

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA No. 705/CHD/2023**

निर्धारण वर्ष / Assessment Year: 2021-22

Gurdip Cycle Industries, 536,/3 Station Road, Near Dhandari Railway Station, Dhandari Kalan, Ludhiana	Vs. बनाम	The DCIT, Central Circle-3, Ludhiana
स्थायी लेखा सं./PAN No: AAAFG9508M		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

and

आयकर अपील सं./ **ITA No. 753/CHD/2023**

निर्धारण वर्ष / Assessment Year: 2021-22

The ACIT, Central Circle-1, Ludhiana	Vs. बनाम	Gurdip Cycle Industries, 536/3 Station Road, Near Dhandari Railway Station, Dhandari Kalan, Ludhiana
स्थायी लेखा सं./PAN No: AAAFG9508M		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate  
& Shri Rohit Kapoor, CA

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma CIT DR

सुनवाई की तारीख/Date of Hearing : 24.06.2024

उद्घोषणा की तारीख/Date of Pronouncement : 23.07.2024

**आदेश/Order**

**Per Dr. Krinwant Sahay, A.M.:**

Appeal in these cases have been filed by the Assessee and Revenue against the order dated 25.09.2023 respectively of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana [herein referred to as 'CIT(A)'].

2. Since the issues involved in both the appeals are identical, they have been heard together and are being disposed of by this common and consolidated order. First, we shall deal with the appeal of the Assessee it ITA No. 705/Chd./2023.

**ITA No. 705/Chd/2023 (Assessee's appeal)**

3. The Assessee in its appeal has taken following Revised Grounds:

1. *That the Ld. CIT(A) has erred in confirming the addition of Rs. 22,77,606/- on account of alleged under invoicing in respect of three parties namely M/s Dhanawat Enterprises, M/s Ashoka Trading Co. and M/s A.K. Sales India.*
- 2 . a) *That the Ld. CIT (A) has also erred in calculating the alleged under invoicing as per above ground no.1 in respect of above parties by adopting the basis of 30% of the disclosed sales on account of*

*alleged under invoicing, which is against the facts and circumstances of the case.*

*b) Notwithstanding the above said ground'\* of appeal and for the sake of argument, at best the notings on the "Whatsapp Messages' in respect of above there parties could at best be treated as sales outside the books of account relating to year under consideration and only 'gross profit' on the amount as mentioned in the 'Whatsapp Messages', could be a subject matter of addition.*

- 3. That the Ld. CIT(A) has erred in relying upon the statement of Sh. Satya Parkash Tiwari and Others by sustaining the addition on account of 30% of alleged under invoicing in respect three parties as stated above.*
- 4. a) That the Ld. CIT(A) has erred in making a total addition of Rs. 26,58,600/- on account of sales outside the books of accounts.*

*b) Notwithstanding the above ground of appeal, only appropriate gross profit on such sales of Rs. 26,58,600/- could be added as total amount of sales could not be treated as entire profit.*
- 5. That the Ld. CIT(A) has erred in sustaining the finding of the Assessing Officer in rejecting the books of accounts u/s 145(3) of the Income Tax Act.*
- 6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

4. Brief facts of the case are that there was a search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short 'the Act') at the business and residential premises of the Assessee on 21.10.2021. During search, there was no seizure of cash, jewellery or any evidence of investment in the shape of immovable or movable asset was found. The stock was tallied and there was no shortage or excess stock found during the search operation. However, during the course of search, statement of one Shri Satya Parkash Tiwari who has been working and looking after the sales and billing of the firm was recorded on the basis of Whatapp Chat extracted from the mobile phone. Mr. Tiwari in his statement on oath stated on the basis of one Whatapp Chat found in the phone stated that there was suppression of sales to the tune of 25% to 30% in the case of one M/s Dhanawat Enterprises. The statement of Shri Satya Parkash Tiwari was later confronted to Mr. Amarjit Singh, who is partner of M/s Ashoka Industrial Fastners, which is a sister concern of the Assessee firm and he accepted that the statement given by Mr. Satya Parkash Tiwari was correct. Further, a statement of Mr. Gurjit Singh, Partner of the Assessee firm was also recorded and he also confirmed that the statement of Mr. Satya Parkash Tiwari was correct. On the basis of above facts and statement, the Assessing Officer (A.O.) issued a show cause notice pertaining to the sales outside the books.

4.1 In response to the notice, the Assessee filed a reply stating that there was no case of under invoicing. The Assessee also brought it on record that out of total Rs. 63 crores of sales during the year, sales to the tune of Rs. 46 crores were made to the reputed parties like Hero Cycle, Avon Cycle, T.I .Cycle of India etc. However, the Assessing Officer in the assessment order tabulated a list of some of the parties to whom the Assessee had made sales and the Assessing Officer further prepared a list comprising of rates at which cycles parts were sold to various parties and finally concluded that since the rates at which the goods had been sold to other parties were the same as per the rates under items supplied to M/s Dhanawat Enterprises and accordingly concluded that since there was suppression of sale rate in respect of M/s Dhanawat Enterprises, therefore, the entire turnover of the Assessee was extrapolated and an addition of Rs. 27,01,59,518/- was made in the assessment order. The Assessing Officer further made an addition of Rs. 26,58,600/- claiming sales outside the books of account to various parties and thus the total addition of Rs. 28,29,70,480/- was made by the A.O. in the assessment order.

4.2 Aggrieved with the order of the Assessing Officer, the Assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) in his order has

considered the findings of the A.O. as well as written submissions filed by the Counsel of the Assessee. The main argument of the Assessee before the Id. CIT(A) was that on the basis of Whatsapp Chat of M/s Dhanawat Enterprises, it was not a case of under invoicing rather, it was only that some quantity of cycle parts was sold to M/s Dhanawat Enterprises which was not recorded in the books of account. In fact, the Assessing Officer had made a case of under invoicing which contended that 70% of the quantity of different items of cycle parts as per the Whatsapp Chat were sold and recorded in the books of account and 30% of such items were sold and not recorded in the books of account.

5. On the other hand, the Id. Counsel of the Assessee submitted that before the Id. CIT(A) that the rates of the items on which cycle parts were sold to M/s Dhanawat Enterprises were the same on which such items were sold to other parties. The Id. Counsel further stated that it was only in the case of M/s Dhanawat Enterprises that 30% of sales were not recorded in the books of account but it was not a case with other enterprises, therefore, the Counsel submitted that the action of extrapolation of sales outside books of account on the basis of few Whatsapp Chat were not justified and hence, should be deleted. It was brought on record that 30% sales outside books of account as it was

reflected in the Whatsapp Chat which were made on the request of M/s Dhanawat Enterprises and, therefore, on the basis of such isolated incident, extrapolating the entire turn over recorded in the books of account was uncalled for. It was also stated that no corroborative evidence was found in respect of such allegation on the basis of Whatsapp chat nor any evidence of payment by other parties or receiving of payments by the Assessee was found. Even no corresponding asset was found during the course of search justifying the allegation of addition on the basis of exploitation. It was also submitted before the Id. CIT(A) that in respect of sales outside the books of account, only gross profit rate as disclosed to the tune of 8.60% can be applied since total receipts could not be the profit of the Assessee.

6. The Id. CIT(A) after considering the detailed submissions filed by the Assessee and going through relevant Whatsapp Chat in respect of M/s Dhanawat Enterprises, M/s Ashoka Trading Co. and A.K. Sales India gave his findings that there was under invoicing in respect of three parties only during the year under consideration. The Id. CIT(A) further gave his findings that since there was no evidence in respect of under invoicing in the case of other parties found during the year, therefore, he hold that under invoicing at best could be in respect of sales as per

books of account made to these three parties only and accordingly he concluded that 30% of the disclosed sales as per the books of account in respect of these three parties could be added and confirmed the addition of Rs. 22,77,606/- in this respect. He further gave his finding relying upon the various case laws that no extrapolation can be made in respect of entire turn over since no such evidence had either been found during the search nor brought on record in post-search investigation. Thus, the Id. CIT(A) concluded that the addition had to be restricted up to the evidence as unearthed during the course of search and, therefore, he rejected the addition on the basis of extrapolation done on presumption by the Assessing Officer. The Assessee also filed affidavits of Shri Gurjit Singh, Partner and Shri Satya Parkash Tiwari, Accountant regarding retraction of statement given during the search operation. The Id. CIT(A) gave his finding on this issue that since the retraction was made after a long time, therefore, it could at best be taken an afterthought and, therefore, rejected the retraction.

7. Aggrieved with the addition of Rs. 26,58,600/-, made on the basis of sale made outside of the books of account, the Assessee has filed this appeal before the Tribunal.

8. During the proceedings before us, the Id. Counsel of the Assessee explained the modus operandi of the business carried on by the Assessee and argued that the Assessee was engaged in the business of manufacturing and trading of different cycle parts. He submitted that bulk sales were made and majority of items out of total turnover of Rs. 63 crores for the year under consideration were sold to major cycle manufacturers such as Hero Cycle Ltd, T.I. Cycle of India, Neelam Cycle Industries etc. The Id. Counsel further argued that the addition and conclusion drawn by the A.O. of under invoicing was confirmed by the Id. CIT(A) for three parties was against the Whatapp Chat and that Whatapp Chat, in fact, had been misread. He vehemently described in detail and concerned Whatapp Chat as extracted from the mobile of Shri Satya Parkash Tiwari, which was reproduced in assessment order also. He also brought it on record that as per the Whatapp Chat, total order as received in respect of each item, supplied as per different bill numbers were items supplied outside the books of account were at the same rates. So, there was no difference in rates in the sales of items either inside or outside the books. He further explained on the basis of Whatapp Chat that only in the case of M/s Dhanawat Enterprises, 70% of such sale of cycle parts were recorded in the regular books of account and 30% remained unrecorded. He also submitted that the

A.O. himself has commented in the assessment order that goods were supplied to other parties at the same rates as per the billing made in the case of M/s Dhanawat and since as per Assessing Officer, there was possibility of suppression of sales or sales outside the books to other parties also, therefore, on the basis of this assumptions, the A.O. extrapolated on the basis of entire turn over and made addition accordingly. The ld. Counsel also argued that apart from M/s Dhanawat Enterprises, the ld. CIT(A) had accepted the sales made to M/s Ashoka Trading Company and M/s A.K. Sales India pertaining to the year under consideration and sales made to other parties according to CIT(A) pertained to other assessment years, therefore, ld. CIT(A) restricted himself to only three parties that are M/s Dhanawat Enterprises, M/s Ashok Trading Company and A.K. Sales India and calculated 30% of sales made to them as sales made outside the books of account and confirmed the addition of Rs. 22,77,606/-. Finally, the ld. Counsel of the Assessee concluded that even sales made out to M/s Ashoka Trading Company and M/s A K Sales India were not made out the books on the basis of Whatsapp Chat and he vehemently argued that there was no case of under invoicing of three parties as tabulated by the ld. CIT(A) in his order and accordingly he requested the Bench to delete the addition of Rs. 22,77,606/- confirmed by the ld. CIT(A)

on the basis of extrapolating of sale made outside the books to three parties namely M/s Dhanawat Enterprises, Ashoka Trading Company and M/s A.K. Sales India.

9. Ground No.2: Appeal on Ground Nos 2 is against the addition of Rs. 26,58,600/- and its confirmation by the Id. CIT(A) taking 30% of the total sales to three parties M/s Dhanawat Enterprises, Ashoka Trading Company and A.K Sales India. The Id. Counsel for the Assessee argued that though, the assessee in order to avoid the litigation has accepted Rs. 26,58,600/- as the sales outside the books of accounts and argued that only appropriate gross profit rate, which in the case of assessee, during the year under consideration was 8.60% could be applied and further argued that total sales/receipts cannot be taken as profit, because, only profit embedded in such sales amount could be taxed. This is because of the fact that during the course of search, no case of negative or excess stock have been made out found by the Department and under such circumstances, the only appropriate gross profit rate @ 8.60% could at best be applied on the sales at Rs. 26,58,600/- and the entire receipts cannot be taken as profit and for which, the reliance was placed on the following case laws for which gist of following judgments were filed:

- i). MGV Jain Jewellers P Ltd (138 taxmann.com 482), Delhi Bench ITAT
- ii) CIT Vs Gurubachan Singh J. Juneja 2008 (2) TIM1 177- Gujarat High Court
- iii) ACIT vs. Conor Granito (P.) Ltd. [2024] 159 taxmann.com 1209 (Rajkot Bench ITAT
- iv) Nilkhil Garg vs Income Tax Officer (145 taxmann.com 171) Jaipur Bench ITAT
- vi) V.R Textiles vs Joint Commissioner of Income Tax (20 taxmann.com 154) Ahmedabad Bench, ITAT
- vii) DCIT/Asstt. Vs Panna Corporation, 2014 (11) TMI 797, Gujarat High Court
- viii). Dinesh Bhai Dhansukhlal Mithaiwala vs. Income Tax Officer (49 taxmann.com Ahmedabad Bench), ITAT.

10. After the conclusion of the arguments by the ld. Counsel of the Assessee, the ld. DR invited our attention to the assessment order wherein, Satya Parkash Tiwari had confirmed that the transaction in respect to sales to M/s. Dhanawat Enterprises had been made on the direction of the management and further confirmed that he was unable to produce the bills and vouchers or other supporting documents, since these transactions have not been entered in the regular books of accounts. The ld. DR further invited our attention to 'Whatsapp chat', wherein, it has been mentioned about billing 60% and similarly, again

it has been stated by Sh. Satya Parkash Tiwari about the adjustment of cash. The ld. DR also stated that in the Whatsapp Chat with M/s Dhanawat Enterprises, again, there is some mention of the transactions outside the books of accounts. He also read out the answer to Question No. 16, reproduced in the assessment order, which is the Whatsapp conversation dated 06.04.2021, wherein there is a copy of 'one ten rupee note' and he referred to answer of Sh. Satya Parkash Tiwari, wherein he stated that Rs. 5 lacs was to be collected in cash from one Sh. Pardeep. Similarly, there is a 'WhatsApp chat' of Ashoka Trading Company, wherein certain advance paid in cash have been mentioned and all these facts were highlighted by the Ld. CIT (DR) to substantiate, that there has been regular transactions in cash outside the books of accounts.

11. Further, ld. DR referred to 'WhatsApp chat', which is dated 04.01.2020 and 09.01.2020 wherein, there is certain details of sale outside the books of accounts. Finally, ld. DR read out the statement of Sh. Satya Parkash Tiwari, where he had agreed that unaccounted cash component of 30% of actual sales was made over and above the sales as per books of accounts for Financial Years 2016-17 to 2021-22. Similarly, ld. DR referred to statement of Sh. Amarjit Singh, wherein, he has in answer to question No. 8, acknowledged the statement of Sh.

Satya Parkash Tiwari. It was further read out from the statement of Sh. Amarjit Singh, where he had agreed that they have received approximately 25 to 30% of cash of total bill from the party and given 5% discount to compensate the losses incurred of the receiving party of the earlier order.

12. Further, by referring to the various Whatsapp chat, it was argued by the Id. DR that there is a regular transaction of the sales having been made outside the books of accounts. The Id. DR also referred to the statement of Sh. Gurjit Singh, Partner, recorded during the assessment proceedings in the assessment order and argued that when Gurjit Singh was confronted with the statement of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh, he confirmed such statement by stating that he agrees with the statement of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh recorded during the search proceedings. Then by way of various Whatsapp chat, which were not related to the year under consideration, the Id. DR argued that there was regular trend of sales outside the books of accounts and also referred to the assessment order, wherein the A.O. has calculated the sales outside the books of accounts to the tune of Rs. 26,58,600/- and argued that total addition was rightly made by the Assessing Officer and confirmed by the Id. CIT(A) since, all

expenses regarding the purchases have already been booked in the books of accounts and thus, there was no question of application of gross profit rate on such undisclosed sales.

13. The ld. DR concluded his arguments by saying that there was a regular trend over the years with regard to the sales outside the books of accounts and under invoicing and thus, the Assessing Officer, had rightly extrapolated the sales by 30% of the book turnover and the CIT(A) has erred in restricting the addition only in respect of three parties as per page 56 of his order and heavily relied upon the order of the AO in respect of the extrapolation.

14. The ld. DR relied upon the judgment of Hon'ble Delhi High Court in the case of 'Chetan Das Laxman Das', reported in 25 Taxmann.com 227 (Delhi), wherein it was held that the seized material can also be relied upon to draw inference that there was a similar transaction throughout the period of six years covered u/s 153A. The ld. DR also relied upon the case of 'Smt. Dayawanti', reported at 75 taxmann.com 308, wherein on the basis of certain material, documents, agreement, invoices, the books of accounts were rejected and addition was made by estimating the sales and gross profit. The ld. DR also relied upon the

judgment of Supreme Court in the case of 'Orma Marbles Palace Pvt. Ltd.,' reported in 110 taxmann.com 436, wherein, there was a under invoicing of the sale bills and it was held that the Assessing Officer was fully justified to make estimation for the block period. Regarding the retraction made by the Sh. Satya Parkash Tiwari and Sh. Gurjit Singh by filing affidavits before the CIT(A), the ld. DR argued that, since the retraction was made after the assessment order was passed by the Assessing Officer, the same was an afterthought and no reliance could be placed on such retraction. Thus, in the nutshell, the ld. DR concluded his argument by stating that the A.O. had rightly rejected the books of accounts and confirmed by the CIT(A) and also stated that since there were regular transactions of sales outside the books of accounts, the Assessing Officer has rightly extrapolated the sales by 30% of the turnover disclosed in the regular books of accounts and also making the total addition of Rs. 26,58,600/- on account of sales made outside the books of account.

15. In Rejoinder, to the arguments to the ld. DR, the ld. Counsel of the assessee argued vehemently that even from the same 'Whatsapp chat' as relied upon by AO/CIT(A), it is not a case of under invoicing at all and stressed that when the documentary evidence is pitted against

the oral evidence, the cause of documentary evidence should always prevail. He further stressed, it is absolutely clear from the 'Whatsapp chat', that it related to M/s. Dhanawat Enterprises only, and that too to sales outside the books of accounts only in quantity and it is also borne out from the record and accepted by the Assessing Officer that the cycle parts have been supplied to the other parties at the same rates as per the rates supplied to M/s. Dhanawat Enterprises and, which is evident from the Whatsapp Chat' as well. He again stressed that about Rs. 46 crores of sales, were made to the only few parties, out of sales of Rs. 63 crores and there is no evidence of the amount of the alleged under invoicing having come back to the assessee and no independent enquiries have been made by the A.O. during the course of assessment proceedings. Attention was also invited to the two orders of the 'Avon Cycles' and 'Aggarwal Cycle Corporation', whose cases were reopened u/s 148 on the basis of information passed on to their respective Assessing Officers and no adverse view have been drawn in their cases while framing the assessment u/s 143(3)/147 of the Income Tax Act, 1961.

16. The Id. Counsel of the Assessee also referred to various WhatsApp chats and argued that the AO having separately computed sales outside

the books of accounts and there was no justification for making the addition of the entire sales instead of applying the Gross Profit rate on such sales outside the books. He also referred to the answer given by Sh. Amarjit Singh as quoted supra that he never agreed with the 'under invoicing' and that both Sh. Amarjit Singh and Sh. Gurjit Singh, were put leading questions on the basis of mis reading of the Whatsapp Chat' and it was only under pressure, coercion and confusion that they had only said 'yes' to the statement of Satya Parkash Tiwari. He again reiterated the assessment made by the same AO of 'Willpower Cycles Industries' and to whom the sales were made by the assessee and no adverse view have been drawn in that case. It was also stressed by the Id. Counsel that regarding the statement of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh recorded during search, it is a settled law that no evidentiary value could be attached to the statement recorded during search as per the judgment of the Apex Court, Chandigarh Bench of the ITAT and other coordinate benches of the Tribunal and reliance was placed in the judgment of 'Sh. Jagbir Singh Nehra' in ITA No. 687/Chd/2023 in this respect.

17. Finally, the Ld. Counsel argued that no cash, jewellery or other unaccounted investment have been found during search and no case of

excessive or negative stock have been made out by the Assessing Officer and, if it all, the contention of the Id. DR, is to be taken into consideration, that all the expenses have been debited in the trading account, then there would have been very substantial shortage of stock, as per physical verification at the time of search, which is apparently not and, thus, only gross profit element embedded in the sales outside the books of accounts to the tune of Rs. 26,58,600/- @ 8.60% was to be considered and relied upon the judgments of various High Court and different benches of the coordinate benches as cited 'supra'.

18. Regarding the judgments cited by the Id. DR in the case of 'Chetan Das Laxman Dass', (supra) , it was argued that in the cited case, a clear cut case of 'under invoicing' was found and there was suppression of production and, whereas, in the case of the assessee, no such evidence was found. Similarly, the facts in the case of 'Dayawanti' was stated to be different in, as much as, surrender of Rs. 3.5 crore was made of additional income and substantial 'Kacha Papers', containing calculations and the amount routed to the bank account of various members of family, some receivable towards business, documents relating to the purchase of the property outside the books of accounts

were found and under such circumstances, that judgment was delivered and such facts have not been there in the present case of the assessee.

19. With regard to the judgment of the 'Orma Marbles Palace Pvt. Ltd.'(supra) , it was stated that in that case also, there was a clear cut case of under invoicing of sale bills, evidence of unaccounted purchases was found, NRI gift, loan and also that undisclosed income was in excess of undisclosed investment and also certain 'unexplained investments', for which, the agreements found from the assessee and, as such, it was argued that any decision would have its judgment on the basis of facts of that case and, as such, reliance placed by the ld. DR was not proper.

20. The Ld. Counsel in rejoinder invited our attention to the judgment of the jurisdictional Punjab & Haryana High Court in the case of 'VM Spinning Mills vs. CIT(A) Ludhiana', reported in 16 taxmann.com 199, in which, it was held by the Hon'ble Punjab & Haryana High Court, that no extrapolation could be made in respect of the some evidence of sales outside the books of accounts and the addition could be restricted only to the evidence found during the course of search and in this case, unaccounted 17 sales bills were found and it was held that Gross Profit

rate to the such 17 bills could be applied only and no case of extrapolation could be made. The relevant para of the judgement is being is being reproduced: -

*"The learned Tribunal in further appeal by the Revenue as well as by the Assessee rejected the contention of the assessee in respect of addition of sales through 17 sale bills amounting to Rs. 1,11,99,427/- and affirmed the finding that such sales were made outside the books of accounts. However, it held that there is no justification to infer that the assessee would have undertaken sales outside the books of account during the rest of the financial year also, therefore, the assessment of unrecorded sales was limited to Rs. 1,11,99,427/- representing 17 unrecorded sale bills alone."*

21. Our attention was also drawn to the Judgment of Hon'ble Delhi High Court in the case of 'Saksham Commodities Ltd.' reported in 161 taxmann.com 485, in which by referring to the judgment of 'Abhisar Buildwell Pvt. Ltd.' of the 'Apex Court' wherein, it was held that there is a requirement of incriminating material for the purpose of estimation of income of the block period and, as such, no extrapolation was possible and it was held in that case, the assessment of total income for a particular assessment year is not intended to set-off a chain reaction or have a water fall effect on all the assessment year. The relevant para of the judgement is being reproduced as under:-

*"The decision in the case of Commissioner of Income Tax v. Sinhgad Technical Education Society (2018) 11 SCC 490 also constitutes a binding precedent in respect of the aforesaid proposition as would be evident from the Supreme Court noticing that the material disclosed pertained only to AY 2004-05 or thereafter and that consequently the- Section 153C action initiated for AYs' 2000-01 to 2003-04 would not sustain.*

*One should bear in mind the pertinent observations made in RRJ Securities when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to "necessarily" be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. This aspect was again emphasized in para 38 of RRJ Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforesaid judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY".*

22. Similarly, reliance was placed on the various other judgments for the proposition that on the basis of 'on-money' receipt for one year, no addition could be sustained in any of the subsequent years on the basis of evidence in another year as per the judgment in the case of 'Standard Tea Processing Co. Ltd.' reported in 34 taxmann.com 31 (Gujarat High Court). Similar reliance was placed on the judgment of Gujarat High

Court in the case of Sh. Pushkar Construction Co. reported in 154 taxmann.com 22, and also in the case of CIT vs. CJ Shaw reported in 246 taxmann.com 671.

23. Reliance was also placed on the judgment of Delhi High Court in the case of 'Anand Kumar Deepak Kumar' reported in 294 ITR 497, in which, it has been held that merely because some discrepancies were found in the assessee's books of accounts in the pre search period, it could not be presumed that such discrepancy continued even in the post search period and the addition could not be made that the assessee had made unaccounted transactions throughout the unaccounted period. Same view was held by the Hyderabad Bench of the ITAT in the case of 'Dr. S. Surendra Nath Reddy' reported in 72 ITD 205, in which, it has been held that the undisclosed income could not be determined on estimation basis and it could only be determined only to the extent of material seized at the time of search. Same was held by the ITAT Pune Bench 'Third Member' case in 'Samrat Bear Bar vs. ACIT' reported in 251 ITR (AT) 1 Pune. Similar reliance was placed by the Ld. Counsel on the other case laws and regarding the argument of the ld. DR about total addition of the sales outside the books of accounts, it was stated by the ld. Counsel that for making the sales outside the books of

accounts, purchases were made separately in small lots not accounted for in the books of accounts on credit basis as the assessee has goodwill in the market and then out of sales realization, the amount was rotated over a period of time and, as such, appropriate gross profit only could be applied on that and the various judgements of the High Court, and the different benches of the Tribunal, clearly laid down that the total receipts cannot be profit.

24. We have considered the findings of the ld. CIT(A) in his order, arguments put forward by the ld. Counsel of the Assessee and the written submissions filed by him during the proceedings before us. We have also considered the different case laws brought on record by the ld. Counsel of the Assessee. Similarly, we have heard the ld. DR and considered his arguments also. After considering all the facts brought on record both by the ld. counsel of the Assessee and the ld. DR, we find that in appeal on Ground No.1 where the ld. CIT(A) has rejected the extrapolation made by the Assessing Officer in the assessment order on the basis of a few Whatsapp Chat on total turnover of the Assessee is very logical and justified. It is because, in our opinion, if in case there is sales made outside the books of account to certain parties, on this basis the entire turnover of the Assessee cannot be taken as a

suppressed turn over and 30% addition on over and above the turn over without bringing any documentary evidence for the same on record is not justified. We have also considered the finding given by the Id. CIT(A) that it is a case of under-invoicing in respect of three parties i.e., M/s Dhanawat Enterprises, Ashoka Trading and A.K. Sales. In our considered view, it is not a case of under-invoicing. Rather it is a clear-cut case of sales made outside the books of account. Further, since the Assessing Officer has already taken outside the books sales in the case of Ashoka Trading Company and M/s A.K. Sales (on the basis of Whatsapp Chats) therefore, addition in the case of outside the book sales in respect of M/s Dhanawat for Rs. 6,11,043/- (being 30%) of the undisclosed sales out of books may only be considered for calculating G.P. ratio. It is true that on the basis of Whatsapp chat, the A.O. has brought out some of the parties on record to whom the Assessee has made sales outside the books of account. As no other incriminating document was found in the case of other parties, therefore, action of the Id. CIT(A) in restricting the addition to the parties whose names figure in Whatsapp chat is very much logical and justified. We have also considered the various case laws brought on record by the Counsel of the Assessee as well as Id. CIT(A) on this issue in support of their arguments. After considering all the facts and arguments brought

on record and the written submissions filed by the Counsel of the Assessee and also taking into consideration of the case laws brought on record and argued by both the Counsel of the Assessee as well as by the ld. DR, we are of this considered view, that the addition could be confirmed only on sales made outside the books made to the parties which figures in the Whatsapp chat only. Therefore, CIT(A)'s action of restricting the addition made on the basis of sales made during the year under consideration outside the books of account to parties which figures in the Whatsapp chat only are justified and therefore, Assessee's appeal on this Ground of appeal is allowed.

25. Assessee's appeal on Ground No. 2 is against the addition of Rs. 26,58,600/- made on the basis of sales outside the books of account. Here again, we have considered the written submissions filed by the ld. Counsel of the Assessee and the arguments made by him during the proceedings before us. We have also considered the arguments made by the ld. DR on this point. The ld. DR argued vehemently for confirmation of addition by the CIT(A) and the entire sale proceeds made to the parties outside the books of account,

26. On the other hand, the Id. Counsel of the Assessee argued in favour of the adoption of GP ratio of such sales. We have taken into consideration Whatsapp chat and statement recorded of Mr. Satya Parkash Tiwari as well as the partners of the firm and we have also considered all other documents and evidences brought on record by the Assessing Officer as well as discussed by the Id. CIT(A) in their respective orders. We find that there is no evidence that sales made to other parties are from the same procurement and purchase of raw material shown by the Assessee in its books of account. In this regard, no such evidence has either been brought on record by the A.O. nor any findings have been given by the Id. CIT(A) in his order. Therefore, it is logical to infer that the sales made to these parties outside the books of account must be from the purchases and procurements made outside the books of account only. Accordingly, the confirmation of addition of entire amount of sales made outside the books of account to other parties by the Id. CIT(A) does not look logical or justified. It is because whatever sales of cycle parts have been made to these parties outside the books of account, must have been procured / purchased / manufactured by the Assessee firm outside the books of account only. In this case, the addition of GP ratio of 8.60% of such sales of Rs.

26,58,600/- could only be sustained along with addition of G.P. on the sales made to M/s Dhanawat to the tune of Rs.6,11,043/-.

27. Accordingly, we confirm the addition of 8.60% ( GP ratio declared by the Assessee) on total sales of Rs. 26,58,600/- + Rs. 6,11,043/- as calculated and confirmed by the Id. CIT(A). Thus, Assessee's appeal on this Ground is partly allowed.

28. In the result, Assessee's appeal is partly allowed.

**ITA No. 753/Chd/2023 (Revenue's appeal)**

29. The Revenue, in its appeal, has taken the following Revised Grounds of appeal:-

1. *Whether on facts and circumstances of the case the Ld. CIT(A) is justified in restricting the addition of Rs. 27,01,59,118/- to the extent of Rs.22,77,606/- made on account of under invoicing of bill where Sh. Satya Parkash Tiwari has accepted in his statement dated 21.10.2021 during the search that under invoicing is a usual practice of assessee and actual sale calculated after adding 30% of cash component which has been confirmed by Sh. Amarjit Singh Arneja in his statement dated 22.10.2021\_and also Shri Gurjit Singh has confirmed in his statement dated 28.11.2022 during the assessment proceedings?*
2. *Whether on facts and circumstances of the case the Ld.*

*CIT(A) was correct in deleting the addition of Rs. 26,78,81,912/- by ignoring the whatsapp chat found from the mobile of Sh. Satya Parkash Tiwari which was confronted to Sh. Satya Parkash Tiwari who accepted that the assessee was indulging in under invoicing to the extent of 30% from overall sales?*

3. *Whether on facts and circumstances of the case the Ld. CIT(A) was correct in deleting the addition of Rs. 26,78,81,912/- by ignoring the fact that during the course of assessment proceedings the whatsapp chat and statement of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh Arneja was also confronted to Sh. Gurjit Singh partner of M/s Gurdip Cycle Industries who had also agreed with the statement of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh recorded during the search proceedings who has accepted the practice of under invoicing of bills in overall sales?*
4. *The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.*

30. Revenue has filed the appeal on three grounds and the gist of which are in challenging the action of the Id. CIT(A) to restrict the addition of Rs. 27,01,59,118/- to the extent of Rs. 22,77,606/- and deleting the addition of Rs. 26,78,81,912/- . The Id. CIT(A) in his order has discussed this issue as under: -

*“5.2.6 I have carefully considered the facts of the case, submissions of the assessee and findings of the AO in the assessment order and the legal position. The undisputed fact on record is that during the course of search, certain Whatsapp*

*Nessages have been retrieved from the mobile of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh son of Sh. Nechal Singh, Partner the AO after going through the Whatsapp Messages which were confronted to Sh. Satya Parkash Tiwari during the course of search in which he had agreed that there is a 30% under invoicing viz a viz the actual sales as reflected in the books of accounts and beside that the AO has analyzed all the Whatsapp Messages of Sh. Satya Parkash Tiwari and Sh. Amarjit Singh and has concluded that there is a 30% under invoicing and beside that there is sales outside the books of accounts to the tune of Rs. 26,58,600/-. Disclosed turnover during the year was Rs. 63,03,72,208/-. The worked out undisclosed turnover due to under-invoicing as 30/70 X 63,03,72,208/- and accordingly by drawing a revised trading account AO had made an addition of Rs. 27,01,59,118/- on account of under invoicing. A further addition of Rs. 26,58,600/- was made on account of out of book sales.*

.....

*5.2.11 However, since in the above mentioned three cases, there is evidence in respect of certain transactions that there is under-invoicing to the extent of 30%, I hold that the view of the AO extrapolating these transactions to the entire turnover pertaining to these three entities during the current year is correct and therefore, confirmed to this extent. The details are as under:*

<i>S. No.</i>	<i>Name of the Party</i>	<i>Page No. of the AO's Order</i>	<i>Total Sales as per books for the AY 2021-22 (Rs.)</i>	<i>30% of disclosed sale on account of under invoicing (Rs.)</i>
<i>1.</i>	<i>Dhanawat Enterprises</i>	<i>7</i>	<i>20,36,809</i>	<i>6,11,043</i>
<i>2.</i>	<i>Ashoka Trading Co.</i>	<i>12</i>	<i>26,85,133</i>	<i>8,05,540</i>
<i>3.</i>	<i>AK Sales India</i>	<i>17</i>	<i>28,70,078</i>	<i>8,61,023</i>
	<i>Total</i>			<i>22,77,606</i>

31. The DR argued vehemently that the Id. CIT(A) has ignored the finding given by the Assessing Officer that over all sales made by the Assessee was not recorded in the books of account and approximately 30% of the total sales were outside the books of account. The DR also argued that the action of restricting addition to Rs. 22,77,606/- by taking into account sales made to only three parties namely M/s Dhanawat Enterprises, M/s Ashoka Trading Company and A.K. Sales India was not justified. He also emphasized on the fact that the extrapolation made by the Assessing Officer on the entire turnover of the Assessee company during the year should be accepted and the addition made thereon should be confirmed.

32. On the other hand, Id. Counsel for the Assessee relied heavily on the finding given by the Id. CIT(A) in the appellate order and pointed out that Whatsapp messages which are the basis for addition contain that sales which was made to only three parties pertain to the year under consideration or sales made outside the books of account. He also brought on record the finding given by the Id. CIT(A) in his order on this issue, which is as under: -

*“I have carefully examined the Whatsapp Chat and the statements recorded during Search and relied upon by the AO and it has been observed that in the case of following three companies, there are evidences of under invoicing:*

- *Dhanawat Enterprises*
- *Ashoka Trading Co.*
- *AK Sales India*

*In case of other parties, either the transactions pertain to different years or the nature of transaction is different. In some cases these are simple message having no bearing on income.*

*5.2.10 In respect of other parties, there is no document or no seized material indicating that there is under invoicing in those cases as well. Further there is no material available on record / no evidence of under invoicing with other entities. It becomes only a presumption that there must be under invoicing in those cases as well. It is a settled principle that addition/extrapolation cannot be done on presumption basis.”*

33. We have considered the discussion on this issue by the Assessing Officer in the assessment order and finding given by the Id. CIT(A) in his appeal order. We have also considered the arguments of the DR pertaining to all the three grounds of appeal filed by the Revenue and considered the written submissions filed by the Counsel of the Assessee on this issue. We find that the Id. CIT(A) has given a very categorical

finding that except three parties, i.e., M/s Dhanawat Enterprises, M/s Ashoka Trading Company and A.K. Sales India, transactions made on the basis of Whatapp chat do not pertain to the year under consideration. Therefore, CIT(A) has restricted the extrapolation in case of only three parties and restricted the addition of Rs. 27,01,59,118/- to the extent of Rs. 22,77,606/-. The ld. CIT(A) has given clear finding that sales made to other parties do not pertain to the year under consideration. Therefore, addition of Rs. 26,78,81,912/- on the basis of Whatsapp Chat found and extrapolation made thereon was to be deleted.

34. In our considered view, the findings given by the ld. CIT(A) on this issue is very logical and justified and needs no interference. Accordingly, we confirm the action of the CIT(A) in restricting extrapolation and deleting the addition of Rs. 26,78,81,912/-. Regarding legal position, the discussion made by the DR as well as by the Counsel of the Assessee have already been discussed by us in our order in ITA No. 705/Chd/2023. Accordingly, over and above the addition of Rs. 26,58,600/-, addition of Rs. 6,11,043/- pertaining to M/s Dhanawat Enterprises is also confirmed for calculating GP ratio addition as per our findings given in para 27 above.

35. In view of the findings given above, the appeal filed by the Revenue is partly allowed.

36. In the result, both the appeals are partly allowed.

Order pronounced on 23.07.2024.

**Sd/-**  
**( A.D. JAIN )**  
**Vice President**

**Sd/-**  
**(DR KRINWANT SAHAY)**  
**Accountant Member**

“rkk”

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

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

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar