

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Sudhir Kumar, Judicial Member**

ITA No. 2632/Del/2022 : Asstt. Year: 2017-18

ITA No. 2633/Del/2022 : Asstt. Year: 2018-19

ITA No. 2634/Del/2022 : Asstt. Year: 2019-20

ITA No. 2635/Del/2022 : Asstt. Year: 2020-21

Mahavir Transmission Ltd., 7/33, Ansari Road, Darya Ganj, New Delhi-110002 (APPELLANT)	Vs	DCIT, Central Circle-25, New Delhi (RESPONDENT)
PAN No. AAACF2079H		

ITA No. 2844/Del/2022 : Asstt. Year: 2017-18

ITA No. 2845/Del/2022 : Asstt. Year: 2018-19

ITA No. 2846/Del/2022 : Asstt. Year: 2019-20

DCIT, Central Circle-25, New Delhi (APPELLANT)	Vs	Mahavir Transmission Ltd., 7/33, Ansari Road, Darya Ganj, New Delhi-110002 (RESPONDENT)
PAN No. AAACF2079H		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, CA**

Revenue by : Subhra J. Chakraborty, CIT-DR

Date of Hearing: 14.05.2024

Date of Pronouncement: 02.07.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order. The only difference is in amount involved. In ITA No. 2632/Del/2022 is taken as the lead case. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order passed is bad in the eyes of law as the same was passed in violation of circular no. 19/2019 issued by CBDT which mandates that no order shall be passed without there being Valid Document Identification Number (DIN).

3. On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the assessment order passed is bad in the eyes of law as the same was passed undated & not digitally signed.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the order passed by the learned AO under section 153A r.w.s 143(3) is illegal and bad in law as the same has been passed without having valid jurisdiction.

5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the assessment framed under section 153A r.w.s. 143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the learned AO has erred in making the addition in order passed u/s 153A r.w.s 143(3) of the Act, without any incriminating material having been found during the course of search.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the addition made by AO is unsustainable in law in the absence of opportunity of cross examination being given to the assessee.

8. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the proceedings initiated under section 153A against the appellant and the consequent reassessment framed under section 153A r.w.s 143(3) are in

violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law.

(ii) That the CIT(A) has erred in ignoring the contention of the assessee that the purported approval u/s 1530 of the Act is illegal, bad in law and also without any application of mind.

9.(i) On the facts and circumstances of the case, the learned CIT(A) has erred. both on facts and in law, in sustaining the addition of Rs. 43,77,262/-on account of gross profit (5.47% embedded in purchases out of total purchases of Rs.8,00 23,080/

(ii) That the above said addition has been sustained ignoring detailed submissions and evidences submitted by the assessee with respect to such purchases

(iii) That the addition of Rs. 43.77.262/- by applying gross profit rate of 5.47% over and above the gross profit rate of 5.47% declared and included in its income tantamount to double addition of gross profit rate.

10. That without prejudice to the above, the addition at the rate of 5.47% is otherwise too high

11. On the facts and circumstances of the case, the addition sustained by CIT(A) is untenable in the absence of rejection of books of accounts of the assessee.

12. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in conforming the action of the AO in wrongly charging interest under section 234B of the Income Tax Act."

2. These are four appeals filed by the assessee and three appeals filed by the Revenue arising from the order dated 21.09.2022 passed by Id. CIT(A) for the following assessment years:

Appeals filed by the assessee:

AY 2017-18 – ITA No. 2632/Del/2022

AY 2018-19 – ITA No. 2633/Del/2022

AY 2019-20 – ITA No. 2634/Del/2022

AY 2020-21 – ITA No. 2635/Del/2022

Appels filed by the revenue:

AY 2017-18 – ITA No. 2844/Del/2022

AY 2018-19 – ITA No. 2845/Del/2022

AY 2019-20 – ITA No. 2846/Del/2022

3. In the appeals filed by the assessee for AY 2017-18, 2018-19, 2019-20 and 2020-21, the common issue is regarding total disallowance of purchases made by AO and partially sustained by the Id. CIT(A) by applying the gross profit rate. In the appeals filed by the Revenue for all the three years, the only issue is regarding the deletion of addition by the Id. CIT(A) on account of alleged bogus purchases whereby Id. CIT(A) has restricted the addition to the gross profit rate.

4. In addition to the above-mentioned common issue in four years, there is an additional issue in A.Y. 2018-19 regarding the addition of Rs.2,35,48,600/- on account of difference between purchase price of land acquired by assessee and stamp duty value of such land.

Alleged Bogus purchases:

5. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and supply of aluminum conductors to various State Electricity Boards and Central Power Utilities, etc. These supplies are made mainly to the Government entities through tender process and also to contractors executing government projects.

6. A search and seizure operation was carried out at the premises of the assessee company on 23.03.2021. This search was carried out on the basis of some statement given by one Mr. Manoj Dudeja in August 2020. No incriminating material was found during the course of search on the assessee. No material or evidence whatsoever was found in respect of any sale or purchase outside the books of accounts or any bogus purchases etc. From the Assessment Order, it can be found that the addition is based on the post search field enquiries done by the Inspector.

7. Consequent to search, assessment for these years were opened by issuing of notice u/s 153A. In compliance thereto, the assessee company filed its return of income. During the course of search assessment proceedings, the assessing officer raised the issue of purchases made by the assessee from different parties and various notices were issued to the assessee to explain its purchases made from various parties.

8. The Assessing Officer after considering the replies and evidences submitted by assessee, made an addition by disallowing the purchases made from 19 parties in A.Y. 2017-18, A.Y. 2018-19, A.Y. 2019-20 & A.Y. 2020-21.

9. A chart depicting the purchases made from each party which has been disallowed by the AO for respective AY is as tabulated below:

S. No.	Name	AY 2017-18	AY 2018-19	AY 2019-20	AY 2020-21
i.	M/s. S. K. Trading Co.	4,13,38,560	12,89,00,002	-	-
ii.	M/s. Singh Enterprises	3,86,84,520	9,40,62,169	-	-
iii.	M/s. Kumar Traders	-	81,07,827	-	-
iv.	M/s. Dheeraj Sales Corporation	-	1,03,28,684	-	-
v.	M/s. Kapil Enterprises	-	1,74,19,152	-	-
vi.	M/s. Gulshan Tradelink	-	1,80,62,090	-	-
vii.	M/s. Advance Retail	-	88,55,098	-	-
viii.	M/s. Shri Ganpati Traders	-	3,06,15,810	-	-
ix.	M/s. Ambika International	-	14,89,52,322	-	-
x.	M/s. Radiant Overseas	-	18,59,83,259	-	-
xi.	M/s. Royal Traders	-	5,46,17,922	-	-
xii.	M/s. Dev Infocom	-	36,20,77,917	81,21,89,115	-

	(P) Ltd.				
xiii.	M/s. At Your Door Step Services (P) Ltd.	-	2,13,75,600	-	-
xiv.	M/s. Rudrani Multi Trade	-	2,13,75,600	-	-
xv.	M/s. Sai Enterprises	-	6,04,32,128	-	-
xvi.	M/s. Sai Enterprises	-	5,85,95,852	-	-
xvii.	M/s. Ghanshyam Enterprises	-	1,78,11,882	-	-
xviii.	M/s. Spark Infrapower (P) Ltd.	-	-	2,06,67,540	-
xix.	M/s. Jai Bhawani Enterprises	-	-	9,30,54,020	40,69,867
	Total	8,00,23,080	122,61,97,714	92,59,10,675	40,69,867
	Total Parties	(2)	(17)	(3)	(1)

10. The reasoning given by Assessing Officer for disallowing the purchases in all these years is verbatim same as can also be seen from findings recorded by the AO in the Assessment Orders at the second last page Para 6 (for AY 2017-18)/ 5th last page Para 6 (for AY 2018-19)/ 3rd last page Para 6 (for AY 2019-20, and 3rd last page Para 6 (for AY 2020-21), for respective Assessment Years.

11. The main allegations coming out from the findings recorded by the AO in assessment order are as under:

- i. Statement of Mr. Manoj Dudeja wherein he has stated that he has got purchase invoice issued in some cases.
- ii. Non-receipt of reply from 6 parties out of a total of 19 parties in response to the notice issued by AO u/s 133(6).
- iii. Declaration of meager income by the suppliers/ Non filing of ITR by suppliers

- iv. Transfer of funds from the bank account of the suppliers immediately after receipt of the funds from the assessee company.
 - v. The status of the supplier firms being shown inactive on the GST Portal and also have not filed GST Returns.
 - vi. Submission of incomplete details by the assessee regarding the actual movement of the material.
 - vii. Cross examination not being possible due to non-appearance of Mr. Manoj Dudeja and Mr. Gopal in response to summon issued.
12. Aggrieved by the order passed by the Assessing Officer, the assessee filed appeal before Id. CIT(A) who determined the profit @ 5.47% on the total purchases.
13. Before the Id. CIT(A), the contention of the assessee was as under:-
- i. That no incriminating material was found during the course of the search on the assessee in respect of purchases for which additions have been made by the AO.
 - ii. That the addition on account of disallowance of purchases has been made only on the basis of statement of one Mr. Manoj Dudeja which was undisputedly recorded in August 2020 in the case of independent search and that too much before the date of search on the assessee on 23.03.2021 and hence statement of Mr. Manoj Dudeja cannot be considered to be an incriminating material found during the course of the search on the assessee. Nothing incriminating in relation to the statement given by Mr. Manoj Dudeja was found on the search on the assessee.

- iii. That the statement recorded of the certain employees of the assessee company do not lead to any adverse inference with reference to the purchases made by the assessee and hence, AO was not justified in drawing adverse inference on the basis of these statements.
- iv. That the addition made on the basis of statement of Mr. Manoj Dudeja are otherwise untenable in the absence of any cross examination being allowed by Mr. Manoj Dudeja as is admitted by the assessing officer himself in the Assessment Order at the second last page Para 6(iii) (for AY 2017-18)/ 5th last page Para 6(iii) (for AY 2018-19)/ 3rd last page Para 6(iii) (for AY 2019-20, and 3rd last page Para 6(iii) (for AY 2020-21), of the respective Assessment Years. That in any case assessment cannot be framed u/s 153A by solely relying on the third party statement.
- v. On merits, the assessee filed detailed written submission explaining as under:-
 - a) That the primary reason for making addition on account of bogus purchases is the statement of Manoj Dudeja recorded in August, 2020.
 - b) Firstly, this statement of Mr. Manoj Dudeja is with reference to only two suppliers namely SK Trading and Singh Enterprises and purchases from these two parties are only in the A.Y. 2017-18 and 2018-19. There is no whisper linkage of any other supplier whatsoever in the statement of Mr. Manoj Dudeja and hence there is no justification for disallowing the purchases from other parties.

- c) Even these two firms namely SK Trading and Singh Enterprises do not belong to Mr. Manoj Dudeja. In fact Mr. Manoj Dudeja has categorically stated in his statement which has also been quoted by the AO in the Assessment Order that he has no relation either with SK Trading or with Singh Enterprises as is evident from PB Page 76 and 77 of the Statements Paper Book and also quoted by AO/CIT(A).

14. Based on the submissions, the Id. CIT(A) held that the AO was not justified in making the addition of whole purchases holding the same to be bogus. The Id. CIT(A) directed the AO to restrict the addition to the extent of 5.47% of the gross profit embedded in such purchases.

15. Aggrieved, the assessee and the Revenue filed appeal before the Tribunal. The revenue pleaded for restoration of the addition made on account of the entire purchases and the assessee filed appeal pleading for deletion of the gross profit determined by the Id. CIT(A) on the grounds that the none of the purchases can be treated as bogus.

16. Before us, the Id. DR relied on the Assessment Order (not numbered) containing approximately 150 pages and the Id. AR relied partly on the order of the Id. CIT(A) containing 82 pages and argued that even though the Id. CIT(A) satisfied about the factum of purchases, the Id. CIT(A) erred in determining further profit of 5.47% which has been already disclosed by the assessee.

17. Heard the arguments of both the parties and perused the material available on record.

18. We have gone through the statements of Mr. Manoj Dudeja recorded on 11.08.2020, 12.08.2020 and 13.08.2020. Relevant extract of the statement is reproduced hereunder:

"Question No. 17: Please state your association with SK Trading?

Ans.: I have no relation with SK Trading, I have never associated or had any dealings with same.

Question No. 18: Please state your association with Singh Enterprises?

Ans.: I have no relation with Singh Enterprises. I have never associated or had any dealings with same."

....

Q. 22. Please state about the bogus entry work done by you?

Ans: I have not done bogus entry operation. Although I facilitated the bogus entry for a couple of parties through same entry operators.

.....

Q. 29. Please state your relation with Vijay Kumar, proprietor of Singh Enterprises?

Ans: I don't know anyone called Vijay Kumar nor Singh Enterprises.

Q. 30. Please state your relation with Sanjeev Sharma, proprietor of SK Trading?

Ans: I don't know anyone called Sanjeev Sharma nor SK Trading.

Q. 51.

Ans.

6.....

But as per me, I don't know to SK Trading Co. then how can I comment on same that in which type of business that company involved.

.....

7.

But as I already stated in my last point no. 8 I don't know anything about SK Trading than how can I know about some Rajeev Sharma.

.....

10.

But I am not agree with him as he stated. I also don't know about sachin & Singh Enterprises and also don't know about his business.....

Q.55. You are once again accorded an opportunity to State your association with M/s SK Trading Co.

Ans: I come to know about SK Trading Co. from the market that it is a bogus company used for accommodation entries. I had facilitated a very entries for some work.

Q.56. You are once again accorded an opportunity to State your association with Singh Enterprises.

Ans: I come to know about Singh Enterprises from the market that it is a bogus company used for accommodation entries. I had facilitated a very few entries for some entries.

.....”

19. On the basis of above statement, it was submitted by the assessee before the Id. CIT(A) that no adverse inference can be drawn against the assessee as Mr. Manoj Dudeja has initially on 10.08.2020 and 11.08.2020 categorically denied having given any accommodation entry and has also

stated that he does not have any relation with SK Trading and Singh Enterprises. In the statement recorded on 13.08.2020, Mr. Manoj Dudeja stated that he has come to know from the market that S. K. Trading Co. is a bogus company and issued for accommodation entries and he has facilitated a few entries for entities. Nowhere in the statement he has stated that he facilitated any bogus entry for the appellant company. This clearly shows that the statement nowhere impleads the assessee company.

20. It was also brought to the notice of Id. CIT(A) that the ownership of these two entities was not that of Mr. Manoj Dudeja and hence the statement of Mr. Manoj Dudeja has no value so far as purchases made by the assessee company from these entities are concerned.

21. The assessee had specifically asked the AO to allow cross-examination of Mr. Manoj Dudeja and his employee Mr. Gopal, which AO has failed to provide as is admitted by the Assessing Officer himself in the Assessment Order at the second last page Para 6(iii) (for AY 2017-18)/ 5th last page Para 6(iii) (for AY 2018-19)/ 3rd last page Para 6(iii) (for AY 2019-20, and 3rd last page Para 6(iii) (for AY 2020-21), of the respective Assessment Years., where it has been stated that summons were issued to Mr. Manoj Dudeja and Mr. Gopal to explain the transaction.

22. Though Mr. Akshat Jain, Director of the company was present to cross examine Mr. Manoj Dudeja and Mr. Gopal, however, cross examination could not happen due to non-compliance by Mr. Manoj Dudeja and Mr. Gopal. Despite failure by the AO to point out anything in the statement of these persons against the assessee and also failure to allow cross-examination, the AO still has drawn adverse inference against

the assessee. It was also pointed out that there is no reference to the assessee in the statement of Mr. Manoj Dudeja. In the absence of any specific allegation being made against assessee in the statement of Mr. Manoj Dudeja, no adverse inference can be drawn against the assessee.

23. The Assessing Officer has made disallowances in respect of a total of 19 parties spread over a period of four years despite the fact that the statement of Mr. Manoj Dudeja was with reference to only two parties namely SK Trading and Singh Enterprises from whom purchases have been made only in A.Y. 2017-18 and AY 2018-19. Thus, the disallowance of purchases with respect of remaining 17 parties is arbitrary and without any basis.

24. Moreover, as regards the various other observations of the AO for holding that the purchases made by the assessee are not genuine, the assessee has submitted a point wise detailed rebuttal for each observation during the course of assessment proceedings as well as appellate proceedings. The same are as under:

As regards the statement of Mr. Akshat Jain (Director of the company) – (PB pg. 1-23)

25. The AO interpreted the statement of Mr. Akshat Jain to draw adverse inference. But vide reply letter dated 23.08.2021 before Asst. Director Income Tax Investigation, the assessee has given the following details:

- a) Ledgers account
- b) Copy of Invoices
- c) Transport Receipt/Bilty
- d) Form C

- e) Trip Sheet/E-way Bills
- f) Kanta Parchis
- g) Weighing Slips
- h) Bank statement showing payment to the suppliers.

26. Thereafter, no further details were called for by the ADIT Investigation.

27. Also, all the above-mentioned details were also furnished before the AO vide letter dated 22.03.2022, alongwith all annexures. A copy of such common reply filed by the assessee with respect to AY 2017-18, AY 2018-19, AY 2019-20 & AY 2020-21 has been filed before us in the paper book.

28. Mr. Akshat Jain in his statement has categorically stated that all the purchases made by the assessee company were genuine. This fact is evident from answers given to the questions asked during the course of recording of his statement. Relevant extract of the statement is reproduced hereunder:

“ Q. 10 Please provide documentary proof for delivery of the goods as mentioned in the invoices of SK Trading Co. on Page No. 314 of annexures A5.

Ans: The material purchased from SK Trading Co. is ACSR Conductor and it is traded by us to our customers. The stock registers for that particular dates will have the entries for the input and when the material is sold the relevant entries are entered in the stock register as output. I will provide the relevant documentary evidence for the delivery of materials purchased in due course of time.

Q. No. 12 Sh. Manoj Dudeja has stated in his statement under IT Act, 1961 that SK Trading Co. and Singh Enterprises etc. are not actually involved in any kind of real business. In light of this why these purchases from SK Trading Co. and Singh Enterprises etc. may not be treated as bogus purchases?

Ans: Sir, we are a genuine manufacture and supplier of various electrical conductors and Aluminium based scraps. We have all documentary evidence to prove the genuineness of our purchases from the above entities. Goods have been purchased, payments have been made through banking channels. Further, records for movement of goods will be provided in due course of time. These records are maintained at the respective places of delivery. I will make the records available in due course of time."

- i. Thus, adverse inference drawn by the AO is on the basis of misinterpretation of statement of Mr. Akshat Jain. In fact the assessing officer has conveniently ignored the categorical assertion made in the statement by Mr. Akshat Jain to the effect that 'we have all the documentary evidence to proof the genuineness of our purchases from the above entities.'

The statement of Mr. Ravnish Kumar (PB pg. 30-35)

29. The Assessing Officer relied on the statement of Mr. Ravnish Kumar recorded on 23.03.2021. It has been alleged that Mr. Ravnish Kumar has stated that no goods were received by the assessee on the premises located at 7/33, Ansari Road, Daryaganj, Delhi as per his knowledge.

30. The relevant extract of the statement of Mr. Ravnish Kumar reads as under:

"Q. No. 14: I am showing you the purchase invoice found and seized as Annexure A-1 to Annexure A-10 in respect of M/s. Mahavir Transmission Limited (pertaining to FY 2017-18) during the course of search proceedings at 7/33, Ansari Road, Daryaganj, Delhi. Please acknowledge it and explain why these invoices are kept here.

Ans: Yes, I acknowledge that purchase invoice in respect of M/s. Mahavir Transmission Limited (pertaining to FY 2017-18) have been found and seized during the course of search proceedings at 7/33, Ansari Road, Daryaganj, Delhi. I have no idea why these invoices have been kept here. Accountant Mr. Raman Sharma can explain about the same.....

Q. 15 Please state have the goods have been received here at 7/33, Ansari Road, Daryaganj, Delhi as the purchase invoices (found and seized as Annexure A-1 to Annexure A-10) which have been issued by the suppliers in the name of M/s. Mahavir Transmission Limited and the place of delivery has been shown as 7/33, Ansari Road, Daryaganj, Delhi.

Ans: I submit that no goods have been received here at 7/33, Ansari Road, Daryaganj, Delhi as mentioned in the purchase invoice (found and seized as Annexure A-1 to Annexure A-10) which have been issued by the suppliers in the name of M/s. Mahavir Transmission Limited and the place of delivery has been shown as 7/33, Ansari Road, Daryaganj, Delhi or nearby this place where these goods could have been stored. I don't know why the invoices as mentioned above has been issued by the suppliers in the name of M/s. Mahavir Transmission Limited and the place of delivery has been as 7/33, Ansari Road, Daryaganj, Delhi."

31. It was submitted before the Id. CIT(A) that Mr. Ravnish Kumar was permitted to reside at Daryaganj Office with his family from February, 2020 only after the assessee company had suspended its business activities from Daryaganj premises and these purchases for which allegations have been made related to period prior to that and accordingly his statement has no relevance with the purchases made during the period when he was not there at all at Daryaganj premises. In support thereof, an Affidavit of Mr. Ravnish Kumar was also submitted and which has not been rebutted by the AO at all.

32. It was also submitted before the Id. CIT(A) that Mr. Ravnish Kumar was looking after the house keeping of Noida office and he was not having any knowledge related to the godowns and delivery of goods purchased by the assessee company. It is apparent from his statement itself that he does not have any knowledge about purchase, sale, stock etc. of the assessee company. Moreover, Mr. Ravnish Kumar is required to be at

Noida Office as is evident from Question No. 11 and consequently he could not have any knowledge about the activities of the Daryaganj premises. The Premises No. 7/33, Ansari Road, Daryaganj, Delhi has a very large space of about 1,800 Sq. Yards and approximately 1,000 Sq. Yards open space for storage of material purchased by the assessee company.

Statement of Mr. Anil Chander Jain (Employee)

33. The AO has relied on the statement of Mr. Anil Chander Jain recorded on 23.03.2021 to draw adverse inference. Mr. Anil Chander Jain was looking after the production at Dehradun, Production Unit located at 138, Industrial Estate, Vikas Marg, Dehradun.

34. Accordingly, his statement was with reference to the activities at that premises i.e. 138, Industrial Estate, Vikas Marg, Dehradun which is also evident from his statement which reads as under:-

"Q. 14 Please state nature of your business transactions of following entities: 1. Kumar Traders, 2. SK Trading Company, 3. Singh Enterprises, 4. Advance Retails, 5. Dheeraj Sales, 6. Ghanshyam Enterprises, 7. Gulshan Tradelinks, 8. Kapil Enterprises, 9. Shri Ganpati Traders, 10. Dheeraj Sales Corporation? Please also produce their ledger accounts.

Ans. Out of the entities stated by you Kumar Traders, Main Road Vikasnagar is a supplier of paint and packaging material to us. The annual transaction does not exceed 12,000/-. The other entities are not known to me. To the best of my knowledge this premise of Mahavir Transmission Limited had never dealt with any of them in business during last 4-5 years.

Q. 15. Please state nature of your business transactions with Radhey Enterprises?

Ans. As informed earlier Radhey Enterprises is a supplier of aluminium rod coil and steel to this factory.

Q. 16 What else do you know anything else about Radhey Enterprises or its ownership.

Ans. No, I do not know anything else about Radhey Enterprises or its ownership.

Q. 17 As per the information available with the Department, your establishment namely Mahavir Transmission Limited has 'purchase transactions' with the entities mentioned in Q. No. 14 above. What do you have to say in this regard?

Ans. Sir, I like to state that as per best of my knowledge none of the parties mentioned in Q. no. 14 above, is known to be a supplier to this factory. Your information appears to be misplaced."

35. The submissions of the assessee before the Id. CIT(A) are as under:

- On-going through the above statement, it is important to note that in reply to Question No. 14, Mr. Anil Jain has categorically stated "this premises". Similarly in response to Question No. 15, he answered that Radhey Enterprises is a supplier of aluminium rod coil to 'this factory'. Thus, the statement is with reference to Dehradun unit at 138, Industrial Estate, Vikas Marg, Dehradun only.

- It is also important that in response to Question No. 7 regarding purchase of raw material, he has categorically stated that all purchases were procured directly by the Head Office which is at C-58, Sector-4, Noida.
- The assessee company maintained two premises at Dehradun. One being a production unit where Anil Chander Jain is looking after and the other is at KH No. 1684, Line Jeevan Gudh, Vikas Nagar, Dehradun. This location is different than the production unit which Mr. Anil Chander Jain looks after and all the materials purchased by the assessee were delivered at the unit located KH No. 1684, Line Jeevan Gudh, Vikas Nagar, Dehradun as is duly evident from the invoices and other supporting evidences furnished by the assessee before AO/CIT(A). It is also imperative to note that both the units are duly disclosed in the GST Registration.
- Thus, the statement of Mr. Anil Chander Jain in fact supports the case of the assessee's goods were not received at the premises being looked after by Mr. Anil Chander Jain, but at the other unit and accordingly the AO was not justified in drawing adverse inference on the basis of this statement ignoring all the evidences submitted by the assessee company before the ADIT Investigation & AO in support of the purchases made by it from various parties.

As regards the observation made by AO with respect to transfer of payments received by the suppliers from the assessee company within a short time span to other firms.

36. The AO has quoted bank statement of the supplier with respect to the above observation.

- i. It is evident from the bank statement reproduced by the AO himself that the assessee has made purchases through banking channels only which have also been duly received by these suppliers.
- ii. There is no material or allegation that cash was withdrawn against these payments made by the assessee company. On the contrary, the bank statement confirms that these payments were applied to make further payment to other firms.
- iii. In fact in the show-cause notice dated 28.01.2022 issued to the assessee (PB Page 47 to 49), the assessing officer himself has stated that when the purchase and sale details of SK Trading was examined on GSTIN Portal it was found that SK Trading has purchased material from M/s. Advance Retail, M/s. Dheeraj Sales Corp. and M/s. Kumar Traders etc. Similarly, when the purchase and sale details of M/s. Singh Enterprises (PB Page 67) were examined on the GSTIN Portal, it was found that Ms. Singh Enterprises has purchased material from Advance Retail, Ganpati Traders etc.
- iv. Therefore, in fact the bank statements of the suppliers support the case of the assessee.
- v. Thus, the AO was not justified in drawing any adverse inferences against the assessee.

As regards the alleged inactive GST status of suppliers and non filing of returns by suppliers

37. The AO held that the status of these suppliers is inactive on the GST Portal and they are non-filers of GST returns.

38. As regards the allegation of the inactive status on the GST Portal, it was submitted that the AO has picked up this inactive status not for the relevant year in which purchases have been made but for some other year. The status of all the suppliers was active during the year in which purchases were made by the assessee as is evident from the Assessment Order itself.

- i. In fact all these suppliers have filed the GST returns for the period in which the sales have been made by each of these parties.
- ii. Data of GST returns filed by each of these suppliers was available on the official website and in fact the assessee has submitted the details of the GST return filed by these suppliers by way of annexures for each of the assessment year before the assessing officer.
- iii. As regards the items registered under the GST, it was clarified that while obtaining the GST registration, only top five products/services are initially mentioned which are only indicative in nature. Further the GST Act does not bar the supplier from dealing in any products/services so long the HSN Code is mentioned in the bill and the return is filed by the dealer. It was also pointed out that the assessee company has got input tax credit of all the GST it has on the basis of the GST returns filed by each of these suppliers.

As regards the alleged some blank column in purchase invoices

39. The AO held that some of the columns in the purchase invoice such as delivery note number, mode of payment etc. are blank.

40. In response to the show-cause notice issued by the AO, it was clarified by the assessee during the course of assessment proceedings that

the invoices are printed considering all possible information as may be required in different situations in foreseeable future. However, only those fields/columns as are relevant for the particular supplies are filled and other fields which are not relevant are not filled. It was submitted that the mandatorily fields as required under GST Act have been duly filled up and mentioned in the invoice.

41. In this regard it was also submitted that invoices are required to be issued in compliance to details as per the GST Portal. So, there was nothing wrong in not filing those fields/columns which were not relevant or applicable for the purpose of supplies made to the assessee company by the suppliers. These details being secondary and not relevant to the case under consideration cannot contribute to holding of any adverse inference against the assessee.

42. It was pointed out that all these invoices have been submitted by the suppliers to the GST Authorities and have also been accepted as is evident from the GSTR-2A return of the supplier available on the GST Portal.

As regards the allegation that vehicle number stated on the invoice could not be verified.

43. It was submitted that the AO has ignored the detailed reply submitted by the assessee in response to the show-cause notice issued by him whereby it was clarified that information referred by the assessing officer is on the basis of private website "Car Info". The App used by AO only states that it could not fetch the details of vehicle number from RTO.

44. In support of the case, the assessee submitted copies of the status of vehicle number available on website namely "Vahan" which is the official website of the Ministry of Road, Transport and Highway, Government of India. The assessee also submitted the copy of the Registration Certificate/Trip sheet issued by the Tax Authorities by Department or verification of vehicle number by Sales Tax Department issuing the movement of vehicle. The assessee also submitted the screenshot of Car Info App showing "Vehicle not Found" and reply of the assessee has been stated by the assessing officer in assessment order himself in Para 16 onwards.

45. Moreover, it is a fact on record that the assessee had made the payments against the bills received for such transportation of goods, to the transporters via banking channels duly evidenced by bank statements furnished in this regard with the AO/CIT(A). Sufficient evidences have also been produced in respect of actual movement of the goods by filing the copy of the transport receipt, copy of Form C, trip sheet, e-way bill, kantaparchi, weighing slip, transportation bills, vehicle RC status and no defects have been pointed out by AO in the evidences furnished by the assessee.

46. In fact the assessee has also filed the GST paid by it by way of Reverse Charge Mechanism applicable on transportation charges. The assessee has also furnished an Affidavit of the Transporter duly acknowledging providing of truck for delivery of goods to the assessee. Despite such detailed explanation and the evidences, the assessing officer arbitrarily ignored the same and has drawn adverse inference.

Enquiries through Inspector

47. The Assessing Officer has also referred to the enquiry conducted through Inspector during the post search investigation in respect of a few suppliers. In this regard, the Assessing Officer has referred to the inspector report.

48. Firstly, the reference is in respect of only eight suppliers. Further out of these eight suppliers, the inspector report in respect of three suppliers namely M/s. Dev Infocom (P) Ltd. M/s. At Your Door Step (P) Ltd. and M/s. Spark Infra Power (P) Ltd. clearly states that the company was doing business at that address during the period. Further, even in none of the other cases, it could come out that the suppliers were not genuine. Nowhere any statement was recorded by the Inspector of any person alleging that supplies made by the appellant company was not genuine from any of these supplies. Further in respect of each of these suppliers, the assessee submitted detailed clarification which has been quoted by the Assessing Officer in the assessment order, but has not been rebutted by the AO.

49. It may be relevant to point out that later on during the course of assessment, the AO himself carried out the verification by issuing notices under section 133(6) and all such notices got duly served and even replies were received from 13 parties. Accordingly, the AO was not justified in drawing adverse inference on this account.

50. It was further submitted that the assessee has made purchases from hundreds of parties during the relevant year, out of which purchases from 19 parties have been doubted by the AO without any tangible/rational basis (including 2 parties referred in statement of Mr. Manoj Dudeja).

51. It was also submitted by the assessee that in respect of the purchases from all the impugned 19 parties, the appellant had filed consolidated submissions/reply dated 22.03.2022 before the AO explaining the genuineness of purchases made by the assessee along with documentary evidence therefor. The same reply and documentary evidences were submitted before Id. CIT(A) also. The relevant extract of the written submission filed before Id. CIT(A) which has also been quoted by the Id. CIT(A) in his order at Page 70 of the Order is being reproduced below:

Volume of paper book	Pages No.
2	837 to 1518
3	1519 to 2785
4	2786 to 4178
5	4179 to 5339
6	5360 to 6115

52. The assessee company has filed party wise details of purchases and sales during the course of assessment proceedings vide reply dated 22.03.2022 in the relevant assessment years which was also submitted before the Id. CIT(A).

53. The assessee has also submitted complete quantitative details of the purchase, sales, stock record etc. along with a detailed analysis of stock register, yield (production and sales) during the course of assessment proceedings. Summary of quantitative analysis of manufacturing units is below:

Unit at Vikas Nagar, Dehradun (Uttarakhand)

AY	Opening Balance		Inwards		Outwards		Closing Balance		Enclosed in paper book page at
	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	
2017-18	203318	254204	5789093	2379343	5685008	2380798	307601	262749	Volume 2 at page 1142 to 1143
2018-19	315355	262749	23312288	9521997	21810708	9446436	1816935	344316	Volume 4 at Page 3758 to 3759
2019-20	1816935	344310	21741040	10266243	23219813	10447726	338163	169837	Volume 6 at page 5662 to 5664
2020-21	328163	162827	22280151	19464252	22445901	10564403	172712	122676	Volume at page 5936 to 5937

Yield for above years of this unit is 100%.

54. In this unit the assessee is converting raw material into finished goods using non-foundry operations such as cutting, stripping, drawing, de-stranding, spooling, welding, stranding etc. In these processes there is no loss of material as raw material gets converted into finished goods and scraps.

Unit at Sikandrabad District, Bulandshahr, Uttar Pradesh

AY	Opening Balance		Inwards		Outwards		Closing Balance		Enclosed in paper book page at
	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	Aluminium (Kg)	Steel (Kg)	
2019-20	563	0	37517899	4847808	39632656	47799657	646837	48151	Volume 6 at page 5773 to 5774
2020-21	640837	48151	47005115	10253150	47453814	10219940	192108	80362	Volume 6 at Page 5948 to 5949

Yield for above years of this unit is 96%.

55. In this unit the assessee is converting raw material into finished goods using foundry operations also (apart from non-foundry operations), such as melting of material in furnaces, alloying in molten metal, degassing & fluxing, continuous casting, rolling mill etc. In these processes there is loss of material in shape of burning loss.

56. It is an undisputed fact that no doubt has been casted on quantitative details and value of sales and stock as declared/maintained by the assessee and duly disclosed in the tax audit report(s) and income tax returns.

57. In this regard, it is pertinent to point out that:

- i. Complete stock details were filed during the assessment proceedings and the same have not been doubted by assessing officer nor any discrepancy has been pointed out by the assessing officer.

- ii. The sales as declared by the assessee stands accepted. The quantity of products sold and the value of sale transactions have not been doubted;
- iii. Stock records have been accepted as recorded in the books;
- iv. Profit earned by the appellant on the entire sales and offered to tax stands accepted;
- v. There is no allegation of any sales made outside the books of accounts;
- vi. The yield of the products has not been disputed.

58. We find that the Id. CIT(A) duly took note of the above submissions made by the assessee and has also acknowledged the fact that no doubt has been casted during the assessment proceedings by the AO on the quantitative details of the stock and value of sale and stock as declared/maintained by the appellant and disclosed in the Tax Audit Report and Income Tax Return.

59. The Id. CIT(A) further observed that the sales as declared by the appellant have been accepted, the quantity of product sold and value of the transaction have also not been in doubted and therefore no allegation of any sales made outside the books of accounts. The stock of goods have been accepted as recorded in the books and the yield of the product has also not been disputed. The Id. CIT(A) also didn't dispute the explanation and evidences brought on record by the appellant company in support of its contention. This is also evident from the finding recorded by Id. CIT(A) at Page 97 and 101 of the Id. CIT(A) Order for AY 2018-19. Moreover, the Id. CIT(A) also acknowledged the fact that no evidence of the assessee indulging in bogus purchases was found during the course of search on the assessee company (Page 80 of Id. CIT(A) Order for AY 2017-18).

60. Having said so, the Id. CIT(A) sustained partial addition by applying the Gross Profit Rate of the respective assessment years in respect of the purchases alleged by the AO to be bogus. Thus, though the Id. CIT(A) deleted the addition of bogus purchases, however, he made the addition over and above the Gross Profit Rate declared by the appellant company by applying the same Gross Profit Rate of the respective assessment year in respect of the alleged bogus purchases. Here, the Id. CIT(A) has done right in deleting the entire addition made on bogus purchases but gone wrong in sustaining the addition by applying the Gross Profit Rate in respect of the alleged purchases.

61. Now coming first to these two parties namely SK Trading and Singh Enterprises, the sole basis for drawing adverse inference against the assessee company is the statement of Mr. Manoj Dudeja and Mr Gopal. This statement was recorded much before the date of search on the assessee. In the entire statement recorded of Mr. Manoj Dudeja/ Gopal, there is no allegation against or even the name of the assessee. He, in fact, has categorically stated that he is not the owner of the either of these two concerns. Nowhere has he stated that he has issued bogus invoices to the assessee company. Infact, in the statement, he names the owner of these two concerns which have been quoted by the assessing officer in the Assessment Order itself. The Assessing Officer, being aware of the fact that Mr. Manoj Dudeja is not the owner of these two concerns and some other persons are the owners of these two concerns, no efforts were made to take statement of owners of these two concerns. Further the assessee company during the course of search as well as during the course of the assessment proceedings categorically rebutted the allegation levied against it on the basis of the statement of Mr. Manoj Dudeja. In fact the appellant company insisted for the cross examination of Mr. Manoj

Dudeja/Gopal even if the statement is to be considered to be adverse to the assessee.

62. The Assessing Officer has admitted in the assessment order at the second last page (AY 2017-18)/ 5th last page (AY 2018-19)/ 3rd last page (AY 2019-20, AY 2020-21), Para 6(iii) of the Assessment Order that it has failed to provide the cross-examination as Mr. Manoj Dudeja/ Gopal did not appear in response to the summon issued to him. The allegation of AO was based on the statement of Mr. Manoj Dudeja and it was incumbent upon him to allow cross examination to the assessee in case he wants to rely upon his statement against the assessee. Moreover, it is pertinent to note that the contention of the Revenue that Mr. Gopal is Director/Proprietor in the supplier firms of M/s. S. K. Trading and M/s. Singh Enterprises is factually incorrect as is evident from the facts stated by the assessing officer himself in Assessment Order, as AO has reproduced a table at Page 6 of the Assessment Order of the various entities including S. K. Trading as well as Singh Enterprises. In this table he has stated that Proprietor of S. K. Trading sales is Mr. Sanjeev Sharma and Proprietor of Singh Enterprises sales is Mr. Sachin who is friend of Mr. Gaurav. There is no adverse statements from Mr. Sanjeev Sharma nor from Mr. Sachin. In fact no statement had been recorded as per appellant company of Mr. Sanjeev Sharma and Mr. Sachin. Even in the statement recorded of Mr. Manoj Dudeja, there is no whisper or name of the assessee company. It is also relevant to point out that addition cannot be made merely on the basis of the statement without any corroboration with the material found during the course of the search. In the present case, as is evident from the Assessment Order, that there is no incriminating material referred to which has been found during the course of the search.

63. In view of the above facts, the addition on the basis of statement of Mr. Manoj Dudeja cannot be sustained, particularly keeping in view the fact that assessee has produced all the evidences in support of its contention which include the following documents:-

- i. Invoice containing details such as date, invoices numbers, amount etc.
- ii. Copy of ledger account of the party in the books of assessee-company.
- iii. Confirmation from the parties.
- iv. Copy of invoices, transport receipt/bilty.
- v. Form-C, Trip sheet/e-way bill, if any.
- vi. Copy of bank statement of appellant company.
- vii. Copy of GSTR-2A for GST compliance/VAT Assessment Order

64. In respect of the other parties also nothing adverse was found during the course of the search. Also there is no incriminating material which was unearthed during the course of the search in respect of the other 17 parties. The AO has tried to draw adverse inference on the basis of the statement recorded of two Directors as well as one of the employee. In respect of the material being stored at Daryaganj, the appellant company categorically stated that the person Mr. Ravnish Kumar was only house-keeping boy and he was not there at the time when these purchases were made and he was allowed to reside at that premises only in February 2020 onwards which is much after the date when these purchases were made.

65. Similarly, with regard to the statement of Mr. Anil Chander Jain at Dehradun, the appellant company has duly explained that he was looking

after the production unit at 138, Industrial Estate, Vikas Marg, Dehradun and these purchases were related to the other units which is located at KH No. 1684, Line Jeevan Gudh, Vikas Nagar, Dehradun. On-going through the statement of Mr. Anil Jain, it is apparent that what he has stated was with reference to the unit at 138, Industrial Estate, Vikas Marg, Dehradun and accordingly, there was no reason to draw adverse inference on that basis.

66. As regards the non-filing of the tax returns, it is a matter on record that the AO has issued notices to all these 19 parties under section 133(6) and all notices have been duly delivered and in fact replies have been received from 13 parties confirming that each of these parties have made sales to the appellant company. The AO has made an independent enquiry and nothing adverse has come in the enquiry. Thus, there was no reason for the AO to draw adverse inferences and ignore details and evidences submitted by the appellant in respect of the purchases made by it from these suppliers:

- i. Invoice containing details such as date, invoices numbers, amount etc.
- ii. Copy of ledger account of the party in the books of assessee-company.
- iii. Confirmation from the parties.
- iv. Copy of invoices,
- v. Form-C, Trip sheet/e-way bill, if any.
- vi. Copy of bank statement of appellant company.
- vii. Copy of GSTR-2A for GST compliance/VAT Assessment Order
- viii. Copy of transport receipt.
- ix. Copy of Form-C, Trip sheet/e-way bill, kantaparchi/weighing slip, if any.
- x. Transport bills, RCM Challan & Ledger.
- xi. Vehicle RC Status.
- xii. Transporter's Affidavit

67. The AO in the Assessment Order has tried to draw adverse inferences on the basis of the fields/column in the purchase invoices being blank or the vehicle number not being found on a private website and also on the basis of the analysis of the bank statement of the supplier. In this regard, it is important to point out that assessee in reply to the show-cause notice has specifically rebutted each of these allegations and the AO despite quoting the reply of the assessee to the show-cause notice has not been able to rebut or find anything adverse in the reply.

68. Also, as regards the observations about the inactive status of suppliers on the GST and non-filing of ITR, each of these suppliers were registered with the GST during the period when they made supplies to the appellant company gets confirmed from the fact that they were registered on the GST Portal. Each of these suppliers have filed the GST Return, copies of which have been submitted by the appellant company after downloading the same from GST Portal. The input tax credit in respect of each supplies have been allowed to the appellant company and no dispute has been raised in respect of these supplies under the GST. Thus, the observation of the AO that the status of suppliers is inactive is not relevant because these suppliers may have ceased to carry on the business later on but were active on GST when these supplies were made to the assessee. This fact is getting confirmed from the table of GST verification carried on by the AO and quoted in the Assessment Order where the status of inactive is much after the year in which purchases have been made from these suppliers.

69. In any case the AO himself has recorded in the assessment order that he has issued notice under section 133(6) to all these 19 parties and he has received replies from 13 parties. In respect of remaining six

parties, it is not the case of the AO that replies have not been received. If that be so, then appellant company cannot be faulted if these suppliers have not responded to the notices issued by the assessing officer. The reliance being placed by Revenue upon the judgment of Gujarat High Court in the case of N. K. Industries in respect of addition sustained by the Id. CIT(A) on the basis of gross profit rate is not relevant as in the present case the purchases itself are genuine as the assessee has produced sufficient evidences including the movement of goods of the purchases made by it. The revenue's observations that the assessee is engaged in the job work activity taken for Government Bodies is factually incorrect. The appellant company is engaged in the manufacturing as well as supplying of Aluminium Conductor to various Electricity Board and to the contractors which execute the Government Projects. In the present case, the appellant company has made the payment only through banking channels as quoted by the AO himself in the Assessment Order. As per the bank statements of the suppliers, these payments have been received by the suppliers in their bank account and they have further issued cheques to the various other parties and hence there is no involvement of cash. The contention of the Revenue that quantitative tally was not produced by the assessee during the assessment proceeding is factually incorrect as can be seen from the assessment order Para 26(1) where assessing officer has reproduced the detailed reply filed by the assessee during the course of the assessment proceedings. The contention of the Revenue that gross profit margin disclosed by the assessee was low is firstly self-contradictory as AO has accepted this gross profit margin of each of the years as well as the price at which material has been purchased by the assessee. No defect has been pointed out in the price analysis furnished by the assessee. Further in the absence of any discrepancy being pointed out in the books

of accounts and assessee having submitted complete details including quantitative details, there is no justification for alleging that the gross profit margin declared by the assessee is low.

70. On considering the entire facts, it is a case where the appellant company has produced sufficient evidences in respect of the purchases made by it. Sufficient evidences have also been produced in respect of actual movement of the goods by filing the copy of the transport receipt, copy of Form C, trip sheet, e-way bill, kantaparchi, weighing slip, transportation bills, vehicle RC status. In fact it has also filed the GST paid by it by way of Reverse Charge Mechanism applicable on transportation charges. The assessee has also produced evidences regarding the expenses relating to the freight which has been duly accounted in the books of account and which has not been doubted by the AO and in fact deduction of the same has also been allowed. There is no evidence whatsoever even to suggest that the payment made to the suppliers have been routed back to the assessee in any form. The supplier's bank account quoted by the assessing officer nowhere shows that cash has been withdrawn from these accounts. On the contrary, the payments have been made to the various parties. The appellant company has also submitted the detailed analysis of the stock register, yield, production, sale, complete quantitative details. The Revenue has not doubted on quantitative details of sale declared by the appellant company which has also been accepted. The profit earned by the appellant company from these sales have also been taxed. The Id. CIT(A) has also endorsed above contention of the appellant company. However, the Id. CIT(A) having endorsed the entire contentions of the assessee erred in directing to apply gross profit rate on the purchases which defies logic. The Id. CIT(A) having not pointed out any defect in any of the document

or explanation submitted by the assessee in respect of the purchases made by it, the entire addition has to be deleted.

71. The assessee has duly discharged their onus relating to purchases made by it from those purchase which have not been doubted by the AO by submitting the necessary evidence in support thereof. Hence, we decline to interfere with the order of the Id. CIT(A) to the extent of deletion of addition made on account of alleged bogus purchases.

72. Thus, considering the above mentioned facts and circumstances of the case and the abundant evidences furnished by the assessee in order to substantiate the genuineness of the purchases, there was nothing whatsoever for the Id. CIT(A) to sustain gross profit addition on alleged purchases over and above the gross profit declared by the assessee. In view of the above facts, the gross profit determined by the Id. CIT(A) is directed to be deleted.

Ground No. 11 –ITA No. 2633/Del/2022 : A.Y. 2018-19

73. The assessee has also challenged the addition of Rs. 2,35,98,600/- made by the AO on account of difference in purchase price and the stamp duty value of the property purchased by the assessee.

74. The relevant grounds of appeal raised by the assessee in this respect is as under:

"11(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.2,35,98,600/- on account of difference in purchase price and the stamp duty value of the property.

(ii) That the learned CIT(A) has erred, both on facts and in law in arbitrarily ignoring the valuation report submitted by the assessee.

(iii) That the learned CIT(A) has erred, both on facts and in law, in confirming the abovesaid addition as the addition is legally unsustainable in the absence of any valuation report being obtained by the AO.”

75. This issue has been discussed by the AO on third last page at para 8 of the Assessment Order. It has been alleged that during the course of the search, document regarding the purchase of immovable property i.e. Industrial Land, Gate No. 557, at Sanwali Tehsil, Sikandrabad, Bulandshahr, U.P. was found and it was noticed that the stamp duty value of this property was Rs. 3,40,16,000/-. However, the assessee had paid Rs.1,04,17,400/- as purchase consideration.

76. Thereafter, an explanation with respect to the difference in purchase price and the stamp duty value of the property was called from the assessee. During the course of assessment proceedings, the assessee vide reply dated 22.03.2022 (PB pg.279-398) duly explained that the Fair Market Value of the property was much lower than the stamp duty value. The assessee also submitted the copy of Valuation Report dated 02.08.2017 of the registered government approved valuer wherein the fair market value of the property had been computed at Rs. 1,06,30,000/-. A copy of such valuation report is placed at PB Pg.399-404. The AO rejected the explanation of the assessee and made an addition of Rs. 2,35,98,600/- on account of the difference in purchase price (i.e. Rs.1,04,17,400/-) and

the stamp duty value (i.e. Rs. 3,40,16,000/-) of the property by invoking the provision of section 50C.

77. Aggrieved by the order passed by the AO, the assessee company preferred an appeal before the Id. CIT(A).

78. During the course of appellate proceedings before the Id. CIT(A), it was contended by way of written submission (PB Pg. 460-521) that:

- i. The AO has failed to consider the valuation report submitted by the assessee.
- ii. No cogent material/concrete evidence has been brought on record by the AO to doubt the validity and sanctity of the valuation report.
- iii. It was incumbent on the AO to refer the matter to the DVO in case the valuation report submitted by the assessee was to be ignored by the AO and in the absence of such reference, the addition made by the AO is unsustainable and liable to be deleted.
- iv. It was pointed out that Section 50C is not applicable on the assessee company as the assessee company is not the seller of the property but the purchaser. Section 50C applies on the seller of the property. On this aspect, it was submitted that the addition made by the AO is legally untenable.**

79. The Id. CIT(A) confirmed the addition made by the AO by holding at Page 106 Para 10.3 of the Order that in the present case Section 56(2)(x) will be applicable. It has been further held by the Id. CIT(A) that it is at the option of the AO to refer or not to refer the matter to the Valuation Officer as the words used in the Act are that "the Assessing Officer may

refer the valuation". Accordingly, in case the AO has not referred the matter for valuation to the DVO, there is no infirmity.

80. Aggrieved, the assessee filed appeal before the Tribunal.

81. Before us, the Id. AR repeated the arguments taken up before the Id. CIT(A) and also argued that the Id. CIT(A) does not have the power to change the provisions of this Section. It was argued that the Id. CIT(A)'s power of assessment do not extend to convert provisions of Section 50C to Section 56(2)(x). On the other hand, the Id. DR supported the order of authorities below. The Id. DR argued that reference to DVO is compulsory but the option of the Assessing Officer.

82. Heard the arguments of both the parties and perused the material available on record.

83. The provisions of Section 50C are as under:

"Special provision for full value of consideration in certain cases.

50C. (1) *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :*

Provided *that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by*

the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.

Following third proviso shall be inserted after the second proviso to sub-section (1) of section 50C by the Finance Act, 2018, w.e.f. 1-4-2019 :

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) Without prejudice to the provisions of sub-section (1), where—

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications,

apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."

84. Provisions of Section 56(2)(x) are as under:

"Income from other sources.

56.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

.....

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Following item (B) shall be substituted for the existing item (B) of sub-clause (b) of clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019 :

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause :

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

(c) any property, other than immovable property,—

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any sum of money or any property received—

(I) from any relative; or

(II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

*(IV) in contemplation of death of the payer or donor, as the case may be;
or*

(V) from any local authority as defined in the Explanation to clause (20) of section 10; or

(VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(VII) from or by any trust or institution registered under section 12A or section 12AA; or

(VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

(IX) by way of transaction not regarded as transfer under clause (i) or 85[clause (iv) or clause (v) or] clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47; or

(X) from an individual by a trust created or established solely for the benefit of relative of the individual.

Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii).]

Following clause (xi) shall be inserted after clause (x) of sub-section (2) of section 56 by the Finance Act, 2018, w.e.f. 1-4-2019:

(xi) any compensation or other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto."

85. Provisions of Section 142A are as under:

"Estimation of value of assets by Valuation Officer.

142A. (1) *The Assessing Officer may, for the purposes of assessment or reassess- ment, make a reference to a Valuation Officer to estimate the*

value, including fair market value, of any asset, property or investment and submit a copy of report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer under sub-section (1) whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference made under sub-section (1), shall, for the purpose of estimating the value of the asset, property or investment, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(4) The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgment, if the assessee does not co-operate or comply with his directions.

(6) The Valuation Officer shall send a copy of the report of the estimate made under sub-section (4) or sub-section (5), as the case may be, to the Assessing Officer and the assessee, within a period of six months from the end of the month in which a reference is made under sub-section (1).

(7) The Assessing Officer may, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Explanation.—In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."

86. Now coming to the legal proposition,

- i. Firstly, the addition has been made by the AO under section 50C which is not applicable in the case of the purchaser,
- ii. Secondly, the CIT(A) has changed the section in which addition was made by the AO from Section 50C to Section 56(2)(x). In this regard, it is submitted that Id. CIT(A) could not have changed the section as the power to change any section which was invoked by the AO has not been granted to the CIT(A).
- iii. None of the authorities referred the matter to the DVO.

87. The issue to be examined is whether reference to the DVO is compulsory or at the option of the Assessing Officer. The revenue relied on the word "**may**".

88. Reliance is placed on the following judicial pronouncements in this regard:

- Parasmani (Trust) WZ Vs. ITO (E), Ward-2 (4) New Delhi. 2022 (11) TMI 730 - ITAT Delhi Dated: - 14-11-2022

"7. I have considered rival submissions and perused the material available on record. Undoubtedly, the addition in dispute represents the cash deposit made in the bank account. On perusal of the impugned assessment order, it is very much clear that while making the addition of the cash deposit, the Assessing Officer has treated it as unexplained cash credit under section 68 of the Act. Whereas, while deciding assessee's appeal learned Commissioner (Appeals), though, has accepted assessee's contention that the addition cannot be made under section 68 of the Act, however, he made the addition under section 69A of the Act. On a reading of section 68 as well as 69A of the Act, it becomes very much clear, while section 68 speaks of any sum found credited in the books of assessee in a particular year the source of which cannot be explained can be treated as

unexplained cash credit, section 69A speaks of a situation where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in the books of accounts maintained for any source of income and the assessee offers no explanation regarding the nature and source of such money, bullion etc. then it shall be deemed to be the income of the assessee. Thus, the conditions and situations for applicability of section 68 and section 69A of the Act are different. Therefore, unless the conditions of the specific provision are fulfilled, no addition can be made. In the facts of the present appeal, the first appellate authority has accepted that conditions of section 68 of the Act are not fulfilled. That being the position, he should have deleted the addition. Instead of doing so, he has confirmed the addition under section 69A of the Act without providing any opportunity to the assessee to explain whether the conditions of section 69A are attracted or not. Further, as per the decision of the Hon'ble Jurisdictional High Court in CIT vs. Aar Pee Apartments (P.) Ltd., when the scope and ambit of the two separate provisions are altogether different, the addition cannot be changed to another provision. Following the aforesaid decision of the Hon'ble Jurisdictional High Court, the coordinate bench in the case of Toffee Agricultural farms Pvt. Ltd. vs. ITO (supra) had expressed the view that the first appellate authority unilaterally has no power to change the section under which the Assessing Officer has assessed an item of income. Thus, respectfully following the ratio laid down in these decisions, I hold that the addition made confirmed under section 69A of the Act deserves to be deleted. Accordingly I do so.

8. In the result the appeal of the assessee is allowed."

- Smt. Nirmla Jain, W/O Late Sh. Pawan Kr. Jain Vs. ITO Ward-2 (1) , CGO Complex-2, Kamla Nehru Nagar, Ghaziabad, Uttar Pradesh. 2023 (6) TMI 719 - ITAT Delhi Dated: - 14-3-2023

"5. After careful consideration of rival submissions of both the sides and facts and circumstances of the present case coupled with proposition rendered by the Hon'ble Jurisdictional High Court of Delhi under identical circumstances in the case of CIT vs. Aar Pee Apartments P. Ltd. (supra), I respectfully note that from the reading of sub-section (1) of Sec. 142A of the Act, it is clear that the legislature referred to the provisions of Sec. 69, 69A and 69B of the Act but specifically excluded the provisions of Sec. 69C of the Act. In such a situation the well known principle of casus omissus becomes applicable. In my humble understanding what is not included by the legislature in its wisdom and rather specifically excluded as per legislative intention, the only remedy is to amend the provision. I am cautious that it is not come within the ambit and purview of jurisdiction of this Bench to legislate or to plug the loop holes in the law. Thus, in the light of above binding precedent rendered by the Hon'ble Jurisdictional of Delhi High Court in the case of CIT vs. Aar Pee Apartments P. Ltd. (supra) which was followed by the coordinate bench of the Tribunal in the case of M/s Toffee Agricultural Farms P. Ltd. (supra), I hold that the addition made by the AO u/s 69 of the Act cannot be converted into Sec. 69C of the Act by the Ld. CIT(A) while upholding the addition. Action of the Ld. CIT(A) in this regard cannot be held as valid and sustainable being bad in law. Therefore, ground no. 1 & 2 of assessee are allowed and AO is directed to delete the addition. Since, the grievance of assessee has been allowed in view of findings recorded by me in the earlier part of this order. Therefore, other grounds of assessee on merits are not being adjudicated upon as having become academic."

- Smt. Sarika Jain Vs. CIT, Bareilly and Another 2017 (7) TMI 870 - Allahabad High Court Dated: - 18-7-2017

"In the present case, it is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the

addition of alleged amount of the gift received by the appellant-assessee as his personal income under Section 68 of the Act and not whether such an addition can be made under Section 69-A of the Act.

In view of the above, it can safely be said that the Tribunal travelled beyond the scope of the appeal in making the addition of the said income under Section 69-A of the Act. It may be worth noting that the Tribunal has recorded a categorical finding that "it is clear that under the provisions of Section 68, the addition made by the Assessing Officer and sustained by the CIT (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer and the CIT (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under Section 68 of the Act.

In view of the above, when the said income cannot be added under Section 68 of the Act and the Tribunal was not competent to make the said addition under Section 69-A of the Act, the entire order of the Tribunal sand vitiated in law.

Accordingly, we answer the question of law, as framed above, in favour of the appellant-assessee and against the Revenue and hold that the Tribunal was not competent to make any addition under Section 69-A of the Act and as the same was subject matter of the appeal before it."

89. Even, if it is presumed that the addition has been made under section 56(2)(x) of the Act, in such circumstances also, the addition made by the AO and confirmed by the Id. CIT(A) is bad in law and liable to be deleted in the absence of the valuation being referred to the DVO for determination of the value of the property. It is pertinent to note here the provisions of Section of 56(2)(x) which also states that in case the assessee disputes the stamp duty value of the immovable property, the AO has no option but to refer the same to the Valuation Officer. Thus, the

Id. CIT(A) has gone wrong in interpreting the word "**may**" so as to hold that assessing officer has an option to make or not to make a reference to the DVO. It is pertinent to note here that the assessee has repeatedly submitted that it was a distressed sale and therefore the value of such immovable property was less than the stamp duty value. However, the submission of the assessee has been arbitrarily ignored by the AO as well as by the Id. CIT(A) and no efforts had been made to find out the value of the property either by the AO or Id. CIT(A). In such circumstances of the case where the assessee has been continuously stating that the fair market value of the property is much lower than the stamp duty value, the AO has to mandatorily refer the valuation of the property to the Valuation Officer and having failed to do so, the addition made by the AO is unsustainable and liable to be deleted. There are a number of judgments on this issue wherein it has been held that once the assessee has disputed the stamp duty value and has submitted the valuation report, the AO is duty bound to refer the valuation to DVO in case he proposes to make an addition. Having failed to do so, the addition is not sustainable and liable to be deleted.

90. Reliance is placed on the following judicial pronouncements in this regard:

- DCIT CIRCLE-6 Jaipur Vs. Shri Goverdhan Prasad Singhal and (Vice-Versa) 2022 (7) TMI 1202 - ITAT Jaipur Dated: - 7-6-2022

"13. In the present case, it is noted that the Assessing officer neither discussed the contentions of the assessee for taking actual consideration as fair market value of the property sold nor referred the matter to the DVO as was required U/s 50C (2) of the Act despite specific prayer made by the assessee at the first stage. The AO and the CIT(A) have also not

found or alleged that the assessee received any excess amount over the sale consideration mentioned in the deeds. In the light of these facts and particularly on the failure of the AO to follow the course as prescribed under section 50C (2) and respectfully following various decisions discussed above, we hold that the CIT(A) was not justified in confirming the action of the AO in adopting deemed sale consideration in violation of section 50C (2) of the Act.

14. In the above view and legal precedents in these peculiar facts of the case, the failure of the AO to follow the procedure as prescribed under section 50C (2) in particular, and therefore, the CIT(A) action in confirming such order is held unjustified and against law by sustaining stamp duty value of property Rs.11,19,40,441/- as deemed sale consideration u/s. 50C against actual sale consideration and fair market value Rs. 8,81,00,000/-.Accordingly, the AO is directed to adopt the value of sale consideration at Rs.8,81,00,000/- of the subject property for the purpose of computation of Long-Term Capital Gains. Thus, the ground no. 1 of appeal of the assessee is allowed and corresponding ground no 2. Of the department is dismissed."

- ITO, Ward-15 (1), Hyderabad Vs. Smt. Vankayalapati Kiranmayee And (Vice-Versa) 2022 (1) TMI 294 - ITAT Hyderabad Dated: - 6-1-2022

"9. In this regard, we refer to Section 50C (2) of the Income Tax Act, 1961, which clearly provides that the AO may refer the valuation of the capital assets to a Valuation Officer, if demands by the assessee. In the present case, if the AO finds that the value adopted by the assessee is lesser than the Stamp Valuation Authority due to the specific reasons, the AO was required to refer the matter to the DVO to ascertain the market value of the property. But the AO did not adopt the said procedure as mandated under section 50C (2) of the Act. The assessee, all along, has

objected to the valuation and submitted the required documents to prove that the market value of the property is lesser than the Stamp Valuation Authority.

10. On being asked by the bench, Id. DR could not controvert the above position as to why the matter was not referred to the DVO for ascertaining the market value of the property at the relevant time. In the case of Smt. Chitti Parvatha Vardhanamma (supra), the assessee did not ask the AO to refer the matter to the DVO, hence, the AO was compelled to complete the assessment by adopting the guidelines value considered by the SRO. But in the present case, the assessment was completed u/s.144/147 of the Act in the absence of the assessee. Only when the matter carried to first appellate stage, the assessee objected to the value adopted by the AO without referring the matter to the DVO by giving the detailed reasons as to why the sale consideration was lesser amount. Hence, the decision relied by Id. DR is distinguishable on facts. In view of above, we do not find any infirmity in the findings of the Id. CIT(A) to interfere and, accordingly, dismiss the grounds of the revenue."

- *Neelavara Sanjeeva Rao Vs. Income Tax Officer, Ward-7 (2) (1), Bangalore 2021 (12) TMI 1203 - ITAT Bangalore Dated: - 29-11-2021*

"22. In the present case before us also, the AO completely ignored the valuation report of the registered valuer submitted by the assessee and submissions made thereon. The AO mechanically applied the provisions of section 56(2)(vii) to bring the difference of stamp duty valuation and actual sale consideration paid by the assessee, without making any efforts to find out the actual cost of property, when in fact the assessee stated that the property when purchased was under litigation and pending before the Civil Court, the AO was not bothered about these impediments and straightaway considered the stamp duty valuation for the purpose of

making addition u/s. 56(2)(vii) of the Act. In such circumstances, it was very necessary for the AO to refer the matter to the DVO which he failed to do so.

23. Even before us, the Id. DR submitted that referring the matter to the DVO is only with regard to applicability of section 50C of the Act in the case of seller and it is not all required to refer the matter to the DVO u/s. 56(2)(vii) of the Act which is totally misconceived. In such circumstances, in our opinion, the addition made by the AO is totally unjustified and cannot be sustained. We are also of the opinion that the revenue cannot be allowed a second innings by sending the matter back to the AO to refer the matter to the DVO to ascertain the correct fair market value of the property purchased by the assessee, when assessee all along disputed the valuation of property adopted by the AO for the purpose of registration of the same and the AO failed to find out the correct value of the property both at the assessment stage as well as at the first appellate stage.

...

25. The present issue in dispute is also supported by the decision of Mumbai Bench of Tribunal in the case of Mohd. Ilyas & Sons, 186 ITD 407 (Mum) wherein it was held that when the AO mechanically applied the provisions of section 56(2)(vii) to make addition of the difference between stamp duty value and actual sale consideration paid by the assessee without making any efforts to find out the actual cost of the property, the addition had to be deleted.

26. Accordingly, we delete the addition made by the AO u/s. 56(2)(vii)(b) of the Act. This ground of the assessee is allowed."

- Shri Mohd. Ilyas Ansari Vs. Income Tax Officer - 23 (2) (3), Mumbai 2020 (12) TMI 105 - ITAT Mumbai Dated: - 6-11-2020

"27. In the case before us also the Assessing Officer completely ignored the valuation report of the Government Registered valuer submitted by the assessee and the submissions thereon. The Assessing Officer mechanically applied provisions of section 56(2) of the Act to bring the difference between the stamp duty value and the actual sale consideration paid by the assessee without making any efforts to find out the actual cost of the property when in fact the assessee stated that the property when purchased was under semi construction stage and there were disputes between builders and the purchasers and ultimately the builder was abandoned the project and left. The assessee also stated that what was purchased as per the agreement is different than what was given to him as the property was sold to two persons. So there is dispute in the area acquired by the assessee also. In such circumstances, it was all the more necessary for the Assessing Officer to refer it to the Valuation Officer which he miserably failed. Even at the stage of appellate proceedings when the assessee produced Valuation Officer's report who valued Flat No. 601 in the very same Building at ₹.1,00,76,000/- the Id. CIT(A) should have called for remand report and in turn the Valuation Officer's report which the Id. CIT(A) failed to do so. In such circumstances the addition made by the Assessing Officer is totally unjustified and cannot be sustained. We are also of the opinion that the revenue cannot be allowed a second inning by sending the matter back to the Assessing Officer to prove before the Assessing Officer that the sale consideration was the fair market value of the property purchased by the assessee when the assessee was all along disputing valuation of the property and the revenue miserably failed to find out the correct value of the property both at assessment stage as well as at first appellate stage. The decisions referred to above squarely applies to the facts of the assessee's case.

Thus, in the facts and circumstances of the case and also in view of the above judicial pronouncements we direct the Assessing Officer to delete

the addition made u/s. 56(2) of the Act. Ground No.2 of grounds of appeal is allowed.”

91. Thus, in view of the above mentioned facts and circumstances of the case and the legal proposition mentioned above, the addition of Rs.2,35,98,600/- made by AO and confirmed by Id. CIT(A), in the absence of reference to the DVO is unsustainable and hence liable to be deleted.

92. In the result, the all appeals of the assessee are allowed and all the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 02/07/2024.

Sd/-

(Sudhir Kumar)
Judicial Member

Dated: 02/07/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR