

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

ITA Nos.1047 to 1049/Hyd/2024		
Assessment Years: 2015-16, 2018-19 and 2019-20		
MSN Laboratories Private Limited, Hyderabad. PAN : AADCM6283F. (Appellant)	Vs.	The Assistant Commissioner of Income Tax, Central Circle 2(4), Hyderabad. (Respondent)
Assessee by:	Shri M.V. Prasad, C.A.	
Revenue by:	Shri B. Bala Krishna, CIT-DR.	
Date of hearing:	20.11.2024	
Date of pronouncement:	26.11.2024	

ORDER

PER BENCH:

The appeals of the assessee for A.Ys. 2015-16, 2018-19 and 2019-20 arise from the separate orders of Commissioner of Income Tax (Appeals) – 12 dated 16.08.2024, 19.08.2024 and 14.08.2024, respectively. Since, the facts are identical and issues are common but for the figures, for the sake of convenience, these three appeals were heard together and are being disposed of, by this consolidated order.

2. The grounds raised by the assessee in ITA No.1047/Hyd/2024 for A.Y. 2015-16 read as under :

“1.The order of the Ld. CIT(A) is erroneous on the facts of the case and contrary to the provisions of law.

2. The Ld. CIT(A) erred on facts and in law in not allowing the claim of additional deduction of expenditure of Rs.3,49,82,616/- as evidenced by the entries of cash outflows in the names of the employees found in the seized material against the gross unaccounted cash receipts from sale of spent solvents and scrap of Rs.5,27,90,633/- for arriving at the real income thereon.

3. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in failing to consider the notarized affidavits of the employees and labour contractors furnished as additional evidence which substantiate the additional claim of expenditure towards labour payments by corroborating and supplementing the entries of cash outflows in the names of the employees found in the seized material.

4. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction of expenditure to the extent of Rs.52,79,063/- only on estimate basis at 10% of the gross unaccounted cash receipts from sale of spent solvents and scrap.”

3. The brief facts of the case are that the appellant company is engaged in the business of manufacturing of bulk drugs and formulation of product, filed its return of income for assessment year 2015-16 under Section 139(1) of the Income Tax Act, 1961. A search and seizure operation under Section 132 of the Income Tax Act was carried out in M/s. MSN Group of cases on 24.02.2021. The appellant M/s. MSN Laboratories Private Limited (hereinafter referred to as “MSNL”) is one of the companies covered under Section 132 of the Income Tax Act, 1961 as part of the search. Consequent to search, notice under Section 153A of the Act was

issued to the assessee on 05.10.2021 calling for return of income. In response, the assessee filed its return of income for assessment year 2015-16 on 02.11.2021, declaring total income of Rs.224.80 crores. The case was selected for scrutiny and the assessment was completed under Section u/s 153A of the Act at Rs.224.80 crores and assessed the total income of the assessee by considering the admitted income of Rs.5,27,90,633/- as additional income towards unaccounted sale of spent solvents and scrap for the year under consideration.

3.1. The assessee has filed an appeal against the assessment order passed by the AO for A.Y. 2015-16 and challenged the disallowance of the claim deduction of expenditure of Rs.5,27,90,633/- made by the AO towards expenses incurred against unaccounted cash receipts from sale of spent solvents / scrap. The LD.CIT(A), for the reasons stated in the appellate order dated 16.08.2024, partly allowed the appeal filed by the assessee wherein the LD.CIT(A) has allowed the deduction of expenditure to the extent of Rs.52,79,063/- only on estimate basis at 10% of the expenditure incurred against unaccounted receipts from sale of spent solvent / scrap.

4. Aggrieved by the order of LD.CIT(A), the assessee is now in appeal before the Tribunal.

5. The only issue that came up for our consideration from Ground Nos.2 to 4 of the assessee's appeal for assessment year 2015-16 is the disallowance of claim of deduction of expenditure against the unaccounted cash receipts from sale of spent solvents / scrap. The facts with regard to the impugned dispute are that the assessee is engaged in the manufacturing and sale of bulk drugs. In the process, the assessee purchased various solvents and used them for manufacturing bulk drugs. The used solvents had to be discarded by the assessee. During the course of search at the registered office of the assessee on 24.02.2021, a Sony make pen-drive of 16 GB was found in the possession of Shri R. Buchi Reddy, Cashier, which contained various Excel sheet data. From the excel sheets, it was found that the spent solvents / scrap was sold in cash and such transactions were not recorded in the books of accounts for the relevant assessment years. A sworn statement under Section 132(4) of the Act was recorded from Shri R. Buchi Reddy on 24.02.2021, and in response to Question No. 18, he has stated that details of cash generated from the sale of utilized solvents and scrap has been maintained by him in an excel work book - APRIL 19.29.04.19XZ. xls, found in the seized pen-drive, and further stated that the said cash receipts are not recorded in the books of accounts for the relevant assessment year and further, he has furnished the entity-wise and financial year-wise working of the said cash receipts. As per the details furnished by Shri R. Buchi Reddy, the total cash receipts from the sale of spent solvents / scrap for the financial years 2012-13 to 2020-21, in respect of the appellant and four other group companies, were worked out at Rs.63,61,27,585/- and the total cash receipts from the sale of

spent solvents / scrap for the financial years 2015-16 to 2020-21 were worked out at Rs.18,76,02,606/-. The sworn statement recorded from Shri R. Buchi Reddy along with the Excel sheet data found in the pen-drive was confronted to Shri MSN Reddy, the Managing Director of the appellant and other group companies, and his statement on oath was recorded on 27.04.2021. In response to a specific Question No. 5, he stated that the spent solvents / scrap used for manufacturing of bulk drugs, after such reuse are categorized as hazardous waste and the same are required to be disposed of at the earliest. He further explained that he was given to understand that such waste is sold to local buyers, and some of the employees of the group companies have utilized such money for their own purposes, and the said money has not reached the respective companies. He further explained that the interest of the management in this regard is the quick disposal of such hazardous waste, and the management has not paid much attention to any other aspect. With regard to the sale of scrap, he explained that the same is generated out of dismantling of old building / units purchased by the companies and the proceeds from the disposal of such scrap have never reached the respective companies since the immediate disposal of such scrap for paving the way for further construction or development, is the priority of the management. However, considering the fact that the data was found in the registered office of the appellant company and in order to put a quietus to the issue, he stated that the cash receipts from the sale of spent solvents / scrap of Rs.52,79,063/- was offered as additional income in the hands of assessee for the year under consideration.

5.1. Subsequently, during the post-search investigation, Shri MSN Reddy has furnished a sworn affidavit dated 05-07-2021 to the DDIT(Investigation), Unit – II(2), Hyderabad, and reiterated his statements made during the course of the search in the statement recorded on 27-4-2021. Apart from reiterating the explanation furnished in his sworn statement dated 27-4-2021, he explained in the affidavit that the disposal of hazardous waste of spent solvents / scrap does not attract serious attention of the management from the financial perspective since the revenue generated from the disposal of the same is insignificant in relation to the operational revenue of the group companies. The only interest of the management is the quick disposal of the said waste due to its hazardous nature, failing which it may invite problems from the pollution regulatory authorities. He further stated that after examination of the issue that the data contained in the pen-drive in respect of sale of spent solvents / scrap represented the amounts collected in excess of the actual consideration for the purpose of distribution among the workers, who involved in handling the said waste and further submitted that since the workers used to demand payment of high remuneration in cash for handling and disposal of spent solvents/ scrap, the excess amount so collected, being in the nature of remuneration paid to workers for handling hazardous waste never reached the respective companies and accordingly, the same cannot be treated as income in the hands of the respective companies. However, he once again, to put a quietus to the issue and avoid prolonged litigation, reiterated his stand with

regard to offering additional income in the hands of the respective companies in the relevant assessment year. The details of party-wise and year-wise additional income offered towards unaccounted receipts from the sale of spent solvents / scrap is as follows:

A.Y	MSN Laboratories Pvt Ltd	MSN Pharmachem Pvt Ltd	Maithri Laboratories Pvt Ltd	MSN Organics Pvt Ltd	MSN Life Sciences Pvt Ltd	API Chem Laboratories Pvt Ltd	Total
2013-14	3,61,75,014	2,05,91,892	-	19,42,003	35,29,191	-	6,22,38,100
2014-15	5,35,06,633	1,09,57,678	-	22,84,403	28,30,031	-	6,95,78,745
2015-16	5,27,90,633	86,43,206	-	17,94,442	51,22,781	-	6,83,51,062
2016-17	4,55,32,945	1,28,39,052	-	14,20,467	47,71,521	-	6,45,63,985
2017-18	4,12,58,374	1,99,12,082	57,87,267	18,43,047	47,61,798	-	7,35,62,568
2018-19	6,77,03,448	1,74,25,120	93,97,572	26,08,388	61,56,891	-	10,32,91,419
2019-20	5,12,80,827	4,51,88,803	1,26,36,584	49,90,673	2,68,95,756	-	14,09,92,643
2020-21	5,12,22,731	3,27,38,075	1,02,22,479	48,55,404	2,67,81,999	-	12,58,20,688
2021-22	5,57,69,012	1,62,07,177	58,57,556	41,70,416	3,24,22,875	9,03,945	11,53,30,981
Total	45,52,39,617	18,45,03,085	4,39,01,458	2,59,09,243	11,32,72,843	9,03,945	82,37,30,191

5.2. During the course of assessment proceedings, in the written submissions furnished to the AO on 21-4-2022 in response to notice under Section 142(1) of the Act, the appellant reiterated the explanation furnished by MSN Reddy, the Managing Director of the appellant company, in the sworn statement dated 27-04-2021 and the affidavit dated 05-07-2021, and contended that the unaccounted cash receipts from the sale of spent solvents / scrap offered as additional income in the return of income filed under Section 153A of the Act do not represent the real income of the assessee, as the said amounts were expended for the purpose of business by way of disbursement to the workers who were involved in handling of the said material as per their demand considering the risks and inconveniences they had to face in handling the hazardous waste. Therefore, the appellant requested for deduction towards expenditure incurred for disposal of such hazardous material and claimed that the appellant and other group companies

incurred a sum of Rs. 66,80,52,108/- towards the cash payments made to workers through the head office employees for Assessment Years 2011-12 to 2021-22, as per the seized material for all six group companies. The AO, however, was not convinced with the explanation furnished by the assessee, completed the assessment by accepting the additional income declared by the appellant towards unaccounted cash receipts from the sale of spent solvents / scrap of Rs.5,27,90,633/-.

6. Aggrieved by the assessment order, the appellant preferred an appeal before the LD.CIT(A).

6.1. During the course of appellate proceedings, the appellant brought to the notice of the LD.CIT(A) that the same seized material, which contains the details of unaccounted cash receipts from the sale of spent solvents / scrap also contains the details of the expenditure incurred by the appellant and other group companies against the said unaccounted cash receipts. The expenditure so incurred by the appellant and the group companies is represented through cash outflow entries in the names of various employees at the head office appearing in the seized material. The aggregate amount of such cash outflows worked out to Rs. 66,80,52,108/- for AYs. 2011-12 to 2021-22 and the same represented the expenditure incurred by the appellant and other companies for handling and disposal of spent solvents / scrap. The appellant further contended that, out of the cash outflow as recorded in the same seized material, an amount of Rs.17,63,52,315/- was in the name of MSN Reddy and his family members, which represents an

amount drawn by the management out of unaccounted cash receipts from the sale of spent solvents / scrap and in respect of the said amount, no deduction has been claimed in the hands of the group companies. The appellant further contended that, in the case of the assessee for the instant assessment year, an amount of Rs.5,27,90,633/- was spent on various expenses against the unaccounted cash receipts. To corroborate and supplement the entries of cash outflows in the seized material, the appellant furnished notarized affidavits of various employees of the group who were involved in the process of collection of cash towards sale of spent solvents / scrap and disbursement of the same to the concerned workers and the labour contractors, who have deployed such workers.

6.2. The LD.CIT(A), after considering the submissions of the assessee and also taken note of the Excel data sheet found on the pen-drive, allowed partial relief towards the additional claim of expenditure against unaccounted cash receipts from sale of spent solvents / scrap to the extent of 10% gross receipts on estimation basis by holding that the expenditure shown in the seized material containing entries of cash inflow towards unaccounted cash receipts from sale of spent solvents / scrap as well as cash outflow entries showing handling the cash to various persons. Since both debit and credit entries are simultaneously recorded in the same seized document, the document should be read as a whole and cherry picking of data according to convenience is not justified. The LD.CIT(A) further observed that it is evident from the sworn statement dated 27-4-2021 and the subsequent affidavit dated 5-7-

2021 of Shri MSN Reddy that since beginning, he adhered to his stand that the unaccounted cash receipts were utilized for making payments to workers who were involved in handling of disposal of hazardous waste. The appellant submitted notarized affidavits of the concerned employees and labour contractors as additional evidence to substantiate its claim of making excess payments to workers. Since the appellant's claim of expenditure incurred for making payments to workers is based on seized material, the sworn statement and subsequent affidavits, the claim of the appellant has some reasonable force even if additional evidence by way of notarized affidavits is ignored.

6.3. The LD.CIT(A) further observed that, at the same time, it is true that the expenditure out of unaccounted cash receipts is recorded in the seized material and corroborated by the sworn statement and affidavit of Shri MSN Reddy neither complete retraction from admission nor complete denial of claim of expenditure to the appellant is justified. Therefore, the LD.CIT(A) observed that reasonable expenses incurred for earning unaccounted income is required to be considered. Therefore, considering the evidence filed during the course of appellate proceedings and also taking support from the financials of the MSN group of companies for the relevant financial years, the appellant and other companies have historically incurred an average of 11% of their turnover on salary and wages. Therefore, considering the disposal of such hazardous material associated with risk and challenges, the LD.CIT(A) has directed the AO to allow 10% of the

gross amount realized on sale of spent solvent and scrap for the A.Y. 2015-16 as handling expenses.

7. Aggrieved by the order of the LD.CIT(A), the assessee is in appeal before us.

8. The Learned Counsel for the assessee Shri M.V. Prasad, C.A. submitted that the LD.CIT(A) has erred in allowing the deduction of expenditure to the extent of Rs.52,79,063/- only on estimate basis at 10% of the gross unaccounted cash receipts from sale of spent solvents and scrap without appreciating the fact that income cannot be earned without incurring any expenditure. The Learned Counsel for the assessee further submitted that the LD.CIT(A), having held that the entries in the seized material represents the cash inflow towards unaccounted cash receipts and that the cash outflow represents the amounts spent towards various expenditure as expended by the very same seized material but erred in allowing the additional claim of expenditure only to the extent of 10% of the gross cash receipts from sale of spent solvents / scrap on estimate basis by considering only one element of cost involved in the disposal of scrap without considering the other elements of cost like transportation, handling, and disposal of hazardous waste. The LD.CIT(A), referring to seized material found in the form of an Excel sheet, submitted that except few occasions, the amounts received from the sale of spent solvents / scrap have been given back for further disposal of hazardous waste, as additional wages, to employees who were involved in the disposal of said scrap. The AO

conveniently ignored one part of the seized document, which contains details of expenditure incurred against unaccounted cash receipts from the sale of spent solvents / scrap, even though the Managing Director of the appellant company claimed that the management did not pay any attention to the financial aspects of the disposal of spent solvents / scrap, but only showed interest in the quick and early disposal of waste because of its hazardous nature and the impact that may be created on environment. Although, the appellant has furnished all the evidence, including the sworn affidavit from the persons deployed to disburse expenditure to various persons, but the LD.CIT(A) has ignored all the evidence filed by the assessee and allowed 10% of receipt as expenditure incurred against unaccounted cash receipts from the sale of spent solvents / scrap. Therefore, he submitted that the deduction towards expenditure incurred for handling and disposal of spent solvents / scrap, as per the very same seized material, which was quantified as Rs.5,27,90,663/- may be allowed as a deduction against the unaccounted cash receipts. The Learned Counsel for the assessee made an alternative claim that if at all a reasonable portion of expenditure needs to be estimated, then the same needs to be estimated by considering the various expenditures involved in handling spent solvents / scrap assets, but not only salary and wages as considered by the LD.CIT(A).

9. On the other hand, Shir B. Bala Krishna, CIT-DR supporting the order of the LD.CIT(A), submitted that there is no dispute regarding the fact that the amount received from sale of spent solvents / scrap has not been accounted in the books of account

for the relevant assessment year. In fact, Shri R. Buchi Reddy, Cashier, who received the amount has clearly admitted in a statement recorded under Section 132(4) of the Act during the course of search that the said receipts are not accounted for in the books of accounts of the appellant company. The statements of Shri R. Buchi Reddy have been confirmed by Shri MSN Reddy, the managing director of the assessee company in his sworn statement recorded on 27.04.2021 and the affidavit filed on 05.07.2021 during the course of search. Further, the appellant had also offered additional income towards unaccounted cash receipts from the sale of spent solvents / scrap in all four companies for the relevant assessment years and also filed a revised return in response to notice under Section 153A of the Act and paid taxes on the said unaccounted income. Therefore, the claim of the assessee towards expenditure during the course of assessment proceedings and appellate proceedings is only an afterthought without there being any evidence to suggest that the amount received from the sale of spent solvents / scrap has been utilized for making payments to employees. Although the appellant has obtained a notarized affidavit from the employees, if you go by the seized document, it clearly shows the cash inflow towards unaccounted cash receipts from the sale of spent solvents / scrap and also the cash outflow towards various payments made to MSN Reddy and other Directors of the appellant and other companies. From the above, it is very clear that the LD.CIT(A) has rightly allowed 10% of the receipt as expenditure incurred against unaccounted cash receipts, considering the nature of the material and the risk involved in the disposal of the said

hazardous waste. Therefore, CIT-DR submitted that the order of the LD.CIT(A) should be upheld.

10. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. We find that, this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches, in the case of MSN Pharmachem Private Limited for the A.Y 2019-20 in ITA No.884/Hyd/2024, where the Tribunal has directed the Assessing Officer to allow 60% of expenditure against unaccounted cash receipts from sale of spent solvents / scrap for the year under consideration. The relevant findings of the Tribunal are as under:

“10. We have heard both parties, perused the material, and gone through the orders of the authorities below. There is no dispute with regard to the fact that during the course of the search in the office of the appellant and other group companies, a Sony make 16 GB pen drive was found and seized from the possession of cashier Shri R. Buchi Reddy, which was marked as Annexure A/MSN/OFF/PD1. The entries contained in the Excel workbook in the seized pen drive pertains to the cash receipts of the appellant company as well as the other group companies about the sale of spent solvents / scrap. In fact, Shri R. Buchi Reddy, the cashier, in his sworn statement recorded on 24-02-2021, has admitted unaccounted cash receipts from sale of spent solvents / scrap and also stated that the said receipts are not accounted for in the books of accounts for the relevant assessment years. The statement of Shri R. Buchi Reddy has been confirmed by the MSN Reddy, the Managing Director of the appellant company. He has further explained the process involved in handling and disbursal of spent solvents / scrap, and according to MSN Reddy, the management did not pay any attention to the financial aspects of the disposal of spent solvents / scrap, but their only interest is the early disposal of the said material, considering the hazardous nature and environmental issues involved in handling and disbursal of the said material. Further, it is also an admitted fact that the appellant and other group companies have admitted additional income received from sale of spent solvents / scrap for the respective assessment years and filed returns in response to notices

issued under Section 153A of the Act and paid taxes. Therefore, the issue of the additional claim of expenditure against unaccounted cash receipts from sale of spent solvents / scrap needs to be considered in light of the incriminating material found during the course of the search, statements recorded from the persons who handled the issue, and MSN Reddy, the Managing Director of the appellant company, as well as the subsequent additional evidence filed by the assessee before the LD.CIT(A), including the notarized affidavits from the employees who are involved in the disposal of the said hazardous waste.

10.1. There is no dispute regarding the fact that the Excel sheet in the seized material contains entries of cash inflow represents unaccounted cash receipts from the sale of spent solvents / scrap, as well as cash outflow represents cash payments made in the name of various persons. The AO considered one part of the entries contained in the seized material, which includes cash inflow representing unaccounted cash receipts from sale of spent solvents / scrap, however, he conveniently ignored the other part of the entries contained in the very same incriminating material, which represents cash outflow in the name of various employees. Since the cash inflow and outflow are recorded in the very same incriminating material, in our considered view, the said seized material should be read as a whole for the purpose of assessment instead of cherry-picking of data according to the convenience of the Assessing Officer or the assessee. Therefore, in our considered view, the findings recorded by the LD.CIT(A) on this issue while allowing adhoc deduction on estimate basis to the extent of 10% of such unaccounted cash receipts is in accordance with law and needs to be accepted. Furthermore, there is no dispute regarding the fact that, right from the beginning, MSN Reddy, the managing director of the assessee company, made it very clear that the disposal of the hazardous waste material and amount received from sale of spent solvents / scrap does not attract serious attention of the management from the financial perspective, as the revenue generated from the dispersal of the same is insignificant when compared to the operational revenue of the group companies. He further stated that the only interest of the management is the quick disposal of the said waste, failing which, it may invite problems from the pollution regulatory authorities. Therefore, going by the averments made by the managing director of the assessee company during the early days of the search, during the post-search investigation, and during the assessment proceedings, in our considered view, the subsequent claim made by the appellant during the assessment proceedings towards the deduction of expenditure against unaccounted cash receipts from sale of spent solvents / scrap needs to be considered going by on the entries contained in the very same seized document, which represents cash outflow in the name of various employees.

10.2 It is an admitted fact that income cannot be earned without any expenditure. In order to earn any income, expenditure needs to be incurred. The only difference is that the quantum of expenditure may vary based on the nature of the income. In some cases, higher expenditure may be incurred and in some cases, expenditure may be less but it all depends upon the nature of income. But it cannot be said that there is no expenditure required to be incurred to earn any income. Going by the above analogy, it is true that for handling hazardous waste like spent solvents / scrap, there needs to be various expenditures, such as handling charges, packing, salary and wages, transportation and materials required for the quick disposal of the said hazardous waste. In the present case, although there is no direct evidence for incurring any expenditure, including salary and wages, transportation, and other materials required for the quick disposal of waste material, but the entries contained in the seized material clearly indicate that the appellant has incurred certain expenditure for handling and disposal of hazardous waste. This fact is further fortified by the entries in the very same seized material, where the cash outflow represents cash payments made in the name of various employees of the head office, who in turn had clearly admitted in their notarized affidavits that they have disbursed the amounts received out of unaccounted cash receipts from sale of spent solvents / scrap for the purpose of making higher payments to employees, who involved in handling and disbursement of hazardous waste. Therefore, in our considered view, the LD.CIT(A), having noticed the fact that the process involved in handling and disbursement of hazardous waste is cumbersome and also involves a certain amount of expenditure, but erred in allowing deduction of 10% on estimation basis from unaccounted cash receipts from the sale of spent solvents / scrap.

10.3. Having said so, let us come back how to quantify the amount of expenditure incurred by the appellant for earning unaccounted cash receipts from the sale of spent solvents / scrap. Admittedly, the seized material contains cash outflow in the name of various persons, including the employees of the appellant company, and their associates. The appellant has quantified the total amount of cash outflow in the seized document in the name of employees at Rs. 66,80,52,108/- for all assessment years and for all the assessees put together. The appellant has also quantified cash outflows of Rs.17,63,52,315/- in the name of MSN Reddy and family members out of unaccounted cash receipts. The appellant has not claimed deduction towards the amount received by MSN Reddy, the managing director and other directors of the appellant company amounting to Rs.17,63,52,315/-. In respect of cash outflow representing amounts paid to various employees, the appellant has quantified an amount of Rs. 66,80,52,108/-. Although the appellant claims that the said amount represents various expenditures incurred for handling and disbursement of spent solvents / scrap, but no evidence has been filed except for notarized affidavits from

few employees. In the affidavits filed by employees, they have explained the process involved in handling and disbursement of spent solvents / scrap and the amounts incurred towards various expenditures for disposal of spent solvents / scrap. Further, the cash paid to various employees and the purpose of said payments have been explained by the employees in their notarized affidavits. Going by the entries contained in the seized document, coupled with the affidavits filed by the employees, in our considered view, the purpose of maintaining data in the Excel sheet by the cashier is only for internal control at his end regarding the source from sale of spent solvents / scrap and the disbursal of the said cash to various persons at his end. Once the cash is disbursed by him to the head office employees for the purpose of further disbursal of the said cash to the workers by them and the said fact is noted in the Excel workbook by him, it has served the purpose, and there is nothing more to be recorded by him. This explains the reasons why there is no evidence of material regarding the actual disbursement of cash by the head office employees to the workers. Having regard to the limited purpose of maintaining the said excel workbook, it is not correct to draw any adverse conclusion regarding the absence of evidence in the seized material regarding the actual disbursement of the cash by the head office employees to the workers. It is in this background of said circumstances only that the head office employees have submitted the notarized affidavits stating that the cash handed over to them periodically by the cashier has been fully utilized for making payments to the workers involved in collection and disposal of spent solvents / scrap needs to be accepted. The said notarized affidavits hold evidentiary value. However, the AO, in the remand report, even though not disputing the veracity of the said notarized affidavits or discrediting its contents or bringing any other material on record to disprove the contents of the affidavits, has simply rejected the arguments made by the assessee regarding the expenditure incurred for handling the said scrap. We further noted that the cash outflow represents payments made to various employees are in the name of few employees, and during the course of search, simultaneously search was carried out at the residence of three employees, where no incriminating material has been found in their possession to allege that the cash received by them has been utilized for their personal purposes, including the acquisition of any assets. This fact is further strengthened the arguments of the assessee that the cash given to said employees has been utilized for the purpose of business and also for disbursal of cash to the workers, who involved in handling of hazardous waste. Therefore, we are of the considered view that the LD.CIT(A), having taken note of the affidavit filed by the employees of the assessee, who are involved in handling and disposal of scrap, but erred in considering only 10% of receipts as expenditure against unaccounted cash receipts from sale of spent solvents / scrap.

10.4. Having said so, let us come back to the issue of quantification of expenditure deductible against unaccounted cash receipts from sale of spent solvents / scrap. Admittedly, the LD.CIT(A) has directed the AO to estimate 10% of the receipts towards expenditure incurred against unaccounted receipts. The LD.CIT(A), while estimating the expenditure, has considered only salaries and wages historically incurred by the appellant and other group companies and observed that the appellant and other group companies have incurred 10% of earnings for salaries and wages; therefore, he estimated 10% expenditure against unaccounted receipts. In our considered view, the LD.CIT(A) has grossly erred in coming to the conclusion that the appellant needs to incur only the salary and wages for handling and disposal of hazardous material even though the process of collecting and disposal of hazardous waste requires careful attention in handling the material. The appellant also needs to take steps for quick disposal of such hazardous material. The process of collecting and disposal of spent solvents / scrap requires various other expenditure like transportation, packing, and other necessary items for safe handling of hazardous waste without any environmental impact. If we consider the other expenditure required for the disposal of spent solvents / scrap, in our considered view, the AO needs to consider transportation, packing, and other materials necessary for handling the disposal of spent solvents / scrap. Although there is no direct evidence for incurring these expenditures, the possibility of incurring these expenditures cannot be ruled out. This fact is further strengthened by the disbursement of the cash received from sale of spent solvents / scrap to various employees which accounted for 80% of the total amount received from sales, which is evident from the affidavits filed by the employees, wherein they claimed that the amount received from the head office has been utilized for making payments and incurring other expenditures. Although there is no direct evidence for incurring 80% of the amount towards expenditure, going by the nature of the material, in our considered view, there needs to be certain amount of expenditure for other expenses like transportation, packing etc. Since there is no direct evidence regarding other expenditures, in our considered view, the only possible way is to estimate a reasonable amount of expenditure against unaccounted receipts from sale of spent solvents / scrap. Therefore, considering the fact that the appellant has already disbursed 80% of the amount received from unaccounted cash receipts in the name of various employees, and also going by the nature of the material, in our considered view, at least 60% of the receipts need to be considered as expenditure against unaccounted receipts from the sale of spent solvents / scrap. Therefore, we direct the AO to deduct 60% of the receipts as expenditure against unaccounted receipts from sale of spent solvents / scrap. In other words, out of the additional income offered by the assessee and assessed by the AO towards **unaccounted receipts from sale of spent solvents / scrap, the assessee gets relief to the extent of 60%, and the balance**

amount of 40% of unaccounted cash receipts is hereby sustained for both the assessment years.”

11. In this view of the matter and by respectfully, following the decision of the ITAT Hyderabad Benches in the case of MSN Pharmachem Private Limited for the A.Y 2019-20 in ITA No.884/Hyd/2024 (supra), we direct the Assessing Officer to allow 60% of the receipts as expenditure against unaccounted cash receipts from sale of spent solvents / scrap and sustain 40% of addition towards unaccounted sale of spent solvents and scrap.

12. In the result, the appeal of assessee in ITA No.1047/Hyd/2024 is partly allowed.

**ITA No.1048/Hyd/2024 for A.Y. 2018-19 &
ITA No.1049/Hyd/2024 for A.Y.s 2019-20**

13. The facts of the present cases and issues involved are identical to the facts and issues which we had considered for A.Y. 2015-16. The reasons given by us in preceding paragraph nos.10 and 11 shall mutatis and mutandis apply to these appeals, as well. Therefore, for similar reasons, we direct the Assessing Officer to allow 60% of unaccounted cash receipts from sale of spent solvents / scrap as expenditure and sustain 40% of addition towards unaccounted sale of spent solvents / scrap for the A.Ys. 2018-19 and 2019-20.

14. In the result, the appeals filed by the assessee in ITA No.1048/Hyd/2024 for A.Y. 2018-19 and ITA No.1049/Hyd/2024 for A.Y. 2019-20 are partly allowed.

15. To sum up, all the appeals of assessee are partly allowed.

Order pronounced in the Open Court on 26th November, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER
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Hyderabad, dated 26.11.2024.

TYNM/Sr.P.S.

Copy to:

S.No	Addresses
1	MSN Laboratories Private Limited, Hyderabad. C/o. M.V. Prasad, CA, D.No.607-13, Ground Floor, Siddharth Nagar, 4 th Lane, Vijayawada, Andhra Pradesh – 500018.
2	The Assistant Commissioner of Income Tax, Central Circle – 2(4), Hyderabad
3	The Pr.CIT – (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order