

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA Nos. 1465 to 1468/Del/2014
Assessment Years: 2008-09 to 2011-12**

Gardenia India Ltd.,
R-19, 3rd Floor, Main
Shakarpur Market,
Vikas Marg, New Delhi
PAN: AACCG7503M
(Appellant)

Versus DCIT, Central Circle-7,
New Delhi.

(Respondent)

**ITA Nos. 1875, 1966 & 1876/Del/2014
Assessment Years: 2009-10 to 2011-12**

DCIT, Central Circle-7,
New Delhi.

(Appellant)

Versus Gardenia India Ltd.,
R-19, 3rd Floor, Main
Shakarpur Market,
Vikas Marg, New Delhi
(Respondent)

Assessee by : None
Revenue by : Mohd. Gaysuddin Ansari, Ld. CIT/DR

Date of hearing: 01.03.2023
Date of order : 31.03.2023

ORDER

PER N.K. CHOUDHRY, J.M.

The Assessee has preferred 04 appeals for the assessment years 2008-09 to 2011-12, whereas the Revenue also preferred 03 cross appeals for the assessment years 2009-10 to 2011-12 against the orders even dated 29.01.2014, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-1, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act').

2. In spite of sending notices to the Assessee at the address mentioned in Form 36, the Assessee neither appeared nor filed any adjournment application and even the Registry do not have any alterative address, hence we are constrained to decided these appeals ex-parte.

2.1 For brevity, we will decide ITA No. 1465/Del/2014 filed by the Assessee for the assessment year 2008-09 as a lead case.

3. In the instant case, the Assessee declared an income of Rs.57,53,553/- by filing its original return of income on dated 30.09.2008. Subsequently, a search and seizure operation was carried out under the provisions of section 132 of the Act in Gardenia group of cases on dated 09.09.2010, in which the case of the Assessee was also covered. Therefore, notice u/s. 153A of the Act was issued to the Assessee, in response to which the Assessee filed its return of income and declared an income of Rs.70,25,580/-. Thereafter, statutory notices have also been issued to the Assessee and ultimately, the Assessing Officer computed the total taxable income of the Assessee to the tune of Rs.1,71,06,312/- as against declared income to the tune of Rs.70,25,580/- by the Assessee and made the additions of Rs.1,04,88,750/- and Rs.8,64,000/- respectively on account of cash receipts u/s. 69 of the Act and bogus purchase expenditure.

4. The Assessee being aggrieved, challenged the assessment order and the additions referred to above before the Id. Commissioner, who vide impugned order allowed the appeal of the Assessee partly and affirmed the additions of Rs.1,04,88,750/- and Rs.8,64,000/-. The

Assessee being aggrieved is in appeal before and raised following grounds of appeal:

“1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 1,04,88,750/- as income from other sources instead of Income of Rs. 12,72,018/- returned by the assessee as business income.

2. On the facts and circumstances of case and in law, the addition of Rs.8,60,000/- made by the assessing officer on account of alleged bogus purchase is beyond the jurisdiction of provisions of section 153A of Income Tax 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

3. On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) r.w.s. 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so.

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.”

5. For the sake of brevity, we are deciding this appeal ground-wise.

5.1 Ground No. 1 pertains to the confirmation of the addition of Rs.1,04,88,750/-, which was made by the Assessing Officer as unexplained money u/s. 69A of the Act. The Assessing Officer made the said addition of

Rs.1,04,88,750/- allegedly received during the year under consideration on account of booking of flats as income from undisclosed sources, by concluding that the percentage of completion method is not applicable and therefore, assessed the amount on receipt basis in the respective years, in which have been received. Further, such receipt is to be taxed as unexplained money as "deemed income" u/s. 69 of the Act.

5.2 The Assessee before the Id. Commissioner claimed that section 69A of the Act cannot be applied, as the Assessee has not been found to be the owner of any money, bullion, jewellery or valuable articles etc. No such money etc. has been found. The income has been declared based on the unaccounted receipts mentioned in the seized material and the nature of receipt is business income being advances against the sales and source of receipt is from the respective customers. The Assessee has been following the percentage of completion method regularly since its inception. The Assessing Officer has duly accepted the said method even in the assessments done u/s. 153A of the Act. Once the method followed by the Assessee has been

accepted, the income has to be computed in accordance with that regularly followed method.

5.3 The Id. Commissioner by considering the submissions of the Assessee and analysing the relevant provisions of the Act though accepted the contentions of the Assessee qua non-applicability of section 69A of the Act, however held the amount of Rs.1,04,88,750/- as taxable u/s. 56 of the Act as income under the head "other sources" for the year under consideration, by holding as under :

"4.2 I have considered the assessment order and the submissions made. Facts are that during search and seizure incriminating documents indicating unaccounted cash receipts from customers, inflated purchases and other receipts were seized relating to various persons of the appellant group. The appellants, when confronted with the contents of these documents, admitted unaccounted income amounting in all to Rs.4,78,05,701/-, including the amount of Rs.2,99,05,701/- relating to the appellant company for various assessment years. The amount of Rs. 14,00,000/- presently in dispute is part of the undisclosed income of Rs.2,99,05,701/-, admittedly belonging to the appellant company. There is no dispute as to the nature or quantum of the amounts. The only dispute is regarding the year of taxability wherein the appellant has offered the amounts to tax in the respective years as per the POC method whereas the revenue has taxed the amounts u/s 69A in the respective years of receipt. The year-wise comparative figures have been tabulated in the submissions filed by Ld. AR reproduced above."

5.3 We have given thoughtful consideration to the peculiar facts and circumstances of the case. The Ld. DR supported the assessment order and claimed that that the Id. commissioner wrongly held that provisions of section 69A of the Act are not applicable. We observe that there is no dispute qua nature or quantum of the amount under consideration. The only dispute is regarding the year of taxability wherein the Assessee offered the amounts to tax in the respective years as per POC method, whereas the Assessing Officer taxed the amounts u/s. 69 of the Act in the respective years of receipts. We further observe that the Id. Commissioner categorically held that section 69 of the Act is not applicable to the instant addition. In fact, the income from unaccounted/undisclosed business transactions is to be treated on different footings and taxed under the head "income from other sources". The Id. Commissioner also held since the amount was not recorded in the books, it did not form the part of the Revenue Receipts of the Assessee. The amount was enjoyed by the Assessee on receipt basis and never recorded in the regular books of accounts, therefore, the amount has to be taxed on receipt basis and not on the basis of POC method. We do not find any reason and/or material to contradict the findings recorded by the Id. Commissioner in taking into

consideration the peculiar facts and circumstances of the case and the relevant provisions of law as applicable to the issue in hand, hence we are inclined not to interfere in the decision of the Id. Commissioner in holding the amount of Rs.1,04,88,750/- as taxable u/s. 56 of the Act under the head "other sources". As we have already upheld the addition hence not dwelling into the controversy raised by the Ld. DR to the effects that the Id. commissioner wrongly held that provisions of section 69A of the Act are not applicable. Consequently, **Ground No. 1** stands dismissed.

6. Ground No. 2 pertains to the confirmation of addition of Rs.8,64,000/- by the Id. Commissioner on account of bogus purchases. It appears from the assessment order that M/s. Laxmi Enterprises has received the payments on account of sales of goods from M/s. Gardenia India Ltd. and various other sources to the tune of Rs.8,64,000/-. Therefore, to ascertain the genuineness of the firm and the transaction entered with Gardenia group and their associates concerns, summon u/s. 131 was issued on 22.11.2012 requiring the said party to personally attend the proceedings and to submit the evidence in support of the sale of goods to these companies, in response to which the

said party has submitted the details such as copy of account etc. . Ultimately, the Assessing Officer made the addition of Rs.8,64,000/- being bogus and added to the income of the Assessee on the below mentioned reasons :

“6.5. In view of the above facts, the identity & existence of M/s. Laxmi Enterprises and genuineness of transactions of purchases of raw material by the Assessee remained un-verifiable, as ;

a) As during the course of survey done by ADIT(Inv.), Unit-II, Ghaziabad (UP) that the above party admitted to have received commission of 25 paise for every 100 rupees for providing entry for sale of goods.

b) The existence of the party on the given addresses are verifiable de jure but de-facto they are not functioning and doing the real business of sale & purchase of steel.

c) The location of the premises from which business is purport to be carried is such from which operation of business alleged to be carried out is not possible.

d) The level of transactions routed through the bank account of these parties are such voluminous and big, which person of status of these parties in no manner can match.

e) Money routed through the bank accounts are at first stage transferred to other accounts and at second stage these are withdrawn mostly in cash, which is repatriated to the beneficiary i.e. the assessee company and its associates in cash.

f) Moreover, failure on the part of the assessee to produce such parties inspite of the repeated opportunity given to them conclusively prove that no such party actual exist which can stand and own-up the transactions alleged to be routed through their bank accounts and issue of purchase bills.

g) If the assesses has never sought the opportunity for cross examining of these bogus parties

6.6 Accordingly, the transactions of purchase of building materials/steels alleged to be sourced from these parties are remained unverified and treaded as "Bogus& Unexplained Expenditure". Accordingly, the purchases claimed by the assessee from M/s. Laxmi Enterprises amounting to Rs. 8,64,000/- is not genuine and to be treated as "Bogus" and is disallowed and added to the income of the assessee."

6.1 The Assessee being aggrieved challenged the said addition before the Id. Commissioner on the legal point as well as on merits. We observe that the Id. Commissioner though dismissed the ground raised by the Assessee qua validity of the proceedings or the order u/s. 153A of the Act, however, deleted the addition on merits by holding as under:

"6.3. I have considered the assessment order and the submissions made. The objection taken by the appellant that it was not confronted with the evidence (survey/inspector's report) before taking adverse view now stands met as appellant has been supplied with the documents and has had the opportunity to eply to the report. Thus, this plea of the appellant is no longer valid. Having gone through the facts and documents, I find that one Sh. Vinod Kumar Dubey supplied both cement and steel to the appellant. While cement was supplied through M/s Laxmi Enterprises (LE) owned by Sh. Dubey, some steel was supplied through M/s Shree Saraswati Steel Center (SSC) owned by one Sh. A K Saini. Sh. Saini knows Sh. Dubey but does not know the appellant company or its directors. Invoices / bills for steel supply were raised by SSC and payment was made by the appellant to SSC. The bills of SSC were given to and payments received, for and on behalf of SSC. by Sh. Dubey. Sh. Saini was never in picture or direct contact with the

appellant company. Therefore, if Sh. Saini gave any statement to the effect that he had actually not supplied the steel, it was to be confronted to Sh. Dubey first and then the appellant to get to the truth. This was never done. Therefore, adverse statement by Sh. Saini could not be held against the appellant. Secondly, it is undisputed that the material was actually used as per the certificate of the architect and the quantity of purchase and consumption of steel in the projects has not been found to be incorrect or assailed by the revenue. In these circumstances, it cannot be held that the purchases were bogus or unexplained. I hold accordingly. The addition of Rs.8.64,000/- is deleted.

6.4 The appropriate course for the revenue was to first enquire into the matter in the case of Sh. Saini (SSC) and Sh. Dubey (LE) and take appropriate action according to the law. I hold accordingly, and direct the AO to make necessary reference to the AO of the said two persons / proprietors. Adverse inference can be drawn against the appellant only if it is established from this enquiry that the purchases were indeed bogus or the material so supplied was not actually consumed.”

6.2 Before us the Ld. DR reiterated the observations of the AO as recorded in assessment order and supported the decision of AO in making the addition in hand. The Ld. DR further claimed that based on the facts and circumstances of the case, judgement of Kabul Chawla is not applicable to the instant case.

6.3 We have given thoughtful consideration to the peculiar facts and circumstances of the case. We observe that the Assessing Officer on the basis of the statement made by the

third party, i.e., Mr. A.K. Saini, made this addition. Therefore, considering the peculiar facts and circumstances of the case specifically to the effect that the statement of Shri Saini was not confronted to Mr. Vinod Kumar Dubey, who supplied cement and steel to the Assessee respectively through M/s. Laxmi Enterprises (LE) owned by Shri Dubey himself and through M/s. Shree Sarswati Steel Centre (Assessee) owned by one Shri A.K. Saini, therefore, adverse statement by Shri Saini could not be held against the Assessee. The Id. Commissioner further held that it is undisputed that the material was actually used as per the certificate of the Architect and the quantity of purchase and consumption of steel in the projects has not been found to be incorrect or assailed by the Revenue. In these circumstances, it cannot be held that the purchases were bogus or unexplained. The Id. Commissioner though deleted the addition under consideration, however, goes beyond by directing the Assessing Officer to make necessary reference to the Assessing Officer of the said two persons/proprietors. The Id. Commissioner directed that adverse inference can be drawn against the Assessee only, if it is established from this inquiry that the purchases were indeed bogus or the material so supplied was not actually consumed.

6.4 We again given thoughtful consideration to the determinations made by the Id. Commissioner and are of the considered view that the Id. Commissioner thoroughly examined the peculiar facts and circumstances of the case and not only deleted the addition in hand, but also directed the Assessing Officer for taking appropriate actions. The Assessee before us did not appear inspite of sending notice, hence, failed to substantiate its ground of appeal and even otherwise, we do not find any reason and/or material to contradict the findings of the Id. Commissioner on the issue in hand. As the Assessee got substantive relief on merits, hence, adjudication of the ground under consideration would be academic exercise only. Accordingly, ground No. 2 also stands dismissed.

7. By way of **Ground No. 3**, the Assessee has claimed that the assessment order passed by the Assessing Officer u/s. 143(3) read with section 153A of the Act is illegal and without jurisdiction and the Id. commissioner of Income-tax (Appeals) should have held so. The Assessee failed to substantiate the present ground and even otherwise we do not find any infirmity in the decision of the Ld. Commissioner on the issue under consideration, hence Ground no. 3 stands dismissed.

7.1 In the result, the appeal filed by the Assessee stands dismissed.

ITA No. 1466/Del/2014 (A.Y. 2009-10):

8. In this case, the Assessee has raised following grounds of appeal:

“1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.57,02,001/- as income from other sources instead of Income of Rs.96,89,039/- returned by the assessee as business income.

2. On the facts and circumstances of case and in law, the addition of Rs.2,62,02,645/- made by the assessing officer on account of alleged bogus purchase is beyond the jurisdiction of provisions of section 153A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

3. On the facts and circumstances of case and in law, the addition of Rs.50,86,488/- on account of disallowance of commission is beyond the scope of provisions of section 153A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

4. On the facts and circumstances of case and in law, the addition of Rs.2,07,040/- on account of disallowance of Interest is beyond the scope of provisions of section 153A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

5. *On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) r.w.s. 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so.*

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.”

9. Ground No. 1 pertains to affirmation of the addition of Rs.57,02,001/- which was made by the Assessing Officer as income from undisclosed sources u/s. 69A of the Act. We observe that the said amount of Rs.57,02,001/- has been determined by the Id. Commissioner as taxable u/s. 56 of the Act, as income of the Assessee under the head “other sources” instead of undisclosed income u/s. 69A of the Act as determined by the Assessing Officer. In view of our decision on **Ground No. 1** raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No 5.3 of this order, this ground No. 1 also stands dismissed.

10. Ground No. 2 pertains to the challenge of the jurisdiction of the Assessing Officer under the provisions of section 153A of the Act. In view of our decision on **Ground No. 2** raised by the Assessee in ITA No. 1465/Del/2014 for

A.Y. 2008-09, as decided by us in para No 6.2 of this order, this ground also stands dismissed.

11. By way of **Ground No. 3**, the Assessee has raised the issue that addition of Rs.50,86,488/- on account of disallowance of commission is beyond the scope of provisions of section 153A of the Act and the Id. Commissioner erred in not holding so. We observe that the Id. Commissioner deleted the said addition. The Assessee failed to substantiate the present ground and even otherwise we do not find any infirmity in the decision of the Ld. Commissioner on the issue under consideration. Consequently, in the absence of any plausible reason and/or material, we are inclined to dismiss this ground under consideration.

12. Ground No. 4 pertains to the addition of Rs.2,07,040/- on account of disallowance of interest as made by the Assessing Officer, however, deleted by the Id. Commissioner. The Assessee by raising this ground also raised the issue that the addition of Rs.2,07,040/- was beyond the scope of section 153A of the Act and therefore, the Id. Commissioner erred in not holding so. As the Id. Commissioner already deleted the addition in hand and the

Assessee failed to substantiate the present ground and even otherwise we do not find any infirmity in the decision of the Ld. Commissioner on the issue under consideration, hence **Ground no. 4** also stands dismissed.

13. Ground No.5 is general in nature, hence, needs no independent adjudication.

14. In the result, the appeal filed by the Assessee stands dismissed.

ITA No. 1467/Del/2014 (A.Y. 2010-11):

15. The Assessee has raised following grounds of appeal :

“1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.1,03,87,450/- as income from other sources instead of Income of Rs.82,86,651/- returned by the assessee as business income.

2. On the facts and circumstances of case and in law, the addition of Rs.22,21,86,248/- made by the assessing officer on account of alleged bogus purchase is beyond the jurisdiction of provisions of section 153 A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

3. On the facts and circumstances of case and in law, the addition of Rs. 1,30,00,000/- (rectified to Rs. 13,00,000/-) on account of alleged unexplained loan is beyond the scope of provisions of section 153A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

4. On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) r.w.s. 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so.

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.”

16. Ground No. 1 pertains to affirmation of the addition of Rs.1,03,87,450/- which was made u/s. 69A of the Act. The Id. Commissioner treated the said amount as income from “other sources” taxable u/s. 56 of the Act, by relying upon its order in Assessee’s own cases for the A.Yrs. 2008-09 and 2009-10 and dismissed the ground raised by the Assessee on the same footing as decided in the said appeals. Hence, in view of our decision on ground No. 1 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para no. 5.3 of this order, this ground also stands dismissed.

17. Ground No. 2 pertains to addition of Rs.22,21,86,248/- which was made by the Assessing Officer on account of alleged bogus purchase. The Assessee has claimed that the same was beyond the provisions of section 153A of the act and the Id. Commissioner erred in not holding so. In view of our decision on ground No. 2 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-

09, as decided by us in para no. 6.2 of this order, consequently, this ground is also dismissed.

18. By **Ground No. 3**, the Assessee has raised the issue that the addition of Rs.13,00,000/- on account of alleged unexplained loan was beyond the scope of the provisions of section 153A of the Act and the Id. Commissioner erred in not holding so. We observe that the Id. Commissioner deleted the said addition of Rs.13,00,000/- by considering the peculiar facts and circumstances of the case. The Assessee failed to substantiate the present ground and even otherwise we do not find any infirmity in the decision of the Id. Commissioner on the issue under consideration, hence **Ground no. 3** stands dismissed.

19. Ground No. 4 is general in nature, hence, needs no adjudication.

ITA No. 1468/Del/2014 (A.Y. 2011-12):

20. The Assessee has raised following grounds of appeal in this appeal:

“1. On the facts and circumstances of case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 19,27,500/- as income from other sources instead of Income of Rs.75,83,789/- returned by the assessee as business income.

2. On the facts and circumstances of case and in law, the addition of Rs. 12,43,20,102/- made by the assessing officer on account of alleged bogus purchase, is beyond the jurisdiction of provisions of section 153 A of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.

3. On the facts and circumstances of case and in law, the assessment order passed by the assessing officer u/s 143(3) r.w.s. 153A is illegal and without jurisdiction and Commissioner of Income Tax (Appeal) should have held so.

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.”

21. By way of **Ground No. 1**, the Assessee has challenged the addition of Rs.19,27,500/- which was treated as unexplained money u/s. 69 of the Act by the AO. We observe that the Id. Commissioner while following its own decisions in the Assessee’s own cases for the assessment year 2008-09 (Appeal No. 207/13-14) and 2009-10 (Appeal No. 204/13-14), affirmed the said amount/addition taxable u/s. 56 of the Act, instead of section 69A of the Act as determined by the Assessing Officer. Hence, in view of our decision on ground No. 1 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 5.3 of this order, this ground also stands dismissed.

22. By way of **Ground No.2**, the Assessee claimed that the addition of Rs.12,43,20,102/- as made by the Assessing Officer on account of alleged bogus purchase, is beyond the scope of the provisions of section 153A of the Act and the Id. Commissioner erred in not holding so. We observe that the Id. Commissioner already deleted the addition under consideration on the same footing as done in Assessee's own case for the assessment year 2009-10 (Appeal No. 204/13-14). Hence, in view of our decision on ground No. 2 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 6.2 of this order, this ground, also stands dismissed.

23. Ground No. 3 is general in nature, hence, needs no adjudication.

24. In the result, the appeal filed by the Assessee stands dismissed.

REVENUE'S APPEALS

ITA No. 1875/Del/2014 (A.Y. 2009-10):

25. The Revenue Department by filing the instant appeal has raised the following grounds of appeal:

"1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.57,02,001/- made by AO as deemed income u/s 69A of the IT. Act, 1961.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2.62,02,645/- made by AO on account of Bogus purchase.

4. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 50,86,488/- made by AO on account of excessive commission expenses.

5. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,07,040/- made by AO on account of interest free advances.

6. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

26. Grounds No. 1 & 6 are general in nature, hence, needs no adjudication.

27. Ground No. 2 pertains to deletion of addition of Rs.57,02,001/-. We observe that this addition was made by the Assessing Officer u/s. 69A of the Act and the Id. Commissioner by considering the said addition as well as the relevant provisions of the Act, has held that it was not appropriate for the Revenue to invoke the section 69A to charge the amount of tax. However, the Id. Commissioner held the said amount as taxable u/s. 56 of the Act as income of the Assessee under the head “other sources”.

Hence, in view of our decision on ground No. 1 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 5.3 of this order, this ground also stands dismissed.

28. By ground No. 3, the Revenue Department has raised the issue qua deletion of addition of Rs.2,62,02,645/- which was made by the Assessing Officer on account of bogus purchases. In view of our decision on ground No. 2 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 6.2 of this order, this Ground no. 03 raised by the Revenue department also stands dismissed.

29. Coming to **Ground No. 4,** the Revenue Department has challenged the deletion of the addition of Rs.50,86,488/- which was made as disallowance being 50% of the commission paid as excessive on the ground that the advance booking received during the year was Rs.10,96,20,909/- and the commission paid is very high at almost 10% which is against the normal industries norms of 2-3% of total sales. We observe that the Assessee before the Id. Commissioner claimed that it is beyond the

jurisdiction of the Assessing Officer to state that the payment made is excessive. The reasonableness of the payment cannot be judged from the viewpoint of the Assessing Officer, as it has to be judged from the viewpoint of the Assessee. The Assessee further claimed that there is no high payment of commission. The Assessing Officer has gone wrong on facts. Without seeking any clarification from the Assessee, he has drawn wrong inference resulting into erroneous disallowance. The Assessee further claimed that the Assessing Officer has erred in stating that the advance received from the customers during the year was Rs.10,96,20,909/-. The fact of the matter is that the advance received from the customers during the year was Rs.54,66,19,438/- and not Rs.10,96,20,909/- as stated by the Assessing Officer and therefore, the commission expense claimed by the Assessee works out to be less than 2% and therefore, not excessive at all. The Assessee in support of its case also disclosed the figures such as opening balance of advances from customers as on 01.04.2008 and the advances received during the year and the sales books in profit and loss account and the closing balance of advances from customers as on 31.03.2009. The Assessee had last claimed that the Assessing Officer computed the figures of advances from customers by

deducing the opening balance of advances from customers from closing balance of advances from customers, committing the mistake of not considering the sales of Rs.43,69,98,530/- credited in the P & L account. The Id. Commissioner by thoroughly considering the assessment order and the aforesaid explanation made by the Assessee came to the conclusion that the calculation of the figure of advance from customer is factually wrong and cannot form the basis of any disallowance. The Id. Commissioner further held that this could have been clarified, if the issue had been brought to the notice of the Assessee by the Assessing Officer. The Assessee was never informed of the adverse conclusion reached by the Revenue. The addition made is flawed and is deleted. In our considered view, the Id. Commissioner based his decision on peculiar facts and circumstances of the case and even otherwise we do not find any reason and/or material to contradict the findings of the Id. Commissioner in deleting the addition under consideration. Consequently, ground No. 4 raised by the Revenue Department stands dismissed.

30. Ground No. 5 pertains to deletion of addition/disallowance of Rs.2,07,040/- on account of interest free

advance given by the Assessee. We observe that the Id. Commissioner by considering the peculiar facts and circumstances and the submissions made by the Assessee and the assessment order, came to the conclusion that the interest free advance given pertains to earlier years. The interest expenditure of the Assessee in this year relates to interest on bank loan for vehicle and other interest which have no direct nexus with the advances given earlier. Therefore, the addition made is unfounded and is deleted. Before us, the factual determination by the Id. Commissioner is not in controversy. Hence, **Ground No. 5** stands dismissed.

31. In the result, the appeal filed by the Revenue Department stands dismissed.

ITA No. 1966/Del/2014 (A.Y. 2010-11):

32. In this appeal, the Revenue department has raised the following grounds of appeal:

- 1. The order of Ld. CIT (A) is not correct in law and facts.*

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,03,87,450/- made by AO as deemed income u/s 69A of the I.T. Act, 1961.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 22,21,86,248/- made by AO on account of Bogus purchases.

4. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 13,00,000/- made by AO on account of unexplained loan credit.

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

33. Ground No. 1 & 5 are general in nature, hence, need not independent adjudication.

34. Ground No. 2 pertains to deletion of addition of Rs.1,03,87,450/- made by the Assessing Officer as deemed income u/s. 69A of the Act. In view of our decision on ground No. 1 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 5.3 of this order, this ground no. 02 raised by the Revenue department also stands dismissed.

35. Ground No. 3 pertain to the deletion of addition of Rs.22,21,86,248/- made by the Assessing Officer on account of bogus purchases. In view of our decision on

ground No. 2 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 6.2 of this order, this ground no. 03 of the Revenue department stands dismissed.

36. Ground No. 4 pertains to deletion of addition of Rs.13,00,000/- made by the Assessing Officer on account of unexplained loan credit from Anjali Buildcom Pvt. Ltd. We observe that the Id. Commissioner by considering the peculiar facts and circumstances that the amount was not borrowed during the year under consideration, but only the repayment was made during the year, as the credit does not pertain to the previous year, no addition can be made in this year. The Assessee has discharged its primary onus of establishing the transaction. No defect is found in the evidences filed by the Assessee. As the confirmations had been filed, reference could have been made to the Assessing Officer of the creditor company for further verification. The addition appears to have been hurriedly made without proper application of law and procedure and cannot be sustained. We observe that the Id. Commissioner duly considered the peculiar facts and circumstances of the case and correctly adjudicated the facts pertaining to the

addition under consideration. Even otherwise, we do not find any reason and/or material to controvert the findings of the Id. Commissioner in deleting the addition under consideration. Consequently, this ground no. 04 also stands dismissed.

37. In the result, the appeal filed by the Revenue Department stands dismissed.

ITA No. 1876/Del/2014 (A.Y. 2011-12):

38. In this appeal, the Revenue has raised following grounds :

“1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 19,27,500/- made by AO as deemed income u/s 69A of the I.T. Act, 1961.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 12,43,20,102/- made by AO on account of Bogus purchase.

4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

39. Ground Nos. 1 & 4 are general in nature, hence, need no adjudication.

40. Ground No. 2 pertains to deletion of addition of Rs.19,27,500/-, which was made by the Assessing Officer as deemed income u/s. 69A of the Act. In view of our decision on ground No. 1 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09, as decided by us in para No. 5.3 of this order, this ground raised by the Revenue department stands dismissed.

41. Ground No. 3 pertains to deletion of addition of Rs.12,43,20,102/-, which was made by the Assessing Officer on account of bogus purchases. This issue has also been dealt by us while adjudicating ground No. 2 raised by the Assessee in ITA No. 1465/Del/2014 for A.Y. 2008-09 at para 6.2 of this order, in view of which, this ground No. 3 also stands dismissed.

42. Accordingly, this appeal of the Revenue Department stands dismissed.

43. In the result, all the appeals filed by the Assessee and the Revenue Department stands dismissed.

Order pronounced in the open court on 31/03/2023.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar
ITAT New Delhi

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