

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1257/Del/2018
(Assessment Year: 2015-16)**

Rathi Special Steels Ltd, A-24/8, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi (Appellant) PAN:AACCR8097H	Vs.	ACIT, Central Circle-16, New Delhi (Respondent)
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**ITA No. 1543/Del/2018
(Assessment Year: 2015-16)**

ACIT, Central Circle-16, New Delhi (Appellant) PAN:AACCR8097H	Vs.	Rathi Special Steels Ltd, A-24/8, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi (Respondent)
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Assessee by :	Shri Deepesh Garg, Adv Shri Shrey Jain, Adv
Revenue by:	Shri Amit Katoch, Sr. DR
Date of Hearing	10/05/2024
Date of pronouncement	08/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1254/Del/2018 filed by the assessee and ITA No. 1543/Del/2018 filed by the revenue for AY 2015-16, arise out of the order of the Commissioner of Income Tax (Appeals)-XXVI, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 273/16-17 dated 27.12.2017 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act')

dated 31.12.2016 by the Assessing Officer, ACIT, Central Circle-16, New Delhi (hereinafter referred to as 'Id. AO').

2. Ground Nos. 1 to 9, 11(ii), 11(iii), 12 and 13 raised by the assessee were stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly, those grounds are hereby dismissed as not pressed.

3. Ground No. 11(i) raised by the assessee is challenging the confirmation of addition of Rs. 1,29,283/- made by the Id AO on account of income earned on unaccounted sales of Rs. 3,80,24,399/-.

4. We have heard the rival submissions and perused the material available on record. The assessee company is engaged in the business of manufacturing and trading in iron and steel. A search and seizure operation u/s 132 of the Act was conducted on 20.01.2015 and on subsequent dates in different business and residential premises of Rathi Group of cases based at Delhi and National Capital Region (NCR). The case of the assessee company was also covered as one of the group companies. During the course of search operation, various incriminating documents/ papers were found and seized. The case of the assessee was centralized with DCIT, Central circle-16, New Delhi vide notification issued by Id Principal Commissioner of Income Tax dated 29.09.2015. During the course of search and seizure/ survey operation, statement of Shri Amit Gupta, Chief Operating Officer (COO) of M/s. Hari Iron India Ltd, who was distributor of assessee company, was recorded. It is pertinent to note that this statement of Shri Amit Gupta was recorded during the course of search and survey operation conducted independently in his case. He had deposed that he is distributor of iron and steel bars for the assessee and further deposed unaccounted sale transactions were conducted between him and assessee company and that such bills were marked as "W",

meaning thereby, that the sale is without bills and that such sales are nearly 30% of total sales made. It was also submitted that such bills are destroyed and no record of such bills were kept. The total sales made to M/s. Hari Iron India Ltd by the assessee was Rs. 8.87 crores. The assessee categorically refuted the above statement of Shri Amit Gupta stating that there was no unrecorded sales made by the assessee; and that the entire sales made by the assessee have already been duly reflected in the regular books of account maintained by the assessee company. It was also submitted that there is no corroborative evidence for the statement of Shri Amit Gupta. It was also submitted that despite the search and seizure operation carried out in assessee's case, no such sales bills marked as "W" were even found by the search party, which makes the statement of Shri Amit Gupta completely unreliable and not supported by any corroborative evidence whatsoever. Further it was submitted that the sales made by the assessee have been duly reflected in the sales tax and excise returns which also forms part of the seized records whereby, gram by gram quantity of sales made by the assessee company has been duly recorded. Accordingly, it was also pleaded that the statement of Shri Amit Gupta recorded u/s 132(4) of the Act operates against him i.e. Amit Gupta and the same cannot be used against the assessee in the absence of any corroborative evidence found during the course of search. Further, this statement was not even given to the assessee for its rebuttal and the same was not subjected to cross examination by the assessee as no opportunity thereon was provided by the revenue. Accordingly, it was pleaded that the third party statement could not be used against the assessee without any corroborative evidence found during the course of search. The Id AO however, did not agree to these contentions and proceeded to rely completely on the statement of Shri Amit Gupta by treating 30% of total sales as unaccounted and added the profit element

thereon and made an addition of Rs. 1,29,283/- in the assessment which stood confirmed by the Id CIT(A). But we find that the Id CIT(A) in page 34 of his order had originally directed the Id AO to delete the said addition. However, in page 75 of his order, he erroneously confirmed the said addition. In our considered opinion, the entire issue requires reconsideration by the Id. AO as the aforesaid contentions of the assessee were not even met by the Id. AO in his order. Hence, we deem it fit and appropriate, in the interest of justice and fair play, to restore this issue to the file of the Id AO for de novo adjudication in accordance with law and in the light of submissions made by the assessee. Accordingly, ground No. 11(i) raised by the assessee is allowed for statistical purposes.

5. Ground No. 14 raised by the assessee is challenging the addition of Rs. 2,05,689/- made by the Id AO by applying the net profit on account of turnover made out of books of the assessee amounting to Rs. 47,23,594/-.

6. We have heard the rival submissions and perused the material available on record. During the course of search and seizure operation, some torn papers were seized from the room of Shri Anurag Rathi at A-24/7 and A-24/8, Mohan Cooperative Industrial Estate, Delhi reflecting sales of Rathi Special Steel Ltd for the period of 14.01.2015 to 15.01.2015. Copies of these seized papers were marked as Annexure A-22. The sale summary documents found contained details of sales such as materials delivered and payment received in advance and the same were already entered in the books of account. Wherever the goods were not delivered and payments were not received, the same were not booked as sales in the books of the assessee. There was absolutely no evidence that has been found to prove that goods have been delivered but sale has not been affected in the books. It is pertinent to note that the statement of Shri A. K. Bansal, in charge of taxation and accounts was recorded, who deposed that he is unable to

comment on these papers and only Shri Anurag Rathi would be able to explain the seized documents and entries made thereon. Consequently, the statement was recorded from Shri Anurag Rathi who replied in response to Question Nos. 9, 10 and 19 that he is not looking after sales and therefore, he will not be in a position to say anything on the matter. He stated it might be known to his father Shri Kamlesh Rathi. Hence statement was recorded from Shri Kamlesh Rathi, who denied any sale made outside the books. In the course of assessment proceedings, the assessee explained that these details pertained to sales made through brokers which are tabulated vide pages 24 to 26 of the assessment order. The Id AO worked out the details of such sales at Rs. 1,60,53,180/-. It was explained that out of these notings, only such sales in respect of which money has been received and material has been delivered are accounted for in books to the tune of Rs. 1,18,29,586/-. In respect of balance notings totaling to Rs. 42,23,594/-, it was explained that neither the goods were delivered nor any money was received. The Id AO concluded that remaining amount of Rs. 42,23,594/- represent sales that have not been entered in the books of account of the assessee and applied profit percentage directly thereon and made addition of Rs. 2,05,689/- in the assessment. In this ground also, the addition has been made based on reliance placed on third party statement which was never given to the assessee for rebuttal. It was submitted that the torn papers cannot be the basis to conclude that the same represent sales made by the assessee. These are not corroborated with any other evidence. All the responsible persons of the group had categorically denied having made any sales outside the books of account. We find that this ground is similar to ground No. 11(i) raised by the assessee supra which has already been adjudicated wherein the issue was restored to the file of the Id AO for de novo adjudication in accordance with the law and in the light of submissions and materials available on

record. Hence, we direct accordingly. Accordingly, the ground No. 14 raised by the assessee is allowed for statistical purposes.

7. Ground No. 15 raised by the assessee is general in nature and does not require any specific adjudication.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA NO. 1543/Del/2018 – Revenue Appeal

9. Ground No. 1 raised by the revenue is challenging the deletion of addition of Rs. 2,37,77,550/- made on account of share capital.

10. We have heard the rival submissions and perused the material available on record. The assessee company raised share capital and share premium totaling to Rs. 2,37,77,550/- during the year under consideration from various parties. The share comprises face value of Rs. 10 and premium of Rs. 47 per share. The share capital and share premium were received from the following parties:-

Sno.	Name of Investing Company	No. of Shares Allotted	Face Value/Premium	Total Investment in Rs.
1.	Anupam Cotfab Pvt. Ltd.	20500	10/47	1168500
2.	Rathi Breweries Ltd.	11550	10/47	658350
3.	Amrit Krishi Farms Pvt. Ltd.	17050	10/47	971850
4.	Rathi Overseas (P) Ltd.	15700	10/47	894900
5.	Eleventh Hour Leasing & Finance Ltd.	6700	10/47	381900
6.	Sarveshwar Cereals Pvt. Ltd.	50350	10/47	2869950
7.	Uddhav Investment (P) Ltd.	35700	10/47	2034900
8.	Uddhav Leasing & Finance (P) Ltd.	37650	10/47	2146050
9.	Vasudev Exports Pvt. Ltd.	6300	10/47	359100
10.	Bhuwneshwari Leasing & Finance Ltd.	26750	10/47	1524750
11.	Maryada Holding Pvt. Ltd.	20950	10/47	1194150
12.	Pamika Investment (P)	39450	10/47	2248650

	Ltd.			
13.	Pamika Leasing & Finance (P) Ltd.	40250	10/47	2294250
	Total	328900		18747300
S. No.	Name of Investing Company	No. of Shares allotted	Face Value/Pre mium	Total Investment in Rs.
1.	Rathi Overseas (P) Ltd.	22250	10/47	1268250
2.	Eleventh Hour Leasing & Finance Ltd.	12250	10/47	698250
3.	Sarveshwar Cereals Pvt. Ltd.	3500	10/47	199500
4.	Uddhav Investment (P) Ltd.	11050	10/47	629850
5.	Uddhav Leasing & Finance (P) Ltd.	11400	10/47	649800
6.	Vasudev Exports Pvt. Ltd.	13150	10/47	749550
7.	Bhuwneshwari Leasing & Finance Ltd.	6450	10/47	367650
8.	Parnika Investment (P) Ltd.	2950	10/47	168150
9.	Parnika Leasing & Finance (P) Ltd.	5250	10/47	299250
	Total	88250		5030250

11. The assessee furnished the complete details of all the share investors before the Id AO. The Id AO sought to examine the existence of these investor companies but the companies were not found in the given addresses. The assessee when confronted gave the changed address of the investors. Later notices were independently sent to all these investors in the changed addresses which were duly served and the details called for by the Id AO were duly furnished directly by the investors before the Id AO. The Id AO tabulated the financial details of these companies, namely net profit, net worth and share premium, contribution made by each of the parties. The assessee was asked to prove the creditworthiness of all these investors and genuineness of the transactions. The assessee furnished elaborate details of each of the investors which are in the form of copy of ITR, Copy of PAN card, copy of master data downloaded from website of Registrar of Companies, copy of audited financial statements of the investor companies, copy of ledger accounts of the assessee as appearing in

the books of the investors company, copy of mutual funds account statement of the investors to prove that the investors had redeemed their mutual funds and utilized the proceeds thereon for making investment in assessee company. These documents are enclosed in pages 98 to 354 of the Paper Book. Despite these documents, the Id AO concluded that the credit worthiness of the investors were not proved by the assessee and directors of the investors companies were not produced by the assessee for examination. The assessee on the other hand, stated that all the investors are group companies of the assessee and directors could not be produced because short span of time of 1 or 2 days was granted by the Id AO to produce all the directors. However, the Id AO proceeded to treat the entire amount of share capital and share premium totaling to Rs. 2,37,77,550/- as unexplained cash credit u/s 68 of the Act while framing the assessment. The Id CIT(A) observed on perusal of the documents already placed on record before the Id AO that all the investor companies are having sufficient net worth to make investment in assessee company which are tabulated as under:-

Name of Company	Net Profit for the A.Y. 2015-16	Net Worth as on 31.03.2015	Amount of Shares Allotted during the A.Y.2015-16
Udhav Leasing & Finance P. Ltd	442229/-	10270549/-	2795850/-
Udhav Investments P. Ltd	370726/-	11255919/-	2664750/-
AmritKrishi Farms P. Ltd	18136/-	16756567/-	971850/-
Vasudev Exports P. Ltd	11928/-	18712931/-	1108650/-
Sarveshwar Cereals P. Ltd	597065/-	26423186/-	3069450/-
Rathi Breweries P. Ltd	(121963/-)	13976205/-	658350/-
Pranika Leasing & Finance. P. Ltd	415144/-	15377420/-	2593500/-
Pamika Investments P. Ltd	267695/-	19697921/-	2416800/-
Maryada Holdings P. Ltd	196504/-	21268797/-	1194150/-
AnupamCotfab P. Ltd	40004/-	21761870/-	1168500/-
Bhuvneshwari Leasing & Finance P. Ltd	219100/-	14143171/-	1892400/-
Rathi Overseas P. Ltd	29457/-	22039859/-	2163150/-
Eleventh Hours Leasing & Finance P. Ltd	39376/-	20673361/-	1080150/-

12. Further the entire documents proving the 3 ingredients of Section 68 of the Act viz. identity of the investors, creditworthiness of

the investors and genuineness of the transactions were duly complied by the assessee by furnishing the following documents which are tabulated here under:-

Name Of Company	Old Address	New Address	Change since	Documents found in the search	Enclosed
Udhav Leasing & Finance P. Ltd.	A-6, Chet Ram Gali, Maujpur. A Block, Main Road, Delhi - 110053	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	06/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>6. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>7. Source of the source of the investing companies is enclosed.</p> <p>8. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	<p>Pg No. 01-02 Pg No.3-40 Pg No.41-43 Pg No.44-337 Pg No.405-638 Pg No.-405-638</p>
					Pg No.-6.L9-700
Udhav	C-44, Manas	A-24/7, Mohan	25/10/2014	1. Copy of Annexure 1 &	Pg No. 01-02

Investments P. Ltd.	Appartment. Mayur Vihar-1, Delhi-91.	Co-op. Industrial Estate Mathura Road, New Delhi-110044		<p>List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search for change of authorized signatory in Bank & ROC.</p> <p>3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>4. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>6. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>7. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>8. Source of the source of the investing companies is enclosed.</p> <p>9. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	<p>Pg No.44-337 Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.405-638</p> <p>Pg No.-405-638</p> <p>Pg No.-639-700</p>
AmritKris hi Farms P. Ltd.	A-24/8, Mohan Cooperative Industrial Area, Mathura Road, New Delhi-110044	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	03/03/2015	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search for change of authorized signatory in Bank & ROC</p> <p>3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>4. Docs found for valuation</p>	<p>Pg No. 01-02</p> <p>Pg No.44-337</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.338-363</p> <p>Pg No.405-638</p>

				<p>of shares allotted per Rule 11UA found in search.</p> <p>5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>6. Summons received from A.DIT (inv) Unit-4(2) u/s 131(1 A) and replied by assessee proves the notice has been issued and received.</p> <p>7. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>8. To prove</p>	
				<p>(i) Identity</p> <p>(ii) Credit worthiness</p> <p>(iii) Genuineness</p> <p>We are enclosing herewith:</p> <p>(i) PAN of the company- Identity</p> <p>(ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company</p> <p>(iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>9. Source of the source of the investing companies is enclosed.</p> <p>10. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	<p>Pg No.-405-638</p> <p>Pg No.-639-700</p>
Vasudev Exports P. Ltd.	117-A, DDA Flats, Mansarovar Park, Shahdara	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	07/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY</p>	<p>Pg No. 01-02</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.405-638</p>

				<p>06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>6. To prove</p> <p>(i) Identity' (ii) Credit worthiness (iii) Genuineness We are enclosing herewith:</p> <p>(i) PAN of the company- Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>7. Source of the source of the investing companies is enclosed.</p> <p>8. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	
Sarveshwar Cereals P. Ltd.	6, Sadhna Enclave, New Delhi-110017	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	04/03/2015	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search</p>	<p>Pg 638 No.-405 Pg 700 No.-639-</p> <p>Pg No. 01-02</p>

				<p>for change of authorized signatory in Bank & ROC</p> <p>3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>4. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>6. Summons received from A.DIT (inv) Unit-4(2) u/s 131(1A) and replied by assessee proves the notice has been issued and received.</p> <p>7. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>8. To prove</p> <p>(i) Identity</p> <p>(ii) Credit worthiness</p> <p>(iii) Genuineness</p> <p>We are enclosing herewith:</p> <p>(i) PAN of the company- Identity</p> <p>(ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company</p> <p>(iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>9. Source of the source of the investing companies is enclosed.</p> <p>10. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance</p>	<p>Pg No.44-337</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>No.405-Pg 638</p> <p>No.-405 Pg 638</p> <p>-</p> <p>No.-639- Pg 700</p>
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				is pending as on date.	
Rathi Breweries P. Ltd. i I	6, Sadhna Enclave, New Delhi-110017	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi- 110044	04/03/2015	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search for change of authorized signatory in Bank & ROC.</p> <p>3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>4. Docs found for valuation of shares allotted per Rule 11UA found in search.</p>	<p>Pg No. 01-02</p> <p>Pg No.44-337</p> <p>Pg No.3-40 Pg No.41-43</p>
—				<p>5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>6. Summons received from A.DIT (inv) Unit-4(2) u/s 131(1A) and replied by assessee proves the notice has been issued and received.</p> <p>7. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>8. To prove</p> <p>(i) Identity</p> <p>(ii) Credit worthiness</p> <p>(iii) Genuineness</p> <p>We are enclosing herewith:</p> <p>(i) PAN of the company-Identity</p> <p>(ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company</p> <p>(iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>9. Source of the source of the</p>	<p>Pg No.44-337</p> <p>Pg No. 400-404</p> <p>Pg No.405-638</p> <p>Pg No.-405-638</p> <p>i</p> <p>Pg No.-639-700</p>

				investing companies is enclosed. 10. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.	
Pranika Leasing & Finance. P. Ltd	A-6, Chet Ram Gali, Maujpur, A Block, Main Road, Delhi110053	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	06/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized Documents</p> <p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>6. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>7. Source of the source of the investing companies is enclosed.</p> <p>8. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	<p>Pg No. 01-02</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.405-638</p> <p>Pg No.-405-638</p> <p>P</p> <p>Pg No.-639-700</p>

Pamika Investments P. Ltd.	C-44, Manas Apartment, Mayur Vihar-1, Delhi-110091	A-24/7, Mohan Co-op. Industrial Estate Mathura	25/10/2014	1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents	Pg No. 01-02
		Road, New Delhi-110044		<p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>6. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>7. Source of the source of the investing companies is enclosed.</p> <p>8. The latest information of the company in MCA 21 site of the govt, that shows the</p>	<p>Pg No.3-40 Pg No.41-43 Pg No.44-337 Pg No.405-638 Pg No.-405-638 Pg No.-639-700</p>

				company is still working and no compliance is pending as on date.	
Maryada Holdings P. Ltd.	C-44, Manas Appartment, Mayur Vihar-I, Delhi-110091	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	06/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search for change of authorized signatory in Bank & ROC.</p> <p>3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>4. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>6. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>7. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness</p> <p>We are enclosing herewith: (i) PAN of the company- Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p>	<p>Pg No. 01-02</p> <p>Pg No.44-337</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.405-638</p> <p>Pg No.-405-638</p>

				<p>8. Source of the source of the investing companies is enclosed.</p> <p>9. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	Pg No.-639-700
Anupam Cotfab P. Ltd	6, Sadhna Enclave, New Delhi-110017	A-24/8, Mohan Co-op. Industrial Estate Mathura Road, New Delhi-110044	03/03/2015 in pen drive of A10 of seized documents	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>6. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit</p>	<p>Pg No. 01-02</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.405-638</p> <p>Pg No.-405-638</p>

				<p>worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>7. Source of the source of the investing companies is enclosed.</p> <p>8. The latest information of the company in MCA 21 site of the govt, that shows the company is still working and no compliance is pending as on date.</p>	Pg No.-639-700
Bhuwneshwari Leasing & Finance P Ltd	RZ-24A, Uttam Nagar, Uttam Vihar, New Delhi 110059	A-24/8/Mohan Cooperative Industrial Estate Mathura Road, Delhi 110044	05/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents</p> <p>2. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14.</p> <p>3. Docs found for valuation of shares allotted per Rule 11UA found in search.</p> <p>4. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc.</p> <p>5. Summons received from A.DIT (inv) Unit-4(2) u/s 131(1A) and replied by assessee proves the notice has been issued and received.</p> <p>6. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O.</p> <p>7. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith:</p>	<p>Pg No. 01-02</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.364-381</p> <p>No.405-638</p> <p>No.-405-638</p>

				<p>(i) PAN of the company- Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction. 8. Source of the source of the investing companies is enclosed. 9. The latest information of the company in MCA 21 site of the govt. that shows the company is still working and no compliance is pending as on date.</p>	
Rathi Overseas Pvt. Ltd	RZ-24A, Uttam Nagar, Uttam Vihar, New Delhi 110059	A-24/8/Mohan Cooperative Industrial Estate Mathura Road, Delhi 110044	06/12/2014	<p>Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents 2. Docs found in search for change of authorized signatory in Bank & ROC. 3. Docs found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14. 4. Docs found for valuation of shares allotted per Rule 11UA found in search. 5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc. 6. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of the same A.O. 7. To prove (i) Identity (ii) Credit worthiness (iii) Genuineness We are enclosing herewith: (i) PAN of the company-</p>	<p>Page No. 3-40 Page No. 41-43 Page No. 44-337 Page No. 364-381 Page No. 405-638</p>

				<p>Identity (ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company (iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>8. Source of the source of the investing companies is enclosed. 9. The latest information of the company in MCA 21 site of the Govt that shows the company is still working and no compliance is pending as on date</p>	<p>Page No. 405-638</p> <p>Page No. 639-700</p>
Eleventh Hours Leasing & Finance P. Ltd.	117-ADDA Flats, Mansarovar Park, Shahdara	A-24/8, Mohan Co-op.	05/12/2014	<p>1. Copy of Annexure 1 & List of companies & tally data contained in pen drive of A10 of seized documents 2. Does found in search for change of authorized signatory in Bank & ROC. 3. Does found in search relating to share capital employed, SAM, loans and advances, reserves from FY 06-07 TO 13-14. 4. Docs found for valuation of shares allotted per Rule 11UA found in search. 5. Docs found in search giving details of registered office of the company, list of directors, bank account signatories, bank account no. etc. 6. Summons received from A.DIT (inv) Unit-4(2) u/s 131(1A) and replied by assessee proves the 399 notice has been issued and received. 7. List of Directors, their assessment u/s 153A proves the company owned and directed by directors of the company are the assessee of</p>	<p>Pg No. 01-02</p> <p>Pg No.3-40</p> <p>Pg No.41-43</p> <p>Pg No.44-337</p> <p>Pg No.364-381</p> <p>No.405-638</p> <p>No.-405-638</p>

				<p>the same A.O.</p> <p>8. To prove</p> <p>(i) Identity</p> <p>(ii) Credit worthiness</p> <p>(iii) Genuineness</p> <p>We are enclosing herewith:</p> <p>(i) PAN of the company- Identity</p> <p>(ii) ITR, Audited Balance Sheet proving the net worth and credit worthiness of the company</p> <p>(iii) Copy of Bank Statement proving the genuineness of the transaction.</p> <p>9. Source of the source of the investing companies is enclosed.</p> <p>10. The latest information of the company in MCA 21 site of the govt. that shows the company is still working and no compliance is pending as on date.</p>	<p>No.-405-638</p> <p>Page No. 639-700</p>
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13. The Id CIT(A) had categorically observed that the investor companies had redeemed their mutual funds which were held by them by selling in the open market through the registered broker and proceeds thereon had been utilized by them for making investments in share capital and share premium of the assessee company. The Id. CIT(A) also examined the details placed on record by analyzing party-wise the bank statement of each of the investor company for the immediate source of credit, before making investment in assessee company. These are tabulated in pages 68 and 69 of the order of the Id CIT(A). Based on all these documents, the Id CIT(A) was convinced that the assessee had duly proved all the 3 ingredients of Section 68 of the Act and no addition could be made in the hands of the assessee herein. None of the aforesaid factual findings recorded by the Id CIT(A) qua the relevant documents that were placed before the lower authorities were controverted by the revenue before us except making

a general statement that there was certain cash deposits made in the bank account of the investor companies and similar pattern has been followed by various investor companies. But it is pertinent to note that the immediate source of credit of the investor company was redemption of mutual funds. Admittedly the investor company held mutual fund and had reflected the same as their investment in the respective balance sheet. The existing investment in mutual fund lying in balance sheet of the investor company was redeemed in open market and proceeds thereon were utilized for making investment in assessee company. Hence, immediate source of credit stands proved beyond reasonable doubt. All the investors are regularly assessed to income tax and in support of which copy of ITR, PAN, audited financial statements were enclosed. The investments made in the assessee company at a premium were duly reflected in the audited balance sheet of the investor companies and the transactions were routed through regular banking channels. The justification for the premium is also supported by valuation report under Rule 11UA of the Income Tax Rules. All these documents clearly proved genuineness of the transactions beyond reasonable doubt. Hence, we hold that the Id CIT(A) was duly justified in deleting the addition made on account of share capital and share premium. Accordingly, ground No. 1 raised by the revenue is dismissed.

14. Ground No. 2 raised by the revenue is challenging the deletion of addition of addition of Rs. 1,36,08,090/- made by the Id AO on account of difference in stock.

15. We have heard the rival submissions and perused the material available on record. Some discrepancies were found in the physical inventory of stock taken on the date of search viz-a-viz stock reflected in the books of account on the date of survey as under:-

	Item of stock	As per stock register (MT)	As per stock prepared during survey (MT)	Difference
1.	Raw Materials (Ingot/Billets/ Work In Progress)	2190.390	2191.720	1.330
2	Finished Goods Steel Bar	2425.220	2796.921	371.701
3.	Goods in Transit	-	-	-
4.	Miss Roll	375.915	391.415	15.500
5.	Scrap	54.750	63.250	8.500

16. Four items have been taken up which consists of Raw Material (ingot/billets), Work in progress, Finished Goods of Steel Bars, Miss Roll and Scrap. No goods were found in transit. According to this table, the major difference arises in Finished Goods of steel bars. The survey party found that this stock as per books was 2425.22 MT while on physical verification this stock was 2796.921 MT. Thus, the difference was 371.701 MT. There are some differences in other items also as can be seen from the table. It was submitted in the course of assessment that while finding out the stock, the survey team counted the bundles of each gauge i.e., 8MM, 10MM, 11MM, 12MM, and so on till 25MM. Thereafter, it was assumed that for all MM bar of a particular gauge, the weight is same. Thus for example in the case of 8MM bar of 40Ft., a uniform weight of 85kg per bar has been taken. It was further submitted by assessee before Ld. AO vide its reply dated 22.12.2016 (reproduced at page 28 of the assessment order) that assessee's machinery being old, it does not produce each bar of same length and gauge to be of the same weight. In other words, for two identical bars in terms of MM and length, the weight would vary. It was for this reason that the assessee has not been selling its product in terms of number or number of bundles but in terms of actual weight. Because of this uniformity taken in weight for the bars of different MM and length, there has been an error in calculating the

weight of the final product. The assessee furnished comparative chart taking the weight as per department on one side and standard weight as per ISI on the other. This chart is available on page nos. 29-34 of the assessment order. On the basis of this chart, the total weight of final product as per ISI standards comes to 2424.017 MT against 2425.220 MT in the book thereby resulting in a very very nominal difference of 1.203 MT. However, the weight of the same goods has been worked out by the department to be 2796.921 MT. Thus, the Ld. AO did not appreciate the arguments of the assessee in proper perspective. He is of the view that survey team had inventorized the stock in presence of the employees of the assessee. The assessee has submitted the detailed calculation of stock based on ISI standards for a certain description of steel bars but this has no documentary evidence in its support. Therefore, the goods as valued by the survey team was taken as stock on the date of search and the difference between this and the book value amounting to Rs. 1,36,08,090/- was added to the total income.

17. Before the Id CIT(A), it was submitted that the survey team erred in accounting the bundles and multiplying with weights instead of weighing each and every bundle to arrive at the correct weight which had resulted in difference in quantity of stock. It was submitted that record of raw material as well as finished goods has been maintained on the basis of weight and not on the number of pieces. The government records especially relating to the excise department were submitted to show that the records were maintained on weight basis. (i) It was also submitted that the weight of raw material and finished goods is maintained by weight; (ii) this system of valuation has been followed from year to year and it had been accepted in past; (iii) in the previous year it has been admitted that stock has been maintained in weight; (iv) excise records which have been produced show that sales are made by weight; (v) the company has submitted

documents and evidence to explain the difference in stock taken by the department and actual stock by preparing a comparable chart (Page 29-33 of the assessment order); (vi) the methodology adopted by the AO in valuing the stock is incorrect. He has first counted the bundles and thereafter estimated the weight by taking the weight of each bundle of identical MM and length to be the same. Actually, the weight of the stock should have been taken separately for each bundle; (vii) the annual accounts prepared after search and survey have been prepared by computing stock value as per weight only and Ld. AO has accepted the same. Therefore, he cannot follow a different method for valuing the inventory of the finished goods in some other way at the time of search; (viii) the Ld. AO has not taken into account the facts that the machinery of the assessee is old, and therefore there is no standard output of finished goods, in terms of length, diameter and weight. Therefore, it was contended that the valuation made by the department was erroneous and it should not be considered for the purpose of making addition.

18. The Id CIT(A) appreciated the contentions of the assessee and deleted the addition by observing as under:-

"v.I have considered the facts of the case as revealed in the assessment order, other materials available on records and the submissions of the Ld. Counsel of the appellant. The addition on account of value of raw materials, MS Scrap, Steel bars and Miss Roll found in surplus as a result of survey /search have been made on account of difference in such valuation as per stock register maintained by the appellant and the physical inventory taken by the survey team on the date of survey/ search. However such valuation made by the survey team by adopting standard length per bundle and estimated weight per bundle has been challenged during the course of assessment proceedings on the ground that weight of each bundle is different from another with same diameter because the length differs from bundle to bundle and this is the reason that goods are sold by the appellant company in units of weights only and not by items of specific diameters having standard length and weight per bundle. The appellant has also pointed out some anomalies toward, the estimated weight per bundle of specific items and the same had not be examined and plausible explanations could not be offered by the A.O. The A.O also could not give any satisfactory reply as to why the valuations

were arrived at by the survey team on the basis of standard length and weight per bundle, instead of taking actual weights of such bundles in order to arrive at the correct valuation. The A.O has rejected the contention of the appellant namely on the ground that the appellant did not point out these issues at the time of survey or during post search investigation at the Directorate of investigation. The appellant has also calculated valuation of the items based on ISI standards by taking the standard weight per meter on actual lengths of the items present in a bundle of specific dimensions in diameter size and the value so arrived at has been found to be more or less equal vis-a-vis the value adopted by the survey team on the same items, casting serious doubts about the correctness of the value adopted by the survey team. The A.O has commented on such valuation that the same is not acceptable because no documentary evidence could be made available to substantiate said claim. This explanation of the A.O for rejecting the same doesn't cut any ice because the standards adopted as per ISI for the specific item for making such valuations by the appellant company have not been challenged, nor the basis of valuation in the said manner was objected to with any reasonable basis. The A.O has accepted such valuations on weight basis arrived at by the appellant in the Balance Sheet & P & L Account for the year under consideration which has been finalised after search/survey and so a different stand taken, while approving the valuation of inventory taken by the survey team on physical verification of the items found in course of survey/search, cannot be upheld. The appellant had also made available the excise documents, like, RG23A Part I filed with the excise department wherein the stock of raw materials/ finished goods has been arrived at on weight basis which has been duly accepted by the Excise Authorities while determining the excise duties applicable to the case of the appellant. The A.O was provided with such documents to explain the case of the appellant during assessment proceedings, but reasons for non-acceptance of such documents have not been highlighted in the assessment order. Further, the valuation of the raw materials, MS Scrap, Steel bars and Miss Roll by the survey team is purely on estimate basis and the department has already accepted in earlier assessments the valuation of such raw materials arrived at on weight basis, I do not find any reason to differ from such method of valuation actually adopted in the instant assessment year by the appellant on weight basis and no interference is called for in this respect. Accordingly, the addition made by the A.O in respect of surplus stock of raw materials (on account of Ms Billet /MS Ingot), MS Scrap, Steel bars and Miss Roll arrived at by the survey team purely on the basis of estimation to the tune of Rs. 1,36,08,090 cannot be sustained and the A.O is hereby directed to delete such addition.

vi. In view of the discussions supra, the addition based on projected physical inventory per stock statement cannot be sustained for the margins of variation are there in products due to lax production standards and then the primary factor for invoicing the items is 'weight based' and not 'dimension based' alone. The addition I on this count is, therefore, directed to be deleted."

19. We find the discrepancies in the manner in which weights were taken erroneously by the Id AO following the erroneous act of the survey team was duly appreciated by the Id CIT(A). Similar method of valuation of finished goods by considering the weight of finished goods based on ISI standards were consistently followed by the assessee year on year and the same has been accepted by the Id AO in the assessment framed subsequent to search and survey. The excise records duly proved that the goods are sold by weight and stock is maintained in weight. None of the aforesaid factual findings recorded by the Id CIT(A) which are corroborated with excise records in RG23A were controverted by the revenue before us. Hence, we do not find any infirmity in the order of the Id CIT(A). Accordingly, ground No. 2 raised by the revenue is dismissed.

20. Ground No. 3 raised by the revenue is general in nature and does not require any specific adjudication.

21. To sum up, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the revenue is dismissed.

Order pronounced in the open court on 08/08/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 08/08/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi