

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

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

ITA Nos.389, 390,391,392,425, 630 & 631/Alld/2014  
AYs.2005-06, 2007-08, 2008-09, 2009-10, 2005-06, 2004-05 & 2006-07

Kesarwani & Company, Sahson, Allahabad	vs.	Joint Commissioner of Income Tax, Central Circle, Allahabad
<b>PAN:AADFK6562C</b>		
(Appellant)		(Respondent)

C.O. Nos.20/Alld/2014  
A.Y. 2005-06  
(A/o ITA No. 425/Alld/2014)

Joint Commissioner of Income Tax, Central Circle, Allahabad	vs.	Kesarwani & Company, Sahson, Allahabad
		<b>PAN:AADFK6562C</b>
(Appellant)		(Respondent)

Assessee by:	Sh. Praveen Godbole, C.A.
Revenue by:	Sh. Neel Jain, CIT DR
Date of hearing:	14.11.2024
Date of pronouncement:	29.11.2024

**ORDER**

**PER BENCH:**

These appeals have been filed by the assessee and the Revenue against the orders of the Id. CIT(A), Allahabad vide his separate orders dated 14.03.2014, 19.03.2014 and 23.09.2014. As the issues involved in many of these appeals are similar, all the appeals are being taken up for disposal together for the sake of convenience. Ongoing through the issues involved, it is observed that in the assessment year 2009-10, all the issues involved in the various assessment years are covered. Therefore, the appeal in respect of the assessment made for the A.Y.

2009-10 is being taken up for disposal first and, our findings in the said appeal would apply *mutatis mutandis* to the similar issues in the remaining appeals and cross objections filed by the assessee and the Department.

2. The grounds of appeal for the A.Y. 2009-10 are as under:-

*"1. That in view of the fact that in this case the assessment had already been concluded by an order u/s 143(1) of the I.T. Act and not pending on the date of search u/s 132 of the I.T. Acts the 2nd proviso to sec.153A(1)(b) of the I.T. Act being applicable and no incriminating material or undisclosed income was found on search, no additions or disallowances should have been made and thus additions and disallowances as made in the assessment u/s 153A(1)(b) of the I.T. Act should have been deleted and order quashed and the learned C.I.T.(A) has erred both in law as well as on facts in dismissing grounds No. 1, 2 & 3 as per his order vide para 3 on page 12 of the order.*

*2. That in view of the fact that detailed explanation was submitted before the A.O. as well as before the learned CIT(A) with fact and figures and there was no unaccounted sales as alleged, the learned CIT(A) vide para 4.4 has wrongly confirmed the addition of Rs. 1658561.00 without properly considering the facts and figures and submissions of assessee.*

*3. That the learned CIT(A) has wrongly confirmed 50% of the addition of Rs.2076268.00 i.e. 1038134.00 vide para 5.4 ignoring the actual facts of the case that there was no inflated expenses as alleged and the facts were duly verified in remand by the A.O.*

*4. That like wise learned CIT(A) vide para 5.4 has wrongly confirmed 50% of Rs.1120165.00 i.e. Rs.560082.00 for alleged difference on commission sales although there was no difference at all and as per letter explanation was duly filed and verified.*

*5. That although the expenses on repairs and maintenance were relating to the business of the firm and details maintained and furnished and not proved inflated or bogus the learned CIT(A) vide para 6.4 has wrongly confirmed Rs.2000.00 out of repairs and maintenance.*

*6. That the learned CIT(A) has erred both in law as well as on facts in disallowing interest of Rs.33570.00 paid on unsecured interest bearing loan and not to bank as alleged by A.O. and further did not consider this fact that the unsecured loans to sister concerns were advanced out of unsecured non interest bearing loans of substantial amount and the provisions of sec. 36(1) (iii) was not at all applicable and judicial pronouncements on this issue being totally in favour of assessee such disallowance confirmed as per para 7.4 of the order is unjustified.*

*7. That although the expenses on diesel oil was incurred on commercial vehicles of the firm and details duly filed and not proved bogus or inflated the learned CIT(A) has erred in confirming Rs.90000.00 vide para 8.4 of the order.*

*8. That the assessee reserves his right to modify the existing grounds of appeal and may also take any other ground or grounds either before or at the time of hearing of appeal.”*

3. The facts of the case are, that the assessee is a partnership firm which was engaged in trading of Chewing tobacco that was manufactured by its sister concern, M/s Kesarwani Zarda Bhandar. A search under section 132 of the Income Tax Act was carried out upon the assessee on 27.08.2009. Subsequent to the search being made, a notice under section 153A was issued on 7.07.2010 and finally an assessment was completed under section 153A rws 143(3) at a total income of Rs.1,82,70,440/-. Penalty proceedings under section 271(1)(c) were initiated. During the course of assessment, the following additions were made by the ld. AO.

i. On account of suppressed sale – Rs. 16,68,561/-.

ii. On account of inflated expenses on the basis of print outs of CPU marked as KZ-1 – Rs. 20,76,268/-.

iii. On account of repair and maintenance - Rs.10,120/-.

iv. On account of disallowance of interest – Rs.33,570/-.

v. On account of disallowance of diesel expenses – Rs.8,70,985/-.

vi. On account of disallowance of commission on sales Rs.11,20,165/-.

4. Aggrieved with the said additions, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it challenged the order passed under section 153A(b) dated 20.12.2011, as being passed without jurisdiction. It denied its liability to be assessed under block assessment in the absence of any valid action under section 132 and it also submitted, that since the undisclosed income was not determined on the basis of any search material but framed in a manner similar to normal

assessment, the additions made were not valid. The Id. CIT(A) examined these grounds and quoting from his judgment in the case of the assessee's sister concerned M/s Kesarwani Zarda Bhandar, held that the proceedings against the assessee were validly initiated and completed under section 153A and he accordingly, dismissed the appeal of the assessee on such count. With regard to the issue, that additions in respect of the assessee in a search assessment under section 153A could only be made on the basis of undisclosed income unearthed in the course of search and seizure action, the Id. CIT(A) held that Board's Circular No. 7/2003, did not make any such prohibition that the assessment or reassessment would be confined to the evidence found in the course of the search. Relying upon the case of **Shiv Nath Rai Harnarayan (India) Ltd. vs. DCIT** 117 TTJ 480 (ITAT Delhi Bench), the Id. CIT(A) held that after May, 31, 2003, the earlier provisions of block assessment in the case of search initiated against the assessee would not apply, as the special procedure for assessment in search cases contained in Chapter XIVB stood abolished and the new provision of section 153A provided for only a single assessment, of the period comprising of previous years, relating to six assessment years preceding the year in which the search was conducted. He also relied upon the judgments of the Tribunal in the case of **Shyam Lata Kaushik vs. ACIT** (2008) 306 ITR (AT) 117 (Delhi), **ACIT vs. Hotel Harbour View** (2010) 2 ITR (Trib) 178 (Coch) and **DCIT vs. Natrajan (K.)**(2010), (Bangalore ITAT), to hold that the requirement that the assessment should be confined to the undisclosed income found during the search were no longer necessary under the new system of assessment. The Id. CIT(A) recorded his respectful disagreement with the decision of the Special Bench Mumbai in the case of **All Cargo Global Logistics Ltd , Mumbai vs. DCIT** on the grounds, that in the case of **Prakash Nath Khanna vs. CIT** (2004) 266 ITR 1, the Hon'ble Supreme Court had held that the first and foremost rule of construction was that the intention of the Legislature had to be found from the words used by the Legislature itself. Thus the provision had to be read as a whole, as they exist and there was no necessity of reading them down or providing *casus*

*omissus*. He held that where the search was conducted, there was no option with the ld. AO but to issue the notice calling for a return of all six assessment years and thereafter, the first proviso cast a duty upon him to assess or re-assess the total income in respect of each of assessment. To obviate the necessity of making two assessments in respect of the year for which proceedings are pending, the second proviso provided for abatement of pending assessments so that only one assessment under section 153A shall be made in respect of assessments which have abated because of this provision. He pointed out that both the first and the second proviso, directed the ld. AO to assess the total income which had to be completed in accordance with Section 5 of the Act. Therefore, he held that in respect of all six assessments, the ld. AO had to make assessments or re-assessments of total income and while doing so, there was no fetter on his powers and he was not restricted to the consideration of only incriminating material or undisclosed valuables. He also quoted from the decision of Hon'ble Karnataka High Court in the case of **Shankar Narayan and Ors vs. State of Karnataka and Anr** (2004) 276 ITR 56(Kar), to hold that the introduction of provisions of section 153A was to avoid litigation proliferating on the issue of, "undisclosed income" and if the same controversy was raised under the new provisions, the avowed purpose of bringing the new provisions would be forfeited. Thus, relying on the said judgment, he held that the ld. AO had to compute the total income for six assessment years. In view of the same, he dismissed the argument of the assessee, that additions could only be made on account of incriminating material found during the search.

5. Coming to the facts of the case, on the issue of addition of Rs. 16,68,581/-, made on account of, 'unaccounted sales', the ld. CIT(A) observed that from the print out taken from the computer, the ld. AO had found that sales were worth Rs. 38,01,62,145/-. On the other hand, the sales as per the register that was maintained were only Rs.34,21,95,999/-, which comprised of credit sales of Rs.33,16,26,123/- and cash sales of Rs.1,05,69,876/-. Thus, the ld. AO observed a difference of

Rs.3,79,66,146/-. In order to explain the difference, the assessee submitted a chart before the ld. AO which showed the sales figure as under:-

<i>Credit sales</i>	<i>Rs.32,99,57,561.14</i>
<i>Cash Memo sales</i>	<i>Rs.62,68,466.59</i>
<i>Total Sales (Excluding VAT)</i>	<i>Rs.33,62,26,027.73</i>
<i>VAT @ 12.50% on sales</i>	<i>Rs.4,20,28,256.04</i>
<i>Total Sales (including VAT)</i>	<i>Rs.37,82,54,283.73</i>

In explaining the discrepancy between the print out and the books of accounts, the assessee submitted that the figure of sales as per the computer amounting to Rs.38,01,62,145/- as against actual sales of Rs.37,82,854,283/-, was due to an error in the computer software and improper commands giving at the time of taking print out during the course of the search on 27.08.2009. By way of evidence, it was pointed out that the trial balance as on 31.03.2010, was for the period 1.04.2008 to 27.08.2009, i.e. for a period of seventeen months instead of five months. It was further pointed out that the ledger print out of sales – credit accounts for F.Y. 2008-09, did not show the balance against any transaction, except against the last transaction of the year. The ld. AO did not agree with the explanation given by the assessee and added the difference of Rs.16,68,561/- in the credit sales. However, the explanation of the assessee with regard to cash sales had been accepted. Before the ld. CIT(A), the assessee presented these arguments, and, comments were invited from the ld. AO. The ld. AO replied that the assessee had not been able to substantiate its claim, as to how an improper command was given. Therefore, the assessee's contention could not be relied upon. In response, the assessee pointed out that difference was only on account of error in computer software and / or improper command given to computer while printing the documents at the time of search on 27.08.2008. Due to the error in computer software / improper command given to computer on 27.08.2009, the amount of sales during the period from 1.04.2008 to 15.04.2008, was shown at the revised rates on the basis of sales made w.e.f. 16.04.2008. It was submitted that the ACIT

had checked, tallied the entries from the computerized ledger (which was claimed by the assessee to be the correct book after giving correct command) and the assessee's contention had been found to be correct. Therefore, the addition was fit to be deleted. The Id. CIT(A) held that the assessee had not given elaborate details to verify the claim with regard to applying revised rate on old items therefore, he held that the addition as made by the Id. AO was justified.

6. Thereafter, the Id. CIT(A) considered the appeal of the assessee against the additions made on account of inflated expenses, on account of the document KZ-1 which was a printout taken from a computer. The facts of the matter in this case were, that one CPU, marked as 'Annexure A-44' was found and seized from the factory premises from M/s Kesarwani Zarda Bhandar, Sahson, Allahabad. The print out of the data on the CPU, marked as Annexure, 'KZ-1' contained the balance sheet and the profit and loss account for the financial year 2008-09. On being confronted with difference in figures of various expenses, arising out of the comparison of the audited profit and loss account found and maintained in the computer, the assessee explained that the accounts on the CPU were only rough documents. This explanation was rejected by the Id. AO, stating that the accounts were found to be maintained on the computer of the assessee and therefore, could not be treated as rough documents. The Id. AO also observed that the figures of some of the items were same in both the accounts under comparison. The Id. AO also remarked that the assessee could not produce vouchers in respect of various heads of expenses. Thereafter, drawing reference to the manner and style in which the business was conducted by the partners of the assessee firm, the Id. AO opined that the assessee had the habit of generating unaccounted income and claiming bogus expenditures. It was pointed out that the partners of the assessee firm had invested in the construction of building and purchase of jewellery and indulged in the practice of maintaining Deshwar accounts and claiming bogus expenses, to square off the withdrawals from the firm. On going through the audited profit and loss account and

comparing it with the profit and loss account maintained on the computer, found during the course of search and seizure, the Id. AO noticed the following differences, as under: -

<b>Heads of Expenses</b>	<b>Expenses shown in print out / CPU</b>	<b>Expenses shown in Profit &amp; Loss Account (Audited)</b>	<b>Difference/Expenses inflated</b>
<b>Surti Expenses</b>	23460.00	1690872.00	1667412.00
<b>Electricity Expenses</b>	118876.00	326351.00	207475.00
<b>Telephone</b>	53867.00	125764.00	71897.00
<b>Damage Lost in Transit</b>	87708.00	187192.00	129484.00
<b>Total</b>	253911.00	2330179.00	2076268.00
<b>Commission on sales</b>	9667.00	1129832.00	1120165.00

In view of the above, the Id. AO held that the assessee had inflated the expenses to the extent of the difference noticed. He further observed that the assessee had not maintained vouchers for labour expenses, under the head of repair and maintenance of building and office. He also observed, that assessee had not maintained details of marketing expenses and petrol expenses under the head, "Surti expenses". He observed that no bills and vouchers had been found during the course of search seizure action, to support the claim of the expenses. The Id. AO also added a sum of Rs. 11,20,165/- out of the claim of expenses under the head 'Commission on Sales', on which the expenditure under this particular head was only shown at Rs.9,967/-. The balance, as reflected in the profit and loss account was considered as inflated / bogus. In appeal against the said additions, the assessee submitted that the Id. AO had considered and taken into account expenditure as claimed by the assessee in its head office, under a few heads, without considering the branch expenditures and comparing the difference with the profit and loss accounts, made the addition to the extent of Rs.20,76,268/-. Similarly, he had made an addition of Rs.11,20,165/- by disallowance on the commission of sales, without

incorporating and without considering branch expenditures and comparing this head office figure, with the expenditure claimed in the profit and loss account and audit report. It was submitted that the assessee had a head office at Sahson, Allahabad and branches at Mumbai and Chandkheda, Ahmedabad and for this purpose, three different sets accounts were maintained. At the end of the year, the entire transactions / expenditures merged into the head office sets of accounts books and a combined trading and profit and loss account was prepared and audited and the audit report was filed on this basis along with the return of income. The fact of the Assessee trading in chewing tobacco from its head office and branch offices was a fact admitted by the Id. AO Also. In was submitted, that in the course of assessment, the assessee had submitted all three sets of books of accounts which had been examined. It was further submitted that the said books of accounts were produced before the Sales Tax authorities year after year during assessment proceedings. Thus, there was no dispute about the existence of books of head office and branch offices and the purchases / sales / expenditure connected with each set, have been recorded in the regular books of accounts. The reconciliation statement was submitted before the Id. CIT(A), in which the expenses shown in KZ-1 were sought to be reconciled with the total expenses claimed in the profit and loss account as under:-

<b>Head of Expenses</b>	<b>Expenses claimed in Sahson set</b>	<b>Expenses claimed in Mumbai set</b>	<b>Expenses claimed in Ahmedabad Set</b>	<b>Total expenses claimed in P/L A/c</b>
Surti Expenses	26320.00	1207468.00	457084.00	1690872.00
Electricity Expenses	118876.00	207475.00	0.00	326351.00
Telephone	52522.00	72970.00	272.00	125764.00
Damage Lost in Transit	57708.79	107673.72	21809.95	187192.46
<b>Total</b>	<b>255426.79</b>	<b>1595586.72</b>	<b>479165.95</b>	<b>2330179.46</b>
Commission on sale	38715.26	1073637.79	17479.20	1129832.25

The assessee submitted that the difference had been worked out by comparing the total expenditure in the consolidated accounts with the expenditure of the head office which was recorded on the CPU and regarding the same as inflated expenditure, which was not correct because while computing the income, the ld. AO had ignored the expenditure incurred and recorded in the branch offices of Mumbai and Chankheda, Ahmedabad. It was further pointed out that the ld. AO had considered the transactions of the head office and the branch offices, in relation to the amount of opening stock, purchases, sales and closing stock but ignored the amounts mentioned in the branch sets in respect of certain heads as mentioned in the aforesaid chart. A reference was invited to the reply to notice dated 3.10.2011 whereby the above information had been submitted to the ld. AO. It was, therefore, prayed that the expenditures recorded in the branch sets of books of accounts should also be considered and the additions on account of inflated expenditure should be deleted. It was further submitted that the ld. AO had made wrong observations with regard to the fact that sales and opening stock, as shown in Annexure KZ-1, tallied with the audited accounts of the assessee. It was further submitted that the amounts as recorded in KZ-1 only represented the sales and opening stock of the head office and attention was invited to the figures revealed in the profit and loss account, to demonstrate that it did not contain the sales or opening stock of the branch offices. With regard to the observation of the ld. AO that no books of accounts were found during the course of the search, it was submitted that they were very much present, but no query was made at that time nor was any statement recorded on the issue. Attention was invited to the decision of the Hon'ble ITAT in ITA No. 440/Alld/2012 in the case of M/s Kesarwani Sheetalya, Sahson, Allahabad, wherein the Hon'ble ITAT had observed that adverse inference could not be made with regard to books of accounts being maintained by the assessee. The assessee also questioned the observation of the ld. AO with regard to Deshwar account, alleged inflated expenses and tallying of a few balances appearing in the printouts with the audited balance sheet, on the grounds that these comments had

been made without considering the actual facts and explanations and were therefore incorrect, unjustified and improper. It was also submitted that the additions of Rs.20,76,268/- and Rs.11,20,165/- on the basis of KZ-1 were unjustified because the print out was only a test run P & L Account, containing imaginary figures not rebutted by the Id. AO through any piece of evidence. Hence, it could not form the basis of an addition. The said balance-sheets in the print outs were based on the facts and figures put in the computer by the Accountant, Shri. Ujjwal Bhattacharya, for his own reference to have a quick look/reply to information, mainly in respect of debtors position and was not in the knowledge of the partners. An affidavit of Shri. Ujjwal Bhattacharya was presented to this effect before the Id. CIT(A) and the Id. AO. It was further argued that the certain similar and identical figures appeared in all alleged balance-sheets from assessment years 1999 to 2000 onwards, demonstrating that the balance-sheet which the Id. AO was considering was not a final balance-sheet and was therefore, liable to be ignored. It was also submitted that these explanations had been provided to the Id. AO and on the basis of these explanations, the operator of the said computer Shri. Ujjwal Bhattacharya had been summoned and his statement had been recorded, in which he had confirmed these facts. It was, therefore, submitted that KZ-1 did not give a true / natural picture of transactions of the assessee's firm and hence the same was liable to be ignored. The Id. CIT(A) remanded the matter back to the Id. AO for comments. In response, the Id. AO recorded that the assessee's submission had been test checked. However, no details of expenses claimed under, "damaged lost in transit" had been produced and it had been submitted that no voucher was maintained, but the same was credited in the account of the concerned parties. On the issue of consolidation of various heads, like fixed assets for the branch offices at Ahmedabad and Mumbai, the Id. AO recorded that the assessee's submissions were test checked and found to be correct, but he added that no books of accounts were found during the course of search and therefore, the books now produced by the assessee could not be fully relied upon. With regard to the disallowance of Rs.11,20,165/- under

the head Commission on Sales, once again the Id. AO pointed out, that no books other than computerised books were maintained by the assessee at the branch office at Ahmedabad and Mumbai and no such entries had been found during the search. It was further submitted that the figures of sales and stock in Annexure KZ-1 tallied with the figures shown in the audit report and disproved that KZ-1 was a rough document. The assessee reiterated that the books of accounts had been produced before the Id. AO and no inconsistency had been found in them. In fact, the basis of consolidation of expenses had been test checked and found to be correct hence any adverse observations made by the Id. AO in this regard were unjustified. The Id. CIT(A) rejected the contention of the appellant that the document was a dumb document, holding that documents found during the course of search and seizure cannot be discarded as rough and waste, unless they are proved to be so. It was a presumption that the contents of such documents were true. He, however, accepted the argument of the assessee, in principle, that the difference of figures of expenses under the respect heads were attributable to the reasons that those heads did not include the figures of branches. He observed that though the authenticity of other expenses could not be fully proved, expenses incurred towards electricity and telephone incurred by the branches could not be rejected, because such payments were made either to Government agencies or to Government/Semi Government concerns. He held that even if the payments were made to private parties, the possibilities of bogus claim was almost negligible. He, therefore, held that all the expenses could not be disallowed, as being bogus and inflated. The payments of the nature mentioned had a certain degree of credence. But other than such expenses, he found that the remaining expenses as shown in the KZ-1 document, had been claimed through cash, only self-made vouchers had been maintained in respect of marketing expenses, travelling expenses, loading and unloading expenses and repair and maintenance amounting to just Rs.79,191/-. Furthermore, no details of expenses had been claimed under the head, "damage lost in transit" and the counsel had admitted that no vouchers were maintained for the same. That let the Id. CIT(A)

to question the basis for quantification of damage. Therefore, while the Id. CIT(A) accepted, in principle, the fact of the difference being on account of consolidation of accounts, in view of the fact that the assessee could not produce bills and vouchers in respect of the majority of the claimed expenses, he retained a disallowance of 50% on account of the difference between various expenses, as recorded in KZ-1 and applying a similar logic to expenses incurred on commission of sales, where the mode of payment had not been given, since the genuineness of the payments could not be verified, he confirmed half the disallowance made in this regard. Thus, he confirmed disallowances of Rs.10,38,134/- and Rs.5,60,082/- in respect of the two additions made by the Id. AO in respect of the document KZ-1, and he gave a relief of equal amount to the assessee.

7. With relation to the disallowance of Rs.10,120/- out of repair and maintenance expenses, the Id. CIT(A) observed that the Id. AO had noticed that vouchers for repair expenses under the head institution had not been maintained and the submissions of the appellant for assessment year 2004-05, wherein it had been submitted that only internal payment vouchers were maintained for some of the expenses out of the overall claim. Therefore, taking queue from that, the Id. AO had disallowed expenses to the tune of Rs.10,120/- out of Rs.72,910/-. In appeal, the assessee submitted that such ad hoc disallowances were not permissible under the Act. The expenditure claimed was genuine and incurred in the normal course of business, exclusively and necessarily for the purposes of the business of the assessee. They were recorded in the regular books of accounts and supported by vouchers. The entire disallowance was based on presumption, surmises and conjectures. These submissions were forwarded to the Id. AO for his comments and in response, the Id. AO submitted that some of the vouchers produced by the assessee were self-made. Furthermore, it was only the percentage of disallowance which had been adopted from the assessment year 2004-05 and therefore, no adverse inference should be drawn on that account. The assessee submitted that in

any business undertaking, some petty repairs and maintenance was required to be carried out and such work was usually done by persons from the unorganized sector, who were illiterate and do not provide proper bills and receipts for payments received by them. Similarly, some small and petty items were acquired from small vendors and for such type of expenses, the assessee maintained internal vouchers, which was signed by the person receiving the payment from the assessee mentioning his name and address. The payment vouchers were duly recorded in the books of accounts maintained by the assessee and there was no occasion for disallowance of the same. Upon consideration of these arguments, the Id. CIT(A) restricted the disallowance to Rs.2,000/- and gave the assessee a relief of Rs.8,120/-. The Id. AO had also disallowed interest of Rs.33,570/- on account of the fact that the assessee had advanced loans amounting to Rs.38,60,351/- to Raja Roller Flower Mill, Sathariya, a sister concern and a loan of Rs. 19,50,000/- to M/s Gupta Traders, on which it had not charged interest while it had paid interest to the bank during the year under consideration. In appeal, the assessee submitted that the assessee had interest free funds with it, which had gone to finance the transactions to the sister concern and interest had been paid to depositors on their deposits. It was further submitted, that transactions with the bank related to the business of the assessee. When the matter was remanded to the Id. AO, the Id. AO accepted the assessee's contention that interest was paid on unsecured loan taken from Sarika (Depositor) and not paid on the secured loan. On consideration of the remand report, the Id. CIT(A) observed, that in the case of Additional CIT vs. Tulip Star Hotels Limited (2012) 21 taxman.com 97, the Hon'ble Supreme Court had reconsidered its earlier decision in the case of S.A. Builders Limited vs. CIT(Appeals) 2007 158 taxman 74, in which interest paid by a holding company on borrowed money advanced to a subsidiary for business purposes would entitle it for deduction on the borrowings. He also relied upon the decision in the case of CIT vs. Deepak Aggarwal (2013) 35 taxman.com 293, to hold that since the assessee was not engaged in the business of investment in shares, interest bearing funds invested in shares of related company

would not be said to have been utilized for purposes of business and proportionate interest was liable to be disallowed under section 36(1)(iii). Observing that the assessee had unsecured loans amounting to Rs.2,38,32,073/- and interest on capital amounting to Rs.31,94,098/- had been paid, the Id. CIT(A) upheld the decision of the Id. AO to disallow interest of Rs.33,520/-. Finally, with regard to the disallowance of Rs.8,70,985/- under the head diesel expenses. The Id. CIT(A) observed that the Id. AO had noticed that the assessee had shown income of Rs.1,20,000/- from the hiring of trucks and upon seeking details of hiring with regard to log books, expenses, hire agreements if any, the assessee submitted before the Id. AO that it owned three trucks during the year – which were attached with the transporter on hire basis. The depreciation had been claimed by the assessee on the WDV method. The Id. AO observed, that the details called for by him were not submitted, but on scrutiny of the various details, observed that M/s Kesarwani Zarda Bhandar had shown transportation of goods through Amritsar Transport Company by Truck No. U.P. 70 X 9761 – one of the trucks stated to have been owned by the assessee during construction. She raised the question as to how the assessee was receiving goods purchased for M/s Kesarwani Zarda Bhandar by its own truck in the name of Amritsar Transport Company. She, therefore, held that the name of the transporter had only been used for claiming bogus expenses under the head freight, by the sister concern. Accordingly, She disallowed the diesel expenses amounting to Rs.8,70,985/-. In appeal, the assessee submitted that the addition was wrong because it ignored the explanation that diesel expenses were incurred on account of vehicles owned by the assessee and not in respect of Truck No. U.P. 70 X – 9761. It was submitted that only the details of trucks given on hire had been submitted and not the details of all the vehicles owned by the assessee, which were being used for the purposes of business. The diesel expenses were on account of vehicles that were owned by assessee that were not given for hire and not attached to any transporter, but running under the control of assessee for its business purposes. In response to this submission, the Id. AO submitted on remand that the assessee contended that

he had twelve vehicles for commercial purposes of which three vehicles had been given on hire and the remaining nine vehicles were used for commercial purposes of the firm therefore, the claim of diesel expenses was justifiable. However, when the assessee was asked to produce the log book of the vehicles, he failed to produce the log book and only produced some self-made vouchers. In absence of production of log book, it could not be accepted that the vehicles were used for its own business purposes. In response to this remand report, the assessee submitted before the Id. CIT(A), that the vouchers relating to diesel expenses had been test checked and found to be correct and recorded in the books of accounts maintained by assessee in normal course of business. There was no dispute to the fact that out of fourteen commercial vehicles owned by the assessee, only two were given on hire and twelve vehicles were run by the assessee, for his own business. Against the two vehicles given on hire, the assessee had received income of hire charges of Rs.1,20,000/-, which had been offered to tax, but for the other twelve vehicles, diesel expenses were incurred by the assessee, which were duly recorded in the books of accounts maintained in normal course of business and debited in the profit and loss account for the year. It was submitted that looking to the nature and size of the business, the diesel expenses of Rs.8,70,985/- debited in P & L Account, were very reasonable and should be allowed. On consideration, the Id. CIT(A) appreciated the fact that the Id. AO had misunderstood the claim of diesel expenses ,as relating to three vehicles only and therefore, his disallowance was incorrect. However, he observed that the observation of the Id. AO that M/s Kesarwani Zarda Bhandar and Kesarwani & Company both have their offices in Mumbai, so there should not be transportation expenses, was not fully clarified by the assessee. Therefore, he retained a disallowance of Rs.90,000/- and gave the assessee relief of Rs.7,50,985/-.

8. Aggrieved with these disallowances that had been sustained by the Id. CIT(A), the assessee is in appeal before us. Shri Praveen Godbole, C.A. (hereinafter referred to as the 'Id. AR') appeared on behalf of the assessee and argued the case. At

the very outset, the ld. AR submitted that he was not pressing ground no. 6 on account of disallowance of interest of Rs.33,570/- paid on unsecured interest-bearing loan in either this year or in any of the years under consideration, therefore, ground no. 6 is dismissed as withdrawn. With regard to ground no. 1, it was submitted that in this case, a search operation was conducted on 27.08.2009 but no incriminating material was found by the search party. It was submitted that in response to the notice under section 153A, a return was filed on 16.08.2010 showing an income of Rs.1,24,90,770/-. Prior to the filing of such return, another return had earlier been filed under section 139(1), with the same returned income. That original return had been processed under section 143(1) and in this manner, all the necessary information / facts and figures had been brought on record much prior to the date of search. It was submitted, that since the original assessment had already been concluded by an order under section 143(1), in view of the second proviso to section 153A(1)(b), no addition or disallowances should have been made and the order should either have been cancelled or the additions should have been deleted since, there was no incriminating material or undisclosed income found during the search. With regard to the allegation of unexplained sales of Rs.16,68,561/-, it was submitted that the position had already been explained before the ld. CIT(A), that the figure of Rs.16,68,561/- that was arrived at was due to wrong command given to the computer system and error in software at the time of taking print outs during the course of search. Thus, two additions had been made on wrong facts and figures. During the remand proceedings, the ld. AO had tallied the data with the computerised ledger after taking out the correct ledger and satisfied himself that there was no difference. But he gave a general remark at the end that no books were found at the time of search and therefore, reliance could not be placed on the books produced before him. It was submitted that when in the remand proceedings, the ld. AO had tallied the correct facts and figures then the question of making additions did not arise. Alternatively, it was submitted that the ld. AO was wrong in considering the alleged sales as income, because sales could

never be termed as income and only a net rate could have been applied. Hence, the entire addition made was improper and incorrect and needed to be deleted. With regard to the addition made on account of the printout of the CPU which was marked as Annexure KZ-1, the Id. AR submitted that detailed explanations had already been furnished with regard to Annexure KZ-1. The set was a rough and a dumb document and there was no signature on the said balance sheet. It was submitted that the figure of Rs.47,25,015/- was appearing in all earlier and subsequent years of the balance sheet, which demonstrated that the Annexure had no authenticity of its own. The Id. AR submitted that, when certain similar and identical figures were appearing in all the balance sheets from the year assessment year 1999-2000 onwards as per the seized hard disk, then the balance sheet and profit and loss account found thereon, had no authenticity and could not be called final balance sheet and were therefore, liable to be ignored. Therefore, in his opinion, it was a dumb and waste document which should not be given credence to. It was further submitted that the conclusion drawn by the Id. AO from a perusal of that document that the expenditures had been inflated were unjustified. It was submitted that the expenditure which had been recorded in the regular books of accounts were duly supported by vouchers, book entries, payments had been made through banking channel and account books had been written in the normal way. In such circumstances, the allegations that the expenditures were inflated were not correct. It was further submitted that the Id. AO had not considered or taken into account expenditure of the branch offices at Mumbai and Ahmedabad before coming to a conclusion that the expenditure had been inflated, to the extent of Rs.20,76,268/- during the year. Even the Id. CIT(A) had ignored the fact that three different sets of books of account had been maintained and at the end of the year, all the transactions and expenditures had been merged into the head office sets of account book, to generate a combined and a final trading profit and loss account that was audited and filed along with the return of the income for the year. The Id. AR invited our attention to the reconciliation statement submitted by him before the Id.

CIT(A) and contained on page 10 of his paper book. It was submitted that while computing the income, the Id. AO had compared the expenditure of the head office at Sahson, Allahabad with the audited expenditure claimed in the profit and loss account and worked out a difference, on account of alleged inflated expenditure which was not correct since, the figure as per the CPU print out was only the head office's figure and a comparison was made with the audit report which included the figures of both the head office and the branches. It was further submitted that since the assessee was maintaining regular books of accounts in the ordinary course of business, the proviso of section 145(3) was not applicable nor had they been applied, as sales were not disturbed and no adverse findings with regard to the books of accounts or method of accounting had been given. All these facts had been placed before the Id. CIT(A), but the Id. CIT(A) was not correct in retaining an addition of Rs. 10,38,134/- out of the addition of Rs. 20,76,268/- made by the Id. AO. It was submitted that the entire addition was unjustified because the veracity and correctness of the entries could not be established by the Id. AO / Id. CIT(A), through seized material and independent evidences and such printout was only a test run profit and loss account, containing imaginary figures not rebutted by the lower authorities through any evidences. Therefore, the entire action of the lower authorities in making and confirming part of the addition on account of, "inflated expenses" was not correct and deserved to be deleted. Attention was also invited to the figure of Rs.47,25,015/- appearing as difference in opening balance in all earlier and subsequent year's balance-sheet also marked as KZ-1 and 25 other figures which were repeated in the said documents, as an attempt to show that the alleged KZ-1 was only a rough print out. It was argued that since similar figures were appearing in every year therefore, the said figure/annexure had got no authenticity of its own – it was a format of a balance-sheet, but it was not a true and authentic balance sheet. This fact had been totally ignored by the two lower authorities while making the addition which was totally unjustified. Similarly, with regard to the disallowance on account of commission on sale, it was submitted that the addition

made by the Id. AO on the basis of KZ-1 was arbitrary. He had not pointed out any defects in the books of accounts, proviso to section 145(3) was not applied, sales were not disturbed and therefore, no such disallowance could be made or retained to the extent of 50% as the Id. CIT(A) had done. On the retaining a part of the disallowance on account of repair and maintenance, it was submitted that the expenses claimed were genuine expenses, incurred in the regular course of business and the Id. CIT(A) had confirmed part of the disallowances on an ad hoc basis when in earlier years (2004-05, 2005-06 & 2006-07), such expenses had been allowed by the Department. Hence, the additions made without appreciating the true facts were liable to be deleted. Finally, on account of disallowance of diesel expenses, it was pointed out that the sum of Rs.8,70,985/-, had been made by the Id. AO on a mis-appreciation of facts. This had been acknowledged by the Id. CIT(A) in his order but still the Id. CIT(A) had chosen to retain the addition to the extent of Rs.90,000/-, although no specific defects had been pointed out in the books, for disallowing the same. It was further submitted, that in previous years i.e. A.Ys. 2004-05, 2005-06 & 2006-07 and also in the subsequent assessment year i.e. A.Y. 2010-11, these diesel expenses had been accepted by the Id. AO. after consideration of the entire facts and circumstances of the case. Therefore, there was no occasion to make any disallowance under this head and once the aspect of mis-appreciation of facts was apparent to the Id. CIT(A), there was no justification for retaining any part of the disallowance on an ad hoc basis. It was, therefore, submitted that in view of the aforesaid arguments the additions that had been sustained were fit to be deleted..

9. On the other hand, Shri. Neel Jain Id. CIT DR (hereinafter referred to as the 'Id. DR') appearing on behalf of the Revenue submitted that the document KZ-1 constituted a piece of incriminating evidence which justified the making of additions in the hands of the assessee. The Id. AO had quite clearly brought out in the assessment order, that copy of trial balance and sale and purchase statement had been taken out from the system and compared with the sales register which had

revealed a difference of Rs. 3,79,66,146/-. The assessee had not been able to explain a sum of Rs.16,68,561/- in credit sales. Hence, it had been treated as unexplained sales and added to the income of the assessee firm. The assessee had been provided due opportunity to show how this difference occurred, during the course of appeal and remand proceedings, but firstly the assessee could not provide the details of the improper command that resulted in the allegedly wrong figures and secondly, the assessee was not able to give details to verify that revised rates had been applied to items sold between 1.04.2008 to 15.04.2008. Therefore, the addition had been rightly been sustained by the Id. CIT(A). With regard to the additions made on account of KZ-1, the Id. CIT DR pointed out that in the A.Y. 2005-06, the Department was in appeal, on the relief granted by the Id. CIT(A) because in the opinion of the Department, the Id. CIT(A) had failed to appreciate the fact that it was a search case and that the expenses shown in the printout could not be ignored while examining and verifying the same with regular books of accounts and the audit report. However, in the current assessment year, the Id. CIT DR sought to support the extent of disallowance made by the Id. CIT(A), by pointing out that the Id. CIT(A), after considering all the arguments of the assessee had also observed that many of the expenses relating to labour expenses under the head, repair and maintenance of building and office had not been maintained. Furthermore, marketing expenses and petrol expenses under the head, "Surti expenses" had also been claimed but not proved and the assessee had itself admitted that no vouchers were maintained for "damage - 'lost in transit". The Id. CIT DR submitted that it was therefore on account of the fact that the expenses claimed by the assessee in the said document KZ-1 could not be justified with reference to bills and vouchers, and the overall failure of the assessee to justify the expenses recorded in its books of accounts ,that the Id. CIT(A) had retained the disallowance of 50% of the amounts so disallowed under the heads of expenses and commission on sales. He submitted that no further relief was allowable to the assessee in the absence of any documentation to prove the expenses. The Id. CIT DR also argued that commission on sales had not been claimed

by the assessee from assessment year 2004-05 to 2007-08 and therefore, that in itself, showed that it was not an expenditure wholly and necessarily made for the purposes of business but only a means of siphoning out of money from the firm in the nature of bogus expenses therefore, the addition sustained by the Id. CIT(A) should not be disturbed. Similarly, with regard to the disallowance on account of repair and maintenance expenses and diesel expenses, the Id. CIT DR pointed out that essentially the Id. CIT(A) had sustained additions only on account of the fact that the assessee had not been able to prove the expenses with reference to proper bills and vouchers. Since it was the duty of the assessee to prove the expenses claimed by it, since no books of accounts had been found during the course of the search and since proper bills and vouchers had not been maintained by the assessee, there was, therefore, no reason to grant further relief to the assessee over and above the relief already granted by the Id. CIT(A).

10. We have duly considered the facts and circumstances of the case. The first ground of appeal relates to the decision of the Id. CIT(A) to reject the plea of the assessee, that the provisions of section 153A restricted the scope of assessment to making additions on the basis of incriminating material unearthed during the course of search. We observe that this matter is no longer res integra, in view of the decision of the Hon'ble Supreme Court in the case of **PCIT, Central-3, Delhi vs. Abhisar Buildwell Pvt. Ltd**, [2023] 150 taxmann.com 7 in which the Hon'ble Supreme Court has held as under:-

*"14. In view of the above and for the reasons stated above, it is concluded as under:*

- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) all pending assessments/reassessments shall stand abated;*
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the*

*incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns;*

*and*

*iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved."*

Therefore, in view of the decision of the Hon'ble Supreme Court in the aforesaid case, the ground no. 1 is accordingly allowed and would govern our appreciation of the individual additions made in the course of assessment.

11. Ground no.2 relates to addition of Rs. 16,68,561/- on account of suppression of sales determined through a comparison of the trial balance, sale and purchase statement taken from a computer during the course of search and seizure action, at 9/10, Sheetal Apartment, Andheri East and comparison with a purchase and sale register that was also found to be maintained there. As the addition is made on account of material found during the search, we hold that the same would not be hit by the orders of the Hon'ble Supreme Court in the case of M/s Abhisar Buildwell (supra) and must therefore, be examined on its merits. The assessee submitted before the Id. CIT(A), that there was, in fact, no discrepancy and that the difference was attributable to errors in giving the command to the computer while taking the printout. By way of evidence of the same, it was pointed out that the trial balance had been taken for the period from 1.04.2008 to 27.08.2009 i.e. for about 17 months instead of 05 months, the ledger printout of sales credit account for F.Y. 2008-09 did not show balance against any transaction except the last transaction of the year and

the revised rates implementable from 16.04.2008 were adopted for the sales made at the old rate w.e.f. 1.04.2008 till 15.04.2008. The Id. CIT(A) was in agreement with the Id. AO, that the assessee had not been able to substantiate these facts before the Id. AO during the course of the remand proceedings and could not demonstrate the so-called, improper command. Therefore, the explanation of the assessee had been rejected and the addition confirmed. On examination of the record, it is observed that the assessee presented the computerised ledger, which was claimed by it to be the correct book after giving the correct command and the same was checked by the Id. AO and found to tally with its claims. However, the Id. AO, despite tallying the entries, chose to disbelieve the same on the grounds that the assessee could not demonstrate how the improper command was given. In our view, this is an unjustified expectation. While any person can be expected to remember and recall the proper command sequence in software, it is unjustified to expect a person to recall an incorrect command sequence, which was given by mistake and in error, because it assumes the fact that the incorrect command was given on purpose and with planning. The evidence that the said command had resulted in the generation of a trial balance for 17 months (instead of 5) and that the ledger print out of sales credit did not show the balance against any transactions, is demonstrative of the fact, that there was an error in the command. Once the computerised ledger had been taken out from the same hard disk and produced before the Id. AO and no discrepancy was found with relation to the entries found therein, there was no reason to disbelieve the same, only on account of the fact that the improper command sequence could not be demonstrated for it could be argued that had the proper command been given in the first place, there would have been no difference that necessitated conducting the exercise. Thus, in view of the fact that the Id. AO has not been able to find any discrepancy between the computerised ledger and the sales register, after the generation of the ledger with a proper command, we hold that there is no basis for sustaining an addition of Rs. 16,68,561/- on this account. Ground no. 2 is accordingly allowed.

12. Ground no. 3 relates to the sustenance of addition of Rs.10,38,134/- on account of certain expenses recorded in KZ-1, while ground no. 4 relates to sustenance of addition of Rs.5,60,082/- for alleged difference on commission of sales, on account of entries recorded in KZ-1. The ld. AO made the addition on account of his belief that there was inflation of expenses and sales commission, since the balance-sheet and profit and loss account that were generated in KZ-1, did not tally with the audited profit and loss account and balance-sheet of the assessee firm. The assessee has submitted that the same was not a proper balance sheet but a rough working / dumb document, on which no reliance should be placed. The same had been prepared by its accountant, Shri Ujjwal Bhattacharya, for reporting purposes and did not represent the final balance-sheet of the firm. It has also been submitted that the same contained figures only of head office at Sahson, Allahabad and did not incorporate the figures of the branches at Mumbai or Ahmedabad and therefore, there is a discrepancy in the accounts. Before proceedings further, we observe that the addition is made on account of materials unearthed during the search and therefore, is not hit by the judgment of the Hon'ble Supreme Court in the case of M/s Abhisar Buildwell (supra). Therefore, the issue is required to be decided on its merits. On-going through the order of the ld. CIT(A), we find that the ld. CIT(A) has, after considering the reconciliation statement submitted by the assessee during the appeal proceedings and after obtaining a remand report from the ld. AO in which the final figures given in the reconciliation statement were seen to tally with the audit report and the method of consolidation for heads like fixed assets was test checked and found to be correct, accepted the fact that certain expenses stated to be made by the branches could not be disallowed on account of the fact that they have been paid to government agencies or, even where they had been paid to private parties, possibility of bogus claim was always negligible and therefore, had a certain degree of credence. In effect, he accepted the explanation of the assessee that the difference in the figures recorded in KZ-1 and the audited accounts of the assessee, were on account of consolidation of branch accounts to the head office

account and not on account of inflation of expenses, as originally held by the Id. AO. However, the Id. CIT(A), in view of certain observations made by the Id. AO during remand proceedings, held that expenses claimed on other heads could not be proved in the absence of complete vouchers, or in the absence of details and furthermore, that payment of sales commission could not be proved on account of payment being made in cash. It is for this reason that he sustained the disallowance. We have duly considered the submissions of the assessee and the orders of the authorities below. On examination of the balance-sheet and profit and loss account for A.Ys. 1999 to 2000 to A.Ys. 2010-11, marked as KZ-1 and contained on pages 107 to 140 of the paper book submitted by the assessee, We observe that certain figures in this balance-sheet, representing the value of various fixed assets are constant in the balance-sheet over the years under consideration i.e. there is no claim of depreciation against these assets, which would seem to suggest that the balance-sheets contained on KZ-1, were not complete and final balance-sheets. While, we agree with the view of the Id. CIT(A), that the concerned balance-sheets and profit and loss accounts which have been found during the course of search are not rough work / dumb documents, it is very evident from the comparison of the profit and loss account of the current financial year in KZ-1 to the audited profit and loss account of the assessee firm, that the said documents do not represent the complete accounts of the assessee. This is because while sales in KZ-1 are reflected at Rs.27,85,5,918.93/-, they are seen to stand at Rs.62,26,32,797.26/- in the profit and loss account filed along with the return. Similarly, while opening stock in the KZ-1 document is seen to be at Rs.69,35,904.12/-, the opening stock in the profit and loss account of the firm, filed with the audit report are seen to be Rs.2,59,92,129.95/- and while purchases are revealed to the extent of Rs.27,46,91,843.70/- in the KZ-1 account, they are shown at the figure of Rs.59,15,91,897.70/- in the audited profit and loss account. It is, therefore, fairly evident from a bare glance of the two accounts, that the profit and loss account for the financial year contained within KZ-1, is an incomplete account and not reflective of the complete business operations of

the assessee firm. Therefore, to conclude from the same that any expenses that were not recorded in that document, but recorded in the audited financial statement of the assessee company, are on account of inflated expenses overlooks this vital fact that the profit and loss account of the assessee firm as filed along with the audit report, reveals a much larger operation than what is revealed by the profit and loss account contained in KZ-1 and that being the case, the inference that the difference in expenditures in the two accounts is on account of inflation of expenses is misplaced. Accordingly, no addition is called for on this count in our opinion. However, we observe that the Id. CIT(A) has sustained the addition on account of expenses and on account of sales commission to the extent of 50%, because the assessee was not able to prove the expenses to the satisfaction of the Id. AO with reference to his books, bills or vouchers. Therefore, the Id. CIT(A) has effectively questioned the completeness and correctness of the books of accounts, when he raises the question, in respect of expenses claimed under the head, 'damaged lost in transit', as to what was the basis of quantification of the damage. With regard to expenses incurred on sale commission, he has observed that details relating to the mode of payment, have not been provided by the assessee. And in the absence of these details, he has confirmed the disallowance to the extent of 50% of the disallowance made. We have duly considered the Id. CIT(Appeal's) approach and while we would not find flaw with the same in the regular assessment, we observe that this is a search assessment under section 153A and that no incriminating has been unearthed during the course of the search, that has been relied upon by the Id. AO, to show that the expenses on the said heads of expenditure or the commission on sales were inflated. The comments of the Id. AO about the withdrawal of cash under Deshawar account and adjustment of the same against bogus expenses have not been backed up by any evidences demonstrating the same. Thus, they can only represent his opinion. Furthermore, the Id. AO has not established any linkage, between the acquisition of assets and expenditures of the partners and the claim of these expenditures in the accounts of the firm. In short, there is nothing on record to

show that any of these expenses have been inflated, but for the fact the assessee has not been able to show vouchers in respect of the same to the ld. AO. The absence of incriminating material would therefore, in our opinion, not justify sustaining of addition to the extent of 50% when the ld. CIT(A) was convinced that the difference between KZ-1 and the audited accounts was essentially on account of the fact that KZ-1 only represented the head office accounts and the audited accounts represented the consolidated accounts of the head office and the branches. In the circumstances, we hold that the additions sustained by the ld. CIT(A) are not permissible in an assessment under section 153A and therefore, the same are deleted. Ground Nos. 3 and 4 are accordingly allowed.

13. Ground number 5 is with relation to the sustenance of an addition of Rs. 2000/- on account of repairs and maintenance, out of a total addition of Rs. 10,120/- made by the assessing officer. The ld. CIT(Appeals), while observing that the AO could not adopt the facts of AY 2004-05 to make an addition in the year 2009-10, has sustained the addition in part, because, in his opinion, the genuineness of payments in the absence of external vouchers could not be verified. In consideration of this ground, we hold that this disallowance made by the Ld CIT(A), essentially stems from his understanding of law, that additions could be made in a search assessment on issues over and above the incriminating material found. However, now that the Supreme Court has clarified the legal position, it is quite clear that no addition may be made on any issue in a 153A assessment, in the absence of incriminating material. As there is no incriminating material to back up the addition, we delete the same. Ground number 5 is accordingly allowed

14. Ground Number 7 is with regard to the sustenance of an addition of Rs. 90,000/- out of diesel expenses claimed by the assessee to the tune of Rs 8,70,985/-, which had been disallowed by the assessing officer on the grounds that the expenditure was bogus because the assessee was leasing its own trucks to Amritsar Transport co and therefore this claim of expenditure was disallowable. In appeal,

the Ld. CIT(Appeals) found that the addition was made on a fundamentally wrong premise, because the assessee had only given three out of its' 15 trucks on lease and therefore, was entitled to claim expenditures for the remaining trucks, However he disallowed Rs 90,000/- of the expenditure claimed, on the ground that the Assessee was not satisfactorily able to rebut the assessing officer's contention, that the claim was excessive, because the offices of the Assessee and the sister concern of the assessee were both located in Mumbai. In consideration of this ground, we observe that the disallowance has not been made after any systematic examination of the assessee's claim. There is no finding that the transportation used to take place only from the office of the sister concern to the assessee or that they were located at the same premises. In the circumstances, the addition seems to have been sustained on presumptions. Moreover, since no incriminating material was recovered during the search to indicate that the expenses claimed were excessive or irregular, the disallowance can even otherwise not be sustained. It is therefore deleted and ground number 7 is allowed.

15. Ground number 8 does not require adjudication.

16. In the result the appeal of the assessee is partly allowed.

**ITA No. 630/Alld/14 (A.Y. 2004-05)**

17. This appeal has been filed by the assessee against the order of the Id. CIT(A), Allahabad dated 23.09.2014. The Following grounds have been raised as under:-

*"That in any view of the matter the assessment Order dated 20.12.2011 passed U/s 153A (b) of the Income Tax Act and actions of the assessing officer as partly maintained by the Commissioner of Income Tax (Appeals) vide his Order dated 23.09.2014 both are unjustified and illegal on facts and bad in law, hence in all fairness declared income by the appellant should have been accepted in the facts and circumstances of the case.*

*2. That in any view of the matter the assessee denies his liability to be assessed under block assessment as the assessing officer has no jurisdiction to pass assessment order for the block period in absence of valid action U/s 132 of the*

*Income Tax Act as well as mandatory requirements were also not complied with for framing a valid and legal assessment.*

*3. That in any view of the matter the undisclosed income was not determined on the basis of any search material rather based on the same books of accounts informations, details and figures which were already examined in original assessment framed U/s 143(1) of the Income Tax Act by disturbing the sanctity of the original return hence the assessment so framed U/s 153A (b) of the Income Tax dated 20.12.2011 is liable to be declared illegal.*

*4. That in any view of the matter observations and findings of the two lower authorities for making and maintaining the additions in their orders are incorrect, vague, illegal and contrary to the actual facts of the case therefore the additions so made and partly maintained deserve to be deleted.*

*5. That in any view of the matter a part sum of Rs. 10,38,042/- out of the addition of Rs. 20,76,084/- made by the assessing officer by saying inflated expenses on the basis of print out of CPU and on other reasons as maintained by the Commissioner of Income Tax (Appeal) is unjustified, incorrect and illegal in the facts and circumstances of the case, hence the partly maintained addition is liable to be deleted in the facts and circumstances of the case.*

*6. That in any view of the matter in the audited profit and loss account expenditures of head office as well as expenditure of two branches consolidately appearing in the profit and loss account whereas in the alleged balance sheet, profit and loss account marked as Annexure KZ-1 (which was taken out from the alleged CPU) relates to figures only in respect of head office but this aspect was altogether ignored by the two lower authorities. Therefore the comparisons as done by the assessing officer and his action as maintained by the Commissioner of Income Tax (Act) in part is not correct and liable to be ignored, hence the part sum of Rs. 10,38,042/- out of the addition of Rs. 20,76,084/- as maintained by the Commissioner of Income Tax (Appeal) is wrong and therefore liable to be deleted in the facts and circumstances of the cash.*

*7. That in any view of the matter since the veracity and correctness of the entries on the basis of aforesaid Annexure KZ-1 (Print out taken from CPU) could not be established by the two lower authorities through any material and independent evidences but such print out is only a test run profit and loss account containing imaginary figures not rebutted by the assessing officer through any piece of evidence then the entire actions of the two lower authorities for saying "inflated expenses' and making and maintaining the addition on this count is incorrect and illegal and hence the same deserves to be deleted.*

*8. That in any view of the matter the appellant is maintaining regular books of accounts in the ordinary course of business duly supported by the stock register, bills & vouchers etc. Hence proviso to Section 145(3) of the Income Tax Act is not applicable nor applied as sales were not disturbed nor any adverse finding with regard to books of account and method of accounting have been given in the*

*Orders of the two lower authorities, therefore the books results are liable to be accepted.*

*9. That in any view of the matter disallowance of Rs. 60,507/- as made by the assessing officer by saying interest payment to bank is not allowable and his action as confirmed by the Commissioner of Income Tax (Appeal) is absolutely unjustified and incorrect in facts and therefore the disallowance on this count as made and confirmed is unwarranted, hence liable to be deleted.*

*10. That in any view of the matter no reasonable opportunity was provided to the appellant of being heard before making such addition/disallowance which is highly unjustified and illegal in the eyes of law.*

*11. That in any view of the matter the penal interest as charged under different Sections of the Income Tax Act is unjustified and illegal in the facts and circumstances of the case.*

*12. That in any view of the matter the appellant reserves his right to take any further ground of appeal, before hearing of the appeal.”*

18. Ground No. 9 pertains to the disallowance of interest of Rs 60,507/-. The ground has not been pressed by the Ld. AR, and is therefore dismissed as withdrawn.

19. Ground No. 2 relates to the deniability to be assessed under block assessment, in view of the contention that no valid search was carried out. In view of the fact that this ground has not been pressed before us, it is dismissed as withdrawn.

20. Ground No. 3 pertains to denial of liability to be assessed under section 153A on the basis of material other than incriminating material discovered during the search .In view of our reasoning adopted in ITA No. 392/Alld/2014 for the A.Y. 2009-10, this ground of appeal is allowed.

21. Ground Nos. 5 to 8 pertain to disallowance made on account of difference in figures as recorded in KZ- 1 and the regular accounts presented along with the Audit report. Following our findings and reasoning on the issue in ITA No. 392/Alld/2014, these grounds of appeal are allowed.

22. Ground No. 10 relates to the lack of opportunity afforded to the assessee by the lower authorities. As nothing specific has been cited before us in this regard, this ground is dismissed.

23. Ground No. 11 relates to the charging of interest by the Id. Assessing Officer. We observe that the charging of interest is automatically triggered upon the variation in tax due as a result of assessment. However, the same would stand modified to the extent of reliefs allowed in this appeal. Accordingly, this ground is partly allowed.

24. Ground Nos. 1 & 4 relate to acceptance of returned income and question the decisions of the lower authorities in making additions. In view of the fact that the Ld. AR has not pressed ground no. 9, but substantial relief has been allowed by us in appeal on other matters, these grounds are partly allowed.

25. In the result the appeal of the assessee is partly allowed.

**ITA No. 389/Alld/2014 (A.Y. 2005-06)**

26. This appeal has been filed by the assessee against the order of the Id. CIT(A), Allahabad dated 19.03.2014. The Following grounds have been raised are as under:-

*1. That in view of the fact that the assessment for the Asstt. year under consideration had already been concluded prior to the date of the search on 27.8.09 and not pending at that point of time and there being no incriminating material or undisclosed income found in search in view of 2nd proviso to sec. 153A(1)(b) of the I.T. Act no additions or disallowances was called for in framing the assessment and the learned CIT(A) has illegally dismissed the legal ground taken for the illegality of the assessment.*

*2. That on the facts and circumstances of the case since the expenses to the extent of Rs. 1955094.00 under various heads was duly accounted for in the books and related to the business of the firm merely being some expenses in cash but not found bogus or inflated the learned CIT(A) merely on surmises has wrongly disallowed half of such expenses i.e. Rs.977547.00 as per para 5.4 of the Appellate order. This action is arbitrary, unjustified and in any case highly excessive.*

*3. That without considering all the facts and circumstances of the case including case laws cited and evidences adduced that no loans advanced out of interest bearing unsecured loans rather exclusively out of non-bearing unsecured loans the provisions of sec. 36 (I)(iii) has been wrongly invoked and thus erroneously confirmed the disallowance of Rs.27453.00 which was illegally made on wrong facts hence such addition is liable to be deleted.*

*4. That the assessee reserve its right to modify the existing grounds of appeal and may also take any other ground or grounds either before or at the time of the hearing of appeal.”*

27. Ground No. 1 pertains to questioning of additions under section 153A on the basis of material other than incriminating material discovered during the search. In view of our reasoning adopted in ITA No.392/Alld/2014 for the AY 2009-10, this ground of appeal is allowed.

28. Ground No. 2 pertains to disallowance made on account of difference in figures as recorded in KZ 1 and the regular accounts presented along with the Audit report. Following our findings and reasoning on the issue in ITA No. 392/Alld/2014, these grounds of appeal are allowed.

29. Ground No. 3 pertains to the disallowance of interest of Rs. 27,453/-. The ground has not been pressed by the Ld. AR, and is therefore dismissed as withdrawn.

30. Ground number 4 is general and does not require adjudication .

31. In the result the appeal of the assessee is partly allowed

**ITA No. 425/Alld/2014 A/w CO No. 20/Alld/2014 (A.Y. 2005-06)**

32. This appeal has been filed by the Department and Cross Objection preferred by the assessee .The ground of appeal preferred are as under:

*“1.That the Ld. CIT (A) has erred in law and on facts in deleting the disallowance of Rs. 1,31,09,323/- made by the AO in respect of unaccounted sale found in quantitative details of closing stock as on 31.03.2005 and opening stock as on 01.04.2005.*

*2. That the Ld. CIT (A) has erred in law and on facts in reducing the addition of Rs. 19,55,094/- made by the AO in respect of bogus bills and vouchers shown in the print out taken from seized CPU and shown in profit and loss account, to Rs. 9,77,547/- without appreciation the facts that it was a search case and the expenses shown in the printout cannot be ignored while examining and verifying with that of regular books of accounts and audit report.*

*3. That the order of the Ld. CIT (A) being erroneous in law and on facts which needs to be vacated and the order of the AO be restored.*

*4. That the appellant craves leave to add or amend any one or more of the ground of the appeal as stated above as and when need for doing so may arise."*

33. Ground No. 1 relates to the decision of the Ld. CIT(A) to delete a disallowance of Rs. 1,31,09,323/- made on account of unaccounted sales deduced on the basis of difference in closing and opening stock in the accounts of the assessee. The facts of the case are that the ld. AO compared the quantitative details of closing stock given as per annexure "D" of Column 28(a) of Form 3CD for FY 2004-05, relevant for AY 2005-06, with the opening stock in Form 3CD for FY 2005-06, relevant for AY 2006-07, and found that the quantity of certain items did not tally. He therefore issued a notice as to why the difference in the stock should not be regarded as unaccounted sale for the year under consideration. In response the assessee submitted that the opening stock as shown in the report for FY 2005-06 was not correct as, due to clerical mistake, in respect of certain items the quantity of stock was only recorded in respect of head office i.e. the quantity of closing stock with the branches as on 31.03.2005, was not taken into opening stock as on 1.04.2005, while preparing the report for the FY 2005-06. The assessee argued that the above did not have any bearing on the taxable income of the years involved. It was submitted that the value of closing stock on 31.03.2005, was the same as the value of opening stock on 1.04.2005 i.e. Rs. 1,89,90,725.51/-. To support its contention, it submitted item wise details of quantitative tally of opening stock, purchases, sales and closing stock for each unit from financial year 2005-06 till FY 2009-10. However the AO rejected the explanation of the assessee, on the grounds that this explanation was furnished only when the error was noticed by the Department and because no books of

account had been found during the search, therefore it could not be treated as only a lapse on the part of the auditor. Therefore, he rejected the reconciliation chart submitted by the assessee and, after working out the cost of the same, assessed the suppressed sale at Rs. 1,31,09,323/-. Aggrieved with this addition, the assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee submitted detailed explanation, as to how the difference was on account of a mistake in form 3CD for the FY 2005-06, in failing to include the closing stock of the branches at Mumbai and Ahmedabad. It was submitted that, however this had no revenue implications, as the value of the consolidated closing stock on 31.03.2005 had been included in the final accounts as the opening stock on 1.04.2005 and the figure tallied at Rs. 1,89,90,725.51/-. Questioning the estimation of value done by the assessing officer, the Assessee submitted that the assessing officer had failed to consider the fact that there were items of different weights and descriptions and therefore, a flat rate could not be applied. It was submitted that had the assessing officer done the valuation properly, the value of the stock would always arrive at Rs. 1,89,90,725.51/-, and there would consequently, be no variation. Without prejudice to this argument, it was also submitted that, in any case, only the gross profit on the sale could be added back and not the entire sale consideration and therefore, the addition made by the assessee was bad in law. The matter was remanded to the assessing officer, who after tallying the items shown for Mumbai and Ahmedabad branches with the stock register of those branches, accepted that they matched, but declined to give that any weightage, because no books had been found during the search, the assessee had admitted before him during remand proceedings that only computerized books were maintained at the two branches and those computerized books did not contain the entries, now claimed by the assessee. In response the assessee submitted that the lad AO had checked and tallied the items missing in form 3CD, with the books produced before him and could not draw adverse inference against the assessee just because books were not found at the time of search and for this proposition, it relied upon the judgment of the ITAT in the case of

M/s Kesarwani Sheetalaya in ITA No. 440/Alld/2012, which held that the mere fact that books were not found during the search, could not be a ground to assume that they were not maintained and it prayed, that the same may be considered before deciding the appeal. Upon considering the matter, the Ld. CIT(A) held that the inference drawn by the assessing officer regarding sales outside of books of accounts was not correct because apart from difference in the quantitative figures of certain items of stock, there was no other material found to corroborate the theory of the assessing officer. He recorded the fact that the assessee had submitted the unit wise breakup of closing stock and explained how the difference arose out of the omission to record the quantitative figure of closing stock of the branches in the previous year, during preparation of the audit report in form 3CD, for the subsequent year. He further observed that there was no material found during the search and seizure operation, to indicate that the stock was sold outside the books of account and there was no difference in the value of stock shown in the profit and loss accounts of the two years in question. The Ld. CIT(A) opined that had the assessee sold stock outside the books, then there would a corresponding attempt to suppress profit, but in the instant case the assessee had declared more profit in the FY 2005-06, despite not reducing the value of the opening stock. He wondered aloud as to what could be the motive to show less opening stock in terms of quantity (though not in terms of value) when it did not yield any unaccounted income? He held that, if an unscrupulous business man sold goods out of the books then also he would not show a difference in terms of quantity because the same would lead to glaring mistake in terms of accounting principles. He observed that it was not the case that the AO had noticed that certain sold items had been entered into the stock and subsequently, certain adjustments had been made to hide this glaring mistake. Therefore he held that the only logical inference was that this was a clerical mistake committed at the time of audit, while taking down the opening stock. He also observed that had the assessee manipulated the value of opening stock by increasing the same as on 1.04.2005, it would have impacted the profit of 2005-06

and held that it would only impact taxable income if there was corresponding manipulation in the value of stock. In view of these findings, he deleted the addition made by the assessing officer.

34. Sh. Neel Jain, Ld. CIT(DR) (hereinafter referred to as the 'ld. CIT DR) appearing on behalf of the Revenue argued that the Ld. CIT(A) was unjustified in allowing relief to the assessee, without considering the facts brought out by the ld. AO in his order. He took us through the assessment order wherein the AO had recorded that the assessee had taken up the issue of clerical mistake only after 6 years, when the Department had pointed out the inconsistency. The AO had further pointed out that during the course of audit, the auditor was expected to verify every detail, including the figures of branches and head office. Shri Jain pointed out, that if the quantitative items did not tally, there could be no audit of the value assigned. It was further submitted that the AO had recorded that the books of account had not been found during the search. Therefore, the reconciliation statement, where the assessee was trying to consolidate the stocks of the head office and the branches, had no meaning in the absence of these books. Therefore, it was established that the sales had been made out of the books of account. Shri Jain submitted that the valuation of the same could be looked at again, but the fact of discrepancy of stock was not in doubt and this indicated suppressed sales. On the other hand, Shri. Praveen Godbole, C.A. (hereinafter referred to as the "ld. AR"), appearing on behalf of the assessee, submitted that the fact that books of account were not recovered during the course of search was not a ground to hold that they did not exist and the audit report was bogus. He pointed out that there was a fundamental contradiction in the stand of the assessing officer, in that he was relying on the two audit reports to make an addition, which audit reports could not exist in the absence of the books of account. Shri Godbole further submitted, that the Ld. CIT(A) had elaborately brought out the fact that ld. AO had not found any evidence of sale outside the books and that there was no difference in the value of the stock shown in the two profit

and loss accounts and no attempt to suppress profits in the FY 2005-06. The AO had not noticed any instance of adjustment made to the books to reconcile any unaccounted stock sold and inadvertently recorded, that might have led to the lower figure of opening balance as on 1.04.2005. He submitted that the only logical explanation was the one offered by the assessee i.e. that there was a mistake in the audit report, but that did not have any impact on the taxability of the assessee. He, therefore, submitted that there was no reason to interfere with the orders of the Ld. CIT(A) and the deletion made by him was justified.

35. We have considered the facts of the case and the arguments advanced by both parties. It is self-evident that the closing stock on 31.03.2005 has to be the opening stock on 1.04.2005 and if this is not reflected in the accounts, it can only mean one of two things i.e. that there has been an error in the carrying forward of stock balance while computing the same or, that the figure of closing stock as reflected in the audit report of FY 2004-05, was in fact incorrect and stock to that extent did not exist in actuality, but only on paper. It is only in the second case that the inference made by the assessing officer can be considered to be of merit. But, we observe, that such an inference could not be made only from the fact that a lesser volume of stock was reflected in the form 3CD of the succeeding year (when the assessee had offered a plausible explanation as to why this was so and when the value of the stock remained unchanged in the P&L account) but only from any material that demonstrated instances sale outside the books of account or any finding of overvaluation of remaining stock, to match the value shown in the profit and loss account stock. As the Ld. CIT(A) has pointed out, the assessing officer has not brought to light, a single instance of sale outside the books. Nor has the AO pointed out any instance of over valuation of the remaining stock, reflected as opening stock in the form 3CD of FY 2005-06, to balance the value of the stock as reflected in the profit and loss account for the FY 2005-06. Thus, there is absolutely no incriminating evidence to support the theory of the assessing officer. Such an

addition could not therefore be sustained in even a normal assessment under section 143(3), much less an assessment under section 153A. where the recovery of incriminating material during the search is a pre requisite for a sustainable addition on this account. Therefore, in view of the same, we hold that there is no basis to hold that the discrepancy in stock in the two Form 3CDs was on any account, other than clerical error and no case of sale outside the books in FY 2004-05 is made out from such discrepancy. Resultantly, the order of the Ld. CIT(A) is upheld and ground number 1 of the appeal is dismissed.

36. Ground No. 2 pertains to disallowance made on account of difference in figures as recorded in KZ -1 and the regular accounts presented along with the Audit report. Following our findings and reasoning on the issue in ITA No. 392/Alld/2014, this ground of appeal is dismissed.

37. Ground No. 3 describes the orders of the Ld. CIT(A) as erroneous and deserving of vacation. In view of the fact that we have dismissed ground nos. 1 & 2, ground no. 3 is also dismissed.

38. Ground No. 4 is general in nature and does not require adjudication.

39. In the result the Department's appeal is dismissed.

40. In the Cross Objection, the assessee has preferred the following grounds:-

*"1. That in any view of the matter it is not correct to say that the learned Commissioner of Income Tax (Appeals) erred in law and on facts and he deleted the unjustified additions/disallowances by appreciating the true facts of the case correctly hence the relief of Rs. 1,31,09,323/- as allowed by the learned Commissioner of Income Tax (Appeals) is correct in the facts and circumstances of the case.*

*2. That in any view of the matter it is not correct to say that the learned Commissioner of Income Tax (Appeals) erred in law in reducing the addition of Rs. 19,55,094/- made by the assessing officer by alleging bogus bills. Thus the relief allowed is justified and correct.*

*3. That in any view of the matter the additions/ disallowances made by the assessing officer and maintained by the learned Commissioner of Income Tax (Appeals) are liable to be deleted in the facts and circumstances of the case.*

*4. That in any view of the matter the appellant reserves his right to amend or take any further ground of appeal before hearing of the appeal."*

41. In view of our decisions in ITA No. 425/Alld/2014 and ITA No. 389/Alld/2014, the Cross Objection filed by the assessee is allowed.

**ITA No.631/Alld/2014 ( A.Y. 2006-07)**

42. This appeal has been filed by the assessee against the order of the Id. CIT(A), Allahabad dated 23.09.2014. The assessee has raised the following grounds of appeal:-

*"1. That in any view of the matter the assessment Order dated 20.12.2011 passed U/s 153A (b) of the Income Tax Act and actions of the assessing officer partly maintained by the Commissioner of Income Tax (Appeals) vide his Order dated 23.09.2014 both are unjustified and illegal on facts and bad in law, hence in all fairness declared income by the appellant should have been accepted in the facts and circumstances of the case.*

*2. That in any view of the matter the assessee denies his liability to be assessed under block assessment as the assessing officer has no jurisdiction to pass assessment order for the block period in absence of valid action U/s 132 of the Income Tax Act as well as mandatory requirements were also not complied with for framing a valid and legal assessment.*

*3. That in any view of the matter the undisclosed income was not determined on the basis of any search material rather based on the same books of accounts informations, details and figures which were already examined in original assessment framed U/s 143(1) of the Income Tax Act by disturbing the sanctity of the original return hence the assessment so framed U/s 153A (b) of the Income Tax dated 20.12.2011 is liable to be declared illegal.*

*4. That in any view of the matter observation and findings of the two lower authorities for making and maintaining the additions in their orders are incorrect, vague, illegal and contrary to the actual facts of the case therefore the addition so made and partly maintained deserve to be deleted.*

*5. That in any view of the matter a part sum of Rs. 5,03,310./ out of the addition of Rs. 10,06,620/- made by the assessing officer by saying inflated expenses on the basis of print out of CPU and on other reasons as maintained by the Commissioner of Income Tax (Appeal) is unjustified, incorrect and illegal in the*

*facts and circumstances of the case, hence the partly maintained addition is liable to be deleted in the facts and circumstances of the case.*

*6. That in any view of the matter in the audited profit and loss account expenditures of head office as well as expenditure of two branches consolidately appearing in the profit and loss account whereas in the alleged balance sheet, profit and loss account marked as Annexure KZ-1 (which was taken out from the alleged CPU) relates to figures only in respect of head office but this aspect was altogether ignored by the two lower authorities. Therefore the comparisons as done by the assessing officer and his action as maintained by the Commissioner of Income Tax (Act) in part is not correct and liable to be ignored, hence the part sum of Rs. 5,03,310/- out of the addition of Rs. 10,06,620/- as maintained by the Commissioner of Income Tax (Appeal) is wrong and therefore liable to be deleted in the facts and circumstances of the cash.*

*7. That in any view of the matter since the veracity and correctness of the entries on the basis of aforesaid Annexure KZ-1 (Print out taken from CPU) could not be established by the two lower authorities through any material and independent evidences but such print out is only a test run profit and loss account containing imaginary figures not rebutted by the assessing officer through any piece of evidence then the entire actions of the two lower authorities for saying "inflated and expenses' making and maintaining the addition on this count is incorrect and illegal and hence the same deserves to be deleted.*

*8. That in any view of the matter the appellant is maintaining regular books of accounts in the ordinary course of business duly supported by the stock register, bills & vouchers etc. Hence proviso to Section 145(3) of the Income Tax Act is not applicable nor applied as sales were not disturbed nor any adverse finding with regard to books of account and method of accounting have been given in the Orders of the two lower authorities, therefore the books results are liable to be accepted.*

*9. That in any view of the matter disallowance of Rs. 27,528/- as made by the assessing officer by saying interest payment to bank is not allowable and his action as confirmed by the Commissioner of Income Tax (Appeal) is absolutely unjustified and incorrect in facts and therefore the disallowance on this count as made and confirmed is unwarranted, hence liable to be deleted.*

*10. That in any view of the matter no reasonable opportunity was provided to the appellant of being heard before making such addition/disallowance which is highly unjustified and illegal in the eyes of law.*

*11. That in any view of the matter the penal interest as charged under different Sections of the Income Tax Act is unjustified and illegal in the facts and circumstances of the case.*

*12. That in any view of the matter the appellant reserves his right to take any further ground of appeal, before hearing of the appeal.”*

43. Ground No. 9 pertains to the disallowance of interest of Rs. 27,528/-. The ground has not been pressed by the Ld. AR, and is, therefore, dismissed as withdrawn.

44. Ground No. 2 relates to the deniability to be assessed under block assessment, in view of the contention that no valid search was carried out. In view of the fact that this ground has not been pressed before us, it is dismissed as withdrawn.

45. Ground No. 3 pertains to denial of liability to be assessed under section 153A on the basis of material other than incriminating material discovered during the search. In view of our reasoning adopted in ITA No. 392/Alld/2014 for the AY 2009-10, this ground of appeal is allowed.

46. Ground Nos. 5 to 8 pertain to disallowance made on account of difference in figures as recorded in KZ- 1 and the regular accounts presented along with the Audit report. Following our findings and reasoning on the issue in ITA No.392/Alld/2014, these grounds of appeal are allowed.

47. Ground No. 10 relates to the lack of opportunity afforded to the assessee by the lower authorities. As nothing specific has been cited before us in this regard, this ground is dismissed.

48. Ground No.11 relates to the charging of interest by the assessing officer. We observe that the charging of interest is automatically triggered upon the variation in tax due as a result of assessment. However, the same would stand modified to the extent of reliefs allowed in this appeal. Accordingly, this ground is partly allowed

49. Ground numbers 1 & 4 relate to acceptance of returned income and question the decisions of the lower authorities in making additions. In view of the fact that

the Ld. AR has not pressed ground number 9, but substantial relief has been allowed by us in appeal on other matters, these grounds are partly allowed.

50. In the result the appeal of the assessee is partly allowed

**ITA No.390/Alld/2014 (A.Y. 2007-08)**

51. This appeal has been filed by the assessee against the order of the Id. CIT(A), Allahabad dated 23.09.2014. The assessee has raised the following grounds of appeal:-

*"1. That in view of the fact that in this case the assessment had already been concluded by an order u/s 143(1) of the I.T. Act and not pending on the date of search u/s 132 of the I.T. Act the 2nd proviso to sec.153A(1)(b) of the I.T. Act being applicable and there was no incriminating material or undisclosed income was found on search, no additions or disallowances should have been made and thus in the assessment made u/s 153A(1)(b) of the I.T. Act should have been deleted the additions and disallowances made by the AO and assessment quashed and the learned C.I.T.(A) has erred both in law as well as on facts in dismissing grounds No. 1, 2 & 3 as per his order vide para 3 on page 10 of the order.*

*2. That the addition of Rs.1598504.00 as alleged inflated expenses made by the A.O. under wrong notion and without taking into consideration the whole facts, explanation and clarification given during the course of hearing of case as well as in written submissions before the learned C.I.T.(A) in appeal who also obtained remand report from the A.O. who verified the contentions found them as correct and hence the learned C.I.T. (A) has erred both in law as well on facts in confirming half of the same i.e. Rs.799252.00.*

*as per his decision vide para 4.4 on page 23 of the order. Such confirmation is only on surmises and conjectures and without proving that the expenses actually incurred as per regular books of accounts were either bogus or inflated. Merely because some expenses were in cash and not fully vouched in the absence of any adverse material on record after laps of time no adverse inference should have been draw.*

*3. That the learned C.I.T.(A) has erred in sustaining adhoc disallowance of Rs.50000.00 as per para 5.4 of his order on page 27 out of disallowance from repairs and maintenance. This action is unjustified without proving any such expenses of non business purposes, either bogus or inflated. The disallowance is merely on surmises and conjectures.*

*4. That the learned C.I.T.(A) has erred both in law as well as on facts in sustaining the disallowance / addition of interest of Rs.29429.00 paid only on*

*interest bearing loan. Without appreciating this fact that the A.O. disallowed on wrong premises that it was paid to Bank. As a matter of fact the unsecured loans were advanced to sister concerns out of interest free loan of substantial amount which was duly proved. Hence the disallowance of Rs.29429.00 as per para 6.4 is absolutely, unjustified and illegal on page 29.*

*5. That the assessee claimed diesel expenses of Rs.422740.00 on the commercial vehicles of the firm and such expenses duly debited in regular books of accounts duly audited and verifiable and vouched and details filed but as per para 7.4 on page 33 of the order the learned C.I.T.(A) has confirmed the adhoc disallowance of Rs.50000.00 on wrong inferences and without appreciating fully the contentions/submissions of the assessee.*

*6. That, in any view of the matter and without prejudice to the contentions that no disallowances should have been made the disallowances as confirmed are highly excessive and unjustified.*

*7. That the assessee reserves his right to modify the existing grounds of appeal and may take any other ground or grounds either before or at the time of the hearing of appeal.”*

52. Ground No. 4 pertains to the disallowance of interest of Rs. 27,528/-. The ground has not been pressed by the Ld. AR, and is therefore dismissed as withdrawn.

53. Ground No. 1 pertains to denial of liability to be assessed under section 153A on the basis of material other than incriminating material discovered during the search and questioning the decision of the Ld. CIT(A) to dismiss Ground Nos. 1, 2 & 3 raised before him on this basis. In view of our reasoning adopted in ITA No. 392/Alld/2014 for the AY 2009-10, this ground of appeal is allowed.

54. Ground No. 2 pertains to disallowance made on account of difference in figures as recorded in KZ- 1 and the regular accounts presented along with the Audit report. Following our findings and reasoning on the issue in ITA number 392/Alld/2014, this ground of appeal is allowed.

55. Ground No.3 pertains to the decision of the Ld. CIT(A) in sustaining an ad hoc disallowance of Rs. 50,000/- on account of repairs and maintenance. Following our

decision on the similar issue in ITA no 392/Alld/2014 for the AY 2009-10, we delete this addition. This ground of appeal is accordingly allowed.

56. Ground No. 5 pertains to confirmation of disallowance of diesel expenses to the extent of Rs 50,000/-. Following our decision on the similar issue in ITA No. 392/Alld/2014 for the AY 2009-10, we delete this addition. This ground of appeal is accordingly allowed.

57. Ground No. 6 is dismissed in view of withdrawal of ground no. 4 and ground no. 7 is general in nature and does not require adjudication.

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

**ITA No.391/Alld./2014 (A.Y. 2008-09)**

59. This appeal has been filed by the assessee against the order of the Id. CIT(A), Allahabad dated 23.09.2014. The assessee has raised the following grounds of appeal:-

*"1. That in view of the fact that in this case the assessment had already been concluded by an order u/s 143(1) of the I.T. Act and not pending on the date of search u/s 132 of the I.T. Act and the 2nd proviso to sec.153A(1)(b) of the I.T. Act being applicable and there was no incriminating material or undisclosed income found on search, no additions or disallowances should have been made and hence in the assessment made u/s 153A(1)(b) of the I.T. Act all the additions and disallowances made by the AO should have been deleted and order quashed and the learned C.I.T.(A) has erred both in law as well as on facts in dismissing grounds No. 1, 2 & 3 as per his order vide para 3 on page 12 of the order.*

*2. That the additions of Rs.2299634.00 alleged inflated expenses and Rs.878012.00 commission on sales were made by the A.O. under wrong notion and without taking into consideration the whole facts, explanation and clarification given during the course of hearing of case as well as in written submissions before the learned C.I.T. (A) in appeal who also obtained remand report from the A.O. who verified the contentions and found them as correct and thus the learned C.I.T.(A) has erred both law as well on facts in confirming half of the same i.e. Rs.1149817.00 and 439006.00 as per his decision vide para 4.4 on page 23 of the order. Such confirmation is only on surmises and conjectures and without proving that the expenses actually incurred as per regular books of accounts were either bogus or inflated.*

3. That the learned C.I.T.(A) has erred in sustaining Rs.25000.00 as per para 5.4 of his order on page 27 as adhoc disallowance from repairs and maintenance. This action is unjustified and without proving any such expenses of non-business purposes, either bogus or inflated. The disallowance is merely on surmises and conjectures.

4. That the learned C.I.T.(A) has erred both in law as well as on facts in sustaining the disallowance / addition of interest of Rs.35238.00 paid on interest bearing loan without appreciating this fact that the A.O. disallowed on wrong premises that it was paid to Bank. As a matter of fact the unsecured loans were advanced to sister concerns interest free out of substantial amount of interest free unsecured loans which was duly proved. Hence the disallowance of Rs.35238.00 is absolutely, unjustified and illegal as per para 6.4 of the order on page 29 of the order.

5. That the assessee claimed diesel expenses of Rs.422740.00 on the commercial vehicles of the firm and such expenses duly debited in regular books of accounts duly audited and verifiable and vouched and as per para 7.4 on page 33 of the order the learned C.I.T.(A) has confirmed the disallowance of Rs.75000.00 on wrong inferences and on adhoc basis and without appreciating fully the contentions/submissions of the assessee.

6. That in any view of the matter and without prejudice to the contentions above that no disallowances should have been made the disallowances as confirmed are highly excessive and unjustified.

7. That the assessee reserves his right to modify the existing grounds of appeal and may take any other ground or grounds either before or at the time of the hearing of appeal.”

60. Ground No. 4 pertains to the disallowance of interest of Rs 35,238/-. The ground has not been pressed by the Ld. AR, and is therefore dismissed as withdrawn.

61. Ground No.1 pertains to denial of liability to be assessed under section 153A on the basis of material other than incriminating material discovered during the search and questioning the decision of the Ld. CIT(A) to dismiss ground nos. 1, 2 & 3 raised before him on this basis .In view of our reasoning adopted in ITA No.392/Alld/2014 for the AY 2009-10, this ground of appeal is allowed.

62. Ground No. 2 pertains to disallowance made on account of difference in figures as recorded in KZ- 1 and the regular accounts presented along with the Audit

report in respect of certain expenses and commission on sales. Following our findings and reasoning on the issue in ITA No. 392/Alld/2014, this ground of appeal is allowed.

63. Ground No. 3 pertains to the decision of the Ld. CIT(A) in sustaining an ad hoc disallowance of Rs 25,000/- on account of repairs and maintenance. Following our decision on the similar issue in ITA No. 392/Alld/2014 for the AY 2009-10, we delete this addition. This ground of appeal is accordingly allowed.

64. Ground No. 5 pertains to confirmation of disallowance of diesel expenses to the extent of Rs.75,000/-. Following our decision on the similar issue in ITA No. 392/Alld/2014 for the AY 2009-10, we delete this addition. This ground of appeal is accordingly allowed.

65. Ground No. 6 is dismissed in view of withdrawal of ground no.4 and ground no. 7 is general in nature and does not require adjudication.

66. In the result the appeal of the assessee is partly allowed.

Orders pronounced on 29.11.2024 at Allahabad U.P.

*Sd/-*  
**SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

DATED: 29/11/2024

Sh

*Sd/-*  
**[NIKHIL CHOUDHARY]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

By order  
Sr. P.S.