which additions were later confirmed by Id. CIT(A). The AO observed that as per page 28 of Annexure A-5 seized from 9B , Dada Nagar, Kanpur and as per page 26 of KMPL/9B/KNP/CPU 1 and 2, cash in hand has been shown at Rs. 25,19,595/- as against cash in hand at Rs. 38,74,827/- shown in audit report, wherein the difference is of Rs. 13,55,232/-. The AO asked assessee to explain the difference . The assessee submitted before the AO that cash at Allahabad Branch was at Rs. 3,47,303/- and cash of Rs. 9,17,929/- of head office, both are not included in the above figure. The AO observed that contention of the assessee is not correct, hence the same were rejected by the AO. The AO referred to the evidences as per page 93 and 114 of annexure 10, printouts taken from CDs of backup of CPU from the premise of M/s Gupta Sanjay and Associates, Allahabad ,which are balance sheets of Allahabad Branch and head office for the year under consideration. The AO observed that in the said balance sheet, cash in hand of Allahabad Branch has been shown at Rs. 4,63,341.84 and cash in hand of head office has been shown at (-) 16,43,471/- . The AO observed that evidentiary value of said annexures could not be ruled out because assessee , itself , mentions

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the figure of that annexure while explaining the sundry creditors of Allahabad Branch i.e. Rs. 15,53,333.60 . The AO observed that , thus, the assessee has shown fabricated figures of cash in hand. Therefore, the cash in hand shown in the audit report has been enhanced by Rs. 13,55,232/- The AO observed that the assessee has failed to explain the difference in liabilities , and the assessee failed to explain that the difference occurs in liabilities by manipulating the figures shown. The AO cited example, that the creditors of Allahabad Branch has been shown at Rs. 15,53,333/- in the financial year 2007-08 and 2008-09 and liabilities of Head Office is minus figure of 74,22,778/- which the assessee could not explain with evidences. The AO observed that the assessee also fails to explain as to why this liability is pending and for what purposes. Thus, the AO concluded that the assessee has introduced cash in asset side, and assessee created bogus liability against amount by Rs. 13,55,232/- . The AO held that it is established that based on above annexures that the assessee has raised bogus liabilities of Rs. 13,55,232/- by introducing cash and hence Rs. 13,55,232/- was added by the AO to the income of the assessee u/s 68 of the 1961 Act, vide assessment order dated 28.12.2011 passed u/s 153A(b) of the 1961 Act. Aggrieved by assessment order passed by the AO , the assessee filed first appeal with Id. CIT(A), which stood dismissed by Id. CIT(A) , vide appellate order dated 30.01.2013. The assessee submitted before Id. CIT(A) that the AO was not justified in making addition of Rs. 13,55,232/- to the returned income of the assessee on the alleged difference in the figure of Balance of cash in hand as per audited Balance Sheet and as per impounded material of Kanpur Branch treating the same as bogus liability u/s 68 by ignoring the explanation regarding separate books of accounts

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for each unit of the company and their consolidation for audited Balance Sheet and reconciliation submitted by the assessee. The assessee submitted that the AO erred in making additions to the income of the assessee. Regarding page number 93 and 114 of Annexure A 10 referred to by the Id. AO at page 4 para 7 of the assessment order, the assessee submitted that these documents were printed at the stage when data entry was not complete in the books of accounts hence are liable to be ignored. The assessee enclosed reconciliation statement before Id. CIT(A). The Id. CIT(A) rejected the contentions of the assessee, by holding as under , vide appellate order dated 30.01.2013:

*“ 9.2 Decision:*

*I have gone through the assessment order and the submission of the appellant. The appellant has tried to explain the difference in cash balance by stating that Allahabad branch has the cash balance of Rs. 4,37,303/- and the head office had the cash balance of Rs. 9,17,929/- . It is submitted by the appellant that the cash balance of Rs. 25,19,595/- related to Kanpur branch only. With respect to page no. 93 and 114 of Annexure A-10 discussed above the appellant has submitted that these documents were printed at the stage when data entry was not complete. But the appellant has given no sound logic to accept this version. Moreover, the evidentiary value of page 93 and 114 of Annexure 10 which shows the cash balance of Allahabad branch at Rs. 4,63,341/- and of head office at (-) Rs. 16,42,471/- cannot be glossed over. The appellant had itself relied on the evidentiary value of these papers while explaining the liabilities as mentioned by the A.O. . Accordingly, I hold that A.O. was justified in making the addition of Rs. 13,55,232/- as inflated cash balance having its corresponding bogus liability. Accordingly, the addition is confirmed.”*

Being aggrieved by appellate order dated 30.01.2013 passed by Id. CIT(A), the assessee filed second appeal with tribunal. The Id. Counsel for the assessee submitted that the additions have been made based on seized annexure A-5 page 28 seized from 9B, Dada Nagar, Kanpur and as per page 26 of KMPL/9B/KNP/CPU

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1 and 2. Our attention was drawn to relevant para's of the assessment order as well Id. CIT(A) appellate order. Our attention was drawn to page 60 /Paper Book filed by the assessee, wherein it was explained that as per seized material A-5, cash in hand is Rs. 25,19,595/- , which is cash balance of Kanpur Branch of Rs. 25,19,595.14. It was submitted that the assessee has cash in hand as on 31.03.2009 with Allahabad Branch of Rs. 4,37,303.84 and also with Head Office of Rs. 9,17,929/-, which aggregates to Rs. 38,74,827.98 which tallies with cash in hand as on 31.03.2009 in the audited balance sheet. The assessee drew our attention to page 101 of paper book, which is the audited Balance Sheet of the assessee company and cash balance certified was Rs. 38,74,827.98 as at 31.03.2009. Our attention was also drawn to page 113 of paper book, wherein the cash in hand of all the three premises of the assessee viz. Kanpur branch of Rs. 25,19,595.14 , Allahabad Branch of Rs. 4,37,303.84 and H.O. of Rs. 9,17,929/- are reflected, aggregating to Rs. 38,74,827.98 , and it was submitted that authorities below erred in making additions. It was submitted that as per documents impounded under Survey u/s 133A conducted on CA Sanjay Gupta, the cash balance was Rs. 4,63,341.80 at Allahabad, H.O. was (-) Rs. 16,43,471/- , while cash balance with Kanpur Branch office was Rs. 25,19,595/-. The Id. Counsel for the assessee submitted that proper explanations were submitted before AO/CIT(A) , but the authorities erred in making/sustaining additions to the income of the assessee. The prayers were made by Id. Counsel for the assessee to set aside and restore the matter to the file of the AO for fresh determination of the issue on merits. The Id. CIT-DR relied upon the appellate order passed by Id. CIT(A). After considering the material on record and after hearing both the parties, we are of

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the considered view that this matter also needs to be restored to the file of the AO for fresh determination of the issue on merit. The search and survey operations took place on 27.08.2009. The audited accounts for financial year 2008-09(ay:2009-10) i.e. the relevant year under consideration are placed on record at page 86-120 of the paper. The audited accounts were signed on 03.09.2009, which is post survey. The audit report is signed by Mr. Sanjay Gupta, CA, Prop. Of Gupta Sanjay and Associates, CA. The survey operations u/s 133A took place in the case of M/s Gupta Sanjay and Associates on 27.08.2009, and documents as per page 93 and 114 of annexure 10, which are printouts taken from CDs of backup of CPU impounded from the premise of M/s Gupta Sanjay and Associates, Allahabad during survey operations , are Balance Sheets of Allahabad Branch and head office for the year under consideration, and in the said balance sheet, cash in hand of Allahabad Branch has been shown at Rs. 4,63,341.84 and cash in hand of head office has been shown at (-) 16,43,471/-. The explanation given by the assessee is that when the survey u/s 133A took place, the accounts were not updated completely. It is sought to be explained that actual cash balance at Kanpur branch was of Rs. 25,19,595.14 , Allahabad Branch of Rs. 4,37,303.84 and H.O. of Rs. 9,17,929/- are reflected, aggregating to Rs. 38,74,827.98, and there is no difference in cash . The assessee has sought to explain by way of audited accounts, that there was no difference in cash as only cash of Rs. 25,19,595/- of Kanpur Branch was considered , while the total cash as at 31.03.2009 was Rs. 38,74,827.98 which included cash of Kanpur branch of Rs. 25,19,595.14 , Allahabad Branch of Rs. 4,37,303.84 and H.O. of Rs. 9,17,929/- are reflected, aggregating to Rs. 38,74,827.98, and hence there was no difference in

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cash balance. The assessee has also sought to explain by way of reconciliation that cash balance tallied and there is no difference, but it is only because of incomplete accounts recovered and impounded during survey u/s 133A from Gupta Sanjay and Associates, Chartered Accountants of the assessee( statutory auditor who signed the accounts for the year ended 31.03.2009 on 03.09.2009), being printouts of CDs of backup of CPU , this difference has arisen. The assessee has sought to explain the difference by filing of reconciliation statement, but the authorities below rejected the same. Be that as it may be there is a presumption u/s 292C that the contents of the documents found during survey u/s 133A, are true. The documents were recovered and impounded from none other than CA(statutory auditors of the assessee) of the assessee during survey proceedings u/s 133A on 27.08.2009. The documents pertain to the assessee as its books of accounts , and presumption u/s 292C shall apply that contents of the documents are true. This presumption is rebuttable, but the assessee is required to bring on record cogent evidences and explanations to rebut the same, and merely saying that the accounts recovered from the CA(statutory auditors of the assessee) are not complete is not sufficient , more so it is the matter of difference in the cash and the cash book are to be written on daily basis as and when transaction occurs both for receipts and payments. The onus is squarely on the assessee to rebut the presumption, and the burden is very heavy as it is a matter of difference in cash. The assessee has claimed to have submitted reconciliation statements, which is a matter of fact requiring verification in details by authorities , before rejecting or accepting the same. Analysis of the reconciliation statements are required qua impounded documents, to unravel truth and to arrive at the conclusion what was

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the true state of affairs when search and survey took place on 27.08.2009 and the explanation now submitted is not merely an afterthought to wriggle out of tax liability. The burden is very heavy on assessee, as it is a matter of cash balance differential, wherein it is expected that cash book is required to be written on daily basis as and when cash transactions took place. The financial year under consideration is 2008-09 i.e. ending on 31.03.2009, while the survey took place u/s 133A on 27.08.2009. The accounts were audited post survey, on 03.09.2009 and the auditor is Mr. Sanjay Gupta, CA Prop, Gupta Sanjay and Associates, from whom, infact, these documents as per page 93 and 114 of annexure 10, which are printouts taken from CDs of backup of CPU from the premise of M/s Gupta Sanjay and Associates, Allahabad, are Balance Sheets of Allahabad Branch and head office for the year under consideration, were recovered and impounded during survey u/s 133A on 27.08.2009, which assessee is required to explain. Principles of natural justice also demand that all the **relied upon** seized/impounded material as well relied upon statements recorded be also provided to assessee for rebuttal (if not yet provided but relied upon during set aside proceedings to cause prejudice to assessee), before any prejudice is caused to the assessee. Thus, we are restoring the matter back to the file of AO for re-adjudication on merits in accordance with law, after giving proper and adequate opportunity of being heard to the assessee. We clarify that we have not commented on the merits of the issue. We order accordingly.

7. Ground No. 6 and 7 concerns itself with disallowance of marketing expenses to the tune of 19,74,401/- made by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 13,64,337/-, being additions made by invoking

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provisions of Section 40(a)(ia) read with Section 194C of the 1961 Act. The Id. AO observed that the assessee has claimed to have debited Marketing expenses to the tune of Rs. 19,74,401/- in the Profit and Loss Account. The AO observed that the payments were made to distributors for pushing up the sales. The AO observed that payments were made under contract and no income tax was deducted at source on such payments. The AO asked assessee to explain why these expenses be not disallowed. The assessee submitted before AO that marketing expenses incurred by the assessee is towards reimbursement of payments made by the distributors appointed by the assessee as per instructions of the assessee. The assessee submitted that TDS(income tax deducted at source under Chapter XVIIIB) is not applicable on such reimbursement of payments. The AO observed that the assessee has submitted the above submissions ,but no evidence has been submitted to substantiate the same. The AO disallowed the expenses to the tune of Rs. 19,74,401/- as the assessee failed to deduct income-tax at source on such payments. Aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A), who granted part relief to the assessee. There were two fold contentions made by the assessee before Id. CIT(A), firstly that the TDS u/s 194C is not applicable as Marketing expenses incurred were in the nature of reimbursement of payments/expenses , and secondly Section 194C is applicable only when the aggregate payments /credits exceed Rs. 50,000/- to a party in a financial year. The assessee enclosed copy of ledger account of Marketing expenses before Id. CIT(A) and also submitted party wise details. The Id. CIT(A) rejected the contentions of the assessee so far as that there was no understanding between the assessee company and the distributors to

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make the advertisement for the assessee for which the payments are allegedly reimbursed. The Id. CIT(A) held that Section 194C is applicable in the instant case, and on failure of the assessee to deduct TDS u/s 194C, disallowance u/s 40(a)(ia) is attracted. The Id. CIT(A) referred to provisions of Section 194C read with proviso to Section 194C(5) and restricted the disallowance to the parties wherein the aggregate payments or credits in a year exceeded Rs. 50,000/- to a party. The Id. CIT(A) also considered the requirement of Section 194C, when the payment/credit in a day exceeded Rs. 20,000/- to a party, while sustaining disallowance. Thus, Id. CIT(A) after considering the replies of the assessee and keeping in view the aforesaid conditions for applying provision of Section 194C read with Section 40(a)(ia), upheld the additions to the tune of Rs. 13,64,337/-. Still aggrieved with the appellate order passed by Id. CIT(A), the assessee has now filed an appeal with tribunal. The Id. Counsel for the assessee submitted before the Bench that the assessee has granted marketing rights to the distributors. The disallowance were made by invoking provisions of Section 194C read with Section 40(a)(ia), as no TDS was deducted by the assessee on these payments. It was submitted that the distributors have also not deducted any TDS while making payments for marketing done of the assessee's products. Our attention was drawn to relevant para's of the assessment order as well appellate order passed by Id. CIT(A). Both the parties argued before us that similar issue arose in ITA No. 77/Alld/2013 for assessment year 2007-08 and facts are similar in the instant appeal as were prevalent in ITA No. 77/Alld/2013 for assessment year 2007-08. We have gone through the relevant record and we observe that the facts in the instant appeal before us in ITA No. 154/Alld/2013 for ay: 2009-10 on this issue of

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disallowance of Marketing Expenses by invoking provisions of Section 194C read with Section 40(a)(ia) are similar to the facts in ITA no. 77/Alld/2013 for ay: 2007-08 and our decision in ITA no. 77/Alld/2013 for ay: 2007-08 shall apply mutatis mutandis to adjudication of this issue for the impugned assessment year. Our decision for ay: 2007-08 in ITA No. 77/Alld/2013 for ay: 2007-08 on this issue is reproduced hereunder:

*“16.Ground No. 4 and 5 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance of marketing expenses to the tune of Rs.12,63,138/- made by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 3,98,526/- , being additions made by invoking provisions of Section 40(a)(ia) read with Section 194C of the 1961 Act. The Id. AO observed that the assessee has claimed to have debited Marketing expenses to the tune of Rs. 12,63,138/- in the Profit and Loss Account. The AO observed that the payments were made to distributors for pushing up the sales. The AO observed that payments were made under contract and no income tax was deducted at source on such payments. The AO asked assessee to explain why these expenses be not disallowed. The assessee submitted before AO that marketing expenses incurred by the assessee is towards reimbursement of payments made by the distributors appointed by the assessee as per instructions of the assessee. The assessee submitted that TDS is not applicable on such reimbursement of payments. The AO observed that the assessee has submitted the above submissions ,but no evidence has been submitted to substantiate the same. The AO disallowed the expenses to the tune of Rs. 12,63,138/- as the assessee failed to deduct income-tax at source on such payments. Aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A), who granted part relief to the assessee. There were two fold contentions made by the assessee before Id. CIT(A), firstly that the TDS u/s 194C is not applicable as Marketing expenses incurred were in the nature of reimbursement of payments/expenses , and secondly Section 194C is applicable only when the aggregate payments /credits exceed Rs. 50,000/- to a party in a financial year. The assessee enclosed copy of ledger account of Marketing expenses before Id. CIT(A) and also submitted party wise details. The Id. CIT(A) rejected the contentions of the assessee so far as that there was no understanding between the assessee company and the distributors to make the advertisement for the*

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*assessee for which the payments are allegedly reimbursed. The Id. CIT(A) held that Section 194C is applicable in the instant case, and on failure of the assessee to deduct TDS u/s 194C, disallowance u/s 40(a)(ia) is attracted. The Id. CIT(A) referred to provisions of Section 194C read with proviso to Section 194C(5) and restricted the disallowance to the parties wherein the aggregate payments or credits in a year exceeded Rs. 50,000/-. The Id. CIT(A) also considered the requirement of Section 194C, when the payment/credit in a day exceeded Rs. 20,000/- to a party, while sustaining disallowance. Thus, Id. CIT(A) after considering the replies of the assessee and keeping in view the aforesaid conditions for applying provision of Section 194C read with Section 40(a)(ia), upheld the additions to the tune of Rs. 3,98,526/-. Still aggrieved, the assessee has now filed an appeal with tribunal. The Id. Counsel for the assessee submitted before the Bench that the assessee has granted marketing rights to the distributors. The disallowance were made by invoking provisions of Section 194C read with Section 40(a)(ia), as no TDS was deducted by the assessee on these payments. It was submitted that the distributors have also not deducted any TDS while making payments for marketing done of the assessee's products. Our attention was drawn to relevant para's of the assessment order as well appellate order passed by Id. CIT(A). Our attention was drawn to page 25-39 of the Paper Book filed by the assessee, where Marketing expenses ledger accounts in the books of the assessee is placed. It was submitted that the AO disallowed entire marketing expenses of Rs. 12,63,138/-, while Id. CIT(A) restricted disallowance of expenses to Rs. 3,98,526/- after considering requirements of Section 194C, that the payment/credit to a party in a day in aggregate should exceed Rs. 20,000/- and further in a year aggregate payments/credits to a party should exceed Rs. 50,000/-. It was submitted that the distributors were acting as agents on behalf of the assessee. The Id. Counsel for the assessee relied upon the judgment and order of Hon'ble Supreme Court in the case of **Hindustan Coca Cola Beverage Private Limited v. CIT, reported in (2007) 163 Taxman 355(SC)**. The Id. CIT-DR relied upon the appellate order passed by Id. CIT(A) and submitted that if the ratio of decision in the case of *Hindustan Coca Cola Beverages Private Limited (supra)* is to be applied, then the assessee will be liable to pay interest liability as upheld by Hon'ble Supreme Court. After hearing both the parties and perusing the material on record, we are of the considered view that the assessee has failed to deduct income-tax at source within the provisions of Section 194C on the marketing expenses to the tune of Rs. 3,98,526/- as upheld/sustained by Id. CIT(A) w.r.t. payments made to its distributors. These are contractual payments to distributors for promoting*

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*assessee's product and even if oral understanding is there and no written contracts are executed, still Section 194C shall apply, as the Contract Act, 1872 shall apply and it covers oral as well implied contracts , and it is not necessary that contracts should be in writing .Reference is drawn to decision of ITAT, Mumbai Benches in **ITO v. Gopal S. Rajput , reported in (2016) 156 ITD 827(Mum-trib.)** , in which one of us namely Accountant Member was part of Division Bench who pronounced the order.So far as contention of the assessee that Section 194C has no applicability, when there are no payable as on 31.03.2007 i.e. at the year end, this proposition is already rejected by Hon'ble Supreme Court in the case of **Palam Gas Service v. CIT , reported in (2017) 81 taxmann.com 43(SC)**. Thus, we uphold the appellate order passed by Id. CIT(A). Regarding contentions of the assessee for applicability of ratio of judgment and order of Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Private Limited (supra), we are remitting the matter back to the file of AO for limited purposes to apply ratio of Hon'ble Supreme Court in toto, for which the onus is entirely on the assessee to prove with cogent evidence that the payee's have duly included the said respective amounts paid by the assessee in their return of income and paid due taxes to Revenue. With these directions ,for limited purposes as indicated above, we are remitting the matter back to the file of AO. This issue is allowed for statistical purposes, in the manner as indicated above.We order accordingly."*

It is reiterated that the facts in the instant appeal before us in ITA No. 154/Alld/2013 for ay: 2009-10 on this issue of disallowance of Marketing Expenses by invoking provisions of Section 194C read with Section 40(a)(ia) are similar to the facts in ITA no. 77/Alld/2013 for ay: 2007-08 , and our decision in ITA no. 77/Alld/2013 for ay: 2007-08 shall apply mutatis mutandis to adjudication of this issue for the impugned assessment year, with similar directions.We order accordingly.

8. Ground No. 8 and 9 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance of expenses to the tune of Rs.4,80,855/- made

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by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 2,40,428/-, being additions made towards expenses claimed to be incurred by the assessee, under the head freight expenses, office expense, printing and stationary , and travelling and conveyance expenses , being @ 5% of these expenses stood confirmed by Id. CIT(A) , as against additions made by the AO @10% of these expenses . The AO observed that as discussed in the preceding assessment year in the case of the assessee itself, it has been observed that the assessee is inflating expenses as per trial balance found and seized during search conducted by Revenue u/s 132(1) on 27.08.2009. While examining the books of accounts produced during the course of assessment year, the AO observed that **the vouchers for the freight expenses, office expenses, printing and stationary expenses are not fully supported by pucca bills and vouchers for expenses of travelling and conveyance have not been produced.** The AO sought explanation from the assessee. **The assessee did not produced any vouchers nor any submissions were made.** The AO disallowed expenses @10% claimed in the Profit and Loss account, under the heads freight expenses,office expenses , printing and stationary and travelling and conveyance expenses, and an aggregate amount of Rs. 4,80,855 /- stood added by the AO to the income of the assessee. Being aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A) and submitted that the AO erred in estimating expenses @10% of freight expenses, office expenses , printing and stationary and travelling and conveyance expenses, and such type of ad-hoc disallowance is not permissible. The assessee submitted ledger account copies of these expenses before Id. CIT(A) for verification. It was submitted that these expenses are incurred wholly and

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exclusively for the business of the assessee, and no disallowance is warranted. The Id. CIT(A) observed that various expenses are not paid by cheques and payments have been claimed on self made vouchers, and complete verifications of such expenses is not possible. Therefore, to meet the end of justice, the Id. CIT(A) restricted the additions to 5% of these expenses. Still being aggrieved by the appellate order passed by Id. CIT(A), the assessee has now filed second appeal before tribunal. Both the rival parties have submitted before the Bench, that similar additions were made in ITA No. 76/Alld/2013 for ay: 2006-07 , and the facts being similar decision in ITA No. 76/Alld/2013 for ay: 2006-07 shall apply mutatis mutandis to this appeal in ITA No. 154/Alld/2013 for ay: 2009-10. We have observed that the facts are similar on this issue in ITA no. 76/Alld/2013 for ay: 2006-07 to facts in appeal for impugned assessment year in ITA No. 154/Alld/2013 for ay: 2009-10, and our decision in ITA no. 76/Alld/2013 for ay: 2006-07 shall apply mutatis mutandis to this issue in the impugned assessment year 2009-10 in ITA no. 154/Alld/2013. Our decision in ITA no. 76/Alld/2013 for ay: 2006-07 is reproduced hereunder:

*“12.Ground No. 4 and 5 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance of expenses to the tune of Rs.3,41,407/- made by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 1,77,709/-, being additions made towards expenses claimed to be incurred by the assessee, under the head sale promotion expenses, telephone expenses, travelling expenses , freight expenses, conveyance expenses and vehicle running and maintenance expenses , being @ 5% of these expenses stood confirmed by Id. CIT(A) , as against additions made by the AO @10% of these expenses . The AO observed that as discussed in the preceding assessment year in the case of the assessee itself, it has been observed that the assessee is inflating expenses as per trial balance found and seized during search conducted by Revenue u/s 132(1) on 27.08.2009. While examining the books of accounts*

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*produced during the course of assessment year, the AO observed that **the vouchers for the freight expenses, office and printing and stationary expenses are not fully supported by pucca bills and vouchers for expenses of travelling and conveyance have not been produced.** The AO sought explanation from the assessee. **The assessee did not produced any vouchers nor any submissions were made.** The AO disallowed expenses @10% claimed in the Profit and Loss account, under the heads sale promotion expenses, telephone expenses, travelling expenses , freight, expenses conveyance expenses and vehicle running and maintenance expenses, and an aggregate amount of Rs. 3,41,407/- stood added by the AO to the income of the assessee. Being aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A) and submitted that the AO erred in estimating expenses @10% of sale promotion expenses, telephone expenses, travelling expenses , freight, expenses conveyance expenses and vehicle running and maintenance expenses, and such type of ad-hoc disallowance is not permissible. The assessee submitted ledger account copies of these expenses before Id. CIT(A) for verification. It was submitted that these expenses are incurred wholly and exclusively for the business of the assessee, and no disallowance is warranted. The Id. CIT(A) observed that various expenses are not paid by cheques and payments have been claimed on self made vouchers, and complete verifications of such expenses is not possible. Therefore, to meet the end of justice, the Id. CIT(A) restricted the additions to 5% of these expenses. Still being aggrieved, the assessee has now filed second appeal before tribunal. The Id. Counsel for the assessee submitted that additions were made on estimated basis. Our attention was drawn to relevant para's of assessment order and appellate order passed by Id.CIT(A), and it was submitted that the AO made additions by estimating disallowance @10% of these expenses, which was reduced by Id. CIT(A) to 5% of these expenses . It was submitted that no disallowance of expenses is warranted on estimation basis , and no specific defects were pointed out by both AO as well Id. CIT(A). It was submitted that complete details were filed by assessee before Id. CIT(A) and our attention was drawn to page 12 of the paper book , wherein vide para V it is stated(vide handwriting additions) that vide page 31-248(copies not filed with tribunal), the details were furnished. It was submitted that the ITAT,'SMC' Bench, while adjudicating appeal for ay: 2004-05 has deleted the additions, in ITA No. 69/Alld/2013 vide appellate order dated 2.2.2016 ,wherein some pucca bills could not be produced. The prayers were made by Id. Counsel for the assessee that the matter can go back to the file of the AO for fresh adjudication on merits. On the other hand, the Id. CIT-DR submitted that no details were furnished before the AO, while it was submitted before Id.*

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*CIT(A). It was submitted that Id. CIT(A) has given categorical finding that the payments have been claimed on self made vouchers and complete verification of these expenses is not possible. The Id. CIT-DR relied on the judgment and order passed by Hon'ble Allahabad High Court in the case of PCIT v. RimjihimIspat Limited, reported in (2017) 81 taxmann.com 86(All. HC) .The Id. CIT-DR also concurred that matter can go back to AO for re-adjudication on merits. After hearing both the parties and perusing the material on record, we are of the considered view that, in the interest of justice, the matter need to be restored to the file of the AO for verification of claim for expenses to have been incurred by the assessee. These expenses are claimed to have been incurred by assessee which are claimed as deduction from the income chargeable to tax, and the onus is squarely on the assessee to satisfy the mandate of Section 37(1) that the expenses were incurred wholly and exclusively for the purposes of the business, as well satisfy the mandate of other applicable provisions of the 1961 Act. The assessee did not provide the details before the AO, and for the first time claimed to have produced details before Id. CIT(A)(details not produced before tribunal). These were additional evidences filed by assessee before Id. CIT(A), who partly accepted the claim of the assessee. No remand report was called by Id. CIT(A), and part relief was given by Id. CIT(A) while partly additions were confirmed/sustained by Id. CIT(A). The AO did not get opportunity to examine and verify these additional evidences, on merit. Presently, we are seized of the assessee's appeal w.r.t. grievance of the assessee as to sustainability of addition @5% of these expenses claimed to have been incurred by the assessee under the head sale promotion expenses, telephone expenses, travelling expenses , freight, expenses conveyance expenses and vehicle running and maintenance expenses . However, it is equally true that no specific identification of the expenses which need to be disallowed keeping in view failure of the assessee to satisfy the mandate of the provisions of the 1961 Act , was pointed out by both Id. CIT(A) as well the AO, and disallowance was done on estimation on the grounds that cash expenses based on self made vouchers were incurred and claimed as deduction, which could not be verified. On the part of the assessee, was also the failure to furnish the complete details and to discharge onus cast on the assessee. In our considered view, in the interest of justice, one more opportunity is to be given to the assessee , as well to the AO for examination and verification of these expenses as these evidences were so far not produced before the AO, for its examination on merits by the AO. We are restoring the matter back to the file of AO for re-adjudication on merits in accordance with law, after giving proper and adequate*

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*opportunity of being heard to the assessee. We clarify that we have not commented on the merits of the issue. We order accordingly.”*

We reiterate that the facts are similar on this issue in ITA no. 76/Alld/2013 for ay: 2006-07 to facts in appeal on this issue for impugned assessment year in ITA No. 154/Alld/2013 for ay: 2009-10 , and our decision in ITA no. 76/Alld/2013 for ay: 2006-07 shall apply mutatis mutandis to the adjudication of this issue in the impugned assessment year 2009-10 in ITA no. 154/Alld/2013, with similar directions .We order accordingly.

9. In the result , appeal of the assessee for assessment year 2009-10 stands partly allowed for statistical purposes.We order accordingly.

**Appeal No. ITA No. 373/Alld/2013-Assessment Year 2010-11**

10. We shall now take up appeal of the assessee for ay: 2010-11.The brief facts of the case are that the assessee company is engaged in the business of purchase and sale of spices and masala and other food items manufactured by Bhola Food Products Private Limited. In pursuance to authorization issued u/s 132 , a search and seizure operations were carried out by Revenue on 27.08.2009 in the Business and Residential premises of group cases of Kesarwani Zarda Bhandar , Sahson, Allahabad and its partners and directors. The assessee company is sister concern of M/s Kesarwani Zarda Bhandar. Notice u/s 142(1) was issued by AO, on 31.01.2011, which was claimed by AO to have been duly served on Director of the assessee company on 03.02.2011. In compliance thereof, the assessee company filed return of income disclosing returned income of Rs. 20,11,748/- on

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23.02.2011. Thereafter ,the AO issued notice u/s 143(2) on 01.03.2011 , which was claimed by AO to have been duly served on the assessee. Statutory notices u/s 142(1) were issued by AO, from time to time. The assessee participated in assessment proceedings. The AO had observed in his assessment order, that no books of accounts were found during the course of search, but during assessment proceedings books of accounts were produced by the assessee, which were perused and examined by the AO. The assessment proceedings culminated into an assessment order dated 28.12.2011 passed by AO u/s 143(2) , wherein income of the assessee assessed by AO was Rs.87,86,990/- as against returned income of Rs. 20,11,748/-. The assessee being aggrieved filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A) vide appellate order dated 30.09.2013 (Appeal No. 511/JCIT/CC/Alld/11-12). Aggrieved by appellate order dated 30.09.2013 passed by Id. CIT(A), the assessee has filed an appeal with tribunal. Both the rival parties advanced their arguments before the Division Bench of ITAT, Allahabad Bench, in the proceedings conducted in Open Court hearing through physical hearing mode. Now, we propose to dispose of the appeal filed by the assessee on merits in accordance with law for ay: 2010-11 , ground wise.

11.At the outset Id. Counsel for the assessee stated before the Bench , that the assessee does not want to peruse grounds of appeal number 1 raised by it in memo of appeal filed with tribunal, and prayers were made before the Bench by Id. Counsel for the assessee to dismiss ground number 1 raised by the assessee before tribunal , as not being pressed. The Ld. CIT-DR has no objection, if Ground No. 1 is dismissed , as not being pressed. After hearing both the parties, we

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dismiss Ground No. 1 raised by assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

12. Ground No. 2 and 3 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance of marketing expenses to the tune of Rs.19,94,705/- made by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 10,23,076/- , being additions made by invoking provisions of Section 40(a)(ia) read with Section 194C of the 1961 Act. We have already adjudicated this issue , while adjudicating appeal for ay: 2009-10, and facts being similar in this year, our decision for ay: 2009-10 shall apply mutatis mutandis to the issue raised by assessee in this year. The issue is restored to the file of the AO with similar directions as were given by us for ay: 2009-10 . We order accordingly.

13. Ground No. 4 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance by AO of expenses to the tune of Rs.3,58,700/- , which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 1,79,350/-, being additions made towards expenses claimed to be incurred by the assessee, under the head freight expenses , office expenses, printing and stationary and traveling and conveyance, being disallowance @ 5% of these expenses being confirmed by Id. CIT(A) , as against additions made by the AO @10% of these expenses . We have already adjudicated this issue , while adjudicating appeal for ay: 2009-10, and facts being similar in this year, our decision for ay: 2009-10 shall apply mutatis mutandis to the issue raised by assessee in this year. The issue is restored to the file of the AO for fresh adjudication with similar directions as were given by us for ay: 2009-10. We order accordingly.

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14. In the result appeal filed by assessee in ITA No. 373/Alld/2013 for assessment year 2010-11 stand partly allowed for statistical purposes. We order accordingly.

15. In the result, both the appeals filed by assessee in ITA No. 154/Alld/2013 & 373/Alld/2013 for assessment year 2009-10 and 2010-11 stands partly allowed for statistical purposes. We order accordingly

Order pronounced in Open Court on 01/02/2023 at Allahabad, U.P.

*Sd/-*  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

*Sd/-*  
**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**

DATED: 01/02/2023

Copy forwarded to:

1. Appellant –M/s KesarwaniMarketing Private Limited , Sahson, Allahabad, U.P..
2. Respondent –The JCIT(OSD), Central Circle, Allahabad , U.P.
3. The CIT(A) –AayakarBhawan, Civil Lines, Allahabad, U.P.
4. The CIT, Allahabad, U.P.
5. The Id. CIT-DR. ITAT, Allahabad, U.P.
6. The Guard File

By Order

P.S.