

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'H' : NEW DELHI)  
BEFORE DR. B.R.R. KUMAR ACCOUNTANT MEMBER  
AND**

**SH. YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No. 711, 712 & 713/Del/2022  
A.Y. 2016-17, 2017-18 & 2018-19**

Kwality Techmech Pvt. Ltd. B-20, Lawrence Road Industrial Area , Keshav Puram, North West Delhi, Delhi-110035 PAN : AAECK1176E	Vs.	DCIT/ACIT, CC-20, Delhi
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 937 & 938/Del/2022 (A.Y. 2017-18 & 2018-19)**

DCIT/ACIT, CC-20, Delhi	Vs.	Kwality Techmech Pvt. Ltd. B-20, Lawrence Road Industrial Area , Keshav Puram, North West Delhi, Delhi-110035 PAN : AAECK1176E
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 714, 715, 1854 & 1855/Del/2022,  
A.Y. 2015-16, 2016-17, 2017-18 & 2018-19**

Globus Agro Foods P. ltd. C-35/5, Lawrence Road Industrial Area, Keshav Puram, North West Delhi, Delhi-110035 PAN : AAJCS2114B	Vs.	DCIT/ACIT, CC-20, New Delhi
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 939, 940, 2419 & 2420/Del/2022,  
(A.Y. 2015-16, 2016-17, 2017-18 & 2018-19)**

DCIT, CC-20, New Delhi	Vs.	Globus Agro Foods P. ltd. C-35/5, Lawrence Road Industrial Area, Keshav Puram, North West Delhi, Delhi-110035 PAN : AAJCS2114B
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 716 & 717/Del/2022, A.Y. 2016-17, 2017-18**

Sh. Devesh Mittal 443, Deepali Enclave, Pitampura, North West Delhi Delhi-110034 PAN : AAXPM7144G	Vs.	DCIT/ACIT, CC-20, New Delhi
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 941 to 944 & 1332/Del/2022,  
(A.Y. 2014-15 to 2018-19)**

DCIT/ACIT, CC-20, New Delhi	Vs.	Sh. Devesh Mittal 443, Deepali Enclave, Pitampura, North West Delhi Delhi-110034 PAN : AAXPM7144G
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 718 to 722, 980 & 981/Del/2022,  
A.Y. 2012-13 to 2018-19**

Parmanand & Sons Food Products Pvt. Ltd. A-23/1, Lawrence road Industrial Area, North West Delhi Delhi-110035 PAN : AADCP9286H	Vs.	DCIT/ACIT, CC-20, New Delhi
<b>Appellant</b>		<b>Respondent</b>

**ITA No. 930 to 934, 1329 & 1330/Del/2022,  
A.Y. 2012-13 to 2018-19**

DCIT/ACIT, CC-20, New Delhi	Vs.	Parmanand & Sons Food Products Pvt. Ltd. A-23/1, Lawrence road Industrial Area, North West Delhi Delhi-110035 PAN : AADCP9286H
<b>Appellant</b>		<b>Respondent</b>

Assessee by	Sh. Amol Sinha, Adv.
Revenue by	Ms. Sapna Bhatia, CIT-DR
Date of Hearing	02/05/2024
Date of Pronouncement	30/05/2024

**ORDER**

**PER BENCH:**

1. These are group appeals by Assesseees as well as Revenue are directed against the different orders of CIT(A) wherein certain issues are common in nature, therefore captioned Appeals are clubbed together, heard together and disposed off by this common order. Both the parties have agreed that all the issues involved in the above group appeals are the subject matter in the AY 2018-19 which is under challenge by the Assessee in ITA No. 981/Del/2022 and the Revenues Appeal in ITA No. 930/Del/2022, therefore, the Appeals for the AY 2018-19 same has been taken as lead matter and the respective parties have made submission on all the captioned Appeals. For the sake of convenience the Grounds of Appeal the Assessee in ITA No. 981/Del/2022 for AY 2018-19 and the Grounds of Appeal of the Revenue in ITA No. 930/Del/2022 in the case of Parmanand & Sons Food Products Pvt. Ltd. for AY 2018-19 are considered which reads as under:-

*“1. That the Ld. CIT(A) grossly erred in law and in facts of the case in holding the purchases of the assessee company to be non-genuine only due to alleged non-compliance of summons by suppliers.*

*2. That the Ld. CIT(A) grossly erred in law and in facts of the case in not accepting genuineness of purchases from alleged bogus supplier despite the fact that the said suppliers had duly complied to the summons issued and the*

*acknowledgement of the same was furnished before the Ld. CIT(A) during the course of appellate proceedings and business existence of some were verified by Ld. AO during the course of assessment proceedings.*

*3. That the Ld. CIT(A) grossly erred in law and in facts of the case in making adhoc disallowance of Rs. 1,39,57,366/-being 5.67% of alleged bogus purchases despite the fact that the appellant had discharged his onus of substantiating the genuineness of its purchases.*

*4. That the Ld. CIT(A) grossly erred in upholding the addition of Rs. 9,72,150/- being the amount of cash found during the course of search proceedings despite the fact that the appellant has explained the same to be recorded in its books of account.*

*5. That the Ld. CIT(A) grossly erred in upholding the addition of Rs. 16,51,000/- as unexplained investment u/s 69B r.w.s. 115BBE of the Act.*

*6. That the Ld. CIT(A) grossly erred in law and in facts of the case in making enhancement of Rs. 1,62,648/- to the assessed income of the assessee without allowing any opportunity of being heard in this regard.*

*7. That the Ld. CIT(A) grossly erred in law and in facts of the case in making enhancement of Rs. 1,62,648/- to the assessed income of the assessee on the presumption that the assessee has sold some stock out of its books of account.*

*8. That the appellant seeks leave to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of instant appeal.”*

### **1.1 The grounds of Revenue taken in ITA No. 1330/Del/2022 A.Y**

**2018-19 are as under :-**

*“1. The LA CTT (A) has erred on facts and in law, while giving his observations and findings regarding the Working of Food Grain Market without appreciating, that, most of the states have enacted their own Agricultural Produce Markets Regulation Acts to regulate the purchase, sale, storage and processing of agricultural produce through "notified market areas and licensed brokers/dealers/godown-keepers etc.*

*2. The Ld. CTT (A) has erred on facts and in law in holding that at no point of time an Ahartiya has any stock in his premises/books, ignoring the fact that Ahartiyas are also involved in activities related to*

*storage, cleaning, weighing & measurement and transportation of goods to the premises of buyers.*

*3. The Ld. CIT (A) has erred on facts and in law in holding that Ahartiyas on receipt of payments from buyers, make further payment to agriculturists ignoring the fact, that, Ahartiyas in general are also involved in making advance payments/financing to agriculturists.*

*4 The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee by holding that there is no opening and closing stock in the books of Ahartiyas, which is in complete variance to the prevalent market practice in many markets where Ahartiyas hold the stock with themselves till the completion of cleaning, weighing and transportation activities.*

*5. The L4. CIT(A) has erred on facts and in law in allowing the appeal of the assessee by differentiating between genuine and bogus purchases merely on the basis of submission of financials and bank statements by the suppliers.*

*6 The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee ignoring the fact, that, neither the assessee nor the suppliers were able to produce any stock register of the goods purported to have been traded.*

*7. The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee ignoring the fact, that, there were major suppliers, who remained non-compliant to the notices/summons issued by AO and were found to be non-existent/non-functional during the surveys conducted.*

*8. The Ld. CIT(A) has erred on facts and in law in allowing the appeal of the assessee by holding certain purchases of the assessee as genuine ignoring the fact, that, the alleged transportation companies were found to be non-existent and moreover during the search blank filled bilty books and receipt books of transporters were found and seized from the premises of the assessee, itself.*

*9. The Ld. CIT (A) has erred on facts and in law in allowing the appeal of the assessee ignoring the fact that 25% of purchases was added by AO after taking into consideration his own detailed discreet enquiries in the case along with the statement of Shri Pramod Kumar Prop Shree Balaji Associates, one of the biggest sellers, recorded on 22/09/2018 u/s 131 of the Income Tax Act, 1961, whom the assessee chose not to cross-examine despite being given an opportunity to do so.*

*10. The Ld. CIT(A) has erred on facts and in law in placing reliance on the decisions of Hon'ble Bombay High Court in the cases of PCIT vs Sh. Pinaki D Panani (ITA No1543 of 2017 dated 08.01.2020 & PCIT-17 vs Mohammad Haji Adam and Co dated 11.02.2019 and also, on the decisions of Hon'ble ITAT, Delhi in the case of ACIT, Circle-22(1) vs. M/s Sanvik Engineers India Private Limited, New Delhi in ITA No. 3201/Del/2015 dated 30.05.2019 & M/s Becon Constructions Private Limited vs ACIT, CC-8, Delhi in IT No. 5034/Del/2016 dated 24.12.2020, ignoring the fact that these cases were materially different from the instant case.*

11. *The Ld. CIT(A) has erred on facts and in law in relying on judgments in the above referred cases ignoring the fact that in these cases sales made by sundry suppliers were doubtful whereas in the instant case, the major supplier's identity itself is disputed and uncorroborated.*

12. *The Ld. CIT (A) has erred on facts and in law in placing reliance on the decision of Hon'ble ITAT, Mumbai in the case of Sh. Popatlal Nathalal Shah vs. ACIT-19(2) in ITA No.6029/Mum/2018 ignoring the fact, that, the assessee in that case was involved in trading of diamonds, an extremely niche product with its own market dynamics, as was appreciated by the Hon'ble ITAT in the judgment itself, whereas the instant case deals with trading of agro-goods, where 25% margins are common-place.*

13. *The Ld. CIT (A) has erred on facts and in law in not appreciating, that, the facts in the instant case are similar to the facts in the cases of PIT vs. Synbiotics Ltd. (R/Tax Appeal Nos. 1209 to 1213 of 2018) Gujarat and Vijay Proteins Ltd. vs. Commissioner of Income Tax (1. T. Ref No 139 Of 1996, Tax Appeal No. 243 of 2002, Dec 9, 2014) Gujarat.*

14. *The Ld. CIT(A) has erred on facts and in law in applying the GP rate of earlier Assessment Years, thereby effectively ignoring the findings and evidences gathered during the search in the case of the assessee and during the surveys conducted on the various suppliers.*

15. *The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.37,00,000 by considering that the amount on account of unexplained money u/s 68 of the Act without appreciating the fact that the AO has clearly delineated the modus operandi of the assessee, wherein huge amounts of cash were routed back into their coffers by inflating its purchases.*

16. *The Ld. CIT(A) has erred on facts and in law in presuming the cost of Chani Kant Refraction at Rs. 2,000 per quintal, when no such agro product/by-product actually exists. ignoring the fact that assessee merely created a made-up item and was trying to sell off a different product in the name of Chani Kant Refraction.*

17. *(a) The Order of the Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

**2.** The issues involved above captioned appeals to be decided on the grounds wise of all the Appeals of the Assessee as well as the Revenue are as under:

Grounds of appeals related to BOGUS PURCHASES: Ground Nos. 1 to 3 in Assessee's appeals and Ground Nos.1 to 14 in Revenue's appeals as follows:

**(a) In the case of M/s. Kwality Techmech Private Limited:**

ITA 711, 712, 713/Delhi/2022 for AY 2016-17 to 2018-19- Assessee's appeal

ITA 937 & 938/Delhi/2022 AY 2017-18 & 2018-19 -Revenue's appeal

**(b) In the case of Shri Devesh Mittal (Prop. M/s. Mittal Enterprises)**

ITA Nos.716 & 717/Delhi/2022 in assessment years 2016-17 & 2017-18 - Assessee's appeal

ITA Nos.941, 942, 943, 944 & 1332/Delhi/2022 for the assessment years 2014-15 to 2018-19 – Revenue's appeals

**(c) In the case of M/s. Paramanand and Sons Food Products Private Limited:**

ITA Nos.718, 719, 720, 721, 722, 980 & 981/Delhi/2022 for the AYs 2012-13 to 2018-19 – Assessee's appeals

ITA Nos.930, 931, 932, 933, 934, 1329 & 1330/Delhi/2022 for AYs 2012-13 to 2018-19 respectively - Revenue appeals.

**(d) In the case of M/s. Globus Agrofoods Private Limited:**

ITA Nos.714, 715, 1854 & 1855/Del/2022 for the AYs 2015-16 to 2018-19 - Assessee's appeals.

ITA Nos.939, 940, 2419 & 2420/Del/2022 for the AYs 2015-16 to 2018-19 – Revenue appeals.

**3.** Since in all the above grounds of appeals are related to bogus purchases, we consider the grounds in Assessee's appeal ITA No.981/Delhi/2022 and revenue appeal in ITA No.1330 of 2022 for the AY 2018-19 in the case of M/s. Paramananda & Sons Food Products Pvt. Ltd.

**4.** In the instant case, the Assessing Officer himself has observed that the purchases were actually made but not from the parties from whom it was claimed to have been made and instead purchased from grey market without proper billing or documentation. But also held that the purchases were bogus in a manner that purchases were made from the parties other than those mentioned in the books of account. That being the position, the Assessing Officer held that on the basis of principles laid down by the judicial authorities from time to time, entire purchase price cannot be disallowed but only the profit element embedded in such purchases to be added to the income of the assessee. Holding thus, the Assessing Officer held that the next question is, that what should be the fair profit rate out of the purported bogus purchases which should be added back to the

income of the assessee. Based on the show cause notice and considering the material pertaining to transport company or agent along with bill and invoices of suppliers which were blank, statements of the two of the accountants who have explicitly given statement on oath that they don't maintain stock register, based on the discrepancies in the inventory furnished by assessee and the audit reports, based on the other prominent companies engaged into the similar business as that of Assessee Company who have earned the gross profits between 10 to 12 percent, the Assessing Officer concluded that 25% of the total purchases were treated as bogus purchases. Accordingly, 25% of bogus purchase on the total purchases of Rs.92,73,19,076/- was added by the Assessing Officer to the total income of assessee u/s 37(1) of the Income Tax Act, 1961.

**5.** On appeal, ld. CIT(A) observed as follows:

*“5.1 All these grounds pertain to the addition made by the AO ON ACCOUNT OF BOGUS PURCHASES. The AO has made the addition in respect of amount of purchases on the ground that purchases through the said parties are not genuine. Therefore, all these grounds are taken together.*

*5.2 WORKING OF FOOD GRAIN MARKET*

*5.2.1 This is a common and well accepted practice in Delhi and surrounding areas that food grains are also procured by the businessmen/mills through the network of kachha Ahartiyas (herein after as Ahartiya). Probably this system is in practice because most of the time farmers are neither interested in issuing the bills nor in accepting the payment through electronic modes/banking channels. On the other hand various laws including IT Act require businessmen to purchase through electronic modes/banking channels and also to maintain proper records of purchases including purchase bills. Thus, the Businessmen is not left with any other option but to take the services of Ahartiyas.*

*5.2.2 The working of Ahratiyas are as under:*

- i. Ahartiyas procure agricultural produce from Agriculturists generally on short term credit.*
- ii. After procurement, Ahartiya shows sample agricultural products to the prospective buyers/ millers.*
- iii. Once sample is approved by the buyer, rate and quantity will be settled.*
- iv. On getting green signal from Ahartiya, the agriculturist offloads the products in the premises of the buyer.*

- v. *"Ahartiya" submits bills to the buyer as per the recorded weight of the goods as per the rate already settled between Ahartiya and the buyer/miller.*
- vi. *On receipt of the payment from buyer, Ahartiya further makes the payment to agriculturist generally in cash after withdrawing from his bank account.*
- vii. *In this process, Ahartiya earns some commission from buyer and also sometimes from agriculturists.*

*5.2.3 The salient features of Ahrtiyas system are as under:*

- i. *At no point of time Ahartiya has any stock in his premises/Books. Therefore, in his books of account there is no opening and closing stock.*
- ii. *Ahrtiyas accounts are also not audited on the basis of his turn over rather on the basis of commission he earns.*
- iii. *Ahrtiyas only issue the bills for the agreed quantity and rate..*
- iv. *Ahrtiyas are not responsible for transporting the goods to the premises of the buyer. .*

*Actually, goods are directly delivered by the agriculturists at the premises of the buyer, mostly through his own vehicles. Therefore, there is a good chance that bills issued by Ahartiya may not be accompanied with transport bills.*

5.3 *The above practice has also been recognised by the CBDT while issuing Circular though it was in regard to Audit of Accounts. The relevant part of the Circular No. 452 dt. 17/05/1986 are as under:*

*"Sec. 44AB IT Act, 1961-Applicability in the cases of commission agents, arahitias, etc. -Clarification regarding .*

#### **AUDIT OF ACCOUNTS**

##### **S 44AB.**

*Sec: 44AB of the IT Act, 1961, as inserted by the Finance Act, 1984, casts an obligation on every person carrying on business to get his accounts audited, if his total sales, turnover or gross receipts, as the case may be, exceed Rs. 40 lakhs in any previous year relevant to the assessment year commencing on 1st April, 1985 or any subsequent assessment year.*

*1. The board have received representations from various persons, trade associations, etc., to clarify whether in cases where an agent effects sales/turnover on behalf of his principal, such sales/turnover have to be treated as the sale/turnover of the agent for the purpose of s. 44AB of the IT Act, 1961.*

*2. The matter was examined in consultation with the Ministry of Law. There are various trade practices prevalent in the country in regard to agency business and no uniform pattern is followed by the commission agents, consignment agents, brokers, kachhaarahitias and paccarahitias dealing in different commodities in different parts of the country. The primary necessity in each instance is to ascertain with precision what are the express terms of the particular contract under consideration. Each transaction, therefore, requires to be examined with references to its terms and conditions and no hard and fast rule can be laid down as to whether the agent is acting only as an agent or also is a principal.*

5.4 *In view above discussion, it is important to understand that*

- i. *In the present case the assessee has actually purchased the food grains as purchases, sales, opening stock and closing stock have not been disturbed in the Assessment order.*
- ii. *Books of account have also not been rejected.*
- iii. *No question has been raised on purchase price/rate and there is also no allegation of suppression of sales.*

5.5 *Therefore, it is not correct to infer that assessee has made purchases from gray market and received the bills from billing agents to save some taxes and to suppress profit through inflated bills. In the present case, procuring food grains through Kachha Ahartiyas is an accepted practice. There is no tax on sale of agricultural produce and there is also no Income tax on the income derived from agriculture in India. Therefore, this is not a case of saving on taxes. Further, since rates have not been challenged either during search proceeding or assessment proceeding, there is no ease of suppression of profit through inflated bills obtained from billing agents/Ahartiyas.*

5.6 *Further, the AO during the course of assessment proceedings has conducted enquiries and summons were issued to the concerned person/authorized persons of such parties whose transactions were considered as suspicious. They were required to appear before the AO along with the sales documents, purchase*

*documents, bank account statements, bill copy and other transportation documents. Various parties appeared before the AO in response to the summons and submitted the following documents:*

- i. Copy of audited financial statement and TAR showing secured loans from scheduled commercial banks.*
- ii. Copy of acknowledgement of ROI showing GTI.*
- iii. Copy of bank Statement showing receipt of payment from Assessee Company.*
- iv. Copy of Account of assessee company in the books of accounts.”*

**6.** In view of the *modus operandi*, the ld. CIT(A) was of the considered opinion that wherever Ahartiyas/Billing agents have provided the above documents, there transaction with the assessee is held as genuine transaction. Only in those cases where Billing agents/Ahartiyas have either not provided the above documents or not responded at all, purchases from them are considered as bogus purchases. The ld. CIT(A) held that no fault was found in the documents, therefore the Ld. CIT(A) was of the opinion nothing more can be produced by an Ahartiya before the AO as he does not have transport bill, purchase documents, opening sock, closing stock, etc. AO has not appreciated the

working of Ahartiyas and tried to find the faults as in the case of any other supplier of non-agricultural goods.

**7.** After going through the entire *modus operandi*, the Id. CIT(A) held that the purchases from the following entities wherein the reply has not been received, to be bogus purchases and made addition of Rs.1.39 Cr. being the gross profit @ 5.67% on the amount of purported bogus purchases of Rs.24.61 Cr.

Sl. No. as per para 5 of Assessment order	Name of seller party	PAN	Purchase Amount in Rs.	Reply by the seller party
15	Sunil Kumar Sanjay Kumar & Co.	AKSPB3461E	64722744	No reply
29	Matadin Sumit Kumar	AWNPM4068	11429661	No reply
32	Rupal Traders	AAAPT4567B	138301128	No reply
39	Poonam Dal & Besan Mills Pvt. Ltd.	AABCP2949M	10771975	No reply
40	ETG Agro Pvt. Ltd.	AACCE6163B	2984004	No reply
44	Hare Krishna Traders	AGPPG9273A	10962519	No reply
45	Lord Krishna Trading Co. (Purchase)	AFCPA7958L	6067201	No reply
52	Rajat & Company Commodities Pvt. Ltd.		622560	No reply
53	Rajat Dall Mill	AATFR1732R	298875	No reply
	<b>TOTAL</b>		<b>246160667</b>	

**8.** The Id. CIT(A) has relied on the judgment of Hon'ble Bombay High Court in the case of Principal Commissioner of Income Tax vs. Pinaki D Panani ITA No. 1543 of 2017 dated 08/01/2020 wherein it was held that if the bogus purchase is established then in the said circumstances the net profit embedded to the bogus purchase is liable to be considered to the income of the assessee. In the above case, judgment of Hon'ble

Bombay High Court dated 11/02/2019 in the case of Principal Commissioner of Income Tax - 17 vs Mohammad Haji Adam and Co has been considered. In the said judgment AO found that certain purchases made by the assessee were through bogus billing. The Hon'ble Court held that the gross profit embedded to the bogus purchase is liable to be considered to the income of the assessee. Further, in the case of Popatlal Nathalal Shah vs Assistant Commissioner of Income Tax, 19(2), ITA No 6029/Mum/2018 the Tribunal confirmed the profit @3% on bogus purchases. In the case of ACIT- 22(3), Mumbai vs Vipul Diamond and (Vice-versa), ITA No 2793/Mum/2018, G.O.NO.121/Mum/2019 the Tribunal confirmed the profit @ 3% on bogus purchases. In the context of this case, the observations of the Co-ordinate Bench of ITAT Delhi in the case of Manoj Sharma Versus ITO, Ward-39 (5), New Delhi ITA No.:4342/Del/2018. (Dated:- 28 January 2019) has observed as under :-

*“10. Once the quantity of opening stock and purchases on the debit side; and sales and closing stock in the credit side in the books of account has been accepted, then to hold that the some quantity of purchases recorded in the books are unexplained or outside books of account, is very difficult proposition to accept. Because, the quantitative details of stock, purchases, sales have not been discarded or any defect has been found, then purchases as debited in the books of accounts cannot be added u/s 69C. Here in this case, even balancing figure of the gross profit shown by the assessee has not disturbed. Even if it is to be accepted*

*that the purchases made from the three parties were in the nature of accommodation entries, then it has to be seen, firstly, whether these purchases have been made outside books or does not matches with the quantitative tally; or secondly, whether such bills have been obtained merely to suppress the gross profit. Ostensibly, the first reason is lacking here in this case as discussed above, and in so far as the second reasoning is concerned, one has to examine, i/purchases have been made through cheques, the source of which are from the books of accounts and if later on, cash has been received in lieu of such cheque but no purchases have been made, then clearly there would be a difference in quantitative tally of purchases as well as in the stock and such a discrepancy has been found then purchases can be held to be bogus. But here in this case no such difference in the quantitative tally has been found. Further, if assessee after receiving the cash in lieu of the cheque has made purchases from the grey market for getting the same quantity of material in cash from some different vender, then at the most it could be a case of the suppressing of gross profit. In other words, assessee has debited higher amount for the purchase which in fact has purchased the same material and quantity at a lesser amount, thereby suppressing the gross profit. Under these circumstances any addition at all which could be made, is by enhancing the Gross Profit on such purchases. Nowhere there is a finding or whisper either by the AO or CIT (A) that the gross profit shown by the assessee during the year was less as compared to earlier or subsequent years or there is any material to show that gross profit has been low during the year. If all the entries in the trading account including the quantitative tally of purchases, opening stock, sales and closing stock are found to be correct and no discrepancy has been found, then no addition on account of unexplained purchases can be made, because nowhere it has been found that assessee has made purchases outside the books. The entire finding of the Ld. CIT (A) hinges upon the fact that there was material indicating purchase under consideration are bogus without even appreciating that if the source of purchases are from the books and through account payee cheque, then how such purchases can be treated as unaccounted. Since gross profit rate and gross profit has been accepted including the trading account then no such addition can be made. In the result on merits addition made by the AO is deleted and consequently assessee 's appeal is allowed."*

**9.** The ld. CIT(A) has also relied on the order of the ITAT Delhi in the case of Assistant Commissioner of Income Tax Circle-22 (1) New Delhi Versus M/S. Sanvik Engineers India Pvt. Ltd, ITA

No.3201/Del/2015. (Dated:- 30 May 2019) wherein ITAT has observed as under :-

*" 15. However, it has been held in various decisions that even if the purchases are held as bogus, the entire purchase amount cannot be added when the department has not disputed the assessee's sales and the Assessing officer has not rejected the books of accounts and has not granted opportunities of cross examination. In such case only gross profit element embedded in such bogus purchases can be added. for the above proposition, we find support from decision of Hon'ble Bombay High Court in the case of PCIT Vs. Mohd. Hazi Adam vide ITA No. 1004/M/2016 and other connected appeals vide consolidated order dated 21.02.2019...*

*16. Since in the instant case the Assessing Officer has not disturbed the sales and has not rejected the books of accounts, therefore, the entire amount of bogus purchases as alleged cannot be added to the total income of the assessee and the addition has to be restricted to the extent of the G. P. Rate on purchases at the same rate of other genuine purchases. The assessee in the paper book page 54 has given the calculations of such GP rate at 9.96%. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to restrict the addition to the extent the G. P. rate on purchases at the same rate of other genuine purchases. The Assessing Officer is accordingly directed to restrict the addition to 9.96% of alleged bogus purchases as against Rs. 1,58,47,973 added by him subject to verification of the GP so computed by the assessee in the paper book. The appeal filed by the revenue is accordingly partly allowed."*

**10.** In view of above discussion, the CIT (A) was of the opinion that the A.O. was not justified in making the addition on the basis of prevalent GP of various companies in the line of the similar business. Following the judicial pronouncements as quoted supra it was held that the addition on account of bogus purchases is to be restricted to the gross profit embedded in such purchases. The purchases from various parties as

considered by the AO in his assessment order at para 5 are differentiated between genuine and bogus purchases on the basis of criteria suggested at para 5.6. Thus, the ld. CIT(A) determined 5.6% as the profit earned based on the GP declared by the assessee on the purchases made from the 9 parties mentioned in the table.

Sl**. No. as per para 5 of Assessment order	Name of seller party	PAN	Purchase Amount in Rs.	Reply by the seller party
15	Sunil Kumar Sanjay Kumar & Co.	AKSPB3461E	64722744	No reply
29	Matadin Sumit Kumar	AWNPM4068	11429661	No reply
32	Rupal Traders	AAAPT4567B	138301128	No reply
39	Poonam Dal & Besan Mills Pvt. Ltd.	AABCP2949M	10771975	No reply
40	ETG Agro Pvt. Ltd.	AACCE6163B	2984004	No reply
44	Hare Krishna Traders	AGPPG9273A	10962519	No reply
45	Lord Krishna Trading Co. (Purchase)	AFCPA7958L	6067201	No reply
52	Rajat & Company Commodities Pvt. Ltd.		622560	No reply
53	Rajat Dall Mill	AATFR1732R	298875	No reply
	<b>TOTAL</b>		<b>246160667</b>	

**11.** Thus, the critical point was while the AO himself considered 25% of the total purchases as bogus, the ld. CIT(A) determined profit @ 5.67% on the unsubstantiated purchases.

**12.** Aggrieved, both the assessee and the revenue are in appeal before us. The Revenue is in appeal against deletion of the addition made by the Assessing Officer on account of 25% of the total purchases and the assessee is in appeal against the

confirmation of profit @ 5.67% on the unsubstantiated purchases of Rs.24.61 Cr.

**13.** Before us, the ld. DR supported the Assessment Order and the ld. AR while supporting the order of the ld. CIT(A) argued that the bogus purchases have been wrongly computed by the ld. CIT(A).

**14.** The bogus purchases determined by the ld. CIT(A) are as under:

Sl. No. as per para 5 of Assessment order	Name of seller party	PAN	Purchase Amount in Rs.	Reply by the seller party
15	Sunil Kumar Sanjay Kumar & Co.	AKSPB3461E	64722744	No reply
29	Matadin Sumit Kumar	AWNPM4068	11429661	No reply
32	Rupal Traders	AAAPT4567B	138301128	No reply
39	Poonam Dal & Besan Mills Pvt. Ltd.	AABCP2949M	10771975	No reply
40	ETG Agro Pvt. Ltd.	AACCE6163B	2984004	No reply
44	Hare Krishna Traders	AGPPG9273A	10962519	No reply
45	Lord Krishna Trading Co. (Purchase)	AFCPA7958L	6067201	No reply
52	Rajat & Company Commodities Pvt. Ltd.		622560	No reply
53	Rajat Dall Mill	AATFR1732R	298875	No reply
	<b>TOTAL</b>		<b>246160667</b>	

**15.** With regard to these parties, the ld. AR submitted the following details:

Sl. No.	Name of seller party	PAN	Issue related to A.Y.	Remarks
15	Sunil Kumar Sanjay Kumar & Co.	AKSPB3461E	2012-13	The supplier had furnished its reply giving details of, copy of audited financial statement and TAR, copy of acknowledgement of ROI showing GTI of Rs.809531, copy of bank account statement showing receipt of payment from assessee company, copy of account of assessee company y in his books of accounts and copy of invoices issued to Sunil Kumar & Sanjay Kumar having vehicle No. on few bills.
			2013-14	
			2014-15	
			2015-16	
			2016-17	
			2017-18	
			2018-19	
			2018-19	
29	Matadin Sumit Kumar	AWNPM4068R	2012-13	As per notice dated 08/12/2019 issued by the assessing officer, the supplier had provided all details in post search investigation as can be seen from Pg. 385, of paper book vol-2 and also complied during assessment proceedings as can be seen from paper book, vol-2.
			2013-14	
			2014-15	
			2015-16	
			2016-17	
			2017-18	
			2018-19	A copy of the acknowledgement substantiating filing of requisite details even before AO is enclosed as can be seen from page-3367, paper book vol-2.
			2018-19	
32	Rupal Traders	AAAPT4567B	2017-18	The supplier had furnished its reply through e-filing portal on 27/11/2019 and 06/12/2019 but ignored by theAO. As it can be seen at page- 3369 to 3370 forming part of paper book, vol-2.
			2018-19	

				Kanta receipts substantiating purchases were found and seized which is also forming part of record at Pg. 210-243, paper book, vol-1.
39	Poona Dal & Besan Mills Pvt. Ltd.	AABCP2949M	2017-18	The supplier had furnished its reply on 20/12/2019 in response to summon issued by the AO but it was not considered by AO. As it can be seen at page- 3374-3375 forming part of paper book, vol-2.
			2018-19	
40	ETG Agro Pvt. Ltd.	AACCE6163B	2014-15	It can be seen that Invoices and Dharam Kanta receipts substantiating purchases were found and seized which is also forming part of record at Pg. 249-250, paper book, vol-1.
			2017-18	
			2018-19	
44	Hare Krishna Traders	AGPPG9273A	2017-18	The supplier was found to be existing at address in field enquiries a fact admitted by the assessing officer in terms of page 59 of the assessment order.
			2018-19	
45	Lord Krishna Trading Co.	AFCPA7958L	2017-18	It can be seen that Invoices and Dharam Kanta receipts substantiating purchases were found and seized which is also forming part of record at Pg. 278-315, paper book, vol-1.
			2018-19	
			2017-18	
52	Rajat & Company Commodities Pvt. Ltd.	AAFRCR2108E	2016-17	The supplier had furnished its reply in response to the summon dated 08/12/2019 issued by the AO but it was not considered by AO. The reply can be seen at page- 3376-3378 forming part of paper book, vol-2.
			2017-18	
			2018-19	
53	Rajat Dall Mill	AATFR1732R	2017-18	The supplier had furnished its reply in response to the summon dated 08/12/2019 issued by the AO but it was not considered by AO. The reply can be seen at page- 3379-3381 forming part of paper book, vol-2.
			2018-19	

**16.** We have heard the rival submissions and perused the materials available on record. The main claim of assessee is that the Assesseees have not made any bogus purchases and actually

made a purchase from grey market, which has been admitted by the Assessing Officer also. As such, the ld. A.R. pleaded that no addition should be made on this count. It is also a case that there was no sales tax, VAT is applicable on the grain purchase & sales. Hence, it cannot be said that the assessee is benefited by way of saving of ancillary taxes.

**17.** We find that the Assessing Officer has accepted the sale and the factum of purchases and having accepted the fact that the purchases have been indeed taken place, the Assessing Officer flip flopped in determining profit @ 25% on all the purchases irrespective of the fact that all the purchases in any way cannot be considered as bogus. In this case the ld. CIT(A) estimated the income of the assessee on bogus purchase on the basis of gross profit embedded in such bogus purchases. In our opinion, the ld. CIT(A) was justified in estimating income of the assessee on the basis of gross profit embedded with bogus purchases. However, while doing so, the ld. CIT(A) has considered the parties which were also proved as genuine, existing by the revenue authorities. These parties have also replied and complied to the notices issued. Hence, determination of the GP on the non-bogus,

genuine parties needs to be modified. The details of the parties are as under:

48	Singhal Food Products	CEAPS0681D	2017-18	3622500	No cogent evidence furnished.
54	Rohit Trading Co.	ABVPK1411F	2016-17	446431	No cogent evidence furnished.

**18.** The parties namely Singhal Food Products for AY 2017-18 and Rohit Trading Co. for AY 2016-17 have not complied to the notices and hence these parties are considered as bogus and following the rationale given by the ld. CIT(A), and in the presence of evidences for sale of such goods, the method determined by the ld. CIT(A) has to be applied to these parties. Hence, the following additions are sustained:

Sl. No.	Name	A.Y.	Amount	G.P. (%)	G.P (Amount)
1.	Singhal Food Products	2017-18	3622500	4.6%	1,66,635
2.	Rohit Trading Co.	2016-17	446431	4.4%	19,642

**19.** Further, reliance is being placed on following Judgments:-

**(i)** In the case of CIT Vs. Vijay M. Mistry construction Ltd.

355 ITR 498 (Guj.) the Hon'ble Gujarat High Court has held as under:

*“Held, dismissing the appeal, that the conclusion arrived at by the Tribunal was based on concurrent findings of fact recorded by the Commissioner (Appeals) as well as the Tribunal. It was not the case of the Revenue that the Tribunal had taken into*

*account any irrelevant material or that any relevant material had not been taken into consideration. In the absence of any material to the contrary being pointed out on behalf of the Revenue, the order of the Tribunal could not be found fault with.”*

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

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

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

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

*“Thus, it is apparent that both the Commissioner (Appeals) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by account payee cheques, the cheques have been deposited in bank accounts ostensibly in the name of the apparent sellers, thereafter the entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank accounts. In the light of the aforesaid nature of evidence it is not possible to record a different conclusion, different from the one recorded by the Commissioner (Appeals) and the Tribunal concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee-firm and the actual sellers of the raw materials. Both the Commissioner (Appeals) and the Tribunal have, therefore, come to the conclusion that in such circumstances, the likelihood of the purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the books of account matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The*

*assessee has, by set of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two appellate authorities does not warrant interference. Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law.*

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

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

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

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

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

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

**(vi)** In the case of CIT Vs. Satyanarayan P. Rathi (2013) 351 ITR

150 (Guj), the Hon’ble Gujarat High Court has held as under:

*“The assessee was in the business of trading in iron and steel. During the reassessment proceedings for the year 2003-04, it was found that purchases worth Rs.61.40 lakhs were not supported by sufficient evidence. Purchase of such goods from various suppliers was verified, but it was found that such parties had not supplied the goods as named by the assessee. The Assessing Officer made an addition of the entire amount of purchase of Rs.61.40 lakhs. The Commissioner (Appeals) found that though the purchases were not made from the parties from whom the assessee claimed, there was complete quantitative tally of the materials purchased and sold. He was of the view that such materials were purchased from the open market incurring cash payment and bills were procured from various sources. He added only the profit element and not the entire amount of the purchases, for the limited addition to 30 percent of the total amount and reduced the amount to Rs.18.42 lakhs. The Tribunal allowed further relief to the assessee and retained the addition to the level of twelve and half per cent in pursuance of the various purchases. On appeal:*

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

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

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

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

**20.** Thus, in our opinion, no purchase can be rejected without disturbing the sales and addition to be limited to the extent of net profit embedded with these transactions. The profit may be at the same rate of profit declared by the assessee in case of genuine purchases in the last three immediate preceding assessment years. As such entire purchase amount cannot be added by way of assessee income. The assessee has incurred expenditure, for which there were no dispute. This being a finding of fact, we have to proceed on such a basis. The contention of ld. D.R. is that such logic cannot be applied. In our opinion, since the department has not disputed the Assessee's sales and also for that matter, the purchases (AO never doubted the purchases per se) and there was no discrepancy in the sales declared, the purchase cannot be rejected without disturbing the sales and only gross profit embedded with the bogus purchases to be considered.

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

*"5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the*

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

**22.** Further, Pune Bench of Tribunal in IT(SS)A Nos.1 to 6/PNJ/2015, ITA No.30/Bang/2017 & ITA No.870/Bang/2017

for the AYs 2006-07 to 2011-12, 2012-13 & 2013-14 respectively in the case of M/s. Hassan Hajee & Co., Mangalore vide order dated 22.9.2022 by observing as under:

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

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

*6.1 The main reason for disallowance by AO was that payment Labour Charges supported by self-made vouchers and have no signature of recipients. These expenditures mainly pertain to iron ore loading and unloading transit/site marshalling charges and other casual labour charges. According to the assessee, these expenditures incurred at various stages of iron ore movements. These expenses are pertaining to wages paid to various parties, such as workers manually handling iron ore from lorries/railway vehicles to the exporter’s yard, those engaged to counter pilferage of iron ore at railway yards, export yards and other casual labourers engaged for cleaning purposes. It was explained before us that the assessee has been carrying voluminous quantity of iron ore and large number of workers who were illiterate and have no commercial knowledge and it is not possible to take down the signatures of those persons and in such circumstances, the vouchers were blank and for the accounting purposes assessee prepared vouchers and they were duly accounted in the books of accounts of the assessee and books of accounts were audited by the statutory auditors and no adverse comments has been made by them. The A.O. alleged in the first page of the assessment order that incriminating evidence has been seized which reveals that the assessee has been engaged in inflation of*

*expenditure substantially. This statement of the AO in the first page of the order shows that he has opened the file with pre-determined mind that assessee has inflated the expenditure. It was so alleged by the AO even without rejecting the books of accounts. Before making allegation that assessee has inflated expenditure, it is incumbent upon the AO to reject the audited books of accounts maintained by the assessee, he should challenge the entries in the books of accounts by duly rejecting the same. In other words, it is evident that the AO considered the income declared by the assessee, thereafter, he made disallowances of expenditure after accepting the books of accounts. The total disallowance made by the AO is only on conjectures and surmises. The claim of labour charges in these assessment years commensurate with the nature of volume of business carried on by the assessee and there is no sudden or steep increase in the claim of assessee as compared to year to year. However, the AO opted to disallow the expenditure on the reason that these are supported by self-made vouchers and were written by common persons. In our opinion, when the self-made vouchers are prepared in-house, it must be prepared by inhouse persons only and as such, it has common pattern and that cannot be reason to doubt the genuineness of the payment. The assessee cannot carry on this business without incurring the expenditure. The allegation of the AO is that the vouchers are prepared at a stretch on one or two days during the financial year. There is no basis for this kind of allegation made by the AO and he has not brought anything on record to establish this contention of him. Being so, we have to reject this plea of the revenue authorities. In our opinion, considering the nature of the business of the assessee, we can take the judicial notice of the fact that if the AO had any doubt with regard to genuineness of any one of the voucher produced by the assessee, he could have drawn sample vouchers and called upon the assessee to produce the concerned recipient to establish the genuineness. Without doing so, making any adhoc disallowance is not legally sustainable. If the Ld. CIT(A) also without carrying on any enquiry, certain percentage of the labour payment at 10% in assessment years 2007-08 to 2011-12 and 2.5% in assessment years 2012-13 & 2013-14 was sustained. This act of Ld. CIT(A) is not justified. In our opinion, the impugned expenditure in fact claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business and it cannot be said that this expenditure is bogus or fictitious and cannot be said that it has not been incurred by the assessee for the purpose of*

*business. We do not see remotely there is any mention of rationale in arriving at the percentage of disallowance in the present case, and secondly, we find force in the claim of assessee that devoid of any specific infirmity in the books of accounts of the assessee, disallowance of labour charges expenditure by the lower authority is not proper and the adhoc disallowance made by authorities in most ordinary manner. In our opinion, to estimate any disallowance the first and foremost thing is that the A.O. has to reject the books of accounts by observing that books of accounts are not reliable and not verifiable. Then he has to specify the each entry which are to be considered as bogus or unverifiable and only to that extent he can make disallowance. In the present case, in a wholesome manner the A.O. made disallowance on estimate basis without rejecting the books of accounts. However, Ld. CIT(A) sustained this addition to the tune of 10% in A.Y. 2007-08 to 2011-12 and 2.5% in A.Y. 2012-13 & 2013-14. This is having no legal sanction. For this purpose, we rely on the judgement of Hon'ble Karnataka High Court in the case of Shri Ganesh Shipping Agency in ITA No.366 of 2015 dated 6.2.2021, wherein held as follows:-*

*“5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the assessee. The Assessing Officer, in its order, has admitted that the payment of speed money is a trade practice which is followed by the assessee and similar business concerns functioning for speedy completion of their work. However, the disallowance of 20% of the expenses is made solely on the ground that the assessee had produced the self-made cash vouchers which showed that the payment was made by cash to each gang leader and the identity of the gang leader is not verifiable and the recipients are not assessee's employees. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Tribunal. However, it is pertinent to note that the books of accounts have not been touted by any of the authorities under the Act. A Bench of this Court vide judgment dated 24.03.2015 passed in ITA No.22/2015, has held that admittedly the normal practice in the line of business of the assessee is to pay certain extra amounts to port labourers as speed money for*

*promptly and speedily carrying out the labour work of handling cargo beyond working hours and has placed reliance on, the decision rendered by this Court in **KONKAN MARINE AGENCIES**, supra. It is pertinent to note that in **CLIFFORD D'SOZA**, supra, payment was made to the sub-contractors in cash as well as by Cheques. In the absence of any challenge to the entries made in the books of accounts by the authorities, in our opinion, the finding recorded by the Assessing Officer as well as the Tribunal that it denied the claim of the assessee for expenditure to the extent of 10% on account of payment of speed money, is perverse as the same is duly supported by the documentary evidence. Insofar as the submission made by the learned counsel for the revenue that in paragraph 4 of the order of the Commissioner the assessee himself had restricted the payment of speed money to 10% is concerned, it is pertinent to note that the restriction was made by the assessee in respect of Assessment Year 200405 and from the grounds of memorandum of appeal before the Tribunal, we find that the assessee had challenged the aforesaid finding which is evident from paragraphs 1 and 2, therefore, the aforesaid submission is of no assistance to the revenue.*

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

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

**23.** In view of the above, the Assessing Officer has to consider the gross profit on the proven bogus purchases namely Singhal Food Products and Rohit Trading Co.

**24.** The Next ground common ground in revenue's appeal in ITA No.1329 & 1330/Delhi/2022 for the AYs 2017-18 & 2018-19 in the case of M/s. Parmanand and Sons Food Products Private

Limited are with regard to deposit during demonetization period, addition made on account of rough note sheets and I-phone messages.

**25.** We consider the facts of the case in ITA No.1330/Delhi/2022 for the AY 2018-19. The facts are that an addition of Rs. 37,00,000/- u/s 68 r.w.s. 115BBE of the Act has been made being amount of cash deposited on 18/12/2017.

**26.** While making the above addition, the AO made the following observations:

*"10. During the course of assessment proceedings analysis of electronic data of mobile phone of Ashutosh Mittal, it is found that on 18-12-2017 at 18:17:07 Sh. Ashutosh Mittal had deposited cash amounting to Rs. 37,00,000/- in the account number 50200007144045 towards Parmanand And Sons Foods Pvt Ltd. As ITR profile of Ashu Mittal is not commensurate to such a huge amount of cash deposit, In view of the above, the show cause notice issued to the assessee to explain the above transactions, same was also asked to Sh. Ashutosh Mittal. Sh. Ashutosh Mittal however explained that this amount pertains to M/S Parmanand and Sons Food Pvt Ltd and he was intimated by the Bank as, his phone number is registered against this account.*

*10.1 However, it is noted that assessee has not complied with respect to cash deposits. After given a sufficient opportunity of being heard or to comply with the notices issued to the assessee, no reply/satisfactory reply have been furnished by the assessee whereby identity, genuineness, creditworthiness is not established and the explanation offered by him remains unexplained and unverified with respect to Cash Deposits performed by the assessee during the relevant F.Y 2017-18.*

*10.2 In view of the above facts of the case it is clear that provision of Section 68 r.w.s.115BBE of the I. T. Act, 1961 is applicable in the assessee's case. Accordingly, a sum of Rs.37,00,000/- is added to the total income of the assessee on*

*count of unexplained money deposited during the demonetization period by the assessee relevant to the A. Y. 2018-19. "*

**27.** The ld. D.R. relied on the above observation of the ld. AO. On the other hand, the A.R. has explained that the amount of Rs. 37,00,000/- credited to bank account No. 50200007144045 on 18/12/2017 operated and maintained by the assessee company with HDFC Bank was not a cash deposit. Rather the said amount was an internal transfer from bank account No. 50200014631352 operated and maintained by Assessee Company with HDFC Bank itself. That the account No. 50200014631352 was a current account and the account No.50200007144045 was an overdraft account and any surplus funds lying in Current Account are transferred to overdraft account to save interest cost. The same was done on 18/12/2017.

**28.** The assessee produced the copy of relevant bank account before ld. CIT(A) as follows:



From : 01/12/2017		To : 28/02/2018		Statement of account	
	NR. MUM-HDFC52007121866509138		535.00		
18/12/17	RTOR DR-SHIB0031355-SHRIPARASTRADINGCO-V	HDFC52007121866	18/12/17	856,449.00	
	E BANK MUM-HDFC520172186609146		589.00		
18/12/17	RINGS DEL PUN 8045390-KANSAI TRADING NETUM	HDFC5212007121866	18/12/17	253,458.00	
	NR. MUM-HDFC52007121866509138		269.00		
18/12/17	712189068143HDFCAX BHATYA	K352170434069035	18/12/17	15,800.00	
18/12/17	712189183470HDFCUT LOGISTICS	N352170434400354	18/12/17	92,311.00	
18/12/17	712189149571ANJUN LK LOGISTICS	N352170434279956	18/12/17	70,000.00	
18/12/17	R. G. G. PUNJAB WOOD-KANHAJI TRADERS PVR	M3521704347121866	18/12/17	1,000,000.00	
	MAHMANAND SONS FOOD PROD PVR-SHIB0031355		478.85		
	EXP 478850				
18/12/17	50700007144045-PNB HDFC	09007121866470036	18/12/17	1,700,000.00	
28/12/17	RINGS DR-KA.URE007959-FARMANAND AND SONS F	K3521704347121866	28/12/17	25,000,000.00	
	PROD PVR-PV-FARMANAND AND SONS FOOD		922.00		
	PRODUCTSANK 4NR5200712200062863				
28/12/17	RTOR DR-SHIB0031355-SHRIPARASTRADINGCO-V	HDFC52007121866	28/12/17	3,021,900.00	
	ET BANK, MUM-HDFC5200712266103075		92.00		
28/12/17	ZTC S DR-SYND0000004-VI090126 LOGISTICS NET	HDFC520071225961	28/12/17	2,084,785.00	
	BANK, MUM-HDFC52007122661030945		822.00		
28/12/17	R. G. G. PUNJAB WOOD-KANHAJI TRADERS PVR	HDFC52007122661	28/12/17	654,451.00	
	E BANK, MUM-HDFC520172186609146		632.84		
28/12/17	RTOR DR-SHIB0031355-SHRIPARASTRADINGCO-V	HDFC52007122661	28/12/17	1,356,175.00	
	ET BANK, MUM-HDFC52007122661030945		286.90		
28/12/17	RTOR DR-SHIB0031355-SHRIPARASTRADINGCO-V	HDFC52007122661	28/12/17	801,380.00	
	ET BANK, MUM-HDFC52007122661030945		104.75		
28/12/17	RINGS	HDFC52007122661	28/12/17	200,000.00	
	DR. MAHMANAND SONS FOOD PROD PVR-SHIB0031355		630.00		
	EXP 630000				
28/12/17	RTOR	HDFC52007122661	28/12/17	9,700,000.00	
	ET BANK, MUM-HDFC52007122661030945		91.750		
	PRODUCTSANK 4NR5200712200062863				

29. The Id. A.R. submitted that from these statements it can be observed that,

- i). On 18.12.2017, amount of Rs. 37,00,000/- was transferred from HDFC Bank a/c Number 50200014631352 to HDFC Bank A/c Number 50200007144045 vide cheque number

0000712189474956. This cheque number is appearing in both the statements.

ii). HDFC A/c Number 50200007144045 also confirms that amount of Rs. 37,00,000/- was deposited.

iii). AO has also alleged that amount of Rs. 37,00,000/- was deposited in the A/c Number 50200007144045 on 18.12.2017.

iv). Therefore, date, amount and a/c number were matching.

v). However, the allegation that it is a cash deposit is not found to be correct.

vi). In fact, amount has been transferred from one a/c. to another a/c of the assessee.

**30.** We have heard the rival submissions and perused the materials available on record. In this case, assessee has explained that it was not the cash deposit during the demonetization period and on the other hand, it was the inter-bank transfer and given the details of the account numbers as above. The ld. D.R. not able to controvert findings of the ld. CIT(A) and hence, in our opinion, the allegation made by ld. AO was without any basis. Hence, we do not find any infirmity in the order of the ld. CIT(A) and the same is confirmed in both

assessment years 2017-18 & 2018-19. These grounds of appeals are dismissed in both the revenue appeals.

**31.** Next ground in Assessee's appeal in the case of M/s. Paramanand and Sons Food Products Pvt. Ltd. in ITA No.981/Delhi/2022 for the AY 2018-19 is with regard to cash found during the course of search action

**32.** Facts relating to the addition of Rs.9,72,150/- on account of unexplained cash u/s 69A of the IT Act. While making the above addition, the AO made the following observations:

*"12. As per Party No PO 1, during the course of search and seizure an amount of Rs 9,72,150/- were found out of which Rs. 8,26,150/- were seized. The assessee was asked to explain the source of such cash. However, the assessee has not furnished any satisfactory explanation explaining the source of the cash. In view of the same an amount of Rs 9, 72,150/- is hereby added to the total income of the assessee as per provisions of section 69A r.w.s 115BBE of the Income Tax Act, 1961 being unexplained money"*

**33.** The ld. CIT(A) have considered the submissions of the assessee and records. The assessee has tried to explain that this total cash of Rs.9,72, 150/- pertains to the assessee and in support of his claim he produced the copy of Cash Book. However, the claim of the assessee cannot be accepted as at the time of search, the assessee could not complete the cash book of this company up to the date of search. Therefore, this claim of the assessee can at best be considered as an afterthought as no

explanation was given at the time of search and no substantiation was made during assessment proceedings. Further, the explanation of the assessee was not even substantiated properly during the assessment proceedings. Therefore, addition made by the AO of Rs.9,72,150/- was confirmed and this ground of appeal was dismissed by the ld. CIT(A).

**34.** We have heard the rival submission and perused the materials available on record. In this case, on this issue it is admitted fact that there was a cash book found during the course of search action which was not completed as on the date of search. The lying physical cash balance found during the course of search not tallied with the cash book on that date. Hence, it was presumed by the AO that this cash was found over and above the entries found in the cash book. However, on later occasion, the cash book was completed and physical cash balance found during the course of search action tallied with the entries in the cash book. The only allegation made by the ld. CIT(A) is that the preparation and completion of cash book and accommodating the entry relating to the cash was after thought. In our opinion, when the books of accounts not completed as on

date of search and it was completed after the date of search and the physical cash balance found during the course of search action was tallied with the entries in the cash book, without bringing any material on record to suggest that entries are accommodated in the books of accounts so as to adjust the physical cash balance, it is not possible to hold that the physical cash balance found was over and above the entry of cash balance in the cash book. Since, the cash found and the completed cash book tallied, no addition is called for on this account.

**35.** Next ground in assessee's appeal with regard to addition of Rs.1,15,83,000/- in the case of M/s. Paramanand and Sons Food Products Pvt. Ltd. in ITA No.981/Delhi/02022 and revenue's appeal in ITA No.1330/Delhi/2022 for the AY 2018-19 is with regard to alleged variation in inventory and tax audit report.

**36.** Facts of the issue are that while making the above addition, the AO made the following observations:

*"During the course of assessment proceedings vide your common submission dated 28.12.2019, which has been filed only three days prior to the date on which the above matter would become barred by limitation i.e. 31.12.2019, on the perusal of reconciliation of Inventory Records and Tax Audit Report which has been filed in the cases of M/S Parmanand and Sons Foods Pvt. Ltd. Globus Agrofoods Pvt Ltd., Kwality Techmech Pvt Ltd and Mittal Enterprises for the A. Y. 2012-13 to 2018-19, it has been emerged that quantity of Chani Kant Refraction shown by the assessee is 825.5 quintals similarly, Matar Flour mentioned as 332.8 quintals in its Inventory Records where by no such*

*items were entertained or shown by Tax Auditor in its Tax Auditor Report for the F Y. 2017-18 relevant to A Y. 2018-19. Accordingly, due to non accountability of the aforesaid items in Tax Audit Report, a cause notice dated. 28.12.2019 was issued to the assessee to substantiate the items ie. ChaniKant Refraction and Matar Flour for 825.5 and 332.8 quintals respectively which has been estimated @ of Rs.100 per kg which comes to Rs.1,15,83,000/- (Rs.82,55,000 + Rs.33,28,000) for the relevant f.y. 2017-18*

*14.1 In response to show cause notice dated 28.12.2019 the assessee has not furnished any satisfactory reply with respect to these two items and no supporting documents is furnished. Accordingly, on the perusal of documents available on record, it is concluded that after providing proper opportunity of being heard assessee again failed to furnish any reply/satisfactory reply to substantiate its bogus material/items as discussed above, and has concealed the complete facts of the case for the relevant A. Y. 2018-19. Also, the identity, genuineness, creditworthiness is not established with respect to the bogus materialie. Chani Kant Refraction and Matar Flour as claimed by the assessee in its Inventory for the relevant F.Y. 2017-18. Further, the assessee failed to discharge the onus which lies upon him. Hence, it is assumed that assessee has nothing to say on it. Considering all these facts and circumstances, assessee has concealed the true facts of its income for the relevant A: Y: 2018-19.*

*14.2 In view of the above facts and circumstances of the case it is clear that provision of Section 69B r.w.s. 115BBE of the IT. Act, 1961 is applicable in the assessee's case. Accordingly, the entire amount of Rs.1,15,83,000/- (Rs.82,55,000 + Rs.33,28,000) is added to the total income of the assessee as unexplained investment u/s 69B r.w.s. 115BBE of the I.T. Act, 1961 for the relevant AY 2018-19”.*

**37.** The reply of the assessee in this regard is as under:

*a. "That the appellant company vide submission dated 28/12/2019 furnished reconciliation of stock as per tax audit report and the inventory records furnished during the course of assessment proceedings. (Pg. 463, 474, PB2)*

*b. That the Ld. AO vide email (dated 28/12/2019 (Pg. 478, PB2) stated that there were certain differences in quantitative stock as per inventory details and tax audit report. The appellant company was asked to Show cause the following:*

*i. As to Why the GP on shortage of said stock shall not be added to the income the appellant*

ii. As to Why the excess stock shall not be assessed as unexplained investment.

It is pertinent to mention here that said details were called for in respect of stock items being Moong, Matar Flour and Besan. The stock differences highlighted in the Show cause notice issued are highlighted hereunder:

Item Name	Qty. as per Tax Audit report	Qty. as per Inventory Record	Difference
Moong	3695.00 quintal	3670.80 quintal	- 24.20 quintal
Matar Flour	402.00 quintal	332.80 quintal	- 69.20 quintal
Besan	2826.00 quintal	2666.20 quintal	- 159.80 quintal

That (The appellant company Vide submission dated 29/12/2019 explained that the said differences are arising out of typographical errors and also stated that in respect to said shortage of stock as per Inventory records only Gross Profit is assessable as income of the appellant company and furnished working of GP (pg. 487, PB) which is as under:

Item Name	Qty. as per Tax Audit report	Qty. as per Inventory Record	Difference	Rate per quintal as on relevant date	GP Rate	GP
Moong	3695.00 quintal	3670.80 quintal	24.20 quintal	7293	5.67%	10007
Matar Flour	402.00 quintal	332.80 quintal	69.20 quintal	3635	5.67%	14262
Besan	2826.00 quintal	2666.20 quintal	159.80 quintals	4951	5.67%	44859
						69128

Since the Ld. AO on perusal of the submission of the appellant observed that the addition proposed by him is of small amount of Rs.69,128/- only; the ld. AO in the assessment order changed the allegations and in an ambiguous manner stated in the assessment order as under:

14 it has emerged that quantity of Chani Kant Refraction shown by the assessee is 825.5 quintals similarly, Matar Flour mentioned as 332.8 quintals in its Inventory Records whereby no such items were entertained or shown by Tax Auditor Report for the F.Y. 2017-18 relevant to A. Y. 2018-19. Accordingly, due to non-accountability of the aforesaid items in Tax Audit Report, a show cause notice dated 28.12.2019 was issued to the assessee to substantiate the items i.e.Chani Kant Refraction and Matar Flour for 825.5 and 332.8 quintals respectively which has been estimated @ of Rs. 100 per kg which comes to Rs.1,15,83,000 (Rs.82,55,000 + Rs.33,28,000) for the relevant FY 2017-18.”

Since the Ld. AO never raised said questions during the assessment proceedings the addition made by him is not tenable

*and deserves to be deleted. However, to explain the purported differences highlighted by id. AO; the following is submitted:*

*iv. As evident from the show cause notice issued (Pg. 478, PB) and . the inventory reconciliation (Pg. 474, P B); the item Matar Besan mentioned in Tax Audit report. was mentioned as Matar Flour in . inventory records and the said fact was duly acknowledged by Ld. 10 in the show cause notice issued.*

*However, since the acceptance of said fact was leading to minor addition of Rs. 14262/- being GP on unaccounted sales; the Ld. 10 changed his opinion and proceeded to opine that Matar Besan and Matar Flour are different items and made addition on account of unexplained investment in Matar Flour which was otherwise duly explained and recorded in the books of account.*

*v. That the tax audit report has item Chilka Churi – 1235 quintals and the inventory records have items Chilka Churi - 410.3 quintals and Chanikant Refraction - 825.5 quintals which aggregate to 1235.8 quintals (Pg. 474, PB2). The said fact was duly observed and acknowledged by ld. AO while issuing show cause notice and thus, no query in respect of the same was raised.*

*It is pertinent to mention here that these items are by-products and might have been clubbed by tax auditor while reporting in the tax audit report. However, due to the said act of tax auditor the by-products duly recorded in the books of account do not become unaccounted and unexplained investment.*

*From the facts of the case enumerated supra it is evident that the stock items assessed as unaccounted and unexplained by Ld. AO are duly recorded in the books of account and the only difference is arising due to mention of difference names in the tax audit report which do not make the goods unaccounted.*

*f. It is also pertinent to mention here that the Ld. 10 has assumed the price of Matar Besan @ Rs. 100 per kg whereas it was duly submitted that the market price of Matar Besan was Rs. 3635 per quintal Rs. 36 per kg. The said price is verifiable from market/ google and thus, making addition assuming the price of the same at Rs. 100/-per kg is highly unjustified and the same deserves to be deleted.*

*Further, the price of Chanikant Refraction is Rs. 20/- per kg as google and the Ld. AO has presumed the price of the same as Rs. 100/- per Kg and thus, the exorbitant addition made by Ld. AO is not tenable.*

*In view of the stated facts the addition made by ld. AO the income of the appellant company deserves to be deleted and may please be deleted."*

**38.** The ld. CIT(A) observed that the comparative chart of the audit report and stock inventory as submitted to the AO vide letter dated 19.12.2017 is as under:

PSPC-Comparative Stock Position As on 31.03.2018					
As per B/S		As per Tax Audit Report		As per Inventory Records	
Item	Amount in Lakh	Item	Weight	Item	Weight
Raw Material	1584.17	Trading Concern		Trading Concern	
Finished Goods	5690.24	Arhar Dal	470	Arhar Dal	470.3
WIP	85.6	Chana Kabuli	17153	Chana Kabuli	17153.06
		Dalia	257	Dalia	257.2
		Lobhiya	1225	Lobhiya	1224.5
		Maida	347	Maida	167.7
		Masoor	2501	Masoor	1921.4
		Moth Dal & Moth Sabut	2434	Moth Dal & Moth Sabut	2434.05
		Moha	508	Moha	367.75
		Rajma	6824	Rajma	7824.04
		Sooji	722	Sooji	722
		Maize	918	Maize	918.01
		Urad Chikha & Sabut	3270	Urad Chikha & Sabut	3270.02
		Manufacturing Concern		Manufacturing Concern	
		Raw Material		Raw Material	
		Channa	2666.0	Channa	2651.05
		Moong	1665	Moong	1679.9
		Channa Dal	0	Channa Dal	0
		Rice	0	Rice	0
		Moong dal	0	Moong dal	0
		Maida	0	Maida	0
		Sooji	0	Sooji	0
		Moth Dal	0	Moth Dal	0
		matar	7667	matar	7666.05
		Finished Goods		Finished Goods	
		Channa Dal	21927	Channa Dal	21908.4
		Besan	2826	Besan	2826.2
		Moong Dal	15795	Moong Dal	15702.55
		Rice	644	Rice	641.8
		KLSD	0	KLSD	0
		Urad Chikha	0	Urad Chikha	0
		Moat Refraction	0	Moat Refraction	0
		Matar Dal	12004	Matar Dal	12004
		Matar Besan	402	Matar Besan	402.8
		Matar Flour		Matar Flour	
		By Products		By Products	
		Chikha Churi	238	Chikha Churi	410.3
		Kaiza	180	Kaiza	180
		Matar Chikha	248	Matar Chikha	257.8
				Chikha Refraction	828.6



**39.** From the above chart he observed as follows:

- i. This is a common knowledge that the Matar Besan and Matar Flour are the same thing. The quantity of Matar Besan as per Audit report is 102 quintal while as per Inventory records the quantity of Matar flour is 332.8 quintal. This means difference of 69.2 quintal has been sold out of books.
- ii. Similar is the observation in case of Moong and Besan.
- iii. The quantity of Chilka Churi as per Audit report is 1235 quintal while as per Inventory records the quantity of Chilka Churi is 410.3 quintal. This means the stock as per Audit report is short by 824.7 quintal. However, there is another item appearing in the Inventory records and that is Chani Kant refraction. The quantity of Chani Kant refraction is 825.5 quintal which is very close to short stock of Chilka churi. But there is no evidence that Chani Kant refraction is same as Chilka Churi and both have the same valuation so that can be clubbed together. He has also checked the Audit reports of earlier years and found that no item in the name of Chani Kant refraction appear there. Therefore, stock of Chani Kant refraction is considered as excess stock not appearing in the audit report and thus not forming the part of closing stock. However, the valuation of Chani Kant

refraction is taken as Rs.2000/-per quintal which is the then market price. AO has also not given any. reason/justification behind taking this price as Rs.10,000/- per quintal, This results into the addition of Rs.16,51,000/(825.5\*2000) on account of undisclosed investment in the stock.

**40.** Accordingly addition of Rs.1,15,83,000/- is restricted to Rs.16,51,000/- as unexplained investment u/s 69B r.w.s. 115BBE of the I.T. Act, 1961 for the relevant A.Y. 2018-19 by the ld. CIT(A).

**41.** ENHANCEMENT: In view of the shortage of stock which has been considered as sales out of books and as discussed above, the GP on these sales is calculated as under by the ld. CIT(A):

Item Name	Qty. as per Tax Audit report in quintal	Qty. as per Inventory Record in quintal	Difference	Rate per quintal as on relevant date in Rs.	GP Rate in %	GP in Rs.
Chilka Churi	1235.00	410.30	824.70	2000	5.67	93520
Moong	3695.00	3670.80	24.20	7293	5.67	10007
Matar Floor	402.00	332.80	69.20	3635	5.67	14262
Besan	2826.00	2666.20	159.80	4951	5.67	44859
<b>TOTAL</b>						<b>162648</b>

**42.** Accordingly addition of Rs.1,62,648/- was made by ld. CIT(A) on account of undisclosed sales for the relevant AY 2018-19. Against this both the parties are in appeal before us.

At this juncture, the ld. AR submitted that owing to the small quantum of the addition, the ground is not being pressed hence dismissed.

**43.** Next ground in the case of M/s. Paramanand and Sons Food Products Pvt. Ltd. in ITA No.981/Delhi/2022 in assessee's appeal is with regard to enhancement of income in view of shortage of stock.

**44.** Since we have given direction while adjudicating the issue relating to addition made on account of alleged variation of physical inventory of stock as compared to tax audit report, this ground is not required to be adjudicated independently and the assessee will get consequent relief. Ordered accordingly.

**45.** Next ground for our consideration in revenue's appeal in the case of Shri Devesh Mittal (Prop. M/s. Mittal Enterprises) in ITA No.1332/Delhi/2022 in assessment year 2018-19 is with regard to deletion of addition of Rs.9,15,27,773/- on account of hand written note and I Phone images.

**Addition of transactions of another assessee in the case of the assessee:**

The ld. D.R. submitted that the above addition made by ld. CIT(A) deleted the addition on observing that the above addition was made on the basis of images from the mobile phone of the assessee. The assessee wrongly claimed all these entries pertain to M/s. Parmanand & Sons Food Products Pvt. Ltd. Thus, the ld. CIT(A) relied that the assessee has received the details from customers from who he has to coordinate for recovery of dues and it was wrongly observed by ld. CIT(A) that this amount is recoverable from the customers of M/s. Parmanand & Sons Food Products Pvt. Ltd., which required to be examined at the end of ld. AO and ld. CIT(A) without verifying the same deleted the entire addition the same to be reversed.

**46.** The ld. A.R. submitted that the assessee during the course of assessment proceedings it was duly explained and substantiated that the images found from his mobile had details of amount recoverable from the customers of M/s Parmanand and Sons Food Products Private Limited and none the transactions mentioned on said images were executed by him in his personal capacity. The assessee had also furnished copies of ledger account of customers from the books of account of M/s Parmanand and Sons Food Products Private Limited. The

assessee is one of the assessee of PAN Brand group and is duly engaged in family business. In this era of modernization and digitalization finding of business transactions from mobile of a person is natural and no adverse cognizance can be drawn on the basis of the same. One has to objectively look upon the nature of transactions. M/s Parmanand and Sons Food Products Private Limited was also being assessed in the jurisdiction of ld. AO himself and he has simultaneously passed assessment order in the case of M/s Parmanand and Sons Food Products Private Limited also. Thus, the ld. A.R. submitted that the ld AO cannot claim that he was unaware that the assessee was engaged in family business or was unaware about the transactions recorded in images found from his mobile. All the transactions recorded in the images found from mobile of the assessee pertained to M/s Parmanand and Sons Food Products Private Limited and were duly recorded in its books of account. Thus, the ld. A.R. submitted that it is evident that the ld. AO has made additions of transactions entered into by M/s Parmanand and Sons Food Products Private Limited in the case of the assessee which is not tenable under the law.

**47.** The Ld. A.R. submitted that from the perusal of the documents which were also available before the Ld. AO during the course of assessment proceedings, it is evident that all the amounts mentioned in images found were duly recorded in the books of accounts of M/s. Parmanand and Sons Food Products Private Limited and none of the amount represent an unaccounted transaction. In view of the stated facts of the case, the ld. A.R. submitted that the no addition can be made.

**48.** We have heard the rival submissions and perused the materials available on record. The contention of the ld. A.R. is that the entries found in his mobile phone shows the details of amount recoverable from the customers of M/s. Parmanand and Sons Food Products Pvt. Ltd. which are duly accounted in their books of accounts of M/s. Parmanand & Sons Food Products Pvt. Ltd. and nowhere related to the present assessee. These entries are unsubstantiated and not supported by any material evidence to show that it is anyway related to the present assessee before us. In the present case, the image taken from the mobile phone of the assessee does not show the owning of any money, bullion, jewellery or valuable article. Being so, the lower authority is not justified in considering uncorroborated material found in the

mobile phone of assessee to make any addition. The ld. CIT(A) categorically observed that these entries are pertaining to M/s. Parmanand & Sons Food Products Pvt. Ltd. by verifying with the bank statement of M/s. Parmanand & Sons Food Products Pvt. Ltd. The assessee have nothing to do with these entries and he was only monitoring and coordinating the timely collection of payment from various parties on behalf of M/s. Parmanand & Sons Food Products Pvt. Ltd. and thus the ld. CIT(A) rightly deleted this addition in the hands of present assessee. Accordingly, this ground of appeals of revenue in ITA No.1332/Delhi/2022 is dismissed.

**49.** In ITA No.1854/Delhi/2022 & 1855/Delhi/2022 (AY 2017-18 & 2018-19) Assessee's appeals in the case of M/s. Globus Agrofoods Private Limited, the Ground with regard to sustaining addition of Rs.49,21,568/- out of Rs.2,54,85,394/- and Rs.83,31,932/- out of Rs.13,67,70,799/- which has been made in the assessment years 2017-18 and 2018-19 respectively on the basis of loose sheets found during the search operation in the case of assessee.

**50.** Facts of the case are that sustaining addition of Rs.49,21,568/- out of Rs.2,54,85,394/- and Rs.83,31,932/- out

of Rs.13,67,70,799/- has been made in the assessment years 2017-18 and 2018-19 respectively on the basis of loose sheets found during the such operation. Facts in both assessment years are same. We will consider the facts in assessment year 2017-18.

**51.** The ld. CIT(A) observed that the addition of Rs.2,54,85,394/- was made on the basis of entries on loose sheets found during search operation. To ascertain the veracity of what assessee is stating the reply filed by the assessee for each entry is examined by the ld. CIT(A) in the following table:

Annexure A-7

Page	Amount	Assessee	Explanation	Paper book Reference		Decision
				Seized Material	Explanation	
1-41	4921568	Sh. Ritesh Mittal	That Sh. Ritesh Mittal, one of the director of assessee company was in the business of trading of bardana and several hand written documents pertaining to said business of Sh. Ritesh Mittal was found and seized during the course of assessment proceedings. The said business of bardana was not disclosed by Sh. Ritesh Mittal in the return of income filed u/s 139 of the Act. However, the said business was duly declared by him in the return of income filed u/s 153A of the Act and the turnover of said business was disclosed u/s 44AD and profit was declared on the same.	1-41	1-11	<i>Contention of the appellant is not found to be correct. Therefore addition on this account is confirmed.</i>

			Out of turnover of said business receipts of Rs. 41,28,680/- were considered by Ld. AO as unexplained income of the appellant company. Further payments of Rs. 7,92,888/- made for this business were also considered and additions were made in the case of the appellant company. A chart wherein receipts and payments have been separately identified is supra. Thus, additions of Rs. 49,21,568/- (41,28,680 + 7,92,888) made by Ld. AO to the income of the appellant company which were duly considered and declared in the return of income filed by Sh. Ritesh Mittal deserves to be deleted and may please be deleted.		
10 & 14	545500	M/s Globus Agrofood s Pvt Ltd	These payments are duly recorded in books of account of the appellant company and thus, the source of these payments is duly explained and thus, no addition are warranted in respect of these transactions. Copies of ledger account in the books of account of assessee company substantiating the fact are enclosed.	14 & 18	22-23 <i>Contention of the appellant is found to be correct. Therefore addition on this account is deleted</i>
31 & 36	262046	M/s Parmanand and Sons Food Products Pvt. Ltd.	These transactions are duly recorded in the books of account of said company. In view of the same it is evident that these transactions are duly explained and thus, no addition are warranted in respect of them. Copies of ledger account in the books of account of M/s Parmanand and Sons Food Products Pvt. Ltd. substantiating the fact are enclosed.	38 & 40	24-25 <i>Contention of the appellant is found to be correct. Therefore addition on this account is deleted</i>

Annex A-68

Page No.	Amount	Assessee	Explanation	Paper book Reference		Decision
				Seized Material	Explanation	
26	1,691,578	M/s Parmanand and Sons Food Products Private Limited	That this page contains amounts receivable from several customers of M/s Parmanand and Sons Food Products Private Limited, a group concern and copies of ledger account of parties in the books of account of assessee are enclosed. It is evident that these amounts are receivable against sales made and these details have been written by some employee for periodic recovery from customers.	536-553	26-49	<i>Contention of the appellant is found to be correct. Therefore addition on this account is deleted.</i>
27	2,541,030				50-64	
28	4,702,763				65-78	
29	1,117,989				79-103	
30	415,618				104-137	
31	927,452				138-172	
32	535,581				173-190	
33	198,496				191-229	
34	143,126				230-271	

Annex A68 (continue...)

Page No.	Amount	Assessee	Explanation	Paper book Reference		Decision																																										
				Seized Material	Explanation																																											
35-36	1,374,594	M/s Parmanand & Sons Food Products Pvt. Ltd.	<p>That this page contain details of several amounts receivable from and payable to brokers facilitating sale of cattle feed.</p> <p>That in sale of cattle feed sometimes differences arise in contracted price with brokers and the price at which invoices were issued to their customers. That calculation of these amount are at Page 37-77 of this annexure and this page contains summary of all these pages.</p> <p>These differences are sometimes actually recovered or paid and sometimes the brokers on the pretext that they have long business relations with assessee group do not pay these difference amounts.</p> <p>Out of amount mentioned on this page following were actually received/ paid and were recorded in the books of account of M/s Parmanand &amp; Sons Food Products Pvt. Ltd.</p> <table border="1"> <tr> <td>Puneet Garg</td> <td>18,000</td> <td>Pg 65-66</td> </tr> <tr> <td>S. S. Tr (Praveen)</td> <td>26,890</td> <td>Pg 67-68</td> </tr> <tr> <td>Durga Ji</td> <td>28,660</td> <td>Pg 73-75</td> </tr> <tr> <td>A. Satish</td> <td>11,800</td> <td>Pg 53</td> </tr> <tr> <td>Rahul Goel</td> <td>106,816</td> <td>Pg 43-44</td> </tr> <tr> <td>Lalit Gupta</td> <td>549,967</td> <td>Pg 69-72</td> </tr> <tr> <td></td> <td>742,133</td> <td></td> </tr> </table> <p>Copies of ledger account in the books of account of M/s M/s Parmanand &amp; Sons Food Products Pvt. Ltd. are enclosed. It is also pertinent to mention here that the amount received was also mentioned on Page 37 of Annexure A-4 which has been considered as income for A.Y. 2018-19.</p> <p>That in respect of balance amount of Rs. 6,32,461/- it is clarified that the part amounts were receivable and part were payable details of which are as under:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Receivable</th> <th>Payable</th> </tr> </thead> <tbody> <tr> <td>Satish N. B.</td> <td>7,000</td> <td></td> </tr> <tr> <td>Ramkishan Gupta</td> <td>46,050</td> <td>Pg 76-77</td> </tr> <tr> <td>Amit Jain</td> <td></td> <td>14,900 Pg. 61</td> </tr> <tr> <td>Rajesh Aggarwal</td> <td></td> <td>925 Pg 62</td> </tr> <tr> <td>K. Vinay</td> <td></td> <td>2,900 Pg 56</td> </tr> <tr> <td>Shyam Lal Sons</td> <td></td> <td>1,02,250 Pg 57-58</td> </tr> </tbody> </table>	Puneet Garg	18,000	Pg 65-66	S. S. Tr (Praveen)	26,890	Pg 67-68	Durga Ji	28,660	Pg 73-75	A. Satish	11,800	Pg 53	Rahul Goel	106,816	Pg 43-44	Lalit Gupta	549,967	Pg 69-72		742,133		Name	Receivable	Payable	Satish N. B.	7,000		Ramkishan Gupta	46,050	Pg 76-77	Amit Jain		14,900 Pg. 61	Rajesh Aggarwal		925 Pg 62	K. Vinay		2,900 Pg 56	Shyam Lal Sons		1,02,250 Pg 57-58	534-535	272-281	<p>Contention of the appellant is found to be correct. Therefore addition on this account is deleted.</p>
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52	73,530	That this page contains details of amount payable to Shivam who was a commission agent. The amount alongwith amount of several other brokers is consolidated on Page 35-36 and since said pages have been separately considered; no addition shall be made on the basis of this page because the same will lead to double taxation.	510	Contention of the appellant is found to be correct. Therefore addition on this account is deleted.																																												
77	<table border="1"> <tbody> <tr><td>2,500</td></tr> <tr><td>2,500</td></tr> <tr><td>5,000</td></tr> <tr><td>1,500</td></tr> <tr><td>10,000</td></tr> <tr><td>10,000</td></tr> <tr><td>10,000</td></tr> <tr><td>10,000</td></tr> <tr><td>5,000</td></tr> <tr><td>5,000</td></tr> <tr><td>5,800</td></tr> <tr><td>5,000</td></tr> <tr><td>1,750</td></tr> <tr><td>2,000</td></tr> <tr><td>2,000</td></tr> <tr><td>9,000</td></tr> </tbody> </table>	2,500	2,500	5,000	1,500	10,000	10,000	10,000	10,000	5,000	5,000	5,800	5,000	1,750	2,000	2,000	9,000	That this page contains details of amount receivable from Ramkishan who was a commission agent. The amount alongwith amount of several other brokers is consolidated on Page 35-36 and since said pages have been separately considered; no addition shall be made on the basis of this page because the same will lead to double taxation.	469	Contention of the appellant is found to be correct. Therefore addition on this account is deleted.																												
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**52.** The decision “Contention of the assessee is found to be correct” has been arrived by Id. CIT(A) after duly verifying:

- i. Such entries recorded in Books of M/s. Parmanand & Sons Food Products Pvt. Ltd. and the assessee:
- ii. Supported by the Bank statement, and
- iii. Observing that these books of account were in the possession of the Department since 19.12.2017 i.e. from the date of search leaving no scope for making any alterations in the cash book.

**53.** Similarly, the decision “Contention of the assessee is not found to be correct” has been arrived by the ld. CIT(A) after observing that:

- i. No such books of accounts were found at the time of search;
- ii. Transactions were not through banking channel, and
- iii. There is all the possibility that these entries were created to explain the seized papers.

**54.** Accordingly, addition of Rs.2,54,85,394/- made by the ld. AO u/s 69A of the Act on account of unexplained money, was restricted to Rs.49,21,568/- and this ground of appeal was partly allowed by the ld. CIT(A). Against this assessee is in appeal before us.

**55.** We have heard both the parties and perused the materials available on record. As we have already held that the addition is based on the loose slips found during the course of search action at the premises of the assessee. The ld. CIT(A) sustained partial addition in these assessment years and deleted the major addition after observing that these entries are entered in books of accounts of M/s. Parmanand and Sons Food Products Pvt. Ltd., supported by bank statements and books of accounts cannot be

audited by assessee after 19.12.2017 from the date of search as the books of accounts are with the possession of department. However, he observed that contention of the assessee is not correct that no such books of accounts are found at the time of search, transactions were not gone through the banking channel and certain entries are created to explain the seized material. Hence, he sustained addition of Rs.49,21,568/- in assessment year 2017-18 and Rs.83,31,932/- in assessment year 2018-19. In our opinion, the basis for addition is loose slips, which is having no evidentiary value under Indian Evidence Act and accordingly, we find no reason to sustain additions. Even otherwise, these loose slips cannot be relied upon without any corroborative material supporting the same and it cannot be bind the assessee unless there is supporting documents. Without any cogent material, it cannot be presumed that the alleged transaction took place. Therefore, there is no adverse inference could be drawn on the basis of these unsupported loose slips.

**56.** Further, no corroborative evidence was brought on record to confirm that the entries in seized material were actually reflects the transactions in the form of cash payment between the assessee and others. In the seized material, there was no concrete proof regarding the payment of cash loan between these parties. Even otherwise, it does not suggest the amount of involved, either in the form of cheque and cash, date transaction and other details and also there was no circumstantial evidence to suggest all these things. The department is relying on only the unsubstantiated loose slips to suggest the transactions. In our opinion, the addition made by the ld. AO only on the basis of

conjectures and surmises and presumption and money was transacted between the parties. The above conclusion drawn by the ld. AO is contrary to the elementary understanding of the contact between the parties. As per the trade practice, we cannot come to the conclusion that an assessee will transact such huge amount without a piece of paper to support the transaction. Hence, there was no reason for making such addition. In our opinion, the conclusion drawn by ld. AO is only imagination and based on conjectures and surmises.

**57.** In the case of Dreamcity Buildwell (P.) Ltd. reported in [2019] 110 taxmann.com 28 (Delhi), in the identical facts, Hon'ble High Court of Delhi had deleted the additions with the following reasoning:-

*"15. It can straightaway be noticed that the crucial change is the substitution of the words 'books of account or documents, seized or requisitioned belongs to or belong to a person other than the person referred to in Section 153A' by two clauses i.e. a and b, where clause b is in the alternative and provides that 'such books of account or documents, seized or requisitioned' could 'pertain' to or contain information that 'relates to' a person other than a person referred to in Section 153A of the Act.*

- The trigger for the above change was a series of decisions under Section 153C, as it stood prior to the amendment, which categorically held that unless the documents or material seized 'belonged' to the Assessee, the assumption of jurisdiction under Section 153C of the Act qua such Assessee would be impermissible. The legal position in this regard was explained in Pepsi Foods (P.) Ltd. v. Asstt. CIT [2014] 367 ITR 112 (Del) where in para 6 it was held as under:*

*'6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is*

*only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is -after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132 (4A) (i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C (1) (i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".*

- In the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search*

*'belongs' to the Assessee. In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee.*

- In the present case, the Revenue is seeking to rely on three documents to justify the assumption of jurisdiction under Section 153 C of the Act against the Assessee. Two of them, viz., the licence issued to the Assessee by the DTCP and the letter issued by the DTCP permitting it to transfer such licence, have no relevance for the purposes of determining escapement of income of the Assessee for the AYs in question. Consequently, even if those two documents can be said to 'belong' to the Assessee they are not documents on the basis of which jurisdiction can be assumed by the AO under Section 153C of the Act.*

- As far as the third document, being Annexure A to the statement of Mr. D. N. Taneja, is concerned that was not a document that 'belonged' to the Assessee. Admittedly, this was a statement made by Mr. Taneja during the course of the search and survey proceedings. While it contained information that 'related' to the Assessee, by no stretch of imagination could it be said to a document that 'belonged' to the Assessee. Therefore, the jurisdictional requirement of Section 153C of the Act, as it stood at the relevant time, was not met in the present case.*

- For the aforementioned reasons, this Court concludes that the ITAT committed no legal error in holding that the AO had wrongly assumed jurisdiction under Section 153C qua the Assessee. The ITAT, rightly, therefore, set aside the order of the CIT (A), which had held the contrary.”*

**58.** At this point, we rely on the order of the Tribunal in the case of ACIT Vs. Manchukonda Shyam in ITA 87/Viz/2020 dt.23.09.2020 wherein the Tribunal at paras 6 and 6.1 has held as under :

*“6. We have heard both the parties, gone through the orders of the authorities below. Shri Lanka Anil Kumar is an employee of M/s Navaratna Estates Ltd. A search u/s 132 was conducted*

*in the residence of Shri Lanka Anil Kumar and certain sums were found in whatsapp messages in digits. When asked to explain, Shri Anil Kumar stated that the amounts were written in thousands represent lakhs and the total sum of Rs.1,05,00,000/- was taken as loan from the assessee in cash for his business purposes. When confronted with the assessee, he explained that the amounts mentioned in thousands are correct and the total amount would be in the range of Rs.5,000/- and Rs.10,000/- given to Shri Anil Kumar to meet the petty cash or miscellaneous expenses from M/s Navaratna Estates during registration of properties. A search u/s 132 was conducted in the case of Shri Lanka Anil Kumar as well as the assessee and the survey u/s 133A was conducted in the case of M/s Navaratna Estates. No evidence was found by the department either in the premises of the assessee or in the premises of M/s Navaratna Estates, having given loan to Sri Anil Kumar to the extent of Rs.1,05,00,000/-. In the search proceedings in the residence of Shri Anil Kumar also, no evidence with regard to unaccounted investment or expenditure representing the loan supposed to be taken from the assessee was found. Merely on the basis of the statement given by Shri Lanka Anil Kumar, which was subsequently retracted, the AO made the addition on the presumption that the assessee had advanced the sums to Shri Lanka Anil Kumar without bringing any evidence on record. The AO has neither given opportunity to the assessee to cross examine the third party nor disproved the explanation given by the assessee. As found from the order of the AO Sri Lanka Anil Kumar is an employee of M/s Navaratna Estates and drawing the salary of Rs.25000/- per month. He explained that the sums mentioned in the whatsapp messages were related to the amounts given to Sri Lanka Anil Kumar in the range of Rs.5,000/- to Rs.10,000/- to meet the petty cash and miscellaneous expenses. No evidence was found with regard to the investment made by Shri Anil Kumar in his own business out of the loans stated to have given by the assessee. In the above facts and circumstances there is no reason to disbelieve the statement given by the assessee that the payments were given for meeting petty cash or miscellaneous expenses. The Ld.CIT(A) following the decisions of Hon'ble Jurisdictional High Court as well as this Tribunal held that on the basis of notings and loose sheets found from third parties and the statement of third parties, the additions cannot be made without having corroborative / independent evidences. For the sake of clarity and convenience, we extract relevant part*

of the order of Ld.CIT(A) in para No.6.2 of page No.13 which reads as under :

“6.2. I have considered the assessment order and submissions of the appellant. It is seen that the addition made by the AO is solely based on the social media (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L. Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and 'details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The law on this issue is laid down by the jurisdictional High Court, and followed by ITAT consistently in the following cases.

- *K. V. Lakshmi Savitri Devi Vs ACT 148 ITJ 517 (Hyd).*
- *K. V. Lakshmi Savitri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)*
- *Jawahar Bhai Atmaram Hathiwala Vs ITO 128 ITJ 36 (Ahd)*
- *DCIT Vs B. Vijaya Kumar ITA No.930 & 931 of 2009 (Hyd).*
- *CIT Vs R. Nalini Devi ITTA 232 of 2013 (A. P)*
- *CIT Vs P. V Kalyana Sundaran (2007) 294 ITR 49*
- *Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.*
- *P. Venkateshwar Rao Vs DCIT ITA 25/825/Vizag/2012.*

The ratio laid down is that solely on the basis evidences such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidences and independent enquiries. Applying the above ratio to

the facts of the case, it is held that the addition made is not warranted, the same is deleted.”

6.1. No evidence was found by the department to establish that assessee has given loans to Shri Lanka Anil Kumar during the course of search and no evidence was found regarding utilization of purported advances by Shri Lanka Anil Kumar. Shri Anil Kumar also subsequently retracted from the statement and clarified that he has not received any cash loans from the assessee. Addition was made merely on the basis of whatsapp messages and the statement recorded from section 132(4) from Shri Lanka Anil Kumar which was subsequently retracted. Therefore we are of the view that the addition made by the AO is unsustainable and the Ld.CIT(A) rightly deleted the addition. Accordingly, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed.”

**59.** Accordingly, in view of the above discussion, we delete the addition made in all these assessment years towards unaccounted transactions based on the uncorroborated loose slips. These grounds of appeals of the assessee in both assessment years are allowed.

**60.** In the result, the appeals are disposed of as follows:

Sl. No.	Name of the assessee	Assessment year	Assessee's appeal (ITA No.)	Result	Revenue's appeal (ITA No.)	Result
1	M/s. Parmanand and Sons Food Products Pvt. Ltd.	2012-13	718/Del/2022	Partly Allowed for Statistical purposes	930/Del/2022	Dismissed
	-do-	2013-14	719/Del/2022	-do-	931/Del/2022	Dismissed
	-do-	2014-15	720/Del/2022	-do-	932/Del/2022	Dismissed
	-do-	2015-16	721/Del/2022	-do-	933/Del/2022	Dismissed
	-do-	2016-17	722/Del/2022	-do-	934/Del/2022	Dismissed
	-do-	2017-18	980/Del/2022	-do-	1329/Del/2022	Dismissed
	-do-	2018-19	981/Del/2022	-do-	1330/Del/2022	Partly

						Allowed for Statistical purposes
2.	M/s. Globus Agrofoods Private Ltd.	2015-16	714/Del/2022	Partly Allowed for Statistical purposes	939/Del/2022	Dismissed
	-do-	2016-17	715/Del/2022	Partly Allowed for Statistical purposes	940/Del/2022	Dismissed
	-do-	2017-18	1854/Del/2022	-do-	2419/Del/2022	Dismissed
	-do-	2018-19	1855/Del/2022	-do-	2420/Del/2022	Dismissed
3.	M/s. Kwality Techmech Private Ltd.	2016-17	711/Del/2022	Partly Allowed for Statistical purposes	--	--
	-do-	2017-18	712/Del/2022	-do-	937/Del/2022	Dismissed
	-do-	2018-19	713/Del/2022	-do-	938/Del/2022	Dismissed
4.	Shri Devesh Mittal (Prop. M/s. Mittal Enterprises)	2014-15	--	--	941/Del/2022	Dismissed
	-do-	2015-16	--	--	942/Del/2022	Dismissed
	-do-	2016-17	716/Del/2022	Partly Allowed for Statistical purposes	943/Del/2022	Dismissed
	-do-	2017-18	717/Del/2022	-do-	944/Del/2022	Dismissed
	-do-	2018-19	--	--	1332/Del/2022	Dismissed

**Order pronounced in the open court on 30<sup>th</sup> MAY, 2024.**

**Sd/-**  
**(DR. B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**  
Date:- 30.05.2024  
RN, 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

