

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.91/Nag./2022
(Assessment Year : 2010-11)

Asstt. Commissioner of Income Tax
Central Circle-2(1), Nagpur Appellant

v/s

M/s. Gupta Metalics & Power Ltd.
Gupta House, Civil Lines Respondent
Nagpur 440 001 PAN - AABCG9051D

C.O. no.2/Nag./2022
(Arising out of ITA no.424/Nag./2023)
(Assessment Year : 2011-12)

M/s. Gupta Metalics & Power Ltd.
Gupta House, Civil Lines Cross Objector
Nagpur 440 001 PAN - AABCG9051D (Original Appellant)

v/s

Asstt. Commissioner of Income Tax
Central Circle-2(1), Nagpur Respondent
(Original Respondent)

Assessee by : Shri Rajesh Loya
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing - 07/08/2024

Date of Order - 02/09/2024

ORDER

PER K.M. ROY, A.M.

The Revenue has filed this appeal challenging the impugned order dated 14/03/2022, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, ["*learned CIT(A)*"], for the assessment year 2010-11 and the cross objection has been filed by the assessee which arose out of the appeal filed by the Revenue for the assessment year 2010-11.

ITA no.91/Nag./2022
Revenue's Appeal – A.Y. 2010-11

2. In its appeal, the Revenue has raised following grounds:–

"1. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition on Valuation of Excess Stock during survey of Rs.1,17,18,149/- holding that the report of Valuation Officer is not reliable although, the Valuation Officer valued stock in the presence of Supervisors of factory and the Income Tax Authorities.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition on account of Finance charged and Interest of Rs.3,65,26,337/- holding that the expenditure incurred are directly relatable to assessee's business activities and are for the purpose of business without appreciating the findings of the Assessing Officer that the transactions entered by assessee were paper transactions, the expenditure claimed were bogus, the gross profit shown were notional with an intention to show higher turnover to obtain Bank Finance.

3. On the facts and circumstances of the case, the Ld. CIT(A) erred in directing the Assessing officer to adjust various additions made in the assessment order against the income of Rs. 1,00,00,000/- surrendered by the assessee in the return of income inspite of the fact that the assessee had not submitted any evidence to prove any nexus between the additions made by the Assessing Officer and the income of Rs.1,00,00,000/- surrendered by the assessee in the return of income.

4. Any other ground that may be urged at the time of hearing."

3. During the course of hearing, the Registry has pointed out that there is a delay of four days in filing the present appeal by the Revenue. Since the delay being minor, we condone the delay and proceed to adjudicate the appeal on merit.

4. Facts in Brief:– The assessee company is engaged in the business of manufacturing of sponge and iron, trading of coal, coal fines, etc. A search and seizure operation under section 132 of the Income Tax Act, 1961 (*"the Act"*) was conducted on 29/07/2009, in the business premises of the assessee company and the residential premises of Shri Mahesh Gupta. Simultaneously

a search action was also carried out in the other premises, which belongs to Shri Mahesh Gupta Group. There was no seizure of cash and valuables from the assessee. Also there was a disclosure of ₹ 36,00,000, under section 132(4) of the Act for the present year. During the course of search, several items of books of accounts and incriminating documents were found and seized. On the date of survey in the factory premises of GMPL at Chunala, huge quantity of stock was found. The stock was valued by an approved valuer in the presence of supervisors of the factory and officers of Income Tax Department. During the post search proceedings, the assessee has furnished the following reconciliation of stock:-

Sr. no.	Item	Stock as per books of account	Stock as estimated by valuer (Deptt.)	Adjusted stock of valuer (Deptt.)	Difference between C & E	Rate / MT	Amount of stock (difference)
A	B	C	D	E	F = (C-E)	G	H=(GxF)
1.	Sponge Iron Lumps	331.100		390.195 326.612	-59.095 -21.942	11700 11200	-691411.5 -245750.4
2.	Sponge Iron Fines	304.470 635.770	995.000				0
3.	Coal / Char. Ash	11217.890	19890.000		-8672.110	40	-346884.4
4.	Iron Ore	24839.840 11190.380 36030.220	37230.500	25361.920 11862.480	-522.080 -672.100 -1200.280	2850 440	-1487928 -295724
	Iron Ore Fines						
5.	Coal	10261.270	12367.000	10638.920	-377.650	1400.000	-528710
6.	Dolomite	47.750	240.800	126.469	-76.719	800.000	-61375.36
	Total	58194.900	70723.300	48706.596	- 10326.759		3,657,783.66

5. During the assessment proceedings, the assessee was show caused to explain the excess stock found. In response, the assessee has furnished following reply:-

"Regarding Stock found at our factory and its valuation done by the departmental Valuer team, we would like to state that we have already explained in detailed that the stocks lying at our factory was properly accounted and the stocks were not excess. We have also submitted our detailed reply as to how the stocks was calculated by the departmental stock valuation team and what mistakes/ oversights were done in that. further the expert team members have ignored the things/ explanations which were given/ said by the assessee companies technical staff in the field while stock estimations. The departmental valuer has also done stock valuation without any base. We have explained the same to DDIT, who have accepted our contention which was also incorporated in point no 22 on page 61 in ANNEXURE TO notice U/s 142 (1) dated 21.02.2011. We object to your contention of excess stocks or excess stock valuation. We are enclosing the copy of our reply given by us to DDIT which is MARKED AS "ANNEXURE A". The said reply is self explanatory and stating that the stocks estimated by the expert team were not proper. In the circumstances we deny of having any excess stocks and request your good self to consider our stand and not to make any addition as proposed in your above said letter."

6. The Assessing Officer did not accept the submissions. He held as follows:-

"The assessee has not brought forward any new fact or evidence to prove that there was no excess stock. The assessee is only referring to the submissions made during post search enquiries. As regards valuation of sponge iron lumps, the assessee stated that height of the heap was considered at 4.2 meters by the valuer, which is not correct. According to the assessee, the height of the heap of sponge iron was only 2.40 meters. In support, the assessee has furnished a photograph of the iron ore lumps. The photographs submitted by the assessee are not reliable because the photographs were taken much after search and survey operation. Secondly the assessee argued that it is not possible to stack iron ore upto the height of 4.2 meters with the help of tippers and tractors as height of the shed is 5.8 meters on both the sides and 7.1 meters at the center. Arguments of the assessee have no merit as the stock was taken in the presence of officers of Income Tax Department and supervisory staff of the factory. The iron ore lumps can be stacked manually without the help of tippers and tractors in the shed. Maximum height of the shed is 7.1 mts. and height of the sponge iron lumps as measured is only 4.2 meters i.e there is still a gap of 2.9 mts. The valuation officer has calculated the quantity of iron ore at 37230.500 MT. The assessee has claimed that about 1/3rd of the iron ore is iron ore fine. However the assessee has not furnished any proof to support its claim. On the other hand the valuation officer has adopted the rate applicable to the iron ore which shows that the quantity of 37230.500 MT is of iron ore only. Therefore the same is adopted accordingly. As regards valuation of Dolomite, the Valuation officer has adopted conversion factor at 1.4 tons per cubic meter. Whereas the assessee has considered the same at 0.737 tons per cubic meter. Since the Conversion Factor is a technical issue, the view taken by the valuation officer is adopted. The assessee valued the stock on cost price including transportation charges, except sponge iron lumps and sponge iron fines, which has been valued at market price. Cost of iron ore lumps and fines is ₹ 13,500, approx. The same

has been valued @ ₹ 11,200, and ₹ 11,700, on market price. The stock of sponge iron lumps and sponge iron fines, therefore, is valued @ ₹ 13,500, while determining the excess stock. Based on the above discussions, excess stock on the date of survey / search is worked out as under:-

Sr. no.	Name Item	Stock as per books MT	Stock as per department MT	Excess Stock MT	Rate ₹/ MT	Value of excess stock
A	B	C	D	E	F = (C-E)	G
1.	Sponge Iron / Fines	635.770	995.000	359.23	13500	48,49,605
2.	Coal / Char, Ash	11217.890	19890.000	8672.110	40	3,46,884
3.	Iron Ore	36030.220	37230.500	1200.280	2850	34,20,798
4.	Coal	1026.270	12367.000	2105.730	1400	29,48,022
5.	Dolomite	49.750	240.800	191.050	800	1,52,840
Total						1,17,18,149

7. Therefore, the Assessing Officer made addition of ₹ 1,17,18,149, which was added to the total income of the assessee as undisclosed income. Aggrieved, the assessee filed appeal before the first appellate authority.

8. Before the learned CIT(A) elaborate the submissions made by the assessee which are reproduced below:-

"GROUND NO. 3:

The learned AO erred in law and on facts in making addition of १११ Rs. 1,17,18,149/- as undisclosed income by holding that there is excess stock. We object to the addition made by AO by rejecting the explanation of the assessee and submit as under for the favour of your kind consideration:

(1) That the stock taking was not done properly at the time of search. The defects as regards the quantity, adoption of value, manner of stock taking and the method of determining stock was duly pointed out by written explanation with working in the post search proceedings. The copy of such explanation with Annexure were also provided to the Assessing Officer. The stock lying at factory on the date of search is duly accounted in the books of accounts. It tallies with the Excise record which is in seized record. All the purchases and sales are supported by bills and vouchers and duly found accounted. There is no unrecorded purchase and sales found during search. The entries in the books of accounts tallies with the Excise record which was reconciled by the Inspector during the course of assessment proceedings. The stock was taken by the department by volumetric assessment and eye sight view which was improper and the defects in such method were duly pointed out. The valuation provided by the assessee is supported by purchase bills The Letter filed before

the Investigation Wing with annexure and before the Assessing Officer may kindly be considered is part of the assessment record.

We draw your kind attention to the assessment order page 5 para 5 wherein the AO has dealt with the addition on account of excess income. We have raised various objection before the investigation wing as well as have also point out about the various infirmities in the stock valuation by the department. We further draw your kind attention to the following facts which resulted into incorrect stock:-

(a) Survey was conducted at the factory premises of GMPL at Chunala. The valuer determined the stock in the presence of supervisor of the factory, however the same was done on estimated basis by adopting volumetric assessment and eye sight view. This method was adopted to complete the stock taking in hurry. None of the Directors were present in the stock valuation process and the same were confronted to the Directors after conclusion of search/survey proceedings. Thus the assessee had no opportunity to object at the time of stock taking.

(b) Subsequently, on receipt of valuation report, the Directors found infirmities and factual inaccuracies in the stock valuation of the valuer. The same was brought to the notice of investigation wing as well as in the assessment proceedings. The observation of the AO that the assessee did not brought forward any new fact or evidence to prove that there was no excess stock is incorrect.

(c) Few examples were pointed out which a layman would also agree. It was pointed out that the sponge iron lumps is the finished good which is dealt by the company. After the production process, such finished goods are stacked in such a manner that it is easy to remove for the purpose of delivery on sales. Thus your goodself will appreciate that the heap would be of a size convenient for operation. The height of such heap of sponge iron lumps was only 2.40 Mtr. ie. (7.5 Ft.) and in support of same, the photograph of lumps was also furnished. The valuer adopted the height of heap is 4.2 Mtr. i.e. more than 12.52 ft. Your goodself will appreciate that it is humanly not possible to create such a heap of lumps nor it is possible to make available for subsequent disposal. It was further pointed out the height of the shed is 5.8 Mtrs. on both the sides and 7.1 Mtr. at the centre. Thus it is an impossibility to create heap of 4.2 Mtr. and there is no reason obviously to create such heap since it is to be delivered and not to be dumped as a waste. The evidence submitted and the explanation furnished was rejected summarily by the AO without going into the facts properly. Had there been a case of absurd explanation the investigation wing could have immediately brought on record such falsity.

The valuer has determined the quantity of iron ore at 37,230.500 MT. It is a matter of record that the iron ore is a raw material for the product of the company. Iron ore fines arises out of the production process and are always dumped for further sale. Your goodself will find that there is no stock of iron ore fines valued by the valuer. This is a major infirmity as in a sponge iron unit there is no iron ore fine. It was claimed by the assessee that 1/3rd of the iron ore is iron ore fine and the valuation of such iron ore fine is substantially low than the iron ore. The AO without considering the objection mechanically adopted the quantity and valuation of iron ore and applied the same for valuation of iron ore fines as well which is incorrect.

(e) As regards the valuation of dolomite, the assessee adopted conversion factor of 0.737 tonnes per cubic mtr. while the valuer adopted conversion factor 1.4 tonnes per cubic mtr. This infirmity was brought to the notice of investigation wing as well as before the AO, however the AO mechanically adopted valuers report instead of verifying the facts.

(f) The valuation adopted by the valuer with regard to sponge iron ore at Rs. 13,500/- was also objected by the assessee and it was submitted that the same should be valued at 11,200/- and Rs. 11,700/-. The aforesaid valuation is supported by the document. However, the AO without verification determined the excess value of stock and considered the same for addition.

From the above your goodself will find that the assessee objected to various serious infirmities in the valuer's report which could only lead to rejection of the valuer's report. On the other side the AO could not point out any defect in the valuation of stock determined by the assessee and corroborated with the books of accounts. The AO simply adopted the valuation as per valuers report and made the addition. The action of the AO is arbitrary and unjust and therefore the addition made may kindly be deleted

(3) Without prejudice to our above submissions, alternatively, it is submitted that the assessee during the course of search, surrendered a sum of Rs. 1 crore over and above its regular income as per audited financial statements. The aforesaid surrender is available for telescoping as there is no other unaccounted income/asset which was found during the course of search. In such circumstances, it is submitted that the impugned addition is already covered by the surrender of income which is Rs. 1 crore. In view of the above facts, it is submitted that the addition to this extent is double. The benefit of telescoping may kindly be allowed and/ the separate addition made by the Assessing Officer may kindly be deleted. The ground of appeal raised by assessee may kindly be allowed."

9. The learned CIT(A) considering the submissions of the assessee concluded that the Assessing Officer was not justified in making the addition of ₹ 1,17,18,149, on account of excess stock by observing very cogently as follows:-

"I have carefully considered the material available on record, in particular the valuation report on which the AO has relied entirel entirely. As per the valuation report, the valuation officer (VO) has first measured the volume in cubic meters of the heap of iron ore, sponge iron, coal, coal ash, and dolomite. Then the VO has converted the volume into weight in ton by using different conversion rate for each of the item mentioned above, for instance, for iron ore the VO has taken conversion rate of 1.90 tons per cubic meter. There is no explanation given in the valuation report for adopting these conversion rates. Against each calculation of the volume of the heap present, the VO has stated 'say which means it is not measured but the sized of the heap is crudely

estimated. Again, this is a very crude and unscientific method for calculating the volume of each item. In the remarks' column of the valuation report, the VO has stated that, "while taking the measurements of various heaps, average length, width and height had been considered as the heaps of various materials are of uneven shape". This remark clearly shows that the calculation of the volume of each heap was not done in a scientific manner and therefore the volume has not been determined accurately. The VO has also admitted in the valuation report that there is possibility of ten percent variation from the values determined by him and stated in the valuation report.

It is also noted that in the valuation report, there is no estimation for iron ore fines and sponge iron fines. The VO has taken the entire heap as iron ore and sponge iron and adopted the rate of lumps which is much higher than that of the fines. As per the books, the appellant had iron ore fines of 11190.38 tons and sponge iron fines of 304.67 tons. But the VO has remained silent on this matter in his report. It is a well-accepted fact that the conversion rate for converting volume to weight will be different for lumps and fines. It is not possible that the physical stock of the iron Ore and sponge ore will not have any fines. Since the VO has not taken this aspect into consideration, the valuation of stock by VO is obviously inaccurate.

Further, when the stock as per books of iron ore lumps and fines in weights is compared with that of iron ore as per valuation report, it is seen that difference is marginal, i.e., less than ten percent. The VO has himself stated in the valuation report that ten percent variation is possible due to human errors in measurement. The excess stock of iron ore is valued by the AO as Rs 34,20,798/- which in my opinion is not correct since the difference between the physical stock and stock as per books is less than ten percent. Moreover, I firmly believe that the excess stock of sponge iron has also been inaccurately and unreliably valued due to reasons discussed above. It is also noted that although the VO has taken the rate of Rs 11,500/- per ton for sponge iron, the AO has taken the rate of Rs 13,500/- per ton for the same. The AO has not given any reason for adopting this higher rate. When the rate of Rs 11,500/- per ton is adopted the value of excess stock of sponge iron comes to Rs 41,39,258/- and not Rs.48,49,605/- taken by the AO.

During the assessment proceedings, the appellant's AR also pointed out that the size of the factory shed, i.e., height, width, and length of the shed is not so much as to accommodate the sizes of the heaps of the different materials calculated by the VO in his valuation report. The AR submitted photographs of the factory shed, its measurement etc to support his argument. In my opinion, this is an important aspect of this issue since it clearly shows that the measurement of volume and weight of the items was not done in any rational and accurate manner. However, the AO has failed to appreciate this aspect and has rejected AR's contention without any basis.

Due to the reasons discussed above, I firmly believe that the valuation report prepared by the VO is not reliable since the calculation of volume and weight of the items was not done in an accurate manner. It is also seen that the appellant has offered additional income of Rs 1 Crore in its return of income on account of miscellaneous discrepancies. Therefore, in my opinion the AO was not justified in of Rs 1,17,18,149/- on account of excess stock. Hence, I direct the AO to delete this addition."

The Revenue being aggrieved by the order so passed by the learned CIT(A), is in appeal before the Tribunal.

10. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. During the course of hearing, the learned Departmental Representative submitted that the stock was correctly determined by the Valuation Officer, however, he could not controvert the glaring infirmities pointed out by the learned CIT(A) in the entire stock valuation process as well as about arbitrary valuation of Sponge Iron. The learned A.R. reiterated the submissions before the learned CIT(A) and pleaded that the order need not be disturbed. It is also a fact that the books of account was never rejected and even the opening stock, purchase, sales, production and closing stock were accepted. If that be so, there is no question of any excess stock on a particular day in the midst of the financial year, more so when closing stock at year end was accepted to be correct. The Assessing Officer has blindly relied upon the report of the Valuation Officer without any meaningful application of mind and did not apply any logic to the contentions thereof. There is no scope to interfere with the rock solid conclusion of the learned CIT(A) in the absence of any palpable error. Accordingly, ground no.1, is dismissed.

11. As regards ground no.2, regarding addition of finance charges, we find that this very same Bench had considered a similar issue in ACIT v/s Anshul Impex Pvt. Ltd., ITA no.45/Nag./2021, order dated 18/07/2024, wherein the Tribunal held as under:–

3. "As evident from the facts of the case, the assessee himself has admitted that it had resorted to circular transaction only to raise Bank finance which was required for his business genuine needs. The loss incurred on this transaction for ₹ 8,33,594, was confirmed by the learned CIT(A). The assessee has not agitated against the same before us. The learned CIT(A) had remarked that since these were managed transactions, the loss were fabricated. As regards the disallowance of proportionate financial expenditure amounting to ₹ 25,25,934, it is important to refer to the relevant portion of the learned CIT(A)'s order:—

"4.5 Though with introduction of section 158BI of the Act provision of cechapter XIVB are made inapplicable to proceedings u/s 153A/153C of the Act. The above principle propounded by Supreme Court in above discussion is embedded in section 153A & 153C which does not limit the authority of Assessing Officers to material found during search as held in the case CIT vs Gopal Lai Bhadraka, supra. Therefore, AO has rightly considered all the material available on record while framing assessment u/s 153A.

4.6 It is the 'assessment of total income' which is required to be made u/s 153A. The total income as defined u/s 2(45) would be the total income computed as per section 5 of the Act. The word 'assessment' cannot have a different meaning for different purposes under the same Act, unless restricted by specific provisions. The process of assessment for the purposes of the Act is wide enough to include every kind of enquiry/examination for discovery, quantification and assessment of any income wholly or partly for the purposes of the Act. Hence, the process of assessment of total income' u/s 153A can neither be restrictive nor have a different connotation for assessment under section 153A vis a vis 143(3) or 147."

4. However, we find that the Co-ordinate Bench of the Tribunal, Nagpur Bench, in Gupta Domestic Fuels Nagpur Ltd., ITA no.308/Nag./2016, A.Y. 2011-12, order dated 05/04/2022, has subscribed to the view that the Assessing Officer has duly applied his mind and has disallowed the expenditure to the extent of paper transaction not backed by actual business. In fact, in the assessment order, the Assessing Officer has specifically noted by way of an office note which reads as follows:—

"Office Note:-

1) The disallowance of financial expenses in proportion to the interest expenses on account of cash credit/L.C. and addition on account of loss incurred due to the corresponding sale and purchase transactions are the only items which have direct nexus with the circular transactions carried out by the assessee. The other items of expenses debited in the profit & loss account were not found to have any nexus with such circular trading/transaction and hence no disallowance regarding any part of the other items of the expenses debited in the profit and loss account has been made."

5. The learned CIT(A) had disallowed the loss on circular transaction holding it to be artificial and managed and losses are fabricated, but on the other hand, he found that the financial charges to be incurred for the purpose of business, hence, to be allowed. The assessee has pleaded that the funds were required for working capital. But in case of paper transaction, there is no requirement of capital at all because there was neither any purchase nor was there any sale. However, the assessee has adopted this route to raise higher finance from the circular transaction. Since the discounting charges on letter

of credits have been paid to bank, the genuinity is sacrosanct. The funds so raised have been used to augment the working capital required for delivery based business. The assessee had used the platform of circular trading to draw higher finance from the bank. There is no instance of any diversion of funds as pointed out by the Assessing Officer. The funds from the discounted letter of credits are used for the purpose of business and is allowable under section 36(1)(iii) of the Act. There is no ground to interfere with the conclusions of the learned CIT(A). Hence, the ground raised by the Revenue is dismissed."

12. In view of the aforesaid decision on similar facts, there is no reason to differ with the conclusion so drawn by the learned CIT(A), who has also relied on a series of judgments in similar matters. When profit from non-delivery based business has been taxed, it cannot be said that relevant expenses are bogus. We further find that identical issue was considered by the Co-ordinate Bench of the Tribunal, Nagpur Bench, vide order dated 29/03/2019, passed in Gupta Domestic Fuels (Nagpur) Ltd., ITA no.201/Nag./2014, A.Y. 2010-11, wherein the disallowance made by the Assessing Officer was directed to be deleted by the Tribunal. The relevant findings of the Tribunal are reproduced below:-

"In my considered view, the AO has failed to discharge the onus upon him to conclusively prove that the expenditure incurred are bogus. The AO in Page 4 para 4.4. of the Assessment Order agreed that the expenses claimed had to be restricted to only those expenses which were related to non delivery transactions or paper transactions and in Para 4.5 further held that it is reasonable to allow only those expenses which are genuinely incurred to carry out such paper transactions. Thus the AO agrees that the expenses are allowable. However, he failed to bring on record any infirmity in the individual head of expenditure which had been considered for disallowance. I find that the assessee has paid interest to banks on the LC transaction and finance facility. Similarly, the bank charges and commission have been paid for LC discounting. The interest paid to others is also for securing funds for the purpose of business. It is nowhere established by the AO that the funds have been utilised for personal purposes or non business activity. The genuineness of the expenditure cannot be doubted as the payments are made to bank and other parties. The manufacturing expenses like factory expenses, electricity charges etc. have been incurred to carry out manufacturing activity and the AO erred in disallowing the expenditure merely construing the manufacturing activity as paper transaction. No defect has been pointed out in any of such expenditure. The AO has disallowed professional and legal charges, travelling

expenses, consultancy charges and selling expenses only on the basis that such expenses are not required without going into the details of such expenditure, and whether they have been actually incurred or not. The expenditure has been disallowed by the AO summarily without proper verifications. I find that the other expenses in the Profit and Loss Account which are also of similar nature have been allowed as deduction. Since it is held that the assessee had carried out the regular business activity on which profit is earned, the expenditure incurred for such transaction or for facilitating the business have to be allowed. I find that the assessee has incurred expenditure and no defect/infirmities have been pointed out by the AO. It is to be further noted that no evidence was found during search on the basis of which AO could have disallowed the expenditure. In fact, there is no such finding at all.

Here, I also find that the similar nature of transactions and the business activity of the assessee and the expenditure incurred by the assessee were subject to scrutiny in earlier occasion as well. Proceedings u/s.153A were initiated for A.Y. 2004-05 in pursuance of search conducted earlier on 24-12-2003 and the assessment order was passed u/s.143(3) r.w.s. 153A on 31-03-2006. The expenditure were very much allowed and there was no edition made by the AO of this nature. Further, on the similar facts, the CIT(A)-I vide his appellate order dated 11/03/2013 in the case of Shri Krishna Gupta for A.Y.2008-09 vide appeal number CIT(A)-11545/2011-12 has held that the expenditure is directly relatable and without which the appellant would not have earned income and accordingly has allowed the appeal.

Considering the aforesaid facts, I hold that the expenditure claimed by the assessee are incurred as well as directly relatable for the purpose of earning profit on the activities carried out by the assessee and therefore the disallowance of Rs.1,63,64,142/- made by the AO is unjustified and therefore directed to be deleted. The ground of appeal is allowed in favour of the appellant."

13. In view of the aforesaid discussions and respectfully following the findings of the Tribunal cited supra, ground no.2, raised by the Revenue is dismissed.

14. Regarding ground no.3, the learned A.R. pointed out that ad-hoc surrender of ₹ 1 crore, without any nexus to particular source of income was duly honoured by paying full tax, hence, the Revenue cannot be aggrieved. The ground is infructuous. The decision of the learned CIT(A) is without any blemish. Accordingly, ground no.3, raised by the Revenue is also dismissed.

15. In the result, appeal filed by the Revenue is dismissed.

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(Arising out of Revenue's
Appeal being ITA no.91/Nag./2022
Assessment Year – 2010-11

16. The assessee has filed its cross objection in support of the appeal filed by the Revenue, which we have dismissed. Accordingly, the cross objection filed by the assessee becomes infructuous and hence dismissed.

17. In the result, cross objection filed by the assessee is dismissed.

18. To sum up, appeal by the Revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open Court on 02/09/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 02/09/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur