

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 297/JP/2020
निर्धारण वर्ष/Assessment Year : 2012-13

M/s Raghuvver Metals Industries Ltd., 21, Adarsh Nagar, Ajmer	बनाम Vs.	Assistant Commissioner of Income Tax, Central Circle, Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR 7496 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 1039/JP/2016
निर्धारण वर्ष/Assessment Year : 2012-13

Assistant Commissioner of Income Tax, Central Circle, Alwar	बनाम Vs.	M/s Raghuvver Metals Industries Ltd., 21, Adarsh Nagar, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR 7496 R		
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निर्धारिती की ओर से/ Assessee by: Sh. Himanshu Goyal (CA) &
Sh. Prateek Jain (CA)
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehra (CIT)

सुनवाई की तारीख/ Date of Hearing : 23/05/2023
उदघोषणा की तारीख/Date of Pronouncement: 31/07/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are two cross appeals filed by the assessee and revenue which are directed against the order of the Id. Commissioner of Income Tax

(Appeals)-4, Jaipur [hereinafter referred to as (Id. CIT(A))] dated 08.09.2016 for the Assessment Years 2012-13, which in turn arise out of an order passed by ACIT, Central Circle, Alwar passed u/s 143 (3) of the Income Tax Act, 1961 [here in after referred to act "Act"] on 28.03.2015.

2. Since, these cross appeals relate one assessee involving the same assessment year filed by the revenue and assessee on the separate grounds raised by them in their appeal, we have heard both the cases together and passing the consolidated order as the issues involved are interconnected having the same assessment year. The grounds of appeal taken by the assessee in ITA No. 297/JP/2020 for A.Y 2012-13 are as under

- “1. On the facts and circumstances of the case the order passed by the learned Commissioner of Income Tax (A)-4, Jaipur (CIT(A)-2) under Section 250 of the IT Act is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the Id. CIT(A)-4, grossly erred in sustaining the addition of on account of gross profit of manufacturing activity to the tune of Rs. 5,41,854/-.
3. That, the appellant craves leave to add, alter and/or amend any ground of appeal as and when considered necessary.”

3. Whereas the grounds of the appeal taken by the revenue in appeal No. 1039/JPR/2016 for assessment year 2012-13 reads as follows:

- “1. Whether on the facts and in the circumstances of the case the CIT(A) was right in law and on facts in deleting trading addition of Rs. 62,31,322/- made by the AO on account of low manufacturing result.

2. Whether on the facts and in the circumstances of the case the CIT(A) was right in law and on facts in deleting addition of Rs. 13,599/- made by the AO on account of clandestine removal of goods.

3. Whether on the facts and in the circumstances of the case of Ld. CIT(A) has erred in law and on facts in deleting addition of Rs. 1,31,819/- made by the AO on account of undisclosed initial investments in stock.

4. At the outset of the hearing, the bench noted that the appeal filed by the assessee was delayed by 1401 days. The assessee company in petition for condonation of delay submitted that the appeal was not filed on account of fault on the part of the authorized representative of the assessee. In support of the condonation application the director of the company also filed an affidavit verifying the content of the application. The authorized representative of the assessee also submitted various judicial precedent where in on the similar circumstances delay has been condone.

The learned authorized representative relied upon the following judgement,

- IN THE ITAT BANGALORE BENCH 'C' Sri Suhas Suresh Shet v. Income-tax Officer, International Taxation [2022] 140 taxmann.com 96
- Judgement of the Hon'ble Supreme in the case of Collector Land Acquisition v. Mst. Katiji [1987] 167 ITR 471
- HL Malhotra & Company Pvt. Ltd. Vs DCIT, New Delhi (ITA No. 211/2020 & CM Appeals 32045-32047/2020 dated 22 December, 2020)
- Vijay Vishan Meghani vs. DCIT (Bombay High Court) (2017) 398 ITR 250
- Sonerao Sadashivrao Patil &Anr. v. Godawaribai [MANU/MH/0022/2000: 1999 (2) Manu 273]:
- In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore (1988) (2 SCC 142), Venkatachaliah, J. (as his Lordship then was)
- In Sreenivas Charitable Trust it was held by The Madras High Court
- Apex Court (Honorable Supreme Court of the country) in the case of Sandhya Rani Sarkar v. Sudha Rani Debi AIR 1978 SC 537
- Bajaj Hindustan Ltd. Vs Jt. CIT [2005] 277 ITR (AT)

- Mercedes Benz Education Academy Vs ITO (ITAT Pune) [ITA No. 745/PUN/2015 AY. 2006-07, decided on 17.05.2019]
- IN THE ITAT COCHIN BENCH Kaikara Construction Co. V Joint Commissioner of Income-tax, Circle - 1, Kollam [2013] 33 taxmann.com 327 (Cochin - Trib.)
- M.D. Industries Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle-1 (06.12.2019 - ITAT Surat) : MANU/RS/0060/2019 [delay in filing of appeal about 4378 days.]
- Hon'ble Supreme Court in Anil Kumar Nehru Vs. ACIT reported in [2019] 101 taxmann.com 191 (SC)

4.1 In addition to the above judgement, the learned authorized representative relying on decision of the apex court, in the case of Sandhya, Rani Sarkar versus Sudha Rani AIR 1978 SC 537 taken a view that non filing of an affidavit in opposition to an application for condonation of delay be sufficient cause for condonation of delay. As it is in this case revenue has not filed a counter affidavit. Moreover, on its merits the Id. AR submitted that AO made addition of Rs. 1.22 cr., CIT(A) reduced to it by 60 lac and assessee having loss so was of the view that the tax effect would be not much. The Id. AR of the assessee also submitted that the jurisdiction of the assessee company travelled from Jaipur, Alwar Delhi and back and the assessee was disputing the issue under both direct and indirect tax and has sufficient reasons for this appeal filed delayed.

4.2 On the other hand, the Id. DR, opposed the content of application stating that the assessee is a company cannot take such causal plea and

the inaction and laxity on the part of the assessee apparent. Therefore, Id. DR opposed to the contentions so raised.

4.3 We have heard the rival contentions and persuaded the material placed on record and have also gone to the decision relied upon by the authorized representative, looking to the content of the application for condonation of delay and looking to the various judgement cited before us we of the considered view that the assessee company is not gaining by bringing this appeal belatedly delay. Considering the detailed date wise sequence of the event filed by the Id. AR of the assessee we condone the delay in filing this appeal and the appeal of the assessee is admitted to be decided on its merit.

5. The fact as culled out from the records is that the assessee filed e-return on 25.09.2012 declaring income at Rs. 1,36,16,910. The case was selected for scrutiny and consequently the assessment was completed u/s 143(3) vide order dated 23.03.2015.

5.1 During the course of assessment proceedings, it was gathered that the assessee company was indulging in evasion of central excise duty by

resorting to clandestine manufacture and clearance of their finished goods. A search operation was conducted on 14/15 September 2010 wherein the department conducted physical verification of material and found various discrepancies. Based on the detailed discussion in the assessment order, the Id. assessing officer was of the view that the finding of the excise department that the assessee did the transaction of manufacturing and sale of item which were found to have been removed clandestinely and were not recorded in the books of account. To such extent the books of accounts of the assessee company were incomplete and did not reflect the true and correct affairs of the business. The assessee company has made only theoretical submission based on judicial pronouncement. On facts of the case and the evidences based on which the books of accounts were rejected by the assessing officer. In spite of the submission that the CESTAT New Delhi provided relief to the assessee by holding that the assessee has not removed the goods clandestinely. In this connection it is pertinent to mention that the department has not accepted the decision of the CESTAT, New Delhi and filed appeal against the said decision of the CESTAT as such the matter has not attained the finality. Accordingly, the contention of the assessee company for not rejecting the books of account or not found tenable. In view of the discussion made in the assessment

order the provision of section 145(3) invoked and the books of accounts of the assessee were rejected by the assessing officer. Having rejected the books of account, the Id. AO found that the GP rate of the manufacturing and trading account of the assessee company has reduced from 1.37 % in the immediately preceding year to 0.75 % in the current year. Similarly, the GP rate of the manufacturing activity has reduced from 1.05 % in the immediately preceding year to 0.61 % in the minus figure in the current year. In view of this fact and for the purpose of estimating the correct GP of manufacturing account for the year under consideration, the past history of gross profit rate of manufacturing account of the assessee was adopted the most appropriate method on perusal of the last two years, GP for manufacturing account reveals that the average rate of GP works out to 0.9 % in respect of manufacturing activity. Considering the various reasons submitted by the assessee for fall in GP, in order to be fair and reasonable, the rate of GP of manufacturing activity adopted at the rate of 0.75%. As the total sales turnover of manufacturing activity being 90,30,90,223. The gross profit at the rate of, 0.75 percentage works out to Rs.67,73,177 as against the loss of Rs.55,21,982 shown by the assessee.

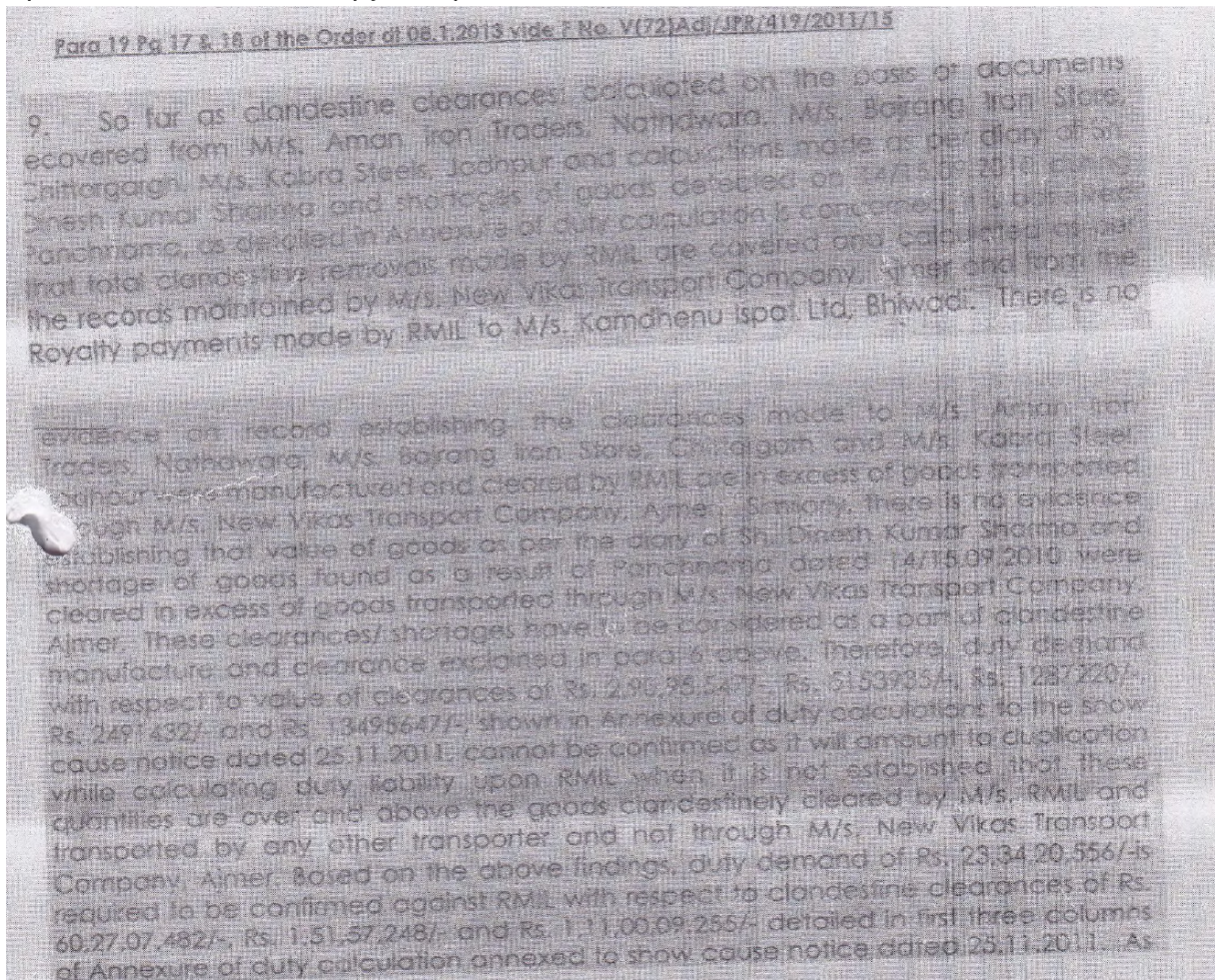
5.2 Accordingly, the difference between the gross profit worked out at the rate of 0.75 % and as shown by the assessee being Rs.1,22,95,158 is held to be the gross profit of manufacturing activity of the assessee company. The same is added to the total income of the assessee. Similarly, the assessing officer also added a sum of Rs.13,599 for the gross profit and also 1,31,819 for initial investment made in the purchase of raw material for finished goods.

6. Aggrieved from the order of the assessing officer, the assessee preferred an appeal before the Commissioner of income tax appeals. A propose to the grounds of appeal raised the relevant finding of the Id. CIT(A) is reiterated here in below :

“6 I have duly considered assessee's submission and carefully gone through assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. Assessee has requested to keep disposal appeal in abeyance till the disposal of Excise appeal by CESTAT New Delhi. It is pertinent to mention here that the said appeal is pending for last 3 years and as the issues have already been decided by Commissioner Central Excise-II Jaipur and on this, AO has framed the assessment orders for AY 2010-11, 2011-12 & 2012-13. Further, against the order of Commissioner Central Excise-II Jaipur, I am also given to understand that assessee has also approached the Hon'ble Jurisdictional High Court Rajasthan for relief which has also been declined. I have also asked no of times since 2015 about the status of the appeal before CESTAT New Delhi but AR simply stated that it is still pending. Therefore, in view of these facts, appeal in this case cannot be kept in abeyance when main appeals for AY 2010-11 & 2011-12 have already been decided against the assessee in last FY. Accordingly, assessee's plea in this regard cannot be accepted.

I have also carefully gone through the appellate order dt 31.12.2012 passed by the Commissioner Central Excise Zone-II Jaipur wherein partial relief on a/c of clandestine removal of excisable goods during the FY 2011-12 from the premises/locations of (1) M/s Aman Iron Traders (1) M/s Bajrang Iron Store (i) VTR and (iv) M/s Kabra Steel Jodhpur.

For the sake of clarity, relevant extracts of para 19 pg 17& 18 of the scanned portion of the order's copy is reproduced here as under:"



From the above, it is clear that Commissioner Central Excise-11 Jalpur has observed that when it is not established that the quantities are over and above the goods cleared by the assessee and transported by any other transporter but not through M/s Vikash Transport Company Ajmer, therefore there remains no issue of clandestine sales. Accordingly in view of these findings, addition made by the AO on A/c of profit determined at Rs. 13,599/- and Investment In stock amounting to Rs. 1,31,819/ cannot be sustained. Hence they are deleted. Assessee gets relief of Rs.

13,599/- in Gr No 5 & Rs. 1,31,819/- in Gr no 6. In the result assessee's appeal in Gr No 5 & 6 are allowed.

7. Ground No. 7: "The Ld. AD has also erred in raising wrong demand of Rs. 54,38,340/- which is totally unwarranted and the entire demand cannot be sustained."

7.1 Submission made: Relevant extracts of submissions made by AR of the assessee are reproduced here as under:

"..... Ground No. 7 is regarding error in raising a demand of Rs. 54,38,340/- as the addition made by the AO is bad on the facts of the case.

7.2 As the issues pertaining to clandestine removal of goods have already been decided in favour of the assessee in para no 5.3 above. Accordingly, demand raised in assessment order will get reduced at the time of giving effect to this appellate order, therefore, to that extent assessee gets partial relief.

8. Ground No. 8: "That the Ld. AO has erred in charging interest u/s 234B of the I.T. Act, 1961 of Rs. 14,39,568/"

8.1 As the charging of Interest u/s 234B of the Act is automatic, however in view of relief given in above para, AO is directed to re-compute the interest chargeable u/s 234B while giving effect to this appellate order.

9. Ground No. 9: "That the Ld. AO has erred in initiating penalty proceedings u/s 271(1)(c) of I.T. Act, 1961.

9.1 As there is no cause of action arising out of initiation penalty proceeding u/s 271(1)(c) of the Act, therefore there is no need of any adjudication on this issue. Therefore, the same is dismissed.

10. In the result, the appeal stands partly allowed for A.Y. 2013-14."

7. As the revenue not satisfied with the finding of the Id. CIT(A) preferred an appeal before the tribunal in ITA NO. 1039/JPR/2016. The said appeal of the revenue was disposed based on the CBDT circular having low tax appeal. The revenue against that order moved a

Miscellaneous Application (MA) and said MA was allowed by the bench considering the exception criteria that the addition in this case was based on the information received from eternal source from law enforcement agencies and accordingly the appeal of the assessee was recalled to be heard on merits. In the mean time the assessee company also moved an appeal against the finding of the Id. CIT(A) and the fact related that the condonation has been discussed here in above paras. Based on the facts and back ground now we are taking up the appeal of both the parties on its merits.

8. The Id. AR appearing on behalf of the assessee has placed their written submission which is reproduced here in below;

This is an appeal against the order passed by Ld. the Commissioner of Income Tax (Appeals)-4 Jaipur dated 8th September 2016 whereby he has assessed the income of the appellant at Rs. 1,96,80,750/- as against the assessed income made by Learned AO at Rs. 2,60,57,486/-. However, assessee had declared Rs. 1,36,16,910/- in its return of income filed during the assessment year 2012-13. Now, the addition sustained by the Hon'ble CIT(A) has been made on account of following items:

Addition on account of Low Gross Profit of Rs.5,41,854/- which will increase the returned income of the appellant by the tune of 60,63,840/-

That both the Income Tax Appeals namely ITA/297/JP/2020 & ITA/1039/JP/2016 arises out of the same issue in order passed by the Commissioner of Income Tax (Appeals)-4 Jaipur vide order No. ITA No. 147/2015-16 dated 08.09.2016 in case of M/s. Raghuvveer Metal Industries Limited for the AY 2015-16 and both the matters have identical facts and circumstances hence the written submission and cross objections to make the case of the assessee is as under:-

The appellant is disputing the above said action of CIT(A) and hence this appeal before your Honor.

Facts of the case

1. The appellant is a company engaged in the business of manufacturing and trading of TMT Bars.
2. The appellant filed its return of Income for the assessment year 2012-13 on 25th September 2012 declaring an income of Rs. 1,36,16,910/-.
3. The said return was selected under scrutiny by the Id. AO and Notices u/s 143(2) and 142(1) of the IT Act were issued.
4. The appellant appeared before the Id. AO as and when called for and provided all necessary details as asked by him.
5. In this case the Officers of DGCEI conducted a search operation on 14th/15th September 2010 at the factory and related premises. Certain documents/records were recovered and resumed from the factory under panchnama dated 14th/15th September 2010 in the presence of two witnesses and Shri Surendra Kumar, Authorized person and Shri Sunil Pokharna, Director of the appellant. After huge inquiries and elaborated working, a Show Cause Notice was issued to the appellant by Excise Department wherein certain demand was raised.
6. The demand proposed in the Show Cause Notice was based on various allegations of clandestine manufacture and clearance of excisable goods. **The case of the Excise Department as per Show Cause Notice was that appellant procured scrap from various parties which was not accounted for and have processed it and such production has not been accounted for.** The Show Cause Notice further alleged that such unaccounted production has been cleared clandestinely by the appellants without payment of duty. Excise Duty of Rs. 23,85,67,946/- was calculated in Show Cause Notice against such value of alleged clandestine clearances.
7. A reply dated 24.12.2012 to the above Show Cause Notice was submitted by the appellant. The Commissioner did not find complete favour with the reply submitted by the appellant, although **he dropped the demand of Rs. Excise duty 51,47,390/-, he still preferred to confirm the demand of Rs. 23,34,20,556/-** by Issuance of the Order-in- Original No. 80-81/2012/C.EX/JPR-II Commissioner dated 31.12.2012.
8. That the assessee further moved an appeal to Hon'ble CESTAT New Delhi against the said order of Commissioner of Central Excise which was pending for disposal at the moment of passing of order by the Ld. CIT(A) which has been filed by the appellant being aggrieved from the order of Learned Assessing Officer.
9. The appellant during the course of hearing before the Ld. CIT (A) in response to the queries raised by him brought the above facts to his knowledge and submitted that the excise proceedings were bad in law, arbitrary and on imaginary basis and hence no additions should be made on the basis of excise proceedings. Further the assessee also requested the Ld. CIT(A) to keep the proceedings in abeyance till the disposal of quantum of excise matter by Hon'ble

CESTAT, if he is of the opinion that addition is warranted on the basis of excise proceedings.

10. The Ld. CIT(A) did not accept the request of assessee to keep the proceedings in abeyance till the disposal of quantum excise matter by Hon'ble CESTAT and proceeded to pass the impugned order.

11. The Ld. CIT(A), although dropped the demand in respect of clandestine removal of goods and provide relief in respect of GP ratio and profit of the assessee, but doubted the correctness of books of accounts of the assessee and rejected the same and proceeded to determine the GP ratio of the assessee from (-) 0.62% to 0.06 % which resulted into manufacturing profit of Rs 5,41,854 /-and consequently, the addition will become Rs. 60,63,840 / - in returned income on account of low GP ratio. Thereby, assessed the income of the appellant at Rs. 1,96,80,750/- as against the returned income of Rs. 1,36,16,910/-.

12. Subsequently, the Hon'ble CESTAT vide its order 57285-57299/2017 dated 20.10.2017 found no force in allegation of clandestine removal of goods and deleted all the additions and set aside all the demands and deleted the corresponding penalties.

13. The appellant is disputing the above said action of Ld. CIT(A) of rejecting the books on the basis of correctness and hence this appeal before your honor.

Issues

A. The rejection of books of accounts solely on the findings of Excise Department is not justified as the Hon'ble CESTAT put aside all the demand and deleted all the penalty

(i) Your Honor, the Ld. AO had agreed with AO in respect of invoking the provisions of section 145(3) and rejected the books of account of the assessee and determined the manufacturing business income of Rs. 5,41,854/- solely on basis of notional GP rate. Therefore, resulting in the total consequential addition of Rs. 60,63,840/- to the total income of the assessee.

(ii) The Ld. AO had completely and solely relied on the findings of Excise Department and was not satisfied about the completeness of the books of accounts of the assessee and maintained the invoking of the provision of section 145(3) and rejection of the books of accounts maintained by the assessee.

(iii) The findings in this respect as noted by the Ld. CIT(A) are reproduced hereunder for your kind reference:

"3.1.2 I have duly considered assessee's submission and carefully gone through assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. Duly considering the fact that assessee had made a detailed submission in compliance to the show cause notice issued by the Excise Authority and assessee's contention was not accepted by them. However on perusal of the order, it is seen that the Commissioner Central Excise-II Jaipur

*has observed that when it is not established that the quantities are over and above the goods cleared by the assessee and transported by any other transporter but not through M/s Vikash Transport Company Ajmer, therefore any further addition on a/c of clandestine sales will amount to double addition, accordingly relief was given to the appellant. The basic facts of clandestine removal of excisable goods by the assessee and evidences gathered by the DGCEI authority have remained uncontroverted by the assessee. Further, when all parameters remained the same in both FY 2010-11 and FY 2011-12, then explanation given dip in GP in the current year compared to immediate preceding year does not seem to be acceptable. Merely saying that accounts are audited by Chartered Accountants will not hold no good **when assessee has been found indulging in clandestine removable of excisable goods without paying any duty and correctness of books of accounts can always be doubted.**"*

(iv) Further, it is pertinent to mention here that there were no independent inquiries or investigations conducted by the Ld. AO or CIT(A) and no other parties were ever cross questioned and the whole proceedings has been solely based on the findings of Excise Department.

(v) Your Honor, the assessee would like to bring your kind attention to the provisions of Section 145 is reproduced hereunder for your kind reference:

"145 Method of accounting-

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144."

(vi) Your honor from a plain reading of the above stated text it is clear that the power under section 145(3) of the Act can be invoked if

- (a) He is not satisfied about the correctness of accounts
- (b) He is not satisfied about the completeness of accounts
- (c) Where the method of accounting is not followed as stated in subsection (1) of section 145
- (d) Where the accounting standards as notified under subsection (2) of section 145 have not been followed.

As regards points (c) & (d), it is very clear that the books of the assessee have been audited by a chartered accountant and he has not qualified his report on any of these points.

(vii) Your Honor, the Ld. CIT(A) upheld the rejection of books of accounts stating that the assessee was found indulging in clandestine removal of excisable goods without any paying any duty and hence the correctness of books is in doubt.

(viii) It is respectfully submitted your honor that the findings of Ld. CIT(A) has been rendered moot in light of recent judgment passed by the Hon'ble CESTAT in which the assessee has been absolved in totality from all the allegations of clandestine removal and put aside all the demands and deleted all the penalties.

(ix) The relevant findings of the Hon'ble CESTAT order has been reproduced hereunder for your kind reference:

40. *"On the first issue, regarding Physical verification of stock we observe that such exercise was challenged by the appellant immediately after search, the Pancha witness Shri Daulat Ram during cross examination confirms not undertaking of stock taking exercise. During subsequent statements the Appellant or its directors were never again confronted on the aspect of retractions and from this we find force in the appellants arguments that no such stocktaking was actually done. Further, it can also be understood that stock of approximately 2200 tons of steel (approximately 228 trucks load) cannot be undertaken in the total duration of 15 hours. Therefore, this finding of the Commissioner is not sustainable.*

41. *We also observe that Ld. Commissioner's finding that each test recorded in the diary of chemist is one heat and calculating total production by an arithmetic calculation is not sustainable in view of the specific statement of the director during investigation and not recording of the any statement of the chemist who had made entries in the said diary. Further, it is a legally settled position that no demand for clandestine manufacture can be sustained based on theoretical and uncorroborated calculations.*

42. *On the issue of clandestine removal based on register of vehicles booking maintained by New Vikas Transport Company we find force in the appellants arguments that these are not record of vehicles actually transported but only a memoranda record of bookings recorded by transporter for approximate vehicles to be supplied to the appellant. This is very clear from the record of cross examination of the transporter Moin Khan, which leaves no room for any other interpretation and therefore any such demand is not sustainable. This also applies to the demand based on loose GRs.*

43. *The substantial demand based on the Ledger account of royalty amount, resumed from the premises of Kamdhenu Ispat Ltd., We observe that as per the basic principle of the accounting the entries in the debit side and credit side of ledger cannot be totaled together. A perusal of ledger resumed from Kamdhenu Ispat Ltd Shows separate column for Debit and credit amount whereas Revenue has put the amount of debit column as well as credit column in one single Column and then totaled it, which is nearly doubled because of wrong merging of the Debit*

side and credit side column. In our view any confirmation of demand based on such doubling of amount(s) cannot be sustained. There is no plausible reasoning given by Revenue in support of totaling of debit amount and credit amount, while calculating demand of duty because of difference in royalty. Further, not recording of statement of Kamdhenu Ispat Ltd, on such resumed ledger account, also shows that there is no substance in the finding of the Revenue that alleged difference in royalty leads to clandestine clearances.

44. *To sum up, the appeal No. E/56611 of 2013 is allowed in part as follows –*
- (a) *the demand of Rs. 7,33,57,221/- is set aside ;*
 - (b) *the demand of Rs. 16,00,60,335/- is set aside and remanded to the learned Commissioner, for reverification, in terms of directions and observations hereinabove ;*
 - (c) *order of confiscation of cash and goods is set aside ;*
 - (d) *all penalties stand deleted ;*
 - (e) *Appellant is entitled to consequential benefit (s).*
45. *All other appeals are allowed with consequential benefits.”*

(x) It is evident that the Hon'ble CESTAT, New Delhi held that the assessee was not indulged in the clandestine manufacture, clearance or removal of goods and there is no case of evading the excise duty and hence the contention of Ld. CIT(A) does not hold true and the books of accounts of assessee is infact complete and correct.

(xi) Further the Id. CIT(A) did not point out any irregularity in the balance sheet and the profit and loss account, rather he has merely relied on finding of Excise Authorities which have been now annulled by the CESTAT. Your honor a mere reliance on finding of some other department that too on a finding which has been annulled and the respective allegation/demand has been deleted, without being backed by some corroborative evidence or without bringing forward any material in this respect is bad in law.

(xii) Similar issue had arise in the matter of **M/sNatani Rolling Mills Pvt.Ltd. Versus Income Tax Officer, Ward-4 (2) , JAIPUR [2019 (9) TMI 1336 - ITAT JAIPUR]** wherein the Hon'ble ITAT Jaipur held that *“The whole case of the Revenue regarding undisclosed sales rest on the orders of the Central Excise authorities which has since been set-aside by the CESTAT vide its order dated 7.02.19. In view of the same, the additions so made by the Assessing officer towards gross profit on unrecorded sales and unaccounted purchases is directed to be deleted.”*

Further reliance is placed upon the decision in the matter of **The Acit Circle Iv Trichy Versus M/S Amman Steel & Allied Industries [2011 (8) TMI 1335 - ITAT CHENNAI]** wherein the Hon'ble ITAT Chennai held that *“In our considered opinion, to the extent the Hon'ble CESTAT has found the documents/evidence to be unreliable, the same cannot be used in making assessment under Income-tax Act, specially when not even a whit of enquiry has been independently made by*

him despite directed by the Id. CIT(A) . In this case, even a modicum of enquiry has not been made independently by the Assessing Officer. There is no corroborating or supporting evidence available on record. When the main evidence on the basis of which the assessment was framed has been found to be not reliable by the very same Department(Central Excise Department), the cumulative effect of finding given in the assessment order, remand report and submissions of the parties, would lead to only one conclusion that no addition can survive on the basis of unreliable evidence. The addition made by the Assessing Officer hinges on the show cause notice of the Central Excise Department which has been found to be unreliable to a greater extent.

The Hon'ble CESTAT is the final fact finding body insofar as Central Excise Department is concerned and this body has settled the facts regarding the reliability of the seized documents and their authenticity. It was contended that the Assessing Officer has to obey the view taken by Hon'ble CESTAT unless any contrary evidence is available with him. The reliance on these documents by the Assessing Officer (Income tax) even thereafter, was assailed before the Id. CIT(A). Thus, the basis on which the Income Tax Officer(Assessing Officer) has made the impugned additions, would not at all now survive. The Assessing Officer has tried to make out a case that, in law, even if the search is held to be illegal or invalid or against the law, yet any evidence found and collected during that operation, can be considered as a piece of evidence against the assessee. But, first of all this is not a case of search under the Income-tax Act. Secondly, the Assessing Officer has found nothing incriminating against the assessee. The evidence found by Central Excise Department has been held to be unreliable. The Assessing Officer has not tested the reliability of the same by making independent enquiries.We are convinced that the additions which are made solely on the basis of the material seized by the Central Excise Department and which have been dubbed as unreliable by Hon'ble CESTAT, no addition can be made by the Assessing Officer(Income Tax) in the eyes of law."

(xiii) Further, the Ld. CIT(A) contended that the assessee had not provided any reasonable explanation and the assessee could not explain properly the sudden dip in GP rate for manufacturing and trading account from 1.37% in FY 2010 to 0.75% in FY 2011 and slight improvement in manufacturing GP from (-)1.05% to (-)0.61% in the same period. The relevant findings are reproduced hereunder

"I have duly considered assessee's submission and carefully gone through assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. I have carefully gone through the assessment order,

In this case, AO after duly considering the facts and circumstances has invoked the provisions of sec 145(3) of the Act and rejected the books of accounts. Thereafter, AO after taking into a/c GP of FY 2010-11 & 2011-12, has applied the rate of GP of 0.75% on manufacturing activity and computed the GP at Rs. 67,73,177/= on total sales turnover of Rs. 90,30,90,223/= against the declared Loss of Rs. 55,21,982/= thereby added the differential amount of Rs. 1,22,95,128/- . In the assessment order, AO has observed that assessee could not explain properly the sudden dip in GP rate for manufacturing & trading a/c from 1.37% in

FY 2010 to 0.75% in current FY and also slight improvement in manufacturing GP from (-) 1.05% to (-) 0.61% in the same period. Now, for the sake of clarity, the financial results of last 3 FYs as summarized in the paper book submitted (Reference :PB pg-52 to 55), are given as under:

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.....

I have also carefully gone through the assessment order. On perusal it is seen that AO has applied average rate of GP @ 0.75% in respect of Manufacturing Activity on total sales turnover of mfg activity being Rs. 90,30,90,223/= against the loss of (-) Rs. 55,21,982/- which is without any justification. AO is of the view that GP rate of only manufacturing activity has reduced from 1.05% in the immediate preceding year to (-) 0.61% in the current year. But I am afraid AO has completely ignored the fact that assessee has shown GP% @ (-) 1.06% in FY 2010-11 (Gross loss Rs 97,59,128/=). Even during the appellate proceeding, assessee has not provided any reasonable explanation and submitted the same set of written submission which was given to Commissioner Central Excise-II Jaipur. It is also a fact that power & electricity being the major expenditure component has also been upward over the years. Considering these facts, additions made by the AO is very difficult to be sustained. However, considering the facts and circumstances of the case and also duly considering the average % GP on manufacturing & trading at 1.42% and 0.03% on manufacturing activity for the Financial Year 2008-09 to 2011-12, it will be reasonable if GP rate @ 0.06% on total sale turnover of manufacturing activity of Rs. 90,30,90,223/- and this will translate into addition of Rs. 5,41,854/= (0.06% of Rs. 90,30,90,223/=). Assessee's appeal is partly allowed to that extent."

(xiv) At the outset, it is submitted that the manufacturing GP ratio of the assessee has in fact, improved from (-)1.06% in previous year to (-)0.61% in the current year and since the GP rate declared by the assessee for the year under consideration is better than the past year hence any manufacturing addition is uncalled for and not sustainable.

Reliance in this regards is placed upon the decision in the matter of **Shri Prakash Chand Ostwal Versus The Income Tax Officer, Ward 3 (3) Jaipur [2020 (4) TMI 786]** wherein the Hon'ble ITAT Jaipur held that *"Undisputedly, the GP rate declared by the assessee for the year under consideration is better than the past history and, therefore, after rejection of books of account no trading addition is called for. Hence the trading addition made by the AO which is adhoc and the lump sum addition of ₹ 1,00,000/- as well as disallowance of direct expenses which is part of the trading account are not sustainable in law and liable to be deleted."*

(xv) Further, in respect of improvement in manufacturing GP ratio, it is pertinent to bring your attention the manufacturing account for the financial year 2010-11 and 2011-12 which are reproduced hereunder for your kind reference:

Manufacturing account for the period ending on 31.03.2011					
Particulars	Amount (Rs.)	%	Particulars	Amount (Rs.)	%
Opening Stock	64881494	7.04	Sales	922178570	100
Purchases	728320953	78.98	Closing Stock	64884309	7.04
<u>Direct Expenses</u>		0.00			
Power & Electricity	125687038	13.63			
Consumables & Stores	25999888	2.82			
Furnace Oil	40226040	4.36			
Coal	7135352	0.77			
Plant repair & Maintenance	505639	0.05			
Job work charges	38400	0.00			
Workers cost	4027203	0.44			
		0.00			
Gross Profit/Loss	-9759128	-1.06			
	987062879	107.04		987062879	107.036
			GP Rate	-1.058268791	

Manufacturing account for the period ending on 31.03.2012					
Particulars	Amount (Rs.)	%	Particulars	%	Amount (Rs.)
Opening Stock	6,48,84,309	7.18	Sales	100.00	90,30,90,223
Purchases	72,85,18,652	80.67	Closing Stock	10.96	9,90,09,362
Direct Expenses					
Consumables	6,26,07,731	6.93			
Freight (Consumables)	39,44,145	0.44			
Direct Labour exp.	20,20,053	0.22			
Electricity & Power Exp	14,37,79,411	15.92			
Job work charges	2,76,640	0.03			
Plant repair & maintenance exp	16,24,481	0.18			
Gross Profit/Loss	-55,55,837	-0.62			
	1,00,20,99,585	110.96		110.96	1,00,20,99,585
			GP Rate		-0.61,52,02,873

Your Honor, the closing stock for the year 2010-11 stood at Rs. 6,48,84,309 (i.e. 7.04% of the sales) which subsequently increased by around 52.6% and stood at Rs. 9,90,09,362/- (i.e. 10.96% of the sales) for the year 2011-12.

Your Honor, for the year under consideration, there was a substantial increase in closing stock along with a slight dip in the quantum of sales. It is evident that the assessee suffered losses in previous year due to poor market conditions and consequently did not cleared out whole of the product in the open market in the current year in order to limit his losses and hence there was a slight improvement in the manufacturing GP Ratio.

(xvi) Further, in respect of sudden dip in GP rate for manufacturing and trading account from 1.37% in FY 2010 to 0.75% in FY 2011, it is submitted that there is a general upward trend in power and electricity charges, fuel prices, wages and salary and production over heads and hence there was slight dip in trading and manufacturing GP ratio. The same is supported by the Ld. CIT who agreed with the contention of the appellants and recorded the fact of upward trend in expenses in his findings and the same is being reproduced hereunder for your perusal:

“It is also a fact that power & electricity being the major expenditure component has also been upward over the years. Considering these facts, additions made by the AO is very difficult to be sustained.”

Reliance in this regard is also placed upon the decision in the matter of **Ganesh Foundry. Versus Income-Tax Officer[2000 (4) TMI 162]** wherein the Hon’ble ITAT Jodhpur held that *“It is not practically possible for assessee to declare uniform rate of G.P. year after year. He has contended that the decline in G.P. rate has been mainly due to increase in the rate of wages and of job work charges and bonus paid to employees..... In the case of Vinod Kumar Pramod Kumar vs. ITO, it has been held by this Tribunal that correctness of book results cannot be challenged without pointing out any specific mistake or deficiency in the books of account or without recording a firm finding that the profits and gains cannot be properly deduced from such books of account..... In the case of Soni & Co. vs. Asstt. CIT it has been held by Jodhpur Bench of Tribunal that mere absence of day-to-day stock records or meagre fall in GP rate cannot by themselves justify rejection of the book results and the AO cannot invoke the proviso to s. 145(1) or 145(2) on that basis alone. As such considering all the facts and circumstances of the case and respectfully following the above-mentioned decisions of the Tribunal we are of the view that the addition made in the trading result is not justified and uncalled for. We, therefore, delete the addition.”*

(xvii) Further, attention is brought to the decision in the matter of the appellant for AY 2010-11 and 2011-12, being connected with the present case and dealing with completely same issue, passed by this Hon’ble Tribunal [ITA number 555 & 556/JP/2016] (Reference to Page 86-119 of the paper book) dealing with similar facts and circumstances wherein this Hon’ble Tribunal has ruled in favour of the appellant and have deleted all the additions made.

(xviii) Your honour mere non satisfaction of AO on any one aspect during the assessment proceedings, having very less materiality with regard to the quantum of business of the appellant, does not mean that the complete books maintained by any assessee are incomplete or incorrect. The appellant in the subsequent submissions has explained the genuineness of the above said transactions done by it. Further since the sole basis of addition of the AO was the findings of the excise department which have then been negated and adjudged at Rs. NIL /- amount by the Honourable CESTAT, New Delhi and thus no addition can be made on this ground. Thus your honour the action of the CIT(A) in rejecting the books of the assessee without any pith and substance backing the same is void in the eyes of law. And thus the consequential addition of Rs. 60,63,840 /- is bad in law and liable to be deleted.

B. The addition on account of Profit on sale of undisclosed stock and addition on account of undisclosed investment are not justified as the Hon’ble CESTAT put aside all the demand and deleted all the penalties.

Your Honor, it is reiterated that the Hon'ble CESTAT has cleared the appellant from all the allegation of clandestine removal of the goods and deleted all the consequent penalties and hence any addition based on the clandestine removal of goods on account of Profit on sale of undisclosed stock and addition on account of undisclosed investment is aptly adjudicated at Rs. NIL /- amount by the Learned CIT(A).

Further, your Honour, attention is brought to the decision in the matter of the appellant for AY 2010-11 and 2011-12, being connected with the present case, passed by This Hon'ble Tribunal [ITA number 555 & 556/JP/2016] (Reference to Page 86-119 of the paper book) dealing with similar facts and circumstances wherein this Hon'ble Court has ruled in favour of the appellant and have deleted all the additions made.

Therefore, keeping in view of the facts and circumstances, reappraisal of the facts and ratio of cases cited above, the learned assessing officer while making the above addition arbitrarily, erred both in facts and in law by framing the assessment by making consequential addition of Rs. 60,63,840 /- which involves adding of the said amount to the total income of the assessee on account of low GP ratio. The learned AO on conjecture and surmise made the additions Merely on the basis of the findings of the excise department wherein he has failed to consider the fact that the same have then been deleted and adjudged at Rs. NIL /- amount by the Honourable CESTAT, New Delhi and thus no addition can be made on this ground. Hence, consequential addition of Rs 60,63,840 /- on account of low Gross profit ratio is bad in law and liable to be deleted.

PRAYER

It is most respectfully prayed that this Hon'ble Tribunal be pleased to pass the following orders and directions thereby:

- (i) Pass necessary orders and directions thereby quashing the impugned order passed by the Ld. CIT; and
- (ii) Pass necessary orders and directions thereby deleting the additions made; and
- (iii) Pass necessary orders and directions quashing the demand notice issued against the appellant; and
- (iv) Pass necessary orders and direction hereby dismissing the appeal filed by the Revenue and provide consequential relief to the appellant; and
- (v) Pass necessary orders and directions thereby deleting any penalty proceedings initiated against the applicant and provide consequential relief to the appellant; and
- (vi) Pass any such other order(s) that this Hon'ble Tribunal deems fit and proper and in the current facts and circumstances of the case."

9. The Id. AR of the assessee thus relied above submission and on the judgement of the co-ordinate bench in the earlier year for 2010-11 & 2011-12 in ITA No, 555 & 556 /JPR/2016 submitted the fact being similar in this year the appeal of the assessee is to be decided based on that judgment.

10. The Id DR is heard who has relied on the findings of the lower authorities and also submitted that revenue has challenged the order of the CESTAT. The assessee was engaged in the activities of the manufacturing the selling the goods out of the books as alleged by the excise department. The Id. CIT(A) has already accepted the fact and confirmed the rejection of the book results of the assessee and even the assessee has not taken up this ground in this appeal and has challenged only the confirmation of the GP by the Id. CIT(A).

11. We have heard the rival contentions and perused the material placed on record. We find that the additions were made by the AO merely based on the search action carried out by DGCEI conducted at assessee's premises wherein it was found that the assessee was involved in clandestine manufacture and clearance of their finished goods during the course of assessment proceedings basis of search action and subsequent

proceedings conducted by the Central Excise Department. The Id. AO countrified value of such clandestine goods for the year under consideration which was determined and added considering the gross profit @ 0.75% and consequently thereupon and addition of Rs. 1,22,95,158/- was made and also an addition of Rs. 13,599/- for the gross profit of the goods removed clandestine goods. The AO has also added at Rs. 1,31,819/- being the initial investments made for purchase raw material. Thus, it is an apparent that the addition has been made by the Assessing Officer merely based on the findings of the DGCEI relating to manufacture and clandestine removal of finish goods confirmed by the order of the Commissioner of Central Excise. We have also noted that against the order of Commissioner of Central Excise, assessee moved an appeal before the CESAT in the appeal. The issue has been set aside by the CESAT by the order dated 20.10.2017 for which the Id. CIT(A) has also recorded the findings in his order. Further, the fact that the assessee moved an appeal was also noted by the Id. CIT(A). The addition to the extent of Rs. 5,41,851/- being the profit of 0.06% of Rs. 90,30,90,223/- and as regards the addition of Rs. 13,599/- and Rs. 1,31,819/-. The Id. CIT(A) has observed as under:-

"From the above, it is clear that Commissioner Central Excise-II, Jaipur has observed that when it is not established that the quantities are over and above the goods cleared by the assessee and transported by any other transporter but not through M/s Vikash Transport Company Ajmer, therefore, there remains no issue of clandestine sales. Accordingly in view of this findings, addition made by the AO

on A/c of profit determined at Rs. 13,599/- and investment in stock amounting to Rs. 1,31,819/- cannot be sustained. Hence they are deleted. Assessee gets relief of Rs. 13,599/- in Gr No. 5 & Rs. 1,31,819/- in Gr no. 6. In the result assessee's appeal in Gr No. 5 & 6 are allowed."

12. We find from the record though the Id. CIT(A) has not considered the order of CESAT but has also given the relief to the assessee while calculating the GP on the sales reported by the assessee considering the arguments of Id. AR of the assessee as finding of Id. CIT(A) is very much accurate and based on facts submitted before him. We find no infirmity in the order of Id. CIT(A) and therefore, the appeal of the revenue is no merit and the revenue has not filed any written submission so as to point out any mistake in the finding of Id. CIT(A) moreover subsequent to the passing of the order of Id. CIT(A). CESAT has also set aside the order of Central Excise Authority and therefore, the Ground Nos. 2 & 3 based on these facts does not survive as and the same is dismissed. The revenue has not contradicted the finding of Id. CIT(A) on its merits and has not submitted any written submission so as to substantiate that the finding of Id. CIT(A) is perverse and prejudicial in the absence of this. We are of the considered view that the finding of Id. CIT(A) is correct and does not require our intervention in the matter. As regards, the appeal of the assessee for sustaining the addition of Rs. 5,41,854/-, we do not find any merits in the

arguments of the Id. AR of the assessee but at the same time, the Id. AR of the assessee submitted that the appeal effect granted by the Id. Assessing Officer as it will determine the income at 5,41,854/- as against loss declared by the assessee. Therefore, he prayed that the direction may be given that if the finding of Id. CIT(A) is confirmed on merits then that income of Rs. 5,41,854/- is to be adjusted against the income declared/loss declared by the assessee. We find force in the arguments of the Id. AR of the assessee and therefore, we direct that as against the addition of Rs. 1,22,95,158/-. The profit should be estimated at Rs. 5,41,854/- and since the addition of Rs. 13,599/- and Rs. 1,31,819/- has already been deleted and we dismiss the appeal of revenue the only income to be added against the return of income of the assessee that at Rs. 5,41,854/- based on these observations, the appeal of the revenue is dismissed and that of the assessee is partly allowed.

Order pronounced in the open court on 31/07/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31/07/2023

*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s Raghuvver Metals Industries Pvt. Ltd., Ajmer
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Alwar

3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 297/JP/2020 & ITA No. 1039/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar