आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(Conducted through E-Court, Rajkot)

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sr. No.	ITA No.	Asstt. Year	Name of Appellant	Name of Respondent
1.	ITA No.310/Rjt/2015	2005-06	Parshwa Print Pack Pvt. Ltd., Plot No.1403, 4th Phase, GIDC Estate, Wadhwa City, Surendranagar-363035. **PAN: AACCP7013P**	A.C.I.T, Surendranagar Circle, Surendranagar.
2.	ITA No.248/Rjt/2013	2009-10	Parshwa Print Pack Pvt. Ltd., Plot No.1403, 4th Phase, GIDC Estate, Wadhwa City, Surendranagar-363035. **PAN: AACCP7013P**	D.C.I.T, Surendranagar Circle, Surendranagar.
3.	ITA No.311/Rjt/2020	2010-11	Parshwa Print Pack Pvt. Ltd., Plot No.1403, 4th Phase, GIDC Estate, Wadhwa City, Surendranagar-363035. **PAN: AACCP7013P**	A.C.I.T, Surendranagar Circle, Surendranagar.

Assessee by :	Shri Parth Mehta, A.R.
Revenue by :	Shri B. D. Gupta, Sr. DR

सुनवाईकीतारीख/**Date of Hearing : 16/01/2023**
घोषणाकीतारीख/**Date of Pronouncement: 29/03/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned three appeals have been filed at the instance of the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-7

(in short the "Ld. CIT(A)"), Ahmedabad arising in the matter of assessment order passed under Section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2005-06, 2009-10 & 2010-11.

2 First, we take up the appeal of the assessee bearing **ITA No.248/Rjt/2013**, for A.Y. 2009-10 as the lead year.

2.1 The assessee has raised the following grounds of appeal:

The appellant in the said matter presents this appeal on the following amongst the other grounds:

1) The CIT (A) erred in law as well as on the facts, as far as the question of the admission of the addition evidence was concerned and deciding the case overlooking the facts and evidences which were well on record. The appellant in the said matter here by craves before your honor that the said evidences may be admitted as the same tilts the balance of the justice solely in the favor of the assessee.

2) The CIT(A) erred in law as well as on facts in upholding the order of the AO in holding the genuine commission expenses paid by the assessee as bad without referring or disproving any of the condition as laid down in the section 37(1) of the act. The same expenses of Rs.952591/- may be allowed by your honor sir now.

3) The CIT(A) erred in law as well as on facts in upholding the order of the AO were by AO made addition on account of the genuine credits which were received by the assessee and for which the assessee had duly cleared the burden in form of proving the identity and the credit worthiness of the parties, as the income of the assessee in form of unexplained cash credit to the tune of Rs. 21 lakhs.

4) The CIT(A) erred in law as well as on facts in upholding the order of the AO were by AO has disallowed the interest paid on the amounts borrowed to the tune of Rs.2,52,000/- without even referring to the provision of the section 36(1)(iii) of the act. The same may be allowed by your honor now.

5) The appellant reserves the right to add amend, alter, delete all or any of the grounds of the appeal before the final hearing.

The appeal has been filed in due time and with the challan of the filling fees enclosed

3. The first issue raised by the assessee is that the learned CIT(A) erred in not accepting the additional evidences submitted before him.

4. The brief facts are that the assessee is a private limited company and engaged in the business of manufacturing of Corrugated Sheet & Boxes. The

assessee during the year claimed to have made payment of sales commission for Rs. 9,52,591/- to the following persons:

Sr. No.	*Name*	*Address*
1.	*Amit R Shah*	*Natha Vora Street, Wadwan City, Dist. Surendranagar*
2.	*Jitndra R. Shah*	
3.	*Rameshchandra G. Shah*	
4.	*Gunvantral G. Shah*	
5.	*Satishkumar G. Shah*	
6.	*Jigar Bipinbhai Shah*	*Bipinbhai Shah, 10, Benhran, Hall Lane, Mumbai-04*
7.	*Sahil Bipin Shah*	
8.	*Mehta Auto & Hardware Store (Bipinbhai Shah)*	

5. The AO to verify the veracity of the payment of sales commission issued notices under section 133(6) of the Act to the above mentioned parties but no response was received. Thereafter, a summon under section 131(1) of the Act was issued to all the parties. In response to the summon, the parties mentioned at serial Nos. 1 to 5 in the above table came forward and their statements were recorded. The AO found all the 5 person are family members and engaged in their personal businesses. Likewise, they also have family relationship with director of Assessee Company. The first two parties namely Shri Amit R Shah and Shri Jitendra R Shah (both are son of Rameshchandra G Shah party at serial no-3) in their statement out-rightly denied to have worked for the assessee for commission or procured any sales order from the customer for the assessee. They also stated that, whatever amount was credited in their bank account from the assessee was withdrawn in cash and returned back. The remaining parties Shri Rameshchandra G Shah, Gunvantrai G Shah and Satish Kumar G Shah also stated that they are not working as agent of the assessee company. However, it was accepted by them that they recommended the name of Assessee Company to some random persons seeking package materials supplier for which, they received some amount of commission from the assessee company. The AO in view of the above statement issued show cause notice to the assessee proposing to treat such payment of commission as bogus but the assessee did not reply.

5.1 Likewise, the AO also found that the books of the assessee company was credited for the unsecured loan received from certain parties, detailed as under:

Sr.No.	***Name of Depositor***	***Amount***
1.	*Amin Rehmanbhai Shaikh*	*3,00,000*
2.	*Kalpanaben Sharadbhai Sheth*	*3,00,000*
3.	*Mustak Rehmanbhai Shaikh*	*3,00,000*
4.	*Rehmanbhai Usmanbhai Shaikh*	*3,00,000*
5.	*Sharadbhai Durlabhai Sheth*	*3,00,000*
6.	*Binaben A. Shah*	*1,00,000*
7.	*Amit R. Shah*	*2,00,000*
8.	*Mitra Advertising*	*3,00,000*

5.2 The assessee in support of credit of unsecured loan furnished all the necessary details i.e. PAN, confirmation, bank statement of the parties, ledgers copies showing TDS deducted on interest payments. However, the AO noticed that there were cash deposits in the bank account of loan parties before transferring the amount to the assessee company. Therefore, the AO to verify the genuineness of the transactions and creditworthiness of the loan parties summoned all the above mentioned parties under section 131 of the Act. Out of 8 parties, 7 parties except M/s Mitra advertising came and recorded their statements. All the parties in their statement stated that they don't have enough source of income to lend money. They don't know the director or shareholder of the assessee company. They all said that they know one Shri Jitendra Shah who happened to be cousin of the director of the assessee company who operated their bank accounts. Thus, in view of the above the AO issued show cause notice to the assessee proposing to treat the credit of loan for Rs. 21 lakh from the above mentioned parties as unexplained cash credit under section 68 of the Act and but assessee did not respond.

5.3 In view of the above, the AO held the commission expenses and the unsecured loan & interest thereon amounting to Rs. 9,52,591/- and Rs. 21 lakh & 2.5 Lakh respectively as bogus in nature and unexplained cash credit under

section 68 of the Act. Hence, the AO disallowed the same and added to total income of the assessee.

6. Aggrieved assessee preferred an appeal before the learned CIT-A.

7. The assessee before the learned CIT(A) submitted that the addition has been solely made on the basis of the statements of the 5 parties out of 8 parties to whom commission was paid through account payee cheques after deducting relevant tax at source. There was no cross examination of the parties provided by the AO before using such statement against the company which was necessary. Therefore, the AO violated the principle of natural justice.

7.1 The assessee further submitted that the parties have retracted from their statement through affidavit furnished before the AO dated 27-11-2011 (after completion of assessment order dated 23-11-2011). The assessee further submitted that the remaining three parties from Mumbai furnished all the documents/materials required by the AO in response to the notice issued under section 133(6) of the Act. But still, the AO summoned them under section 131(1) of the Act for their personal attendance but they were not able to attend the office of the AO. The materials supplied by the 3 Mumbai based parties were also submitted by assessee vide letter dated 07-12-2011. The three parties also provided their affidavits confirming the payment of commission which were filed before the AO dated 27-11-2011. All these document being material informations were directly supplied by the parties based in Mumbai to the assessee. Based on the same a letter dated 07-12-2011, confirmation of transaction vide affidavit and retraction of statement were not considered by the AO. Therefore, the same should be admitted as additional document under the provision of Rule 46A of Income tax rule 1962.

7.2 Likewise, the credit of unsecured was also treated as unexplained solely on the basis of statement of loan parties recorded behind its back with undue

influence. The AO without providing opportunity of cross examination used the statement against it. However, all the loan parties retracted from their statement by filing affidavit to this effect, the same were furnished as additional evidences.

8. However, the learned CIT(A) did not admit the additional evidence submitted by the assessee by holding that conditions prescribed under rule 46A of Income Tax Rules were not subscribed. The learned CIT(A) after considering the submission of the assessee also dismissed the plea of assessee with regard to the cross examination of parties whose statement were made basis to draw inference against the assessee. The relevant finding of the CIT(A) reads as under:

> *I have carefully considered the submission of the Ld.Consel and the facts of the case. A perusal of the above clearly shows that appellant's case do not fall in any of the conditions laid down under the said provision. In the instant case there are clear evidence to indicate that the document under consideration being the affidavits of loan lenders/persons receiving commission was created after the passing of the assessment order Thus, (he appellant cannot claim that it was prevented by even an iota of any reasonable causes to file the said evidence before the assessing officer It is not the case where the appellant was in possession of certain evidences and which were required by the assessing officer and which could not be produced because of contemporary factors There is no dispute that Rule 46A permits introduction of additional evidences which an assesses was prevented by sufficient and reasonable cause to present before the A O during the course of assessment proceedings The settled principle however is, that such evidence ought to have existed at the time of original assessment proceedings. To decide the case, an A O is required to consider evidences which were in existence till the time of passing or the order in case for certain justifiable reasons the said evidence could not be produced by the assessee the assessee can exercise the option of requesting for admission of such evidences during the appellate proceedings In the instant case, the same has not been the case. The evidence under consideration is created after the passage of the assessment order i e on 23-12-2011 Even the assessee has himself admitted that the said evidence comprising an affidavit was created on 27-12-2011 itself The evidence under consideration was created after the passage o< the assessment order and hence the same by no stretch of imagination falls under any of the categories specified in Rule 46A.*
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> *3.4 It is evident from the submission of the appellant that they said additional evidence was created after the passage of the assessment order It is surprising that the assessee had shifted all the responsibilities for the non- consideration of the evidence. upon the Assessing Officer raising the bogey of violation of principles of natural justice. Therefore, there is no substance in the reasons given by the appellant about his inability to produce the said evidence The additional evidence furnished therefore, cannot be admitted and are rejected Reliance is placed on the decision of the Hon'ble Punjab and Haryana High Court in the case of Rajat Bansal vs. CiT [2011] 200 taxman 72 (Punj. & Har.) in that case the Hon'bie Court had quoted the finding of the tribunal as " In our view, the assessee does not deserve any lenient view from [he court of law on the issue of additional evidence produced by the assessee before the Id. first appellate authority. This evidence was very much available with the assessee during the course of assessment but the assessee could not establish the circumstances and the reasons as to why he has not produced the same before the Assessing Officer Therefore, the Id first appellate authority has rightly rejected*

the same. Secondly the assessee could not establish that the additional evidence produced by the assessee before the Id. CIT(A) is very much essential for just and proper decision in the case of the assessee. Consequently, it is seen that the evidences which are requested for admission by the appellant do not fall within the meaning of additional evidences under Rule 46A and hence there can be no case for admission of such evidences at the appellate stage. Accordingly, appellants request for admission of additional evidences is hereby rejected.

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*4.2 I have carefully considered the facts of the case and the submissions made by the appellant including the plethora of judicial rulings cited by the appellant. The arguments of the appellant can be broadly divided into three parts, one that the impugned parties had retracted in their statements to their affidavits, secondly that opportunity of cross examination not being given and thirdly regarding the genuineness of the payment on the grounds that parties are existing, payments made by banking channel, TDS deducted etc. As far as the issue of retraction of statements by impugned parties and their subsequent filing of sworn affidavits alleging coercion and duress is concerned, i! is seen that the appellant has attempted to introduce the impugned sworn affidavits as additional evidences Apropos, to the discussions made m the preceding paras, it has been held'that the impugned affidavits cannot be admitted as additional evidences within the meaning of Rule 46A and hence the argument of the appellant concerning the same cannot be considered The issue of opportunity of cross examination and its relevance with the present case has been examined at length There is no denying the fact, as observed in the case of Ennen Castings Pvt Ltd vs M M Sundaresh and Others AIR 2003 Kant 293, that Cross-examination is the most effective of ail means for extracting truth and exposing falsehood. The object is to impeach the accuracy, credibility and genera! value of the evidence given in chief to sift the facts already stated by ihc witness io detect and expose discrepancies or to elicit suppressed facts which wilt support the case of the cross-examination party The exercise of hts right is justly regarded as one of the most efficacious tests, which the law has devised for the discovery of truth It is beyond any doubt the greatest legal engine ever invented for the discovery of truth. The right of cross-examination belongs to an adverse party and parties who do not hold that position should not be allowed to take part in the cross-examination." **As a general rule, evidence is not legally admissible against a party, who at the time it was given had no** opportunity to **cross-examine the witness or of rebutting their testimony by other** evidence- When two **or more** persons **are tried on the same indictment and are separately** defended **any witness called by one of them may be cross-examined on behalf of the others, if he gives any testimony to incriminate them. A defendant may cross-examine his co-defendant who gives evidence or any of his co-defendant's** witnesses, if his co-defendant's **interest** is hostile to **his own..Though there is no provision in the Indian Evidence Act providing for such an opportunity for a defendant-respondent to cross-examine a co-defendant/co-respondent,** however, regard to the **object and scope** of cross examination, it **is settled law that when** allegations are made against the party to the proceedings, before that evidence could be acted upon, that party should have an ample opportunity to cross-examine the person who had given the evidence against him. It is only after such an opportunity is given, and the witness is cross examined that evidence becomes admissible. Therefore, it is very clear from the aforesaid passages that it is the settled law that no evidence should be received against one who had no opportunity of testing it by cross-examination ; as it would be unjust and unsafe not to allow a co-accused or co-defendant to cross-examine a witness called by one whose case was adverse to him, or who has given evidence against. If there is no conflict of interest, such an opportunity need not be given. Therefore, the condition precedent for giving an opportunity to a defendant-respondent to cross-examine*

a co-respondent or a defendant is either from the pleadings ol the parties or in the evidence, there should exist conflict of the interest between them. Once it is demonstrated that their interest is not common and there is a conflict of interest and evidence has been adduced, affecting the interest of the co-defendant' co-respondents, then before the court could act on that evidence, the person against whom the evidence is given should have an opportunity to cross-examine the; said witness, so f/iar ultimately truth emerges on the basis of which the court can act.......". So far as criminal cases are concerned the right to cross examination is a constitutional right whereas in civil proceedings, it is a principle emanating from due process In the case of Kishanchand Chelaram vs CIT 125 ITR 713 (1980) Hon'ble Apex Court while emphasizing upon !he need of cross examination Have also held that "..It is true that the proceedings under the income-tax law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the income-tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in, it.,.".

4.3 It is however seen that in the present case appellants arguments of addition being erroneous since opportunity of cross examination was not given are misplaced. The assessment order mentioned supra, clearly indicates on page-6 that after recording the statements of the said five parsons. A O had given vide show cause notice dated 29-11-2011 a clear opportunity to the appellant to explain why addition be no! made relying upon statement u/s 131 of the said five parties It is important to note that the A O has clearly mentioned that !he copies of statements of said live parties was being enclosed with the said cause The A O had also given opportunity to the appellant to produce the balance three parties, who had not responded to his summons u/s 131 Incidentally, perusal of appellant submission supra, indicates that the appellant has acknowledged this fact that the statement recorded us 131 by the A O were provided to him Further, in para-6, on page-7 of the assessment order, the A O has clearly recorded that there was no response from the appellant to his impugned show cause. It has been held in several decisions that the opportunity of cross examination is a right which has to be exercised by the appellant. There is no denying the fact that cross examination is an inalienable right of an agreed party but it is also true that such right deserves to be exercised. It is a settled principle of law that rights and duties under a statute go hand in hand and cannot be exercised in isolation

4.4 In this case there is not even an iota of evidence on record that the appellant wanted to exercise this right had ever made a plea before the A O to this effect 1'ne arguments accordingly taken by the appellant now at this stage is merely an attempt to establish a legal infirmity m the order of the id A O On the issue of the three Mumbai based parties having responded to A Os notices u/s 133(6). 't is seen that the same is not established by any cogent evidence on records. The A O has categorically mentioned in para-4 of his order on page-2 that notices u/s 133(6) issued to All the eight parties remained un-complied as a reason of which he had to issue summons u/s 131 to the said eight parties. The appellants argument do not have any evidentiary value as no evidence of having filed any details to the A O were provided Consequently, it is held that the argument of the appellant that the addition is erroneous as opportunity of cross examination was not given is not established by any evidence on record arid hence the same are rejected.

9. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

10. The learned AR before us filed a paper book running from pages 1 to 326 and also filed the written submissions containing 7 pages wherein it was contended that the addition has been made by the AO merely on the basis of the statement recorded of the commission agents and loan creditor which was recorded behind the back of the assessee. As per the learned AR, the opportunity of cross examination wasn't offered by the revenue to the assessee before using the statements furnished by the commission agents and loan parties. Likewise, the learned AR also contended that there were filed additional piece of evidences before the learned CIT(A) on which the learned CIT(A) also called for the remand report but the same was not considered by the learned CIT(A). As such the learned CIT(A) rejected the additional evidence filed by the assessee as these evidences were not as per the rule prescribed under rule 46A of income tax. Thus the learned AR pleaded before us to set aside the issue to the file of the AO to decide of fresh in the light of the additional evidences as well as after providing the opportunity of cross examination of witness of the AO which is the mandatory requirement

11. On the other hand, the learned DR vehemently supported the order of the authorities below but he did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

12. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the learned CIT(A) after calling the remand report from the AO on the additional documents filed by the assessee has rejected the additional evidences filed by the assessee on the reasoning that the case of the assessee does not fall in any of the exception as provided under rule 46A of income tax rules and also not establish that the additional evidences were necessary for adjudication of issue.

12.1 Admittedly the remand report, when called upon by the learned CIT(A) presupposes that the learned CIT(A) was principally agreeing to consider those

additional evidences. But later on, the ld. CIT-A rejected the additional document filed by the assessee. In this regard we find that coordinate bench of Delhi Tribunal in case of Dhanna Ram Garg vs. ITO reported in 15 taxmann.com 104 held that the admissibility of the additional evidence should be decided at first stage by the learned CIT(A) without calling for remand report. Once learned CIT(A) called for remand report and provided the opportunity to the AO to verify the additional evidences, then same should be accepted. The relevant finding of Tribunal in above cited case reads as under:

> *A bare perusal of rule 46A would reveal that an assessee shall not be entitled to produce any evidence whether oral or documentary, other then the evidence produced by him during the assessment proceedings unless conditions enumerated in clauses A to D of sub-rule (1) are available. According to these clauses, additional evidence would be permitted, if it is proved that the Assessing Officer has refused to admit the additional evidence or assessee was called upon to produce a specific evidence by the Assessing Officer but by virtue of sufficient reasons he could not produce such evidence or assessee was to produce any evidence relevant to the grounds of appeal but he could not produce it before the Assessing Officer or the Assessing Officer has passed the assessment order without giving sufficient opportunity to the assessee. If any one condition is available then assessee would be permitted to adduce additional evidence. The next step suggested in the rule is that the Commissioner (Appeals) has to record reasons for permitting an assessee to adduce the additional evidence. After this exercise, it has been provided in sub-rule (3) that first appellate authority shall not take into account such evidence unless an opportunity to rebut the evidence was given to the Assessing Officer. The Assessing Officer shall be provided an opportunity to examine the document submitted by the assessee and he will be provided an opportunity to adduce evidence for rebutting the evidence produced by the assessee. Sub-clause (4) of rule 46A is an exception to these conditions. It empowers the first appellate authority to direct the production of any document or examination of any witness which can help the First Appellate Authority to dispose of the appeal in accordance with law and for any other substantial cause. The Commissioner (Appeals) has remitted the submissions of the assessee along with the documents to the Assessing Officer for his comments. The Assessing Officer has submitted two remandreports. After analysis of the remandreports as well as the submissions of the assessee, the Commissioner (Appeals) has observed that the documents submitted by the assessee are not worth admitting. It is held that this is not the right course. Once he called for a remandreport on the merits of the evidence and gave an opportunity to the Assessing Officer for rebutting the evidence then conditions of sub-rules (1) and (2) would be construed as fulfilled. Commissioner (Appeals) may not rely upon the evidence for rejecting the arguments of the assessee on the ground that it is not sufficient to buttress the contentions of the assessee, but he cannot say that evidence is not to be taken on record. The admissibility of the evidence is to be decided at the first stage under sub-rule (1). For that he need not to call for a remandreport on the merit of the evidence. He can simply hear the Assessing Officer as is provided in section 250(1) of the Act. In other words, the Commissioner (Appeals) is supposed to give just an opportunity of hearing to the Assessing Officer before admission of evidence. Once, it is admitted by recording reasons as provided in sub-rule (2) then next stage would come as enumerated in sub-rule (3), where the Commissioner (Appeals) would call upon a remandreport of the Assessing Officer on the merit of the evidence and also given an opportunity to the Assessing Officer to lead evidence in rebuttal of the evidence submitted by the assessee. [Para 6]*

12.2 We also find that the AO issued show cause notice as on 29-11-2011 requiring assessee to make reply 07-12-2012, thereafter the AO noted that the assessee not responded, thus he framed assessment order dated 23-12-2011. Thus, the AO given opportunity of just over 20 days to assessee to make reply and framed assessment holding that no response was received from the assessee. However, we note that there was ample time limit available under section 153 of the Act with the AO for framing the assessment under section 143(3) of the Act. The provision of section 153 of the Act as applicable to the year under consideration i.e. A.Y. 2009-10 reads under:

> **153.** [32][(1) No order of assessment [33] shall be made under section 143 or section 144 at any time after the expiry of—
> (a) two years from the end of the assessment year in which the income was first assessable ; or
> (b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or sub-section (5) of section 139, whichever is later :]

12.3 From the above, it is clear that the time limit of 2 years from end of the assessment i.e. 31-03-2010 was ending on 31st March 2012 whereas AO without providing another opportunity to the assessee made assessment order in hurry as on 23-12-2011. In view of the above we are of the opinion that the additional evidences furnished by the assessee should have been accepted by the learned CIT(A).

12.4 Moving forward we find that the AO while making disallowance of sales commission expenses and treating the loan credit as unexplained cash credit under section 68 of the Act and interest thereon as bogus relied heavily on the statements of the loan creditors and commission agents which were recorded behind the back of the assessee. The assessee before the learned CIT(A) demanded the opportunity of cross examination of deponent which is important ingredient of principle of natural justice. But no such opportunity of cross examination was provided by the lower authorities.

12.5 Therefore, considering the facts in totality, we hereby set aside the issue to the file of the AO for fresh adjudication as per law. We also direct the AO to consider the additional evidence furnished by the assessee and allow opportunity of cross exemption before drawing inference against the assessee on the basis of statements of loan creditor or commission agent. Hence the ground of appeal of the Assessee is hereby allowed for statistical purposes.

12.6 In the result appeal of the assessee is allowed for statistical purposes.

Coming to ITA 311/Ahd/2015, an appeal by the assessee for the A.Y. 2010-11

13. At the outset, we note that the issues raised by the assessee in its grounds of appeal for the AY 2010-11 are identical to the issues raised by the assessee in ITA No. 248/AHD/2013 for the assessment year 2009-10. Therefore, the findings given in ITA No. 248/AHD/2013 shall also be applicable for the assessment year 2010-11. The appeal of the assessee for the AY 2009-10 has been decided by us vide paragraph No. 12 of this order in favour of the assessee for statistical purposes. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2009-10 shall also be applied for the assessment years 2010-11. Hence, the grounds of appeals filed by the assessee are hereby allowed for statistical purposes.

13.1 In the result, the appeal of the assessee is allowed for statistical purposes.

Coming to ITA 310/Ahd/2015, an appeal by the assessee for AY 2005-06

14. At the outset, we note that the assessee before us has challenged the reopening assessment under section 147 r.w.s. 143(3) of the Act beside raising

the issue of addition on merit. However, we find that there was no finding of the learned CIT(A) on the issue of validity of reopening assessment neither appellate order contain the submission of the assessee on this issue. But the learned CIT(A) in initial remark of his order had noted that the effective ground of appeal of the assessee was against the reopening of assessment. The relevant observation of the learned CIT(A) is extracted as under:

The effective ground of appeal is against reopening of assessment u/s.148 and making disallowance of commission expenses of Rs.4,60,512/-

15. We have also perused the paper book filed by the learned AR for the assessee but we did not find any copy of the reason recorded for initiating the proceedings under section 147 of the Act. Thus, the necessary facts such reason for reopening and the observation of the lower authorities in this regard is not available on record before us. Therefore, we feel pertinent to set aside the issue to the file of the AO for fresh adjudication as the provision of law. Hence the ground of appeal of the assessee challenging the validity of reopening assessment is hereby allowed for statistical purposes.

16. Coming to the issue raised by the assessee on the merit of addition, we note that identical issue was raised by the assessee in its grounds of appeal for the AY 2009-10 in ITA No. 248/AHD/2013. Therefore, the findings given in ITA No. 248/AHD/2013 shall also be applicable for the year under consideration i.e. A.Y. 2005-06. The appeal of the assessee for the A.Y. 2009-10 has been decided by us vide paragraph No.12 of this order in favour of the assessee for statistical purposes. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2009-10 shall also be applied for the assessment years 2005-06. Hence, the grounds of appeals filed by the assessee are hereby allowed for statistical purposes.

16.1 In the result, the appeal of the assessee is allowed for the statistical purposes.

17. In the combined result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Court on 29/03/2023 at Ahmedabad.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 29/03/2023
Manish, Sr. PS