

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.557/PUN/2024
Assessment Year : 2020-21**

Kapil Alcotech LLP Plot No.E-45, MIDC Chikalhana, Aurangabad – 431136	Vs.	DCIT, Circle – 1, Aurangabad
PAN: AAQFK3855R		
(Appellant)		(Respondent)

Assessee by : Shri K P Dewani
Department by : Shri Pankaj Kumar
Date of hearing : 19-06-2024
Date of pronouncement : 09-08-2024

ORDER

PER R.K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 14.03.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2020-21.

2. Facts of the case in brief, are that the assessee is a partnership firm engaged in the business of trading in wholesale in Indian Made Foreign Liquor (IMFL) at Aurangabad. It had filed its return of income on 01.01.2021 declaring total income of Rs.49,51,589/-. The case was selected for complete scrutiny. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were issued and served on the assessee. However, there was no proper representation before the Assessing Officer since the assessee did not furnish full details as called for by the Assessing Officer. In view of the same,

the Assessing Officer completed the assessment on the basis of whatever details furnished by the assessee and determined the total income of the assessee at Rs.25,43,82,529/- by making the following additions:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount in INR</i>
1	<i>Variation on account of disallowance of remuneration paid to working partners since the same was not authorized by partnership deed as discussed in Para 13 above</i>	<i>Rs.5,90,000/-</i>
2	<i>Variation on account of difference amount of to be taxed u/s 68 r.w.s. 115BBE of the Act as unexplained credits as discussed in Para 14 above</i>	<i>Rs.49,93,038/-</i>
3	<i>Variation on account of disallowance of inflated purchase expenses as discussed in Para 15.1 above</i>	<i>Rs.1,12,968/-</i>
4	<i>Variation on account of difference between the value adopted or assessed or assessable by the stamp duty valuation authority and the document value as discussed in Para 17.1 above</i>	<i>Rs.33,47,987/-</i>
5	<i>Variation as inflated expenses on account of disallowance of Expenses claimed as Travelling expenses as discussed in Para 20 above</i>	<i>Rs.24,010/-</i>
6	<i>Variation as unexplained expenditure on account of difference between the travelling expenses as per petty cash book and the travelling expenses admitted in the schedule forming part of P & L account as discussed in Para 20 above</i>	<i>Rs.5,53,295/-</i>
7	<i>Variation on account of difference between the direct expenses, indirect expenses, and the capital expenses booked in P&L account and balance sheet and the expenses booked in the sundry creditors group summary, assessed as unexplained expenditure u/s 69C of the Act as discussed in Para 21 above</i>	<i>Rs.13,12,365/-</i>
8	<i>Variation on account of alleged capital introduction made by partner Shri Harleensingh Sethi u/s 68 of the Act as unexplained cash credits as discussed in Para 22 above</i>	<i>Rs.1,18,82,797/-</i>
9	<i>Variation on account of difference between total credits found in the bank accounts of the assessee firm and the total revenue receipts, capital receipts, and exempt receipts u/s 68 of the Act as discussed in Para 23 above</i>	<i>Rs.22,66,14,480/-</i>
	<i>Total income determined u/s 143(3) r.w.s. 144B of the Act.</i>	<i>Rs.25,43,82,529/-</i>

3. In appeal, the CIT(A) / NFAC gave part relief to the assessee, wherein he deleted the addition of Rs.13,12,365/- and sustained the remaining additions.

4. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

- 1) *The order passed by Commissioner of Income Tax (Appeals) u/s 250 of I.T. Act, 1961 is illegal invalid and bad in law as it is passed without fixing the hearing in terms of mandatory provisions of section 250(1) of I.T. Act, 1961.*
- 2) *The order passed by CIT(A) is without providing reasonable opportunity of being heard and is in violation of principles of natural justice. No video conferencing is allowed even though specific request was made in written submission uploaded on 29/08/2023.*
- 3) *The learned CIT(A) erred in upholding various additions made in assessment order u/s 143(3) of I.T. Act, 1961*
- 4) *The addition made by learned A.O. and upheld by CIT(A) at Rs.5,90,000/- on account of disallowance of remuneration to working partner is unjustified, unwarranted and excessive.*
- 5) *The addition made by learned A.O. and upheld by CIT(A) at Rs.49,93,038/- on account of difference in amount between sales amount shown in Profit & Loss Account and sales amount shown in ITR to be taxed u/s 68 r.w.s. 115BBE of I.T. Act, 1961 as unexplained credits is unjustified, unwarranted and excessive.*
- 6) *The addition made by learned A.O. and upheld by CIT(A) at Rs.1,12,968/- by comparing purchases as per books and VAT return u/s 69C of I.T. Act, 1961 on account of inflated purchases is unjustified, unwarranted and excessive.*
- 7) *The addition made by learned A.O. and upheld by CIT(A) at Rs.33,47,987/- u/s 56(2)(x) of I.T. Act, 1961 is unjustified, unwarranted and excessive.*
- 8) *The addition made by learned A.O. u/s 56(2)(x) of I.T. Act, 1961 at Rs.33,47,987/- without making reference to valuation officer is illegal, invalid and bad in law.*
- 9) *The addition made by learned A.O. and upheld by CIT(A) at Rs.24,010/- and Rs.5,53,295/- on account of disallowance of travelling expenses is unjustified, unwarranted and excessive.*

- 10) *The addition made by learned A.O. and upheld by CIT(A) at Rs.1,18,82,797/- on account of credit in capital account of partner Shri Harleensingh Sethi u/s 68 of I.T. Act, 1961 is unjustified, unwarranted and excessive.*
- 11) *The addition made by learned A.O. and upheld by CIT(A) at Rs.22,66,14,480/- on account of difference between total credits in bank and total of revenue, capital & exempt receipts u/s 68 of I.T. Act, 1961 is unjustified, unwarranted and excessive.*
- 12) *The addition made by learned A.O. and upheld by CIT(A) at Rs.22,66,14,480/- for credits in bank account u/s 68 of I.T. Act, 1961 is illegal, invalid and bad in law.*
- 13) *The assessee denies liability to pay interest u/s 234A, 234B and 234C of I.T. Act, 1961. Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act, 1961 is unjustified, unwarranted and excessive.*

5. The grounds of appeal No.1 to 3 and 14 being general, are dismissed. The grounds of appeal No.13 which is related to levy of penalty u/s 234A, 234B and 234C of the Act being mandatory and consequential in nature, is dismissed.

6. So far as the ground No.4 is concerned, the same relates to the order of the CIT(A) / NFAC in confirming the disallowance of Rs.5,90,000/- being remuneration to working partners.

7. Facts of the case in brief are that the Assessing Officer during the course of assessment proceedings noted from the Profit and Loss Account for the year ended 31.03.2020 that the assessee firm has paid remuneration of Rs.5,90,000/- to the 2 working partners @ Rs.2,95,000/- each. The above remuneration includes salary, bonus and commission on fixed percentage. He referred to the relevant provisions of the Act and noted that as per partnership deed, neither the amount to be paid as

remuneration nor the manner of computing remuneration has been incorporated which is in violation of CBDT Circular No.739 dated 25.03.1996. During the course of video conference, he asked the AR to present his case in respect of proposed disallowance of remuneration of Rs.5,90,000/- paid to the partners. The AR of the assessee furnished the copy of the supplementary deed wherein the manner of payment of remuneration has been described. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made disallowance of Rs.5,90,000/- paid to the working partners on the ground that the same was not authorized by the partnership deed.

8. In appeal, the CIT(A) / NFAC upheld the action of the Assessing Officer by observing as under:

*“Decision: I have considered the submission of the appellant, case records and gone through the AO's observation & decision in assessment order. I find the appellant despite availing ample opportunity of hearing miserably failed to file supplementary Partnership deed with specific remuneration payment clause in accordance with CBDT Circular 739 dated 25-03-1996 before the AO in assessment stage. Therefore I find no infirmity in the order of the AO in making additions/disallowance of remuneration paid to working partners of Rs.5,90,000/- invoking provision of section 40(B) of the Income Tax Act being the same was unauthorized either by Limited Liability Partnership Deed or Supplementary Deed. In view of above discussion addition of **Rs.5,90,000/-** made by the AO stand confirmed. These grounds are therefore dismissed”.*

9. The Ld. Counsel for the assessee challenged the order of the CIT(A) / NFAC in sustaining the disallowance made by the Assessing Officer. He submitted that the CIT(A) / NFAC despite going through the supplementary partnership deed where the manner of computing the remuneration is authorized, sustained the disallowance, which is not correct. Referring to the observations of the Assessing

Officer, he submitted that the Assessing Officer himself has mentioned that the assessee has filed the copy of supplementary deed. Further on the basis of same supplementary deed, the remuneration has been allowed to the working partners in the order passed u/s 143(3) of the Act for the assessment year 2022-23, a copy of which is placed at pages 46 to 49 of the paper book. He further submitted that there is no loss to the Revenue since the partners are assessed to the tax at the maximum marginal rate. He accordingly submitted that the disallowance made by the Assessing Officer and sustained by the CIT(A) / NFAC is not in accordance with the law and therefore should be deleted.

10. The Ld. DR on the other hand heavily relied on the orders of Assessing Officer and CIT(A) / NFAC.

11. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case disallowed the remuneration paid to two working partners amounting to Rs.5,90,000/- on the ground that the partnership deed does not contain the manner of remuneration to be paid to the working partners. We find the CIT(A) / NFAC sustained the disallowance made by the Assessing Officer, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the finding of the CIT(A) / NFAC that the assessee despite availing ample opportunity of hearing miserably failed to file supplementary deed

with specific remuneration payment clause in accordance with CBDT Circular No.739 dated 25.03.1996 before the Assessing Officer in the assessment stage is incorrect since the assessee had filed the copy of the supplementary deed, the scanned copy of which has already been reproduced by the Assessing Officer in the body of the assessment order. A perusal of the remuneration clause in the supplementary deed shows that the manner of remuneration payable to each of the working partners has been mentioned. Further, we find some force in the arguments of the Ld. Counsel for the assessee that both the partners as well as the firm are assessed at the same rate of tax and there is no loss to the Revenue. Further, on the basis of the same clause as per the supplementary deed, the Assessing Officer in the order passed u/s 143(3) on 19.03.2024 has allowed the remuneration to the working partners. In any case, since the supplementary deed contains the manner of calculation of the remuneration payable to the partners, therefore we set aside the order of the CIT(A) / NFAC and direct the Assessing Officer to allow the remuneration paid to the two working partners at Rs.5,90,000/-. The first issue raised by the assessee as per ground of appeal No.4 is accordingly allowed.

12. The ground No.5 relates to the order of the CIT(A) / NFAC in confirming the addition of Rs.49,93,038/- made by the Assessing Officer u/s 68 of the Act being the difference in sale amount in the Profit and Loss Account and sale amount in the ITR.

13. Facts of the case in brief, are that the Assessing Officer made addition of Rs.49,93,038/- on the ground that there is a difference in the figures shown in the Profit and Loss Account at Rs.65,75,97,015/- and total sales disclosed in the ITR at Rs.66,26,20,053/- and the assessee according to the Assessing Officer, could not explain the difference to his satisfaction.

14. In appeal, the CIT(A) / NFAC upheld the action of the Assessing Officer by observing as under:

“Decision : I have considered the submission of the appellant, case records and gone through the AO's observation & decision in assessment order. I find the appellant despite availing ample opportunity of hearing miserably failed to explain the cause of discrepancies or differences in details by furnishing the relevant documents substantiating the objection raised by the appellant before the AO in assessment stage . Also it is observed that the appellant was unable to give satisfactory explanation before the AO with supporting documents in as much as the appellant shifted its onus in most of the issues of variance over/with the technical glitch of the software. Therefore I find no infirmity in the order of the AO in making additions /disallowance of Rs.49,93,038/- for variation on account of difference of sales, admitted in the P&L account and the sales admitted in the ITR for A.Y.2020-21, invoking provision of section u/s.68 r.w.s. 115BBE of the Act . In view of above discussion addition of Rs.49,93,038/- made by the AO stand confirmed. These grounds are therefore dismissed.”

15. The Ld. Counsel for the assessee submitted that there is absolutely no difference in the two figures since the assessee has given cash discount of Rs.40,94,726/- as per page 36 of the paper book and incurred sales promotion expenses of Rs.9,28,312/- as per page 35 of the paper book which were debited to the sales account in audited financial statements and it was only an inadvertent error. He further submitted that the turnover has been shown more in the ITR and therefore there is no case for making addition u/s 68 of the Act. Since the requisite conditions for invoking provisions of section 68 are absent, the addition made is

prima facie unjustified. He submitted that the CIT(A) / NFAC without understanding the evidence on record in a very cryptic order has sustained the addition made by the Assessing Officer which is not correct.

16. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and CIT(A) / NFAC.

17. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case made addition of Rs.49,93,038/- on the ground that there is difference in the amounts reflected in the Profit and Loss Account and the amount of sales reflected in the ITR. We find the CIT(A) / NFAC sustained the addition made by the Assessing Officer, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that if the amount of cash discount of Rs.40,94,726/- and sales promotion of Rs.9,28,312/- is deducted from the figure of Rs.66,26,20,053/-, then the net sales comes to Rs.65,75,97,014/- which has been reflected in the Profit and Loss Account. We find merit in the above arguments of the Ld. Counsel for the assessee. Although in the Profit and Loss Account the sales and labour charges are reflected at Rs.65,75,97,014.95, however, the amount of cash discount of Rs.40,94,726/- and the sales promotion of Rs.9,28,312/- which were mentioned in the ITR are not found in the trading profit and loss account. Thus, in our opinion, the Ld. Counsel for the assessee has successfully clarified the

said difference. We, therefore, set aside the order of the CIT(A) / NFAC and direct the Assessing Officer to delete the disallowance of Rs.49,93,038/- being the difference between the sales amount reflected in the Profit and Loss Account and the sale amount reflected in the ITR. Accordingly, the ground No.5 is allowed.

18. The ground No.6 relates to the order of the CIT(A) / NFAC in confirming the addition of Rs.1,12,968/- being the difference in purchases as per books and VAT return.

19. Facts of the case in brief are that the Assessing Officer made addition of Rs.1,12,968/- being the difference between the purchases as per books and purchases as per VAT return. We find the CIT(A) / NFAC upheld the action of the Assessing Officer by observing as under:

“Decision: I have considered the submission of the appellant, case records and gone through the AO's observation & decision in assessment order. I find the appellant despite availing ample opportunity of hearing miserably failed to explain the cause of discrepancies or differences in details by furnishing the relevant documents of differences tantamount to previous years before the AO in assessment stage. Also it is observed that the appellant was unable to give satisfactory explanation before the AO with supporting documents in as much as the appellant failed to furnish ledger accounts and other related documents to substantiate its legitimate claim. Therefore I find no infirmity in the order of the AO in making additions/disallowance of Rs.1,12,968/- for variation on account of disallowance of inflated purchase. In view of above discussion addition of Rs.1,12,968/- made by the AO stand confirmed. These grounds are therefore dismissed.”

20. It is the submission of the Ld. Counsel for the assessee that the difference is on account of debit notes and credit notes for value of purchases on account of the following:

<i>Date</i>	<i>Particulars</i>	<i>Voucher Type</i>	<i>Vch No.</i>	<i>In Purchase – Trade Discount considered F.Y 2018-19</i>	<i>Trade Discount Recd</i>	<i>Trade Discount reversed in purchased F.Y 2019-20</i>
01/04/2019	Radico NV Distilleries Maharashtra Ltd.	Journal	251	1,16,010.00	80,350.00	35,660.00
01/04/2019	Radico NV Distilleries Maharashtra Ltd.	Journal	254	1,77,996.00	75,000.00	1,02,996.00
01/04/2019	Radico NV Distilleries Maharashtra Ltd.	Journal	255	1,70,669.00	1,31,250.00	39,419.00
01/04/2019	Allied Blenders and Distillers Pvt. Ltd	Journal	256	1,31,730.00	61,300.00	70,430.00
01/04/2019	Good Drop Wine Cellers Pvt Ltd	Journal	253	90,606.00		90,606.00
01/04/2019	FARTELLI WINES PVT LTD	Journal	127	86,753.00		86,753.00
01/04/2019	United Breweries Limited	Journal	120	-	3,12,889.40	(3,12,889.40)
	Round Off					(6.60)
	<i>Grand Total</i>					

21. Although the assessee had given detailed submission before the CIT(A) / NFAC, however, the CIT(A) / NFAC without considering the arguments of the assessee in a proper perspective has sustained the addition. Since the assessee has explained the difference of Rs.1,12,968/- which is on account of debit notes and credit notes for value of purchases, therefore, we set aside the order of the CIT(A) / NFAC and direct the Assessing Officer to delete the addition. The ground No.6 is accordingly allowed.

22. The grounds of appeal No.7 and 8 relate to the order of the CIT(A) / NFAC in confirming the addition of Rs.33,47,987/- made by the Assessing Officer u/s 56(2)(x) of the Act on account of difference in value adopted by the Stamp Duty Authorities and value as per registered sale deed.

23. Facts of the case in brief are that the Assessing Officer on perusal of the depreciation schedule in respect of plant & machinery and other assets noted that an amount of Rs.2,22,42,457/- has been spent towards purchase of building and furniture & fittings and Rs.40,600/- towards purchase of computer. From the various details furnished by the assessee, he noted that the value adopted by the

Stamp Duty Authorities for purchase of building is more than the document value by Rs.33,47,987/-. Since the assessee firm failed to furnish the entire document, citing the size of the document, the Assessing Officer made addition of the same by invoking the provisions of section 56(2)(x) of the Act.

24. In appeal, the CIT(A) / NFAC sustained the addition made by the Assessing Officer on the ground that the assessee was unable to give satisfactory explanation before the Assessing Officer with supporting documents and also failed to submit the other relevant details to substantiate its claim.

25. The Ld. Counsel for the assessee submitted that the assessee has purchased office premises on sub-lease basis for a consideration of Rs.2,05,43,157/- and stamp duty value of property is Rs.1,25,66,832/-. Since the purchase price is more than the stamp duty value of the property, there is no case for making the addition u/s 56(2)(x) of the Act. He submitted that the office premises which is acquired by the assessee on sub-lease is constructed on a land owned by MIDC. The premises is acquired on sub-lease and is not an immovable property and therefore, the provisions of section 56(2)(x) of the Act are also not applicable. Referring to the following decisions, he submitted that the addition made by the Assessing Officer and sustained by the CIT(A) / NFAC is not in accordance with law:

- i) *ITAT order in ITA No.839/PUN/2018 in the case of Mrs. Bhavana Shashikant Ghone vide order dated 20.06.2022*
- ii) *ITAT order in ITA No.183/JP/2020 in the case of Shri Shiv Kumar Soni vide order dated 18.10.2022*
- iii) *ITAT order in ITA No.462/Kol/2023 in the case of Birtannia Industries Ltd. vide order dated 06.03.2024*

26. The Ld. DR heavily relied on the orders of Assessing Officer and CIT(A) / NFAC.

27. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer made the addition of Rs.33,47,987/- u/s 56(2)(x) of the Act on the ground that there is difference in value adopted by the Stamp Duty Authorities and the value as per the registered document. A perusal of the details furnished by the assessee in paper book shows that the office premises was purchased for Rs.2,05,43,157/- as per page 69 of the paper book, whereas the stamp duty value of the property is only Rs.1,25,66,832/-. Since the purchase price is more than the stamp duty value of the property, we find merit in the arguments of the Ld. Counsel for the assessee that there is no case for making addition u/s 56(2)(x) of the Act. Accordingly, the order of the CIT(A) / NFAC is set aside on this issue and the grounds of appeal No.7 and 8 raised by the assessee are allowed.

28. The ground No.9 relates to the order of the CIT(A) / NFAC in confirming the disallowance of Rs.24,010/- and Rs.5,53,295/- made by the Assessing Officer out of travelling expenses.

29. Facts of the case in brief, are that during the course of assessment proceedings the Assessing Officer noted that the assessee has claimed Rs.5,09,058/- towards travelling expenses under the schedule 'Administration and

selling expenses'. He asked the assessee to give breakup of the expenses. From the details furnished by the assessee, he noted that the total expenses incurred towards travelling is Rs.4,85,058/-, whereas the assessee firm claimed Rs.5,09,058/-, hence, he made addition of difference of Rs.24,010/- on account of inflation of such expenses and for want of evidence. The Assessing Officer further noted that the veracity of the travelling expenses and the payment details in the Petty cash book shows that the assessee firm has incurred Rs.10,62,353/- towards travelling expenses whereas only Rs.5,09,058/- has been accounted for in the books. He, therefore, proposed an addition of Rs.5,53,295/- being the difference between travelling expenses as per petty cash book and the travelling expenses admitted in the Profit and Loss Account. In absence of satisfactory explanation given by the assessee, the Assessing Officer made addition of Rs.24,010/- and Rs.5,53,295/-, respectively to the total income of the assessee.

30. In appeal, the CIT(A) / NFAC upheld the action of the Assessing Officer by observing as under:

“Decision : I have considered the submission of the appellant and gone through the AO's observation & decision in assessment order. On this ground I find neither the appellant could adduce satisfactory explanation nor could it furnish relevant documents substantiating the objections made by the appellant. Instead of substantiating its various claim with supporting documents, the appellants took resort on software problems regarding discrepancies in as much as it states travelling expenses of Rs.5,05,637/- being clubbed under the head freight and hamali in financial statement. Therefore, I find no infirmity in the order of the AO in making additions of Rs.24,010/- for variation as inflated expenses on account of disallowance of Expenses claimed as Travelling expenses and Rs.5,53,637/- being Variation as unexplained expenditure on account of difference between the travelling expenses as per petty cash book and the travelling expenses admitted in the schedule forming part of P & L account. In view of above discussion addition of Rs.24,010/- and Rs.5,53,637/- made by the AO stand confirmed. These grounds are therefore dismissed.”

31. The Ld. Counsel for the assessee submitted that the amount of Rs.24,010/- is travelling expenses for vehicle No.MH 03 – DC 3414 for which a separate ledger account was opened, the details of which are in pages 130 and 131 of the paper book, Volume-I. Proper TDS has been made and payments are through proper banking channel. The above sum was clubbed with ledger account considered by the Assessing Officer at Rs.4,85,058/- to report expenses in Profit and Loss Account at Rs.5,09,058/-. So far as the petty cash book is concerned, the payment of Rs.5,05,637/- is part of freight and hamali debited in Profit and Loss Account at Rs.29,69,634/-, details of which are at pages 132 and 39 of the paper book, Volume – I. He further submitted that since all these expenses are recorded in the books of account, therefore, there cannot be any addition u/s 69C of the Act. He submitted that despite the detailed submissions given by the assessee which have been reproduced by the CIT(A) / NFAC at page 49 to 52 in his order and without finding any inaccuracy in the same, the CIT(A) / NFAC in a cryptic order has sustained the addition which is not correct.

32. The Ld. DR strongly supported the orders of the Assessing Officer and CIT(A) / NFAC.

33. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case made addition of Rs.24,010/- being the difference of the travelling expenses debited in the ledger

account at Rs.4,85,058/- and claimed at Rs.5,09,058/-. Similarly, he made addition of Rs.5,53,295/- on the ground that the amount as per petty cash book comes to Rs.10,62,353/- whereas the assessee has debited only an amount of Rs.5,09,058/-. We find the CIT(A) / NFAC sustained the addition which has already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the amount of Rs.24,010/- represents the travelling expenses for vehicle No. MH -3 – DC 3414 for which a separate ledger account has been opened, details of which are as under:

*KAPIL ALCOTECH LLP [IT 1920]
Travelling Expenses MH03-DC-3414*

1-Apr-2019 to 31-Mar-2020

<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch No.</i>	<i>Debit</i>	<i>Credit</i>
31-7-2019	<i>Cr Td on contractor</i>	<i>Journal Being amount incurred towards Travelling Expenses paid for the month of July-19 (Swift Dezire MH03-DC- 3414)</i>	171	24,000.00	
				24,000.00	
	<i>Dr Closing Balance</i>				24,000.00
				24,000.00	24,000.00

34. Since the above amount has been paid by cheque and due TDS has been deducted, therefore, the CIT(A) / NFAC, in our opinion, is not justified in sustaining the addition of Rs.24,010/-. Accordingly, the same is directed to be deleted.

35. So far as the amount of Rs.5,53,295/- is concerned, we find an amount of Rs.5,05,637/- has been debited towards freight and hamali expenses under the head

‘travelling expenses’. We, therefore, find merit in the arguments of the Ld. Counsel for the assessee that when the amount has already been debited under the head ‘freight and hamali expenses’, the CIT(A) / NFAC is not justified in sustaining the addition of Rs.5,53,295/-. However, we find although the assessee has debited an amount of Rs.5,05,637/- towards travelling expenses which is against the head ‘freight and hamali expenses’, still the assessee could not explain the difference to the tune of Rs.47,658/-. We, therefore, modify the order of the CIT(A) / NFAC and the disallowance is restricted to Rs.47,658/-. The ground of appeal No.9 is accordingly partly allowed.

36. The ground No.10 relates to the order of the CIT(A) / NFAC in confirming the addition of Rs.1,18,82,797/- being the variation on account of capital introduced by the partner Shri Harleensingh Sethi by invoking the provisions of section 68 of the Act.

37. Facts of the case in brief, are that during the course of assessment proceedings the Assessing Officer noted that the partners Shri Harleensingh Sethi and Shri Suryadev Dewani had introduced capital of Rs.1,18,82,797/- and Rs.1,00,00,000/-, respectively. After considering the various submissions filed by the assessee firm, the Assessing Officer accepted the capital introduced by Shri Suryadev Dewani at Rs.1,00,00,000/-. However, in absence of satisfactory explanation in respect of capital introduced by Shri Harleensingh Sethi at

Rs.1,18,82,797/-, the Assessing Officer made addition of the same to the total income of the assessee.

38. In appeal, the CIT(A) / NFAC sustained the addition made by the Assessing Officer by observing as under:

“Decision : I have considered the submission of the appellant and gone through the AO's observation & decision in assessment order. On this grounds I find the AO has accepted the submission in respect to capital introduction of Rs.1,00,00,000/- by Shri Suryadeb Dewani, one of the Partners of the Appellant Firm being in order, but the submission in respect of another partner Shri Harieen Singh Sethi is not accepted by the AO and made addition invoking provision of section 68 of the I.T Act. In course of assessment proceeding the appellant, despite getting ample opportunity of hearing, was unable to substantiate the creditworthiness of partners with necessary material evidence for the capital introduction of Rs.1,18,82,797/-. Therefore, I find no infirmity in the order of the AO in making additions of Rs.1,18,82,797/- invoking provision of section 68. In view of above discussion addition of Rs.1,18,82,797/- made by the AO stand confirmed. These grounds are therefore dismissed.”

39. The Ld. Counsel for the assessee referring to page 173 of the paper book submitted that the amount of Rs.1,18,82,797/- was credited to the capital account of the partner by debiting the account of Satyam Spirit Pvt. Ltd. CC account on 01.06.2019. The confirmation of Satyam Spirit Pvt. Ltd. was submitted and written submission was given. Therefore, the CIT(A) / NFAC was not justified in sustaining the addition. In his alternate argument, he submitted that the capital contributed by the partner cannot be added u/s 68 of the Act and the addition, if any, only can be made in the hands of partner. For the above proposition, he relied on the following decisions:

- i) *Hon'ble Bombay High Court in ITA No.87/2009 in case of M/s. Aditya Constructions vide order dated 28/06/2013.*
- ii) *PCIT vs. Vaishnodevi Refoils & Solvex (89 taxmann.com 80 (Guj)*

- iii) *SLP filed by Revenue in respect of aforesaid judgment is dismissed by Hon'ble Apex Court in SLP (Civil) No.22842/2018 vide judgment dated 09/07/2018.*

40. The Ld. DR heavily relied on the orders of Assessing Officer and CIT(A) / NFAC.

41. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case made addition of Rs.1,18,82,797/- being the capital introduced by Shri Harleensingh Sethi on the ground that the assessee could not substantiate the creditworthiness of the partner with necessary material evidence for capital introduction. We find the CIT(A) / NFAC sustained the addition, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that an amount of Rs.1,18,82,797/- was transferred from CC account of Satyam Spirit Pvt. Ltd. on 01.06.2019 and despite giving full details the CIT(A) / NFAC has sustained the addition which is not correct. It is also his submission that the capital contribution of partner cannot be added u/s 68 of the Act. We find merit in the alternate submission of the Ld. Counsel for the assessee. The Hon'ble High Court of Gujarat in the case of PCIT vs. Vaishnodevi Refoils & Solvex (89 taxmann.com 80 (Guj) has held that on account of introduction of capital by the partner, addition, if any, can be made in the hands of the partner and not in the hands of the firm.

The relevant observations of the Hon'ble High Court read as under:

"8. In the facts of the present case, when the assessee has furnished the details with regard to the source of the capital introduced in the firm and the concerned

partner had confirmed such contribution, the assessee had duly discharged the onus cast upon it. Thereafter, if the Assessing Officer was not convinced about the creditworthiness of the partner who had made the capital contribution, the inquiry had to be made at the end of the partner and not against the firm. The controversy involved in the present case, therefore, stands squarely covered by the decision of this court in the case of Commissioner of Income-tax v. Pankaj Dyestuff Industries, rendered on 6.7.2005 in Income Tax Reference No.241 of 1993.”

42. Respectfully following the decision of the Hon’ble High Court of Gujarat in the case of PCIT vs. Vaishnodevi Refoils & Solvex (supra), we hold that the addition, if any, on account of introduction of capital by the partner can be made in the hands of the partner only and not in the hands of the firm. The order of the CIT(A) / NFAC on this issue is accordingly set aside and the Assessing Officer is directed to delete the addition. Thus, the ground of appeal No.10 is accordingly allowed.

43. The grounds of appeal No.11 and 12 relate to the order of the CIT(A) / NFAC in confirming the addition of Rs.22,66,14,480/- being the difference between the total credits in the bank and the total credits reflected in the Profit and Loss Account.

44. Facts of the case in brief, are that the Assessing Officer during the course of assessment proceedings noted that the total credits as per the bank accounts maintained with Bank of Maharashtra and HDFC Bank comes to Rs.1,36,96,81,565/- whereas the total credits as per the Profit and Loss Account is reflected only at Rs.65,79,99,365/-. He, therefore, asked the assessee to explain the difference of Rs.71,16,82,200/- between the total credits found in the bank

statements and the total credits as per the Profit and Loss Account. After considering the various submissions furnished by the assessee, the Assessing Officer noted that still there is a difference of Rs.22,66,14,479/-, the details of which are as under:

<i>Total credit entries in the Bank of Maharashtra, HDFC Bank (Current account & Cash credit account)</i>	<i>1369681565</i>
<i>Total credit entries reconciled by assessee firm</i>	<i>747647178</i>
<i>Credit entries yet to be reconciled</i>	<i>622034387</i>
<i>*LESS: In HDFC CA Total Credits in the Narration of AURANGABAD SER.BR.(A)</i>	<i>367687991.00</i>
<i>*LESS: In HDFC CCA Total Credits in the Narration contains Hotel (B)</i>	<i>0.00</i>
<i>*LESS: In HDFC CA Total Credits in the Narration contains Hotel (C)</i>	<i>40162740.58</i>
<i>*LESS: In Bank of Maharashtra Total Credits in the Narration contains Hotel (D)</i>	<i>20656461.00</i>
<i>** ADD: Total Credits already added to sundry debtors with Narration Hotel (E)</i>	<i>33087285.18</i>
<i>Total difference between total credits in all bank accounts and the total sales / turnover reported by assessee firm in the P & L account plus total loans received and trade advances, in any received.</i>	<i>226614479.60</i>

45. He, therefore, asked the assessee to explain as to why the above amount should not be added to the total income of the assessee. In absence of any proper reply to his satisfaction, the Assessing Officer made addition of the same to the total income of the assessee.

46. In appeal, the CIT(A) / NFAC confirmed the addition made by the Assessing Officer by observing as under:

“Decision : I have considered the submission of the appellant, case records and gone through the AO’s observation & decision in assessment order. I find the AO has adopted a new method of accounting i.e. correlation of Total aggregate credit entries of all Banks i.e. Bank of Maharastra, HDFC Bank (Current account &

Cash credit account) (as furnished by the appellant) with Total Credit (Sales/Turnover) in P&L Account. And by virtue of said correlation method, the AO, during show cause notice dated 31-08-2022, calls for explanation/reconciliation from the appellant the difference amount of 71,16,82,200/- (para 23.1 as per assessment order). After receiving the compliance from the appellant, the AO found out net difference of Rs.22,66,14,480/- and added with total income invoking provision of section 68 of the I.T Act in absence of material evidences in support of the statements made by the assessee firm as regards to the difference between total credits found in the bank accounts of the assessee firm and the total revenue receipts, capital receipts, and exempt receipts.

I find merit in the contention of the appellant in as much as it states the method of computation of addition being highly arbitrary but at the same time it is also observed that despite availing multiple opportunity of hearing, neither the appellant could adduce satisfactory explanation nor could it furnish relevant documents substantiating the objections made by the appellant . Instead of substantiating its various claim (deletion of additions) with supporting documents, the appellants took resort on mere statement without any supporting material evidence. Therefore, I find less infirmity in the order of the AO in making additions of Rs.22,66,14,480/- for Variation on account of difference between total credits found in the bank accounts of the assessee firm and the total revenue receipts, capital receipts, and exempt receipts u/s.68 of the Act. In view of above discussion addition of Rs.22,66,14,480/- made by the AO stand confirmed. These grounds are therefore dismissed.”

47. The Ld. Counsel for the assessee submitted that the assessee has explained each and every deposit and withdrawal in the two bank accounts and the Assessing Officer has not pointed out any specific credit entry in the bank accounts which the assessee has not substantiated. The books of account of the assessee are audited by the CA and are not rejected in assessment proceedings. He submitted that the calculation of debtors is taken at Rs.47.92 crores by the Assessing Officer as against the actual calculation of debtors at Rs.65.66 crores, the details of which are given at page 51 of the paper book, Volume – 2. Similarly, the difference in account of Satyam Spirits Pvt. Ltd. has been taken at Rs.93 lacs even though confirmation has been on record at pages 174 and 175 of the paper book Volume-1. Similarly, an amount of Rs.65.32 lacs on account of cheques returned has not

been considered, details of which as per page 53 of the paper book, Volume-2. Similarly, transfer of Rs.3.58 crores from cash credit account to current account has been taken as part of addition, the details of which are as per pages 54 and 55 of the paper book, volume -2. He submitted that the written submissions as reproduced by the CIT(A) / NFAC have not been faulted with or found to be incorrect.

48. The Ld. Counsel for the assessee further submitted that the assessee is a distributor of M/s. Allied Blenders & Distillers Pvt. Ltd. In respect of goods traded quantitative details are maintained under the supervision of Excise Authorities. The activity of business of purchase and sale of goods is through license vendors with the State of Maharashtra. The movement of goods traded is supported by transit pass issued by the Excise Authorities. Referring to the various decisions, he submitted that the addition made by the Assessing Officer and sustained by the CIT(A) / NFAC is not correct.

49. The Ld. DR heavily relied on the orders of Assessing Officer and CIT(A) / NFAC.

50. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We find the Assessing Officer in the instant case made addition of Rs.22,66,14,480/- on the ground that the assessee could not reconcile the difference between the credits appearing in the bank accounts and the credits as per

Profit and Loss Account. We find the CIT(A) / NFAC sustained the addition, the reasons of which are already reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that the lower authorities have wrongly taken the calculation of debtors at Rs.47.92 crores as against the actual calculation of debtors at Rs.65.66 crores which gives difference of Rs.17.74 crores. Similarly, the difference in account of Satyam Spirits Pvt. Ltd. has been taken at Rs.93 lacs even though the confirmation is on record. It is also the submission of the Ld. Counsel for the assessee that an amount of Rs.65.32 lacs on account of cheques returned has not been considered. Further, the amount of Rs.3.58 crores transferred from cash credit account to current account has been added which is also not justified. We find some force in the above arguments of the Ld. Counsel for the assessee that the addition is made due to certain errors while computing the difference between the amounts credited in the bank accounts and the amounts credited in the Profit and Loss Account. Since various defects pointed out by the Ld. Counsel for the assessee require verification at the level of the Assessing Officer, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the jurisdictional Assessing Officer with a direction to verify the calculation of amount received from debtors, the transfer of Rs.3.58 crores from cash credit account to current account, difference in account of Satyam Spirits Pvt. Ltd. and the amount of cheques returned which were not considered. The Assessing Officer shall decide the issue as per fact and law after providing due opportunity of being heard to the

assessee. We hold and direct accordingly. The grounds of appeal raised by the assessee on this issue are accordingly allowed for statistical purposes.

51. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 9th August, 2024.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 9th August, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	06.08.2024		Sr. PS/PS
2	Draft placed before author	07.08.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			