

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "बी" , चण्डीगढ  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA Nos. 307, 308, 309, 310 & 618/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2013-14, 2015-16, 2016-17, 2017-18 & 2018-19

M/s Seo Lehenga House Main Bazar, Jagraon-142026 Punjab	बनाम	The DCIT Circle-3 Ludhiana
स्थायी लेखा सं. / PAN NO: ABMFS8434M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA No. 617/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2018-19

M/s Seo Bridal Studio Pvt. Ltd. Main Bazar, Jagraon-142026 Punjab	बनाम	The DCIT Circle-3 Ludhiana
स्थायी लेखा सं. / PAN NO: AASCS1098M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Sudhir Sehgal, Advocate and  
Shri Rishabh Marwah, CA  
राजस्व की ओर से/ Revenue by : Smt. Kusum, CIT, DR

सुनवाई की तारीख/ Date of Hearing : 04/01/2024  
उद्घोषणा की तारीख/ Date of Pronouncement : 27/03/2024

**आदेश/Order**

**PER BENCH :**

All the above appeals are filed by the respective Assesseees against the order passed by the Ld. CIT(A)-5 Ludhiana as per following details:

Sl.No.	Appeal No.	Name of assessee	CIT(Appeal / s )	Order dt.	Asst. Year
1.	ITA No. 307/Chd/2022	M/s Seo Lehenga House	CIT(A)-5, Ludhiana	19/01/2022	2013-14
2.	ITA NO. 308/Chd/2022	M/s Seo Lehenga House	CIT(A)-5, Ludhiana	19/01/2022	2015-16
3.	ITA NO. 309/Chd/2022	M/s Seo Lehenga House	CIT(A)-5, Ludhiana	19/01/2022	2016-17
4.	ITA NO. 310/Chd/2022	M/s Seo Lehenga House	CIT(A)-5, Ludhiana	19/01/2022	2017-18

5.	ITA NO. 618/Chd/2022	M/s Seo Lehenga House	CIT(A)-5, Ludhiana	11/07/2022	2018-19
6.	ITA NO. 617/Chd/2022	M/s Seo Bridal Studio Pvt. Ltd.	CIT(A)-5, Ludhiana	08/07/2022	2018-19

2. All these appeals were heard together and are being disposed off by this consolidated order. Firstly, we shall deal with the appeal of the assessee in ITA No. 307/Chd/2022 pertaining to Assessment Year 2013-14, wherein the assessee has raised following grounds of appeal:

*"1. a) That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs. 3,32,371/- being the commission paid on bogus purchases and sales by the company.*

*b). Without prejudice to above ground of appeal, the Ld. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs. 14,57,154/- on the bogus purchases and sales, which were never made and, thus, the addition of Rs. 3,32,371/- is liable to be set off against such gross profit already offered to tax.*

*2. a). That the Ld. CIT(A) has erred in confirming the addition of Rs. 58,58,524/- on account of unexplained investment u/s 69 of the Act on the basis of rough working/rough jottings.*

*b). Notwithstanding the above said ground of appeal, the CIT(A) has erred in not allowing the credit of amount surrendered during survey u/s 133A on 26.10.2012 without assigning any reason.*

*3. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

3. Briefly the facts of the case are that the assessee filed its original return of income under section 139(1) on 20/09/2013 declaring total income of Rs. 90,47,350/- which was assessed at Rs. 92,94,440/- under section 143(3) dt. 23/06/2016. Subsequently, the search and seizure operation under section 132(1) were carried out at the business premises of the assessee on 01/11/2017. Thereafter notice under section 153A dt. 25/02/2019 was issued to the assessee. In response, the assessee filed its return of income on 03/05/2019 declaring income as originally declared at Rs. 90,47,350/-. Subsequently, notice under

section 142(1) alongwith specific questionnaire were issued, responses were called for and after taking into consideration the submissions filed by the assessee, the reassessment was completed under section 153A r.w.s 143(3) dt. 27/12/2019 at an assessed income of Rs. 2,26,35,818/- by making addition under section 69C towards unexplained expenditure amounting to Rs. 5,31,795/- and another addition of Rs. 1,28,09,583/- towards unexplained investment in respect of unaccounted purchases under section 69 of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has allowed part relief to the assessee.

5. Against the addition sustained by the Ld. CIT(A), the assessee is in appeal before us.

6. In Ground No. 1, the assessee has challenged the sustenance of addition of Rs. 3,32,371/- in respect of commission paid on bogus purchase and sales made by the assessee company.

6.1 In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that on the perusal of the material seized during the course of survey, it was found that the assessee has made bogus purchases amounting to Rs. 8,74,87,448/- and bogus sales amounting to Rs. 9,10,72,110/- through broker Shri Satish Kapoor to whom cash commission was paid on the total amount of bogus purchase and sales. It was further stated by the AO that Shri Shivam Singla, partner of the assessee firm has admitted in his statement recorded on oath dt. 13/04/2018 that the entire bogus purchase and sale were made through Shri Satish Kapoor to whom the cash commission was paid and which was never accounted for in regular books of account.

6.2 It was further stated by the AO that summons were issued to Shri Satish Kapoor which remained uncomplied with and the actual rate of commission could not be verified. Thereafter, a show cause was issued to the assessee as to

why commission @ 1% on total amount of bogus purchase and sale amounting to Rs. 17,85,59,558/- which comes to Rs. 17,85,596/- should not be treated as unexplained expenditure under section 69C of the Act.

6.3 In response, the assessee submitted that they have paid commission at the rate of 0.25% on total bogus purchase and sale which can be verified from the statement of Shri Shivam Singla, partner of the assessee firm recorded before DDIT, Ludhiana on 13/04/2018. It was further submitted that the assessee has itself shown gross profit on bogus purchase and sale which were never earned by it @ 1.6% on bogus sale of Knitted Cloth which comes to Rs. 14,57,154/-. It was accordingly submitted that total alleged commission payment for declared bogus purchase and sale is duly covered by the gross profit shown in the books of account on bogus sales which was never earned by them.

6.4 It was further submitted that the assessee has made bogus purchase and sale between their own concerns which comes to Rs. 4,56,10,807/- on which no commission was paid. It was accordingly submitted that the amount of commission paid may kindly be applied at 0.25% after subtracting the bogus purchases and sales between their group concerns amounting to Rs 4,56,10,807/-.

6.5 It was further submitted that without prejudice and alternatively, no addition under section 69C is called for, for procuring purchase and sales as the assessee already declared much more gross profit on the bogus purchase and sales which was never earned by it.

7. The submissions so filed by the assessee were considered by the AO but not found acceptable. As per the AO, the assessee has not given any proof of cash commission @ 0.25% on the bogus purchase and sales of Knitted Cloth and mere making the claim without giving any proof cannot be accepted. Further referring to the statement of Shri Shivam Singla, partner of the assessee firm, the

AO stated that it can be seen that the cash commission was given on bogus purchase and sales ranging from 0.25% to 0.40%.

7.1 Referring to the submission of assessee that it had disclosed gross profit at the rate of 1.60% on the gross sale of Knitted Cloth, the AO stated that the same cannot be accepted for the reason that the assessee has made bogus purchase and sales which were actually not made and benefit of gross profit as claimed by the assessee was also not allowable.

7.2 As far as the assessee's claim that bogus purchase and sale were made with its own group concern on which no commission was paid, the said contention was however, found acceptable by the AO. Thereafter giving relief for inter group concern bogus purchase and sale amounting to Rs. 4,56,10,807/-, commission @ 0.40% on the bogus purchase and sales with other concern amounting to Rs. 13,29,48,751/- which amounts to Rs. 5,31,795/- was brought to tax as unexplained expenditure under section 69C of the Act.

8. Now coming to the findings of the Ld. CIT(A). The Ld. CIT(A) has stated that the assessee has submitted that it had admitted commission payment @ 0.25% voluntarily and argued that the Revenue has not proved at any stage that it had paid commission beyond 0.25% and the broker Shri Satish Kapoor, through whom the bogus purchase and sale were made, was not cross examined in spite of various requests. The Ld. CIT(A) further took note of the assessee's submission that the gross profit shown by the assessee is more than the amount of the commission which has been brought to tax by the AO. However the said submission was not found convincing for the reason that the assessee was doing genuine business also and the profit for which was taxable. However the contention regarding the rate of commission @ 0.25% was found acceptable for the reason that nothing has been brought on record by the AO to show the exact amount of commission payment by the assessee. The Ld. CIT(A) therefore upheld the commission payment @ 0.25% of Rs. 13,29,48,751/-

which comes to Rs. 3,32,371/- and the remaining addition was directed to be deleted.

9. Against the addition of Rs. 3,32,371/- sustained by the Id CIT(A), the assessee is now in appeal before us.

10. During the course of hearing, the Ld. AR submitted that it is an admitted fact that there were bogus purchase and sale recorded in the books of accounts on which the tax has been paid and the AO has duly acknowledged the said fact at page 2 of the assessment order wherein he has duly stated that there were bogus sales to the tune of Rs. 9,10,72,110/-. It was submitted that the assessee has disclosed GP of 3.43% on total sales of Rs. 20,23,12,313/- including the bogus sales of Rs. 9,10,72,110/- during the year under consideration. It was submitted that the AO has not given any adverse finding on account of bogus sales and the profit as disclosed in the books of accounts of the Assessee on such bogus sales which are not actually made by the assessee. It was submitted that the AO has not rejected the books of account of the assessee and has accepted the bogus profit as disclosed and already offered to tax on such bogus sales. It was submitted the addition has been made simply on the basis of statement of the partner of the assessee firm recorded at the time of survey. It has been stated that the Shri Shivam Singla has admitted that commission has been paid to one of the brokers Shri Satish Kapoor on the bogus purchases and sales as recorded in the books of accounts. It was submitted that it is a matter of fact that the assessee has already shown the profit on bogus sales which is actually not earned. The benefit of such profit as disclosed covers the amount of commission paid and such action of the Ld. CIT(A) has resulted into double addition. It was accordingly submitted that the assessee be allowed to set off the alleged commission paid by the assessee on the bogus sales and purchases from the profit already disclosed in the audited books of account.

11. Per contra, the Ld. DR has relied on the findings of the lower authorities which we have already considered and not repeated for the sake of brevity.

12. We have heard the rival contentions and perused the material available on record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 1.60% on bogus sales of knitted cloth which comes to Rs 14,57,154/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 5,31,795/- as so determined by the AO stand covered by the said gross profit of Rs 14,57,154/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 332,371/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

13. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 58,58,524/- on account of unexplained investment under section 69 of the Act.

14. In this regard, briefly the facts of the case are that during the course of search, certain documents referred to as Annexure-A2 were seized from the House No. 1017, Garewal Colony, Jagraon. Basis the said documents, the AO stated that the assessee has made unaccounted purchases amounting to Rs. 1,28,09,583/- and a show cause was issued as to why same should not be treated as unexplained investment in purchase of stock and brought to tax under section 69 of the Act.

14.1 In response, the assessee submitted that these figures are not reliable as these are part of rough Trial Balance and the same may not be treated as unexplained investment under section 69 of the Act. Alternatively it was submitted that a survey under section 133A was conducted at the business premises of the assessee on 26/10/2012 wherein the assessee has voluntarily surrendered a sum of Rs. 82,00,000/- in stock and sundry receivables and the said amount so surrendered may be adjusted towards any proposed addition under section 69 of the Act.

14.2 The submission so filed by the assessee were considered but not found acceptable to the AO. As per the AO, the contention of the assessee that the seized documents are part of the rough Trial Balance cannot be accepted as in the statement recorded on oath on 13/04/2018, the partner of the assessee firm Shri Shivam Singla had stated that the documents are details of purchases made on account of Jewellery, Cosmetic, Chura, Lehenga etc. by the assessee during the F.Y. 2012-13. It was accordingly held by the AO that the assessee has admitted that entries mentioned in the seized documents totaling to Rs. 1,28,09,583/- are unaccounted purchases.

14.3 Regarding adjustment against the surrendered amount of Rs. 82,00,000/- pursuant to survey, the AO stated that the said contention again cannot be accepted as the assessee has neither provided any documentary evidence regarding the surrender and the heads of income under which the surrender was made nor provided the copy of the surrender letter and even from the perusal of the assessment order passed under section 143(3) dt. 23/03/2016, it is not clear under which head of income, the additional income of Rs. 82,00,000/- was surrendered. It was further held by the AO that the document have been seized from the residence at Grewal Colony, Jagraon during the search much after the survey on assessee firm on 26/10/2012. Accordingly, the amount of

unaccounted purchases amounting to Rs. 1,28,09,583/- was brought to tax as unexplained investment under section 69 of the Act.

15. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

15.1 The Ld. CIT(A) referred to the contention of the assessee that these are part of the rough Trial Balance and the fact that the assessee has voluntarily surrendered a sum of Rs. 82,00,000/- in stock and sundry receivables at the time of original survey under section 133(3). The Ld. CIT(A) also referred to the fact that the assessee has stated that out of the total unexplained entries of Rs. 1,28,09,583/-, the entries/purchases totaling Rs. 51,50,402/- have been duly shown in the purchase account of the assessee which were got verified during the appellate proceedings by the Inspector of Income Tax who in his report has stated that purchase amounting to Rs. 46,52,059/- have been recorded in the regular books of account of the assessee. The Ld. CIT(A) accordingly held that the balance amount of Rs. 81,57,524/- remained unexplained.

15.2 In this regard, referring to the contention of the assessee that the same is covered by the initial surrender of Rs. 82,00,000/- at the time of survey on 26/10/2012, the Ld. CIT(A) referred to the contents of the surrender letter and stated that the surrender against the stock was Rs. 23,00,000/- only and the sundry receivables represents the sale yet to be realized and therefore the assessee was entitled for credit of Rs. 23,00,000/- and after giving the credit for the same, the remaining amount of Rs. 58,57,524/- was found to be unexplained and which was sustained by the Ld. CIT(A).

16. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

17. During the course of hearing, the Ld. AR submitted that the Ld. CIT(A) has accepted the part submission of the assessee and benefit of only Rs. 23,00,000/-

was given to the assessee by holding that the benefit of only surrender of stock can be given out of the earlier survey proceedings wherein an amount of Rs. 82,00,000/- was surrendered by the assessee on account of sundry receivables, tax free stock and cash.

17.1 It was submitted that it is a matter of fact that there is no discrepancy in physical stock and stock as per books of accounts as on the date of search and reliance was placed on the decision of Ld. CIT(A) for A.Y. 2018-19 wherein at para 4.5, it has been accepted that there is no difference in quantity as on the date of search i.e; 01/11/2017. It was accordingly submitted that it can be concluded that even where there were unaccounted purchases, the same were sold in the same year and the amount of receivables as offered to the extent of Rs. 57.85 lacs pursuant to the survey proceedings covers the addition as upheld by the Ld. CIT(A) and therefore there is no basis for sustaining the addition as so done by the Ld. CIT(A).

17.2 It was submitted that no major difference in stock was identified by the department at the time of survey in 2012 and even at the time of search in 2017 and therefore, it cannot be denied that the remaining difference of unaccounted purchase were sold in the same year in 2012 and the same was offered to tax in the shape of receivables and cash. Hence it will amount to double taxation and the same deserves to be deleted.

18. Per contra, the Ld. DR relied on the findings of the lower authorities which we have already considered and not repeated for the sake of brevity.

19. We have heard the rival contentions and perused the material available on record. In A.Y 2018-19, disposing off the assessee's ground of appeal no. 4 relating to unexplained investment in stock u/s 69 amounting to Rs 77,01,819/-, the Id CIT(A) has recorded his findings which read as under:

*"The facts of the case, the basis of addition made by the A.O. and the arguments of the AR during the appellate proceedings have been considered. The AR has submitted that during the assessment, the assessee explained this issue to the AO mentioning that detailed record of all the traded items was maintained and \*\*\* the searched party did not find any discrepancy in the quantity of stock maintained as per books of accounts and further submitted that the valuation was done on estimation basis by applying average price, whereas there is no method in accountancy called average price for valuation of closing stock. It is also submitted that the department had made valuation of 805 pieces of Lehanga at average rate of Rs. 24,175/- per piece (at Rs. 1,94,60,875/-) which is the rate for stitched/completed Lehanga, whereas the assessee was having stock of 512 unstitched Lehanga, the rate of which was Rs. 6,096/- per piece as per valuation done by the department also and accordingly argued that the value has been wrongly increased by an amount of Rs. 92,56,448/-. The AR enclosed the bill for stitched and unstitched Lehanga in support of the claim. The documents were sent to the AO for comments during the course of appellate proceedings and in the remand report dated 19.05.2022, the AO has accepted this fact that rate of unstitched Lehanga was inadvertently taken at Rs. 24,175/- per piece instead of Rs. 6,096/- per piece and the higher rate was applied for all the Lehanga (including the unstitched Lehanga). Therefore, as per the AO, the plea of the assessee is acceptable on this issue. Under the facts & circumstances of the case and in view of the report submitted by the AO, the arguments of the AR on this issue are found acceptable and the addition of Rs. 77,01,819/- is deleted."*

20. As can be noted from the aforesaid findings, the AO in the remand report dated 19/5/2022 has stated that the higher rate of Rs 24,175/- was inadvertently taken as against Rs 6096/- for all pieces of Lahangas and taking cognizance of the same, the Id CIT(A) has agreed with the assessee's contention that there was no discrepancy in the quantity of stock maintained as per books of accounts and valuation which was done on estimated basis by applying average rate was accepted and the addition was deleted. We therefore agree with the assessee's contention where it says that there was no discrepancy in physical stock and stock as per books of accounts as on the date of search i.e, as on 01/11/2017.

21. Now coming to the subsequent contention of the assessee that even where there were unaccounted purchases in the financial year relevant to impugned assessment year 2013-14, the same were sold in same assessment year 2013-14 (resulting in unaccounted receivables) and not carried forward to subsequent assessment years (including assessment year 2018-19) and thus form

part of unaccounted receivables surrendered at the time of survey. In this regard, we find there is nothing on record to establish that stock in form of unaccounted purchases were sold in impugned assessment year 2013-14 and in terms of likelihood it could be possible that the same was sold in subsequent years prior to date of search. Therefore, the said contention without any corroboration cannot be accepted.

22. At the same time, where certain additions in respect of undisclosed income have been made in the hands of the assessee, whether the said additions being in the nature of intangible addition be available to the assessee for set off against any subsequent additions for the same assessment year. In this regard, useful reference can be drawn to the decision of the Hon'ble Supreme Court in case of Anantharam Veerasinghaiah & Co vs CIT (1980) 123 ITR 457 where the Lordships have held that where an intangible addition is made to the book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitute the undisclosed income of the assessee. It was held that that income is as much a part of real income as that disclosed in the account books, has the same existence and could be available to the assessee as the books profits could be and may constitute a fund from which the assessee may draw subsequently for meeting expenditure or introducing amount in his books. At the same time, it was held that the mere availability of such fund cannot in all cases imply that the assessee has not earned further secret profits. It is for the taxing authority in each case to determine whether the unexplained cash deficit and the cash credits can be reasonably attributable to a pre-existing fund of concealed profits or they are reasonably explained by reference to concealed income earned in that year. In the instant case, we find that the unaccounted receivables amounting to Rs 57.85 lacs which were brought to tax as undisclosed income at the time of survey was available to the assessee to make subsequent purchases which again remain unaccounted for and now sought to be taxed by the authorities.

Given that the said amount has already been brought to tax in the impugned assessment year, there cannot be any further addition on utilization of the said amount towards making the purchases. Therefore, the addition to the extent of Rs 57.85 lacs out of addition of Rs 58.57 lacs sustained by the Id CIT(A) is hereby directed to be deleted. In the result, the ground of appeal is partly allowed.

23. In the result, the appeal of the assessee is partly allowed.

24. Now, we deal with the appeal of the assessee in ITA No. 308/Chd/2022 pertaining to Assessment Year 2015-16, wherein the assessee has raised following grounds of appeal:

*"1. a) That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs. 2,08,116/- being the commission paid on bogus purchases and sales by the company.*

*b). With prejudice to above ground of appeal, the Ld. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs. 40,40,351/- on the bogus purchases and sales, which were never made and, thus the addition of Rs. 2,08,116/ is liable to be set off against the such income. already offered.*

*2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 63,364/- by applying the gross profit @ 5.59% on the amount of Rs. 11,33,526/-.*

*3. That the Ld. CIT(A) has erred in confirming the addition of Rs. 10,309/- on account of gross profit @ 5.34% on the amount of Rs. 1,93,060/-.*

*4. That the Ld. CIT(A) has erred in confirming the addition of Rs. 1,34,530/- on account of unexplained expenditure.*

*5. Without prejudice to ground No. 2,3,& 4 as above, the Ld. CIT(A) should have allowed the benefit of addition as confirmed by him of Rs. 63,364/-10,340/- and Rs. 1,34,530/- against the addition of Rs. 1,34,530/ of unexplained expenditure."*

25. In Ground No. 1, the assessee has challenged the sustenance of addition of Rs.2,08,116/- on account of unexplained expenditure under section 69 being the commission paid on bogus purchase and sales by the assessee company.

26. During the course of hearing, the Ld. AR submitted that the addition has been made by the AO on account of alleged payment of commission on bogus purchase and sales forming part of the audited books of account wherein the assessee has already disclosed profit of Rs. 40,40,351/-.

26.1 It was submitted that the facts and circumstances of the case are identical as in Assessment Year 2013-14 and the submission made therein may be duly considered while deciding the grounds of appeal.

26.2 It was submitted that the AO has made an addition of Rs. 3,32,986/- @ 0.40% on total bogus purchase and sale which has been brought down to Rs. 208,116/- @ 0.25% by the Id CIT(A). It was submitted that since the assessee has already offered the profit of Rs. 40,40,351/- which was never realized at first place therefore the addition of Rs. 208,116/- is liable to be set off against the said income already offered to tax.

27. Per contra, the Ld. DR has fairly admitted that the facts and circumstances are identical as in A.Y 2013-14 and has relied on the order of the lower authorities.

28. We have heard the rival contention and perused the material available on the record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 5.09% on bogus sales of knitted cloth which comes to Rs 40,40,351/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 3,32,986/- as so determined by the AO stand covered by the said gross profit of Rs 40,40,351/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 208,116/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

29. Ground No. 2, 3 & 4 were not pressed during the course of hearing except for the limited prayer that the addition of Rs. 63,364/- made on account of G.P Rate on undisclosed sales and Rs. 10,309/- being the G.P on undisclosed rentals be allowed to be set off against the addition of Rs. 134,530/- towards unexplained expenditure.

30. The Ld. DR relied on the order of the lower authorities.

31. We have heard the rival contention and perused the material available on the record. In view of the limited prayer raised on behalf of the assessee which we find acceptable, the gross profit addition of Rs. 63,364/- and Rs. 10,309/- is hereby sustained and being the intangible addition is available to the assessee and is hereby directed to be set off against the addition of Rs. 134,530/- towards unexplained expenditure. In the result, ground no. 2 & 3 are dismissed as not pressed and ground no. 3 is partly allowed.

32. In the result, the appeal is partly allowed.

33. Now we shall deal with the appeal of the assessee in ITA No. 309/Chd/2022 pertaining to Assessment Year 2016-17, wherein the assessee has raised following grounds of appeal:

*"1. a) That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs. 4,67,441/- being the commission paid on bogus purchases and sales by the company.*

*b). With prejudice to above ground of appeal, the Ld. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs. 59,66,942/ on the bogus purchases and sales, which were never made and, thus, the addition of Rs.4,67,441/- is liable to be set off against the such income already offered.*

*2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 75,427/-by applying the gross profit @ 5.35% on the amount of Rs. 14,09,154/-.*

*3. That the Ld. CIT(A) has erred in confirming the addition of Rs.8,83,826/- on account of rough jottings as unexplained expenditure.*

*4. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

34. Regarding Ground No. 1 wherein the addition of Rs. 4,67,441/- being the commission paid on bogus purchases and sales have been sustained by the Ld. CIT(A), the assessee has reiterated the submission as made in the Assessment Year 2013-14 and it was submitted that the facts and circumstances of the case are identical wherein the assessee has already disclosed the profit of Rs. 59,66,942/- on the bogus purchase and sales which were never made and therefore the addition of Rs. 4,67,441/- may be allowed to be set off against the income already offered to tax.

35. Per contra, the Ld. DR has fairly admitted that the facts and circumstances are identical as in A.Y 2013-14 and has relied on the order of the lower authorities.

36. We have heard the rival contentions and perused the material available on the record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 5% on bogus sales of knitted cloth which comes to Rs 59,66,942/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 747,906/- as so determined by the AO stand covered by the said gross profit of Rs 59,66,942/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 467,441/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

37. Ground No. 2 wherein the addition of Rs. 75,427/- has been sustained by the Ld. CIT(A) was not pressed during the course of hearing, at the same time it

was submitted that the assessee be allowed the set off of the same against the addition of Rs. 8,83,826/- in respect of unexplained expenditure which has been challenged in Ground No. 3 of the assessee's appeal.

38. The Ld. DR relied on the order of the lower authorities.

39. We have heard the rival contention and perused the material available on the record. In view of the limited prayer raised on behalf of the assessee which we find acceptable, the gross profit addition of Rs. 75,427/- is hereby sustained and being the intangible addition is available to the assessee and is hereby directed to be set off against the addition of Rs. 883826/- towards unaccounted advances to employees. In the result, ground no. 2 is dismissed as not pressed and ground no. 3 is partly allowed.

40. In the result, the appeal of the assessee is partly allowed.

41. Now we shall deal with the appeal of the assessee in ITA No. 310/Chd/2022 pertaining to Assessment Year 2017-18, wherein the assessee has raised following grounds of appeal:

*"1. a) That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs. 4,90,995/- being the commission paid on bogus purchases and sales by the company.*

*b). With prejudice to above ground of appeal, the L.d. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs.43,10,127/- on the bogus purchases and sales, which were never made and, thus, the addition of Rs.4,90,995/- is liable to be set off against the such income already offered.*

*2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 1,56,000/- account of rough jottings as unexplained expenditure.*

*3. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

42. Regarding Ground No. 1 wherein the addition of Rs. 4,90,995/- being the commission paid on bogus purchases and sales have been sustained by the Ld. CIT(A), the assessee has reiterated the submission as made in the Assessment Year 2013-14 and it was submitted that the assessee has already disclosed the

profit of Rs. 43,10,127/- on the bogus purchase and sales which were never made and therefore the addition of Rs. 4,90,995/- may be allowed to be set off against the income already offered to tax.

43. The Ld. DR relied on the order of the lower authorities.

44. We have heard the rival contentions and perused the material available on the record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 3.65% on bogus sales of knitted cloth which comes to Rs 43,10,127/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 785,591/- as so determined by the AO stand covered by the said gross profit of Rs 43,10,127/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 490,995/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

45. Ground No. 2 was not pressed during the course of hearing, hence the same is dismissed as not pressed.

46. In the result, the appeal of the assessee is partly allowed.

47. Now we shall deal with the appeal of the assessee in ITA No. 618/Chd/2022 pertaining to Assessment Year 2018-19, wherein the assessee has raised following grounds of appeal:

*"1.a). That the Ld. Commissioner of Income Tax(Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs.*

1,83,016/- being the commission paid to bogus purchases and sales by the company.

b) With prejudice to above ground of appeal, the Ld. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs. 13,03,320/- of the bogus purchases and sales, which were never made and the addition of Rs. 1,83,016/- is liable to be set off against the such income already offered.

2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 43,048/- by applying the provisions of section 36(1)(iii).

3. That the Ld. CIT(A) has erred in confirming the following additions:

- |                                |                                                           |
|--------------------------------|-----------------------------------------------------------|
| i) Addition of Rs. 6,13,202/-  | As per para 4.5.1, Pages 36 to 38 of the order of CIT(A). |
| ii) Addition of Rs. 3,02,542/- | As per para 4.6.2, Pages 38 to 39 of the order of CIT(A)  |
| iii) Addition of Rs. 59,235/-  | As per para 4.6.4, Pages 40 to 42 of the order of CIT(A)  |
| iv) Addition of Rs. 7,56,000/- | As per para 4.6.5, Pages 42 to 43 of the order of CIT(A). |
| v) Addition of Rs. 12,60,606/- | As per para 4.7.1, Pages 44 to 45 of the order of CIT(A). |
| vi) Addition of Rs. 750/-      | As per para 4.7.2, Page 45 of the order of CIT(A).        |

4. That the Ld. CIT(A) has erred in confirming the following additions.

- |                                |                                                                     |
|--------------------------------|---------------------------------------------------------------------|
| i) Addition of Rs. 1,49,464/-  | As per para 4.8.1 of the order of CIT(A)                            |
| ii) Addition of Rs. 97,648/-   | As per para 4.8.3, page 48 of the order of CIT(A)                   |
| iii) Addition of Rs. 98,136/-  | As per para 4.8.4, page 49 of the order of CIT(A)                   |
| iv) Addition of Rs. 8,05,798/- | As per para 4.8.1, Page 49 & 50 of the order of the order of CIT(A) |

5. Without prejudice to ground No. 3 & 4, the Ld, CIT(A) should have allowed the benefit of sum available with the assessee to the tune of Rs. 1,49,664/-, 97,648/-, 98,136/- and 8,05,798/- against the addition of unexplained expenditure.

6. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."

48. Regarding Ground No. 1 wherein the addition of Rs. 1,83,016/- being the commission paid on bogus purchases and sales have been sustained by the Ld. CIT(A), the assessee has reiterated the submission as made in the Assessment Year 2013-14 and it was submitted that the assessee has already disclosed the profit of Rs. 13,03,320/- on the bogus purchase and sales which were never

made and therefore the addition of Rs. 1,83,016/- may be allowed to be set off against the income already offered to tax.

49. The Ld. DR relied on the order of the lower authorities.

50. We have heard the rival contentions and perused the material available on the record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 3.5% on bogus sales of knitted cloth which comes to Rs 13,03,320/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 292,826/- as so determined by the AO stand covered by the said gross profit of Rs 13,03,320/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 183,016/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

51. Ground No. 2 was not pressed during the course of hearing, hence the same is dismissed as not pressed.

52. Ground No. 3 & 4 were not pressed during the course of hearing, at the same time in terms of ground no. 5, it was submitted that the unexplained expenditure may be allowed to be set off against the GP rate as determined by the AO as unexplained income. In other words, it was submitted that the benefit of GP rate addition of Rs. 1,49,464/-, 97,648/-, 98,136/- and Rs. 8,05,798/- as per ground no. 4 be allowed to be set off against the addition as per the Ground No. 3 in terms of unexplained expenditure.

53. We have heard the rival contentions and perused the material available on the record. In view of the limited prayer raised on behalf of the assessee which we find acceptable, the gross profit addition and addition towards unexplained expenditure are both sustained and at the same time, gross profit addition is directed to be set off against unexplained expenditure and only the remaining amount to be brought to tax. In the result, ground no. 3 & 4 are dismissed as not pressed and ground no. 5 is allowed.

54. In the result, the appeal of the assessee is partly allowed.

55. Now we shall deal with the appeal of the assessee in ITA No. 617/Chd/2022 pertaining to Assessment Year 2018-19, wherein the assessee has raised following grounds of appeal:

*"1. a). That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition on account of unexplained expenditure u/s 69 amounting to Rs. 78,726/- being the commission paid on bogus purchases and sales by the company.*

*b). With prejudice to above ground of appeal, the Ld. CIT(A) has failed to appreciate that the assessee has already disclosed the profit of Rs.3,80,237/- on the bogus purchases and sales, which were never made and, thus, the addition of Rs.78,726/- is liable to be set off against the such income already offered.*

*2. That the Ld. CIT(A) has erred in confirming (restricted) the addition of Rs. 17,22,325/- out of 39,83,040/- on account of alleged difference in stock as on the date of survey.*

*3. That the Ld. CIT(A) has erred in confirming the addition of Rs. 2,19,466/- on account of provisions section 36(1)(iii).*

*4. That the Ld. CIT(A) has erred in confirming the addition of Rs.6,73,458/- as per Annexure-VI a, page 11 of the order of Assessing Officer.*

*5. That the Ld. CIT(A) has erred in confirming the addition of Rs.4158/- on account of unexplained investment, as per Annexure-VI, page 31 of the order of Assessing Officer.*

*6. a) That the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the of Rs. 10,966/- on account of gross profit.*

*b). Without prejudice to above ground of appeal, the Ld. CIT(A) should have set off the addition on account of unexplained expenditure of Rs. 6,73,458/- against the confirmation of additions of Rs. 10,966/-*

*7. That appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

56. Regarding Ground No. 1 wherein the addition of Rs. 78,726/- being the commission paid on bogus purchases and sales have been sustained by the Ld. CIT(A), the Id. AR has reiterated the submission as made in the Assessment Year 2013-14 in case of Group Concern, Seo Lehenga and it was submitted that the assessee has already disclosed the profit of Rs. 3,80,237/- on the bogus purchase and sales which were never made and therefore the addition of Rs. 78,726/- may be allowed to be set off against the income already offered to tax.

57. The Ld. DR relied on the order of the lower authorities.

58. We have heard the rival contentions and perused the material available on the record. We have heard the rival contentions and perused the material available on record. We find that the assessee has been contending right from the assessment proceedings that it has disclosed and offered to tax gross profit on bogus sales which has been accounted for in its books of accounts and the commission payment to the broker is therefore duly covered by the quantum of gross profit already offered to tax. The factum thereof has not been disputed by the Revenue and at the same time, both the lower authorities have failed to give due effect to the same. On perusal of records, it is noted that the assessee has disclosed gross profit at the rate of 2.39% on bogus sales of knitted cloth which comes to Rs 380,237/- and therefore, the commission for procuring the bogus purchase and sale amounting to Rs 125,962/- as so determined by the AO stand covered by the said gross profit of Rs 3,80,237/- and there cannot be any separate addition in this regard. Therefore, the addition of Rs 78,726/- sustained by the Id CIT(A) is hereby directed to be deleted and the ground of appeal is allowed.

59. Regarding Ground No. 2 during the course of hearing, the Ld. AR submitted that the department at the time of search has valued the stock at

Rs.2,46,80,750/-. It is also a matter of fact that another valuation was made at Rs. 2,37,78,482/-. The Assessee has submitted that the stock as on date of search in the books of accounts was to the tune of Rs. 1,77,43,710/-. Thus, there was difference in stock of Rs. 69,37,040/-. During the course of assessment proceedings, detailed submissions were given but the same were not accepted completely by the AO. Detailed working of dead stock of Rs. 42,20,000/- was also given before the AO and it was stated that the value of such stock is normally 10-15%. The Assessing Officer assessed the value of dead stock of Rs. 42,20,000/- @ 30% and relief of value of 70% of 42,20,000/- was given. Thus, net addition of Rs. 39,83,040/- was made on account of difference in stock. It was submitted that the Id CIT(A) at the time of passing the order gave further benefit of 10% of dead stock and valued the dead stock @20% and further also gave the benefit of GP rate of 7.45% on the total value of stock of Rs. 2,46,80,750/-. Thus, the net addition was sustained to Rs. 17,22,325/- as against the addition of Rs. 39,83,040/- by the AO.

60. In the aforesaid factual background, it was submitted that the department itself has made two valuations at the time of search proceedings. The higher valuation was made as the base for all calculations, there was no evidence of unaccounted purchase at the time of search proceedings, complete bill wise stock tally has been maintained by the Assessee which was duly submitted before the AO, the search party and even the AO has not found any discrepancy in the stock record as maintained by the Assessee. The search party has calculated the stock on the basis of average cost method which is not a method of valuation of closing stock whereas the assessee has calculated and maintained the closing stock, bill wise and on the basis of cost price and the same cannot be denied unless any defect is pointed out.

61. The Id DR is heard who has relied on the order of lower authorities. It was submitted that the Id CIT(A) has already allowed relief to the assessee in terms of

valuation of stock as well as dead stock and no further relief is warranted in the facts of the present case and the same be upheld.

62. We have heard the rival contentions and perused the material available on record. We find that the Id CIT(A) has taken due cognizance of the assessee's contention regarding valuation of stock on average price and has held that the stock valuation of Rs 246,80,750/- was done on the basis of sale price and Gross profit @ 7.45% is to be reduced for arriving at the value as per books of accounts and assessee was held entitled for benefit of Rs 18,38,715/-. Further, regarding the second valuation report, we find that no such contention has been raised by the assessee before the lower authorities or is emerging from the assessment and appellate order. Even if we look at the valuation as so stated at page 33 of APB, we find that it is unclear whether the same has been taken cognizance of by the survey team or for that matter, the AO during the assessment proceedings and in any case, it talks about valuation of stock as per average weighted price method for two quarters which has been duly addressed by the Id CIT(A) where he has held that the stock has to be valued at cost after reducing the gross profit rate. Therefore, we find no merit in the said contention. In the result, we do not find any justifiable basis to interfere with the order of the Id CIT(A) where he has sustained the addition of Rs 17,22,325/- and the same is hereby upheld and the ground of appeal taken by the assessee is dismissed.

63. Ground No. 3, 4, 5 and 6(a) were not pressed during the course of hearing, at the same time in terms of ground no. 6(b), it was submitted that the assessee be allowed set off of unexplained expenditure of Rs. 6,73,458/- against the confirmation of addition of Rs. 10,966/- on account of GP Rate.

64. We have heard the rival contention and perused the material available on the record. In view of the limited prayer raised on behalf of the assessee which we find acceptable, the gross profit addition of Rs. 10,986/- is hereby sustained and being the intangible addition is available to the assessee and is

hereby directed to be set off against the addition of Rs. 6,73,458/- towards unexplained expenditure. In the result, ground no. 3,4,5 & 6(a) are dismissed as not pressed and ground no. 6(b) is allowed.

65. In the result, the appeal of the assessee is partly allowed.

66. In the result, all appeals filed by respective assessees are partly allowed.

Order pronounced in the open Court on 27/03/2024.

Sd/-

आकाश दीप जैन  
(AAKASH DEEP JAIN)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

**AG**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar