

**IN THE INCOME TAX APPELLATE TRIBUNAL****“B” BENCH, MUMBAI**

BEFORE SHRI ABY T VARKEY, JM

AND

SHRI PRASHANT MAHARISHI, AM

**ITA No. 2371/MUM/2023**

(Assessment Year: 2015-2016)

**ITA No. 2377/MUM/2023**

(Assessment Year: 2014-2015)

**ITA No. 2374/MUM/2023**

(Assessment Year: 2016-2017)

**ITA No. 2375/MUM/2023**

(Assessment Year: 2017-2018)

**ITA No. 2373/MUM/2023**

(Assessment Year: 2018-2019)

**ITA No. 2376/MUM/2023**

(Assessment Year: 2021-2022)

DCIT CIRCLE-2(2)  
OLD CGO Building  
806, 8<sup>th</sup> Floor,  
M.K.Road,  
Mumbai 400020**(Appellant)**

Vs.

Bhisma Agro Food Products  
Pvt. Ltd.  
255 Swarna Park,  
Industrial Area,  
Mundka Nangoli,  
New Delhi 110041**(Respondent)****PAN No.AADCB6374Q****ITA No. 2067/MUM/2023**

(Assessment Year: 2015-16)

Bhisma Agro Food Products  
Pvt. Ltd.  
255 Swarna Park,  
Industrial Area,  
Mundka Nangoloi,  
New Delhi 110041**(Appellant)**

Vs.

DCIT CIRCLE-2(2)  
OLD CGO Building  
806, 8<sup>th</sup> Floor,  
M.K.Road,  
Mumbai 400020**(Respondent)**

**Assessee by** : Shri Rajiv Khandelwal, CA ,  
AR  
**Revenue by** : Shri S.Srinivasu CIT DR & Shri  
Ashok Kumar Ambastha, SR  
DR.

**Date of hearing:** 13.02.2024

**Date of pronouncement :** 12. 04.2024

## **ORDER**

### **PER PRASHANT MAHARISHI, AM:**

1. In this bunch, there are seven appeals filed by the parties in case of Bhisma Agro food products private limited, New Delhi (Assessee/Appellant) involving similar issues arising out of search under section 132 of The Income Tax Act [The Act] on the JMJ group on 8/2/2021. against the appellate order passed by The Commissioner of Income Tax (Appeals) – 48, Mumbai [The Learned CIT – A] for assessment year 2014 – 15 to 2017 – 18 and 2018 – 19 by order dated 25/4/2023 and another appellate order passed on that date also for assessment year 2020 – 21 and 2021 – 22. For assessment year 2015 – 16 parties have filed cross appeals and for other years the Deputy Commissioner of Income Tax, Central Circle – 2 (2), Mumbai (The Learned AO) is in appeal.
2. These appeals are as under:-
  - i. ITA number 2377/M/2023 is filed by The Deputy Commissioner of Income Tax, Central Circle – 2 (2), Mumbai (the AO) for assessment year 2014 – 15 wherein the

appeal filed by the assessee against the assessment order passed under section 153C of The Income Tax Act dated 31/3/2022 was partly allowed. Following grounds of appeal are raised:-

*“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the Income Tax Act, 1961 amounting to Rs. 1,81,00,000/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 69C of the Income Tax Act 1961 amounting to Rs. 1,49,48,661/ made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.”*

- ii. ITA number 2371/M/2023 is filed by the AO and the assessee files ITA number 2067/M/2023 for A.Y. 2015-16 wherein the appeal filed by the assessee against assessment order passed by the AO under section 153C of the act on 31/3/2022, is partly allowed. Following grounds of appeal are raised:-

a. Grounds in ITA No. 2371/Mum/2023 are as under:-

*"1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition u/s 68 of the Income Tax Act, 1961 amounting to Rs. 10,14,45,908/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.*

*2. Whether on the facts and circumstances of the case and in law, Ld. CIT (A) erred in deleting the addition u/s 69C of the Income Tax Act, 1961 amounting to Rs. 2, 88,00,000/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law officer, without considering the facts and circumstances of the case and settled position of law."*

b. Grounds in ITA No. 2067/Mum/2023 are as under:-

*"The learned Assessing Officer has erred in making addition u/s 69C of the Income*

*Tax Act, 1961 amounting to Rs. 2,88,00,000/- without considering the facts and circumstances of the case and settled position of law.”*

- iii. ITA number 2374/M/2023 for AY 2016-17 is filed by the assessing officer against the appellate order wherein appeal against the assessment order passed under section 143 (3) read with section 153C of the act dated 31/3/2022 was allowed. Following grounds of appeal are raised:-

*"1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition w/s 68 of the Income Tax Act, 1961 amounting to Rs. 3,08,75,945/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.*

*2. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition w/s 69A, of the Income Tax Act, 1961 amounting to Rs. 2,39,12,100/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.*

3. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition u/s 69C of the Income Tax Act 1961 amounting to Rs. 1,54,28,550/- made by an assessing officer, without considering the facts and circumstances of the case and settled position of law."*

- iv. ITA number 2375/M/2023 is filed by the learned assessing officer for AY 2017-18 against the appellate order passed by the learned CIT – A wherein the assessment order passed under section 143 (3) read with section 153C of the act was partly allowed. Following grounds of appeal are raised:-

"1. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition was 68 of the Income Tax Act, 1961 amounting to Rs. 1,76,47,599/- made by the assessing officer without considering the facts and circumstances of the case and settled position of law.*

2. *Whether on the facts and circumstances of the case and in law, Ld. CIT (A) erred in deleting the addition u/s 69A of the Income Tax Act, 1961 amounting to Rs. 1,18,80,500/- made by the assessing officer. Without considering the facts*

*and circumstances of the case and settled position of law.*

3. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in deleting the addition u/s 69C of the Income Tax Act 1961 amounting to Rs. 1,47,84,670/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law."*

- v. ITA number 2373/M/2023 is filed by the learned assessing officer against appellate order passed by the learned CIT – A in the appeal of the assessee against the assessment order passed under section 143 (3) read with section 153C of the act for assessment year 2018-19. Following grounds of appeal are raised:-

*"1. Whether on the facts and circumstances of the case and in law, the learned CIT (A) erred in deleting the addition under Section 68 of Income-tax Act, 1961 amounting to ₹1,40,05,099/- made by the Assessing Officer, without considering the facts and circumstances of the case and settled position of law."*

- vi. ITA number 2376/M/2023 is filed by the learned AO for A.Y 2021-22 wherein appeal against the assessment order

passed under section 143 (3) of the act dated 7/4/2022 was dismissed by the learned CIT – A. Following grounds of appeal are raised:-

*"1. Whether on the facts and circumstances of the case and in law, the learned CIT (A) erred in deleting the addition under Section 68 of the Income Tax Act, 1961 amounting to ₹41,88,000/- made by the Assessing Officer, without considering the facts and circumstances of the case and settled position of law.*

*2. Whether on the facts and circumstances of the case and in law, the learned CIT (A) erred in deleting the addition under Section 69A of the Income Tax Act, 1961 amounting to ₹42,79,483/- made by the Assessing Officer, without considering the facts and circumstances of the case and settled position of law."*

3. Brief facts of the case show that :-

- i. Assessee is a domestic company engaged in the business of manufacturing of coca, chocolates and super confectioneries.
- ii. Search under section 132 of the income tax act was conducted on JMJ group and others. Consequent to the search operation the assessee's case was centralised with

- the office of the learned assessing officer and subsequently further orders were passed under section 127 of the act.
- iii. A search was also carried out under section 132 (1) of the act at the residential premises of Mr Manoj Sharma. During search, it was found that Manoj Sharma's brother-in-law of Mr Jadish Joshi is the main person of the group on which the search has been conducted.
  - iv. Mr. Manoj Sharma was working under the directions and instructions of Mr Jadish Joshi and Mr. Sharma is a relative of Mr Jadish Joshi. Mr Manoj Sharma executed all the transactions at the behest of and under the instruction of Mr Jadish Joshi.
  - v. Several materials were seized and found an impounded during search. It was found that Mr Manoj Sharma is handling business operations and other duties in India and in foreign countries.
  - vi. During search based on the seized documents it was admitted by Mr Sharma in his statement that the cash handling work and hawala transaction of Mr Jadish Joshi's companies like Bhisma Agro foods products. Mr Sharma also managed Unicot Food products private limited.
  - vii. In Income tax return, Mr Manoj Sharma has shown only nominal income that is below ₹ 5 lakhs.
  - viii. During search it was found that his wife Mrs. Sangeeta Sharma is merely a partner on paper in the group entities of Mr Jadish Joshi holding 20% share of profit in the

- smart perfumery and essential oil, Samaira enterprises, director in global technology and trademark private limited, BV, partner in Sangeeta enterprises etc.
- ix. Therefore, it was concluded by the revenue authorities that the family of the Manoj Sharma is working for Jagdish Joshi and the living expenses of Mr Manoj Sharma and family was born by Mr Jagdish Joshi through group entities.
- x. During search at the residential premises of Mr. Manoj Sharma loose documents numbered 3 – 6, 10, 11 and 12 were found and seized, were inventoried as annexure – 3 containing various details of cash receipts and transfers made and the expenses incurred in cash in relation to Bhisma Agro food products private limited and Unicot food products private limited.
- xi. Documents shows that the cash receipts are generated from an unaccounted sale made by the assessee and Unicote Food products private limited to the extent of ₹ 20,290,325/- for assessment year 2016 – 17, ₹ 19,050,325/- for assessment year 2015 – 16, ₹ 26,665,174/- for assessment year 2017 – 18, ₹ 312,76,120 for assessment year 2020 – 21 and ₹ 22,719,500/- for assessment year 2021 – 22. These are tabulated based on the loose sheets found and seized.
- xii. Statement of three employees were recorded on 9/2/2021 and 10/2/2021 including Mr Sharma wherein as per question number 1, he was asked to identify himself

wherein it was stated that he was residing at Unicote food products private limited office bungalow at Coimbatore. Further, in answer to question number 13, he was asked about his work in Coimbatore wherein he stated that he was supervising the work of Unicot food products private limited on the instruction of MrJagdish Joshi. MrJadish Joshi is 95% shareholder of Unicot Food products. Thus, it was clear that Manoj Sharma was working under the instructions and directions of Mr Jadish Joshi. Manoj Sharma was handling day-to-day work of Unicot Food products private limited and Samaira enterprises. Mr Manoj Sharma received day-to-day unaccounted cash generated from unaccounted sales made by Mr Jadish Joshi group companies, and from those amounts, Mr. Manoj managed his expenses.

- xiii. During assessment year, 2017 – 18 the business of Bhisma Agro foods Private Limited [Assessee Company] was closed due to some labour problems and the business of Unicot food products private limited commenced its business. Thus, up to assessment year 2017 – 18 Bhisma Agro Food private limited and thereafter M/s Unicote Food private limited are adopting similar strategies of showing its unaccounted sales up to assessment year 2017 – 18 in the name of Sangeeta enterprises and thereafter in the name of Samaira enterprises.

- xiv. Thus, the transactions are up to assessment year 2017 – 18 between and related to Bhisma Agro food products private limited relate to sales of Sangeeta enterprises and thereafter of Unicote Foods products private limited with Samaira enterprises.
- xv. Thus, after assessment year 2017 – 18, the names of the entities and the business operations were carried out in the different entities in similar manner.
- xvi. During search, at the premises of Unicot food products private limited, cash invoices issued by two entities namely M/s Samaira enterprises and M/s Sangeeta enterprises were found. The employees of the group stated that these invoices are prepared and managed in the premises of Unicote Food products private limited at the direction of Mr Manoj Sharma.
- xvii. It was further stated that these cash sales invoices prepared in the name of Samaira enterprises and Sangeeta enterprises are bogus in nature as no actual sales are ever made by these entities to the other parties.
- xviii. Unicote food products private limited and Bhisma Agro food products private limited are the entities who made the cash sales which were not accounted in the books of these entities, such cash is handled by Mr Manoj Sharma and other employees, which was converted into cash sales in the books of M/s Samiara Enterprises and M/s Sangeeta Enterprises.

- xix. Thus, unaccounted sales of the assessee company were not recorded though in the books of the assessee, but cash so generated is shown as cash sales of Sangeeta enterprises and Samaira enterprises. Thus, cash sales shown in these entities i.e. M/s Samaira Enterprises and M/s Sangeeta Enterprises are bogus, as those entities did not sale any products.
- xx. The books of accounts of both these entities were also maintained at the premises of assessee and Unicote food products private limited. Mr Manoj Sharma is a partner having 20% shares in Sangeeta enterprises and Samaira enterprises thus Mr Manoj Sharma was managing all these four entities at the direction of Mr Jack the Joshi.
- xxi. Thus, from the seized documents it was found that Bhisma food products private limited up to assessment year 2016 – 17 and Unicote Food products private limited thereafter had are unaccounted cash sales from their operations by under invoicing. Such cash was handed over to the various persons and operated by Mr Manoj Sharma at the instruction of Mr Jadish Joshi; such cash was deposited in the bank account of M/s Sangeeta enterprises and M/s Samaira enterprises. These cash deposits are shown as small cash sales in sales invoices of less than ₹ 50,000. Based on the cash sales, in the name of Samaira enterprises and Sangeeta enterprises, small profits are shown in their books of accounts and filed the return of

income. Thus, the issue is that though the unaccounted sales belong to Bhisma Agro food products private limited and unicote food products private limited but is shown as cash sales of Sangeeta enterprises and Samaira enterprises.

xxii. The statement of Mr Manoj Sharma, Mr Arvind Kumar Singh, and Mr Jayakumar Jain who operated the same confirms these facts.

xxiii. During search, the books of account of Samaira enterprises and Sangeeta enterprises were found at the premises of Unicote Food products private limited along with the cash sale invoices of Samaira enterprises and Sangeeta enterprises.

4. Therefore, the learned AO based on seized documents found that the sales recorded in the books of Sangeeta enterprises and Samaira enterprises is in fact sales of Bhisma Agro food products private limited and Unicote food products private limited. It was also found that both these dummy entities i.e., Samaira enterprises and Sangeeta enterprises have also shown some sales made by them to Bhisma Agro food products private limited and Unicote food products private limited for which there were no supporting documents either in the form of lorry receipt, transport details, delivery challans etc. Therefore, a sale made by these two dummy entities to the assessee and Unicote food products private limited is also not genuine. Thus, based on the loose documents found AO reached at the conclusion that :-

- i. Sales shown by Samaira enterprises is in fact unaccounted sale of Unicotefood products private limited and sales shown by Sangeeta enterprises is unaccounted sale of Bhisma Agro food products private limited.
  - ii. Purchases made by Unicote food products private limited from Samaira enterprises and from Sangeeta enterprises by Assessee are bogus sales of these entities as there were no supporting documents.
5. Thus, in the hands of Unicote food products private limited for assessment year 2020 – 21 and 2021 – 22 and for assessment year 2016 – 17 and 2017 – 18, unaccounted sales are added u/s 68 of the Act which is cash sales recorded in the books of Samaira enterprises and for Ay 2014-15 to AY 2017-18 in the hands of Bhisma Agro foods Private Limited of sales of Sangeeta enterprises respectively.
6. Further purchases shown by Unicote food products private limited from Samaira enterprises and by Bhisma Agro food products private limited from Sangeeta enterprises for respective years is considered as unexplained expenditure under section 69C of the act of both these companies.
7. There were some other incriminating evidence having other issues were found and seized; those were used for making the assessment and resulted into addition u/s 69 C of the Act.
8. In this background, as the request of the parties, we take up the appeals for assessment year 2015 – 16 filed by both the parties against the Consolidated Appellate order passed by the first appellate authority.

9. Brief facts for AY 2015-16 shows that assessee filed its return of income under section 139 (1) of The Act on 30/10/2015 at a loss of ₹ 19,714,768. Based on the seized documents, it was found that the unaccounted sales of the assessee for assessment year 2015-16 is ₹ 101,445,908/-. This is sales made by assessee to Sangeeta enterprises, which was not backed by the respective lorry receipts etc added under section 68 of The Income Tax Act by the AO as the assessee has failed to show to whom goods are sold.
10. There was an issue of unexplained expenditure of ₹ 288 lakhs made in the hands of the assessee for this assessment year. During search loose paper file containing 1 – 360 was found. Page number 353 of the annexure shows the total expenses of Rs 2.88 crores for the advertisement are made from which ₹ 1.65 crores have been paid in cash to one Mr Rajeev Arora. This contains details of expenses for Santoor advertisement of the assessee company. The document also mentions a cheque payment to Mr Rajeev Arora dated 4/3/2014, which is stated to be not cleared/encashed. Assessee was questioned on this paper. It was stated on 14/7/2021 that these documents pertain to the advertisement of product of the company, but no explanation was offered for the cash payment of ₹ 1.65 crores. The AO noted that as per annexure A – 29 cash vouchers for various parties for financial year 2014 – 15 amounting to ₹ 1.19 crores are found which is the remaining amount given to Mr Rajeev Arora. The figures in the statement were mentioned in Kgs wherein 1 KG stands for ₹ 1 lakh. This was confirmed from document number 335 and 334. The document number 335 is a cash voucher dated 4/6/2014 stating 25 Kgs. Based on the actual cash voucher dated 5/6/2014 show the payment of ₹

25 lakhs. Thus, the AO held that 1 KG refers to ₹ 1 lakh. Assessee was questioned about the explanation about advertisement expenditure of Rs 2.88 crores. Assessee could not show the substantial proof, or the cash transaction carried out between the assessee and Mr Rajeev Arrora. As assessee failed to establish the genuineness and the creditworthiness of the cash, transaction of Rs 2.88 crore given to Mr Rajeev Aurora the addition was made as unexplained expenditure under section 69C of the act.

11. Consequently, assessment order under section 153C of the Act was passed on 31/3/2022 wherein the returned income of a loss of ₹ 19,714,768/- was assessed at ₹ 130,245,908/-. It resulted into an addition of unexplained income under section 68 of the act of ₹ 101,445,908/- and unexplained expenditure under section 69C of the act of ₹ 288 lakhs. Therefore, in the assessment order these are the only two disputes which were carried before the learned CIT – A.
12. The learned CIT – A was seized of appeal of the assessee for assessment year 2014 – 15 to 2018 – 19, those were disposed of by the Consolidated appellate order dated 25/4/2023.
  - i. On the first ground of addition under section 68 of ₹ 101,445,908/- , the learned CIT – A held that he has decided the identical ground in the case of Unicote Food products private limited on identical facts and circumstances and further in the case of the assessee for assessment year 2015 – 16 as well, wherein he deleted the addition. Therefore, he deleted the addition of ₹ 101,445,908/- under section 68 of The Income Tax Act allowing ground number 1.

- ii. With respect to the second ground of addition under section 69C of the act of ₹ 288 lakhs he dismissed the appeal of the assessee holding that the document is related to the advertisement expenditure and where there is a clear mention of the cash payments on it. Thus, he confirmed the addition of ₹ 288 lakhs under section 69C of the act. This is the only Ground of appeal by assessee.
13. The main reason for deletion of addition under section 68 while deleting the addition for assessment year 2015 – 16 in the hands of the assessee as per paragraph number 6 of his appellate order, he gives the justification for following the order in the case of Unicote Food products private limited. He also notes that identical Assessment Order have been passed in the hands of Unicote food products private limited and the assessee. The seized documents are also the same. The logic of the AO for making the addition in the hands of Unicot food products private limited with respect to transactions with Samaira enterprises and logic of addition made in the hands of this assessee for transaction with M/S Sangeeta Enterprises are also identical. Therefore, as he has deleted the addition in the case of Unicote food private limited of the sales made to Samaira enterprises by that entity, he deleted the addition in the hands of this assessee with respect to sales made by the assessee to Sangeeta enterprises. Thus, the deletion of the addition under section 68 of the income tax act has resulted into an appeal filed by the learned assessing officer before us.

14. The addition confirmed by the learned CIT – A under section 69C of ₹ 288 lakhs of unaccounted advertisement expenditure has resulted into appeal filed by the assessee before us.
15. On the ground of appeal of the learned AO, the learned departmental representative made a written submission on 13/2/2024 wherein he has discussed the various statements recorded during search. He submits that a statement of Mr Manoj Sharma was recorded on 10/2/2021 wherein in answer to question number 16 – 18 that there is an unaccounted sale in case of Unicote food products private limited. He also referred to the statement recorded of Mr Arvind Kumar Singh wherein he has specifically confessed in answer to question number 16 that Samaira enterprises did not make any sales. Cash is given by Mr Manoj to employees and is deposited in the account of Samaira. Ultimately, this cash deposited in the bank account of Samaira Enterprise was shown as sales in the books of Samaira Enterprises. He further referred to the statement of Mr Ganesh Gopi recorded on 9/2/2021 wherein also the above statement is confirmed. He vehemently submitted that.
  - i. Sales made by the assessee to Sangeeta enterprises are completely bogus as there is no evidence of movement of goods from assessee to Sangeeta enterprises.
  - ii. The learned departmental representative referred to various invoices shown by assessee with respect to sales made to Sangeeta enterprises. He submitted that such invoices are available in the paper book furnished by the assessee.

- iii. He submits that with respect to the dispatch, the only one lorry number TN40D 2011 is mentioned. He submits that in all the invoices of ₹ 10.44 crores only one lorry is used.
- iv. He further referred to the invoices issued by the assessee at page number 270 onwards which clearly shows that in one lorry the goods have been moved and on one day, the lorry covered the distance which could not have been covered by that lorry looking at the address from which the goods have been dispatched to the destination address where the goods have been delivered allegedly.
- v. He also referred to the distance and stated that by no stretch of imagination this could have been possible. He further submitted that all the bills are having the same lorry number for dispatch also shows that the sales are not genuine.
- vi. He further submitted that if the sales are not genuine, the addition under section 68 of the income tax act deserves to be upheld.
- vii. Learned CIT – A has deleted the addition in the hands of the assessee by following the appellate order passed by the learned CIT – A for assessment year 2015 – 16. In the order for assessment year 2015 – 16, the learned CIT – A followed the order in case of Unicot food products private limited.
- viii. He submits that the finding of the learned CIT – A is identical is devoid of any merit because there was no such allegation of using one lorry which travelled at jet speed for delivery of goods between two destinations.

- ix. He specifically referred to his submission dated 13/2/2024 wherein it has been submitted that there is no possibility to transport such a huge quantity of goods in a single lorry. He referred to the simple bills, he also referred to distance between the destination and source of the goods.
16. Against the above arguments, the learned authorised representative vehemently submitted that.
- i. Appellate order of the learned CIT – A which was relied upon by him in case of Unicot food products private limited has been upheld by the coordinate bench.
  - ii. There is an identical facts pattern between the transaction between Unicote food products private limited with Samaira enterprises and of assessee i.e. Bhisma Agro Food products private limited and Sangeeta enterprises. This is admitted by the LD AO in assessment order itself.
  - iii. sales are accounted for in the books of the assessee, quantitative details are produced, it is an excise duty chargeable product which has been sold, same is also recorded in the books of the assessee as sales, purchases are recorded in the books of Sangeeta enterprises, books of accounts of the assessee are not rejected but accepted, the sale consideration is received by cheque, quantitative details are not disputed either by the excise authorities, VAT authorities either in the case of the assessee or in the case of Sangeeta enterprises, these facts are not in dispute.

- iv. Addition is merely, made on basis of statements of employees who have already retracted the same and hence, reliance on such statements cannot be made. None of the employees is examined during the assessment proceedings.
- v. The learned AO could not have made addition of the sales already recorded in the books of the assessee and on which profits are shown.
- vi. For cash credit assessee has proved identity of M/s Sangeeta Enterprises, Creditworthiness also as it is an assessee, payments are through banking channels, Sources of fund is sales recorded in the books of Sangeeta Enterprises, it is assessed to Income tax. There is no dispute that profit shown by Sangeeta enterprises is Bogus, there is no evidence about the onus established by the assessee. Thus, the assessee explains Nature of Credit and sources of such credit. Hence, addition u/s 68 is rightly deleted by the LD CIT (A) and confirmed by ITAT.
- vii. With respect to the lorry in which the goods have travelled, assessee has stated that this lorry belongs to the assessee, in the same lorry as it is a sister concern goods are transferred/transported, the distance shown by the AO is found from Google maps showing the different address/destination location. The distance is very less, and the goods are shown to have been transported in that lorry. Further, the AO has not doubted that the lorry in which the goods have been shipped/transported has travelled at a jet

speed that is not the case of the AO; it is the only arguments of the ld. DR.

- viii. With respect to the statement of the various persons based on which the AO has made the addition have already been dealt with in the appellate order of the ITAT in case of unicote food products private limited, that order is of the ITAT on similar facts and circumstances.
- ix. In absence of any different facts and circumstances, that the judgement binds the ITAT. No other view on the same facts is permissible by the same strength of the coordinate bench.
- x. The distance shown by the learned departmental representative of 54 km is incorrect. He submits that such distance is hardly 22 km. The learned departmental representative has taken the wrong address of destination. Therefore, the whole submission made by the learned departmental representative dated 13/2/2024 based on the distance of 54 km is devoid of any merit.
- xi. It was further stated that assessee has dealt with in excisable goods, paid excise duty on the removal of goods on monthly basis, such excise payment is not disputed by anybody, and therefore, removal of goods from the factory of the assessee is undisputed.
- xii. There is no evidence available with the revenue authorities that the goods removed from the factory of the assessee has travelled to different destination then dispatched to the premises of Sangeeta enterprises.

17. In the rejoinder, the learned departmental representative vehemently stated that.

- i. In the ITAT , CIT (A) and Id. AO order of Unicote Food products Private Limited there is no recording of the fact that whether the goods have travelled in the same lorry or not, the coordinate bench has also not given any finding of the fact but has merely reproduced the order of the learned CIT – A. In absence of any independent finding by the coordinate bench, that order does not bind the coordinate bench.
- ii. Even otherwise that decision is distinguishable on the fact that over and above the other allegations of the revenue, it is conclusively proved by the revenue that the lorry which has been mentioned in all the invoices is one, the distance stated between the two places i.e. source and the destination insofar as that such a lorry could not have transported the goods in which the timings are stated in the invoices.
- iii. He submits that the coordinate bench in the case of Unicote for products private limited has accepted the contentions of the learned authorised representative regarding the sales made by that company to Samaira enterprises only on the basis of the turnover, gross profit, net profit of the Samaira enterprises and has not considered very absence of primary evidences/documents such as lorry receipts, delivery challans which were not produced by the assessee during search and survey action and statement of the various persons that there is no actual sales to Samaira enterprises

and Sangeeta enterprises. These facts clearly established that the appellant contentions/claim is made and is simply accepted by the Tribunal in the order are neither justifiable not acceptable when facts and evidence are not forthcoming from appellant.

- iv. He further submitted that the vehicle used in one the invoices is only one vehicle, which is neither registered in the name of the directors of the company or the partner of Mrs and with enterprises. Further, the average weight, which is carried on by the vehicle, is almost 5000 KG and the loading and unloading itself is consumed more than one is. In each trip, the lorry carries on an average 5000 KG of load of around hundred bags of 50 KG each. However, the same time taken by the lower is to and from our hardly two hours which includes time for loading and unloading. For delivery of goods the assessee has only maintain the invoices issued by assessee and not supported by delivery challans, get past or excise records. The invoices are prepared in the handwriting of only one person and the time taken is always in round figure, which only indicates that the same are prepared only to support the sales. The coordinate bench in its order has accepted that the Herbal Nuts were sold to two parties but the same are shown in the hence of Unicote food products private limited. Unicote food products private limited would have also prepared the invoices for such sales in the name of Samaira enterprises without actual movement

of the goods. The EV appeal is concerned, Mr Sharma has already diverged the modus operandi of generation of unaccounted cash and the weapons. In support of road distance from the appellant's address to the assessee's premises, the distances obtained from the Google Maps and vehicle registration detail shows that it is almost 50 km. Therefore, the sales made by the assessee to Sony time to prices could not have been accepted as genuine.

18. The learned authorised representative has also invoked the provisions of rule 27 of the ITAT's rules by the application dated 22/9/2023 wherein it has been stated that the satisfaction note recorded under section 153C does not have document identification number and therefore it is invalid. As satisfaction note is invalid, assessment based on that is also invalid. The learned authorised representative relied upon the decision of the honourable Bombay High Court in case of Ashok commercials enterprises [2023] 154 taxmann.com 144 (Bombay)/[2023] 459 ITR 100 (Bomb. Wherein it has been held that if an order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in file and with prior written approval of Chief Commissioner/Director General of Income Tax. Therefore, the learned authorised representative submitted that the satisfaction not provided does not have a DIN; therefore, the assessment order itself is bad. Thus, issue is squarely covered in favour of the assessee.
19. The learned departmental representative vehemently submitted that the argument made by the learned authorised representative is devoid of any merit. He submits that there is no communication of satisfaction note to

any other person other than the assessing officer. When there is no communication, behaviour is the need of document identification number. He submits that let the assessee prove first that there is a communication between department to the assessee or any other person outside department, and then there is a requirement of putting document identification number. If the communication is between the departmental officers only, the circular does not provide for putting document identification number. He specifically referred to Circular No. 19/2019 dated 14th August 2019. He submits that the whole intention of the circular is that if there is a communication from the income tax department it should have been issued with a document identification number. He submits that on reading of that circular there is no provision that internal communication of revenue officers must also contain document identification number. He even otherwise submitted that in case of Ashok commercials enterprises (supra) there was no communication either any other assessing officer or to any other person outside the department. Therefore, the argument of the learned authorised representative deserves to be rejected at the threshold itself.

20. Firstly, we discussed the invocation of provisions of rule 27 of the Income Tax Appellate Tribunal Rules, 1963 by the learned authorised representative. We have carefully considered the rival contention and perused the orders of the lower authorities. Before us, the learned authorised representative could not show that there is any communication of satisfaction note. The circular number 19/2019 dated 14 August 2019 only speaks about the communication. If the learned authorised representative could not show the communication of satisfaction note,

there is no reason to put any document identification number that on. Therefore, we do not find any reason that the decision of the honourable Bombay High Court comes to the rescue of the assessee. As the learned authorised representative failed to prove any communication, there is no question of putting document identification number thereon. Accordingly, the grounds raised by the learned authorised representative invoking the provisions of rule 27 of the ITAT rules are dismissed.

21. Now we come to the merits of the case of ground number 1. We have carefully considered the rival contention and perused the orders of the lower authorities. The allegation in this case is that for this assessment year 2017 – 18, addition u/s 68 has been made of sales made by assessee to Sangeeta enterprises and from assessment year 2018 – 19 onwards unicote food products Ltd has made its sale to Samaira enterprises. Such sale is recorded in the books of the assessee for the respective period and of Unicote food products private limited post FY2017 – 18 that is bogus and therefore the addition under section 68 of the income tax act has been made. As far as the issue is concerned, up to assessment year 2017 – 18 and after 2018 – 19 in the case of assessee as well as Unicote Food products private limited is identical. The case of the unique court food products private limited has been decided by the learned CIT – A which has travelled before the coordinate bench in coordinate bench has upheld the order of the learned CIT – A deleting the addition under section 68 of the income tax act made by the AO with respect to sales made by unicote food products private limited to Samaira enterprises. The coordinate bench has held in those cases of M/s. Unicot Food Products Pvt. Ltd.

[ITA No.1803-1805/Mum/2023 (Assessment Year: 2019-2020, 2020-21 & 2021-22)] dated 30/09/2023 as under:-

*"15. After considering the above submissions made by the ld. CIT DR as well as ld. Counsel for the assessee we find that before the ld. AO as well as ld. CIT (A), assessee had stated that in order to cater to the demand of herbal nut in the state of Tamilnadu, there was another entity which was handling the supply chain to various retailers and small vendors which was M/s. Samaira Enterprises. The assessee would sell the product to M/s. Samaira Enterprises which in turn would sell the products to the small and unorganized pan masala customers from its office / depot as over the counter sales. These retailers used to buy the products in cash. All the sales made to M/s. Samaira Enterprises has been duly reflected in the books of accounts of the assessee company and also offered as income on which VAT, GST has also been collected and paid. Further, the counter sales made by M/s. Samaira Enterprises have also been recorded in its books of accounts and have been offered to tax in its return of income. It is also a matter of fact that in the statement recorded by Shri Manoj Kumar Sharma, he has merely stated that he was handling the cash sales on behalf of M/s. Unicot Food Products Pvt. Ltd. and M/s. Samaira Enterprises belong to his wife Ms. Sangeeta Sharma. Before the ld. CIT(A), assessee had clarified and reconciled each and every entry of the loose sheets which has been dealt and incorporated in the appellate order at pages 15 & 16 and also*

*assessee has given point-wise rebuttal of ld. AO's observations. It is after considering the entire gamut of facts, the ld. CIT (A) has held that it is borne out from the records that M/s. Samaira Enterprises has been regularly filing its return of income on sale of herbal nuts purchased from assessee and he has also incorporated the trading account of M/s. Samaira Enterprises which has been incorporated at page 28 of his finding as incorporated above. He has also noted that out of sales at Rs.7,24,37,751/- made in F.Y.2020-21, Rs.4,21,43,750/- has been made to M/s. Samaira Enterprises which constitute 58% of the total sales. The ld. AO has not even examined the sales of M/s. Samaira Enterprises and has neither verified, whether the sales made by M/s. Samaira Enterprises is same which has been recorded in the loose papers. According to ld. AO, the entire cash sales reflected in the loose sheets pertain to the assessee when there are corresponding sales which has been accounted in the books of M/s. Samaira Enterprises. If that premise of the AO is to be accepted then sale of M/s. Samaira Enterprises would be nil which cannot be the case, because this entity has shown sales and is assessed to tax since past. Thus, based on these documents and the ld. CIT (A) has given his elaborate finding for his conclusion and given direction to the ld. AO in para 6.10 and 6.11 as incorporated above, wherein, he has directed the ld. AO to verify and cross check, whether the sales adopted by him from the loose sheets appears in the cash book / bank*

*book / sales of M/s. Samaira Enterprises or not and similar exercise to be undertaken with respect to expenses of the outgoing in the loose sheets seized and impounded from the search proceedings. We do not find any reason to tinker with such a direction which is based on the facts and material on record. Accordingly, order of the ld. CIT(A) is confirmed on the grounds raised by the Revenue is dismissed."*

22. We find that only difference in that order of the coordinate bench is that instead of the name of Samaira enterprises, it is Sangeeta enterprises and the change for sales. Thus, the amount of sales recorded by the assessee in its books of accounts made to Sangeeta enterprises is absolutely covered by the above decision.
23. However, we hastened added that we do not find any argument in the decision of unicot food products private limited which is raised before us by the learned departmental representative of goods transported from assessee to destination of Sangeeta enterprises in one lorry and at jet speed. Though we find that the argument of the learned departmental representative is correct that in these entire sales bill prepared by the assessee that dispatch of goods from the factory of the assessee Mr Sangeeta enterprises is only in one lorry. The learned authorised representative has submitted that that lorry belongs to the assessee. However, the learned departmental representative has raised the issue that the distance between the factory of the assessee and destination of Sangeeta enterprises is 54 km and therefore in the timing that is provided in the invoices of dispatch of goods is not possible. We find that the distant shown by the learned departmental representative of 54 km

however the learned authorised representative has shown that the distance has wrongly been calculated by the learned departmental representative by Google Maps taking the wrong destination. The correct destination is hardly 30 km away from the place of dispatch of goods to the destination of delivery of goods. Even otherwise, from the excise records of the assessee, the goods have been shown as dispatch to the Sangeeta enterprises and relevant quantity of goods are reduced from the stock. Such stock has been sold by Sangeeta enterprises and sales is assessed in the hence of Sangeeta enterprises. Even in the case of unicot food products private limited the dispute was with respect to the sales made by that entity to Samaira enterprises, the coordinate bench has upheld in favour of the assessee. Therefore, we do not find any reason to deviate from the finding of the coordinate bench in that case. We confirm the order of the learned CIT – A deleting the addition of ₹ 104,044,908/- added by the learned assessing officer under section 68 of the income tax act of the sales made by the assessee to M/s Sangeeta enterprises. Accordingly, the ground No 1 raised by the learned AO is dismissed.

24. Second ground of appeal of the learned assessing officer is with respect to the deletion of the addition under section 69C of the act of ₹ 288 lakhs. On careful consideration of the order of the learned CIT – A in fact it is the ground of appeal of assessee as the learned CIT – A has not deleted the addition but has confirmed the addition. Therefore, this ground of appeal of the learned assessing officer is erroneously taken. This fact has also confirmed by the learned departmental representative that in fact the learned CIT – A confirmed the addition of ₹ 288 lakhs. Accordingly, ground number 2 of the appeal of the AO is dismissed.

25. In the result, appeal filed by the learned AO is dismissed.
26. Now we come to the appeal of assessee wherein the only ground raised is with respect to the confirmation of addition by the learned CIT – A ₹ 288 lakhs under section 69C of the act. The fact shows that there is advertisement expenditure incurred by the assessee on video shooting of its product "santoor". From the seized material it is noticed by the learned AO that assessee has incurred total cost of ₹ 28,822,000 comprising of video shooting expenditure of ₹ 21,072,000 and cost of actors of ₹ 7,750,000 which is not recorded in the books of account of the assessee and therefore the addition to that extent based on seized documents was made. Before the assessing officer, the assessee could not prove that such expenses are recorded in the books of the assessee. When the matter reached before the learned CIT – A, the addition was confirmed holding that these are the shooting expenses for advertisement of the product of the assessee company for which proper explanation is not given to the satisfaction of the assessing officer. Therefore, assessee is in appeal before us.
27. The learned authorised representative vehemently submitted that addition is wrongly made by the learned assessing officer. He referred to the paper book page number 445 wherein the seized documents are placed. He submitted that the payment made in cash from Mr Rajeev Arora refers to date of 31 December 2013 is ₹ 165 lakhs. He further submitted that payments to the actors are given by Mr Rajeev Arora of ₹ 64 lakhs. Therefore, total to be given to Mr Rajeev Arora and Sohamis ₹ 5,922,000/-. Accordingly, the total amount of expenditure shown in that seized document is ₹ 288 lakhs. His arguments are [1] His first

argument was that such document is a dumb document, and no addition could have been made on such a document. [2] The second argument raised by him is that the aggregate payment of ₹ 165 lakhs which mentions date as 31/12/2013 means all payments have been made on or before the date of 31/12/2013 and hence could not have been added for relevant previous year starting from 1 April 2014 to 31st of March 2015 [AY 2015-16] and the date 31/12/2013 is outside the period of the previous year. Therefore, the addition is wrongly made in this financial year. [3] The third argument made by him is that in view of the matter at the end of the page it is mentioned that the cheque given to Mr Rajeev Aurora has not been cleared as on 4/3/2014 of ₹ 2,224,728/- which is not cleared yet and the date is 4/3/2014 which means that all the writings and details on the page is on or before 4 March 2014 which further support the contention that the sum of ₹ 165 lakhs could not have been added in the relevant previous year ending on 31st of March 2015 and the date 31/12/2013 it is outside the relevant previous year. In view of this, it was the submission of the learned authorised representative that the impugned addition requires to be deleted. [4] He further contended that a sum of ₹ 64 lakhs is shown to be given by Mr Rajeev Arora and as such should not be considered the expenses of the appellant hence it could not be added even otherwise in the hands of assessee. His submission was that when the sum is given by Mr Rajeev Aura how the same could have been added in the hands of the assessee. He further stated that a sum of ₹ 5,922,000 is stated to be given to Rajeev and Soham and as such, the amount is not paid, hence it cannot be considered for making the unexplained expenditure in the hands of the assessee. He further stated that when the

expenditure itself has not been incurred by the assessee, how the addition can be made. He further submitted that the learned CIT – A at the time of confirmation of the addition did not give any logic of confirming the addition in the hands of the assessee. Thus, his argument was that expenditure does not belong to this year, and even if it belongs to this year, part of the expenditure has not been incurred by the assessee as the relevant cheques have not been cleared and the document itself says that certain expenditure has been incurred by the other parties.

28. The learned departmental representative vehemently supported the order of the learned lower authorities. He stated that before the learned assessing officer the assessee has not given any explanation. He further states that the document belongs to this year only and therefore the argument of the learned authorised representative that expenditure does not belong to this year deserves to be rejected. He further stated that the expenditure is of the assessee of the product for advertisement manufactured by the assessee, therefore it cannot be said that these expenditures are not incurred by the assessee. He therefore submitted that there is no infirmity in the orders of the lower authorities.
29. We have carefully considered the rival contention and perused the orders of the lower authorities. During course of search, annexure A – 29 was found and seized. It is placed at page number 450 – 578 of the paper books II filed by the assessee. The relevant page number is 445. This page is a typewritten document having four columns. Column number one is serial number, column number two is o name of stars, column number 3 is characters and column number 4 are total cost. Therefore, two components of the total cost A and B. Total cost of A consist of

making cost of santoor advertisement for 3 days amounting to ₹ 21,072,000. B is the cost of seven actors for performing the above shoot comprising of ₹ 7,750,000. The total cost of shooting and actors charges are incurred of ₹ 28,822,000. As the product Santoor is owned by the assessee, marketed by the assessee and manufactured by the assessee naturally the expenditure is belonging to the assessee only. Thus, the argument that these expenses do not belong to the assessee is devoid of any merit. Thus, the expenditure of ₹ 28,822,000 has been incurred by the assessee for advertisement of product. The lower part of that document shows that how these expenditures have been disbursed. A sum of ₹ 165 lakhs is stated to be paid to Mr Rajeev Aurora till 31st of December 2013. Further, out of total payment of actors of ₹ 7,750,000, it is mentioned that payment of actors is given by Mr Rajeev amounting to ₹ 64 lakhs. Thus, some of total payment A plus B of ₹ 229 lakhs is a payment made by Rajeev Aurora stock further it is also mentioned that "total to be given to Mr Rajeev and Shoham" ₹ 5,922,000/-. Further, it is mentioned that on 4/3/2014 a cheque is given to Mr Rajeev of ₹ 2,224,728/- which has not yet been cleared. Thus, it is apparent that out of the total payment to be made of the expenditure of ₹ 28,222,000 the payment of ₹ 229 lakhs belongs to the period prior to 4/3/2014. Thus, the above payment, if at all made, does not belong to financial year 2014 – 2015. Thus, addition could not have been made for assessment year 2015 – 2016. There is another angle to this document. Apparently, the total amount of the expenditure that has been incurred is ₹ 28,822,000/-. These amounts of expenditure have been met by the assessee by payment made in cash to Mr Rajeev Aurora of ₹ 165 lakhs. Further sum of ₹ 64 lakhs has been

paid by Mr Rajeev Aurora to various actors. Thus, ₹ 229 lakhs have either been paid by Mr Rajeev Aurora directly or already paid by the assessee to Mr Rajeev. Further this leaves the balance of ₹ 5,922,000 which is still stated to be payable to Mr Rajeev Aurora. Out of the sum, a cheque of ₹ 2,224,728-dated 4/3/2014 is given to Mr Aurora, which has yet not been cleared. Therefore, still balance of ₹ 3,697,272 remains. There is no evidence of payment of this balance sum. Therefore, on reading of this whole document, taking the relevance of the dates mentioned on the document, it is apparent that it does not belong to the assessment year 2015 – 16. Therefore, it cannot be said that for this assessment year assessee has incurred any expenditure. Accordingly, the addition of ₹ 288 lakhs made by the learned AO under section 69C of the act and confirmed by the learned CIT – A is not sustainable and hence directed to be deleted. Only ground of the appeal of the assessee is allowed.

30. In the result, solitary ground of appeal of assessee in ITA number 2067/M/2023 is allowed.

**ITA number 2374/M/2023 AY 2016-17**

31. Now we come to the appeal of learned assessing officer for assessment year 2016 – 17 in ITA number 2374/M/2023. The first ground of appeal is with respect to the addition under section 68 of the income tax act of ₹ 30,875,945/- made by the learned assessing officer under section 68 of the income tax act deleted by the learned CIT – A. Both the parties agreed that this is identical to ground number 1 of the appeal of the learned AO for assessment year 2015 – 16. It was also submitted that their arguments also remain the same. As in that case while deciding the

appeal of the learned assessing officer we have dismissed that ground and confirmed the order of the learned CIT – A, for the similar reasons, we confirm the order of the learned CIT – A and dismiss ground number 1 of the appeal.

32. Ground number 2 of the appeal is with respect to the deletion of the addition of ₹ 23,912,100 made by the learned assessing officer under section 69A of the income tax act 1961. Brief facts of the case show that based on the loose papers found the learned assessing officer noted that during search at 6 and 7 JM house, GR to another, Lucy documents number 3 – 6, 10 – 12 were found and seized. It contained the various details of cash receipts and expenditure. As per rule sheet number three cash transactions of ₹ 20,290,325/- were found. The learned AO questioned Mr Manoj Sharma to show the details of nature and source of generation of cash in hand along with documentary evidence for the same. He further asked to provide the details of utilisation of the case and the purpose of utilisation for the same and provide the details on that direction the amount was spent. The learned assessing officer found that addition of Rs 1 43,45,325/- is required to be made under section 69A and a sum of ₹ 4,945,000/- is required to be made under section 69C of the act as unexplained expenditure. Similarly, a loose paper number 4 was found wherein the cash transaction of ₹ 19,050,003 and 25 were found. The learned assessing officer noted that a sum of ₹ 9,566,775/- is required to be added as an unexplained money under section 69A of the act and sum of ₹ 9,483,550/- is required to be made under section 69C of the act. Despite the various opportunities, assessee could not furnish the explanation to the satisfaction of the learned assessing officer. The

learned AO noted that as Mr Manoj Sharma has failed to prove either loose papers were found in his possession and the details of the newspapers were not related to him stop further from the statement recorded during the search of Mr Sharma and others it is clear that the unaccounted money of Unicote food products private limited and assessee were handled by Mr Manoj Sharma and park it as per the direction of Mr Jagdish Joshi. The details and nature of cash transactions newspapers were found in the possession of Mr Manoj Sharma and seized during the search has not been explained. Therefore, the learned assessing officer held that the cash transactions, which were, found in the possession of Mr Sharma for the expense of the Unicote Food Products private limited and assessee. None of the expenses is personal in nature and therefore those expenses are unjustified. Accordingly, he made an addition under section 69A of the act of ₹ 23,912,100 and ₹ 15,428,550/- under section 69C of the act. On appeal before the learned CIT – A these additions were challenged. As the learned CIT – A has decided the appeal in case of Unicote food products private limited wherein the identical additions have been deleted, following the decision; he deleted the addition in case of the assessee also.

33. The learned departmental representative vehemently submitted that the addition on the loose sheet was made based on the statement of Mr Manoj Sharma recorded on 10/2/2021 and the learned CIT – A could not have deleted the addition of the extensive referred to his written submission made on 13/2/2024.
34. The learned authorised representative submitted that the decision of the coordinate bench in case of Unicote for products Ltd which has

confirmed the order of the learned CIT – A covers the whole issue in favour of the assessee.

35. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the order of the learned CIT – A in case of Unicote for products private limited has travelled before the coordinate bench wherein in ITA number 1803 – 1805/M/2023 for assessment year 2019 – 20, 20 – 21 and 21 – 22 in case of Unicote for products private limited decided on 30/9/2023 covers the whole issue. In that appeal loose sheet number 6, 10, 11 and 12 were in question related to unique court for products private limited. The documents were identical to lose sheet number 3 – 5 related to the assessee. Identical ground was raised by the learned assessing officer in assessment year 20 – 21 in case of unique court products private limited wherein the addition of ₹ 22,719,500 under section 69A of the act were made. The coordinate bench in paragraph number 14 of that order has referred to the explanation given by the assessee and the findings of the learned CIT – A in that case. Thereafter in paragraph number 15 the arguments of the parties were discussed and thereafter reasons and its decisions are given which is as under:-

"15. After considering the above submissions made by the Id. CIT DR as well as Id. Counsel for the assessee we find that before the Id. AO as well as Id. CIT (A), assessee had stated that in order to cater to the demand of herbal nut in the state of Tamilnadu, there was another entity which was handling the supply chain to various retailers and small vendors which was M/s. Samaira Enterprises. The assessee would sell the product to M/s. Samaira Enterprises,

which in turn would sell the products to the small and unorganized pan masala customers from its office / depot as over the counter sales. These retailers used to buy the products in cash. All the sales made to M/s. Samaira Enterprises has been duly reflected in the books of accounts of the assessee company and offered as income on which VAT, GST has also been collected and paid. Further, the counter sales made by M/s. Samaira Enterprises have also been recorded in its books of accounts and have been offered to tax in its return of income. It is also a matter of fact that in the statement recorded by Shri Manoj Kumar Sharma, he has merely stated that he was handling the cash sales on behalf of M/s. Unicot Food Products Pvt. Ltd. and M/s. Samaira Enterprises belong to his wife Ms. Sangeeta Sharma. Before the Id. CIT (A), assessee had clarified and reconciled each entry of the loose sheets, which has been dealt and incorporated in the appellate order at pages 15 & 16, and assessee has given point-wise rebuttal of Id. AO's observations. It is after considering the entire gamut of facts, the Id. CIT (A) has held that it is borne out from the records that M/s. Samaira Enterprises has been regularly filing its return of income on sale of herbal nuts purchased from assessee and he has also incorporated the trading account of M/s. Samaira Enterprises which has been incorporated at page 28 of his finding as incorporated above. He has also noted that out of sales at Rs.7,24,37,751/- made in F.Y.2020-21, Rs.4,21,43,750/- has been made to M/s. Samaira Enterprises, which constitute 58% of the total sales. The Id. AO has not even

examined the sales of M/s. Samaira Enterprises and has neither verified, whether the sales made by M/s. Samaira Enterprises is same which has been recorded in the loose papers. According to Id. AO, the entire cash sales reflected in the loose sheets pertain to the assessee when there are corresponding sales, which has been accounted in the books of M/s. Samaira Enterprises. If that premise of the AO is to be accepted then sale of M/s. Samaira Enterprises would be nil which cannot be the case, because this entity has shown sales and is assessed to tax since past. Thus, based on these documents and the Id. CIT (A) has given his elaborate finding for his conclusion and given direction to the Id. AO in Para 6.10 and 6.11 as incorporated above, wherein, he has directed the Id. AO to verify and cross check, whether the sales adopted by him from the loose sheets appears in the cash book / bank book / sales of M/s. Samaira Enterprises or not and similar exercise to be undertaken with respect to expenses of the outgoing in the loose sheets seized and impounded from the ITA No.1803-1805/Mum/2023 M/s. Unicot Food Products Pvt. Ltd. 18 search proceedings. We do not find any reason to tinker with such a direction, which is based on the facts and material on record. Accordingly, order of the Id. CIT (A) is confirmed on the grounds raised by the Revenue is dismissed."

36. As the facts in that case, the loose papers also are similar except the change in the amount and the order of the learned AO and the learned CIT – A are also identical,, respectfully following the decision of the coordinate bench we dismiss ground number 2 of the appeal of the AO

and confirmed the order of the learned CIT – A deleting the addition of ₹ 23,912,100/- made by the learned AO under section 69A of the act.

37. Ground number 3 of the appeal is with respect to the addition of ₹ 6 9C of ₹ 15,428,550/- made by the assessing officer which was deleted by the learned CIT – A. This is also based out of same seized paper number three and number four wherein part of the addition was made under section 69A of the act of ₹ 23,912,100 and part of the addition is made under section 69C of ₹ 15,428,550. This ground is identical to the ground number 3 of the appeal of the learned AO for assessment year 2020 – 21 in case of Unicote Food products private limited. As the addition with respect to the loose paper number 6 – 12 has been deleted by the coordinate bench in case of unique products private limited, as this addition is also arising out of the same, respectfully following the decision of the coordinate bench where the identical addition is deleted, as the facts, the orders of the lower authorities are similar, those are deleted. Accordingly, ground number 3 of the appeal of the AO is dismissed.

38. In the result, appeal filed by the learned assessing officer in ITA number 2374/M/2023 for assessment year 2016 – 17 is dismissed.

**ITA No 2375/Mum/2023 AY 2017-18**

39. Now we come to the appeal of the learned AO in ITA number 2375/M/2023 for assessment year 2017 – 18 wherein the first ground relates to the addition under section 68 of the income tax act of Rs 176,47,599/-. This ground is identical to ground number one of the appeals of the AO for assessment year 2016 – 17. Facts relating to this ground are also identical to that ground for that assessment year.

Respectfully following the decision of the coordinate bench in case of unique products private limited, (supra) we have deleted the above addition for that year. Therefore, respectfully following that decision of the coordinate bench, we also dismiss ground number 1 of the appeal of the AO confirming the order of the learned CIT – A in deleting the addition of ₹ 17,647,599 made by the learned assessing officer under section 68 of the income tax act on account of sales made by the assessee to M/s Sangeeta Enterprises.

40. Ground number 2 is also against the deletion of addition of ₹ 18,080,500/- made by the learned assessing officer under section 69A of the act and ground number 3 is with respect to the addition made by the learned assessing officer under section 69C of the act of ₹ 14,784,670. Both these additions are identical to ground number 2 and 3 of the appeal of the learned assessing officer for assessment year 2016 – 17. The addition is also arising out of the loose sheet number 5 wherein the cash transaction of ₹ 26,665,170/- was found that out of which the learned AO made an addition of ₹ 11,880,500 under section 69A of the act of unexplained money and further in addition of ₹ 14,784,670/- is made under section 69C of the act as unexplained expenditure. As both these grounds of appeal are identical to issue in appeal of the learned AO for assessment year 2016 – 17, as there is no change in the facts and circumstances of the case, orders of the lower authorities and the arguments of the parties, as those grounds have been dismissed and the order of the learned CIT – A has been confirmed for assessment year 2016 – 17, we also for the similar reasons, dismiss ground number 2 and 3 of the appeal of the AO for assessment year 2017 – 18.

41. Accordingly, appeal of the learned assessing officer for assessment year 2017 – 18 in ITA number 2375/M/2023 is dismissed.

**ITA number 2373/M/2023 AY 2018-19**

42. ITA number 2373/M/2023 is filed by the learned assessing officer for assessment year 2018 – 19 wherein the only ground of appeal is with respect to the deletion of addition of ₹ 11,405,099 made under section 68 of the income tax act by the learned assessing officer with respect to the sales made by the assessee to M/s Sangeeta enterprises. This ground is identical to ground number 1 of the appeal for assessment year 2015 – 16, 2016 – 17 and 2017 – 18 of the appeal of the learned AO. The facts relating to that ground, orders of the lower authorities, arguments of the parties are identical except the change in the amount. While deciding all those grounds for those assessment years, we have upheld the order of the learned CIT – A because of the reason that such order based on the appellate order of the first appellate authority, travelled up to the coordinate bench and confirmed by ITAT. Therefore, for the similar reasons, we dismiss ground number 1 of the appeal of the learned AO for assessment year 2018 – 19.
43. In the result ITA number 2373/M/2023 for AY 2018-19 filed by the learned AO is dismissed.

**ITA number 2377/M 2023 for assessment year 2014 – 15**

44. ITA number 2377/M/2023 is filed by the learned assessing officer for assessment year 2014 – 15 raising 2 grounds, (1) deletion of the addition under section 68 of ₹ 181 lakhs, (2) deletion of addition under section 69C of the income tax act amounting to ₹ 14,948,661. The addition under section 68 of the act was made by the learned assessing officer under

section 68 of the income tax act because of sales made by Sangeeta Enterprises to assessee. This is identical to the ground of appeal number one in ITA for assessment year 2015 – 16 to assessment year 2018 – 19. Both the parties confirmed that their arguments are also similar. As there is no change in the facts of the case, reason of addition by the learned AO, reason of deleting the addition by the learned CIT – A, arguments of the parties and binding judicial precedents also remains the same. As we have already deleted the similar addition for all other years, for the same reason, we dismiss ground number 1 of the appeal of the AO.

45. Ground number 2 is against the deletion of addition of ₹ 14,948,661 made under sections 69C of the act this is related to the purchases made by the assessee from Sangeeta Enterprises. The argument of the learned AO is that there is no evidence available such as lorry receipt, transportation details and delivery challans. This is also identical to the grounds raised by the learned AO in earlier years. Coordinate bench in case of Unicote food products private limited has dealt with this issue for assessment year 2019 – 20 while dealing with ground number 2 and confirmed the order of the learned CIT – A deleting the addition. As all the parameters such as arguments, findings, directions remain the same, we respectfully following the decision of the coordinate bench dismiss ground number 2 of the appeal of the learned AO and confirm the order of the learned CIT – A.
46. Accordingly, ITA number 2377/M/2023 filed by the learned that assessing officer for assessment year 2014 – 15 is dismissed.
47. ITA number 2376/M/2023 is filed by the learned assessing officer for assessment year 2021 – 22 raising ground number 1 with respect to the

addition under section 68 of the act of ₹ 4,188,000 and another ground of addition under section 69A of ₹ 4,279,483/deleted by the learned CIT – A.

48. Ground number one is identical to ground number 1 in appeal of the learned assessing officer for all other years wherein the addition is made with respect to the sales made by the assessee to M/s Sangeeta Enterprises. This has been dealt with in appeals of the assessing officer for earlier years as per ground number 1 of those appeals wherein the order of the learned and CIT – A has been confirmed. As there is no change in the facts and circumstances of the case, we confirm the order of the learned CIT – A for this year also. Ground number 1 is dismissed.
49. Ground number 2 is with respect to the addition under section 69A of ₹ 4,279,483 made by the learned AO under section 69A of the act. The fact of the case shows that during survey physical inventory of stock was taken which was valued at ₹ 8,061,408/-. Statement of supervisor was recorded. During survey, stock register was not found. At the premises covered under survey, balance sheet was found as on 8/2/2021 which had the closing stock value of ₹ 12,340,891/-. In assessment proceedings the assessee was asked to reconcile the difference between the inventory of stock of ₹ 8,061,408/- and the value shown in the closing stock of ₹ 12,340,891. The difference was ₹ 4,279,483/-. The learned AO after considering the explanation of the assessee found that assessee was not maintaining any stock register in the factory premises where the goods were found. Accordingly, the extra stock of ₹ 4,279,403/- was added under section 69A of the act.

50. Assessee agitated the issue before the learned CIT – A. Assessee submitted the valuation of closing stock as on 8/2/2021 amounting to ₹ 12,149,651/- showing the quantity, rate and value of each of the item. Assessee also submitted that certain stock items, which were found during survey, were duly inventory rise by the investigation wing however, their valuation was not done. This fact is recorded in the assessment order itself. If, the values of these products were taken which are recorded in quantity in the panchnama, the difference would be very nominal. According to the assessee the value of stock would be ₹ 12,149,641/- whereas the value shown in the books of account is ₹ 12,340,891/- the learned CIT – A held that when the assessing officer has himself admitted that some items of physical stock valuation was not determined at that time of survey proceedings, the AO was required to ascertain the correct threats and the value of the remaining stock at the time of assessment proceedings. During assessment proceedings as well as in the appellate proceedings assessee has submitted the rates and value of such stock of material. Neither AO disputed the quantity nor the rate. According to the assessee, the stock should have been physically of ₹ 12,149,641/- against the book stock of ₹ 12,340,891. The learned CIT – A the balance addition of ₹ 191,250. The learned AO is aggrieved with the deletion of the addition of ₹ 4,279,483/- and is in appeal.
51. After carefully considering the argument of the learned DR and the learned authorised representative, considering the paragraph number 10.3 of the order of the learned CIT – A wherein it was found that the difference is only of ₹ 191,250/- which has been sustained, we do not



find any merit in ground number 2 of appeal of the learned AO. Hence dismissed.

52. In the result ITA number 2376/M/2023 filed by the learned AO for assessment year 2021 – 22 is dismissed.
53. Accordingly, all the above appeals are disposed of by this common order.

Order pronounced in the open court on 12.04.2024.

Sd/-

(ABY T VARKEY)

(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)

(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.04.2024

*Sudip Sarkar, Sr.PS/ Dragon*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,



True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai