IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA Nos. 3491, 3474, 3473, 3472 & 3471, 3470/MUM/2023
Assessment Years: 2014-15 to 2017-18 & 2020-21 to 2021-22

M/s Sanman Trade Impex Ltd. 1410, Maker Chamber V, Nariman Point, Mumbai-400021. **PAN NO. AADCS 2973 A** **Appellant**	**Vs.**	Asst. CIT Central Circle-4(4), Air India Building, Nariman Point, Mumbai-400021. **Respondent**

ITA Nos. 3606, 3605, 3603, 3602, 3614 & 3610, 3601/MUM/2023
Assessment Years: 2014-15 to 2018-19 & 2020-21 to 2021-22

DCIT Central Circle-4(4), Room No. 1918, Air India Building, Nariman Point, Mumbai-400021. **Appellant**	**Vs.**	M/s Sanman Trade Impex Ltd. 1410, Maker Chamber V, Nariman Point, Mumbai-400021. **PAN NO. AADCS 2973 A** **Respondent**

Assessee by	:	Mr. Rakesh Joshi
Revenue by	:	Dr. Kishor Dhule, CIT-DR

Date of Hearing	:	13/05/2024
Date of pronouncement	:	24/07/2024

ORDER

PER BENCH

The captioned appeals by the assessee and the Revenue are directed against separate orders passed by the Ld. Commissioner of Income (Appeals)-52, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2014-15 to 2018-19 and 2020-21 to 2021-22. Being common issue in disputes involved in these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First of all, we take up the appeal of the assessee and the Revenue for assessment year 2014-15. The grounds raised by the assessee in its appeal in ITA No. 3491/Mum/2023 are reproduced as under:

> *1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the assessment completed u/s.143(3) r.w. 153C of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
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> *2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in directing the assessing officer to examine therealization of exports, without considering the facts & circumstances of the case and the provisions of the Act.*
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> *3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the addition to the extent of Rs. 29,63,580/-u/s 69C of the Act, without considering the facts & circumstances of the case.*

2.1 The grounds raised by the Revenue in its appeal in ITA No. 3606/Mum/2023 are reproduced as under:

> *1. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not considering the addition of amortization on goodwill of Rs. 16,16,00,000/- to book profit for the purpose of MAT u/s 115JB of the Act, 1961."*
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> *2. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made towards disallowance of exemption claimed u/s 10AA of the Income Tax Act, 1961 of Rs.17,68,37,923/- without appreciating the fact that the survey findings had shown that the assessee has not carried out any genuine activity of software exports from SEZ,"*
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> *3. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the addition made u/s 69C to 0.5% instead of addition made by the A0 at 1% of the circular transaction without appreciating that the estimate made by the AO is very reasonable."*

3. The Ld. counsel for the assessee has also preferred additional ground vide letter dated 11.03.2024 which are reproduced as under:

> *1.1 That the CIT(A) erred on facts and in law in not appreciating that the reassessment order dated 30.03.2022 passed by the assessing officer is illegal and bad in law, being barred by limitation in terms of proviso to section 147 of the Act.*
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> *1.2 That the CIT(A) erred on facts and in law in upholding validity of reassessment proceedings, despite the same having been initiated on the basis of mere change of opinion, without any new tangible material to the possession of the assessing officer M CITCA) subsequent to completion of assessment under section 143(3) r. w.s. 153A r.w.s. 144C(1) of the Act.*
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> *1.3 That the CIT(A) erred on facts and in law in not testing/examining the validity of the reopening strictly on the basis of the reasons recorded, and instead, referring to/relying upon finding not mentioned therein.*
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> *1.4 That the CIT(A) erred on facts and in law in not appreciating that reassessment is barred by limitation in terms of section 149 of the Act,*

since reasons recorded (that too, without copy of Sanction obtained under section 151) were communicated much after the expiry of limitation period as prescribed in that section.

1.5 That the CIT(A) erred on facts and in law in not appreciating that the reassessment order was without jurisdiction, illegal and bad in law, since sanction obtained under section 151 was not provided to the appellant, much less within limitation prescribed in section 149 of the Act.

1.6 That the CIT(A) erred on facts and in law in not appreciating that the reassessment order was without jurisdiction, illegal and bad in law, since sanction obtained under section 151 was without application of mind and without appreciating the facts of the case.

4. We have heard rival submission of the parties on the issue of additional grounds. The additional ground raised being purely legal in nature and not requiring investigation of the fresh facts and therefore, following the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. 229 ITR 283 (SC),** these grounds are admitted for adjudication.

5. Briefly stated facts of the case are that the assessee was stated to be engaged in trading of chemicals, export of software products etc. For the year under consideration, the assessee filed return of income on 21.10.2014 declaring total income at Rs.20,83,060/-. Subsequently, a search action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted in the case of the assessee in September, 2015 and consequent search assessment was completed on 29.12.2017, wherein the total income of the assessee was assessed at Rs.2,80,97,990/-.

5.1 Subsequently, a survey action u/s 133A of the Act was carried out in the case of the assessee on 23.03.2021 on its office premises and premises of Shri Nitin Kumar Didwania, who is promoter and director of the assessee group. According to the Assessing Officer during the course of the survey, the assessee was found engaged in evasion of taxes by creation of goodwill as a result of amalgamation of another company with the assessee and bogus claim of deduction u/s 10AA of the Act by way of export of software products. In view of the information, the assessment for the year under consideration was reopened by way of issue of notice u/s 148 of the Act dated 31.03.2021 after recording reasons and obtaining necessary approval. In response to the notice u/s 148 of the Act, the assessee filed return of income on 19.04.2021 declaring total income at Rs.20,98,970/-. Thereafter statutory notices were issued and reassessment proceedings were commenced. In the reassessment proceedings, the Assessing Officer made addition of Rs.16,16,00,000/- for disallowance of amortization expenses in respect of goodwill while computing total income under regular provisions of the Act , disallowance of exemption claimed u/s 10AA of the Act amounting to Rs.17,68,37,923/- and undisclosed expenditure u/s 69C of the Act amounting to Rs.59,27,16,162/-. On further appeal, the Ld. CIT(A) deleted the disallowance of amortization of goodwill expenses. The Ld. CIT(A) also deleted the

disallowance of exemption claimed u/s 10AA of the Act. Regarding the disallowance u/s 69C of the Act, the Ld. CIT(A) restricted the disallowance to the extent of Rs.29,63,580/-.

6. Aggrieved, the assessee and Revenue are before the Income-tax Appellate Tribunal (in short 'the Tribunal') raising the respective grounds and additional ground as reproduced above.

7. Before us, the Ld. counsel for the assessee has filed a Paper Book in two volumes (Paper Book Page No. 1 to 261 and 262 to 285).

8. In ground No. 1, the assessee has inadvertently referred to the assessment completed u/s 143(3) r.w.s. 153C of the Act whereas the assessment has been completed u/s 147 of the Act. The contention of the assessee to rectify the ground to that extent is accepted. The issues raised in ground No. 1 are covered by the additional grounds raised by the assessee. Accordingly, the additional grounds are taken for adjudication as under.

8.1 Supporting the additional ground No. 1.1, the Ld. counsel for the assessee submitted that as per proviso to section 147 of the Act, assessment cannot be reopened beyond four years from the end of the relevant assessment year, unless there is a failure on the part of the assessee to disclose all the material facts fully and truly which

are necessary for the assessment. The Ld. counsel referred to the copy of the reasons recorded, which are available on Paper Book pages 1 to 3 and submitted that in the reasons recorded there is no allegation of failure on the part of the assessee, hence, the assessment could not be reopened beyond four years from the end of relevant assessment year. The Ld. counsel for the assessee relied on the following decisions:

- ***New Delhi Television Ltd. Vs. DCIT (2020) (271 Taxman 1)(SC)***
- ***Sound Casting(P) Ltd v. DCIT (2012) 250 CTR 119 (Bom.)***
- ***Tao Publishing (P) Ltd..v. Dy. CIT (2015) 370 ITR 135 (Bom.)***
- ***Tata Business support Ser. Ltd. v. DCIT 232 Taxman 702 (Bom)***
- ***Everest Kanto Cylinder Ltd. Vs UOI(159 Taxmann.com 51)(Bom)***
- ***Navkar Share and Stock Brokers P. Ltd v. ACIT (393 ITR 362) (Guj)***

8.2 This objection was raised by the assessee before the Ld. CIT(A) also however, the Ld. CIT(A) rejected the contention of the assessee following the decision of the Hon'ble Jurisdictional High Court in the case of 3i Infotech Ltd. v. ACIT (2010) 329 ITR 257 (Bom HC), in view of fresh information gathered in the form of survey report, statement of the employees and other evidence pursuant to the survey. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"5.1. I have perused the reasons for reopening produced by the appellant. It is seen that the AO has received information from the Investigation Wing regarding a survey conducted on Veritas Group on 23.03.2021. The AO has referred to new revelations emerging from the survey, the bogus claim u/s 10AA. Besides, the AO has formed a view that the appellant has used an*

instrument of amalgamation for evasion of tax by creation of goodwill and claim of amortization expenses. A perusal of the reasons recorded shows that the AO has coherently recorded the reasons and formed his independent view. Hence, the contention of the appellant that this amounts to borrowed satisfaction is REJECTED.

5.2. One of the contentions of the appellant is that the reopening beyond 4 years was not correct. Explanation 1 to Sec. 147 of the Act states as under:-

Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

5.3. Useful guidance is received from the decision by Hon'ble Jurisdictional HC in the case of 329 ITR 257, 3i Infotech Ltd vs ACIT (Bom HC) 2010, wherein it was held as under:-

> *"The Explanation 1 to section 147 stipulates that the production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence, have been discovered by the Assessing Officer will not necessarily amount to a disclosure within the meaning of the first proviso. In other words, an assessee cannot rest content merely with the production of account books or other evidences during the course of the assessment proceedings and challenge the reopening of the assessment on the ground that if the Assessing Officer was to initiate a line of enquiry, he could, with due diligence, have arrived at the material evidence. The primary obligation to disclose is on the assessee and the burden of making a full and true disclosure of material facts does not shift to the Assessing Officer. The assessee has to disclose fully and truly all material facts. Producing voluminous records before the Assessing Officer does not absolve the assessee of the obligation to disclose material facts and the assessee cannot be heard to say that if the Assessing Officer would have conducted a further enquiry, he would have come into possession of material evidence with the exercise of due diligence. An assessee cannot throw reams of paper at the Assessing Officer and rest content in the belief that the Officer better beware or ignore the hidden crevices in the pointed material at his own peril."*

5.4. In the instant case, there is undisputedly fresh information in the form of survey report, statement of employees and other evidences/findings pursuant to the

5.5. Having considered the entire facts and judicial position on the issue, I am of the view that the assessee has not disclosed fully and truly all material facts necessary for the assessment and there has been a failure on

the part of the assessee. The reasons recorded by the AO make this clear. Hence, this part of the argument of the appellant is REJECTED."

8.3 We have heard rival submission of the parties and perused the relevant material on record. The Ld. counsel for the assessee invoked proviso to section 147 of the Act wherein it is prescribed that no assessment can be reopened beyond the period of four years from the end of the relevant assessment year unless there is a failure on the part of the assessee in disclosing the material facts necessary before the assessment fully and truly. In the reasons recorded, the Assessing Officer has referred to information in relation to two items, the first item is regarding claim of amortization expenses in relation to 'goodwill', the second item is exemption claimed u/s 10AA of the Act. The Assessing Officer has referred to the survey carried out in the case of the assessee and statement of the employees of the assessee/group concern wherein the genuineness of the claim of the exemption u/s 10AA was doubted. The said information raising doubts on the genuineness of the exemption claimed u/s 10AA of the Act on export of the software product came to light for the first time during the course of the survey and this fact being material to the exemption u/s 10AA of the Act but was not disclosed during the assessment proceedings ,therefore, we are of the opinion that certainly there is failure on the part of the assessee in disclosing the material facts qua the issue of exemption u/s 10AA of the Act. Merely filing of the audit report,

which is statutory requirement and producing books of accounts, the assessee cannot absorbed itself held by the Hon'ble Bombay High Court in the case of **3i Infotech Ltd. (supra)** which has been reproduced by the Ld. CIT(A) in para 5.3 extracted above. The decisions relied upon by the Ld. counsel for the assessee are on its own facts and distinguishable. The additional ground No. 1.1 of the appeal of the assessee is accordingly dismissed.

9. In additional ground No. 1.2, the assessee has challenged reassessment proceedings initiated on the basis of mere 'change of opinion' without being any tangible material in possession of the Assessing Officer subsequent to completion of the regular assessment. The Ld. CIT(A) has rejected this objection of the assessee observing as under:

> *"5.6. The Next argument of the appellant is that there was a change of opinion and that there was no fresh tangible material. Having perused the paper book filed by the appellant, the appellant has not been able to adequately explain that the issue of goodwill was satisfactorily explained in a true and complete manner during the original proceedings. In any case, the AO has been in receipt of fresh tangible material from the Investigation Wing. Hence, I am unable to uphold the view of the appellant that this tantamount to change of opinion. This view of mine also finds support of the decision of Hon'ble Kerala High Court in Innovative Foods Ltd. 409 ITR 415.*
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> *5.7. As observed by Hon'ble Supreme Court, in the case of Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316/291 ITR 500 (SC), "At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief".*
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> *5.8. Guidance is also drawn from the decision of Hon'ble Apex Court in case of DCIT vs MR Shah Logistics P Ltd (arising out of Special Leave to Appeal (C) No. 22921/2019 dated 28.03.2022):*

"21. In Phool Chand Bajrang Lal & Ors. vs. Income Tax Officer &Ors after reviewing the previous case law, and concluding that a valid reopening is one, preceded by specific, reliable and relevant information, and that the sufficiency of such reasons is not subject to judicial review – the only caveat being that the court can examine the record, if such material existed.

23. It is therefore, clear that the basis for a valid re-opening of assessment should be availability of tangible material, which can lead the AO to scrutinize the returns for the previous assessment year in question, to determine, whether a notice under Section 147 is called for.

29. Another aspect which should not be lost sight of is that the information or "tangible material" which the assessing officer comes by enabling re-opening of an assessment, means that the entire assessment (for the concerned year) is at large; the revenue would then get to examine the returns for the previous year, on a clean slate - as it were. Therefore, to hold- as the High Court did, in this case, that since the assessee may have a reasonable explanation, is not a ground for quashing a notice under Section 147. As long as there is objective tangible material in the form of documents, relevant to the issue) the sufficiency of that material cannot dictate the validity of the notice."

5.8.1. Further, in the case of P.V.S. Beedies (P.) Ltd. (237 ITR 13), the Apex Court held that even the audit party can point out a fact, which has been over looked by the TO in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. The logical following of this judgement is that the AO is entitled to examine the material independently and form his own opinion, which is what has been done by the AO here. Similar is the case with [2021] 438 ITR 657 (Allahabad), Suresh Chand Gupta vs PCIT. Hence, this part of argument of the appellant stands REJECTED.

5.9. In 411 ITR 321, Avirat Star Homes Venture (P.) Ltd vs ITO, (Bom HC), the Hon'ble Jurisdictional HC held as under in para 10: "In our opinion, the information supplied by the investigation wing to the Assessing Officer thus formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Therefore, it cannot be stated that the Assessing Officer did not have reason to believe that income chargeable to tax had escaped assessment."

5.10. It is worthwhile to note the decision of Hon'ble Bombay High Court in the case of Chhagan Chandrakant Bhujbal [440 ITR 359] wherein the Hon'ble Bombay High Court has upheld the action of the AO, the notice u/s

148 was issued within 5 hours of receipt of information. In the present case, it is evident that the AO has linked up the information and drawn his independent satisfaction.

5.11. In the case of Abhisar Build Well Pvt, Ltd., Civil appeal No. 6580 of 2021 dt. 24.04.2023, the Hon'ble Supreme Court held as follows:-

i. that in case of search u/s 132 or requisition u/s 132A, the AO assumes the jurisdiction for block assessment u/s 153A,
ii. all pending assessments/ reassessments shall stand abated,
iii. in case any incriminating material is found/unearthed, even, In case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns and,
iv. in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search u/s 132 or requisition u/s 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers u/s 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned u/s 147/148 of the act and those powers are saved."

5.12. As per the decision of Hon'ble Supreme Court in Abhisar Build Well Pvt. Ltd. (supra), "the completed/unabated assessments can be re-opened by the AO in exercise of powers u/s 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned u/s 147/148 of the act and those powers are saved." Thus, there is no bar in the AO resorting to proceedings u/s 147, as long as the conditions mentioned therein are fulfilled."

9.1 Before us, the Ld. counsel for the assessee referred to Paper Book Pages 275 to 278 and submitted that in the course of regular assessment specific questions were raised under the notice issued u/s 142(1) of the Act dated 08.02.2017, wherein both the issues were raised and in response to which, the assessee had furnished desired details, a copy of which is available on Paper Book Pages

279 to 280. According to the Ld. counsel for the assessee, in the reasons recorded also the Assessing Officer has mentioned that the deduction u/s 10AA of the Act has been addressed during prior assessment proceedings. Further, according to the Ld. counsel for the assessee, no survey was conducted at the unit at 'Surat' in respect of which exemption has been claimed and the Assessing Officer relied on the statement made during survey of the unit, which is situated at 'Nagpur'. According to the Ld. counsel therefore, reassessment has been initiated merely on the 'change of opinion' which was already framed in regular assessment proceedings. The Ld. counsel for assessee relied on following decisions:

- ***Jetair (P) Ltd. Vs DCIT (148 Taxmann.com 185)(Bom)***
- ***German Remdeis Ltd vs. DCIT (2006) 287 ITR 494 (Bom)***
- ***Citius Tech Healthcare Tech. P Ltd. Vs DCIT (155 Taxmann.com 334) (Bom)***
- ***Tirupati Foam Ltd. v. Dy. CIT (2016) 380 ITR 493 (Guj.) (HC)***
- ***Gujarat Eco Textile Park Ltd. v.ACIT (2015) 372 ITR 584 (Guj.) (HC)***
- ***Nirmal Bang Securities (P) Ltd. v. ACIT. (2016) 382 ITR 93 (Bom.) Pandesara Infrastructure Ltd v. Dy. CIT (2019) 263 Taxman 366 (Guj.) (HC)***

9.2 On the contrary, the Ld. Departmental Representative (DR) referred to the survey proceedings and the information obtained therein and submitted that the basis of the reasons recorded is the fresh information obtained during the course of the survey which constitute at tangible material. Further, the Ld. DR submitted that

the employees of the group company specifically stated that no development of the software product was carried out at the SEZ and only packaging was done. This admission was with reference to the assessee and its group company and therefore, it constitutes a tangible material and hence contention of the Ld. counsel for the assessee the reopening has been initiated merely on the basis of the change of the opinion is liable to be rejected.

9.3 We have heard rival submission of the parties and perused the relevant material on record. It is settled principle to the law as held by the Hon'ble Supreme Court in CIT vs Kelviantor India Ltd. 320 ITR 561 (SC) that the reassessment proceedings cannot be initiated on the basis of mere 'change of the opinion' by the Assessing Officer on the same set of the facts and circumstances. But in the instant case, we find that in the course of the survey at the premises of the assessee as well as its group concern, adverse information was gathered relating to the issue of amortization expenses of goodwill as well as exemption claimed on export of software. During the course of the survey on the employees of group concern Shri Gajananad Thakerey admitted that in the SEZ units software CDs were merely packed, which were supplied from the Bombay office. The entire claim of exemption u/s 10AA of the Act is available for development of the software products from the SEZ unit but in view of statement, the genuineness of the entire claim of the assessee

and its group companies was not free from doubts. In the case of Raymond wollen Mills 236 ITR 34(SC), Hon'ble supreme Court has held that sufficiency or correctness of material/ information is not to be seen at the stage of recording reasons. The relevant finding of Hon'ble Supreme Court is reproduced as under:

> *"3. In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."*

9.4 Therefore, in view of the tangible material/information gathered during survey action on the premises of the assessee as well group concerns, the Assessing Officer has validly reopened the assessment. In our opinion, this is not a case of mere change of

opinion on same set of facts and circumstances of the case in prior assessments but it is based on the subsequent tangible information and hence, the decisions relied upon by the Ld. counsel for the assessee are distinguishable. The ground No. 1.2 of the appeal of the assessee is accordingly dismissed.

10. Referring to additional ground No. 1.3 the Ld. counsel for the assessee submitted that the Ld. CIT(A) should have examined the validity of the reassessment on the basis of reasons recorded and not relying upon the finding not mentioned thereon. We have already referred to the finding of the Ld. CIT(A) in respect of validity of the reopening. In our opinion, the Ld. CIT(A) has restricted to the tangible material gathered during the course of the survey while rejecting the grounds challenging validity of the reopening. We do not finding any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we reject the contention raised by the Ld. counsel for the assessee. The ground No. 1.3 of the appeal is accordingly dismissed.

11. The ground Nos. 1.4 and 1.5 appeal were not pressed by the Ld. counsel for the assessee and therefore, same are dismissed as infructuous.

12. In ground No. 1.6, the assessee has challenged the reassessment proceedings on the ground of invalid sanction

obtained u/s 151 of the Act , which is issued by the Ld. Pr. CIT Central, Mumbai-3, a copy of which is available on Paper Book Pages 263 to 266. The Ld. counsel for the assessee referred to page 263 of the Paper Book and submitted that the relevant column for the income escaping assessment was left blank and no quantification was made in that column, whereas in the reasons recorded, the amount of income escaped recorded is Rs.33,84,37,923/-, break up of which has been discussed in the reasons recorded. According to the Ld. Counsel, this clearly shows that Ld. PCIT has not read the proposal form at all. Further, the Ld. counsel submitted that along with proposal, a copy of the reasons was forwarded to the PCIT, seventh paragraph of which reads as under:

> *"The case is within the four years from the end of assessment year under consideration, in compliance to the Proviso to Sec. 151(2) of the Income Tax Act 1961, permission of the Joint/Addl. Commissioner of Income tax, Central Range- 5, Mumbai is hereby sought to re-open the case of the assessee for A. Y. 2014-15 by issue of notice u/s. 148 of the Income Tax Act 1961."*

12.1 The Ld. counsel for the assessee referred to above paragraph and submitted that the Ld. PCIT has granted the approval mechanically without reading above paragraph. The Ld. counsel for the assessee relied on the decision of the Hon'ble Bombay High Court in the case of **Sharvah Multitrade Company (P.) Ltd. v. IT 134 Taxmann.com 134 (Bombay)**. He also relied on the decision of

the Hon'ble Bombay High Court in the case of **Vodafone India Ltd. v. DCIT Writ Petition No. 2108 of 2023**.

12.2 On the contrary, the Ld. DR submitted that in the column for approval u/s 151 of the Act, it is clearly mentioned that income escaped was more than Rs. 1 lakh and in the relevant column it has been affirmed by way of mentioning 'yes', therefore, leaving the subsequent column as blank, was not a material issue which could invalidate the approval u/s 151 of the Act. According to him, the Ld. PCIT has seen the substance of reasons recorded in the light of the object and purpose for which the legislature has inserted the provisions for reopening of the assessment. Regarding the paragraph 7 of the reasons recorded, the Ld. DR submitted that Ld. PCIT was authorized to grant approval in this case and therefore, after due application of the mind, he has granted approval for reopening of the assessment and therefore, contention of the assessee are liable to be rejected.

12.3 We have heard rival submission of the parties and perused the relevant material on record. In our opinion, the contention raised by the Ld. counsel for the assessee that income escaping amount was incorrectly mentioned in proforma for approval u/s 151 of the Act, are baseless. We do not find any infirmity in the approval granted

by the ld PCIT. The relevant part of the proforma of approval u/s 151 is reproduced as under:

"

Approving Authority	*PCIT/CIT*
Category	*Assessment*
Income Escaped Amount >= 1 Lakh	*Yes*
Income Escaping Assessment (Rs.)	

"

12.4 On perusal of the above proforma, it is evident that already income escaped amount was stated to be more than Rs.1 lakh , therefore, it is not significant to mention the amount of income escaping assessment in the subsequent row. The amount has already been specifically mentioned in reasons recorded and therefore, it was not a material fact on the basis of which the entire approval could be invalidated. This contention of the Ld. counsel for the assessee is accordingly rejected. Regarding, the second contention of the Ld. counsel that in the reasons recorded it was stated that reasons was to be approved by the Joint/Additional Commissioner of Income-tax. However, we find that the Ld. PCIT after following the due procedure of the law and under the authority granted in relevant section, has granted approval. We do not find any infirmity in the approval granted by the Ld. PCIT and accordingly the objections of the assessee are rejected.

13. The ground No. 2 of the appeal was not pressed by the Ld. counsel for the assessee and therefore, same is dismissed as infructuous.

14. The ground No. 3 of the appeal of the assessee is connected with the ground No. 3 of the appeal of the Revenue and therefore, same would be adjudicated while dealing with ground no. 3 of the appeal of the Revenue.

15. Now, we take up the appeal of the Revenue. In Ground No. 1, the Revenue is agitated for deletion of addition of amortization expenses on goodwill amounting to Rs.16,16,00,000/- for computing book profit for the purpose of minimum alternative tax (MAT) u/s 115JB of the Act.

16. Brief facts qua the issue in dispute are that M/s Hazel Metals and Minerals Pvt. Ltd. (in short 'Hazel Matels') was amalgamated with the assessee company on appointed date 01.04.2012. After amalgamation M/s Hazel Metals was dissolved and all the assets and liabilities of M/s Hazel Metals was transferred to the assessee company. The shareholders of M/s Hazel Metals were issued 13 equity shares of the assessee company against every 100 shares held by them in M/s Hazel Metals. As a result of this amalgamation, the assessee issued 3,90,000 shares having face value of Rs.39,00,000/- to the shareholders of M/s Hazel Metals.

The assessee company created security premium (without actual cash flow) of Rs.84,34,72,537/- in the process of amalgamation and goodwill of Rs.80,80,00,000/- was created in the books of account of the assessee. In the books of accounts, the assessee amortized said goodwill over a period of 5 years but for the purpose of computation of the income under the provisions of the Act, said amortization was added back to the profit as per books of account. The exercise of creation of the goodwill in the books of accounts of the assessee and its valuation was held to be without any basis by the Assessing Officer. According to the Assessing Officer, there was no actual cash flow and only corresponding book entry in the liability side in the name of reserve was created to match the balance sheet. The Assessing Officer in para 3.2.5 of the impugned assessment order held that amortization of the goodwill was not allowable for the purpose of the computation of the books profit. The relevant finding of the Assessing Officer is reproduced as under:

> *"3.2.5 The goodwill was created in asset side and matchedwith reserve in liability side. These entries were created by passing the bookentry. There was no actual transfer of assets and no actual cash flow for thisclaimed asset of goodwill. There was no consideration of any kind paid by M/s Sanman Trade Impex Ltd to M/s Hazel Metals and Minerals Pvt Ltd. After creation of the goodwillthe same were amortized which was claimed as expenses in Profit & Lossaccount by debiting the same. By claiming the same as expense assessee hasreduced its book profit and thus reduced its tax liability under MAT. Thisamortization of goodwill is not allowable for purpose of computation of bookprofit which the assessee has claimed to reduce its taxable profit."*

16.1 Further, after detailed discussion, the Assessing Officer added this amount of the goodwill amortization expenses amounting to Rs.16,16,00,000/- to the income of the assessee for the purpose of the computation of the regular income. The relevant finding of the Assessing Officer is reproduced as under:

> *"3.2.11 Thus from the above exhaustive discussionon the basis of facts and legal position, it is clear that, the amortization claimed by the assessee on goodwill after the scheme of amalgamation is incorrect and inadmissible under the Income tax provisions. The assessee failed to explain the discrepancies in the projected values taken for revenue and EBITDA from thereal values have. With such huge difference in real value and projected value, the valuation itself is not reliable. Merevaluation by an independent professional is not sufficient. The valuation shouldbe supported by actual figures. Moreover, no assets have been considered in thevaluation report. Therefore, an amount of amortized goodwill amounting to Rs. 16,16,00,000/-is added back to the Income of the assessee."*

16.2 However, while final computation of the income to the assessment order, the Assessing Officer only computed total income under the regular provisions of the Act and no computation for book profit was made by the Assessing Officer. The relevant computation made in assessment order is reproduced as under:

> *"6. In view of the above, the total income of the assessee is recomputed as under:*

Particulars	***Amount (Rs.)***
Total income Assessed u/s 143 r.w.s. 153A vide order dated 29.12.2017	*28097990*
Add: Disallowance of expenses related to amortization of Goodwill (as discussed above)	*16,16,00,000*
Add: Disallowance of exemption claimed u/s 10AA of the (as discussed above)	*17,68,37,923*
Add: Undisclosed expenditure u/s 69C (as discussed above)	*59,27,16,162*
Assessed Total Income	***95,92,52,075***

17. Before the Ld. CIT(A), the assessee only challenged addition made for amount of goodwill amortization expenses of Rs.16,16,00,000/- which was added under the regular provisions of the Act. Though, the Ld. CIT(A) has not given any finding on merit of the issue whether the amortization of the goodwill is liable in the hands of the assessee but the Ld. CIT(A) observed that assessee had not made any claim for amortization of the goodwill expenses under the normal provisions of the Act , therefore, he did not adjudicate the issue on merit as addition of the Assessing Officer itself was held to be infructuous in absence of any claim by the assessee for deduction of the amortization expenses under the regular provisions of the Act. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"8.10. I find that the appellant has made an alternative claim that amortization on goodwill was not claimed as per normal provisions of the Act. I have perused the computation of income filed by the appellant in its paper book. This claim of the appellant has been verified by the undersigned and is found to be correct.*

AY	*Disallowance made by AO on account of depreciation of goodwill*	*Depreciation claimed by the appellant in respect of all assets in the computation of income*
2014-15	*16,16,00,000*	*7,50,677*
2015-16	*16,16,00,000*	*4,58,851*
2016-17	*16,16,00,000*	*15,80,249*
2017-18	*16,16,00,000*	*8,57,369*

> *Thus, in my view, there is no need to adjudicate the issue on merit. Since, it stands established that the very basis of disallowance does not exist, the ground is treated as allowed."*

18. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has not given any finding on merit of the addition and deleted the addition merely for the reason that said amortization of the goodwill expenses amounting to Rs.16,16,00,000/- was not claimed by the assessee for the purpose of normal provisions of the Act. We further note that though the Assessing Officer in the impugned order referred that amortization expenses claimed by the assessee for the purpose of the MAT was not allowable, however in the final computation he did not make any such addition. Before us, the Ld. DR failed to explain any rectification carried out subsequently by the Assessing Officer to the computation of income under assessment order. In any case, if any rectification has been carried out then that will be a separate matter of litigation. But as far as present proceedings are concerned, in absence of any addition made by the AO for amortization of the goodwill expenses for the purpose of the computation of the book profit u/s 115JB of the Act, the ground raised by the Revenue itself becomes infructuous at this stage. Accordingly, the ground No. 1 of the appeal of the Revenue is dismissed.

19. In Ground No. 2, the Revenue is agitated with the disallowance of exemption claimed by the assessee u/s 10AA of the

Act amounting to Rs.17,68,37,923/-, which has been deleted by the Ld. CIT(A).

19.1 Briefly stated facts qua the issue in dispute are that in view of the statement of Shri Gajanan Thakarey (Office Assistant of M/s Hazel Mercantile Ltd.) during the course of survey at Nagpur SEZ, wherein he stated that software CDs were only copied, packed and dispatched from Nagpur office and verification in assessment proceedings, the Ld. Assessing Officer concluded that exemption claimed u/s 10AA was not genuine. The CIT(A) has summarised the finding of the AO as under:

> *"9.3. Survey action concluded with following findings:*
>
> *(a) Software was sold (exported) to merely one or two parties in entire year.*
>
> *(b) Software was sold (exported) only on 3 to 5 days in the month of March in the entire year.*
>
> *(c) No evidence or documents were available related to marketing or communications with the buyers.*
>
> *(d) Software was sold (exported) in very high quantum to one party in a year was abruptly stopped. So, assessee was asked whether he has followed up with these buyers as to why they have stopped buying software suddenly. That too when exports were so high. Assessee could not explain the same.*
>
> *(e) Software was exported to those parties from whom chemicals were imported, which was very unusual.*
>
> *(f) No evidence was found related to after sale services regarding the software exported to the customers.*
>
> *(g) There was no major intangible asset in the books of assessee and further, the cost incurred for development of software was not available.*

(h) The profit derived from the software export was 92% to 97 %, which is very unusual.

(i) There were only 9 to 12 employees employed at SEZ Units including office boys and support staff. This is highly unusual that with such low employee strength, the assessee exported software to the tune of around Rs 18.41crores in the relevant year.

(j) Shri Gajanan Thakare, an Employee at Nagpur SEZ also stated in his statement dated 24.03.2021 that original software CDs were brought from Mumbai Office and, merely copy and packaging were done at Nagpur Office.

(k) It is also seen that the sale price of software is USD 1000 to USD 1400 per unit which also appears very unusual, when the product is new and has not been proven in the market of UAE."

19.1.1 According to the Assessing Officer, the quantum of profit earned in software development was unrealistic in view of few numbers of employees employed by the assessee. The Assessing Officer also rejected the argument of the assessee that once the eligibility of deduction u/s 10A or 10B or 10AA has been accepted in the initial assessment year, then, it cannot be withdrawn in subsequent assessment years. In this regard the Ld. Assessing Officer relied on the decision of the Hon'ble Supreme Court in the case of DCIT v. ACE Multi Axis Systems Ltd. reported in (2017) 88 Taxmann.com 69. The Ld. Assessing Officer also rejected other documentary evidence submitted by the assessee supporting the export of software including customs documentations, letter from the specified officer of the SEZ etc. On further appeal, the Ld. CIT(A) deleted the addition observing as under:

"Decision:

11. I have considered the facts of the case and submission of the appellant. Sh. Mayank Hasmukh Rai Parekh, the person who looks after the IT infrastructure of the company has stated as under in response to question No. 60:-

> *"Q.60 Please provide the details of software product developed and exported from M/s Sanman Trade Impex Pvt Ltd Surat, SEZ in brief. Please provide the details of product name and distributors/purchasers name.*
>
> *Ans: Sir, the product name exported from Sanman Trade Impex Pvt Ltd, Surat SEZ are "ACTIVCRM" and "MP CRM WHITE LABEL (Computer Softwares). The distributors/purchases name are M/s Aureole Trading LLC from FY 13-14 to FY 16-17. M/s Dinowic Pte Ltd for FY 18-19 and M/s Mckenzie Inter Trade Pte Ltd for FY 18-19, FY 19-20 and M/s Merit Union Ltd for FY 1920."*

11.1. He has justified the pricing in reply to question No. 65. As regards cost of development, sales, etc. he has stated that he was not aware as it was handled by different people.

11.2. The AO has referred to the statement of Sh. Gajanan Thakare, employee of Nagpur SEZ to buttress his stand that only copy and packaging was done at Nagpur office. However, I find that Sh. Gajanan Thakare is an employee of M/s Hazel Mercantile Ltd. and not that of the appellant. More importantly, the appellant's unit is located in Surat SEZ (AY 2014-15 to 2017-18) and not in Nagpur SEZ. The Form No. 56F issued by the Chartered Accountant confirms this. Thus, in my view, the statement of Sh. Gajanan Thakare recorded at Nagpur is not relevant for the issue at hand. The statement of Sh. Mayank Hasmukh Rai Parekh is more relevant to the facts of the case.

11.3. The AO has stated that the appellant has not produced details in its own possession and that the letter from the specified officer of the SEZ cannot be the conclusive evidence. In this regard, I find that the appellant has produced the copy of export invoices, bill of lading, shipping bill and bank realisation certificate. As regards after sale support service, Sh. Mayank Hasmukh Rai Parekh has stated that the support to end customer is provided by the distributor. Thus, it cannot be stated that the appellant has not furnished any evidences. No adverse finding has been recorded in respect of actual exports or its realisation. No adverse finding of customs or SEZ authorities has been brought out.

11.4. As regards the high profitability of the appellant, in the case of CIT vs Vesesh Infotechnics Ltd, 210 Taxman 522, (DoJ: 01.08.2012), the Hon'ble Karnataka HC has held that it is perfectly possible for a software enterprise to establish a new unit at an investment of Rs.2.06 lakhs, make a sale of

Rs.72.32 lakhs in 18 days and have profitability of 94.8%. The Hon'ble HC has held that Revenue could not doubt the claim of the assessee.

11.5. In the case of ACIT vs Grasim Industries Ltd in ITA No. 1519/Mum/2002 for AY 1992-93 dated 17.11.2006, (https://indiankanoon.org/doc/8742421), the Hon'ble ITAT held as follows: "The task of the Tribunal would, therefore, be to analyse the materials relied on by both the sides and evaluate the relative merits and reliability. It is sometimes in the nature of a comparative exercise to measure the degree of reliability between the materials relied on by the revenue and the materials relied on by the assessee. This degree of reliability seems to be the crucial test in the present case in applying the principles of preponderance of probability. We think that this is the way to proceed to find a balance of convenience on which alone it might be possible for us to come to a fair decision". Eventually, the Hon'ble Tribunal held that balance of convenience was apparently tilting in favour of the assessee and ruled as such.

11.6. Applying the above ratio, given the set of facts before me, I am of the view that balance of convenience lies in favour of the appellant. Accordingly, the AO is directed to grant deduction u/s 10AA to the appellant. However, the Form No. 56F for AY 2016-17, shows the qualification by the auditor that the deduction is subject to realisation of export sales of undertaking during the prescribed time limit. The AO is directed to examine this factual aspect wherever the Form 56F has similar qualifications and allow the deduction u/s 10AA in respect of export proceeds realised within the prescribed time limit."

19.2 Before us, the Ld. DR relied on the order of the Assessing Officer and submitted that assessee failed to justify development of software in its SEZ unit. He further submitted that the parties to whom software has been exported were engaged in the business of chemicals and infrastructure project and those were its regular customer of the chemicals. The purchase parties have got changed from year to year and the assessee has not filed any evidence to support that the software developed was patented. According to him, onus was on the assessee to justify its export of software and

in view of failure on the part of the assessee, the Assessing Officer is justified in disallowing the claim of exemption u/s 10AA of the Act.

19.3 We have heard rival submission of the parties and perused the relevant material on record. We find that identical issue of disallowance of exemption u/s 10AA of the Act has been made by the Assessing Officer in another related concern of the assessee in ITA No. 3478/M/2023 in the case of M/s Veritas (India) Ltd. for assessment year 2021-22, on the basis of the very same survey finding at Nagpur SEZ. The relevant finding of Tribunal (supra) is reproduced as under:

> *"10. With regard to the deduction allowed u/s 10AA of the Act by Ld CIT(A), we notice that the assessing officer has denied the claim only on the reasoning given by survey officials, which can, at the most, be termed as suspicions and surmises. We notice that the assessee has furnished all the relevant documents in support of export of software. As observed by Ld CIT(A), either customs or SEZ did not suspect the documents furnished by the assessee. We also notice that the AO did not bring any material on record to disprove the documents furnished by the assessee in support of export of software. We notice that the assessee has exported two standard softwares and hence declared high profits. The Ld CIT(A) has taken support of the decision rendered by Hon'ble Karnatka High Court and held that the high profit declared by the assessee is justified. There is no material available with the AO to suspect the sales price mentioned in the sales bills.*
>
> *11. We also noticed that the assessee's claim is related to 9th year. In the preceding 8 years, the deduction u/s 10AA has been allowed. We notice that the reliance of the AO on the decision rendered by Hon'ble Supreme Court in the case of ACE Multi Axis Systems Ltd (supra) is misplaced. In the case before the Hon'ble Supreme Court, the assessee claimed deduction u/s 80IB of the Act. The said deduction was available to Small Scale Industries (SSI) and the assessee was a SSI in the earlier years. Later, it ceased to be a SSI, but continued to claim deduction us 80IB of the Act. Under these set of facts, the Hon'ble Supreme Court held that the deduction shall be allowed only to SSI units and further, if the assessee ceases to be a SSI unit, then it will not be eligible for deduction, even if the same was allowed in the earlier*

years when it was a SSI unit.Thus, there is violation of one of the conditions prescribed for availing deduction u/s 80IB of the Act, which is not the case here.

12. In view of foregoing discussions, we are of the view that the Ld CIT(A) was justified in allowing the claim for deduction u/s 10AA of the Act."

19.3.1 Since, the issue in dispute in the instant case is identical to the issue of export of software products from SEZ in the case of M/s Veritas (India) Ltd. (supra), therefore, following the finding of the Tribunal (supra), we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 2 of the appeal of the Revenue is accordingly dismissed.

20. The ground No. 3 of the appeal of the Revenue and ground No. 3 of the appeal of the assessee are inter-connected. The brief facts qua the issue in dispute are that the Assessing Officer made addition for commission charges at the rate of one percent for bogus circular purchase and sale transactions obtained for rasing turnover for availing bank credit. The Assessing Officer has given detailed finding in para 5.1 of the impugned assessment order, wherein he has stated that assessee and other entities of the group including M/s Hazel Metals , M/s Aspen International Pvt. Ltd. and M/s Veritas (India) Ltd carried out circular trading with M/s Shatranj Trading Pvt. Ltd.

20.1 On further appeal, the Ld. CIT(A) after considering submission of the assessee restricted the disallowance of commission charges to 0.5% of trading turnover which was worked out to Rs.29,63,580/- for the year under consideration.

20.2 Before us, the Ld. counsel for the assessee submitted that issue in dispute of the circular trading in the case of the group company has been decided in favour of the assessee wherein commission amount has been upheld at 0.25% of circular trading turnover.

20.3 We have heard rival submission of the parties and perused the relevant material on record. The lower authorities have observed that the assessee failed to substantiate delivery of the goods or transportation etc. in respect of purchase and sale with concern namely M/s Shatranj Trading Pvt. Ltd. The relevant finding of the Ld. CIT(A) is reproduced as under:

> ***"Decision:***
>
> *14. I have considered the facts of the case and submission of the appellant. The appellant has not been able to effectively rebut the claims of circular transactions or that of they being paper in nature. No evidence of delivery has been produced before the AO or before me. The AO has also tried to obtain such evidence from M/s Shatranj Trading Pvt. Ltd. u/s 133(6) but has not been successful. The transaction shown in the statement and the chart of purchases and sales produced by the AO in pages 32 & 33 of the assessment order do indicate that there is no material substance to these transactions.*
>
> *14.1. One of the contentions of the appellant is statement recorded under survey does not have evidentiary value. Towards this purpose the*

appellant has relied on the judgment of Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan Son, 352 ITR 480 and judgment of Hon'ble Madras High Court in the case of CIT vs. S. Khader Khan Son, 300 ITR 157. The only finding given therein is that the statement obtained u/s. 133A could not automatically bind the assessee. Thus, what is required for implicating someone is that there has to be independent material and not merely the statement. In this regard, I find that the AO has not based this case merely on the statement of ShriNitin Didwania. It is based on several other evidences including:-

i. *Inability of the appellant to produce evidences relating to delivery of goods.*
ii. *Non submission of evidences relating to delivery of goods by the other parties involved in the deal*
iii. *Statement of multiple and independent persons belonging to different companies.*
iv. *Failure by M/s. Shatranj Trading P Ltd to provide the transportation bill, e-way bills and weighment slips etc in response to independent enquiry u/s. 133(6)*
v. *Evidence of close nexus and almost all transactions of M/s. Shatranj Trading P Ltd with Veritas group.*

14.2. A careful and cohesive reading of the order shows that the statement of one singular person is not the sole or primary basis for addition. It may have been among the starting point but definitely not the basis of addition. It is the appellant's inability to demonstrate that the goods have actually been delivered which is the crux of the case. The appellant's contention in this regard is rejected.

14.3. The appellant has contended that the transactions have taken place through bank account and hence should be allowed. I do not agree with this contention of the appellant that merely because the payment is made by cheque, it is a genuine transaction. Several judicial precedents support this proposition:-

14.3.1. In the case of CIT vs Saravana Constructions P Ltd, 208 Taxman 188(Mag.) (DoJ: 14.03.2012), (cross-appeal of both Assessee and Revenue) the Karnataka HC has held as under:

"10. The grievance is that the benefit can be given only for those cheque transactions, which are found to be genuine. Merely because the transactions are through bank channels, the assessee would not be entitled to the benefit. It is true that when a cheque is issued it has to be encashed through bank only. There is no presumption that merely because the payment is made by cheque, it is a genuine transaction. First it has to be found out whether the transaction in question is genuine and only thereafter, the assessee would be entitled to the benefit of disallowance. Probably, the Tribunal while issuing direction did not notice its reasoning

in the earlier part of its very same order. That is how a direction in the aforesaid manner is issued, which is not correct. Therefore, in addition to what has been stated by the Tribunal, the assessing authority shall first find out, whether the cash credit claimed represents a true and genuine transaction. If the answer is "Yes" then accept the credit otherwise not."

14.3.2. In the case of CIT vs Mohanakala, 161 Taxman 169, 291 ITR 278, the Hon'ble Apex Court held as under:

"May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence"

14.3.3. In the case of 208 ITR 465, CIT vs Precision Finance P Ltd, the Hon'ble Calcutta HC held as under:

"6. .....The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, accordingly, it is to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine."

14.3.4 In view of the above, the appellant's contention in this regard is rejected."

20.4 According to the Ld. CIT(A), however, the commission expenses for arranging such circular trading was found to be reasonable to the extent of 0.5%. The relevant finding of the Ld. CIT(A) is reproduced as under:

"14.9. In the case before us, the appellant has not admitted to any circular trade. Rather multiple entities have been used to camouflage the entire affairs so as to portray an artificial picture of genuineness. Thus, the cost incurred in this case has to be higher. In my view, unexplained expenditure @ 0.5% would be reasonable given the facts of the case.

14.10. The above findings apply equally in respect of the appellant's transaction with Yatee Traders Pvt. Ltd. to the extent transactions are made with such party in other years. Accordingly, the disallowance u/s 69C for each of the years is restricted as follows:-

AY	*Purchases/ Sales*	*Disallowance made byAO@1%*	*Disallowance confirmed @ 0.5%*	*Remark (if any)*
2014-15	*59,27,16,162*	*59,27,16,162*	*29,63,580*	*Although the AO has stated that 1% is being disallowed, it appears that 100% stands disallowed by the AO. The may verify this aspect for this year notwithstanding the quantification made alongside.*
2015-16	*285,28,95,733*	*2,85,28,957*	*1,42,64,478*	-
2016-17	*224,62,67,407*	*2,24,62,674*	*1,12,31,337*	-
2017-18	*542,59,10,240*	*5,42,59,102*	*2,71,29,551*	-
2020-21	*572,46,48,056*	*5,72,46,480*	*2,86,23,240*	-
2021-22	*323,64,65,009*	*3,23,64,650*	*1,61,82,325*	-

In view of the above, the disallowance for the year under reference is restricted to Rs. 29,63,5807- (subject to remark above)."

20.5 But we find that M/s Aspen International Pvt. Ltd. is also one of the entities of group, who has been held to be engaged in circular trading with M/s Shatranj Trading Pvt. Ltd. The relevant finding of the Tribunal in the case of M/s Aspen International Pvt. Ltd. in ITA No. 3465/Mum/2023 for assessment year 2021-22 is reproduced as under:

"8. After hearing both the parties and on perusal of the impugned orders, we find that on one hand assessee had submitted purchase and sale invoices, purchase and sale registers, bank statements and has disclosed all the transactions in the books of accounts and also forming part of the trading account. On the other hand, Id. AO's case hinges upon survey conducted in the case of M/s. Veritas group, wherein few of the parties were involved for purchase and sale transactions without delivery and admitted that they were also doing circular trading. If that was the case, then onus was on the assessee to show that, for entire purchase made

from M/s. Shatranj Trading Pvt. Ltd. there were actual delivery of goods and actual outward of sales of the same stock. Assessee might have done genuine purchase and sale transaction with many parties, but qua this party, assessee should have substantiated the same when these statements were confronted to the assessee and the parties had admitted that they have done circular trading and assessee was one of the co-parties. Thus, we do not find any reason to deviate from such observation and finding of the ld. AO and Id. CIT (A).”

20.6 As the issue in dispute is squarely covered by the above decision of the Tribunal (supra), therefore, respectfully following the same, the commission expenses for circular trading in the case of the assessee are restricted to 0.25% of circular trading turnover. The ground of appeal of the assessee is accordingly allowed partly, whereas the ground of the appeal of the Revenue is dismissed.

21. Identical grounds have been raised by the assessee in assessment years 2014-15 to 2017-18 and 2020-21 to 2021-22 except amount involved therefore, following our finding in assessment year 2014-15, the grounds raised in appeals for assessment years 2015-16 to 2017-18 and 2020-21 to 2021-22 are decided *mutatis mutandis*. Similarly, Revenue has also raised identical grounds in appeals for AY 2014-15 to AY 2017-18 and AY 2020-21 to AY 2021-22 except ground raised in AY 2018-19, therefore, following our finding in AY 2014-15, the grounds raised by the Revenue from AY 2015-16 to AY 2017-18 and AYs 2020-21 to 2021-22 are decided *mutatis mutandis*.

22. Now, we take up the appeal of the Revenue for assessment year 2018-19. In the ground raised the Revenue has challenged disallowance of excessive logistic expenses in terms of section 40A(2)(b) of the Act which has been deleted by the Ld. CIT(A).

22.1 Brief facts qua the issue in dispute are that the Assessing Officer observed expenditure of logistic expenses of Rs.3,48,37,713/- payment for which was made to one of the related concern namely M/s Hazel Logistics Pvt. Ltd. According to the Assessing Officer said payment was excessive and therefore, he called for copy of the contract agreement between the parties and supporting documents/evidence. According to the Ld. Assessing Officer only copy of the agreement was filed and subsequently after 2 to 3 reminders, bills in respect of Rs.29,39,444/- were only filed before him. He further observed that summon u/s 131 of the Act was issued to Hazel Logistic Pvt. Ltd. but same was not complied and therefore, he was of the view that the balance expenses of Rs.3,18,98,269/- was in the nature of excessive or unreasonable expense payment made to the related party . Hence, he disallowed amount of Rs.3,18,98,269/- in terms of section 40A(2)(b) of the Act.

23. On further appeal before the Ld. CIT(A), the assessee submitted that it has submitted copy of the contract agreement and entire details in support of expenses incurred and copy of the bills

were provided on sample basis. Further, expenses incurred by M/s Hazel Logistic Pvt. Ltd. having value more than Rs.1,00,000/- were also submitted. It was submitted that M/s Hazel Logistics Pvt. Ltd. also filed return of income and audited statement in compliance to notice u/s 131 of the Act. However, the observations have been recorded wrongly by the Assessing Officer. The assessee also rejected the observation of the Assessing Officer that said expenses were debited for the purpose of the evasion of the tax as according to the Assessing Officer M/s Hazel Logistic Pvt. Ltd. was a loss making company and said expenses have been debited in the hands of the assessee for reducing the profit of assessee. The Ld. counsel for the assessee submitted that the logistic expenses were being incurred for last many years from assessment year 2014-15 to 2017-18. In the circumstances and after consideration, the Ld. CIT(A) held that Assessing Officer has nowhere determined that logistic expenses incurred by the assessee excessive or unreasonable having regard to the specified criteria mentioned in provisions of section 40A(2)(b) of the Act, hence, no disallowance was called for. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"16. I have considered the facts of the case and the submission of the appellant. The AO has stated that M/s Hazel Logistics Pvt. Ltd. to whom the alleged payments were made did not comply with the summons us 131 of the Act and instead filed copy of agreement along with a covering letter. According to the appellant, this is factually*

incorrect in as much as Hazel Logistics Pvt. Ltd. had in response to summons u/s 131 dt. 09.03.2021 filed its ITR acknowledgment, financial statements, bank statement & logistic service agreement. Besides, it is a claim of the appellant that a consolidated chart of the service rendered under various heads, business support services, logistic support services, storage and warehousing services, etc. has been furnished by the said entity. This chart shows the breakup of entire sum of Rs. 3,48,37,713/-, the payments received through bank accounts and TDS on such receipts amounting to Rs. 6,96,756/-. It is also claimed that another reply was filed on 03.04.2021 wherein all these details have been submitted again. Besides, the invoices raised by M/s Hazel Logistics Pvt. Ltd. for the services rendered to the appellant aggregating to Rs. 1.94 crores (approx.) have been furnished with the said submission. It is also the claim of the appellant that M/s Hazel Logistics Pvt. Ltd. had made a third submission to the AO by e-mail on 07.06.2021, whereby charts of services obtained by M/s Hazel Logistics Pvt. Ltd. from other independent market entities for the purpose of running of its business has been furnished. Thus, according to the appellant, it is incorrect to say that M/s Hazel Logistics Pvt. Ltd. had submitted only the copy of agreement.

16.1. As regards, invoices of Rs. 29,39,444/-, these are the invoices raised on M/S Hazel Logistics Pvt. Ltd. by third party entities for the expenses incurred by M/s Hazel Logistics Pvt. Ltd. These are stated to be submitted on sample basis.

16.2. The appellant has also pointed out in its online submission dt. 27.07.2023 that similar logistic expenses have been incurred in various AYs in the past which was as high as Rs. 12.18 crores in AY 2014-15. The appellant has further pointed out that such expenses had been higher in the preceding years.

16.3. The provision of S. 40A(2)(a), read as follows:-

> *"(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction."*

16.4. Thus, in my view, unless the expenditure is excessive or reasonable having regard to the specified criteria in the above mentioned provision, no disallowance is called-for. Under these facts

and circumstances, the disallowance of Rs. 3,18,98,269/- made by the AO u/s 40(2)(b) is deleted. Hence, this ground stands ALLOWED."

24. We have heard rival submission of the parties and perused the relevant material on record. We find that the Assessing Officer has made disallowance of Rs.3,18,98,269/- out of logistic expenses of Rs.3,48,37,713/- incurred by the assessee and paid to its sister's concern M/s Hazel Logistic Pvt. Ltd. For ready reference section 40A(2)(b) of the Act is reproduced as under:

"40A(2)(b) The persons referred to in clause (a) are the following, namely:-

(i)	*where the assessee is an individual*	*any relative of the assessee;*
(ii)	*where the assessee is a company, firm, association of persons or Hindu undivided family*	*any director of the company partner of the firm, or member of the association or family, or any relative of such director, partner or member;*

(iii)any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv)a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v)a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi)any person who carries on a business or profession,-

(A)where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B)where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or

member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person

Explanation. - For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,-

(a)in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent. of the voting power; and

(b)in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent. of the profits of such business or profession.]"

24.1 Thus according to the provisions of the law for making disallowance under this section, the Assessing Officer is required to demonstrate whether the expenditure incurred is excessive and unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made. But, we find that the Assessing Officer has only disallowed the expenses for which bills were stated to be not produced. However, before the Ld. CIT(A) the assessee has filed detail of the expenses incurred by M/s Hazel Logistic Pvt. Ltd. Before us, also filed detail of expenses in excess of Rs.1,00,000/-, which is available on paper book pages 71 to 73. In view of the above, we are of the opinion that the Assessing Officer squarely failed in demonstrating any excessiveness or unreasonableness of the expenses for logistic paid to sister concern. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on issue in dispute and accordingly, we uphold the same.

The ground No. 1 of the appeal of the Revenue is accordingly dismissed.

25. In the result, appeals of the Revenue are dismissed whereas appeals of the assessee are partly allowed.

Order pronounced in the open Court on 24/07/2024.

Sd/-	**Sd/-**
(SANDEEP SINGH KARHAIL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai