

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.159/Alld./2013, 76/Alld./2013, 77/Alld/2013 & 78/Alld/2013.

Assessment Year(s): 2005-06,2006-07,2007-08 & 2008-09

M/s. Kesarwani Marketing Private Limited Sahson, Allahabad U.P.	v.	Joint Commissioner Of Income Tax (OSD), Central Circle, Allahabad.
PAN:AACCK2094H		
(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 four 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) : 2005-06 to 2008-09.

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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. 159/Alld./2013-Grounds of Appeal for ay; 2005-06

“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. 1,48,02,960.00 for the year under consideration as against the returned income of Rs. 13,51,050.00 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. 5,07,352.00 out of the addition of Rs. 27,76,936.00 (as per Para 5 of the assessing officer's order) as maintained by the Commissioner of Income Tax (Appeals) as per Para 8.2 of his order under the head "Difference in creditors for goods" is highly unjustified and uncalled for because the entire working and figures/details were not correctly taken nor considered properly hence the addition as maintained is unwarranted. In this regard the facts discussed by the two lower authorities in their orders were not considered in appropriate manner.

4. That in any view of the matter the addition of Rs. 5,07,352.00 as maintained by the Commissioner of Income Tax (Appeals) as per Para 8.2 of his order is unjustified, incorrect and illegal in the facts and circumstances of the case.

5. That in any view of the matter the addition of Rs. 15,39,256.00 made by the assessing officer as per Para 6 of the assessment order and confirmed by the Commissioner of Income Tax (Appeals) as per Para 9.2 of his order is highly unjustified in so far as it is not correct to say that the assessee claimed bogus

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expenses and the allegation that the appellant failed to reconcile the differences between audited account and seized trial balance is not correct hence the addition as made and confirmed is unwarranted in the facts and circumstances of the case.

6. That in any view of the matter addition of Rs. 1,86,513.00 made as per Para 8 of the assessing officer's order and confirmed by the Commissioner of Income Tax (Appeals) as per Para 11.2 of his order on the allegation that the payment was made without having cash balance and considering the same as unexplained expenditure is highly unjustified in so far as both the lower authorities failed to consider the real facts of the case and also failed in ascertaining the source of income when the expenditure was incurred from definite source, hence the addition is unwarranted and liable to be deleted.

7. That in any view of the matter interest as charged under different section of the income tax act is highly unjustified.

8. 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. 76/Alld/2013-Grounds of Appeal for ay:2006-07

“1. That in any view of the matter assessment was framed under Section 153AB of the Act without any search material therefore the declared income is liable to be accepted in the facts and circumstances of the case and Commissioner of the income Tax (Appeals) is unjustified in confirming the additions/disallowances.

2. That in any view of the matter action under Section 132(1) of the income Tax Act in consequence to which the notice issued under section 153A of the Act without any incriminating material or any undisclosed income found during the course of search the block assessment made determining the income of Rs. 16,74,550.00/- as against returned income Rs. 8,42,480.00/- is illegal, arbitrary and against the provisions of the Income Tax Act.

3. That in any view of the matter while passing the order of the learned Commissioner of Income Tax (Appeals) totally failed to consider the facts of the case, paper book filed and argument advanced and the total relief prayed for has been negative and a very small relief has been considered to be allowed by ignoring the judicial norms which is highly unjustified and incorrect.

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- 4. That in any view of the matter disallowance of Rs. 1,77,709/- maintained on account of sale promotion, telephone, travelling, freight, conveyance and vehicle running and maintenance at the rate of 5% when there is no provision in the Income Tax Act to maintain disallowance on percentage basis is highly unjustified and illegal.*
- 5. That in any view of the matter the expenditures claimed in profit and loss account in connection with the business which are business expenditures and such expenditures are recorded in books in regular course and the books entries were accepted, expenditures are supported by vouchers, hence disallowance as maintained @5% is highly unjustified and illegal.*
- 6. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.*
- 7. That in any view of the matter penal interest charged under different sections of the income Tax Act is highly unjustified in the facts and circumstances of the case.”*

ITA no. 77/Alld/2013-Grounds of Appeal for ay:2007-08

- “1. That in any view of the matter assessment was framed under Section 153AB of the Act without any search material therefore the declared income is liable to be accepted in the facts and circumstances of the case and Commissioner of the Income Tax (Appeals) is unjustified in confirming the additions/disallowances.*
- 2. That in any view of the matter action under Section 132(1) of the Income Tax Act in consequence to which the notice issued under Section 153A of the act without any incriminating material or any undisclosed income found during the course of search the block assessment made determining the income at Rs. 67,35,280.00/- as against returned income of Rs. 6,74,790.00/- is illegal, arbitrary and against the provisions of the Income Tax Act.*
- 3. That in any view of the matter while passing the order the learned Commissioner of Income Tax (Appeals) totally failed to consider the facts of the case, paper book filed and arguments advanced and the total relief prayed for has been negative and a very small relief has been consider to be allowed by ignoring the judicial norms which is highly unjustified and incorrect.*

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4. That in any view of the matter disallowance as made and added by the Assessing Officer of Rs. 12,63,138/- claimed as marketing expenses and as per Para 5 of the assessment order and the disallowance of Rs. 3,98,526/- under the various heads of business expenditures maintained by the Commissioner of Income Tax (Appeals) is highly unjustified as the provision of Section 194C of the Income Tax Act is not applicable hence the addition under Section 40(a)(ia) of the income tax Act is unwarranted.

5. That in any view of the matter disallowance under the head marketing expenditure made by the assessing officer and partly maintained by the Commissioner of Income Tax (Appeals) is highly unjustified in so far as the expenditure was incurred and not appearing in the balance sheet under the head payable hence the provision of Section 40(a)(ia) of the income tax act is not applicable.

6. That in any view of the matter disallowance of Rs. 1,79,350/- maintained by the Commissioner of Income Tax (Appeals) @ 5% as per para 9.2 of his order is highly unjustified in so far as the expenditures relate to the business and are recorded in books in regular manner, hence disallowance is unwarranted.

7. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.

8. That in any view of the matter penal interests charged under different sections of the income tax act is highly unjustified in the facts and circumstances of the case.”

ITA no. 78/Alld/2013-Grounds of Appeal for ay:2008-09

“1. That in any view of the matter assessment was framed under Section 153AB of the Act without any search material therefore the declared income is liable to be accepted in the facts and circumstances of the case and Commissioner of the Income Tax (Appeals) is unjustified in confirming the additions/ disallowances.

2. That in any view of the matter action under Section 132(1) of the Income Tax Act in consequence to which the notice issued under Section 153A of the act without any incriminating material or any undisclosed income found

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during the course of search the block assessment made determining the income at Rs. 80,85,940.00 as against returns income of Rs. 18,19,136.00 is illegal, arbitrary and against the provision of the Income Tax Act.

3. That in any view of the matter while passing the order of the learned Commissioner of Income Tax (Appeal) totally failed to consider the facts of the case, paper book filed and arguments advanced and the total relief prayed for has been negated and a very small relief has been considered to be allowed by ignoring the judicial norms which is highly unjustified and incorrect.

4. That in any view of the matter addition of Rs. 49,557/- made by assessing officer by invoking the provision of Section 68 of the Income Tax Act is highly unjustified in the facts and circumstances of the case as the appellant discharged the burden as required and action of the assessing officer and his observations in the course as confirmed by the Commissioner of Income Tax (Appeals) are not correct in the facts and circumstances of the case.

5. That in any view of the matter addition of Rs. 7,48,442/- as maintained by the Commissioner of Income Tax (Appeal) as per 9.2 of his order is highly unjustified in so far as the expenditure claimed under the head business expenditure and provision of Section 194C of the Income Tax Act is not applicable therefore the provisions of Section 40(a)(ia) of the income Tax Act are not attracted hence the addition was unwarranted and illegal.

6. That in any view of the matter addition of Rs. 2,45,832/- maintained by the Commissioner of Income Tax (Appeal) as per 11.2 of the order is highly unjustified in so far as the expenditure claimed under the head freight, sale promotion, telephone expenses, conveyance are genuine business expenditures recorded in books in regular course,. There is no provision in the act to disallow the expenditures on percentage basis as per whims and wishes of the lower authorities.

7. That in any view of the matter the assessee reserves his right to take any fresh ground of appeal before hearing of the appeal.

8. That in any view of the matter penal interests charged under different sections of the income tax act is highly unjustified in the facts and circumstances of the case.”

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ITA No. 159.Alld/2013-A.Y.: 2005-06

3. First , we shall take up appeal of the assessee for ay: 2005-06. 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. 13,51,050/- 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 the course of 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 as assessed by AO was Rs. 1,48,02,960/- as against returned income of Rs. 13,51,050/-. The assessee being aggrieved filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A) , vide appellate order dated

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30.01.2013(506/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 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: 2005-06, 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 and 2 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 and 2 raised by the assessee before tribunal , as not being pressed.The Ld. CIT-DR has no objection, if Ground No. 1 and 2 are dismissed , as not being pressed. After hearing both the parties, we dismiss Ground No. 1 and 2 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.27,76,936/- as was made by the AO which disallowance stood reduced by Id. CIT(A) to Rs. 5,07,352/- , wherein the appeal of the assessee was partly allowed by Id. CIT(A). This disallowance concerns itself with difference in the liabilities as were shown in the Balance Sheet filed by assessee with return of income and the trial balance seized during search operations marked as Annexure LP-3/page 18-26 , which seized trial balance is reproduced by AO at page number 4-12 of assessment order. This document being seized trial balance of the assessee as at 31.03.2005 was found and seized from Residential premises

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404, Gokul Apartment , Kanpur. The AO observed that as per aforesaid seized document as well in the Balance Sheet filed with the return of income , show investment in FDR of Rs. 15,00,000/-. In order to examine sources of investment in FDR, the AO examined the liabilities created in Balance Sheet. The AO while examining the liabilities as shown in Balance Sheet filed with Return of income with the seized material by way of trial balance, observed that the assessee has created bogus liabilities , as under:

Liabilities Shown	As per seized trial balance (In Rs.)	As per balance sheet filed with the return (In Rs.)
Unsecured Loan	5,00,000	15,23,406
AD World	58,247	2,50,965
Saturn Advertising Private Limited	31,580	40,921
Bhola Food Products Private Limited	28,30,454	26,28,496

The AO observed that Sundry Creditor in the name of Bhola Foods Private Limited as on 31.03.2005 was shown at Rs. 26,28,496 in the Balance Sheet filed with Return of income, while the same is shown to be Rs. 28,30,454 as per seized trial balance . The AO , after examination of books of accounts, observed that the balance of Bhola Foods Private Limited as on 31.03.2005, ought to have been Rs. 53,518/- , worked out by AO in assessment order,as detailed hereunder:

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Opening Balance as on 01.04.2004	Rs. 5,46,870/-
Purchases made during the year	Rs. 2,47,27,380/-
Payments made during the year as per Annexure B Of clause 18 of Form No. 3CD	(-) Rs. 2,52,20,732/-

Balance of Bhola Foods Private Limited which should Have been shown as on 31.03.2005	Rs. 53,518/-

The balance shown by assessee as payable to M/s Bhola Foods Private Limited as on 31.03.2005 in the audit report was Rs. 26,28,496/- , while balance payable was Rs. 28,30,454/- as on 31.03.2005 as per seized trial balance.

The AO further observed that there is a difference of liability towards unsecured loan wherein bogus liability of Rs. 10,23,406/- has been shown. The AO asked assessee to explain the aforesaid differences. The assessee submitted reconciliation chart as under:

“ Opening Balance as on 1-4-2004(532870+14000)	Cr. 5,46,870.00
Add: Net Purchases during the year	Cr. 2,52,20,732.92
Factory Rent	Cr. 12,000.00
Factory Electricity Charges	Cr. 3,600.00
Office Electricity Charges	Cr. 5,194.00
Less: Payments & Dr. Adjustments	Dr. 2,31,65,900.00

Closing Balance as on 31-3-2005(2614496.92+14000)	Cr.26,28,496.92”

The AO observed that the assessee did not furnish any reply on differences of amount shown in the trial balance of Rs. 28,30,454/- in the name of Bhola Foods Private Limited in seized trial balance as against the balance of Rs. 26,28,496.92

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shown in the Balance Sheet. The assessee also did not submit the evidence that payment of Rs. 2,52,20,732/- which has been stated in the audit report to have been paid by assessee to Bhola Foods Private Limited as against payment of Rs. 2,31,65,900/- shown in the reconciliation chart. The AO further observed that even with respect to differences in the other heads, the assessee failed to show as to why bogus liability was created under the different heads as mentioned in the chart. The AO made addition of Rs. 27,76,936/- as the assessee failed to explain aforesaid differences in creditors for goods. Aggrieved by assessment framed by the AO, the assessee filed first appeal, and Id. CIT(A) after considering replies filed by assessee granted relief of Rs. 22,69,584/-, while Id. CIT(A) confirmed the additions to the tune of Rs. 5,07,352/- . The addition confirmed by Id. CIT(A) was firstly on account of difference of Rs. 14,000/- on account of addition made in the opening balance. The Id. CIT(A) observed from the perusal of account of Bhola Foods Private Limited in the books of the assessee, that opening credit balance is Rs. 5,32,870/- while the assessee has claimed the opening balance as at 01.04.2004 at Rs. 5,46,870/-, and the assessee has added Rs. 14,000/- in the opening balance without giving any supporting evidence. Secondly, Id. CIT(A) also observed that the assessee has claimed that it has made purchases to the tune of Rs. 2,52,20,732/- from Bhola Foods Private Limited as shown in Annexure-B clause 18 of Form No. 3CD which the assessee claimed is inclusive of sale tax, while the figure of sale in the books of Bhola Foods Private Limited to the tune of Rs. 2,47,27,380/- is exclusive of sales tax, but as per Id. CIT(A) this contention of the assessee is not proved, and hence the above figure of purchase in the books of the assessee was held not to be genuine, and the

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differential of Rs. 2,52,20,732/- - Rs. 2,47,27,380/- , amounting to Rs. 4,93,352/- was held to be addition sustained on this differential. Thus , on both the counts as aforesaid additions to the tune of Rs. 5,07,352/- (Rs. 14,000/- + Rs. 4,93,352/-) stood confirmed/sustained by Id. CIT(A). Being aggrieved by appellate order passed by Id. CIT(A), the assessee has filed an appeal before tribunal against the additions as were sustained by Id. CIT(A). The Id. Counsel for the assessee opened arguments before the Bench and submitted that the assessee is marketing products manufactured by Bhola Foods Private Limited. He drew our attention to the relevant para's of assessment order passed by the AO as well to the relevant para's of the appellate order passed Id. CIT(A), concerning the additions on account of allegation of bogus liability. It was submitted that Id. CIT(A) sustained the additions to the tune of Rs. 5.07 lacs. Our attention was drawn to page 60-73 of paper book filed by the assessee, to the reconciliation statement and account of Bhola Foods Private Limited in the Books of accounts of the company as well our attention was drawn to audited P&L Account of Bhola Foods Private Limited for the financial year 2004-05. The Id. Counsel submitted that the difference is mainly due to the treatment of VAT by assessee and the Bhola Foods Private Limited, and Id. CIT(A) sustained the addition as the assessee could not demonstrate the said contention properly. It was submitted that the assessee was making purchases from Bhola Foods Private Limited and is accounting the said purchases inclusive of VAT/sales tax, while Bhola Foods Private Limited is selling the products to assessee and accounting for in its books exclusive of VAT/sales tax. Thus, there is a difference between sales reported by Bhola Foods Private Limited and the purchases reported by the assessee being made from Bhola

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Foods Private Limited, which is mainly due to the differential treatment of sales tax/VAT in their respective books of accounts, was the contention of Id. Counsel for the assessee before the Bench . It was submitted by Id. Counsel for the assessee that the assessee brought this to the knowledge of Id. CIT(A) in its written submissions filed but Id. CIT(A) did not properly appreciated the contentions of the assessee. The Id. Counsel for the assessee submitted that the matter can be restored to the file of the AO for verification, and the assessee will demonstrate and prove its contentions before AO that there is no difference between the purchases reported by the assessee and sales reported by Bhola Foods Private Limited, and the difference has arisen mainly due to treatment of sales tax/VAT in the books of accounts. Our attention was drawn to page 136 of Paper Book, where audited Profit and Loss account of the assessee is placed. The Id. CIT-DR on the other hand submitted that the search took place on 27.08.2009 and the trial balance was found and seized during the search operations which pertained to year ended 31.03.2005 i.e. 4 years prior to search and how it can be said that the audited accounts are reliable in the teeth of seized trial balance. The Id. CIT-DR relied upon appellate order passed by Id. CIT(A) . After hearing both the parties and perusing the material on record, we are of the considered view that the matter need to be restored to the file of the AO for verification of claim of the assessee on merits that the difference is majorily due to accounting treatment meted out to purchases made by assessee from Bhola Foods Private Limited which are inclusive of sales tax/VAT, while the seller Bhola Foods Private Limited is accounting for sales made to assessee exclusive of sales tax/VAT. The seized document is recovered from the assessee during search operations carried out by

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Revenue u/s 132(1) on 27.08.2009. The presumption u/s 132(4A) and 292C shall apply and contents of the documents viz. seized trial balance shall be presumed to be true and correct, 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 and correct. This presumption is rebuttable, but onus is squarely on the assessee. There is a difference in amounts as is reflected in the seized trial balance as on 31.03.2005 and the audited balance sheet as at 31.03.2005. The search was conducted on 27.08.2009, and the documents pertain to year ended 31.03.2005 i.e. 4 years prior to the date of search and there are difference between the balance as shown in the seized document i.e. seized trial balance, and the audited accounts for the year ended 31.03.2005, and it is for assessee to discharge onus to rebut the presumption u/s 132(4A) and 292C by cogent evidences/explanations. The onus is squarely on the assessee to rebut the presumption. We are of the considered view that, in the interest of justice, one more opportunity needs to be granted to the assessee to prove its contentions, so that correct income is brought to tax. We are restoring the matter back to 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.

6. Ground No. 5 raised by assessee in memo of appeal filed with tribunal concerns itself with allegation of bogus expenses to the tune of Rs. 15,39,256/- claimed by the assessee, as there was difference between the aforesaid seized trial balance during search operations marked as Annexure LP-3/page 18-26 and the Expenses

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as claimed in the audited accounts filed with Return of income. The AO observed from perusal of Profit and Loss Account that the assessee has inflated expenses in comparison to figures mentioned in the seized trial balance. The details as reproduced by AO in the assessment order are as under:

Indirect Expenses	As per seized trial balance (In Rs.)	As per balance sheet filed with the return (In Rs.)
Advertisement and Publicity	9,11,223	17,47,471
Computer repair and maintenance	8,300	11,700
Diesel Expenses	42,181	58,283
Discount	75,664	2,20,474
Freight	4,23,157	4,33,909
Insurance	9,864	14,756
Salary	6,95,843	7,97,059
Sales Promotion	10,400	2,70,110
Scheme	82,000	1,10,882
Telephone	47,662	54,072
Travelling and conveyance(sales)	6,99,348	8,20,580
Total	30,05,642	45,39,296

The AO observed from the above chart that it is clear that the assessee has claimed bogus expenses to the tune of Rs. 15,33,654/-. The AO further observed while examining of books of accounts, that some of the vouchers are not fully vouched and produced, and most of the vouchers are self made vouchers. The AO disallowed expenses of Rs. 15,33,654/- and added the same to the income of the assessee as bogus expenses. Further , the AO observed that charity and donation expenses claimed of Rs. 5,602/- are not allowable expenses and were disallowed

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by the AO , vide assessment order dated 28.12.2011 passed u/s. 153A(b). Aggrieved by assessment framed by the AO, the assessee filed first appeal before Id. CIT(A) , and submitted that seized trial balance is of Kanpur Branch only and reflect incomplete transaction. It was submitted that audited accounts are genuine and authentic. The assessee explained before Id. CIT(A) that in case of advertisements , the payments are by cheque and even income-tax was deducted at source(TDS). The assessee made contentions that the additions are not sustainable and need to be deleted. The Id. CIT(A) dismissed the appeal of the assessee, by holding that contents of trial balance cannot be disbelieved unless otherwise proved. Reference was drawn to Section 292C, and Id. CIT(A) held that the assessee failed to reconcile the difference. Aggrieved by appellate order passed by Id. CIT(A), the assessee has now filed an appeal with tribunal. The Id. Counsel for the assessee submitted that search took place on 27.08.2009, and seized trial balance was found and seized by Revenue. Our attention was drawn to relevant para's of the assessment order and of the Id. CIT(A) order. It was submitted that seized trial balance is reproduced by AO in its assessment order. It was submitted by Id. Counsel for the assessee that the said seized trial balance represented Kanpur transaction's of the assessee which is a branch office(BO) of the assessee, and Head Office(HO) is situated at Sahson, Allahabad of which transactions are not included in the said seized trial balance, while audited accounts of the company included consolidated transactions of both Head Office(HO) and Branch office(BO). The Id. Counsel for the assessee drew our attention to ledger accounts of these expenses , which are placed in paper book at page 74-130. He also drew our attention to the audited accounts , which are

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placed in paper book at page 130-148 .The Id. Counsel for the assessee submitted that the seized trial balance only included transactions of Kanpur BO. The Id. Counsel for the assessee submitted that the matter can be restored to the file of the AO for verification. The Id. CIT-DR on the other hand submitted that the search took place on 27.08.2009 and the trial balance found and seized during the search operations were for the year ended 31.03.2005 i.e. 4 years prior to search and how it can be said that the audited accounts are reliable. It was submitted by Id. CIT-DR that at Kanpur, the assessee had administrative office at Kanpur and not BO at Kanpur. The Id. CIT-DR relied upon the appellate order passed by Id. CIT(A) and prayed for confirming the addition . After hearing both the parties and perusing the material on record, 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 verification of claim of the assessee that the seized trial balance reflected transaction of Kanpur B.O., while it did not included transactions of Head office situated at Sahson,Allahabad transactions, while audited accounts was prepared after consolidation of transactions of Sahson Allahabad(HO) as well Kanpur BO transactions. There is some merit in the contention of the assessee, as on perusal of the seized trial balance as reproduced in the assessment order, we have observed that there is an credit entry in the name of 'Head Office' and credit balance of Rs.7,99,113.00(balance not completely legible) against it is reflected , which strengthen the view of the assessee that this seized trial balance reflected transactions of Kanpur B.O., but in any case this is a matter of verification of facts. The seized document is recovered from the assessee during search operations carried out by Revenue u/s 132(1) on 27.08.2009. The presumption u/s 132(4A)

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and 292C shall apply and contents of the documents viz. seized trial balance shall be presumed to true and be correct and it is for the assessee to rebut the same by cogent evidences/explanations. There is a difference in amounts in the seized trial balance as on 31.03.2005 and the audited Profit and Loss as at 31.03.2005, of the expenses as per chart reproduced above, wherein audited accounts reflected higher expenses by Rs. 15,33,654/- vis-à-vis expenses reflected in the seized trial balance. The search was conducted on 27.08.2009, and the documents pertain to year ended 31.03.2005 i.e. 4 years prior to the date of search and there are difference in the expense as shown in the seized document i.e. trial balance and the audited accounts for the year ended 31.03.2005, and it is for assessee to discharge onus to rebut the presumption u/s 132(4A) and 292C by cogent evidences/explanations. The onus is squarely on the assessee to rebut the presumption. 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 concerns itself with addition of Rs. 1,86,513.00 made by AO and as confirmed by Id. CIT(A) on the allegation that the payments were made in cash by assessee without having cash balance in the cash book. From Page 1-59 of LP-11 found and seized from the Premises C-11, Panki Industrial Area , Site-1 , Kanpur, is cash book of the assessee. The AO observed from various transactions recorded in the seized cash book, that the assessee made cash payments while there is no cash balance available as per cash book to make the aforesaid payment, which led AO to make additions to the tune of Rs. 1,86,513/- wherein

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payments in cash were made but there was no cash available in the cash book. The details of such aforesaid payments are incorporated by AO in assessment order. The assessee was asked by AO to explain as to why this should not be treated as unexplained expenditure. The assessee submitted that inadvertently, some cash received from customers have been entered in cash book on wrong dates, which was later rectified. The AO rejected the contentions of the assessee, and made additions to income of the assessee to the tune of Rs. 1,86,513/- towards unexplained expenditure. The assessee filed first appeal with Id. CIT(A) and reiterated the same contentions. The assessee also submitted before Id. CIT(A), without prejudice, that peak negative balance was Rs. 1,07,527/- as on 06.11.2004 on page 27 of LP-11. The contentions of the assessee stood rejected by Id. CIT(A) keeping in view provision of Section 292C and the assessee having failed to rebut the presumption by cogent evidence. The Id. CIT(A) also rejected the theory of peak negative cash balance, as the assessee failed to explain that the same was circulating. Thus, the Id. CIT(A) sustained the additions. Still aggrieved, the assessee filed second appeal with tribunal. The Id. Counsel for the assessee reiterated its submission and submitted that opening cash balance was Rs. 69,014/- as on 01.04.2004 and closing balance was Rs. 80,132.50 as on 31.03.2005, as per audited accounts. The Id. CIT-DR relied upon appellate order passed by Id. CIT(A). After hearing both the parties and perusing the material on record, we are of the considered view that there is no merit in the contentions of the assessee. The document LP-11 page 1-59 was seized from assessee from Premises C-11, Panki Industrial Area, Site-1, Kanpur which is cash book of the assessee. The AO has made reference to specific cash payments made by the

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assessee on the particular date(s) on which there was no cash balance available in the cash book, but still the assessee has shown to have made cash payments. The details are incorporated by AO in assessment order All these cash payments without having cash balance available in the cash book on a particular day , aggregated to Rs. 1,86,513/-, which stood added by AO to the income of the assessee as unexplained expenditure. The assessee has claimed that there were some mistakes in recording of cash received from customers which were entered on the wrong days, which stood later rectified post search . There is no merit in the contention of the assessee, as the seized cash book reflected the cash payments date wise and cash payments were made even when there was no cash balance available in the cash book or the available cash balance was negative on a particular day in cash book , and now the assessee is claiming that there were some errors in posting of receipts from customers in cash book on the wrong dates , which obviously the assessee has come forward with such an explanation to wriggle out of the tax liability. The contentions of the assessee are rejected. The seized document is recovered from the assessee during search operations carried out by Revenue u/s 132(1) on 27.08.2009. The presumption u/s 132(4A) and 292C shall apply and contents of the documents viz. seized trial balance shall be presumed to be true and correct and it is for the assessee to rebut the same by cogent evidences/explanations which assessee fails to do so in this case. The search was conducted on 27.08.2009, and the seized documents being cash book pertain to year ended 31.03.2005 i.e. 4 years prior to the date of search and there are no cash balances or negative cash balances found in the cash book on a particular day, and still the assessee made cash payments, and it is for assessee to

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discharge onus to rebut the presumption u/s 132(4A) and 292C by cogent evidences/explanations which assessee fails to substantiate and the explanation of making entries of receipts from customer on the wrong dates is merely to come out of tax liability. The onus was squarely on the assessee to rebut the presumption, which assessee fails to do so. Thus, we hold that payments of Rs. 1,86,513/- were made towards unexplained expenditure of which sources for making such payment could not be explained by the assessee, and the same is held to be made out of undisclosed income of the assessee. Thus, this ground of appeal is decided against the assessee. We order accordingly.

3e Ground No.7 is regarding chargeability of interest consequent to assessment made by the AO u/s 234A, 234B and 234C, and is merely consequential in nature and accordingly stand dismissed. Reference is drawn to judgment and order of Hon'ble Supreme Court in the case of CIT v. Anjum S Ghaswala , reported in (2001) 119 Taxman 352(SC), decision of Hon'ble Supreme Court in the case of CIT v. Bhagat Construction Company Limited , reported in (2016) 383 ITR 9(SC) and also to decision of Hon'ble Supreme Court in the case of Kalyankumar Ray v. CIT, reported in (1991) 191 ITR 634(SC) . Thus, this ground of appeal raised by assessee stand dismissed. We order accordingly.

8. Ground No. 8 raised by assessee in memo of appeal is general in nature and stand dismissed. We order accordingly.

9. In the result , appeal of the assessee for assessment year 2005-06 stands partly allowed for statistical purposes. We order accordingly.

Appeal No. ITA No. 76/Alld/2013-Assessment Year 2006-07

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10. We shall now take up appeal of the assessee for ay: 2006-07. 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. 8,42,480/-, 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.16,74,550/- as against returned income of Rs. 8,42,480/-. The assessee being aggrieved by assessment framed by the AO filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A), vide appellate order dated 13.12.2012 (Appeal No. 507/JCIT/CC/Alld/11-12). Aggrieved by appellate order dated 13.12.2012 passed by Id. CIT(A), the assessee has filed an appeal with

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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: 2006-07, 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 1-3 and 6-7 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 1-3 and 6-7 raised by assessee before tribunal , as not being pressed. The Ld. CIT-DR has no objection, if Ground No. 1-3 and 6-7 are dismissed , as not being pressed. After hearing both the parties, we dismiss Ground No. 1-3 and 6-7 raised by assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

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

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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 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

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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. 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. Rimjhim Ispat 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

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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

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

13. In the result appeal filed by assessee in ITA No. 76/Alld/2013 for assessment year 2006-07 stand partly allowed for statistical purposes. We order accordingly.

Appeal No. ITA No. 77/Alld/2013-Assessment Year 2007-08

14. We shall now take up appeal of the assessee for ay: 2007-08. 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. 6,64,790/- on 18.10.2010. Thereafter,

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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.67,35,280/- as against returned income of Rs. 6,64,790/-. The assessee being aggrieved filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A) vide appellate order dated 20.12.2012(Appeal No. 508/JCIT/CC/Alld/11-12). Aggrieved by appellate order dated 20.12.2012 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: 2007-08 , ground wise.

15.At the outset Id. Counsel for the assessee stated before the Bench , that the assessee does not want to peruse grounds of appeal number 1-3 and 7 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 1-3 and 7 raised by the assessee before tribunal , as not being pressed. The Ld. CIT-DR has no objection, if Ground No. 1-3 and 7 are dismissed , as not being pressed. After hearing both

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the parties, we dismiss Ground No. 1-3 and 7 raised by assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

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

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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 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

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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 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)***

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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.

17. Ground No. 6 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 sales promotion expenses, telephone expenses, travelling and conveyance(sales) expenses , freight expenses , and vehicle running and maintenance expenses, being disallowance @ 5% of these expenses being

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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: 2006-07, and facts being similar in this year, our decision for ay: 2006-07 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: 2006-07. We order accordingly.

18. Ground No. 8 being general in nature, does not require separate adjudication , and hence stand dismissed. We order accordingly.

19. In the result appeal filed by assessee in ITA No. 77/Alld/2013 for assessment year 2007-08 stand partly allowed for statistical purposes. We order accordingly.

ITA No. 78/Alld/2013- Assessment Year 2008-09

20. We shall now take up appeal of the assessee for ay: 2008-09.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. 18,19,136/- on 18.10.2010. Thereafter ,

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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.80,85,940/- as against returned income of Rs. 18,19,136/-. The assessee being aggrieved filed first appeal with Id. CIT(A), which was partly allowed by Id. CIT(A) , vide appellate order dated 20.12.2012(Appeal No. 509/JCIT/CC/Alld/11-12). Aggrieved by appellate order dated 20.12.2012 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: 2008-09, ground wise.

21.At the outset Id. Counsel for the assessee stated before the Bench , that the assessee does not want to peruse grounds of appeal number 1-4 and 7 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 1-4 and 7 raised by the assessee before tribunal , as not being pressed. The Ld. CIT-DR has no objection, if Ground No. 1-4 and 7 are dismissed , as not being pressed. After hearing both

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the parties, we dismiss Ground No. 1-4 and 7 raised by assessee in memo of appeal filed with the tribunal as not being pressed. We order accordingly.

22. Ground No. 5 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance of Marketing expenses to the tune of Rs.15,71,921/- made by the AO which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 7,48,442/- , 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: 2007-08, and facts being similar in this year, our decision for ay: 2007-08 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: 2007-08. We order accordingly.

23. Ground No. 6 raised by assessee in memo of appeal filed with tribunal, concerns itself with disallowance by AO of expenses to the tune of Rs.4,91,664/- , which disallowance of expenses stood reduced by Id. CIT(A) to Rs. 2,45,832/-, being additions made towards expenses claimed to be incurred by the assessee, under the head sales promotion expenses, telephone expenses, travelling and conveyance(sales) expenses , freight expenses , and vehicle running and maintenance expenses , 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: 2006-07 and 2007-08, and facts being similar in this year, our decision for ay: 2006-07 and 2007-08 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

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similar directions as were given by us for ay: 2006-07 and 2007-08. We order accordingly.

24. Ground No. 8 being general in nature, does not require separate adjudication , and hence stand dismissed. We order accordingly.

25. In the result appeal filed by assessee in ITA No. 78/Alld/2013 for assessment year 2008-09 stand partly allowed for statistical purposes. We order accordingly.

26 In the result all the four appeals filed by assessee in ITA No. 159/Alld/2013 & 76-78/Alld/2013 for assessment year 2005-06 to 2008-09 stand partly allowed for statistical purposes. We order accordingly

Order pronounced on 01/02/2023 in Open Court 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 Kesarwani Marketing Private Limited , Sahson, Allahabad, U.P..
2. Respondent –The JCIT(OSD), Central Circle, Allahabad , U.P.
3. The CIT(A) –Aayakar Bhawan, Civil Lines, Allahabad, U.P.
4. The CIT, Allahabad, U.P.
5. The Id. CIT-DR. ITAT, Allahabad, U.P.
6. The Guard File