

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.131 to 134/Bang/2023
Assessment Years: 2008-09 to 2011-12

M/s. SPR Spirits Pvt. Ltd. (Formerly known as SPR Group Holdings Pvt. Ltd.) F 113, 2CD, Central Chambers 2 nd Floor, 2 nd Main, Gandhinagar Bengaluru 560 009 PAN NO : AAEC2377M	Vs.	Deputy Commissioner of Income-tax Central Circle-1(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharath L., A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	14.06.2023
Date of Pronouncement	:	24.07.2023

O R D E R

PER BENCH:

These appeals by assessee are directed against common order of CIT(A)-11, Bangalore for the assessment years 2008-09 to 2011-12 dated 24.1.2023.

2. The grounds of appeal raised by the assessee in ITA No.131/Bang/2023 are as follows:

1. *“On the facts and in the circumstances of the case, the orders passed by the LAO and the Hon. CIT(A) are bad in law since the same were undertaken without considering the Appellant's submissions.*
2. *The Hon. CIT(A) erred in upholding the disallowance of expenses aggregating to Rs.16,74,23,150 without considering any of the submissions made by the Appellant during the remand proceedings pursuant to the order of the Hon. Income-tax Appellate Tribunal ('ITAT').*
3. *The Hon. CIT(A) erred in upholding the disallowance of expenses aggregating to Rs.16,74,23,150 by incorrectly treating the transactions with M/s. Vinayaka Fruit Mandi and M/s. Srinivasa Bottle Traders as bogus.*
4. *The Hon. CIT(A) erred in upholding the disallowance of expenses aggregating to Rs.16,74,23,150 by wrongly concluding that the 3 entities i.e., M/s. Vinayaka Fruit Mandi, M/s. Srinivasa Bottle Traders and M/s. Venkateshwara Bottle Traders are bogus by relying on the field enquiry conducted by the LAO in the first round of proceedings.*
5. *The Hon. CIT(A) committed an error in upholding the additions, relying on the statements of Mr. Janardhan and Mr. Suresh Gowda and holding that M/s. Vinayaka Fruit Mandi, M/s. Srinivasa Bottle Traders and M/s. Venkateshwara Bottle Traders are non-existing concerns.*
6. *The Hon. CIT(A) failed to appreciate that the Appellant did incur expenditure on purchase of raw materials and bottles for the purpose of manufacture and sale of alcoholic beverages.*
7. *The Hon. CIT(A) erred in affirming the outcome of the LAO's action during remand proceedings which involved a futile exercise of deputing an Income-tax Inspector for a physical inspection of the vendors' premises when this action was already undertaken without any result by the LAO in the course of the scrutiny assessment. The Hon. CIT(A) and the LAO erred in not undertaking any new action to disprove the submissions of the Appellant as directed, inter alia, by the Hon. ITAT in its order.*
8. *The Hon. CIT(A) erred in not considering that the Revenue has not taken any action against vendors from whom the purchases were made, that is, the vendor's sales have been accepted as such.*
9. *The LAO erred in undertaking the addition of Rs.16,74,23 150 for the AY 2008-09 towards bogus purchase when the facts are clear that the purchases made by the Appellant was evident with the bills, goods receipt notes which form part of the seized material and the payments have been made through cheques, that is banking channels. The Hon. CIT(A) erred in confirming the same.*

10. *The Hon. CIT(A) and the LAO erred in relying on the statement of Sri. Janardhan in confirming that the purchases are bogus and without establishing any additional relationship between the Appellant and the vendors apart from the fact that the Appellant has had business relationship with these vendors over the past many years.*
11. *Without prejudice to the preceding grounds, the order of the LAO and Hon. CIT(A) is bad in law and ought to be quashed since these orders were passed without considering that the Appellant has purchased the products from its vendors by way of crossed cheques and it cannot be held responsible for cash withdrawals by the vendors.*
12. *Without prejudice to the preceding ground, the order passed by the Hon. CIT(A) is bad in facts and in law since, the same have not given effect to the directions of the Hon. ITAT in para 51 of the Hon. ITAT's order dated 27.05.2022.*
13. *The Hon. CIT(A) and LAO erred in not demonstrating in any manner that the Appellant had purchased any additional bottles and caps without considering that the Appellant had purchased these bottles and caps only to the extent that was required for the manufacture and sale of liquor: none of the actions / averments of the Hon. CIT(A) and LAO have gone to disprove the Appellants statement in this regard.*
14. *The Hon. CIT(A) erred in not directing the LAO in considering the facts and circumstances of the case, in levying statutory interest under section 234A and 234B of the Act.”*

2.1 The crux of above grounds is with regard to treatment of entire alleged bogus purchases as income of the assessee without allowing any expenditure by relying on the enquiry conducted by AO in the first round of proceedings though the vendor sales have been accepted as such.

3. Facts of the case are that earlier assessee came in appeal before this Tribunal in ITA Nos.1658 to 1661/Bang/2018 for the assessment year 2008-09 to 2011-12. The Tribunal set aside the issue to the ld. CIT(A) for fresh consideration. The ld. CIT(A) confirmed the earlier additions. Against this assessee is in appeal before us.

3.1 The assessee company is a manufacturer of alcoholic beverages. The Search and seizure operation u/s 132 of the Income-tax Act,1961 ['the Act' for short] was conducted in the premises of the assessee on 08.12.2011 and 16.12.2011. During the course of search certain incriminating documents were seized and the statement of the Finance Manager and the Executive Director of the Company were recorded.

3.2. The proceedings u/s 153A of the Act were initiated by, issuing notice dated 23.11.2012. During the course of search, incriminating' documents were seized from the premises of the assessee at Wilson Garden, Bangalore. From among the documents seized, the authorities found that the assessee company had made huge purchases from three concerns (i) M/s. Vinayaka Fruit Mandi, (ii) M/s. Venkateshwara Bottle Traders (both of which concerns, one Mr. A Manjunath was a proprietor) and (iii) M/s. Srinivasa Bottle Traders (name of the proprietrix is Mrs. Susheelamma, who is mother of Mr. A Manjunath). The seized documents including the bank details indicated inter alia that though these concerns stood in the name of Mr. A Manjunath and his mother, these were de facto controlled by M/s. SPR Group Holdings Private Limited. The seized materials also indicated that there were huge payments above Rs.20,000/- made in cash in contravention of the provisions of Section 40A(3) of the Act. 1961. The seized material further indicated that some payments were made which were hit by the explanation to provision section 37(1) of the Act. Moreover, the local enquiry conducted by the AO through his inspector revealed that no such concerns were in existence in the address provided by the assessee. With all these incriminating materials, Sri Janardhan.V, Internal Auditor and Finance Manager of the assessee company were confronted and his statements was recorded as under:-

"Q.1. Please identify yourself.

Ans. I am Sri. Janardhan. V, Internal Auditor and Finance Manager of SPR Group Holdings, S/o .Shri Late Varadaraja Iyengar and residing at No.12161650, 12 Cross, 6 Main, Girinagar 2 Phase, Bangalore 560085.

Q.3 Please identify the following persons and explain the transactions with them. M/s.Srinivasa Bottle Traders, Prop: Susheelamma, Mr. Manjunath A Prop: Venkateshwara Bottle Traders, M/s. Venkateshwara Fruit Mandi (Prop Manjunath A) and M/s. Vinayaka Fruit Mandi (Prop Manjunath A).

Ans. Mr. Manjunath A and Mrs. Susheelamma his mother were earlier suppliers to SPR Holdings Pvt. Ltd. This was about 5 years ago i.e. prior to FY 2006-07. However, subsequently from FY 2007-08 onwards, they are not supplying any good or service to us. Sale bills by them are however being provided which are for the purposes of accommodation entries. The purchases of goods and services from them have actually not taken place since FY 2007-08 and the amounts debited on their account are for meeting several cash expenses that have to be incurred for business purposes. The cash that is returned back by these persons are used for labour payments made in cash and other miscellaneous payments.

Q.4 Several papers have been found which refer to "M.M.Payments". Please explain the same.

Ans. These are Miscellaneous payments incurred in the course of business promotion and are according to the instructions of the management.

Q.5 I am showing you ledger copies where the payments made to the concerns are as per list below:

Name	F.Y.	Amount (in Rs.)
Vinayaka Fruit Mandi	09-10	42,14,810
Vinayaka Fruit Mandi	10-11	4,22,50,000
Vinayaka Fruit Mandi	11-12	2,60,02,322
Srinivasa Bottle Traders	08-09	15,41,29,110
Srinivasa Bottle Traders	09-10	3,50,40,907
Venkateshwara Bottle Traders	08-09	1,32,94,040
Total		27,49,31,180

As per the replies submitted above, the payments made to the extent of Rs.27,49,31,189/- for the various years listed against parties in whose name the same have been booked are bogus. Do you agree?

Ans. I Agree.

3.3. The detailed statement of Sri. Suresh Gowda has been quoted in the Assessment Order. On analysis of such statement, Sri. Suresh Gowda was asked to produce Sri. Manjunath before the Assessing Officer for confirmation of the transactions. This was not done. However, in response, Sri. Thimme Gowda filed a reply denying any liability arising out of the transaction recorded in the seized incriminating documents.

3.4. The AO however, declined to accept such explanation and completed the assessments making the additions of Rs.27,49,31,180/- spread over four years as under: -

S.No.	Asst. Year	Undisclosed income (Rs.)
1.	2008-09	16,74,23,150
2.	2009-10	3,92,55,717
3.	2010-11	4,22,50,000
4.	2011-12	2,60,02,322

On this, assessee came in appeal before this Tribunal.

3.5 On this issue, the Tribunal observed as follows:

“33. The next common additional ground in all these appeals is ground No.3 in which the assessee alleges that AO has not given opportunity of cross examination of certain person whose statement has been recorded on oath during the course of search as follows:-

“c. No opportunity was given by the AO to cross examine Sri Janardhan who, without basis, had stated that the expenditure on purchase of grapes and bottles from three vendors (Vinayaka Fruit Mandi, Srinivasa Bottle Traders and Venkateshwara Bottle Traders) is bogus. This opportunity ought to have been given by the AO as a general principle of natural justice as applicable to a quasi-judicial proceeding.

In this regard, reliance is placed on the following judgements:-

- (i) Andaman Timber Industries and Commissioner of Central Excise, Kolkata (Civil Appeal No. 4228 of 2006) (SC);*
- (ii) Veena Gupta v. ACIT (5662/Del/2008) (Del Trib.)*

34. *The Ld. D.R. submitted that the assessee not sought cross examination of any parties on earlier occasion before the lower authorities. As such, it was not provided. Now it cannot be given after lapse of more than 10 years.*

35. *We have heard the rival submissions and perused the record. In this case, a search was taken place on 8.12.2011 at the assessee's premises. The assessment was framed on 25.3.2014 by issuing a notice u/s 153A of the Act on 23.11.2012. Notice u/s 143(2) of the Act was issued on 14.5.2013. Notice u/s 142(1) of the Act was issued on 28.11.2013 and 17.2.2014. The assessee's counsel Shri Ranganath, FCA appeared before the AO and given various information and filed details before AO. At that time the assessee not sought any cross examination of the parties concerned. During the course of search, statements were recorded through Janardhan V., Internal auditor and Finance Manager of the assessee company and Suresh Gowda, Executive Director of the assessee company. The incriminating material found during the course of search were confronted to the assessee's employee Janardhan V. and also to the Executive Director Suresh Gowda. His statement was also recorded. Suresh Gowda has admitted to the fact that the entities namely Vinayaka Fruit Mandi and Venkateswara Bottle Traders were created for the purpose of inflation of expenses of the assessee company and thereby generation of cash. He also stated that the entire payment is not bogus. He further stated that part of the payment made for the purpose of purchase of bottles by the company from the above concerns be considered as bogus and he offered Rs.10.5 crores for assessment year 2009-10 & Rs.4.50 crores for assessment year 2010-11, which is evident from the following statement recorded from Suresh Gowda, Executive Director of the assessee company, in answer to Q.Nos.23 & 24, which reads as follows:-*

Q.No. 23: I am now showing you some of the payment vouchers seized during the course of search proceedings at the office of M/s SPR Group Holdings Pvt. Ltd on 08/12/2011. The details of some of the sample cash vouchers are as follows:

S.NO	MATERIAL NO.	PAGE NO.	DATED	AMOUNT
1	A/SPRGHPU2	6	25/08/2011	4,25,000
2	A/SPRGHPL/2	32	30/07/2010	10,00,000
3	A/SPRGHPL/2	48	25/09/2010	25,00,000
4	A/SPRG HPL/2	105	24/12/2009	10,00,000
5	A/SPRG HPL/5	61	24/12/2009	9,00,000
6	A/SPRGHPU5	70	26/09/2011	25,00,000
7	A/SPRGHPU5	78	22/09/2011	25,00,000
8	A/SPRGHPU5	82	03/08/2011	8,00,000
9	A/SPRGHPU5	84	04/08/2011	4,79,000

Since, the above payments are not allowable as per Sec.37(1) of the I T Act, and Sec.40A(3) of the I T Act, you are requested to offer your comments.

Ans.: I am unable to answer to this question since it appears - to be a legal one. I would consult our Auditors and act according to the law at the time of filing of returns of income.

Q.No. 24: Do you have anything else to say?

Ans.: Nothing more to add to the above answers. The income of Rs.15.00 crores would be offered to tax in the respective assessment years. Further, during the course of search you have noticed that we have hardly any liquidity. The payment of taxes applicable to the above declaration may be permitted to be paid in easy installments. You would also appreciate that we have cooperated in the course of search."

36. *The contentions of Shri. Suresh Gowda was not acceptable to the AO for the simple reason that he was not able to prove conclusively that the actual purchase of the bottles have been made. Further, Sri Suresh Gowda was give show cause notice vide letter dated 02.01.2014 and requesting him to produce Sri A Manjunath for examination. However there was no response from Sri Suresh Gowda. Instead, another Director, in response Sri Thimme gowda has replied as under:-*

"You have referred to seized materials marked as A/SPRGHPU2,3,5,7 & 15. Apparent these documents were seized at our marketing office at Wilson Garden on 08.12.2011. The documents contained in seized materials are payments made to various persons, apparently on the vouchers under the heading of our Company. In reality, they _are payments, not relating to our company or activities.

We have two major suppliers M/s. Vinayaka Fruit Mundy, Prop., concern of Mr. Manjunath and M/s.Srinivasa Bottle Traders, Prop., concern of Mrs. Sushilamma, supplying grapes and bottles respectively. Grapes are used for fermenting and producing spirit. Bottles are used for packing the produce. During the assessment years under consideration, the purchases made from these two concerns are as follows:

<i>Asst. Year</i>	<i>Vinayaka Fruit Mandy (Rs.)</i>	<i>Srinivas Bottle Traders (Rs.)</i>
<i>2007-08</i>	<i>-</i>	<i>1,04,06,142</i>
<i>2008-09</i>	<i>-</i>	<i>15,41,29,110</i>
<i>2009-10</i>	<i>42,14,810</i>	<i>3,42,92,609</i>
<i>2010-11</i>	<i>4,22,50,000</i>	<i>-</i>
<i>2011-12</i>	<i>2,17,78,750</i>	<i>-</i>

37. *However, the AO did not accept the contentions of Sri Thimme Gowda, Director, SPR Group Holdings Pvt. Ltd., on the reason that these payments pertained to FY 2008-09 to 2011-12 wherein payments exceeding Rs.20,000 is not allowable u/s. 40A(3) of the Act. Hence the entire payment of Rs.27,49,31,189 made*

to Vinayaka Fruit Mandi and Srinivasa Bottle Traders was treated as bogus expenditure and assessed as undisclosed income as follows:-

AY	Undisclosed income assessed
2008-09	16,74,23,150
2009-10	3,92,55,717
2010-11	4,22,50,000
2011-12	2,60,02,322

38. With regard to seized documents found in the premises of the assessee pertaining to Vinayaka Fruit Mandi, Venkateshwara Bottle Traders and Srinivasa Bottle Traders, these were confronted to Shri V. Janardhan, Internal Auditor & Finance Manager of SPR Group Holdings P. Ltd., who has admitted that there was no purchase of goods and services from FY 2007-08 onwards. This is the basis for the addition made by the AO. The statement of Shri V. Janardhan who has admitted that there were bogus purchases, his statement was confronted to the Director of the assessee company viz. Suresh Gowda. The statement of Suresh Gowda was also recorded by searched team.

39. Now the contention of the Ld. A.R. is that the statement recorded from the third parties were not confront to the assessee. This argument of the assessee's counsel is devoid of merit. The statement recorded from Janardhan V was rightly confronted to the assessee represented by Executive Director Suresh Gowda and he has given reply against various submissions made by Shri Janardhan V., in his statement recorded u/s 132(4) of the Act. Further, at the time of recording the statement, the authorities asked him whether he wants to say anything else. He said in his answer to question No.24 that nothing more to add to the above answers and offered Rs.15 crores additional income for these assessment years and at that point of time, he has not asked for any cross examination of Shri V. Janardhan or later also he has not asked for the same. Being so, there is no merit in this argument of the assessee and deserves to be rejected. This common additional ground No.3, in all appeals of the assessee is rejected.

40. Next common grounds in ground Nos.3 to 6 in main grounds are with regard to the sustaining of addition by Ld. CIT(A) of bogus purchase in these assessment years. In this case the AO made additions as follows:-

S.No.	Asst. Year	Undisclosed income (Rs.)
1.	2008-09	16,74,23,150
2.	2009-10	3,92,55,717
3.	2010-11	4,22,50,000
4.	2011-12	2,60,02,322

41. The Ld. A.R. submitted that these additions are opposed on the basis of seized material and also the statement recorded u/s 132(4) of the Act from Janardhan V.

and Suresh Gowda. Now the contention of Ld. A.R. is that CIT(A) erred in treating the purchases as bogus for the following reasons:

- a. *The fact of actual purchases made is evident from the purchases made by the Appellant, the bills, goods received notes which form part of the seized material. That the goods have been consumed for production (which has finally yielded sales and taxable income) has not been questioned by the AO or the CIT(A).*
- b. *The LAO and CIT(A) have not disputed the quantity details of goods purchased; the inward receipt of the purchases is also not questioned.*
- c. *Appellant has made payments to the three vendors by way of crossed cheques. The factum of payment by crossed cheques is in accordance with the provisions of the Act and warrants no disallowance.*
- d. *The fact that the vendors have withdrawn the cash immediately is of no concern to the Appellant. No assessments have been framed under section 153C of the Act on those vendors.*
- e. *The Appellant cannot be held responsible for the cash drawals of the vendors.*
- f. *The LAO and CIT(A) did not adduce any evidence to demonstrate that the purchases were bogus apart from the statement of Sri Janardhan. No efforts have been made by the LAO and CIT(A) to demonstrate that the purchases were bogus.*
- g. *The fact that Sri Janardhan was maintaining books of accounts of the vendors and hence, some papers of these entities were found in the Appellant's office is of no consequence to the Appellant. If anything, action should have been initiated by the AO against the vendors.*
- h. *The AO has not established any additional relationship between the Appellant and the vendors apart from the fact that the Appellant has had business relationship with these Vendors over the past many years. No other tangible connection has been mentioned by the AO.*
- i. *On the vendors not being available at the addresses mentioned, it is to be noted that the Appellant had business transactions with the vendors in the years of FY 2011-12 and*

those prior to these years. The enquiry was made by the AO in 2014, many years from the last business transactions. Hence, mere enquiry by the AO and absence of the vendor from the said address after 2 years is not conclusive of the existence of the vendors.

42. *The Ld. D.R. strongly relied on the order of lower authorities.*

43. *We have heard the rival submissions. In our opinion, the addition is based on the seized material and statements recorded from Janardhan V. and Suresh Gowda. However, the Ld. CIT(A) has not examined how these transactions are treated in the hands of Vinayaka Fruit Mandi, Venkateswara Bottle Traders and Srinivasa Bottle Traders in these assessment years. In our opinion, these facts are very relevant to decide the issue in the assessee's case as there should be similar treatment in the hands of seller also. If it is considered as genuine in the hands of these vendors on the same principle, these transactions should be considered as genuine in the hands of the present assessee also. With these observations, we remit this issue on merit to the file of Ld. CIT(A) to consider afresh and decide in accordance with law within six months from the date of receipt of this order as this is very old matter relating to AY 2008-09 to 2011-12."*

3.6 After setting aside by the Tribunal to the file of ld. CIT(A) for fresh adjudication, the ld. CIT(A) observed as under:

9.1 *The submissions of the appellant have duly been considered. On the issue of bogus purchase, it is important to discuss the findings of incriminating material found during search. It was found that there were three proprietorship concerns fully managed by M/s. SPR Group Holdings namely M/s. Vinayaka Fruit Mandi and M/s. Venkateshwara Bottle Traders (lending proprietor is A Manjunath) and M/s. Srinivasa Bottle Traders (lending proprietor is Mrs Susheelamma, mother of Sri A Manjunath and also the power of attorney holder). Bank a/c statement of above mentioned concerned were also obtained from the banks and examined carefully and found that-*

1. *The money has been transferred by way of cheques from the bank account of M/s SPR Group Holdings only and amounts have been withdrawn on the same day or the immediate next day by way of self cheque.*
2. *It was also found that cheques leaves have been signed by Sri. A Manjunath on both sides so that somebody can withdraw on his behalf.*
- 3 *For all the transactions deposit and withdrawal slip were not signed by Sri. A Manjunath.*
- 4 *Self-made cash vouchers where in payments exceeding Rs. 20,000/-were booked in the name of M/s. Vinayaka Fruit Mandi, M/s. Venkateshwara Bottle Traders and M/s. Srinivasa Bottle Traders.*
- 5 *Certain vouchers contained payments which were made in violation of law which would attract Explanation to section 37(1) and were booked*

9.1.1 The above incriminating documents were confronted to Shri. Janardhan. V, Internal Auditor and Finance Manager of M/s. SPR Group Holdings Pvt. Ltd and statement recorded on the day of search u/s 132(4). The relevant portion of his statement is reproduced as under:-

Q.1 Please identify yourself

Ans. I am Sri. Janandhan. V, Internal Auditor and Finance Manager of SPR Group Holdings, s/o . Shri. Late Varadaraja Iyengar and residing at No.1216/630, 12th Cross, 6th Main, Girinagar 2nd Phase, Bangalore 560085.

Q.3 Please identify the following persons and explain the transactions with them. Ws. Srinivasa Bottle Traders, Prop: Susheelamma, Mr. Manjunath A Prop: Venkateshwara Bottle Traders, M/s. Venkateshwara Fruit Mandi (Prop Manjunath A) and M/s. Vinayaka Fruit Mandi (Prop Manjunath A).

Ans. Mr. Manjunath A and Mrs. Susheelamma his mother were earlier suppliers to SPR Holdings Pvt. Ltd. This was about 5 years ago i.e. prior to FY 2006-07. However, subsequently from _6/ 2007-08 onwards, they are not supplying Any good or service to us. Sale bills by them are however being provided which are for the purposes of accommodation entries. The purchase of goods and services from them have actually not taken place since FY 2007-08 and the amount debited on their account are for meeting several cash expenses that have to be incurred for business purposes. The cash that is returned back by these persons are used for labour payments made in cash and other miscellaneous payments.

Q.4 Several papers have been found which refer to "MM Payments". Please explain the same.

Ans. There are Miscellaneous payments incurred in the course of business promotion and are according to the instructions of the management.

Q.5 I am showing you ledger copies where the payments ma4 to the concerns are as-per list below:

Name	F. Y.	Amount In Rs.
Vinayaka Fruit Mandi	09-10	42,14,810
Vinayaka Fruit Mandi	10-11	4,22,50,000
Vinayaka Fruit Mandi	11-12	2,60,02,322
Srinivasa Bottle Traders	08-09	15,41,29,110
.Srinivasa Bottle Traders	09-10	3,50,40,907
Venkateshwara Bottle Traders	08-09	1,32,94,040
Total		27,49,31,180

As per the replies submitted above, the payments made to the extent of Rs. 27,49,31,189/- for the various years listed against parties in whose name the same have been booked are bogus. Do you agree:

Ans. *I Agree."*

Q. 24 *Do you have anything else to say:*

Ans. *Nothing more to add to the above answers. The income of Rs. 15.00 Crores would be offered to tax in the respective assessment years. Further, during the course of search you have noticed that we have hardly any liquidity. The payments of taxes applicable to the above declaration may be permitted to be paid in easy installments. You would also appreciate that we have cooperated in the course of search".*

9.2 *The contention of the AR is not acceptable. During the course of search and seizure proceedings, statement of Sri Janardhan V, Internal Auditor and Finance Manager of the company was recorded and he, in his statement admitted that (vide answer to question no.4) all the transactions in the nature of "M.M. Payments" were made with the instruction of management. Section 37(1) of the Income Tax Act clearly states that any "expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business of profession and no deduction or allowance shall be made in respect of such expenditure". The transactions made in the nature of "M.M. Payments" was a clear violation of section 37(1) of Income Tax Act.*

9.3 *Further, Shri Janardhan V, in his statement also admitted that (vide answer to question no.5) the payments made to the extents of Rs. 27,49,31,189/-for the various years listed against parties in whose name the same have been booked was bogus as there was no purchase of any goods or services after financial year 2007-08 onwards from M/s Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders, and M/s. Vinayaka Fruit Mandi. The company SPR Group Holdings Pvt. Ltd. had created the above three entities for the purpose of inflation of expenses in the name of purchase of bottles and grapes. But in reality, there was no such purchase. The statement of Sri. Suresh gowda, one of the directors of the appellant company was also recorded u/s 132(4) which had corroborated the statement of shri Janardan V. During the course of assessment proceedings, Sri. Suresh Gowda, was asked to produce Sri Manjunath A, proprietor of M/s. Venkateshwara Bottle Traders before the Assessing Officer but no compliance is made.*

9.4 *During the course of appellate proceedings, the assessing officer was directed vide letter dated 16-11-2022 to conduct an enquiry on the observations made by ITAT in para 43 with regard to treatment of transaction in hand of M/s Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders, and M/s. Vinayaka Fruit Mandi and submit the report on the same. The assessing officer conducted an enquiry by issue of notice u/s 133(6) and field visit by the ITI and submitted the report. The same has been duly examined and considered and it has been noted that the no such business entities in the name of M/s Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders, and M/s. Vinayaka Fruit Mandi on the given*

address was found also no such person in the name of Sri. A Manjunath on the given address was located. In reality these business entities were never existed. The appellant company had created these entities for the purpose of inflation of expenses in the name of purchase of bottles and grapes, but in reality there was no such purchase. The claim of appellant is nothing but afterthought. The payment made by the appellant company to M/s Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders, and M/s. Vinayaka Fruit Mandi, amounting to. Rs. 27,49,31,189/- is bogus expenditure. The addition made by the assessing officer is upheld.

9.5 Considering above, the grounds of appeal 2, as raised by the appellant is dismissed.

10. *Vide ground no. 3 & 4, the appellant has contended that the AO erred in placing is conclusion on the oath statement of various persons especially Mr. Janardhan, who was also maintaining accounts of the 3 persons and concluded the declaration of offering the income at the time of search proceedings. The appellant has placed reliance on the ruling of the Hon'ble Apex Court in the case of Pullangode Rubber Produce Co. Ltd. v. State of Kerala (91 ITR 18) observing that admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect. Reliance is also placed on the ruling of the Delhi High Court in the case of S. Arjun Singh v. CWT (175 ITR 91).*

10.1 *During the course of appellate proceedings, the AR of the appellant company argued that The AO only based on the statements recorded by Mr. Suresh Gowda, Executive Director and Mr. Janardhan V, Internal Auditor and Finance Manager had concluded that expenses incurred are for the purpose of inflation of expenses and treated it bogus. The claim of the appellant is baseless hence not acceptable as the AO concluded the assessment not only on the basis of statement recorded u/s 132(4) but also relied on the other factors like the withdrawal of cash by the M/s Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders, and M/s. Vinayaka Fruit Mandi on the same day of receipt of funds from the appellant company, the presence of signatures of the Proprietors of these business entities of both sides of cheques evidencing cash withdrawal, presence of self-made cash vouchers in which payments exceeding 20,000 were booked in the name of these business entities, payments made in the nature of "M.M. Payments" which are not allowable u/s 37 of IT Act. It is submitted that all these factors had no bearing on the Appellant Company as they merely pertained to the suppliers of the appellant. Considering the above, grounds of appeal No.3 & 4, as raised by the appellant are dismissed."*

Against this assessee once again came in appeal before us.

4. The Id. A.R. submitted that the for the AY 2008-09 to AY 2011-12 comprise of the common issue of addition towards bogus purchase expenditure as tabulated year-wise below.

Name	A.Y.	Amount (in Rs.)
Srinivasa Bottle Traders	2008-09	15,41,29,110
Venkateshwara Bottle Traders	2008-09	1,32,94,040
Vinayaka Fruit Mandi	2009-10	42,14,810
Srinivasa Bottle Traders	2009-10	3,50,40,907
Vinayaka Fruit Mandi	2010-11	4,22,50,000
Vinayaka Fruit Mandi	2011-12	2,60,02,322
Total		27,49,31,180

4.1. In the years in appeal, the assessee was engaged in the manufacture and sale of Indian Made Foreign Liquor ('IMFL'). The year-wise break-up of sale of IMFL is tabulated below:

AY	IMFL Sales
2008-09	98,41,74,266
2009-10	102,32,78,436
2010-11	79,85,42,598
2011-12	94,01,36,820
TOTAL	374,61,32,120

4.2 Since IMFL is packed in bottles and sold, Appellant purchased bottles from various vendors. The year-wise break-up of purchase of bottles is tabulated below:

AY	Bottle purchases
2008-09	35,15,83,524
2009-10	27,97,80,731
2010-11	22,36,14,973
2011-12	25,65,13,806
TOTAL	1,11,14,93,034

4.3 Pursuant to a search on the premises of the Assessee on 08.12.2011 & 16.12.2011, various documents were seized. Sworn statements were taken from Sri Janardhan, Assessee's employee and accountant (who also happened to be handling the writing of accounts of the suppliers outside the knowledge of the Assessee). For reasons best known to him, he mentioned in the sworn statement that expenditure as tabulated below, represented bogus purchase expenditure of bottles.

Name	A.Y.	Amount (in Rs.)
Srinivasa Bottle Traders	2008-09	15,41,29,110
Venkateshwara Bottle Traders	2008-09	1,32,94,040
Vinayaka Fruit Mandi	2009-10	42,14,810
Srinivasa Bottle Traders	2009-10	3,50,40,907
Vinayaka Fruit Mandi	2010-11	4,22,50,000
Vinayaka Fruit Mandi	2011-12	2,60,02,322
Total		27,49,31,180

4.4 Statement was also obtained from Sri T Suresh Gowda, one of the directors of the Assessee-Company. While he mentioned that the above purchases are genuine, for reasons best known to him, he mentioned in the sworn statement that some of the above expenditure ought to be disallowed.

4.5 Scrutiny assessment proceedings were initiated pursuant to the search. Per these proceedings, the Assessee filed its income-tax return ('ITR') affirming the returned income. A copy of the ITR-V, together with the IT computation and audited financial statements for the AY 2008-09 to AY 2011-12 are enclosed in pages 1 to 259 of the PBC. During the assessment proceedings, the Assessing Officer ('AO') focused only the issue of bogus purchases.

4.6 During the assessment proceedings, the Assessee did not accept the fact that the purchases were bogus. The Assessee argued that the mere statements of one person, that is Mr. Janardhan, is not conclusive in the absence of any material collaborative circumstances. The Ld. AO has not considered that Sri T Suresh Gowda has clearly mentioned that these are genuine purchases.

4.7 The Assessee demonstrated that the bottles purchased from the suppliers are evidenced by tax purchase invoices, delivery challans, inward documents, payments through banking channels and like, all these were part of the seized documents. The Assessee with these documents demonstrated that the statements made by Sri Janardhan was against the factual position. In fact, the statement of T Suresh Gowda clearly mentions that these purchases were genuine.

4.8 Also, the Assessee contended that these purchases were necessary to effect the sale of the finished products and that it had not booked these as extra surplus bottles. Since apart from the statements of Sri Janardhan, no other evidence was brought on record by the AO to demonstrate that the expenditures were bogus. The fact that the bottle sellers were not to be found on the premises as per the address furnished by the Assessee was of no consequence, since:

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- a. By the time of the search itself, the Assessee had discontinued purchases from these sellers; and
- b. The address verification was done after many years from the last transaction of the Assessee.

4.9. The Ld. AO proceeded to make the addition towards bogus purchases as tabulated earlier.

4.10 The ld. A.R. further submitted that the ld. CIT(A), in the first round of appeal, did not consider the Assessee's submissions in this regard. On further appeal to the ITAT, these aspects were noted and the Hon'ble ITAT 'A' Bench vide its common order for the AY 2008-09 to AY 2011-12 dated 27.05.2022 remanded back the issue to the file of the CIT(A) for afresh consideration with a direction to decide the issue in accordance with within 6 months from the date of receipt of its order.

4.11 Consequent to the said set-aside order, the Assessee filed a detailed submission before the Ld. CIT(A)-11 as and when it was called for. However, the Ld. CIT(A)-11, passed its order on 24.01.2023 by upholding the additions made by the LAO without verifying the facts and circumstances of the case. In this regard, we have summarized below the facts and our submissions against the addition undertaken by the Ld. AO and the order passed by the Ld. CIT(A)- 11.

4.12 In the above backdrop, the ld. A.R. submitted that:

The fact of actual purchases made is evident from the purchase made by the Assessee, the bills, goods receipt notes which form part of the seized material. That the goods have been consumed for production (which has finally yielded sales and taxable income) has not been questioned by the AO or the CIT(A).

4.13 The Assessee had made purchases during the FY 2007-08 to FY 2010-11 with the vendors M/s. Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders and M/s. Vinayaka Fruit Mandi and the same is evidenced with the bills, goods receipt note and invoices raised. As such, it cannot be stated that the purchases are bogus.

4.14 Without prejudice to the above, the ld. A.R. submitted that the Assessee had furnished the relevant copy of bills, goods receipt notes and invoices before the LAO during the course of assessment proceedings to substantiate its claim. However, the LAO only based on the statements recorded by Mr. Janardhan V, internal auditor and finance manager had concluded that the expenses incurred are for the purpose of inflation of expenses in the name of purchase of bottles or grapes and hence, are bogus receipts. That this is contradicted by Sri T Suresh Gowda has not affected the conclusion of the LAO. Thus, the LAO has sought to blow hot and cold on the sworn statements themselves. The Ld. AO has not conducted any detailed investigation to substantiate its claim.

4.15 Without prejudice to the above, the ld. A.R. submitted that purchases should not have been treated as bogus when:

- a. They are duly supported by bills,
- b. All payments are made by account payee cheques,
- c. The supplier has confirmed the transactions,
- d. There is no evidence to show that the purchase consideration has come back to the Assessee in cash,
- e. The quantity of sales have been accepted; and
- f. The supplier has accounted for the purchases made by the Assessee and paid taxes thereon.

4.16 In the instant case, the Ld. AO has not considered the fact that the goods have been consumed for production and it has yielded in taxable income. Also, the Ld. AO has nowhere during the course of assessment proceedings has questioned the veracity of the other expenditure of goods consumed / purchased for manufacturing of the products. It is submitted that if the sails are not questioned, the purchase of other materials are not questioned, there is no basis to query the purchase of bottles which are the very means in which the finished products of IMFL are packed and sold.

4.17 Thus, the Ld. AO without verifying the nature of the Assessee's supply chain has doubted the veracity of income on the basis that low net profit has been declared of Rs.59.53 lakhs for the AY 2009-10 on comparison with the turnover and returned income for the last four years. Hence, the Ld. AO's contention is baseless and unjustified towards treating the expenses as bogus.

The Ld. AO and CIT(A) have not disputed the quantity of goods purchased; the inward receipt of the purchases is also not questioned.

4.18 Without prejudice to the above, the ld. A.R. submitted that the Ld. AO has not questioned the quantity of goods purchased and inward receipts of the purchases, which in turn is relevant details / documents towards the genuineness of purchases made. This is despite the seized material comprising of these invoices, with the goods received notes. When these evidentiary documents have not been rebutted, the Ld. AO is incorrect in claiming that Assessee has incurred bogus expenditure. The Ld. AO has also not undertaken any steps to establish the non-genuineness of the documents seized, by cross verifying with the Assessee's production records or questioning the purchase department personnel of the assessee.

Assessee has made payments to the three vendors by way of crossed cheques. The factum of payment by crossed cheques is in accordance with the provisions of the Act and warrants no disallowance.

4.19 The Id. A.R. further submitted that the Assessee has completed the transaction by issuing account payee cross cheques. Thus, these transactions have been undertaken through banking channels. It is another matter if the expenditure is incurred in cash. When expenditure is discharged through banking channels, it is incorrect to hold that the expenditures are bogus.

The fact that the vendors have withdrawn the cash immediately is of no concern to the Assessee. No assessments have been framed under section 153C of the Act on those vendors.

4.20 The Assessee issued cheques towards purchase of bottles. The fact that the cheques were encashed immediately is of no consequence to the Assessee. The reason for withdrawal of the cash is best known to the sellers of the bottles. Having stated this, the Ld. AO should note that the bottle manufacturing industry is an unorganized industry and at the time of the transactions, the nature and extent of cash transactions in these unorganized industries were intense. The LAO has given a go-by to these surrounding circumstances. As such, the LAO's approach is incorrect.

4.21 Without prejudice to the above, the Id. A.R. submitted that, the Ld. AO during the course of assessment proceedings has not confronted any of the vendors to conclude that why the cash has been withdrawn. The TIN numbers of the sellers are readily available on the invoices of the vendors. The LAO could have enquired on this

matter, inter alia, with the VAT authorities. No such verification has been done by the LAO.

4.22 Further, the Ld. AO neither conducted any enquiry by the powers vested with him through the issuance of notice u/s. 133(6) nor initiated any proceedings under section 153C of the Act. Thus, if the Ld. AO considers that cash that has been withdrawn by the seller is genuine, then, the Assessee's purchases should also be considered as genuine. However, without verification of above factual positions the Ld. AO has concluded the assessment by considering the entire amount of Rs. 27,49,31,180/- as unexplained income.

Assessee cannot be held responsible for the cash withdrawals of the vendors.

4.23 The ld. A.R. submitted that it has a genuine relationship of buyer and seller with the sellers. The Assessee's role was only to purchase bottles and grapes with the vendors as per the requirement for its business purposes. The Assessee cannot be held responsible for the cash withdrawals of the vendors without proper justification.

LAO and CIT(A) did not adduce any evidence to demonstrate that the purchases were bogus apart from the statement of Sri Janardhan. No efforts have been made by the LAO and CIT(A) to demonstrate that the purchases were bogus.

4.24 The ld. A.R. further submitted that that it has furnished the relevant copy of bills, goods receipt notes and invoices before the LAO during the course of assessment proceedings to substantiate its claim. However, the Ld. AO only based on the statements recorded by Mr. Janardhan V, internal auditor and finance manager had concluded that the expenses incurred are for the purpose of inflation of expenses

in the name of purchase of bottles or grapes and hence, are bogus receipts. The Ld. AO has not conducted any investigation to substantiate his claim.

4.25 Without prejudice to the above, the ld. A.R. submitted that in every search and seizure action, statements u/s 132(4) of the Act are recorded multiples times, till the search is concluded'. 'The persons giving such statements during search proceeding remain under great mental pressure, nervousness and stress. Most of times they also do not have the availability of relevant details, documents and books of account at the time of giving such statements, in the absence of which precise information the statements made during the search proceeding are often vulnerable on the ground that same cannot be correctly furnished. These statements are not withdrawn for concern that the search would again be restarted. In this backdrop, assessees generally wait till the assessment proceeding to prove their case.

4.26 The ld. A.R. submitted that section 31 of the Indian Evidence Act, 1872 states that admissions are not conclusive proof of the matters admitted. Thus, an admission or acquiescence cannot be a foundation for an assessment. In such circumstances, it is always open to an assessee to demonstrate and satisfy the authority concerned with documentary evidence and thereby dispel the statement so rendered u/s 132(4).

4.27 In this regard, he placed reliance on the ruling of the Hon. SC in Pullangode Rubber Produce Co. Ltd. v. State of Kerala (91 ITR 18) wherein their Lordships while observing that admission is an extremely important piece of evidence, held that, it cannot be said to be conclusive and the maker can show that it was incorrect. Reliance is also placed on the following rulings:

- a. Ruling of the Delhi High Court (HC) in S. Arjun Singh v. CWT (175 ITR 91);
- b. Ruling of the Mumbai ITAT in DCIT v. DBM Geotechnics and Constructions (P.) Ltd (136 [taxmann.com](#) 345);
- c. Allahabad HC in Abdul Qayume (50 Taxman 171);
- d. Jodhpur ITAT in Gyan Chand Jain (73 TTJ 859);
- e. Delhi HC in Harjeev Aggarwal (70 [taxmann.com](#) 95) followed in Best Infrastructure (84 [taxmann.com](#) 287), Kavitha Agarwal (143 [taxmann.com](#) 404), Promain (91 [taxmann.com](#) 198);
- f. Amritsar ITAT in Anoop Kumar (147 Taxman 26);
- g. SC in Avadh Kishore Das (1979 4 SCC 790) and Kashmira Singh (1952 1 SCC 275);
- h. Ruling of the Jurisdictional ITAT in D Dasappa v. DCIT (ITA Nos.2222 & 2223/Bang/2016, dated 09.02.2022).

4.28 He submitted that the fact that Sri Janardhan was maintaining books of accounts of the vendors and hence, some papers of these entities were found in the Assessee's office is of consequence to the Assessee. If anything, action should have been initiated by the AO against those persons whose books were found in the Assessee's office. However, no such action was initiated by the AO.

4.29 The ld. A.R. submitted that, Sri. Janardhan was looking after the accounts of the vendors (outside the knowledge of the assessee) and when Assessee enquired on this matter, Sri. Janardhan informed to the Assessee that he has collected details from the sellers to update the accounts. This is the reason why some of the papers and documents relating to these vendors are

found in the Assessee's office. However, the Assessee holds no responsibility to the said documents found in its premises. The LAO in this regard, has not conducted any ground reality checks and neither initiated any action against the vendors. Hence, on this basis the disallowance made by the Ld. AO in the assessment order is not justified.

The AO has not established any additional relationship between the Assessee and the vendors apart from the fact that the Assessee has had business relationship with these vendors over the past many years. No other tangible connection has been mentioned by the AO.

4.30 The ld. A.R. submitted that the Ld. AO has concluded the assessment only on the basis of that the Assessee had business relationship with these vendors for many years. He has not established any other tangible connection.

4.31 He submitted that it is not the Ld. AO's case that these sole proprietorships are owned by Assessee's related parties or Assessee's employees. These indicate that the AO has accepted that the sellers are unconnected entities. Hence, arrangements with unrelated entities undertaken through banking channels ought to be respected unless there is significant material on record to disprove the bona fide nature of these arrangements. Pursuant to the remand report, the ld. CIT(A) merely relied on the remand report and the AO's observations and did not comment on any of the assessee's submissions.

4.32 Considering the above facts and arguments, the ld. A.R. prayed to admit the appeal and adjudicate the matter on merit and render justice.

5. On the other hand, the ld. D.R. submitted that reiterated the findings of ld. CIT(A) in its latest order dated 24.1.2023, the gist of which is reproduced in para 3.6 above and requested to dismiss the grounds of appeal raised by the assessee.

Findings on the bogus purchases:

6. We have heard the rival submissions and perused the materials available on record. In the present case, there was search in the case of assessee u/s 132 of the Act on 8.12.2011 and 16.12.2011. In the course of search, it was found that the assessee has purchased bottles and grapes from following 3 parties:

- a) Vinayaka Fruit Mandi, Proprietor Sh. A. Manjunath
- b) Venkateswara Bottle Traders, Proprietor Sh. A. Manjunath
- c) Srinivasa Bottle Traders, Proprietor Susheelamma, Mother of Sh. A. Manjunath.

6.1 Bank accounts of these firms are examined, which shows that the money has been transferred by way of cheques from the account of present assessee. The amount has been withdrawn on the same day or immediate next day by way of cheque. It was also found that cheque leaves above signed by A. Manjunath on both sides, so that somebody can withdraw on his behalf. It was also enquired with the bank and found that all the transactions relating to the deposit and withdrawal slip were not signed by Sh. A. Manjunath. In one slip, it was mentioned as "SPR Group Holdings" only. During the search action, it was found that certain payments exceeding Rs.20,000/- were booked in the name of above 3 parties. The seized materials also include books of accounts of above 3 parties containing all the receipts and cheques from the present assessee and various payments were also shown in that books. It is also alleged by search team that no purchase of either any bottles or grapes which are supplied to present assessee is made. On the other hand, it contained the payment made to few employees of present assessee or

their group concerns were recorded. It also contains certain payments being made on behalf of Shri Thimme Gowda and his family members viz. Sharath Gowda, Prasanna Gowda, Suresh Gowda, Sunita and Vinuta. The books of accounts also contain various payments made in the name of factory expenses obviously meaning M/s. SPR Group Holdings, M/s. Lotus Mall Pvt. Ltd., Alphine Wineries and other SPR group companies and it also contains certain payments made to family members of Thimme Gowda and fuel expenses used by them and various other parties. During the course of search statement recorded from internal auditors Janardan V., who confirmed that there was no purchase of any goods or services after financial year 2007-08 onwards from these 3 parties. He stated that payment recorded in the books of accounts in these assessment years totaling of Rs.27,49,31,180/- were bogus.

6.2 Later, the statement of Janardan V., was confronted to Suresh Gowda, Executive Director of the assessee company. In his statement recorded u/s 132(4) of the Act on 9.12.2011, he has stated that these 3 parties are suppliers of bottles and grapes. They have the goods receipt for supply of the goods. However, he submitted that he wishes to admit Rs.9.96 crores in the hands of M/s. SPR Group Holdings Pvt. Ltd. for the financial year 2008-09 & FY 2010-11 and another additional income of Rs.3.6 crores for the FY 2011-12 as answer to question no.6 in the statement recorded on 9.12.2011 u/s 132(4) of the Act. Further, there was one more observation by AO in his order that Suresh Gowda in his another statement he has admitted that expenses amounting to Rs.15 crores out of Rs.27.70 crores may be treated as non-allowable expenditure and in the same breath AO recorded that Mr. Suresh Gowda has admitted an additional income of Rs.10.5 crores in the AY 2009-10 and Rs.4.5 crores in the AY 2010-11 which is recorded in the

paragraph 13 of the assessment order. The ld. AO also mentioned that income admitted is Rs.10.5 crores for assessment year 2009-10 and Rs.4.5 crores for AY 2010-11. The relevant portion of the statement recorded from Shri Suresh Gowda is as follows:-

.No.3.: I am showing you page Nos. 1 to 105 of the seized material marked as A/SPRGHPL/2 seized during the course of search u/s.132 of the I T Act at M/s.SPR Group Holdings Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 105 of the seized material marked as A/SPRGHPL/2 consisting of cash vouchers of the company SPR Group Holdings Pvt. Ltd. The payments varies from Rs.50,000/- to Rs.10,00,000/- in cash towards certain expenses.

Q.No.4.: I am showing you page Nos. 1 to 76 of the seized material marked as A/SPRGHPL/3 seized during the course of search u/s. 132 of the I T Act at M/s.SPR Group Holding Pvt.Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 76 of the seized material marked. as A/SPRGHPL/3 consists of cash vouchers and ledger extracts of cash payments of the company SPR Group Holdings Pvt. Ltd., The same folder at page No-54 to 64 also consists of cash vouchers debited to M/s. Srinivasa Bottle Traders.

Q.No.5.: I am showing you page Nos. 1 to 42 of the seized material marked as A/SPRGHPL/4 seized during the course of search u/s.132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos to 42 of the seized material marked as A/SPRGHPL/4 consists of bank statements for the financial year 2007-08 to 2009-10 bearing current account No. 0794201003505 of M/s. Srinivasa Bottle Traders maintained at Canara Bank, Seshadripuram Branch, Bangalore.

Q.No.6 The examination of the above account mentioned at Q.No.5 shows that the money has been transferred by way of cheque from the bank account of M/s. SPR Group Holdings Pvt. Ltd. only. The same amounts have been withdrawn on the same day or the immediate next day by way of self cheque. Please explain the transactions.

Ans. Shri. Manjunath was looking after the business of procuring bottles from various sources for the use of our production. The payments to Shri.Manjunatha bottle Traders were being made by way

of crossed cheques from our company. He had to apparently draw the money to make the various payments against the purchases affected by him and also to meet such other expenses. This could be the reason for the cash being drawn out immediately on transfer of cheque payments from us to his bank account.

Q.No.7.: I am showing you page Nos. 1 to 86 of the seized material marked as A/SPRGHPL/5 seized during the course of search u/s. 132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 86 of the seized material marked as A/SPRGHPL/5 consists of cash vouchers of various payments of the company SPR Group Holdings Pvt. Ltd,

Q.No.8.: I am showing you page Nos. 1 to 19 of the seized material marked as A/SPRGHPL/6 seized during the course or search u/s.132 of the I T Act u/s M/s.SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 19 of the seized material marked as A/SPRGHPL/6 consists of bank statements for the financial year 2009-10 and 2010-11 bearing current account No. 0794201003601 of M/S. Vinayaka Fruit Mandi maintained at Canara Bank, Seshadripuram Branch.

Q.No.9 The examination of the above account mentioned at answer to Q.No.8 shows that the money has been transferred by way of cheque from the bank account of M/s. SPR Group Holdings Pvt Ltd only. The amounts have been withdrawn on the same day or the immediate next day by way of self cheque. The statement also shows that the proprietor of M/S. Vinayaka Fruit Mandi is Shri A. Manjunath, who is the joint account holder. Please explain the transaction.

Ans.: Shri. Manjunath was looking after the business of procuring grapes from various sources for the use of our production. The payments to Shri. Manjunath M/S. Vinayaka Fruit Mandi were being made by way of crossed cheques from our company. He had to apparently draw the money to make the various payments against the purchases effected by him and also to meet such other expenses. This could be the reason for the cash being drawn out immediately on transfer of cheque payments from us to his bank account.

Q.No.10 Please explain why the bank statement of M/S. Vinayaka Fruit Mandi is found in the business premises of M/s. SPR Group Holdings Pvt. Ltd?

Ans.: Shri. Janardhan, our accountant was also looking after the accounts of both the concerns viz., M/s. Srinivasa Bottle Traders and M/S. Vinayaka Fruit Mandi. I am told by Shri Janardhan that he had

collected all the details from the said Shri. Manjunath to update the accounts. This is the reason why some of the papers and documents relating to these concerns are found in our office.

Q.No.11.: I am showing you page Nos. 1 to 119 of the seized material marked as A/SPRGHPL/7 seized during the course of search u/s. 132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 119 of the seized material marked as A/SPRGHPL/7 consists of cash vouchers of payments of the company SPR Group Holdings Pvt. Ltd.

Q.No.12.: I am showing you page Nos. 1 to 165 of the seized material marked as A/SPRGHPL/14 seized during the course of search u/s. 132 of the I T Act at M/s.SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 165 of the seized material marked as A/SPRGHPL/14 consists of folder containing copies of monthly VAT returns in the case of M/s. Srinivasa Bottle Traders and M/s. Venkateshwara Bottle Traders for different years.

Q.No.13.: Please explain why the VAT returns of M/s. Srinivasa Bottle Traders and M/s. Venkateshwara Bottle Traders are found in the business premises of M/s. SPR Group Holdings Pvt. Ltd?

Ans.: My answer to Q. No. 10 holds good for this question also.

Q.No.14: I am showing you page Nos. 1 to 38 of the seized material marked as A/SPRGHPL/19 seized during the course of search u/s 132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 38 of the seized material marked as A/SPRGHPL/19 consists of self-made cash vouchers in the name of M/s. Vinayaka Fruit Mandi for the period 19/06/2010 to 14/03/2011.

Q.No.15.: I am showing you page Nos. 1 to 33 of the seized material marked as A/SPRGHPL/20 seized during the course of search u/s. 132 of the I T Act at M/s. SPR Group Holding Pvt.Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The page Nos 1 to 33 of the seized material marked as A/SPRGHPL/20 consists of self-made cash vouchers in the name of M/s. Srinivasa Bottle Traders for the period 08/05/2009 to 18/12/2009.

Q.No.16.: I am showing you page Nos.1 to 28 of the seized material marked as A/SPRGHPL/23 seized during the course of search u/s. 132

of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein. Ans.: The page Nos 1 to 28 of the seized material marked as A/SPRGHPL/3 consists of self-made cash vouchers in the name of M/S. Vinayaka Fruit Mandi,

Q.No.17.: I am showing you the 21 pages of the seized material marked as A/SPRGHPL/26 seized during the course of search u/s.132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The 21 pages of the seized material marked as A/SPRGHP/26 consists of signed cheque book of M/S. Vinayaka Fruit Mandi bearing current account No. 0794201003601 maintained at Canara -Bank, Seshadripuram Branch. The cheque leaves have been signed by Shri. A. Manjunath, Prop: M/S. Vinayaka Fruit Mandi.

Q.No.18 The details of the cheques already issued as counter-foil in the cheque book shows that all the xhw uwa have been used as self cheque for withdrawal of cash. Please explain the reason for withdrawing the cash as self cheque.

Ans.: My answer to Q.No.9 shall hold good for this question also.

Q.No.19.: Please explain the reasons why the entire? cheque book consisting of signed cheque leaves of M/S. Vinayaka Fruit Mandi bearing current account No. 0794201003601 maintained at Canara Bank, Seshadripuram Branch is found in the business premises of M/s. SPR Group Holdings Pvt. Ltd.

Ans: My answer to .Q.No.9 shall hold good for this question also.

Q.No.20.: I am showing you the 47 pages of the seized material marked as A/SPRGHPL/27 seized during the course of search u/s. 132 of the I T Act at M/s. SPR Group Holding Pvt. Ltd., Wilson Garden, Bangalore. Please go through the same and explain the contents therein.

Ans.: The 47 pages of the seized material marked as A/SPRGHPL/27 consists of signed cheque book of M/s. Srinivasa Bottle Traders bearing current account No.0794201003505 maintained at Canara Bank, Seshadripuram Branch. The cheque leaves have been signed by Shri. A. Manjunath, Prop: M/s. Srinivasa Bottle Traders

Q.No.21.: Please explain the reasons why the entire cheque book consisting of signed cheque leaves of M/s. Srinivasa Bottle Traders bearing current account No-0794201003505 maintained at Canara Bank, Seshadripuram Branch is found in the business premises of M/s. SPR Group Holdings Pvt. Ltd.

Ans.: My answer to Q.No. 10 shall hold good for this question also.

Q.No.22.: During the course of search proceedings, copies of ledger extracts of the above firms / persons to whom the payments are made were taken, as per which the total payments made are as under:

S.No.	Name	FY	Amount (Rs.)
1	Vinayaka Fruit Mandi	2009-10	42,14,810
2	Vinayaka Fruit Mandi	2010-11	4,22,50,000
3	Vinayaka Fruit Mandi	2011-12	2,60,02,322
4	Srinivasa Bottle Traders	2008-09	15,41,29,110
5	Srinivasa Bottle Traders	2009-10	3,50,40,907
6	Venkateshwara Bottle Traders	2008-09	1,32,94,040
		Total	27,49,31,189

As per the above table, the total amount paid to firms / persons is amounting to Rs. 27,49,31, 189/-. Whereas during the course of search proceedings at M/s SPR Holdings Pvt. Ltd. on 08/12/2011, you have admitted only Rs. 13.56 crores. Subsequently, you have enhanced the admitted income to an amount of Rs. 15.00 crores (including Rs. 13.56 admitted on 08/12/2011) as un-disclosed income on account of inflation .of expenditures with regard to payment to M/s. Venkaeshwara Bottle Traders, M/s. Srinivasa Bottle Traders and M/S. Vinayaka Fruit Mandi. You may offer your comments so as to why the entire amount of Rs.27,49,31,189/- claimed as expenses should not be disallowed

Ans.: As stated earlier, the supplies made by M/s. Srinivasa Bottle Traders, M/S. Vinayaka Fruit Mandi and also M/S. Venkateshwara Bottle Traders are genuine suppliers of bottles and grapes. The payments made for procuring these goods have to be taken into consideration for determining the income. The amount of Rs. 15.00 crores offered as income represents such of those expenses which are not allowable as per the provisions of income tax Act, more specifically u/s.37(1). This is the reason as to why the entire amount of Rs.27.49 crores cannot be considered as income. The genuineness of procurement and supply of these goods can be verified from the seized materials w.r.t. goods receipt note maintained by our company.

Q.No. 23: I am now showing you some of the payment vouchers seized during the course of search proceedings at the office of M/S SPR Group Holdings Pvt. Ltd on 08/12/2011. The details of some of the sample cash vouchers are as follows:

S.No.	Material No.	Page No.	Dated	Amount
1	S/SPRGHPL/2	6	25/08/2011	4,25,000
2	A/SPRGHPL/2	32	30/07/2010	10,00,000
3	A/SPRGHPL/2	48	25/09/2010	25,00,000
4	A/SPRGHPL/2	105	24/12/2009	10,00,000
5	A/SPRGHPL/5	61	24/03/2011	9,00,000
6	A/SPRGHPL/5	70	26/09/2011	25,00,000
7	A/SPRGHPL/5	78	22/09/2011	25,00,000
8	A/SPRGHPL/5	82	03/08/2011	8,00,000
9	A/SPRGHPL/5	84	04/08/2011	4,79,000

Since, the above payments are not allowable as per Sec.37(1) of the I T Act, and Sec.40A(3) of the I T Act, you are requested to offer your comments.

Ans.- I am unable to answer to this question since it appears to be a legal one. I would consult our Auditors and act according to the law at the time of filing of returns of income.

Q.No. 24: Do you have anything else to say?

Ans.: Nothing more to add to the above answers. The income of Rs. 15.00 crores would be offered to tax in the respective assessment years. Further, during the course of search you have noticed that we have hardly any liquidity. The payment of taxes applicable to the above declaration may be permitted to be paid in easy installments. You would also appreciate that we have cooperated in the course of search. "

6.3 However, the AO not accepted the statement of Suresh Gowda on the reason that he was not able to prove conclusively that actual purchase of bottles has been made. Thereafter, show cause notice was issued to Suresh Gowda on 2.11.2014 requesting him to produce A. Manjunath for examination. However, this show cause notice was replied by Shri Thimme Gowda as under:

15. The contention of Shri. Suresh Gowda is not acceptable for the simple reason that he was not able to prove conclusively that the actual purchase of the bottles have been made. Further, Sri Suresh Gowda was give show cause notice vide letter dated 02.01.2014 and requesting him to produce Sri A Manjunath for examination. However, there is no response from Sri Suresh Gowda. In response Sri Timmegowda has replied as under.

"You have referred to seized materials marked as A/SPRGHPL/2,3,5,7 & 15. Apparently these documents were seized at our marketing office at Wilson Garden on 8.2.201. The documents contained in seized materials are payments made to

various persons, apparently on the vouchers under the heading of our Company. In reality, they are payments relating to our company In reality, they are payments, not relating to our company or activities.

We have two major suppliers M/s. Vinayaka Fruit Mundy, Prop., concern of Mr Manjunath and M/s. Sinivasa Botle Traders, Prop., concern of Mrs. Sushilamma, supplying grapes and bottles respectively. Grapes are used for fermenting and producing spirit. Bottles are used for packing the produce. During the assessment years under consideration, the purchases made from these two concerns are as follows-

Asst. Year	Vinayaka Fruit Mundy (Rs.)	Srinivasa Bottle Traders (Rs.)
2007-08	--	1,04,06,142
2008-09	--	15,41,29,110
2009-10	42,14,810	3,42,92,609
2010-11	4,22,50,000	--
2011-12	2,17,78,75	--

It is material to note that all these purchases are genuine and payments have all been made by account payee cheques as and when due. Neither Mr.Manjunath nor Mrs. Sushilamma are any way connected or related to our Company or the promoters. We understand that the accounts of these companies were maintained by our accountant without our knowledge. We are surprised to note that quite a lot of our stationery was used for these two companies.

The payments indicated in above seized materials are all on account of these two concerns. This could be evidenced by the fact that these payment figures in the daily statements maintained by those concerns and the sources for them are also withdrawal from the two bank accounts maintained by those two concerns. The payments are all to be considered in the respective hands of the two concerns and nothing relates to us. The only connection between the two concerns and our company is the relationship of seller and buyer and all expenses by way of purchase price have been affected through banks. The withdrawal of cash for meeting the above mentioned expenses are all linked to the cash withdrawals in the bank accounts maintained by the two concerns.

Under the circumstances, it is our submission that the provisions of section 40A(3) cannot be made applicable in our case since no cash payments are effected in respect of these noted entries in our books of account. It is a fact that our Managing Director, Sri Suresh Gowda has in his sworn statement before the investigation department and also our group Chairman, Sri M. Thimme Gowda, in his letter dated 17.01.2012 have reiterated the above facts. They have committed that the two concerns shall offer Rs. 13.39 crores between them as additional income. for the relevant assessment years.

Under the circumstances it is our submission that the provisions of section 40A(3) cannot be applied in our case, so also Explanation to section 37(1). To summarize we wish to submit .

- a) *There are no expenses debited in our books of accounts which are in the nature of attracting the provisions of section 40A(3) & section 37(1) Explanation.*
- b) *The seized documents referred to in your letter are all expenses pertaining to the two concerns and examining the provisions of section 40A(3) & section 27(1) have to be applied in their assessments.*
- c) *The facts stated hereinabove are consistently canvassed by us from the beginning of the proceedings u/s 132.*

You have in your letter dated 02.01.2014 referred to the same seized materials and the same details. You have detailed the various factors connected with the payments made to Srinivasa Bottle Traders and Vinayaka Fruit Mundy and contended that why the payments made to the two concern should not be considered as inflated expenditure. In this connection we would like to submit that the expenditure is genuine and no part of the payments made to the two concerns is inflated. Against every payment made to each of the two concerns there is actual purchases affected which can be evidenced by the goods received note and relevant invoices. The two concerns were purchasing these materials from various sources and supplied to us. It was more advantageous to our business activity for purchasing from these two concerns in view of them being major single supplier for these two items. It avoided us too get involved with multiple suppliers trying to supply smaller quantities. In our opinion, the price paid for these purchases are very fair considering the supplies made to us and the various other responsibilities assumed by the two concerns to maintain the quality of supplies. In our opinion, the prices are not inflated. There is no evidence found during the course of search or assessment proceedings to say that the expenditures are not genuine. It is allowable u/s 37(1) of the Act since it is incurred for the purpose of carrying our business activity. Having said that the transactions are genuine, the prices paid are fair. The two concerns are not related to us, as specified persons within the meaning of section 40A(2)(b). For the above your proposal to treat the payments made to these concerns as inflated expenditure is without any basis. Further, there being actual purchases of bottles and grapes and the transaction being genuine, any attempt to treat the entire payment made to the two concerns as inflated expenditure would be without any basis and against the principles of law. For the above reasons, we request you to kindly drop your proposal to initiate proceedings to treat the payment made to the above two concerns as inflated expenditure.”

6.4 The above contention of Thimme Gowda was also not accepted by the Id. AO. The Id. AO observed that the entries made in the books of accounts of 3 parties are bogus expenditure and he

treated the total credit entries at Rs.27,49,31,189/- as undisclosed income of the assessee.

6.5 The main contention of the ld. AR that the assessee has purchased the bottles and grapes from the above parties and those 3 parties are duly registered with the Commercial Tax department and they duly opened the bank account and payments have been made by crossed cheque and AO has not made any effort to trace those parties. Further, the ld. A.R's plea is that the statement of one Mr. Janardhan V. which cannot be considered as conclusive evidence to suggest that the payment to these parties are bogus and on the other hand T. Suresh Gowda has clearly mentioned that these are genuine purchases. The assessee has been maintaining all purchase bills, vouchers, delivery challans, inward documents and supporting documents and payment through the banking channel and the assessee produced these materials from financial years 2007-09 to 2010-11. The AO has made enquiry after the lapse of time i.e. on the date of search on 8.12.2011 and the department was to verify the address after long lapse of time and during this time, the assessee has stopped purchasing goods from them and the assessee have no personal contact with them. The revenue authority has not conducted detailed investigation on the issue. These alleged parties are duly registered with Commercial Tax department and their VAT returns were filed and also found the same in the business premises of the assessee. This fact has been admitted by AO in his assessment order in para 10. The ld. AO has not found out whether these parties are duly registered in the commercial tax department and also they have not enquired with the respective bank with regard to parties whether the bank has opened the bank accounts after complying the NYC (Know Your Customer) norms. Further, the AO has not doubted the sales made by the assessee, he has accepted it. Even the AO has recorded in

his observation that various expenditure is booked by making payment from bank accounts of these alleged parties and the amounts withdrawn has been utilized for the purpose of payment of certain expenses which are not allowable as per section 37 (1) of the Act. In our opinion, if the sales are not questioned, it cannot be possible to sell the goods without purchase or incurring expenditure. There is no whisper in the assessment order that gross profit and net profit rate in these assessment years has gone down as compared to earlier years by booking bogus purchase or expenditure. It is also noted that there was no effort made by the investigating authorities or by AO to locate these alleged parties.

6.6 Further, the ld. CIT(A) recorded in her order that vide letter dated 16.11.2022 she has written letter to AO to conduct an enquiry with observation made by Tribunal on earlier occasion with regard to treatment of transaction in the hands of these 3 parties. The AO conducted an enquiry by issue of notice u/s 133(6) of the Act and since the income tax inspector has given a report that no such business entity in the name of M/s. Srinivasa Bottle Traders, M/s. Venkateshwara Bottle Traders and Vinayaka Fruit Mandi on the given address was found and also no such person in the name of A. Manjunath on the given address was located and according to the ld. CIT(A), no such business entities are existing and thus he came to know that entire purchase is bogus. In our opinion, the enquiry made by the revenue authorities is not sufficient to hold that the assessee has not incurred these expenses. The sole reason for sustaining addition is the statement of Shri V. Janardhan, internal auditor of the assessee company. At the same time, there was a statement recorded for Suresh Gowda who has given contradictory statement on two different occasions. Thereafter, Thimme Gowda, Director of assessee company denied this transaction by filing letter cited (supra). When the Director of

assessee company filed a letter before the tax authorities, it was not considered by the AO. The AO shall reject or accept the letter written by Managing Director or statement of V. Janardhan, employee of assessee company after due verification. However, he is not ready to verify the same. At the same time, he is not ready to accept the statement by letter from Shri Thimme Gowda., Managing Director of assessee company, which cannot be appreciated. As per section 31 of Indian Evidence Act, 1878, admissions are not conclusively proved as against admitted proof. In the absence of rebuttable conclusion, admission bind the maker when these are not rebutted or retracted. An admission is an extremely important piece of evidence but it cannot be said that it is a conclusive and the maker can show that it was incorrect. In our opinion admission made by the assessee will constitute a relevant piece of evidence but if the assessee contends that in making the admission, he had proceeded on a mistaken understanding or on misconception of facts or untrue facts, such admission cannot be relied upon without considering the aforesaid contention. In our opinion, the voluntary admission are not conclusive proof of the facts admitted and may be explained or shown to be wrong but they do raise an estoppel and shift the burden of proof to the person making the admission. In our opinion, unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. Thus, the burden to prove "admission" as incorrect is on the maker and in case of failure of the maker to prove that the earlier stated facts were wrong, these earlier statements are suffice to conclude the matter. If retraction or proved sufficiently, the earlier stated facts lose their effect and relevance as binding evidence and the authorities cannot conclude the matter on the basis of the earlier statements alone. However, bald retraction of earlier admission will not be enough after retraction. Such statements cannot automatically become

nullified. If the assessee proves that the statement recorded was involuntary and it was made under coercion, the statement has no legal validity.

6.7 Further, there was a CBDT circular file no.286/98/2013-IT (Inv.II) dated 18.12.2014 which states as under:

“Instances/complaints of undue influence/coercion have come to notice of the CBDT that some assesseees were coerced to admit undisclosed income during Searches/Surveys conducted by the Department. It is also seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light.

2. I am further directed to invite your attention to the Instructions/Guidelines issued by CBDT from time to time, as referred above, through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

3. In view of the above, while reiterating the aforesaid guidelines of the Board, I am directed to convey that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the IT Act, 1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.”

From the above Circular, it is amply clear that the CBDT has emphasized on its officers to focus on gathering evidences during search/survey operations and strictly directed to avoid obtaining admission of undisclosed income under coercion/under influence. Keeping in view the guidelines issued by the CBDT from time to time regarding statements obtained during search and survey operations, it is undisputedly clear that the lower authorities have not collected any other evidence to prove that the impugned income was earned by the assessee.

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6.7.1 At this stage, it is pertinent to refer to the judgment of the Supreme Court in the case of Vinod Solanki (2009) (233) ELT 157 observed as under :

"22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other

independent and cogent evidences, which would lend adequate assurance to the Court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded. [see Pon Adithan vs. Dy. Director, Narcotics Control Bureau (1999) 6 SCC 1]

6.7.2 In case of Romesh Chandra Mehta vs. State of West Bengal (1969) 2 SCR 461 although Hon'ble Court held that any statement made under ss. 107 and 108 of the Customs Act by a person against whom an enquiry is made by a customs officer is not a statement made by a person accused of an offence, but as indicated hereinbefore, he being an officer concerned or the person in authority, s. 24 of the Indian Evidence Act would be attracted.

6.7.3 It has been similarly held by the Hon'ble Supreme Court in the case of K.T.M.S. Mohd. & Anr. vs. Union of India (1992) (197 ITR 196) as under:

"We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice it to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the customs authorities or the officers of Enforcement Directorate under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and, if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means, that statement must be rejected brevi manu. At the same time, it is to be noted that, merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise, etc. to establish that such improper means have been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat, etc., against the officer who recorded the statement, the authority, while acting on the inculpatory statement of the maker, is not completely relieved of his obligation at least subjectively to apply its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down to this that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law that this Court, in several decisions, has ruled that, even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the Foreign Exchange Regulation Act or the Customs Act, etc., the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order be vitiated. Reference may be made to a decision of the Full Bench of the Madras High Court in Roshan Beevi vs. Jt. Secretary to the Government of Tamil Nadu, Public Deptt. etc.

(1983) Mad LW (Crl.) 289 : (1984) 15 ELT 289 : AIR 1984 NOC 103, to which one of us (S. Ratnavel Pandian, J.) was a party."

6.7.4 The ratio that emerges from the aforesaid decisions is that once a statement is retracted, the contents stated in the retracted statement must be substantially corroborated by other independent and cogent evidence. It has been consistently held by various courts that a sworn statement cannot be relied upon for making any addition and must be corroborated by independent evidence for the purposes of making assessments.

6.8 In view of the above, in our opinion, the AO as well as ld. CIT(A) erred in holding that the entire purchases and payments were bogus and payments for purchases had come back to the assessee as the lower authorities failed to investigate and appreciate the evidence to hold that entire transaction not genuine and they relied upon the statement recorded from V. Janardhan without giving an opportunity of cross examining him to the assessee and also without considering the retraction statements filed by the assessee. This being the position, in our opinion, the entire purchase price paid to this alleged parties could not be treated as income of the assessee in its entirety. However, there is a lapse from the assessee's side also. Hence, in our opinion, it is appropriate to consider only profit element embedded in such purchase as the income of the assessee in these assessment years. More so, from these bank accounts, the assessee has made various payments as recorded in earlier part of this order.

6.9 Further, we take support from following judgements to come to above conclusions:-

6.10 In the case of CIT Vs. Vijay M. Mistry construction Ltd. 355 ITR 498 (Guj.) the Hon'ble Gujarat High Court has held as under:

"Held, dismissing the appeal, that the conclusion arrived at by the Tribunal was based on concurrent findings of fact recorded by the Commissioner (Appeals) as well as the Tribunal. It was not the case of the Revenue that the Tribunal had taken into account any irrelevant material or that any relevant material had not been

taken into consideration. In the absence of any material to the contrary being pointed out on behalf of the Revenue, the order of the Tribunal could not be found fault with.”

6.11 Further in the case of CIT Vs. Bholanath Poly Fab (P) Ltd. 355 ITR 290 the Hon’ble Gujarat High Court has held as under:

“Held, dismissing the appeal, that whether the purchases themselves were bogus or whether the parties from whom such purchases were allegedly made were bogus was essentially a question of fact. The Tribunal having examined the evidence on record came to the conclusion that the assessee did purchase the cloth and sell the finished fabrics. Therefore, as a natural corollary, not the entire amount covered under such purchases, but the profit element embedded therein would be subject to tax.”

6.12 In the case of Sanjay Oilcake Industries vs. CIT reported in (2009) 316 ITR 274 (Guj), the Hon’ble Gujarat High Court held as under (page 281):

“7.2 . A similar question came up before this Court in the case of Sanjay Oilcake Industries vs. Commissioner of Income Tax reported in [2009] 316 ITR 274 (Guj) and this Court while deciding the said issue has held as under:

“Thus, it is apparent that both the Commissioner (Appeals) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by account payee cheques, the cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a different conclusion, different from the one recorded by the Commissioner (Appeals) and the Tribunal concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by set of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law.

In the aforesaid set of facts and circumstances of the case, the impugned order of the Tribunal is an order which is made in accordance with law and does not require any interference. The questions referred at the instance of the assessee as well as the Revenue are, therefore, answered in the affirmative, i.e., in favour of the Revenue and against the assessee in relation to the questions at the instance of the assessee, and in favour of the assessee and against the Revenue in relation to the questions at the instance of the Revenue.”

6.13 In the case of Vijay Trading Co. vs. ITO reported in (2016) 388 ITR 377 (Guj), the Hon’ble Gujarat High Court has held as under:

“Held, that it was not the entire amount covered by such purchase, but the profit element embedded therein which would be subject to tax. It would be appropriate to restrict the disallowance made in this regard to 25 per cent of the cost of such purchases in each year.”

6.14 In the case of CIT Vs. President Industries, reported in 258 ITR 654, the Hon’ble Gujarat High Court held as under:

“In the course of survey conducted in the premises of assessee, excise records were found which disclosed godown sales not disclosed in the books of account of the assessee. The Assessing Officer made addition of undisclosed income of the entire sale proceeds thereof. The Commissioner affirmed the addition but the Appellate Tribunal found that there was no material to indicate that the assessee made investments outside the books of account to make the alleged sales and held that the entire sale proceeds could not have been added as undisclosed income of the assessee but the addition could be only of the profits embedded in the sales. The Tribunal having declined to state a case, the Department applied to the High Court for an order calling for a reference :

Held, dismissing the application for reference, that the amount of sales could not represent the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the Goods; only the realisation of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods which were sold had been made by the assessee and that that investment was also not disclosed, only the excess over the cost incurred could be treated as profit.”

6.15 In the case of CIT Vs. Satyanarayan P. Rathi (2013) 351 ITR 150 (Guj), the Hon’ble Gujarat High Court has held as under:

“The assessee was in the business of trading in iron and steel. During the reassessment proceedings for the year 2003-04, it was found that purchases worth Rs.61.40 lakhs were not supported by sufficient evidence. Purchase of such goods from various suppliers was verified, but it was found that such parties had not supplied the goods as named by the assessee. The Assessing Officer made an addition of the entire amount of purchase of Rs.61.40 lakhs. The Commissioner (Appeals) found that though the purchases were not made from the parties from whom the assessee claimed, there was complete quantitative tally of the materials

purchased and sold. He was of the view that such materials were purchased from the open market incurring cash payment and bills were procured from various sources. He added only the profit element and not the entire amount of the purchases, for the limited addition to 30 percent of the total amount and reduced the amount to Rs.18.42 lakhs. The Tribunal allowed further relief to the assessee and retained the addition to the level of twelve and half per cent in pursuance of the various purchases. On appeal:

Held, dismissing the appeal, that the assessee was a trader and the Tribunal having retained twelve and half per cent of the purchase towards its possible profit, there was no reason to interfere in the order of the Tribunal.”

6.16 In the case of CIT Vs. Simit P. Sheth the Gujarat High Court reported in (2013) 356 ITR 451 (Guj) wherein the Hon'ble Gujarat High Court has held as under:

“The assessee was engaged in the business of trading in steel on wholesale basis. During the course of the reassessment proceedings for the year 2006-07, the Assessing Officer noticed that some of the suppliers of steel to the assessee had made their statements on oath to the effect that they had not supplied the steel to the assessee but had only provided sale bills. In turn, they were receiving small commission. The Assessing Officer concluded that the total purchase of Rs.41,04,903 cumulatively made from the three parties were bogus. He thus treated such purchases as bogus purchases and added the entire amount of Rs.41,04,903 to the gross profit of the assessee. He also rejected the books of account and estimated the assessee's business profits at Rs.5 lakhs. The Commissioner (Appeals) held that the assessee had made purchases from other parties in the open market. Therefore, he retained 30 per cent of the purchases cost as the probable profit of the assessee. He reduced the additions from Rs.41,04,903 to Rs.12,31,471 and deleted the balance of Rs.28,73,432. While doing so, he deleted the addition of Rs.5 lakhs as made by the Assessing Officer on the ground that the addition on account of bogus purchases had already been made. The Tribunal was of the opinion that twelve and half per cent of the disputed purchases should be retained in the hands of the assessee as business profits. On appeal to the High Court:

Held, dismissing the appeal, that the Commissioner (Appeals) believed that the purchases were not bogus but were made from the parties other than those mentioned in the books of account. That being the position, not the entire purchase price but only the profit element embedded in such purchases could be added to the income of the assessee. In essence, the Tribunal only estimated the possible profit out of purchases made through non-genuine parties. The estimation of rate of profit return must necessarily vary with the nature of business and no uniform yardstick could be adopted.”

6.17 Thus, in our opinion, no purchase can be rejected without disturbing the sales and addition to be limited to the extent of profit embedded with these transactions. The profit may be at the same rate of profit declared by the assessee in case of genuine purchases. As such entire purchase amount cannot be added by way of assessee income. The assessee has incurred expenditure from those bank accounts, which were duly recorded by the AO in his assessment order. This being a finding of fact, we have to proceed on such a basis. The contention of ld. D.R. is that such logic cannot be applied. In our opinion, since the department has not disputed the assessee's sales and there was no discrepancy in the sales declared, in our opinion, purchase cannot be rejected without disturbing the sales and only net profit embedded with the bogus purchases to be considered. This view of ours is fortified by the landmark judgement of Bombay High Court in the case of PCIT Vs. Md. Haji Adam and Company reported in 104 CCH 391 (Mum HC) wherein held as under:

"8. In the present case, as noted above, the assessee was a trader of fabrics. The A.O. found three entities who were indulging in bogus billing activities. A.O. found that the purchases made by the assessee from these entities were bogus. This being a finding of fact, we have proceeded on such basis. Despite this, the question arises whether the Revenue is correct in contending that the entire purchase amount should be added by way of assessee's additional income or the assessee is correct in contending that such logic cannot be applied. The finding of the CIT(A) and the Tribunal would suggest that the department had not disputed the assessee's sales. There was no discrepancy between the purchases shown by the assessee and the sales declared. That being the position, the Tribunal was correct in coming to the conclusion that the purchases cannot be rejected without disturbing the sales in case of a trader. The Tribunal, therefore, correctly restricted the additions limited to the extent of bringing the G.P. rate on purchases at the same rate of other genuine purchases. The decision of the Gujarat High Court in the case of N.K. Industries Ltd. (supra) cannot be applied without reference to the facts. In fact in paragraph 8 of the same Judgment the Court held and observed as under-

"So far as the question regarding addition of Rs.3,70,78,125/- as gross profit on sales of Rs.37.08 Crores made by the Assessing Officer despite the fact that the said sales had admittedly been recorded in the regular books during Financial Year 1997-98 is concerned, we are of the view

that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6 % gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price. We have to reduce the selling price accordingly as a result of which profit comes to 5.66 %. Therefore, considering 5.66% of Rs.3,70,78,125/- which comes to Rs.20,98,621.88, we think it fit to direct the revenue to add Rs.20,98,621.88 as gross profit and make necessary deductions accordingly. Accordingly, the said question is answered partially in favour of the assessee and partially in favour of the revenue.

9. *In these circumstances, no question of law, therefore, arises. All Income Tax Appeals are dismissed, accordingly. No order as to costs."*

6.18 Further, **Hon'ble Supreme Court in the case of CIT Vs. Odeon Builders Pvt. Ltd. reported in (2019) 418 ITR 315 (SC)** held as under:

2. *We have perused the review petition and find that the tax effect in this case is above Rs.1 crore, that is, Rs.6,59,27,298/-. Ordinarily, therefore, we would have recalled our order dated 17th September, 2018, since the order was passed only on the basis that the tax effect in this case is less than Rs.1 crore.*

3. *However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs.19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:*

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs.19,39,60,866/-, is directed to be deleted."

4. *The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.”*

6.19 Further, the Hon’ble Karnataka High Court in the case of Shri Ganesh Shipping Company Vs. ACIT in ITA No.366 of 2015 dated 6.2.2021 held as under:

*“5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the assessee. The Assessing Officer, in its order, has admitted that the payment of speed money is a trade practice which is followed by the assessee and similar business concerns functioning for speedy completion of their work. However, the disallowance of 20% of the expenses is made solely on the ground that the assessee had produced the self-made cash vouchers which showed that the payment was made by cash to each gang leader and the identity of the gang leader is not verifiable and the recipients are not assessee's employees. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Tribunal. However, it is pertinent to note that the books of accounts have not been touts by any of the authorities under the Act. A Bench of this Court vide judgment dated 24.03.2015 passed in ITA No.22/2015, has held that admittedly the normal practice in the line of business of the assessee is to pay certain extra amounts to port labourers as speed money for promptly and speedily carrying out the labour work of handling cargo beyond working hours and has placed reliance on the decision rendered by this Court in **KONKAN MARINE AGENCIES**, supra. It is pertinent to note that in **CLIFFORD D'SOZA**, supra, payment was made to the sub-contractors in cash as well as by Cheques. In the absence of any challenge to the entries made in the books of accounts by the authorities, in our opinion, the finding recorded by the Assessing Officer as well as the Tribunal that it denied the claim of the assessee for expenditure to the extent of 10% on account of payment of speed money, is perverse as the same is duly supported by the documentary evidence. Insofar as the submission made by the learned counsel for the revenue that in paragraph 4 of the order of the Commissioner the assessee himself had restricted the payment of speed money to 10% is concerned, it is pertinent to note that the restriction was made by the assessee in respect of Assessment Year 2004-05 and from the grounds of memorandum of appeal before the Tribunal; we find that the assessee had challenged the aforesaid finding which is evident from paragraphs 1 and 2, therefore, the aforesaid submission is of no assistance to the revenue.”*

6.20 The above decision of the Hon'ble Karnataka High Court is followed by the coordinate bench of this Tribunal in IT(SS)A Nos.1 to 6/PNJ/2015, ITA No.30/Bang/2017 & ITA No.870/Bang/2017 for the AYs 2006-07 to 2011-12, 2012-13 & 2013-14 respectively in the case of M/s. Hassan Hajee & Co., Mangalore vide order dated 22.9.2022 by observing as under:

"6. We have heard the rival submissions and perused the materials available on record. The assessee claimed the expenditure in these assessment years as follows:-

	A.Yr	Disallowance by AO	Restricted to 10%
1	2006-07	Nil	Nil
2	2007-08	Rs.1,74,38,149/-	Rs.17,43,815/-
3	2008-09	Rs.35,52,611/-	Rs.3,55,261/-
4	2009-10	Rs.40,40,000/-	Rs.4,04,000/-
5	2010-11	Rs.33,27,170/-	Rs.3,32,717/-
6	2011-12	Rs.50,71,250/-	Rs.5,07,125/-
7.	2012-13	Rs.1,81,74,006/-	Rs.4,54,350/- (Restricted to 2.5%)
8	2013-14	Rs.2,52,34,742/-	Rs.6,30,869/- (Restricted to 2.5%)

6.1 The main reason for disallowance by AO was that payment Labour Charges supported by self-made vouchers and have no signature of recipients. These expenditures mainly pertain to iron ore loading and unloading transit/site marshalling charges and other casual labour charges. According to the assessee, these expenditures incurred at various stages of iron ore movements. These expenses are pertaining to wages paid to various parties, such as workers manually handling iron ore from lorries/railway vehicles to the exporter's yard, those engaged to counter pilferage of iron ore at railway yards, export yards and other casual labourers engaged for cleaning purposes. It was explained before us that the assessee has been carrying voluminous quantity of iron ore and large number of workers who were illiterate and have no commercial knowledge and it is not possible to take down the signatures of those persons and in such circumstances, the vouchers were blank and for the accounting purposes assessee prepared vouchers and they were duly accounted in the books of accounts of the assessee and books of accounts were audited by the statutory auditors and no adverse comments has been made by them. The A.O. alleged in the first page of the assessment order that incriminating evidence has been seized which reveals that the assessee has been engaged in inflation of expenditure substantially. This statement of the AO in the first page of the order shows that he has opened the file with pre-determined mind that assessee has inflated the expenditure. It was so alleged by the AO even without rejecting the books of accounts. Before making allegation that assessee has inflated expenditure, it is incumbent upon the AO to reject the audited books of accounts maintained by the assessee, he should challenge the entries in the books of accounts by duly rejecting the same. In other

words, it is evident that the AO considered the income declared by the assessee, thereafter, he made disallowances of expenditure after accepting the books of accounts. The total disallowance made by the AO is only on conjectures and surmises. The claim of labour charges in these assessment years commensurate with the nature of volume of business carried on by the assessee and there is no sudden or steep increase in the claim of assessee as compared to year to year. However, the AO opted to disallow the expenditure on the reason that these are supported by self-made vouchers and were written by common persons. In our opinion, when the self-made vouchers are prepared inhouse, it must be prepared by inhouse persons only and as such, it has common pattern and that cannot be reason to doubt the genuineness of the payment. The assessee cannot carry on this business without incurring the expenditure. The allegation of the AO is that the vouchers are prepared at a stretch on one or two days during the financial year. There is no basis for this kind of allegation made by the AO and he has not brought anything on record to establish this contention of him. Being so, we have to reject this plea of the revenue authorities. In our opinion, considering the nature of the business of the assessee, we can take the judicial notice of the fact that if the AO had any doubt with regard to genuineness of any one of the voucher produced by the assessee, he could have drawn sample vouchers and called upon the assessee to produce the concerned recipient to establish the genuineness. Without doing so, making any adhoc disallowance is not legally sustainable. If the Ld. CIT(A) also without carrying on any enquiry, certain percentage of the labour payment at 10% in assessment years 2007-08 to 2011-12 and 2.5% in assessment years 2012-13 & 2013-14 was sustained. This act of Ld. CIT(A) is not justified. In our opinion, the impugned expenditure in fact claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business and it cannot be said that this expenditure is bogus or fictitious and cannot be said that it has not been incurred by the assessee for the purpose of business. We do not see remotely there is any mention of rationale in arriving at the percentage of disallowance in the present case, and secondly, we find force in the claim of assessee that devoid of any specific infirmity in the books of accounts of the assessee, disallowance of labour charges expenditure by the lower authority is not proper and the adhoc disallowance made by authorities in most ordinary manner. In our opinion, to estimate any disallowance the first and foremost thing is that the A.O. has to reject the books of accounts by observing that books of accounts are not reliable and not verifiable. Then he has to specify the each entry which are to be considered as bogus or unverifiable and only to that extent he can make disallowance. In the present case, in a wholesome manner the A.O. made disallowance on estimate basis without rejecting the books of accounts. However, Ld. CIT(A) sustained this addition to the tune of 10% in A.Y. 2007-08 to 2011-12 and 2.5% in A.Y. 2012-13 & 2013-14. This is having no legal sanction. For this purpose, we rely on the judgement of Hon'ble Karnataka High Court in the case of Shri Ganesh Shipping Agency in ITA No.366 of 2015 dated 6.2.2021, wherein held as follows:-

*“5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the assessee. The Assessing Officer, in its order, has admitted that the payment of speed money is a trade practice which is followed by the assessee and similar business concerns functioning for speedy completion of their work. However, the disallowance of 20% of the expenses is made solely on the ground that the assessee had produced the self-made cash vouchers which showed that the payment was made by cash to each gang leader and the identity of the gang leader is not verifiable and the recipients are not assessee's employees. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Tribunal. However, it is pertinent to note that the books of accounts have not been touted by any of the authorities under the Act. A Bench of this Court vide judgment dated 24.03.2015 passed in ITA No.22/2015, has held that admittedly the normal practice in the line of business of the assessee is to pay certain extra amounts to port labourers as speed money for promptly and speedily carrying out the labour work of handling cargo beyond working hours and has placed reliance on, the decision rendered by this Court in **KONKAN MARINE AGENCIES**, supra. It is pertinent to note that in **CLIFFORD D'SOZA**, supra, payment was made to the sub-contractors in cash as well as by Cheques. In the absence of any challenge to the entries made in the books of accounts by the authorities, in our opinion, the finding recorded by the Assessing Officer as well as the Tribunal that it denied the claim of the assessee for expenditure to the extent of 10% on account of payment of speed money, is perverse as the same is duly supported by the documentary evidence. Insofar as the submission made by the learned counsel for the revenue that in paragraph 4 of the order of the Commissioner the assessee himself had restricted the payment of speed money to 10% is concerned, it is pertinent to note that the restriction was made by the assessee in respect of Assessment Year 200405 and from the grounds of memorandum of appeal before the Tribunal, we find that the assessee had challenged the aforesaid finding which is evident from paragraphs 1 and 2, therefore, the aforesaid submission is of no assistance to the revenue.*

6. In view of aforesaid preceding analysis, the substantial question of law involved in this appeal is answered against the revenue and in favour of the assessee.”

Accordingly, we delete the addition and allow the ground taken by the assessee in these appeals and dismiss the ground taken by the revenue in these appeals.”

6.21 In view of the above, we direct the AO to consider only profit elements embedded with these transactions at the rate of 10% of these impugned purchases in each assessment year and recompute the income of assessee. This ground of appeal of the assessee is partly allowed.

7. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 24th July, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 24th July, 2023.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.