

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.271/Ind/2023
AY: 2013-14

Som Distilleries & Breweries Limited, Som House, 23, Zone II, M.P. Nagar, Bhopal (PAN: AABCS3374B)	बनाम/ Vs.	Income-tax Officer, 1(1), Bhopal.
(Assessee/Appellant)		(Revenue/Respondent)

ITA No.297/Ind/2023
AY:2014-15

ACIT (Central)-1, Bhopal	बनाम/ Vs.	SOM Distilleries & Breweries Limited, Som House, 23, Zone II, M.P. Nagar, Bhopal (PAN: AABCS3374B)
(Revenue/Appellant)		(Assessee/Respondent)

Assessee by	Shri Sumit Nema, Sr. Adv, Shri Gagan Tiwari, Adv.
Revenue by	Shri Ram Kumar Yadav, CIT DR

Date of Hearing	11.07.2024
Date of Pronouncement	08.08.2024

आदेश / O R D E R

Per Bench:

The captioned two appeals filed by parties are as per following details:

- (a) **ITA No. 271/Ind/2023** is an appeal by assessee against appeal-order dated 05.06.2023 passed by Commissioner of Income-tax (Appeal)-3, Bhopal ["CIT(A)"] which in turn arises out of assessment-order dated 28.03.2016 passed by ITO-1(1), Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2013-14.
- (b) **ITA No. 297/Ind/2023** is an appeal by revenue against appeal-order dated 02.06.2023 passed by same CIT(A) which in turn arises out of assessment-order dated 30.12.2016 passed by ITO-1(3), Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for AY 2014-15.

2. Since these appeals relate to the same assessee and the learned representatives are also same, therefore they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. The background facts leading to present appeals are such that the assessee is a company engaged in the business of manufacture of beer, IMFL & country liquor. For AY 2013-14 and 2014-15, the assessee filed respective returns u/s 139(1) alongwith audited accounts declaring total incomes of Rs. 19,12,04,720/- and 23,06,81,370/- respectively. The cases of assessee were selected for scrutiny and notices u/s 143(2)/142(1) were issued from time to time. Ultimately, the AO completed assessments u/s 143(3) after making certain additions and determining total income at Rs. 20,80,88,634/- and Rs. 30,77,93,415/- respectively. Aggrieved, the assessee

filed appeals to CIT(A) and succeeded to a large extent. Now, the assessee has come in appeal for AY 2013-14 and the revenue has come in appeal for AY 2014-15 challenging respective orders of CIT(A).

Assessee's ITA 271/Ind/2023 for AY 2013-14:

4. The assessee has raised following grounds:

1. *That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 6,27,157/- u/s 14A are neither justified nor lawful and therefore the said disallowance of Rs. 6,27,157/- be kindly deleted.*
2. *That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 47,86,252/- are neither justified nor lawful and therefore the said disallowance of Rs. 47,86,252/- be kindly deleted.*
3. *That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 1,20,000/- out of Hotel expenses are neither justified nor lawful and therefore the said disallowance of Rs. 1,20,000/- be kindly deleted.*
4. *That on the facts and in the circumstances of the case and in law, the levy of interest u/s 234A, 234B & 234C are unlawful and without jurisdiction hence the said levies be kindly cancelled.*

Ground No. 1:

5. In this ground, the assessee has challenged the disallowance of Rs. 6,27,157/- u/s 14A upheld by CIT(A) out of total disallowance of Rs. 7,02,964/- made by AO.

6. After hearing submissions of learned Representatives of both sides and on perusal of orders of lower-authorities, we find that the assessee has earned exempted income of Rs. 35,03,727/- by way of dividend but did not make any suo motu disallowance u/s 14A read with Rule 8D for expenses

incurred for earning such exempt income. During assessment-proceeding, the AO invoked section 14A and made disallowance of Rs. 7,02,964/- consisting of two elements in terms of Rule 8D, viz. (i) Interest disallowance under Rule 8D(2)(ii) computed at Rs. 75,807/- and (ii) standard disallowance @ 0.50% of the average investments of Rs. 12,54,41,410/- made in the shares yielding the exempted dividend, computed at Rs. 6,27,157/- under Rule 8D(2)(iii). During first-appeal, the CIT(A) deleted the first element of disallowance but upheld the second element. Presently, the agitation before us is the second element of disallowance, namely standard disallowance of 0.50% amounting to Rs. 6,27,157/-. On perusal of documents, we find that the assessee has incurred administrative and general expenses for both taxable and exempted activities and it is not possible to segregate the portion of two segments. Therefore the application of Rule 8D(2)(iii) by AO is justified. Ld. AR for assessee though advanced the grievance of assessee yet could not demonstrate how it can be termed as a wrong action of AO. Faced with this situation, we do not find any merit in the ground of assessee, the same is hereby rejected.

Ground No. 2:

7. In this ground, the assessee has challenged the disallowance of Rs. 47,86,252/- made by AO and upheld by CIT(A) u/s 40(a)(ia) for failure to deduct tax at source (TDS).

8. The AO has made this disallowance in Para 14-15 of assessment-order and the CIT(A) has upheld AO's action in Para 3.7 of order of first-appeal. We have gone through the orders of lower-authorities with the able assistance of learned Representatives of both sides and found that the assessee made a payment of Rs. 3,07,58,252/- to M/s United Breweries Ltd. ["UBL"] towards royalty payment without TDS. During assessment-proceeding, the assessee filed a declaration/certificate in Form No. 26A dated 26.03.2016 to claim the benefit of first proviso to section 201(1) read with Rule 31ACB. The AO has accepted Form No. 26A filed by assessee and given benefit of first proviso to section 201(1). But, on perusal of Form No. 26A, the AO found that UBL has declared income of Rs. 2,59,72,000/- only in its return of income filed to department. Accordingly, the AO did not grant benefit of differential of Rs. 47,86,252/- [Rs. 3,07,58,252/- (-) Rs. 2,59,72,000/-] and made disallowance u/s 40(a)(ia). During first-appeal, the CIT(A) upheld disallowance made by AO.

9. Before us, Ld. AR for assessee submitted that the assessee has paid a sum of Rs. 3,07,58,252/- but why the UBL has mentioned only a sum of Rs. 2,59,72,000/- in Form No. 26A is not known. He submitted that in all fairness, the AO ought to have made enquiry from UBL before making disallowance. He drew our attention also to the submission made by assessee to CIT(A) wherein a specific request was made to CIT(A) to seek verification/clarification from UBL at the cost of assessee (Page No. 38 of CIT(A)'s order) but the CIT(A) has also not given any weightage to assessee's

submission/request. Ld. AR very humbly as well as strongly submitted that the assessee is unnecessarily suffering this disallowance just because of difference in figures. Ld. AR prayed that this issue must be restored to AO for afresh adjudication with a direction to conduct necessary enquiry from UBL.

10. Ld. DR for revenue though dutifully supported the orders of lower-authorities yet could not controvert the submission and prayer of Ld. AR.

11. On a careful consideration, we find sufficient merit in the submission of Ld. AR. We find that the addition has been made/sustained merely on the basis of difference in figures without any investigation as to the why there was difference. Therefore, the matter requires a proper investigation. While we admit that filing of Form No. 26A is the responsibility of assessee, we also agree that there would be no harm to revenue/respondent if the dust is removed by the process of investigation and disallowance, if any required, is made after getting certainty in the matter. Therefore, we are inclined to accept the prayer of Ld. AR and restore this issue to the file of AO for adjudication afresh after necessary enquiry at the risk and responsibility of assessee. The assessee's ground can be said to have been allowed for statistical purpose.

Ground No. 3:

12. In this ground, the assessee has challenged the disallowance of Rs. 1,20,000/- made by AO and upheld by CIT(A) on account of hotel expenses.
13. The AO has made impugned disallowance by passing following order:

"17. As per ITS details the assessee has paid expenses exceeding Rs. 1,20,000/- to Hotel and Restaurant during F.Y. 2012-13. As per details, said payment of Rs. 1,20,000/- was made on 12.10.2012 for Smt. Abha Singh to M/s. Taj Mahal Hotel. During the course of assessment proceedings the assessee was asked to explain said expenses as per note sheet entry dated 15.03.2016. Assessee furnished reply on 18.03.2016 which is placed on record. Assessee has submitted that said expenses have been incurred by Delhi Office and reflected in the imprest account. Ledger copy of the account for the period is enclosed wherein payment of Rs.1,20,000/- was debited on 12.10.2012 for Hotel bills. The assessee stated that said expenses have been booked under sales promotion expenses as the same was incurred for stay of prospective C&F agent to be appointed for several state of the country.

The submission of the assessee is considered carefully and not found acceptable in view of the fact that no other documentary support in this regard is furnished. As per information available payment of said Hotel bills was made for Dr. Abha Singh. The assessee has failed to establish with supporting documentary evidence that said guest was appointed as C&F agent of the company, as contended by him. In view of this disallowance of Rs. 1,20,000/- is being made and the same is added to the total income."

14. During first-appeal, the CIT(A) has upheld AO's order by observing and holding thus:

"3.9.2 I have considered the facts of the case, plea raised by the appellant and findings of the AO. The Ld AO during assessment proceedings found that appellant made payment of Rs. 1,20,000/- on 12.10.2012 to hotel Taj Mahal for Smt Abha Singh. The appellant during assessment proceeding submitted that the said expenses have been incurred by its Delhi branch and is fully recorded in books of accounts under the head sales promotion expenses. The said expenses have been incurred for stay of prospective C&F agents to be appointed for several state of the county. The Id AO after considering reply of the appellant stated that the impugned bills was paid for Smt Abha Singh, however, no supporting details were filed confirming whether the said guest was appointed as C&F agent of the appellant company. On perusal of written submission, I find that a similar claim has been made by the appellant during appellate proceedings, however, the details of all the guest, details of C&F

appointed out of these guest, details of state in which such C&F were pointed, date of appointment etc have not been filed by the appellant either before the Id AO or before me. Therefore, in absence of any documentary evidence in support of claim of the appellant, I do not find any infirmity in the disallowance made by the AO. Thus, disallowance made by the AO amounting to Rs. 1,20,000/- is upheld and therefore, appeal on this ground is dismissed."

15. Thus, the lower authorities have made/upheld disallowance basically for the reason that the assessee could not file any evidence to substantiate that the expenditure was incurred for business purpose. Before us, Ld. AR for assessee claimed that the expenditure was incurred for prospective C&F agent but there is no substantiation of such claim by any evidence. Thus, the position remains same as before lower authorities. Therefore, we do not have any reason to upset the orders passed by lower-authorities in this regard. Consequently, the disallowance is upheld and this ground is rejected.

Ground No. 4:

16. In this ground, the assessee has challenged the levy of interest u/s 234A, 234B and 234C. The levy of interest u/s 234A, 234B and 234C is statutory as per provisions of Act. Further, no submission has been made by either side qua this ground. Being so, this ground is rejected.

Revenue's ITA 297/Ind/2023 for AY 2014-15:

17. The Revenue has raised following grounds:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting various additions made by the AO, on account of disallowance of expenses by mainly observing that the AO made the disallowance 'on ad hoc basis without pointing out any defect*

in bills and vouchers', without appreciating that the AO was disabled from pointing out defect since the assessee did not provide/produce the copies of entire set of bills and vouchers despite the AO having consistently specifically asked for those ?

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting various additions made by the AO, on account of disallowance of expenses also by mainly observing to the verify the genuineness of expenses', ignoring **Jansampark Advertising & Marketing (P)Ltd, [2015] 56 taxmann.com 286 (Delhi)** which held that though it is obligation of AO to conduct proper scrutiny of material, in event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry shifts to Commissioner (Appeals) and Tribunal and they cannot simply delete addition made by the AO. ?*
3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,27,11,271/- (out of addition of Rs. 3,27,31,170/-) made by the AO, on account of disallowance of sales promotion expenses without appreciating :*
 - a) *that the assessee has not produced, despite specific requirement by the AO, complete set of books of accounts and relevant bills and vouchers as noted by the AO in para 4 of the assessment order ?*
 - b) *that even in bills submitted by the assessee, the AO has emphatically brought out specific discrepancies in para 5 of the assessment order ?*
4. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,40,11,928/- made by the AO on account of disallowance of expenses on roads without appreciating :*
 - a) *that the contractor, to whom the alleged payment has been made, is into housing projects business and not into road construction?*
 - b) *that it is indeed a presumption that entire expenditure was for repair and not for construction of fresh roads and, therefore, that the matter needed investigation/enquiry by the Ld. CIT(A) or specific remand to, the AO ?*
 - c) *the ratio of Assam Bengal Cement Co.Ltd.in 1955 AIR 89 (S.C.)?*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,03,68,947/- made by the AO on account of disallowance of various expenses that the*

assessee has not produced, despite specific requirement by the AO, complete set of books of accounts and relevant bills and vouchers as noted by the AO in para 4 & 7 of the assessment order ?”

Ground No. 1 and 2:

18. Ld. DR for revenue carried us to these grounds and made following submissions:

- (i) In Ground 1, the revenue's grievance is that the CIT(A) was not justified in deleting various additions made by AO by observing that the AO made disallowances 'on adhoc basis without pointing out any defect in bills and vouchers', without appreciating that the AO was disabled from pointing out defects since the assessee did not provide copies of entire set of bills/vouchers despite AO calling for. For this ground, Ld. DR contended that the CIT(A) has not given opportunity to AO and accepted assessee's submission which is a clear violation of Rule 46A of Income-tax Rules, 1962. Therefore, the matter must be remanded back to AO/CIT(A).
- (ii) In Ground 2, the revenue's grievance is that the CIT(A) has wrongly ignored the decision of Hon'ble Delhi High Court in '**Jansampark Advertising & Marketing (P) Ltd. (2015) 56 taxmann.com 286 (Delhi)**' holding that although it is an obligation of AO to conduct proper enquiry but if the AO fails, the obligation shifts to CIT(A) and therefore the CIT(A) cannot simply delete the addition made by AO. For this ground, Ld. DR relies upon decision of Hon'ble Delhi High Court.

19. Per contra, Ld. AR for assessee made following submissions and prayed to reject the grounds raised by revenue:

- (i) That, the assessee did not adduce any new evidence to CIT(A). All documents/evidences filed to CIT(A) were already before AO. The assessee, vide letters dated 15.11.2016, 09.12.2016, 12.12.2016 and 29.12.2016, filed detailed replies, produced books of accounts and bills/vouchers to AO. The letters of assessee have been filed in Paper-Book and also taken into consideration in Para 3.1.1 and 3.1.2 of CIT(A)'s order. Our specific attention is also drawn to letter dated 29.12.2016 filed in Paper-Book at Page 9-64 according to which the assessee produced books of account and bills/vouchers of expenses to AO during assessment and also filed some more ledger a/cs and vouchers/documents of expenses as per direction of AO. Ld. AR submitted that the CIT(A) has only appreciated the submissions made by assessee to AO in a proper and lawful manner and granted relief, consequently there is no fallacy in CIT(A)'s order.
- (ii) That, the decision of ***Jansampark Advertising & Marketing (P) Ltd. (2015) 56 taxmann.com 286 (Delhi)*** relied by revenue is in respect of addition made by AO on account of unexplained cash-credit u/s 68. In that decision, the CIT(A) deleted addition and ITAT concurred with CIT(A)'s order holding that the AO had failed to point out 'any discrepancy' in the evidence filed by assessee and the AO had failed to 'pursue the matter further for making enquiries' and therefore the

Hon'ble High Court had occasion to hold that the CIT(A)/ITAT are also facts finding authority and they cannot delete addition by simply finding mistake in AO's function. The present case of assessee is totally different. The AO has made disallowances of expenses on *ad hoc* basis without pointing out any specific defect in assessee's books of account, bills/vouchers and documents filed before him during scrutiny. The assessee made compliances to the notices issued by AO from time to time. In Para 3 of assessment-order, the AO has himself noted that in response to his notices, Shri Ashok Sahani, AVP Taxation and Shri Veer Singh Rajput, Assistant Manager of assessee-company attended hearings from time to time and submitted replies to the queries during the course of assessment proceedings and that various aspects of the case were discussed with reference to the written submissions filed which were considered and placed on record and case was discussed with them. However, ultimately in assessment-order, the AO has made general and vague remarks that the documents were not filed or not filed fully. The CIT(A) has considered assessee's submissions properly and deleted the ad hoc additions made by AO. By placing reliance upon ***Jansampark Advertising (supra)***, Ld. AR contended, the AO is merely trying to justify his baseless and bad approach of making ad hoc additions. Ld. AR went further on submitting that in the present case of assessee, the AO has made ad hoc disallowances and that too without rejecting

books of assessee, therefore the CIT(A) has relied upon several judicial rulings including the binding decision of Hon'ble Supreme Court and deleted addition. The CIT(A) has perfectly relied upon one such decision in ***PCIT Vs. R.G. Buildwell Engineers Ltd. (2018) 99 taxmann.com 284 (SC)*** which is directly applicable to assessee's facts and wherein the departmental appeal was dismissed by Hon'ble Supreme Court, the relevant paras are as under:

"3. In respect of the first item i.e. expenses for bricks, machinery repair, cartage, etc. the AO concluded that insufficient evidence was adduced. He, therefore, disallowed 10% of the claim. This was reduced by half by the CIT(Appeals). The ITAT gave two reasons to set aside the findings of the A.O.-CIT(Appeals). Firstly, that the books of account were not rejected and secondly, that in the past, consistently such expenses were allowed in scrutiny assessments. Likewise, in the case of labour cases too, identical reasons were adduced by the A.O. to bring to tax a sum of Rs. 2.2 crores. The same were set aside ultimately by the ITAT.

4. This court is of the opinion that the principal reasoning of the ITAT, i.e. omission to reject the books of account, in which event the ad-hoc disallowance could have been adjusted and also the historical treatment of such expenses, cannot be termed as unreasonable; in support of its ultimate conclusion. In these circumstances, no substantial question of law arises."

20. We have considered rival submissions and perused the orders of lower-authorities in the light of judicial decisions. The grievances raised by revenue in Ground 1 and 2 are also linked with other specific grounds raised by revenue. Although we shall be adjudicating other grounds in subsequent discussions, at this stage we may mention that the Ld. AR has made a categorical submission that the assessee filed written-replies, produced audited books of account and submitted various details, documents, bills and vouchers as and when called upon by AO. The

assessee's replies filed to AO have also been incorporated in CIT(A)'s order and considered by CIT(A) in disposing of first-appeal. Ld. AR has strongly pleaded that there was no new submission before CIT(A), this particular pleading of Ld. AR remains unrebutted by revenue. Further, we would also see as we deal specific grounds in subsequent discussions that the CIT(A) has vehemently considered the facts of assessee in the light of various judicial rulings and thereafter deleted the additions made by AO wherever deletion was warranted. That apart, the CIT(A) has also mentioned in Para 1.1 of his order that vide his notice dated 06.10.2021, he asked the AO to specify whether he/she would like to be present at the time of hearing in view of provision of section 250(2)(b) of the Act and in response to his notice, the AO failed to submit any report. Further, in absence of any specific request from the AO, the CIT(A) presumed that the AO did not want to attend the hearings. Thus, when the case involved hefty additions and the AO considered his additions on sound footing, he could have at least attended the hearing before CIT(A) but the same was not done. Thus, it is clear that the CIT(A) has merely analysed and appreciated assessee's case without new evidences and even the AO has not chosen to make any attendance before CIT(A) when notified. Therefore, there was no violation of Rule 46A as being claimed by revenue. So far as the decision of ***Jansampark Advertising (supra)*** is concerned, that is not applicable to assessee's case as rightly submitted by Ld. AR. Without repeating Ld. AR's submissions which we have already narrated in preceding para, we only

suffice to say that we agree with Ld. AR that the said decision is not applicable to assessee's facts. Rather the assessee's case is covered by decision of Hon'ble Supreme Court in **R.G. Buildwell (supra)**. That brings us to conclude that the Ground No. 1 and 2 of revenue are devoid of any merit, accordingly they are rejected.

Ground No. 3:

21. In this ground, the revenue challenges the CIT(A)'s action of deleting the disallowance of Rs. 3,27,11,271/- out of total disallowance of Rs. 3,27,31,170/- made by AO on account of sales promotion expenses.

22. The AO has made this disallowance in Para 5 of assessment-order, the same is re-produced below:

"5.0 It has been noticed that the assessee has debited an amount of Rs. 32,73,11,693/- on account of sales promotion expenses during the year. The assessee was asked to produce ledger account bills and vouchers of the said expenses for verification of genuineness/veracity of above expenses claimed by the assessee company. The AR of the assessee produced few bills and vouchers ledger account with regard to above expenses, on sample basis. During verification of bills and vouchers submitted to this office it is observed that the assessee company has enclosed bill of Rs. 4,79,329/- regarding Marketing & Promoter Fee & Sampling work done for Beer Tasting in Canada market for 3 months vide invoice No. 002 dated 26.03.2016 of Chakra Brewery & Distillery Pvt. Ltd., Chandigarh, whereas it is seen from the account of company that the assessee company is not doing business of export. Hence, this bill of Rs. 4,79,329/- does not appear to be genuine. Further it was noticed that another bill invoice No.2519 dated 18.03.2014 of Rs. 19,899/- regarding sale of two mobile phone Brand Black Berry Curve 9720 and Samsung Battery Pack EEB-ELICWEGINU are issued in the name of Assessee Company. Mobile set is a fixed assets and it is reflected in the balance sheet of Assessee Company which is not correct as per accounting system. Hence, this expense is liable to be disallowed. Moreover, one bill dated 16.09.2013 issued by the "THE GRAND NEW DELHI VASANT KUNJ-PHASE II, NELSON MANDELA ROAD, NEW DELHI-110-70, INDIA" has also been analysed. The said bill is not related to assessee company because the name of Customer Company has been left blank in this bill. Hence, looking to these facts, an amount of Rs. 3,27,31,170/- being 10% of total amount of Rs.

32,73,11,693/- claimed by the assessee-company on account of sales promotion expenses is disallowed and added back to the total income of assessee company. (The copies of these bills are being scanned with this order)."

23. The CIT(A) has reversed AO's action partly as under:

3.2.2 The appellant during appellate proceedings has contended that the Ld AO in para 5 of the assessment order has alleged that the appellant failed to produce requisite bills and vouchers for verification. However, the allegation made by the Ld AO is factually incorrect. The appellant during assessment proceedings had furnished requisite bills and vouchers which were perused by the Ld AO. Further, the appellant during the year under consideration has claimed expenses aggregating to Rs. 32,73,11,693/- on account of rebate on secondary sales of Rs. 28,84,17,582/- and sales promotion expenses of Rs. 3,88,94,111/-. The rebate on secondary sales was given as discount to retailers. Hence, the entire adhoc disallowance has been made on sheer assumption and presumption basis. Further, the Ld AO before making impugned disallowance has referred to certain bills and vouchers. The appellant explained that bill of Rs. 4,79,329/- referred by the Ld AO pertained to manufacturing & selling of "Tiger Chakra" beer brand being manufactured at the factory premises of the appellant. The brand belonged to Chakra Brewery & Distillery Pvt Ltd and was meant for export purpose and prior to launching of beer to Canada market, extensive marketing was done by Chakra Brewery on behalf of the appellant. Certain expenses were incurred towards marketing in Canada for 3 months and the bill for professional services was paid by appellant after deducting TDS. Another bill of Rs. 19,899/- for purchase of two mobile battery of blackberry and curve have been referred by the Ld AO. The Ld AO has stated that the said expenditure is capital in nature and however, as per appellant the expenditure is revenue in nature and is fully allowable. The Ld AO has also relied upon a hotel bill dated 16.09.2013 issued by 'The Grand, new Delhi'. The appellant in respect of the said bills submitted that the said expenditure was incurred on launching of Whisky brand "MILESTONE 100" and all the payments have been made through cheque and therefore, is a genuine and allowable expenditure. The appellant by taking alternate plea has furnished copy of comparative chart of sales promotion and stated that there is no significant increase in the sale promotion expenses when compare to immediate preceding year.

3.2.3 The appellant has also contended that the Ld AO during assessment proceedings has perused bills and vouchers on random basis has had recorded incorrect findings on the basis of few of the bills and vouchers. However, all the bills and vouchers have been recorded in books of accounts and therefore, the Ld AO was not justified in making ad hoc disallowance @ 10% of the said expenditure. In support reliance has been placed by appellant on its own case for AY 2012-13 where ad hoc disallowance was deleted by Hon'ble jurisdictional ITAT Indore bench. Reliance has also been placed on following judicial pronouncements rendering decision that no ad hoc disallowance can be made without pointing out any specific defects in the books of accounts maintained by the appellant:-

Som Distilleries and Breweries Limited, Bhopal
ITA Nos. 271/Ind/2023 (A.Y. 2013-14) & ITA No. 297/Ind/2023 (A.Y. 2014-15)

S.No	Particulars	Citation	Court
1	Rajat Tradecom India Pvt Ltd vs DCIT	124 TTJ 53 12 ITJ 589	ITAT Indore
2	Sponz & Power Pvt Ltd vs ACIT	13 ITJ 554	ITAT Bilaspur
3	Malwa Service Society vs ACIT	32 ITJ 187	ITAT Indore
4	Gopal Sponge & power P Ltd vs ACIT	13 ITJ 554	ITAT Raipur
5	Sandeep Sharma vs ITO	13 ITJ 648	ITAT Indore
6	ACIT vs Shree Sai Vihar	28 ITJ 158	ITAT Raipur
7	ACIT vs Ind Synergy Ltd	28 ITJ 108	ITAT Indore
8	ACIT vs Kehems Engineering Pvt Ltd	28 ITJ 173	ITAT Indore
9	ACIT vs Synergy Media Entertainment Ltd	26 ITJ 758	ITAT Indore
10	Waidan Engineering and industries Pvt Ltd vs JCIT	26 ITJ 505	ITAT Jabalpur
11	NK Electricals vs ACIT	23 ITJ 89	ITAT Indore
12	ACIT vs Indira Export Pvt Ltd	21 ITJ 372	ITAT Indore
13	Agrawal Coal Corporation Pvt Ltd vs Addl.CIT	18 ITJ 717	ITAT Indore

3.2.4 I have considered the facts of the case, plea raised by the appellant and findings of the Ld AO. I find that the appellant during the year under consideration under the head 'sales promotion expenses' have claimed total expenditure of Rs. 32,73,11,693/-. The said expenditure has been incurred on two accounts (i) rebate on secondary sales of Rs. 28,84,17,582/- which was on account of discounts given on sales of Beer & IMFL to retailers and (ii) sales promotion expenses of Rs. 388,94,111/-. The Id AO during assessment proceedings on verification of bills and vouchers furnished by the appellant found that a bill dated 26.03.2014 (reproduced on page no 4 of assessment order) of Rs. 4,79,329/- was raised by M/s Chakra Brewery & Distillery Pvt Ltd for marketing, promotion & sampling work done for beer in Canada market for 3 months. The Id AO on perusal of books of account of the appellant found that the appellant is not doing any business of exports. Per contra, the appellant with supportive documents has contended that the said expenditure has been incurred for marketing in of "Tiger Chakra" brand beer in Canada for 3 months. The appellant also explained that the said brand belonged to M/s Chakra brewery & Distillery Pvt Ltd and was meant for export purpose. Therefore, certain expense were incurred for marketing and promotion of the brand. Further, the appellant during the year under consideration has export sales of beer of Rs. 62,83,449/- and export sale of IMFL of Rs. 49,84,380/-. After considering entire factual position and on perusal of documentary evidences filed by the appellant, I find that the appellant during the year under consideration made sales through export of IMFL of Rs. 49,84,380/- in Korea, Haiti, Uganda and Nigeria. Likewise the sales through export of beer has been recorded at Rs. 62,83,449/- to Haiti, Indonesia, Singapore and Norway. Therefore, the fining of the Id AO that no export sales have been made by the appellant is factually incorrect. Further, the impugned bill was raised against marketing and promotion of Tiger Chakra Brand beer and was paid by

appellant after deducting applicable TDS. Most importantly, the Id AO was in possession of all the details of M/s Chakra brewery & distillery Pvt Ltd like address, PAN etc, however, no enquiry was made by the Ld AO from the said concern in order to ascertain veracity of the impugned bill.

3.2.5 Another bill of Rs. 19,899/- was referred by the Ld AO before making, *ibid*, ad hoc disallowance. The said bill is for purchase of mobile phone of brand blackberry and Samsung. The appellant has claimed that the mobile phone was provided to senior sales staff and in the scenario of changing technology these mobile phone hardly have any life and therefore, the same were treated as revenue expenditure. Here, I do not find any merit in the claim of the appellant, since, mobile phone are electronical item and therefore, are to be treated as capital asset and the corresponding expenditure is to be treated as capital expenditure, however, in the instant case the appellant has treated the same as revenue expenditure which is not in accordance with accounting principles which also been rightly pointed out by the Ld AO. Here, the correct accounting entry should have been that the appellant should have shown the asset in balance sheet and should have claimed appropriate depreciation. Since, no such claim in made before me therefore, the disallowance made by the Ld AO amounting to Rs. 19,899/- is confirmed. However, the impugned disallowance will not ipso facto lead to a conclusion that all the expenses claimed under the said head are bogus.

3.2.6 Lastly, the Id AO has relied upon a bill dated 16.09.2013 issued by hotel 'The Grand' New Delhi. The appellant has explained that the said expenditure has been incurred on occasion of launching of whisky brand "Milestone 100" and all the payments have been made through cheque. On perusal of the documentary evidences furnished by the appellant it has been observed that sum of Rs. 7,50,000/- has been paid by appellant to M/s Unison Hotel Pvt Ltd for organizing the said event on 16.09.2013. the entire amount has been paid through cheques. Here, the Ld AO has drawn adverse view on the basis that the name of the appellant company was not mentioned on the invoice. On perusal of the impugned invoice (reproduced on page no 3 of assessment order) I find that the said paper prima facie does not seems to be a sales invoice. It seems to be printout of ledger posting of sum of Rs. 7,50,000/-. Here, it is pertinent to mention that the Id AO was in possession of all the details of hotel 'The Grand' like address, contact number etc, however, no enquiry was made by the Ld AO from the said concern in order to ascertain veracity of the impugned bill. Therefore, in absence of any contrary finding, ad hoc addition is not permissible.

3.2.7 The appellant has also filed a comparative chart of sales promotion expense from AYs 2011-12 to 2014-15 which shows that there was no abnormal rise in the claim of the appellant when compared to immediate preceding year. The relevant extract of comparison table is appended as under:-

Particulars	Assessment years	
	2013-14	2014-15
Sales	2,035,475,343	1,902,725,039

Assessee claimed	325,752,908	327,311,693
% over sales	16.00%	17.20%
Disallowed by A.O.	Nil	32,731,170
As per CIT(A)	N.A.	In Appeal
As per ITAT	N.A.	In Appeal

3.2.8 Here, I also find from the assessment order that the Ld. AO has not made any attempt to verify the genuineness of relied bills and vouchers from concerned parties despite having complete details about them. In view of above discussion, no instance has been brought on record to show that the expenses under the subject head were bogus by the Ld. AO. Only a general remark in the assessment has been made. The Ld. AO did not reject books of accounts before making such disallowance which is against the various judicial pronouncements wherein it has been held that such disallowance is not legally sustainable. Hon'ble Apex Court in the case of **Dhakeshwari Cotton Mills Ltd** reported in **26 ITR 776 (WB)** has held that the Income Tax Officer is not entitled to make a pure guess work and make an assessment without reference to any evidence or material at all. Hon'ble M.P. High Court in the case of **V.B. Gadkari Vs. STO - 59 STC 362 (M.P.)** has held that "...**The order of assessment does not refer to any material whatsoever on which the estimate is based. It is thus clear that the assessing authority made an assessment based on pure guess without reference to any evidence or material at all. Under the circumstances the order of assessment passed by respondent No. 1 and the order dismissing the revision petition passed by respondent No. 2 are vitiated by an error apparent on the face of record and deserve to be quashed.** Accordingly, the estimate must be related to some evidence or material and it must be something more than suspicion which is completely missing in the instant case. The bills relied upon by the Id AO are actual expenditure related to business of the appellant. Most importantly, while making ad hoc addition, the Ld. AO has not rejected the books of account of the appellant. No ad hoc addition can be made without rejecting books of account. Hon'ble ITAT Jodhpur Bench in the case of **ACIT Vs. Ercon Composites** as reported in **(2014) 49 Taxmann.com 489** has held that without rejecting books of account addition on estimate basis was not justified. Similar view has been expressed by Hon'ble ITAT Raipur in the case of **M/s. Sanjay Agrawal Vs. DCIT, ITA No. 339/RPR/2016, order dated 24.09.2021**. In similar set of facts, the Hon'ble Calcutta High Court in **M/s. Swadeshi Commercial Co. Ltd. vs. CIT ITA No. 219 of 2001 judgment dated 18th December, 2008** concluded that in the absence of rejection of books, the estimation of profit is arbitrary, unreasonable and perverse. In **CIT vs. Anil Kumar & Co. (2016) 386 ITR 702 (Kar.)**, the Hon'ble High Court echoed the same view. In **CIT v. Paradise Holidays [2010] 325 ITR 13 (Delhi)**, the Hon'ble Delhi High Court has held that if accounts which are regularly maintained in the course of business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable.

3.2.9 Hon'ble ITAT Delhi in the case of **Simbholi Sugar Mills vs ACIT** on the issue in hand has held that adhoc disallowance cannot be upheld when no

defect has been pointed out by the AO. The operative part of the decision is as under:-

"47. Before us, learned Counsel for the assessee submitted that the tax authorities below have disallowed the expenses on ad hoc basis merely on the assumption that these might not have been incurred wholly and exclusively for the purpose of business and further because the element of personal use cannot be ignored, however, ignoring the audited schedule of manufacturing and other expenses having been filed by the assessee before the assessing officer and without pointing out any defect in the books of account and without identifying any expenses with regard to personal use and further without specifying any unverifiable expense.

48. On the reasoning given by us while disposing of the Ground No. 6 and Ground No. 4 of the respective appeals of the assessee the impugned ad hoc disallowances made out of the manufacturing and other expenses made/sustained by the tax authorities below cannot be upheld as the same were made arbitrarily and without any justifiable basis. Accordingly, the orders of the tax authorities below in this regard are set aside and the Ground No. 7 and Ground No. 5 of the respective appeals of the assessee are allowed."

3.2.10 Similar view has been expressed by Hon'ble ITAT Indore in the case of **Rajat Tradecom India Pvt Ltd**, IT(SS)A No 182 & 183/Ind/2007 dated 12.09.2008 wherein it has been held as under:-

" On consideration of the rival submissions, we are of the view that additions are ad hoc in nature and liable to be deleted. The AO has not pointed out as to which of the expenditure is not verifiable. The AO without mentioning anything specifically against the assessee made the routine disallowances. The learned, CIT(A) without any justification has exceeded the reasons by saying that assessee company is running like a partnership firm. We do not know from where learned CIT (A) has subscribed this view without bringing any material on record. The learned CIT(A) should confine to the issue before him and in case, any other reasons are to be quoted in the appellate order then the basis of the same should also be revealed in the order. We accordingly set aside the orders of authorities below and delete the entire additions on both the grounds in both the years. Ground Nos. 2 and 3 of the appeals of the assessee are accordingly allowed."

3.2.11 Hon'ble Supreme Court in the case of **PCIT vs RG Buildwell Engineers Ltd (2018) 99 taxmann.com 284 (SC)** has held that 'This court is of the opinion that the principal reasoning of the ITAT, i.e. omission to reject the books of account, in which event of ad-hoc disallowance could have been adjusted and also the historical treatment of such expenses, cannot be termed as unreasonable; in support of its ultimate conclusion. In these circumstances, no substantial question of law arises. Similar view was taken by Hon'ble Jurisdictional High Court in the case of **CIT vs Pure Pharma (P) Ltd (2005) 277 ITR 273 (MP)** by stating that If it is found as a fact that the assessee has

*incurred expenditure then the Revenue has no right to say that no such expenditure is called for or can be incurred or it is not necessary. It is for the assessee to prove the expenses and the manner in which it is to be incurred in its commercial expediency to run their business effectively. Any lawful payment if found incurred in the course of business for running the business is an allowable deduction. In this view of the matter, no case for interference is called for in the impugned order which does not involve any substantial question of law. The appeal is thus found to be totally devoid of substance. It is dismissed in limine. Furthermore, Hon'ble Apex Court in the case of **Hero Cycles Pvt Ltd, (2015) 63 taxman.com 308 (SC)** has held that it is for the AO to see whether the impugned expenditure was incurred for business of the assessee or not. Once, it is established that it pertains to the business of the assessee, the quantum of it cannot be decided by the Ld AO. In view of the cited decisions, the Ld AO was not justified in making addition on ad hoc basis. Considering the above judicial pronouncements, the ad hoc addition made by the Ld. AO is not found sustainable.*

3.2.12. *In view of the above discussion, the addition made by the Ld AO is restricted to Rs. 19,899/- and appellant gets relief of **Rs. 3,27,11,271/-**. Therefore, appeal on this ground is **partly allowed.**"*

24. Before us, Ld. DR for revenue emphasized the order of AO. He submitted that the AO has, in Para 5 of assessment-order, noted that the assessee produced few bills and vouchers only. Even during examination of those bills/vouchers, the AO has found certain discrepancies as noted in same para of assessment-order. Hence, the AO has rightly suspected the claim of assessee and made disallowance. He submitted that the quantum of disallowance made by AO is proper and reasonable.

25. Per contra, Ld. AR for assessee strongly supported the order of CIT(A). In particular, he emphasised that the CIT(A) has given vehement analysis in Paras 3.2.4 to 3.2.6 of his order regarding the expenditure incurred by assessee on sale-promotion which also includes the analysis of discrepancies alleged by AO in assessment-order *qua* certain bills. He submitted that the CIT(A) has also considered in Para 3.2.7 of his order that

the quantum of expenditure incurred by assessee during current year was 17.20% of sales as against 16% in immediate preceding year, which shows that there was no abnormal rise. He also submitted that the CIT(A) has categorically noted in Para 3.2.8 of order that the AO has neither found any expenditure as bogus nor rejected books of assessee. He submitted that the CIT(A) has also observed that the AO has made ad hoc disallowance on mere estimate and there is no basis for estimation even. Ld. AR contended that the CIT(A) has vehemently dealt this issue and deleted the ad hoc disallowance made by AO in the light of various judicial rulings as noted in his order. Ld. AR placed a particular reliance on the judgement of Hon'ble Supreme Court in ***RG Buildwell (supra)***, which is also relied by CIT(A), to argue that the disallowance made by AO is not sustainable. He prayed that the CIT(A) has rightly deleted the disallowance partly to the extent the disallowance made by AO was not valid, therefore the order of CIT(A) must be upheld.

26. We have considered rival submissions of both sides and also perused the material held on record including the orders of lower-authorities. We find that the AO has made ad hoc disallowance of 10% of expenditure claimed by assessee. On perusal of Para 5 of assessment-order, we find that the AO has acknowledged that the assessee produced few bills and vouchers alongwith ledger a/cs. The AO has not recorded any dissatisfaction qua non-production of bills/vouchers by assessee. However, the AO has analysed the bills/vouchers produced by assessee and noted his observations regarding

discrepancies in three bills, namely (i) a bill of Rs. 4,79,279/- regarding marketing/promotion fee paid to M/s Chakra Brewery & Distillery Pvt. Ltd., (ii) a bill of Rs. 19,899/- regarding purchase of fixed assets (mobile phones) and (iii) a bill dated 16.09.2013 of hotel 'The Grand, Delhi'. On the basis of his own analysis of these three bills, the AO has suspected entire claim of sales promotion expenditure and made ad hoc disallowance of 10%. In first-appeal, the CIT(A) has given cogent analysis of three bills in Para 3.2.4 to 3.2.6 and found that the only disallowance to be sustained was *qua* the purchase of fixed assets (mobile phones) of Rs. 19,899/-. Thereafter, in Para 3.2.7 to 3.2.12, the CIT(A) has also analysed the % ratio of 'sale promotion expenditure to sales' claimed by assessee in current year vis-à-vis preceding year and noted that there is no abnormal rise. The CIT(A) has also noted one important aspect that the AO cannot make ad hoc addition without rejecting books of assessee in the light of various decisions including the judgement of Hon'ble Supreme Court in ***RG Buildwell (supra)***. After a careful consideration, we find that the order passed by CIT(A) is proper in the case of assessee and we have no reason to interfere with the same. Hence, the order of CIT(A) is hereby upheld and revenue's ground is rejected.

Ground No. 4:

27. In this ground, the revenue challenges the CIT(A)'s action of deleting the disallowance of Rs. 2,40,11,928/- made by AO on account of expenses on road.

28. The AO has made this disallowance in Para 6 of assessment-order, the same is re-produced below:

"6.0 It is seen from the profit and loss account of assessee company produced during the course of assessment proceeding that the assessee company has debited an expense of Rs. 2,50,00,000/- on account of repair and maintenance. The assessee was asked to produce ledger account bills and vouchers of the said expenses for verification of genuineness/veracity of the above expenses claimed by the assessee company. It was seen that the amount of Rs. 2,50,00,000/- has been incurred for construction and repair of road inside the factory premises. This work has been by Aryavrat Projects and Developers Private Limited.

XXX (Invoice is not re-produced for brevity)

On being scrutiny it is found that the Aryavrat Projects and Developers Private Limited is engaged in the business of builder and developer. This company is doing business of housing projects and not related with the construction of roads. Hence bill Invoice No. APDPL/2013-14/016 dated 20/03/2014 at Rs. 2,40,11,928/- issued by Aryavrat Projects and Developers Private Limited appears to be highly inflated and unreasonable. Hence the sum of Rs. 2,40,11,928/- is disallowed and added back to the total income of assessee on account of repair and maintenance claimed by the assessee -company."

29. The CIT(A) has reversed AO's action fully as under:

"3.5.3 I have considered the facts of the case, plea raised by the appellant and findings of the Ld AO. The Ld AO during assessment proceedings found that the appellant had debited repair and maintenance expenses of Rs. 2,50,00,000/- in P&L account. The Ld AO on further scrutiny found that during the year under consideration appellant had incurred expenditure of Rs. 2,40,11,928/- towards repairing of road of factory premises. Therefore, the Ld AO by recording a finding that the contractor company was not engaged in the business of construction of roads and the bills raised by the said company was highly inflated and unreasonable and disallowed entire claim of the appellant. The appellant, however, during appellate proceedings has explained that expenditure of Rs. 2,40,11,928/- was alone spent on repair and re-layering of existing roads in the factory premises which is on 28 acre of land. The appellant submitted that the existing road got damaged due to everyday movement of heavy trucks and tankers which carry raw material and other goods used on daily basis in the factory premises. Further, the roads got damaged due to passage of time and rainfall. Therefore, these required an urgent repair and re-layering which was done by M/s Aryavrat Projects & Developers Pvt Ltd. The said company after completion of work raised a bill vide invoice No APDPL/2013-14/016 dated 20.03.2014. The appellant after deducting TDS of Rs. 4,80,238/- made payment of Rs. 2,35,31,690/-. The Ld AO has not disproved the genuineness of any of the expenditure and also not

found defect in the books of accounts and rejected them. No independent enquiry regarding repair of road has been made by the Id AO. Also, no contra finding with supportive evidences or instances, in support of allegation that the bill is highly inflated and unreasonable, has been made by the Ld AO in assessment order. In view of above discussion, no instance has been brought on record to show that the expenses under consideration were bogus. Only a general remark in the assessment has been made. The Ld. AO did not reject books of accounts before making such disallowance which is against the various judicial pronouncements wherein it has been held that such disallowance is not legally sustainable. Hon'ble Apex Court in the case of **Dhakeshwari Cotton Mills Ltd** reported in **26 ITR 776 (WB)** has held that the Income Tax Officer is not entitled to make a pure guess work and make an assessment without reference to any evidence or material at all. Hon'ble M.P. High Court in the case of **V.B. Gadkari Vs. STO - 59 STC 362 (M.P.)** has held that "...**The order of assessment does not refer to any material whatsoever on which the estimate is based. It is thus clear that the assessing authority made an assessment based on pure guess without reference to any evidence or material at all. Under the circumstances the order of assessment passed by respondent No. 1 and the order dismissing the revision petition passed by respondent No. 2 are vitiated by an error apparent on the face of record and deserve to be quashed.** A detailed discussion on this aspect has already been discussed in para 3.2.8 to 3.2.11 of this order, hence, the same are not being repeated.

3.5.4 Now the moot question which arises here is whether the impugned expenditure is capital or revenue in nature. Hon'ble Allahabad High Court in the case of **CIT vs Himalaya Drug Co (P) Ltd 234 ITR 167 (All)** wherein it has been held that when the expenditure is made for repair and resurfacing of roads then the same is revenue in nature and when the expenditure is made for construction of fresh roads the same shall be capital in nature. In the instant case, the existing roads were repaired and resurfaced in order to make them conducive for use and therefore, the expenditure is revenue in nature and is fully allowable as deduction. Similar view was taken by Hon'ble Madras High Court in the case of **CIT vs Tractor & farm Equipments 133 ITR 147 (Mad)**. Hence, expenditure incurred on repair and maintenance of road is revenue expenditure.

3.3.5 In view of the above discussion, the addition made by the Ld AO amounting to **Rs. 2,40,11,928/-** is **deleted**. Therefore, appeal on this ground is **allowed**."

30. Before us, Ld. DR for revenue supported the order of AO. He emphasized that the AO has observed that the assessee claimed a deduction of Rs. 2,40,11,928/- in respect of payment made to M/s Aryavrat Projects and Developers Private Limited ["APDPL"] against Invoice No. 16 dated 20.03.2014 on account of repair of road but from scrutiny of the said Invoice

(which is also re-produced in assessment-order) the AO found that APDPL is engaged in the business of 'builder and developer' and not in construction of road. Therefore, Ld. DR contended, the AO has made disallowance after a proper scrutiny which is proper and must be upheld.

31. Per contra, Ld. AR for assessee strongly supported the order of CIT(A). He firstly drew us to assessment-order and submitted that the AO has raised a baseless and heightened surmise/conjecture. He submitted that the Invoice does not show that APDPL is engaged in the business of 'builder', the Invoice in fact shows that the APDPL is engaged in the business of 'projects and developers'. He submitted that even otherwise APDPL is engaged in the business line of construction activity and can certainly undertake work of road repair. He submitted that the Invoice contains a proper Serial Number, Date, PAN and Service-tax Registration No. of APDPL. He submitted that the AO has made disallowance by observing that the Invoice 'appears to be highly inflated and unreasonable'; there is no doubt regarding genuineness. He submitted that the AO could very well make enquiry from APDPL even if he had slightest doubt but no enquiry was done. He submitted that the assessee has deducted TDS of Rs. 4,80,238/- from payment to APDPL and paid to Govt. A/c. He submitted that the CIT(A) has deleted disallowance by passing a vehement order covering entire gamut of the issue i.e. not only the facts but also the technical aspect that the expenditure on repair of road incurred by assessee was a business-cum-revenue expenditure allowable as deduction to assessee as per decision in ***CIT Vs. Himalaya Drug Co. (P)***

Ltd. 234 ITR 167 (All) and CIT Vs. Tractor & Farm Equipments 133 ITR 147 (Mad). He prayed to uphold the order of CIT(A).

32. We have considered rival submissions of both sides and also perused the material held on record including the orders of lower-authorities. On perusal of assessment-order, we find that the AO has suspected assessee's claim of payment made to APDPL towards repair of road on the basis of his scrutiny of Invoice given by APDPL. The AO has inferred that the APDPL was engaged in the business of 'builder and developer' whereas the invoice shows that APDPL is engaged in 'projects and developers'. Even otherwise, the observation made by AO that APDPL cannot undertake repair of road is a mere surmise/conjecture without any evidence. The line of business of APDPL, whether as builder, project worker or developer is such that the repair of road work can be undertaken. Ld. AR is very much justified in arguing that the AO has made suspicious conclusion without making any enquiry whatsoever. That apart, the AO has made disallowance by observing that the invoice 'appears to be highly inflated and unreasonable', which itself shows that the AO is not serious in doubting the genuineness of Invoice. It is also a fact that the assessee has made payment to APDPL against Invoice after deducting TDS. The TDS is a statutory liability which the assessee has paid to the credit of Income-tax Department and the details of payment, payee, etc. is required to be intimated to Income-Tax Department in quarterly return of TDS which is available with Income-Tax Department. So far the admissibility of deduction of expenditure is

concerned, the CIT(A) has rightly held that the expenditure on repair of road within factory premise is a revenue expenditure. Further, there can hardly be any dispute that such expenditure is for business purpose. In these circumstance, the order passed by CIT(A) does not require any interference from us, the same is hereby upheld. Accordingly, the revenue's ground is rejected.

Ground No. 5:

33. In this ground, the revenue challenges the CIT(A)'s action in deleting the disallowance of Rs. 2,03,68,947/- made by AO out of various expenses.

34. The AO has made this disallowance in Para 7 of assessment-order, the same is re-produced below:

"7. The assessee has claimed many other expenses in the P & L Account but failed to produce the ledger, bills, vouchers and other supporting documents. Details of expenses under various heads claimed by the assessee with comparison to expenses claimed it the preceding year is tabulated as under :-

S.No.	Details of Expenses	Amount Claimed in F.Y. 13-14 (in Rs.)	Amount Claimed in F.Y. 12-13 (in Rs.)	Percentage increase over last year	Percentage of disallowance of expenses in F.Y.13-14	Amount of disallowance (in Rs.)
1	Advertisement & Publicity	37211897	10610305	251	50%	18605948
2	Other repair & maintenance	1635324	647456	153	40%	654129
3	Vehicle Running and Maintenance	2878356	2436590	18	5%	143918
4.	Travelling and Conveyance	19299033	17973390	7	5%	964952
					TOTAL	2,03,68,947

Thus, the total amount of Rs. 2,03,68,947/- is hereby disallowed and added to the total income of the assessee on account of expenses claimed by the assessee as per the above table."

35. The CIT(A) has reversed AO's action fully as under:

“3.4.3 I have considered the facts of the case, plea raised by the appellant and findings of the Ld AO. As culled out from assessment order, the entire addition has been made on the premise that no bills and vouchers relating to the miscellaneous expenses (4 heads) were furnished by the appellant. As discussed herein above in para 3.1 & 3.2, the appellant time and again, as and when desired, has furnished required documents with supportive bills and vouchers which were verified by the Ld AO and no negative inference was drawn. Most importantly, the books of accounts are also audited by independent chartered account and no adverse remark was made. Hence, the entire disallowance has been made without giving any proper finding and reasoning and on pure assumption and presumption. Another reason culled out from assessment order is that the Ld AO has made disallowance on vis-a-vis comparison of expenses with immediate preceding year i.e AY 2013-14. Here, it is important to mention that each and every assessment is separate and the AO cannot determine expenses in comparison with the earlier year. Furthermore, adhocism is not permissible in law to determine true and correct income of the appellant. The judicial pronouncements in support have already been discussed in para 3.2.8 to 3.2.11 of this order.

3.4.4 The appellant has also filed a comparative chart of miscellaneous expense from AYs 2011-12 to 2020-21 which shows that there was no abnormal rise in the claim of the appellant. The relevant extract of comparison table is reproduced as under:-

Comparative Chart of Advertisement and Publicity Expenses

<u>Particulars</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>
	2011-12	2012-13	2013-14	2014-15
Sales	1,745,872,935	1,938,282,041	2,035,475,343	1,902,725,039
Assessee claimed	9,286,042	15,394,566	15,394,566	37,211,897
% over sales	0.53%	0.79%	0.52%	1.96%
Disallowed by A.O.	Nil	Nil	Nil	1,86,05,948
As per CIT(A)	N. A.	N.A.	N.A.	In appeal
As per ITAT	N. A.	N.A.	N.A.	-

Comparative Chart of Other Repair and Maintenance Expenses

<u>Particulars</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>
	2011-12	2012-13	2013-14	2014-15
Sales	1,745,872,935	1,938,282,041	2,035,475,343	1,902,725,039

Som Distilleries and Breweries Limited, Bhopal
ITA Nos. 271/Ind/2023 (A.Y. 2013-14) & ITA No. 297/Ind/2023 (A.Y. 2014-15)

Assessee claimed	582,506	488,323	647,456	1,635,324
% over sales	0.03%	0.03%	0.03%	0.09%
Disallowed by A.O.	Nil	Nil	Nil	654,129
As per CIT(A)	N. A.	N.A.	N.A.	In appeal
As per ITAT	N. A.	N.A.	N.A.	-

Comparative Chart of Vehicle Running and Maintenance Expenses

<u>Particulars</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>
	2011-12	2012-13	2013-14	2014-15
Sales	1,745,872,935	1,938,282,041	2,035,475,343	1,902,725,039
Assessee claimed	1,890,986	2,737,409	2,436,590	2,878,356
% over sales	0.11%	0.14%	0.12%	0.15%
Disallowed by A.O.	Nil	Nil	Nil	143,918
As per CIT(A)	N. A.	N.A.	N.A.	In appeal
As per ITAT	N. A.	N.A.	N.A.	-

Comparative Chart of Travelling and Conveyance Expenses

<u>Particulars</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>	<u>A.Y.</u>
	2011-12	2012-13	2013-14	2014-15
Sales	1,745,872,935	1,938,282,041	2,035,475,343	1,902,725,039
Assessee claimed	10,587,419	17,367,956	17,973,390	19,299,033
% over sales	0.61%	0.90%	0.88%	1.01%
Disallowed by A.O.	Nil	868,398 (5% of Total Claimed)	898,670	964,952
As per CIT(A)	N. A.	Confirmed	In appeal	In appeal
As per ITAT	N. A.	Deleted	-	-

The Id AO had not found the expenses claimed as bogus or non-genuine. The details were available with him. But he did not make any enquiry to examine the veracity of expenses claimed or whether such expenses were actually incurred in connection with business purpose. In absence of any contrary finding, adhoc addition is not permissible. In view of decisions cited in para 3.2.8 to 3.2.11 of this order, the adhoc addition is not sustainable.

3.4.5 A similar adhoc disallowance was made by the Ld AO in the case of appellant (regarding travelling and conveyance expenses) and the entire adhoc addition was deleted by Hon'ble jurisdictional ITAT

Indore bench vide ITA No 495 & 516/Ind/2018 dated 24.10.2019. The relevant extract of decision is as under:-

"10. It transpires from the assessment order that, the Ld. A.O while examining the records during the course of assessment on test check basis on observing few incomplete vouchers and self made vouchers for claim of expenses, most of which may have incurred in cash, made such disallowance. For raising doubts against the genuineness of expenses claimed by the assessee Ld. A.O has to give sound finding because making disallowance is a charge against the assessee company that its records are incomplete. This is not the case of partnership firm where the partners have claimed their expenses as part of the business expenditure which may have some element of personal nature. Assessee is a limited company having a huge turnover and have offered significant income. Such ad-hoc disallowance of 5% should not be a mere formality on the part of the Ld. A.O to make some addition. If any such addition are made, then they should stand as a rock with a clear expressive finding. In the instant case it is missing. Such type of ad-hoc disallowance have also been deleted by the Co-ordinate bench in their decision in the case of Brilliant Estate Pvt. Ltd V/s DCIT (supra), decision of Coordinate Bench of Delhi in the case of ACIT V/s Modi Rubber Limited (supra) and also by Hon'ble High Court of Delhi in the case of Friends Clearing Agency (P) Ltd V/s CIT (supra).

11. We therefore respectfully following above decisions above and in view of finding given herein above and in the facts and circumstances of the case find no reason to sustain the ad-hoc disallowance. We accordingly delete the disallowance of expenses of Rs.17,06,811/- and allow the sole issue and also the appeal of the assessee."

3.4.6 In view of the above discussion and judiciously following the decision of Hon'ble ITAT in the case of appellant for AY 2012-13, the additions/

*disallowance made by the Ld AO under the heads advertisement & Publicity, repair & maintenance, vehicle running & maintenance and travelling & conveyance expenses amounting to Rs. 1,86,05,948/-, Rs. 6,54,129/-, Rs. 1,43,918/- and Rs. 9,64,952/- respectively, aggregating to **Rs. 2,03,68,947/-** is hereby **deleted**. Therefore, appeal on this ground is **allowed**."*

36. Before us, learned Representatives of both sides referred their respective favourable orders i.e. while Ld. DR for revenue referred AO's order, Ld. AR for assessee relied upon CIT(A)'s order. Ld. AR drew our specific attention to Para 3.4.5 of CIT(A)'s order wherein the CIT(A) has followed **ITAT Indore's order dated 24.10.2019 in assessee's own case for AY 2012-13** deleting ad hoc disallowance made by AO out of Travelling & Conveyance expenses. Copy of ITAT's order is also filed in Paper-Book.

37. We have considered rival submissions of both sides and also perused the material held on record including the orders of lower-authorities. Without reiterating the vehement findings and conclusion made by Ld. CIT(A), we only suffice to mention that the CIT(A) has rightly deleted the *ad hoc* disallowance made by AO. In coming to his conclusion, the CIT(A) has also considered the order of ITAT, Indore for earlier AY 2012-13. Ld. DR for revenue though dutifully relied upon order of AO yet could not point out any infirmity, perversity or error in the order of CIT(A). Therefore, we do not find any reason to interfere with the order of CIT(A), the same is hereby upheld. This ground is accordingly rejected.

38. Resultantly, assessee's appeal is partly allowed for statistical purpose and revenue's appeal is dismissed.

Order pronounced in open court on 08.08.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 08.08.2024.
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore