

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.80, 89,90,91,92 & 93/Alld/2023
A.Ys. 2004-05 to 2009-10

Kesarwani Zarda Bhandar, Sahson, Allahabad	vs.	Joint Commissioner of Income Tax, Central Circle, Allahabad
PAN:AADFK6279N		
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Dr Neel Jain CIT(DR)
Date of hearing:	28.08.2024
Date of pronouncement:	22.11.2024

ORDER

PER NIKHIL CHOUDHARY, A.M.:

These appeals have been filed by the assessee against the orders of the Id. CIT(A), Lucknow-3, dated 21.06.2023 passed under section 250 r.w.s. 254 of the Income Tax Act, 1961. As the issues involved in all these appeals is the same, they are taken up for hearing and disposed of by a common order for the sake of convenience.

ITA No.80/ALLD/2023 (A.Y. 2004-05)

2. The grounds of appeal filed by the assessee are as under:-

"1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs.6,15,862/- under the head sundry creditors and Rs. 1,29,617/- addition under the head investment in building on the basis of DVO report as maintained is unwarranted.

2. That in any view of the matter addition of Rs.6,15,862/- as maintained under head sundry creditors by alleging bogus liability is highly unjustified when the liability is a genuine liability supported book entry and vouchers hence addition maintained by CIT(A) is unwarranted.

3. That in any view of the matter addition of Rs.6,15,862/- relate to five trading parties out of which opening balances in two party's account are appearing and two parties to whom part payment was made and accepted and thus closing balance was maintained by CIT(A) which is not correct.

4. That in any view of the matter addition of Rs.1,29,617 as maintained by CIT(A) under the head investment in construction on the basis of DVO report as maintained is highly unjustified incorrect in the facts and circumstances of the case and specially when book entry has been accepted and there was no dispute about investment.

5. That in any view of the matter on account of investment in property on the basis of DVO report various decisions were furnished as well as other CIT(A) in other case himself deleted the addition and copy of said decisions was furnished but not considered.

6. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”

3. The facts of the case are that a search and seizure action under section 132 of the Income Tax Act, 1961 was conducted in the premises of the assessee on 27.08.2009. Notice under section 153A of the Act was issued on 7.07.2010 and assessment was completed on 22.12.2011. Aggrieved with the order passed under section 153A r.w.s. 143(3), the assessee filed an appeal before the Commissioner of Income Tax (Appeals), Allahabad, who partly allowed the appeal. Thereafter, the assessee filed a second appeal before the Hon'ble ITAT, Allahabad. The Hon'ble ITAT, Allahabad vide its order dated 15.07.2014 remanded the matter back to the file of the Id. CIT(A) on two issues i.e. on account of addition of bogus liabilities amounting to Rs.30,04,511/- and addition in respect of construction of building, on the basis of DVO's report amounting to Rs.1,29,617/-. While setting aside the issue of addition on account of bogus liabilities, the Hon'ble ITAT held, *“We accordingly set aside the order of the authority below and restore this issue to the file of the Id. CIT(A)*

with a direction to re-decide this issue after verifying the old balances coming up from earlier years and in case, the balance s are coming up from earlier years, no addition should be made against the assessee and for new items appearing for the first time under sundry creditors, the assessee shall have to furnish the evidences before the Id. CIT(A) for verification of the same. The Id. CIT(A) shall give reasonable sufficient opportunity of being heard to the assessee and shall also allow to furnish material before him for clarification of issue.”

On the issue of addition in respect of construction of building on the basis of DVO’s report, the ITAT held, *“We set aside the order of the Id. CIT(A) and restore this issue to his file with a direction to re-decide this issue in the light of the above judgments. The Id. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee. In the result, all the appeals of the assessee on this issue are allowed for statistical purposes.”*

In pursuance of these orders, the appeals were taken up for hearing by the Id. CIT(A)-3, Lucknow. Before the Id. CIT(A)-3, Lucknow, the assessee submitted that the Hon’ble ITAT, in its order, had reproduced a chart which showed that of total liabilities under the head sundry creditors for expenses, what amount was disputed under the head, “Others”:-

A.Y.	Total Liability under the head sundry creditors for Expenses	Disputed Amount under the head, “OTHERS”
2003-04	57.34.725.81	-Nil
2004-05	56.83.162.01	19,22,490.90
2005-06	38,73,526.92	19,22,490.90
2006-07	44.81,003.10	6.41,177.68
2007-08	40,70,617.07	18,46,952.79
2008-09	41,49,623.31	25,50,707.04
2009-10	41.93.959.70	21,62.415.98

4. After considering the entire written submissions and facts enclosed in the paper book before the Tribunal, the Tribunal had ordered the matter to be set aside

so that the relief could be given to the assessee for old balances and accordingly, it was submitted that details of old balances were being furnished as also another chart was being furnished showing the new creditors along with the documentary evidences. In the light of the ITAT, direction, and the facts of the case as revealed in the charts, it was submitted that the additions were uncalled for and hence additions so made, were liable to be deleted. With regard to the second issue, on the basis of DVO's report, a chart was prepared and submitted which gave the details of the investment recorded in the books, the investment as per DVO's report and the difference in the books and the DVO's report. It was pointed out that the investment recorded in the books and the book results was accepted in assessment years 2003-04 and 2004-05 in the assessment under section 143(3) and therefore, the addition was unwarranted because the issue was covered by various decisions of the Hon'ble Supreme Court and the Hon'ble Allahabad High Court such as Sargam Cinema vs. CIT (2010) 328 ITR 513 (SC) and CIT vs. Lucknow Public Education Society 339 ITR 588 (All). It was submitted that the DVO's report was also liable to be rejected, because in the report there were a number of defects such as higher rate, incorrect measurement, inspection after a long time and lack of material found in the search. It was submitted that the addition made by considering the DVO's report as a gospel truth and by ignoring the investment recorded in the books in a regular manner, which had not been doubted, was unfair and wrong. In view of the above facts and the law on the subject, it was prayed that the addition so made arbitrarily was unjustified and hence liable to be deleted. It was also submitted that identical addition based on DVO's report was made in the case of M/s Kesarwani Sheetalaya and in that case also, the matter was restored back to the Id. AO by the ITAT vide their order dated 30.10.2010 and the Id. AO, after considering the observations of the ITAT, deleted the addition vide his order dated 21.12.2017. It was prayed, therefore, that the addition may be deleted.

5. After considering these arguments, the Id. CIT(A) observed that the details of sundry creditors for expenses (Others) had been submitted and on perusal of the details, it had been observed that out of the total sundry creditors for expenses amounting to Rs. 30,04,511/-, an amount of Rs.29,14,200/- pertained to old balances coming from earlier years. However, he noted that on perusal of submissions made by the assessee for the A.Y. 2007-08, it had been observed that the following sundry creditors for expenses were appearing for the first time in A.Y. 2004-05, i.e. M/s Plastic Translides (publicity), Agra, amounting to Rs.1,15,064/- , M/s Rising India Publication, Varanasi amounting to Rs.2,500/- and M/s Sharda Steels, Kanpur amounting to Rs. 4,07,987/-, aggregating in total to Rs.5,25,551/-. Therefore, following the directions of the ITAT, the Id. CIT(A) deleted additions amounting Rs.23,88,649/- and for the remaining amount of Rs.6,15,862/-, he observed that no supporting evidences except ledger accounts in respect of only Rs.90,311/- had been submitted to justify the genuineness of sundry creditors, therefore, he sustained an addition of Rs. 6,15,862/- in this regard.

With regard to the second issue i.e. addition on account of construction of building on the basis of DVO's report, the Id. CIT(A) observed that during the assessment proceedings, addition to building had been shown amounting to Rs.63,58,268/- and assessee was required to furnish bills and vouchers in respect of these additions but the assessee failed to produce the bills and vouchers. It was in this context that reference had been made to the Valuation Officer, Income Tax Department on 19.10.2011. The Id. CIT(A) noted that the assessee failed to produce bills and vouchers in respect of additions to the building before the Valuation Officer, as well. The Valuation Officer valued the cost of addition made to the building during the assessment year at Rs.8,36,597/- as against Rs.7,06,980/-. After confronting the report to the assessee, the Id. AO made the addition of Rs.1,29,617/- to the total income. The Id. CIT(A) observed that, in the absence of bills and vouchers, the claims of expenditure made by the assessee remained unexplained. He

held that while in the assessment proceedings, the ld. AO has not specifically mentioned about the rejection of books of accounts, but due to the absence of bills and vouchers, a true and correct picture of the books does not emerge therefore, he judged that the books were not correct. On the failure to consider objections against the report of the valuation officer, the ld. CIT(A) drew reference to the case of Commissioner of Wealth Tax, Vs. Dr. H. Rahman (1991) 55 taxman 408 (Allahabad) in W.T. Reference No.210 of 1979. He pointed out that in the said order, the Hon'ble High Court had held that the Wealth Tax Officer is statutory bound by the valuation report submitted by a Valuation Officer under sub section (5) of section 16A as provided in sub section (6) thereof and he had no option but to complete the assessment in conformity with the valuation done by the Valuation Officer. He, therefore, rejected the appeal of the assessee in this regard, in the absence of any supporting documents on the issue and the aforesaid case law. The assessee is aggrieved at these decisions made by the ld. CIT(A) and is accordingly in appeal before us.

6. Shri. Praveen Godbole, C.A. (hereinafter referred to as the 'ld. AR') appeared before us and submitted that during the year under consideration, sundry creditors for expenses (Others) had been shown at Rs.30,04,511/- which was duly recorded in the books. Thereafter, in the set aside proceedings, the ld. CIT(A) had deleted addition of Rs.29,14,200/- since it was an old balance brought forward from earlier years but sustained an addition of Rs.6,15,862/-. It was submitted that the amount of Rs.1,15,064/- standing in the name of M/s Plastic Translides (publicity), Agra and the amount of Rs.4,07,987/- standing in the name of Sharda Steel, Kanpur were opening balances, as was the amount of Rs.52,391/- standing in the name of Vartman Kamal Jyoti, Lucknow. Hence the addition to the extent of Rs.5,75,442/- also needed to be deleted. In so far as the addition of Rs.37,920/- in respect of Tarun Bharat, Nagpur was concerned, it was submitted that the said party was regular trade party and the amount received by the said parties were through banking

channels and therefore, it was not correct to consider them as bogus parties. Further, it was submitted that the books of accounts had been accepted and the proviso to section 145(3) of the Act had not been invoked. Therefore, the addition needed to be deleted. The assessee placed reliance on the following decisions:-

- i. James P. Dsilva vs. DCIT, Circle-28(3), Mumbai (2019) 175 ITD 533 (Mum Trib)
- ii. Kohinoor Enterprises vs. ACIT (2019) 307 CTR (J&K) section 154.

With regard to the addition of Rs.1,29,617/-, it was submitted that the ld. AO has made the addition simply on account of the DVO's report who had estimated the cost of construction for the A.Y. 2004-05 to 2010-11 after inspecting the property on 18.11.2011. Since, it was practically impossible to work out the valuation of earlier years, therefore, the DVO's report could not be said to be a true and fair report. It was submitted that the year wise cost of construction was duly recorded in the books of account and the books had been accepted. As the books had not been rejected hence, addition could not be made on the basis of the DVO's report as held by the Hon'ble Supreme Court in the case of Sargam Cinema 328 ITR 513 as well as the decision of the Hon'ble Allahabad High Court in CIT-2 vs. M/s Lucknow Public Educational Society 339 ITR 588. Further, it was submitted that no incriminating material had been brought on record and therefore, in the absence of incriminating material, the addition made was highly unjustified. It was submitted in identical cases of the same group, the additions had been deleted by the Hon'ble Tribunal. Reference was invited to the orders of the Tribunal in the case of Shri Praveen Kumar Kesarwani in ITA No.68/Alld/2013.

7. On the other hand, Shri. Neel Jain, CIT DR (hereinafter referred to as the 'ld. CIT DR') submitted that this entire appeal was infructuous and was deserving of being dismissed as such. It was submitted that the order of the ITAT in ITA Nos. 358 and 374 to 378/Alld/2013 and ITA Nos. 6 to 11/Alld/2014 relating to assessment years 2004-05 to 2009-10, by which the Hon'ble ITAT had set aside these two

matters to the ld. CIT(A) had been challenged by the Department before the Hon'ble Allahabad High Court and the Hon'ble Allahabad High Court, vide its judgment and order in ITA No.270 of 2014 dated 6.09.2016 had allowed the appeal of the Department, set aside the judgment and orders of the Tribunal and recorded the fact that the additions made by the assessing authority which were deleted by the Tribunal had been restored. It was further submitted that the assessee has filed a review petition (Civil Misc. Review Appl No. 68907 of 2017) against this order of the Hon'ble Allahabad High Court, which had also been dismissed on 21.09.2017. Thus, the ld. CIT DR argued that in view of these orders passed by the Hon'ble High Court, since the orders of the Tribunal had been set aside and the additions made by the ld. AO had been restored, the proceedings before the ld. CIT(A) in pursuance of the earlier order, which had since been set aside, were rendered infructuous and similarly, the appeal against the same was rendered infructuous. Therefore, it was further submitted that pursuant to the order of the Hon'ble Allahabad High Court setting aside the earlier orders of the Tribunal, the ld. AO had recomputed the demand payable by the assessee at Rs.10,37,91,834/- and the assessee had filed fresh appeals against this demand before the ld. CIT(A) on 12.06.2017. It was further argued that on 29.05.2017, following the orders of the Hon'ble High Court, the ld. AO had also levied penalty under section 271(1)(c) of the Income Tax Act and that too was in appeal. Hence, the issues that were agitated before the Hon'ble ITAT in the present appeals, were no longer in existence and accordingly, the appeal was deserving of being dismissed as infructuous. A paper book was filed by the ld. CIT DR containing all this information. Without prejudice to the above, the ld. CIT DR argued that the assessee had been asked by the Tribunal to submit the necessary evidence with regard to sundry creditors before the ld. CIT(A) and it had not submitted anything except ledger accounts. Therefore, ld. CIT(A) had not allowed relief to the assessee where it could not substantiate genuineness of sundry creditors. In the circumstances, no further relief was allowable to the assessee. With

regard to the issue of adoption of the DVO's report, it was submitted that no reliance could be placed on the case laws cited by the appellant because the books of accounts had not been produced before the Id. AO or the Id. CIT(A) or the Valuation Officer. No bills and vouchers had been presented either before the Id. AO or the DVO. As no break-up had been provided by the assessee, the DVO had applied 18.33% for all the years of construction. In the absence of any proof being submitted by the assessee, the DVO's report was the only measure of investment and therefore, was deserving of being accepted.

8. We have duly considered the facts and circumstances of the case and the arguments advanced by both parties. At the very outset, it is necessary to address the issues raised by the Id. CIT DR regarding the maintainability of appeal, as they go to the very root of the matter. It is seen from the order of the ITAT in ITA Nos.358 & 374 to 378/Alld/2013 for the A.Y. 2004-05 to 2009-10, that the ITAT had accepted the arguments of the assessee with regard to the validity of assessments under section 153A of the Act and relying upon the decision of the Hon'ble Allahabad High Court in CIT vs. Smt. Shaila Agarwal 65 DTR 2012 Page 41 and the Special Bench of the Tribunal in the case of All Cargo Global Logistics vs. DCIT 147 TTJ 513, it had set aside the orders of the authorities below and deleted all additions made, on account of the fact that such additions had not been made on the basis of incriminating materials found during the search. However, at the same time, it also proceeded to pronounce decision on the merits of each addition and in this context, it referred back issues relating to sundry creditors and additions made on account of DVO's report, to the Id. CIT(A) for fresh adjudication. We have also perused the order of the Hon'ble Allahabad High Court and the statement of facts and grounds of appeal taken by the Department in such appeal before the Hon'ble Allahabad High Court. It is observed that in ITA No. 270 of 2014, the Department had raised three questions of law, two of these were with relation to the decision of the ITAT in setting aside the assessment completed under section 153A of the Income Tax Act, by not

following the decision of Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Arora (2014) 367 ITR 517 (All), wherein the Hon'ble Allahabad High Court had held that the ld. AO had the powers to re-assess the returns of the assessee, not only for the undisclosed income which was found during the search operation, but also with regard to the material that was available at the time of the original assessment and furthermore, whether the ld. AO had the power to make assessment and compute the total income of the assessee under section 153A, notwithstanding the fact that the return had been filed and processed under section 143(1)(a) of the Act, before the date of search. The third question of law agitated before the Hon'ble High Court, related to the decision of the Tribunal in deleting the addition of Rs.6,95,66,106/-, made on account of suppressed production. However, the Hon'ble Allahabad High Court only admitted the first two questions of law preferred by the Department i.e. the questions of law relating to the decision of the ITAT to set aside the orders on account of the fact that incriminating materials were not recovered during the search to substantiate the additions and that the ld. AO did not have powers to traverse the entire field of assessment to compute the total income once a return had been filed and processed under section 143(1)(a) prior to the date of the search. It did not admit the issue relating to the deletion of suppressed sales. Subsequently, the Hon'ble Allahabad High Court held that the issues under consideration had been finalized by it in the case of CIT vs. Raj Kumar Arora (supra) and accordingly it ruled as under:-

*“13. The judgment and the order of the Tribunal **to this extent** is hereby set aside and the additions made by the assessing authority which were deleted by the Tribunal **by taking otherwise view with respect to the scope of section 153A** are restored. Appeals are allowed.”*

Thus, it would appear from a plain reading of the order, that the Hon'ble Allahabad High Court held that the additions made by the ld. AO, which had been deleted by the Tribunal on the basis of their view regarding the scope of section

153A had been restored. The order of the Hon'ble Allahabad High Court was not concerned with deletion of additions on their merits for reasons other than the view of the Tribunal with regard to the scope of section 153A. The fact that the review petition filed by the assessee, was subsequently rejected by the Hon'ble High Court, does not affect this matter because while rejecting the review application, the Hon'ble High Court observed that the endeavor on the part of the review applicant was to show that the Court had not properly appreciated the matter and the judgment was not correct, as a result of which there was an attempt to reargue the matter, which was not permissible in a review application. Thereafter the Hon'ble Allahabad High Court dwelt on the scope of the review application and held that there was no ground for review that was made out. It, therefore, dismissed the application. This, however, does not change the basic fact that the Hon'ble Allahabad High Court had restored the additions made by the Id. AO only to the extent that the Tribunal had deleted these additions by taking a view with respect to the scope of section 153A. There is nothing in the orders of the Hon'ble High Court, that would suggest, that the Hon'ble High Court had considered the additions on their merits and restored the additions that had been deleted by the Tribunal, on grounds other than their interpretation of the scope of section 153A. As already pointed out, the Tribunal had not only deleted the additions in view of the appreciation of section 153A which stood reflected in paragraph no.7.7 of their order, but they had also specifically dealt with the various issues on merits and pronounced judgment with respect to each issue in the subsequent paragraphs of their orders. It was in such exercise, that the Tribunal dealt with the issue of bogus liabilities in paragraphs 16 and 17 of its order and the issue of addition on account of construction of building on the basis of DVO's report, in paragraph 18, 19 and 19.1 of their orders. Since, these matters have not been restored to the Id. CIT(A) on account of the appreciation of the scope of section 153A but on account of altogether different findings, it cannot be said that the proceedings before the Id. CIT(A) were rendered

infructuous by the order of the Hon'ble Allahabad High Court in ITA No.270 of 2014. Consequently, the arguments of the ld. CIT DR that the appeal is not maintainable against the order of the ld. CIT(A) is rejected.

9. In considering two additions sustained by the ld. CIT(A), it is seen that a sum of Rs.4,07,987.91/- standing in the name of M/s Sharda Steel, Kanpur and a sum of Rs.1,15,064/- standing in the name of M/s Plastics Translides (publicity), Agra, also stood against their names in the assessment year 2003-04. They are, therefore, clearly opening balances which should have been deducted from the amount of addition to be sustained. Accordingly, additions made in respect of these creditors are deleted and the assessee gets relief of Rs.5,23,051.91/-. However, with regard to the sums of Rs.52,391/- standing in the name of Vartman Kamal Jyoti, Lucknow and a sum of Rs.37,920/- standing in the name of M/s Tarun Bharat Associates, Nagpur, it is observed from the details submitted, that these are not old creditors. The Hon'ble ITAT was quite explicit in its order, that for the new creditors, the assessee was required to submit the necessary evidences before the ld. CIT(A). The ld. CIT(A) has recorded the fact that it has submitted nothing except a ledger account, which does not constitute proof of the genuineness of these creditors. In the absence of proof, the submissions of the assessee that they are regular trade creditors have no basis and therefore, additions to the extent of Rs.90,311/- on this account are sustained. Ground Nos. 1, 2 and 3 are partly allowed.

10. Ground Nos. 4 and 5 pertain to addition of Rs.1,29,617/- on account of the DVO's report. The assessee has argued that because the expenses were recorded in the books of accounts and the books of accounts were not rejected, no addition can be made in the hands of the assessee on the basis of the DVO's report because such reference in itself was void. The assessee has also submitted that there were defects in the DVO's report which have been pointed out during the course of assessment but that such deficiencies have not been considered objectively by the ld. AO and the

DVO's report has been blindly adopted. The ld. CIT(A) in considering the arguments furnished by the assessee, observed that the assessee could not produce its bills and vouchers either before the ld. AO due to which the reference was made and such non-production of bills and vouchers rendered the books to be incorrect. Thus, the case laws relied upon by the assessee will not apply. The ld. CIT(A) also held that the ld. AO was bound by the report of the Valuation Officer in accordance with the provisions of the Wealth Tax Act as laid down in the judgment of CWT vs. Dr. H. Rahman (supra) and therefore, he had no option but to complete the assessment in conformity with the valuation done by the Valuation Officer. In consideration of these arguments, We are of the opinion that the mere recording of an expenditure in a books of accounts without producing the primary evidences on the basis of the books of accounts are prepared do not render the books of accounts as complete and correct additions. The failure to produce the primary evidence was the trigger for reference to the Valuation Officer. Therefore, as the ld. CIT(A) has pointed out in his order, while the ld. AO may not have explicitly recorded his rejection of the books, the fact that he recorded that the assessee had failed to produce the primary evidences in support of the books which prompted him to make the reference is indicative of his dissatisfaction with the completeness and correctness of the books maintained by the assessee. In the circumstances, it is observed that the judgments cited by the assessee do not apply to the facts of the assessee's case. It is therefore held that the reference made to the Valuation Officer by the ld. AO was a valid reference. However, it is also observed that the ld. CIT(A) has upheld the decision of the ld. AO to frame an assessment on the basis of the valuation report, disregarding the objections to the same that were furnished by the assessee on the grounds that, as per the provisions of section 16A of the Wealth Tax Act, 1957, the ld. AO was bound by the valuation done by a Valuation Officer. This is an erroneous assumption on the part of the ld. CIT(A). The binding nature of the valuation of the District Valuation Officer depends upon the section under which the valuation is made. For

instance, had the reference for valuation been made under the provisions of section 50C or under the provisions of section 55A, where it has been specified that the provisions of section 16A, section 23A, section 24, section 34AA, section 35 and section 37 of the Wealth Tax Act shall, with necessary modifications, apply to such reference, then it could be said that the ld. AO was bound by the decision of the Valuation Officer. But in the instant case, the reference was made to the Valuation Officer under section 142A and the provisions of sub section 3 of section 142A (as it then stood) categorically state that on receipt of the report from the Valuation Officer, the ld. AO, after giving assessee an opportunity for being heard, shall take such report into account while making the assessment or re-assessment. In other words, the ld. AO had to objectively apply his mind to the discrepancies pointed out by the assessee in the valuation report of the DVO before adopting it as a binding report. This has clearly not been done in the present case as the ld. AO has brushed aside the objections raised by the assessee on the grounds that the Valuation Officer is a technical person and he would have considered all these aspects before making his report. Therefore, the addition made is not in accordance with the provisions as laid down in section 142A. Considering the above, we deem it fit to restore this matter to the file of the ld. AO to consider the objections filed by the assessee against the valuation done by the DVO and thereafter, to frame a fresh assessment on this issue after considering the estimate of the Valuation Officer in the light of these objections filed by the assessee. Ground nos. 4 and 5 are partly allowed.

11. Ground No.6 is general in nature and does not require adjudication.

12. In the result, the appeal of the assessee is partly allowed.

ITA No 89/ALLD/2023 (AY 2005 -06)

13. The Grounds of Appeal filed by the Assessee are as under

"1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading

result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs 86,720 /- under the head investment in building on the basis of DVO report as maintained is unwarranted.

2. That in any view of the matter addition of Rs.86,270/- as maintained by CIT(A) under the head investment in construction on the basis of DVO report as maintained is highly unjustified incorrect in the facts and circumstances of the case and specially when book entry has been accepted and there was no dispute about investment.

3. That in any view of the matter on account of investment in property on the basis of DVO report various decisions were furnished as well as other CIT(A) in other case himself deleted the addition and copy of said decisions was furnished but not considered.

4. That in any view of the matter, the decision of the Hon Allahabad High Court cited in para 6.5 of the CIT(A) order is not applicable at all as the said case relates to wealth tax whereas the assessee's case is well covered by the decisions of the Hon Supreme Court reported in 328 ITR of 2010 at page 513. Hence the addition is unwarranted .

5. That in any view of the matter Penal interest charge in the different sections is totally incorrect ,illegal in the facts and circumstances of the case

6. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal."

14. Ground Nos. 1 to 4 are with relation to the addition based on the DVO's report that has been sustained by the Ld CIT(A). The issue and facts are virtually identical to AY 2004-05. Following our order in ITA No. 80/ALLD/2023 for the AY 2004-05, we held that though the reference was valid , the Ld CIT(A) was incorrect in his assumption that the AO was not entitled to entertain the objections to the valuation report and therefore following our order for Ay 2004-05 , we restore this matter back to the file of the assessing officer to consider the objections to the valuation report that may be filed by the assessee and determine the unexplained investment, if any, thereafter. Grounds Nos. 1 to 4 are accordingly partly allowed.

15. Ground No. 5 relates to the charging of interest. As the matter has been restored to the file of the assessing officer, it becomes infructuous and is dismissed as such.

16. Ground No. 6 is general in nature and does not require a decision.

17. In the result, the appeal of the assessee is partly allowed.

ITA NO 90/ALLD/2023 (AY 2006-07)

18. The Grounds of Appeal filed by the Assessee are as under

“1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs.380,249/- at para 5.5 of CIT(A) order under the head sundry creditors and Rs. 109,205/- addition under the head investment in building on the basis of DVO report as maintained is unwarranted.

2. That in any view of the matter addition of Rs.380,249/- as maintained under head sundry creditors by alleging bogus liability is highly unjustified when the liability is a genuine liability supported book entry and vouchers hence addition maintained by CIT(A) is unwarranted.

3. That in any view of the matter addition of Rs. 380,249/- relate to various trading parties hence addition maintained by CIT(A) which is not correct.

4. That in any view of the matter addition of Rs.109,205/- as maintained by CIT(A) under the head investment in construction on the basis of DVO report as maintained is highly unjustified incorrect in the facts and circumstances of the case and specially when book entry has been accepted and there was no dispute about investment.

5. That in any view of the matter on account of investment in property on the basis of DVO report various decisions were furnished as well as other CIT(A) in other case himself deleted the addition and copy of said decisions was furnished but not considered.

6. That in any view of the matter ,the decision of the Hon Allahabad High Court cited in para 6.5 of the CIT(A) order is not applicable at all as the said case relates to wealth tax whereas the assessee's case is well covered by the decisions of the Hon Supreme Court reported in 328 ITR of 2010 at page 513. Hence the addition is unwarranted .

7. That in any view of the matter Penal interest charge in the different sections is totally incorrect ,illegal in the facts and circumstances of the case

8. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”

19. Ground Nos. 2 & 3 relate to the decision of the CIT(A) to sustain an addition of Rs. 380.249/- of a total addition of Rs. 641,178/- on the grounds that the assessee had not produced any evidence in support of these sundry creditors other than ledger accounts . Following our order in in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that as the assessee had not submitted the necessary evidences before the Ld CIT(A), the Ld CIT(A) was justified in sustaining these additions. These grounds of appeal are therefore dismissed.

20. Ground Nos. 4 to 6 are with relation to the addition based on the DVO's report that has been sustained by the Ld CIT(A). The issue and facts are virtually identical to AY 2004-05. Following our order in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that though the reference was valid , the Ld CIT(A) was incorrect in his assumption that the AO was not entitled to entertain the objections to the valuation report and therefore following our order for Ay 2004-05 , we restore this matter back to the file of the assessing officer to consider the objections to the valuation report that may be filed by the assessee and determine the unexplained investment, if any , thereafter .Grounds number 4 to 6, are accordingly partly allowed.

21. Ground No. 1 challenges both the additions sustained by the Ld CIT(A). In view of our decision on the foregoing grounds, this ground is held to be partly allowed.

22. Ground No. 7 relates to the charging of interest. We observe that the charging of interest is automatic to variation in tax liability that may be determined in assessment hence, there is no illegality in its levy. However, it would stand varied to the extent of reliefs allowed in this appeal. This ground is therefore partly allowed.

23. Ground Number 6 is general in nature and does not require a decision.
24. In the result, the appeal of the assessee is partly allowed.

ITA No 91/ALLD/2023 (A.Y. 2007-08)

25. The Grounds of Appeal filed by the Assessee are as under:-

“1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs.93,765/- as per para 5.5 of CIT(A) order under the head sundry creditors is unwarranted.

2. That in any view of the matter addition of Rs 93,765/- as maintained under head sundry creditors by alleging bogus liability is highly unjustified when the liability is a genuine liability supported book entry and vouchers hence addition maintained by CIT(A) is unwarranted.

3. That in any view of the matter addition of Rs 93,765/- relate to various trading parties hence addition maintained by CIT(A) which is not correct.

4. That in any view of the matter Penal interest charge in the different sections is totally incorrect ,illegal in the facts and circumstances of the case

5. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”

26. Grounds Nos. 1, 2 & 3 relate to the decision of the CIT(A) to sustain an addition of Rs. 93,765/- of a total addition of Rs. 18,46,952/- on the grounds that the assessee had not produced any evidence in support of these sundry creditors other than ledger accounts . Following our order in in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that as the assessee had not submitted the necessary evidences before the Ld CIT(A), the Ld CIT(A) was justified in sustaining these additions. These grounds of appeal are therefore dismissed.

27. Ground No. 4 relates to the charging of interest. We observe that the charging of interest is automatic to variation in tax liability that may be determined in

assessment hence, there is no illegality in its levy. This ground is therefore dismissed.

28. Ground Number 6 is general in nature and does not require a decision.

29. In the result the appeal of the assessee is dismissed.

ITA NO 92/ALLD/2023 (AY 2008-09)

30. The Grounds of Appeal filed by the Assessee are as under

"1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs.31,754/- at para 5.5 of CIT(A) order under the head sundry creditors and Rs. 10,121/- addition under the head investment in building on the basis of DVO report as maintained is unwarranted.

2. That in any view of the matter addition of Rs.31,754/- as maintained under head sundry creditors by alleging bogus liability is highly unjustified when the liability is a genuine liability supported book entry and vouchers hence addition maintained by CIT(A) is unwarranted.

3. That in any view of the matter addition of Rs. 31,574/- relate to various trading parties hence addition maintained by CIT(A) which is not correct.

4. That in any view of the matter addition of Rs.10,121/- as maintained by CIT(A) under the head investment in construction on the basis of DVO report as maintained is highly unjustified incorrect in the facts and circumstances of the case and specially when book entry has been accepted and there was no dispute about investment.

5. That in any view of the matter on account of investment in property on the basis of DVO report various decisions were furnished as well as other CIT(A) in other case himself deleted the addition and copy of said decisions was furnished but not considered.

6. That in any view of the matter ,the decision of the Hon Allahabad Hogh Court cited in para 6.5 of the CIT(A) order is not applicable at all as the said case relates to wealth tax whereas the assessee's case is well covered by the decisions of the Hon Supreme Court reported in 328 ITR of 2010 at page 513. Hence the addition is unwarranted .

7. That in any view of the matter Penal interest charge in the different sections is totally incorrect ,illegal in the facts and circumstances of the case

8. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”

31. Ground Nos. 2 & 3 relate to the decision of the CIT(A) to sustain an addition of Rs 31,574/- of a total addition of Rs 25,35,510/- on the grounds that the assessee had not produced any evidence in support of these sundry creditors other than ledger accounts for one creditor. Following our order in in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that as the assessee had not submitted the necessary evidences before the Ld CIT(A), the Ld CIT(A) was justified in sustaining these additions. These grounds of appeal are therefore dismissed.

32. Ground Nos. 4 to 6 are with relation to the addition based on the DVO's report that has been sustained by the Ld CIT(A). The issue and facts are virtually identical to AY 2004-05. Following our order in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that though the reference was valid , the Ld CIT(A) was incorrect in his assumption that the AO was not entitled to entertain the objections to the valuation report and therefore following our order for Ay 2004-05 , we restore this matter back to the file of the assessing officer to consider the objections to the valuation report that may be filed by the assessee and determine the unexplained investment, if any , thereafter .Grounds number 4 to 6, are accordingly partly allowed.

33. Ground No. 1 challenges both the additions sustained by the Ld CIT(A). In view of our decision on the foregoing grounds, this ground is held to be partly allowed.

34. Ground No. 7 relates to the charging of interest. We observe that the charging of interest is automatic to variation in tax liability that may be determined in assessment hence, there is no illegality in its levy. However, it would stand varied to the extent of reliefs allowed in this appeal. This ground is therefore partly allowed.

35. Ground No. 6 is general in nature and does not require a decision.

36. In the result, the appeal of the assessee is partly allowed.

ITA NO 93/ALLD/2023 (AY 2009-10):

37. The Grounds of Appeal filed by the Assessee are as under

“1. That in any view of the matter in respect of business activity regular books of account have been maintained which are audited year after year and trading result has been accepted by the department in past and even proviso to section 145(3) was not invoked hence the addition of Rs.9,997/- as per para 5.5 of CIT(A) order under the head sundry creditors is unwarranted.

2. That in any view of the matter addition of Rs.9997/- as maintained under head sundry creditors by alleging bogus liability is highly unjustified when the liability is a genuine liability supported book entry and vouchers hence addition maintained by CIT(A) is unwarranted.

3. That in any view of the matter addition of Rs.9997/- relate to various trading parties hence addition maintained by CIT(A) which is not correct .

4. That in any view of the matter Penal interest charge in the different sections is totally incorrect ,illegal in the facts and circumstances of the case

5. That in any view of the matter the appellant reserves his right to take any fresh ground of appeal before hearing of the appeal.”

38. Ground Nos. 1, 2 & 3 relate to the decision of the CIT(A) to sustain an addition of Rs. 9,997/- of a total addition of Rs 21,62,415/- on the grounds that the assessee had not produced any evidence in support of these sundry creditors other than ledger accounts . Following our order in in ITA no 80/ALLD/2023 for the AY 2004-05, we hold that as the assessee had not submitted the necessary evidences before the Ld CIT(A), the Ld CIT(A) was justified in sustaining these additions. These grounds of appeal are therefore dismissed.

39. Ground No. 4 relates to the charging of interest. We observe that the charging of interest is automatic to variation in tax liability that may be determined

in assessment hence, there is no illegality in its levy. This ground is, therefore, dismissed.

40. Ground No. 6 is general in nature and does not require a decision.

41. In the result the appeal of the assessee is dismissed.

Orders pronounced on 22.11.2024 at Allahabad U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED: 22/11/2024

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Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.