

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ' E ': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1846/Del/2020
(ASSESSMENT YEAR-2018-19)**

ACIT Central Circle-28 New Delhi	Vs.	M/s Lumax Industries Limited 2 nd Floor, Harbans Bhawan-II Nangal Raya Commercial Complex, New Delhi-110 046 PAN-AAACL 1126D
(Appellant)		(Respondent)

**ITA No.947/Del/2021
(ASSESSMENT YEAR-2018-19)**

DCIT Central Circle-28 New Delhi	Vs.	M/s Lumax DK Auto Industries Limited 2 nd Floor, Harbans Bhawan-II Commercial Complex, Nangal Raya, West Delhi-110 046 PAN-AAACL 2186P
(Appellant)		(Respondent)

**ITA No.948/Del/2021
(ASSESSMENT YEAR-2018-19)**

DCIT Central Circle-28 New Delhi	Vs.	M/s Lumax Auto Technologies Limited Plot No. 70, Sector-10, PCNTDA Pune City, 411026 Maharashtra PAN-AAACD4090Q
(Appellant)		(Respondent)

Appellant by	Sh. Gaurav Jain, Adv and Sh. Sweta Bansal, CA
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	15.03.2024
Date of Pronouncement	04/04/2024

ORDER**PER BENCH:**

All the three appeals are filed by the Revenue against the orders of Learned Commissioner of Income Tax (Appeals)-29 New Delhi [“Ld. CIT(A)”, for short], dated 15/09/2020, 07/06/2021 and 15.09.2020 for Assessment Years 2018-19.

2. The Grounds taken by the Revenue are as under:

ITA No.1846/Del/2020

“1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.23,30,303/- made u/s 69A by the AO, without appreciating the detailed reasons given in the assessment order and without appreciating the fact that incriminating documents, in form of price difference existed in certain items as supplied by specified vendors/suppliers at Chakan Plant only.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.23,30,303/-, made u/s 69A by the AO, without appreciating the fact that Shri Deepak Jain being principal person of the company has offered the income vide statement recorded u/s 132(4) of the Act on 24.12.2017.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.39,68,55.017/- made by the AO, without appreciating the detailed reasons given in the assessment order and without appreciating the fact that incriminating documents, in form of valuation details of stock recorded in the seized/impounded document, profit on which was worked out at 30.94% against the margin 19.39% shown by assessee company.

4. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.39,68,55,017/-, made by the AO, without appreciating the

detailed reasons given in the assessment order and without appreciating the fact that assessee had suppressed its valuation of stock as on 30.11.2017 which had direct impact on profitability of the assessee.

5. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

6. That the grounds of appeal are without prejudice to each other.

7. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”

ITA No.947/Del/2021

“That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 1,10,98,473/-, made by the AO, without appreciating the detailed findings given in the assessment order and without appreciating the fact that incriminating documents, in form of valuation details of stock recorded as the seized/impounded document, profit on which was worked out at 30.94% against the margin 13.99% shown by assessee company.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.1,10,98,473/-, made by the AO, without appreciating the detailed reasons given in the assessment order and without appreciating the fact that assessee had suppressed its valuation of stock as on 30.11.2017 which had direct impact on profitability of the assessee.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.1,10,98,473/-, made by the AO, without appreciating the fact that Shri Deepak Jain (MD) in his statement recorded u/s 132(4) of the 1. T. Act on 24.12.2017 had voluntarily offered the differential value of stock to be its undisclosed income and pay tax accordingly.

4. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal

ITA No.948/Del/2021

1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 8,77,96,511/-, made by the AO, without appreciating the detailed findings given in the assessment order and without appreciating the fact that incriminating documents, in form of valuation details of stock recorded as the seized/impounded document, profit on which was worked out at 30.94% against the margin 17.04% shown by assessee company.

2. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.8,77,96,511/-, made by the AO, without appreciating the detailed reasons given in the assessment order and without appreciating the fact that assessee had suppressed its valuation of stock as on 30.11.2017 which had direct impact on profitability of the assessee.

3. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 8,77,96,511/-, made by the AO, without appreciating the fact that Shri Deepak Jain (MD) in his statement recorded u/s 132(4) of the 1. T. Act on 24.12.2017 had voluntarily offered the differential value of stock to be its undisclosed income and pay tax accordingly.

4. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”

3. The captioned appeals are filed by three different assessees pertaining to same group, the issues involved in the above Appeals are identical and the Assessment Orders were passed in

consequence to the search conducted u/s 132 of the Act on 22/12/2017, therefore, the above Appeals are heard together and disposed off in this common order.

4. First we take up the Appeal filed by the Assessee in ITA No. 1846/Del/2020 and the brief facts of the case are that, a search u/s 132 of the Income Tax Act ('Act' for short) was conducted on the assessee on 22/12/2017, wherein no incriminating document or unaccounted income and assets were found. Thereafter, notice under section 143(2) of the Act was issued by the Ld. AO. It was informed by the Investigation Wing that during the course of the search and seizure operation, it was found that a few companies of M/s Lumax Group were involved in over invoicing of purchase from the various vendors/suppliers. In this regard a statement of one of the employees Company at Chakan Pune Plant namely Sh. Girdhari Lal Goyal General Manager-Purchases Western Region was recorded during the course of survey operation at the said plant, wherein he admitted to have over invoiced purchases from certain vendors and received back cash at Delhi. Evidence in the form of an excel-sheet termed as 'adjustment.xlsx' was found in the laptop

of Sh. Girdhari Lal Goyal who admitted that the said sheet contains details of price difference related to supplies by various vendors at Chakan Plant of the Assessee Company. The A.O relied on the statement of Sh. Girdhari Lal Goyal, General Manager and Sh. Ashok Kumar Gupta, Manager Accounts of the Assessee and Sh. Shailender Negi also the seized document and passed order under section 143(3) of the Act by making an addition of Rs.23,30,303/- on account of over invoicing of purchase and Rs. 39,68,55,017/- on account of suppressed or under valuation of stock by assessing the income of the Assessee at Rs. 53,55,54,180/-.

5. Aggrieved by the assessment order dated 30/12/2019, the assessee preferred the appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 15/09/2020 allowed the appeal filed by the assessee by deleting the additions made by the AO. As against the order of the Ld. CIT(A), the Department of Revenue filed the present appeal on the grounds mentioned above.

6. Ground No.1 & 2 are regarding deletion of addition of Rs.23,30,303/- made u/s 69A of the Act. The Ld. DR submitted that the Ld. CIT(A) deleted the addition without appreciating the

detailed reasons given in the assessment order and without appreciating the fact that incriminating documents in form of price difference existed in certain items as supplied by specified vendors/suppliers at Chakan Plant only. Further submitted that the Ld. CIT(A) has deleted the addition without appreciating the fact that Sh. Deepak Jain being principal person of the company has offered the income vide statement recorded u/s 132(4) of the Act, therefore, sought for intervention of the Tribunal.

7. Per contra, the Ld. AR submitted that the seized paper namely "Adjustment.xlsx", found in from the Laptop of one Mr. Gridhari Lal Goyal an employee of the assessee does not contain any reference to assessment year 2018-19 which has been examined by the Ld. CIT(A), further, the statement given by the said Gridhari Lal Goyal and Ashok Kumar were duly retracted within five days of the search, the amount mentioned in the excel sheet was rough working of Loyalty incentive along with the excel sheet loyalty incentive agreement (MOU) was also found and seized during the search. The Ld. AO has followed the method of pick and choose of a particular of piece of evidence and failed to consider the entire

material found during the course of search, which is in violation of Section 132(4A) r.w.s 292C of the Income Tax Act. The Ld. Counsel has also taken us through the order of the Ld. CIT(A) and by relying on the findings and the conclusion of the Ld. CIT(A), sought for dismissal of the present appeal filed by the Revenue.

8. We have heard the parties and perused the materials. During the course of survey at Chakan Plant, an excel sheet namely "Adjustment. slxs" was found from the Laptop of one of the employee, viz., Mr. Girdhari Lal Goyal. A copy of the same is enclosed at page 38-39 of paper book. The said sheet had details relating to suppliers to/purchases by, the assessee company containing details like, names of the vendors, name of the items, details of the year wise quantity purchases from FY 2010-11 to FY 2016-17 and the amount under the column 'total adjustment'. The said excel sheet was confronted to Mr. Girdhari Lal Goyal, General Manager- Purchase and Sh. Ashok Kumar, Manager-Accounts. In the statement, they stated that the said excel sheet had details of over pricing of raw material purchased from various vendors, whereby the difference was received by the assessee-company in

cash. On the basis of said excel sheet and the statements, the Ld. AO was of the opinion/assumed that the over-pricing was in the range of 20% of the value of purchases recorded in the books of account from the relevant parties and made addition of the said notional amount in block period, i.e., AY 2012-13 to AY 2018-19, under section 69A of the Act. Accordingly, the assessing officer made addition of Rs. 23,30,303/- [$1,16,51,517 \times 20\%$] u/s 69A of the Act in the year under consideration alleging the same in the nature of over invoiced or bogus value of purchases which have been received back in cash by the assessee outside its books of account. In the appeal filed by the assessee, the Ld. CIT(A) deleted the said addition.

9. The Ld. CIT(A) found that the seized paper produced at page No.38 & 39 of the Paper Book, did not contain any information pertaining to year under consideration, i.e., Financial Year 2017-18, relevant to AY 2018-19. The addition was made on the basis of assumption of excessive purchase price, which renders the addition to be notional in nature. Further, the AO made addition considering the contents of data available on the desktop of Sh.

Gridhar Lal Goyal as the price difference in supplies of goods received at Chakan Plant which was found to be received in cash outside the books of account. The said statement of Sh. Girdhari Lal Goyal and Sh. Ashok Kumar have been reiterated by them vide letter dated 27/12/2017 i.e., within five days of the search, wherein they have stated that they have misinterpreted the impugned sheets under pressure. Apart from the same during the course of assessment proceedings, Sh. Girdhari Lal Goyal was cross examined by the assessee, wherein he has once again re-iterated that he was not aware of the content of the sheet and the statement recorded during survey was a statement under pressure and undue stress. Thus, considering the fact that the statement recorded during the search which has been retracted therefore, no evidentiary value can be given as held in several judicial precedents.

10. It was the case of the assessee that amount mentioned in the excel sheet was rough working of 'liability incentive' and the assessee company commenced its manufacturing operations at Chakan Plant which was expanded in the year 2008. In order to ensure smooth production, the assessee company introduced the

scheme of “Loyalty Incentive” (exclusively for Chakan Plant) and the said scheme included due confidence in the suppliers by ensuring the optimum utilization of their manufacturing facilities over a period of time and the incentive was payable by the said supplier/vendors on achievement of their sales targets over a stipulated period of time. The said Loyalty Incentives Agreement (MOU) were also found and seized during the search. Though, the payment of Loyalty Incentive was duly backed by the agreement found and seized during the course of search, the AO committed error in observing that the Explanation in form of Royalty Incentive is an afterthought. The Ld. CIT(A) has also taken note of the said fact while deleting the addition, in our considered opinion, the AO cannot pick and choose the material found during the course of search. The A.O is duty bound to consider the entire material found during the course of search and take cognizance of all documentary evidence and cannot cherry pick a particular piece of information as per Section 132(4A) read with Section 292C of the Act. It is well settled law that the documents which have been found and seized during the course of search action would be deemed and presumed

to be the true and correct document as per section 132(14A) r.w.s 292C of the Act as held in following judgments:-

- *The Hon'ble Delhi High Court in the case of CIT vs. Indeo Airways (P) Ltd. [2012] 26 taxmann.com 244 (Delhi)/ 349 ITR 85 (Delhi)*
- *The Hon'ble ITAT Delhi on the case of ACIT vs. M/s Vatika Green field (P) Ltd., [2009] 121 TTJ 208 (Delhi)*
- *The Hon'ble Delhi High Court in the case of CIT vs. D.D. Gears Ltd., ITA No.896/2008*
- *Golani Bros. vs. ACIT ; 75 ITD 1 (Pune)*
- *Vivek Kumar Kathotia vs. DCIT [2013] 32 taxmann.com 331 (Kol-Trib.).*

11. It is also found that the survey u/s 133A of the Act was also conducted on total seven suppliers of the assessee company. Out of which five suppliers were surveyed at the same time, who have categorically denied having indulged in any over invoicing of supplies to the assessee company. The statements of those suppliers are enclosed at page No.116-118 of the Paper Book. The Ld. Counsel has relied on the statement of Sh. Shailender Negi and Sh. Amit Bohra. In the statement of Sh. Shailender Negi, it was nowhere mentioned that he was indulged in any payment of cash outside the books of account to the assessee company on account of over invoicing. The Ld. CIT(A) observed that the said Shailender Negi given confusing version of having received credit notes against so called over invoicing which is illogical since such credit notes

neutralized the over invoicing if any, which was duly accounted for the books of account of both the parties. The issuance of credit note by the assessee company wards off any over invoicing and no cash can be deemed to have been received on account of issuance of such credit notes.

12. In so far as the statement of Mr. Amit Bohra, he has not admitted that he has given any cash to the assessee Company. He has only stated that the quantity and the difference of pricing with respect to the impugned items which were contrary to the contents of the sheet found and impounded at Chakan Plant. Initially the said Amit Bohra maintained the stand of not indulged in any over invoicing and later on gave contradictory statement, which did not match with the contents of the sheet relied upon by the A.O. Thus, the CIT(A) has disbelieve the version of Mr. Amit Bohra as cannot be relied upon.

13. Further, the 'Loyalty Incentive' was also clarified by Mr. Deepak Jain M.D. of Company in Question No. 4 & 5 of his statement dated 24/12/2017 recorded during the course of search, which is

produced at Page No. 109-111 of the Paper Book. The said Deepak Jain also clarified the issue to the satisfaction of search party at Delhi by stating that, as per the terms and understanding with parties mentioned in seized material, it was agreed that after procurement of a definite amount of supplies from them, the group will be entitle to certain incentive being the 'Loyalty Incentive' is as payable by the said supplier to their group. The Ld. CIT(A) relied on the statement of aforesaid Deepak Jain as he was the person who was at the helm of the affairs of the Company and had more specific details of the negotiation with the vendors, instead of other junior employees, which may not be aware of the exact integrities of the transaction. In any case even such statements of the employees were stood retracted, the said statement of Shri Deepak Jain was recorded u/s 132(4) at the time of search, where as the statement of employees was recorded u/s 131 of the Act, at the time of Survey which were returned later.

14. It is also observed that as per the terms of 'Loyalty Incentive' agreement which were found and seized during the course of search, the assessee Company has already recognized income to

the extent of Rs. 2,21,75,00,000/- on account of loyalty incentive in its books of account for F.Y 2017-18 based on the written agreement entered into with the suppliers and after expiry of seven years from the date of agreement as has been provided in para 3.3 of the Agreements initial period in terms of Agreements. The assessee company recognizes its revenue and expenses as per the applicable accounting Standards (IndAS) and generally accepted accounting principles and has been constantly following the same over the years. The loyalty incentive accrued to the assessee Company in Assessment Year 2018-19 has been duly recorded in the books of accounts of the assessee company. It is seen from the regular Books of Account that the loyalty incentive income was recorded on 31/03/2018 for Rs. 2,21,75,000/-. A copy of the ledger account filed before Ld. CIT(A) is reproduced at page 356 of paper book are duly reproduced at page 21-23 of CIT(A)'s order. After receipt of credit notes and necessary documents from the vendors the loyalty incentive were debited to the respective vendors ledgers. Copies of credit note, ledger accounts in the books of vender and ledger account in the books of the Assessee are enclosed at 103-106

of paper book. Thus, it is apparent and clearly evident from the perusal of above extracts of the regular books of account that the income in respect of loyalty incentive been already recognized by the assessee company in its regular books of account. Considering the above facts and circumstances, we find no reason to interfere with the findings and conclusion of the CIT(A), accordingly the Ground No. 1 & 2 of the Revenue is dismissed.

15. Ground No. 3 & 4 are regarding addition of Rs. 39,68,55,017/- made by the A.O. on account of unexplained investment in stock/suppression u/s 69B of the Act. The Ld. A.O. based on the loose sheet and also based on the statement of Sh. Deepak Jain, M.D, the above addition has been made. In the Appeal filed by the Assessee, the ld. CIT(A) deleted the said addition.

16. The Ld. Departmental Representative submitted that the Ld. CIT(A) committed error in deleting the addition made by the A.O. without appreciating the detailed reasons given in the Assessment Order and without appreciating the fact that the incriminating materials in form of valuation details of stock recorded in the

seized/impugned document profit on which was worked at 30.94% against the margin 19.39% shown by the assessee. The Ld. A.O. relied on the Assessment Order sought for allowing the Ground No. 3 & 4 of the Revenue.

17. Per contra, the Ld. Assessee's Representative reiterated the submissions made before the CIT(A) and relying on the findings and the conclusions of the Ld. CIT(A), sought for dismissal of Ground No. 3 & 4 of the Revenue.

18. We have heard both the parties and perused the material available on record.

19. The seized document i.e. Page No. 33 of Annexure A-26 has been produced by the Assessee at Page No. 203 of the Paper Book and the addition has been made based on the said seized document and the statement of Sh. Deepak Jain. The said seized sheet mainly contained two type of columns namely "as per books" and "addition on account of valuation", which was claimed to have been prepared for the purposes of determining valuation of the stock had in different companies for the purposes of presentation to the

Strategic Investors. The difference between the amount as per books and amount as per the valuation was at a uniform and absolute percentage of 44.82%, which was applied on the basis of GP of the last available unaudited published result of the Company for the half year ending on 30.09.2017. The same was stated to be worked out as under:-

particulars	As per books- as per seized sheet (A)	Addition on account of valuation as per seized sheet (B)	Addition in (A/B x100)
Moulds	61,35,18,580	27,49,57,847	44.82%
Semi Finished Goods	7,64,54,893	3,42,64,444	44.82%
Finished Goods	12,48,88,356	5,59,70,650	44.82%
Stock in Transit finished goods	7,06,48,182	3,16,62,076	44.82%

20. The ld. CIT(A) after analyzing the above details was of the opinion that the difference was merely on account of "valuation" to an extent of absolute percentage which was seemingly applied to various items of stock as mentioned on the said sheet as on 30/11/2017. The seized material relied by the Revenue itself reflected the difference as valuation which was the sole basis of assuming the difference to be unexplained investment, has no legs to stand.

21. During the assessment proceedings, the AO ignored the vital evidences which formed part of the seized material. The evidences that the impugned valuation was wholly and exclusively notional in nature which was prepared for strategic purposes of presentation to prospective investors existed in the seized material itself which were incorrectly brushed aside by the Assessing Officer, which can be corroborated with the Page No. 204 to 221 of the Paper Book which contained 'Brief investors presentation' dated 05/12/2017.

22. The seized paper also establishes that the balance sheet of the assessee was being re casted on certain assumptions as on 30/11/2017. The land and building of the Assessee was also notionally valued as per prevailing market rates according to the discussions with valuers which was subject to actual valuation. Certain other assets were stated to be valued at book cost as on 30/11/2017. In the case of stock specific mention existed on the seized page regarding notional valuation to the extent of Rs. 39.68 crores in items such as CWIPFG and Moulds as on 30/11/2017.

23. It is further observed by the Ld. CIT(A) that after arriving at the figures of enhanced values in land and building as well as certain items of stock, it was found mentioned that the revised balance sheet with such notional valuations may be presented to the Prospective Investor as per Annexure B. Further, the seized material also contained copies of the Balance Sheets as per actual and as per notional values as cited in the said loose sheet. A chart showing the reconciliation of loose sheet and investor representation found and seized during the search is enclosed at page 247 of paper book. The Ld. CIT(A) has also found that even handwritten remarks stating 'Actual and 'Notional against the figures of stock' were also found written on the said investor representation.

24. In the case in hand, the Ld. AO grossly erred in not taking cognizance of all the material found during the course of the search and not making any observation/comments on the other seized material. The Ld. AO cannot just cherry pick a particular piece of information to put reliance while concluding the proceedings against the Assessee. The Ld. A.O. cannot blow hot and cold at the

same time by accepting and making a particular piece of evidence found during the course of search as his sole basis of addition and ignore the other documents/material, more particularly relating to the impugned transaction, found during the course of same search proceedings. Thus, it is found by the CIT(A) that the addition has been made by the Ld. AO is nothing but the notional value of stock prepared for the purpose of investor representation which did not have any financial implication which has been wrongly added by the Ld. AO. No addition can be made on the basis of such notional figures either by Following the jurisprudence as well as principles of accounting in this respect. The Hon'ble Supreme Court including Jurisdictional and other High Courts have time and again held that no addition can be made on notional basis in following judicial pronouncements:

- i) Hon'ble Supreme Court in the decision of Sanjeev Woolen Mills v. CIT [279 ITR 434 (SC)]*
- ii) CIT Vs Indian Sugar & Gen. Industry Export Import [2012] 19 taxmann.com 42 (Delhi HC)*
- iii) ITAT Delhi in I.T. A. Nos. 4611 & 4594/Del/2010*
- vi) Asstt. CIT v. Jvoti Woollen Mills (2009) 125 TTJ 810 (Delhi)*
- v) PR.CIT vs GLADDER CERAMICS LTD (2018) 401 TTR 205 (Guj HC).*

25. Further, Ld. AO placed reliance upon the statement of Sh. Deepak Jain. It is the case of the Assessee before us that there was no clear admission of any unexplained investment or undisclosed income on the aforesaid issue in the statement of Sh. Deepak Jain relied upon the Revenue. The statement of Sh. Deepak Jain states that, the said sheet may have been prepared for the purposes of some strategic purposes and it was only out of pressure and to buy peace of mind that he agreed to offer the differential amount to tax. The said fact has been clarified vide his letter dated 27/12/2017 filed before ADIT (Inv) Unit II, Faridabad produced at Page No. 112-115 of the paper book. It was stated that the statement recorded during the search was an under stressed statement and the said sheet was prepared for strategic purpose for presenting before prospective investors and the copy of the said letter is enclosed at page 112-115 of paper book. The Ld. CIT(A) was rightly observed that that the act of the AO in placing heavy reliance on the statement of Mr. Deepak Jain recorded during the course of search to make additions is also untenable. In fact, the statement given by

Mr. Deepak Jain should have been considered by the AO in line with the seized documents and in the right perspective.

26. In view of the above said facts and circumstances, we find no error or infirmity in the order of the Ld. CIT(A) in deleting the said addition of Rs 39,68,55,017/-. Finding no merit in Ground No. 3 & 4 of the Revenue, we dismiss the Ground No. 3 & 4 of the Revenue.

ITA Nos. 947/Del/2021 & 948/Del/2021

27. In the instant Appeals also the additions have been made on account of under valuation of stocks by relying on the seized material and the statement of employees. The Ld. Counsel for the assessee adopting the similar submission made in ITA No. 1846/Del/2020 for A.Y 2018-19 in the case of Lumax Industries Ltd. submitted that the A.O. has given credential to the retracted statement of the employees, ignored other seized materials and also ignored the statement of Managing Director of the Company. Thus, relying on the orders of the CIT(A), sought for deletion of the addition.

28. Per contra, the Ld. Departmental Representative relying on the assessment orders sought for reversal of the order of the CIT(A).

29. We have heard both the parties and perused the material available on record. In both the above cases, the addition has been made u/s 69B of the Act on account of unexplained investment in stock/suppression, the A.O. heavily relied on the seized document produced at Page No. 33 of Annexure A6. The seized sheet mainly contained two types of columns namely "as per books" and "addition on account of valuation", which was claimed to have been prepared for determining valuation of the stock for the purposes of presentation to the Strategic Investors as on 30/11/2017. The perusal of the impugned seized sheet, the difference was merely on account of "valuation" to an extent of absolute percentage of 44.82%, which was applied on the basis of GP of the last available unaudited published result of the Company for the half year ending on 30.09.2017. The evidence that the impugned valuation was wholly and exclusively notional in nature which was prepared for strategic purposes of presentation to prospective investors existed in the seized material itself, which were incorrectly brushed aside by the Assessing Officer. It is to be noted that the said seized document contained the similar details of three Companies i.e. M/s

Lumax Industries Ltd., M/s Lumax Auto Technologies Ltd. and M/s Lumax D K Auto Industries.

30. We have already discussed elaborately of the similar Companies involved to the similar Companies in the case of Lumax Industries Ltd. in ITA No. 1846/Del/2020 and held that the Ld. CIT(A) has justified in deleting the addition. Finding the parity, in the instant Appeals for the reasons mentioned thereon, we find no reason to entertain the findings and the conclusion of the CIT(A) in deleting the addition in the appeals in hand. Accordingly, the Appeal filed by the Revenue in ITA No. 947/Del/2021 and 948/Del/2021 are dismissed.

Order pronounced in the open Court on 04th April, 2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 04/04/2024

Pk/R.N Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI