

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

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

ITA Nos.393/Alld/2014  
A.Y. 2010-11

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

ITA Nos.429/Alld/2014  
A.Y. 2010-11

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

And

C.O. No.24/Alld/2014  
(A/o ITA No.429/Alld/2014)

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

**ORDER**

**PER BENCH:**

These Cross appeals have been filed by the Assessee and the Revenue against the same appeal order passed by the ld. CIT(A) on 14.03.2014, with respect to the order of the ld. AO passed under section 143(3) of the Income Tax Act, 1961 for the A.Y. 2010-11. As the issues involved in these appeals are common, these appeals are being taken up for disposal together for the sake of convenience. The grounds of appeal in the appeals and Cross Objection are as under:-

**ITA No.393/Alld/2014 (A.Y. 2010-11)**

"1. That the learned CIT (A) has wrongly invoked provision of sec. 145(3) in sustaining addition of Rs.100000.00 out of Rs.8794292.00 although he himself held that addition of Rs.8794292.00 can not be sustained. Hence the addition of Rs.100000.00 as per last para of 4.4 of the order is unjustified and uncalled for.

2. That the disallowances of the following amounts as confirmed by the learned CIT (A) are quite unjustified, arbitrary and in any highly excessive.

(a) Out of Diesel expenses	Rs.100000/- para 6.4 of CIT(A)
(b) Out of Surti expenses	Rs.63866/- para 7.4 of CIT(A)
(c) Out of Telephone expenses	Rs.9984/- para 8.4 of CIT(A)
(d) Out of Vehicle expenses	Rs.7257/- para 8.4 of CIT(A)
(e) Out of Depreciation expenses	Rs.49486/- para 8.4 of CIT(A)
(f) Out of Repair maintenance Expenses	Rs.7000/- para 9.4 of CIT(A)

3. That the learned CIT (A) has erred both in law as well as on facts in confirming the disallowance of interest of 32116.00 to loan bearing sundry creditors and failed to consider the facts of the case and decision of courts on this issue and case laws cited by him are in applicable to the facts of the assessee's case.

4. That the assessee reserves its right to modify the existing grounds of appeal and may take any other grounds either before or at the time of hearing of appeal."

**ITA No.429/Alld/2014 (A.Y. 2010-11)**

1. That the Ld. CIT (A) has erred in law and on facts in reducing the addition of Rs. 87,94,292/- to Rs. 1,00,000/- on account of suppressed sales without appreciation the fact that the disallowance was made by the AO after considering the seized material found during the course of search operation.

2. That the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 2,66,73,629/- on account of unaccounted purchases without appreciation the facts that the disallowance was made by the AD after considering the seized material found during the course of search operation which was discussed in the assessment order in detail.

3. That the Ld. CIT (A) has erred in law and on facts in reducing the addition of Rs. 10,08,367/- made by the AO, to Rs. 1,00,000/- without appreciating the facts that the transporter is used only for diversion of income and by making bogus expenses under the head freight.

4. That the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 2,95,217/- made by the AO, on account of unexplained expenditure after analyzing the facts of the case.

5. 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.

6. 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.”

**C.O. No.24/Alld/2014 (A.Y. 2010-11)**

“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 in reducing the addition of Rs. 87,94,292/- to Rs. 1,00,000/- which was made by the assessing officer in arbitrary manner without support of any search material by alleging suppressed sales. Thus the relief on this count as allowed by the learned Commissioner of Income Tax (Appeals) after considering the correct facts and circumstances of the case is correct.

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 and on facts in deleting the addition/disallowance of Rs. 2,66,73,629/- which was made by the assessing officer in arbitrary manner without basis of any search material by alleging unaccounted purchases and by giving general and vague observations/findings in his order to mislead the higher authorities. Thus the relief on this count as allowed by the learned Commissioner of Income Tax (Appeals) is justified and correct and based on appreciation of the true facts and circumstances of the case.

3. 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 in reducing the addition of Rs. 10,08,836/- to Rs. 1,00,000/- which was made by the assessing officer without appreciating the correct facts and without support of any search material by alleging bogus expenses. Thus on this count the relief as allowed by the learned Commissioner of Income Tax (Appeals) is justified and correct in the facts and circumstances of the case.

4. 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 in deleting the addition of Rs. 2,95,217/- made by the assessing officer in arbitrary manner without support of any such material by alleging unexplained expenditure. Thus on this count the relief as allowed by the learned Commissioner of Income Tax (Appeals) is justified and correct in the facts and circumstances of the case.

5. 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.

*6. 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.”*

2. The first ground of appeal in both the assessee's and the Department's appeal relates to the issue of the decision of the Id. CIT(A) to reduce the addition of Rs.87,94,292/- made on account of suppressed sales to Rs.100000/-, after invoking the provisions of section 145(3). The Revenue is aggrieved that the Id. CIT(A) had failed to consider the disallowance that was made by the Revenue, after considering the seized material found during the course of search, while the assessee holds that the Id. CIT(A) ought not to have sustained an addition of Rs.100000/-, after he himself had held that the addition of Rs.87,94,292/- could not be sustained. The facts of the case are that an inventory of stock was prepared during the course of search and seizure action and survey at the head office and the branch offices of the assessee firm at Bhiwandi and Chandkheda. As per this inventory, the stock was valued at Rs.1,17,78,354.74/-. The Id. AO examined the cash memos and challans found and seized from the business premises at Chandkheda, Ahmedabad and compared the same with the stock register. She observed, on certain dates, the sale of goods as per the cash memos and challans was either greater or lesser as compared to the availability of stock in the stock register. This exercise was done for the month of April, 2009. Though the assessee replied that the observations of the Id. AO were not correct, the Id. AO held that the books of accounts were not reliable on this count. She, therefore, prepared a trading account of the assessee firm from 1.04.2009 to 27.08.2009 (the date of search), from the ledger and other documents that were found and seized at the time of search. From the same, the extent of sales was computed at Rs.26,52,92,658/-. The Id. AO then compared these figures of sales with the details of month wise sales furnished by the assessee during the course of assessment proceedings, which were at Rs.27,40,86,950/-. Accordingly, the Id. AO held that the sales to the extent of Rs.87,94,292/- had been suppressed. She also

observed some difference in value, in respect of the sales taken from the system (in respect of Mumbai branch) and the sales taken from the total of credit sales and cash sales. The assessee attempted to explain these differences, but the ld. AO did not accept the same and she added Rs.87,94,292/- to the total income of the assessee. Aggrieved by this addition, the assessee went in appeal to ld. CIT(A). Before the ld. CIT(A), it was submitted that the entire working of the ld. AO was wrong and the addition had been made without understanding the facts in the true sense and more so, the whole alleged suppressed sales could not be said to be the income of the assessee. It was submitted that there was no discrepancy in the books of accounts, stock register, cash memo and challans for the F.Y. 2009-10, seized from the business premises of M/s Kesarwani and Co. and the books of accounts. It was submitted that all these alleged discrepancies had been clarified at the time of hearing before the ld. AO, by showing the books of accounts and co-relating the same. With reference to the trading account, it was submitted that the ld. AO had not mentioned the source of the figure of the sales amounting Rs.26,52,92,658/- and purchases amounting to Rs. 23,10,59,878/-, mentioned in the alleged trading account prepared by her. It was submitted, that in fact the sales of the three units as per audited books of accounts was Rs.26,82,38,594/-, and the purchases were Rs.23,27,37,631/-. It was further submitted that from the re-casted trading account prepared after taking these figures, the amount of gross profit as per the audited books of accounts was Rs.1,40,08,718/-, as compared to the amount of gross profit of Rs.1,27,40,535/-, worked out by the ld. AO, as per the trading account prepared by her in the assessment order. Thus, there was no scope of any addition on this account. It was further submitted that the ld. AO had worked out a difference of Rs.87,94,292/- in the figure of sales alleged to have been found to be recorded in the ledger and other documents found during the course of search and in the details of month wise sales furnished by the assessee during the course of assessment

proceedings. However, it was submitted that the ld. AO had compared the figure of sales found by her up to 27.08.2009, with the figure of sales reported by the assessee up to 31.08.2009 and because the two periods were not equal in length, the entire comparison was wrong. It was submitted that the figure of sales as recorded by the assessee in its books up to 27.08.2009 was Rs.26,82,38,594/- and thus the difference between the sales recorded in the trading account prepared by the ld. AO and recorded in the books of the assessee up till 27.08.2009, was only Rs.29,45,936/- and even this could be reconciled, once the source of the figure taken by the ld. AO was disclosed to the assessee. The assessee also clarified the discrepancies noticed with regard to the Mumbai branch. It was submitted that due to an error in the computer accounting software and improper commands given at the time of taking print out during the course of search, the computer print outs of documents furnished to the assessee along with the notice did not have the correct figures i.e. the transaction details in the trial balance provided was for the period from 1.04.2008 to 27.08.2009 i.e. for about 17 months instead of 05 months and the ledger print out of the sales credit account for F.Y. 2008-09, did not show any balance against any of the transactions, except against the last transaction of the year. It was submitted that the assessee had not received the copy of the CD of computer back up as requested by it. The ld. CIT(A) forwarded the submissions of the assessee to the ld. AO for his examination and comments. The ld. AO submitted that no satisfactory reply regarding the difference of sales value, as per register and as per computer, was provided by the assessee and the assessee had also failed to substantiate its claim as to how the improper command was given. It was submitted that the assessee was trying to divert discrepancies to some computer back up, but computer back up was a kind of copy of the original figures which were under the possession of the assessee and the assessee was not relying on the actual figures maintained on his computer. Therefore, since the ld. AO had relied on documents

found during the search, the assessee's contention could not be accepted. In response to this remand report, the assessee reiterated that the ld. AO was silent about the source of figures of sales and purchases taken by the ld. AO to prepare the trading account reflected in her assessment order. The ld. AO had also not responded to the re-casted trading account prepared by the assessee on the basis of its books of accounts, which were also produced during assessment proceedings. It was submitted that the assessee was not in a position to know and explain as to what back up was taken by the search party from the computer of the assessee and the ld. AO was also silent with regard to the same. Finally, it was submitted that there is not an iota of evidence about alleged suppressed sales and since the assessee had disclosed a profit of Rs.66,96,49,454/-, there could be no justification to allege suppression of sales of only Rs.87,94,292/-. Therefore, the addition was required to be deleted. The ld. CIT(A) observed that the assessee had raised questions on the source of figures of sales and purchases recorded by the ld. AO while preparing the trading account and the ld. AO had not answered the question relating to this issue in the remand report. The assessment order was also silent with regard to the source. The ld. CIT(A) observed that the assessee had stated that the purchases for the period in question was Rs.23,27,37,631/- as against Rs.23,10,59,878/- taken by the ld. AO while the sales were at Rs.26,82,38,594/- against sales of Rs. 26,52,92,658/- taken by the ld. AO. Furthermore, the gross profit declared by the assessee was Rs.1,40,08,718/- as against the GP of Rs.1,27,40,535/- worked out by the ld. AO. The ld. CIT(A) further observed that the assessee had pointed out that the discrepancy was on account of the fact, that the ld. AO had taken the figures up to 31.08.2009 while comparing the seized material with the regular books while the comparison should only have been up to 27.08.2009 i.e. the date of the search. He noted that the assessee had submitted, that if such corresponding date had been taken, the difference would only have been

Rs.29,45,936/- and since the assessee had shown excess sales of Rs. Rs.29,45,936/- in its books, it could not be a case of suppression of sales. After considering all these facts, the Id. CIT(A) held that the Id. AO committed a mistake by comparing the figure of sales up to 27.08.2009 with the figure of sales submitted by the assessee up to 31.08.2009 and the excess of Rs.29,45,936/- could not be treated as suppression of sales. It was further observed, that the Id. AO had not mentioned the working of sales amounting to Rs.26,52,92,658/- or the sources thereof. He, therefore, found himself incapable of agreeing with the Id. AO to adopt the figures of purchases and sales taken in the trading account prepared her. The Id. CIT(A) pointed out that even the differences pointed out by the Id. AO relating to Mumbai branch went against her findings in the assessment order, because the assessee had declared more sales in its regular books than in the figures recorded by the Id. AO. In this background, he held that an addition of Rs.87,94,292/- on this account could not be sustained. However, he acknowledged the fact that the assessee could not properly explain certain discrepancies regarding sales at Ahmedabad for the month of April, 2009 and held that it was not possible to overlook this fact. Therefore, in order to take care of such discrepancies, he rejected the books of accounts under section 145(3) to this extent and made an addition of Rs.1,00,000/- on this account, thereby giving the assessee relief of Rs.86,94,292/-.

3. The second issue in the Department's appeal is the decision of the Id. CIT(A) to delete an addition of Rs.2,66,73,629/- on account of unaccounted purchases, without appreciating that the disallowance had been made after considering the seized material and the details of which had been discussed in the assessment order. The assessee, in its cross objection, has supported the order of the Id. CIT(A). The facts of the case are that a, "register of details of goods sold against tax invoices" (Form-C) for the F.Y. 2009-10, was seized from the factory premises of M/s Kesarwani Zarda Bhandar and a goods receipt register was impounded from the

premises of M/s Kesarwani and Co. (Assessee) from Purna, Bhiwandi, District-Thane. The Id. AO observed, that the register of goods sold against tax invoices (which was marked as Annexure A-24 of Panchnama in the case of M/s Kesarwani Zarda Bhandar) had certain goods sold by M/s Kesarwani Zarda Bhandar, which had not been shown by the assessee firm, in the goods receipt register impounded from the assessee, marked as Annexure A-2. The Id. AO made a tabular representation in her assessment order, of the sales made by M/s Kesarwani Zarda Bhandar to the assessee and the goods received by the assessee from M/s Kesarwani Zarda Bhandar. These were in respect of the Mumbai branch of the assessee firm. On comparing the two registers, the Id. AO found that sales made by M/s Kesarwani Zarda Bhandar through Invoice Nos. 23,40,48,51 and 62, had not been shown as purchases in the register marked as Annexure A-2 and the total of such sales worked out to Rs.1,71,64,492/-. Apart from the above, the Id. AO also noticed that certain purchases that had been shown by the assessee firm, did not match with the sales description of the same amounts by M/s Kesarwani Zarda Bhandar, because in such purchases, the invoice numbers were different. She represented the same in her assessment order in tabular form and computed the value of the above purchases, under the category of mismatch, at Rs.2,45,81,902/-. The Id. AO held that such purchases had not been recorded in the books of the assessee firm in the same manner as sales were reflected in the books of M/s Kesarwani Zarda Bhandar. The Id. AO further observed, that sales through Invoice Nos.3/130, 3/134 and 3/135 dated 23.07.2009, 30.07.2009 and 30.07.2009, amounting to Rs.95,09,136/- by M/s Kesarwani Zarda Bhandar, as per Annexure A-24,, had not been shown as purchases by the assessee at Purna, Bhiwandi through matching invoices. He observed that the invoice numbers used by the assessee firm were different and that, in the case of M/s Kesarwani Zarda Bhandar, the matching invoices corresponded to sales made to other firms and not to M/s Kesarwani and Co. at Purna, Bhiwandi. The value of

such sales was computed at Rs.4,42,000/-. On the basis of these, the ld. AO asked the assessee to show cause as to why the addition of Rs.1.71.64.492/-, should not be made, by treating the same as unaccounted purchases- on account of sales made by M/s Kesarwani Zarda Bhandar which were not found recorded as purchases by the assessee. In response, it was submitted that two separate set of invoices was prepared by M/s Kesarwani Zarda Bhandar, Sahson, Allahabad. One was for the Central Excise called the excise invoice and the other was for Sales Tax purposes which were known as the tax invoice. It was submitted that the description and final value of goods in both the invoices, remained the same. It was further submitted that when the goods were received, these purchases were recorded on the computer system at two places; one at Purna Godown and the other at Andheri East, Mumbai and the complete stock details relating to purchases and sales had been recorded at both places. With regard to the allegation of purchases amounting to Rs.1,71,64,492/- not being recorded in the manual register marked as Annexure A-2, it was submitted that the same was maintained by the employees for memory only. However, for making entries on the computer system, the entries were made from the purchase vouchers and such, no importance could be attached to the manually maintained register. It was submitted that all the purchases had been entered on the computer system and the backup of data on the computer system had been taken by the search party, as per Annexure A-1 of Panchnama of the premises at 9/10, Sheetal Apartment, Andheri East, Mumbai. The assessee had produced the computer printout of purchases register stated above, before the ld. AO during the assessment proceedings. It was further submitted that employees would get changed and sometimes they entered excise invoice number and at other times sales tax invoice number in the receipt register. However, the description in final value of the goods never changed. To demonstrate that, the assessee had produced before the ld. AO, photocopies of the tax invoices as well as the excise

invoices, in respect of these unmatched purchases. The ld. AO rejected the above explanation, stating that the invoices and challans were not supported by evidences of transportation and that such transfer invoices/challans, were not found during the search. Only photocopies of bilty had been produced. The ld. AO also raised questions with regard to the means of transportation of these purchases pointing out that while Truck No. U.P. 70 X 9761 was registered in the name of the assessee, payments in respect of the same by Ms Kesarwani Zarda Bhandar , were being made in the name of M/s Amritsar Transport and thus bogus expenses were being claimed under this head by M/s Kesarwani Zarda Bhandar. She, therefore, concluded that no goods were sent through the transporter from Sahson to Mumbai. She further questioned the diesel expenses claimed with regard to the Trucks owned by the assessee and the depreciation by WDV method, on the grounds that the Trucks had been let out to another agency. Finally, the ld. AO made an addition of Rs.2,66,73,629/- and even though she did not give the breakup of the same, the ld. CIT(A) deduced that, of this amount, Rs.1,71,64,492/- were on account of purchases not recorded in the register when compared to sales by M/s Kesarwani Zarda Bhandar, while Rs.95,09,136/- was on account of invoice numbers of M/s Kesarwani Zarda Bhandar and the assessee firm that did not match and were found to be made to other parties. Thus, he observed that no additions have been made with regard to the mismatch of purchase invoice amounting to Rs.2,45,81,902/- and only three purchases worth Rs.95,09,136/- out of such purchases, have been deemed fit to be added. In response, the assessee reiterated its arguments before the ld. CIT(A) regarding the reasons for the different entries in the books of accounts maintained in the computer system and the goods receipt register that was manually kept at the premises. It further submitted that in Annexure-A-24 of M/s Kesarwani Zarda Bhandar, the invoice number mentioned was the tax invoice whereas in Annexure-A2 of M/s Kesarwani and Co. the invoice number mentioned

was the excise invoice. However, both the invoices were for the same description and value of goods. Thus, no adverse inference could be drawn with relation to purchases amounting to Rs.95,09,136/- by the ld. AO, because all these were recorded in the books of accounts of the assessee. It was further argued that if the transactions recorded in the Annexure A-24 of M/s Kesarwani Zarda Bhandar were compared with the data maintained in the computer system, the backup of which had been taken by the search party as per Annexure-1 of Panchnama dated 27.08.2009, there would be no mismatch whatsoever. The copy of the computer-generated purchase register of purchases from M/s Kesarwani Zarda Bhandar, Sahson, Allahabad had been submitted before the ld. AO and was being submitted before the ld. CIT(A) which showed that all the purchases had been recorded and so there was no question of treating purchases amounting to Rs.1,71,64,492/- as purchases made outside the books of accounts. With regard to the observations and comments relating to Trucks of the assessee that were given on hire, it was submitted that these trucks had been purchased in F.Y. 2003-04 and before; hiring charges on these trucks had been shown and credited by the assessee in the profit and loss account for the respective years and accordingly, depreciation on these trucks had been claimed on written down method in the books of accounts for the respective years. The submission of the assessee was forwarded to the ld. AO for his comments. The ld. AO rejected the same calling them an afterthought. He submitted that the assessee had not relied upon the original data (of which CD backup was taken during search) during the assessment proceedings and it was only now that copy of print out of purchase register had been furnished by the assessee, which could not be relied upon. The assessee had admitted that the goods receipt register maintained manually was incomplete and therefore, the contention of the assessee was liable to be rejected. Upon receipt of the remand report, the assessee submitted that it was not clear from where the ld. AO had obtained the figure of

Rs.2,66,73,629/-; that all purchases alleged to be unaccounted had been duly incorporated in the purchase accounts of M/s Kesarwani and Co., which could be considered. The Id. AO, in his remand report, was silent about the existence of two types of invoices – tax invoice and excise invoice and had not made any comment on the correctness of the purchase register submitted by the assessee from the original copy of the computer backup. The Id. AO had also not made any comment on the computer printout of ledger accounts of purchases of M/s Kesarwani Zarda Bhandar, Sahson, as appearing in the audited books of accounts of Kesarwani and Co. at Andheri East, Mumbai, that had been submitted by the assessee from the original of the backed up computer. Furthermore, it had submitted photocopies of Annexure A-2 and Annexure-A 24, that were referred in the assessment order and pointed out that up to Sr. No. 75 of the invoice serial issued by supplier M/s Kesarwani Zarda Bhandar, relating to purchases made by the assessee, the serial number of tax invoice and excise invoice for the same transaction and sale of goods were the same. However, thereafter, there was a variation because for certain transactions like sale of goods i.e. for sale of scrap (used packing materials-cartons) of non-excisable goods by M/s Kesarwani Zarda Bhandar, no excise invoice was required to be issued by M/s Kesarwani Zarda Bhandar, but only a tax invoice was required to be issued. During the F.Y. 200-10 (i.e. upto 27.08.2009) four such transactions of sale of scrap had been made by M/s Kesarwani Zarda Bhandar. Enclosing the copy of tax invoices of sale of scrap upto 27.08.2009, the assessee argued that the difference in the sales tax and excise invoice numbers recorded by M/s Kesarwani Zarda Bhandar and M/s Kesarwani and Co., was only on this account of this. Consignment notes relating to goods sent by supplier, M/s Kesarwani Zarda Bhandar, confirming supply of goods to the assessee firm were also enclosed and a statement of opening stock, purchases, sales and closing stock of all three units of the assessee along with the audit reports in Form 3CD, were enclosed. It was

submitted that since all transactions of purchase and sales were supported by authentic invoices, there was no scope for disallowance. The ld. CIT(A) went through the reply of the assessee and observed that in respect of first part of the addition which was in respect of Rs.1,71,64,492/-, the logical conclusion of the AO's order was that the goods had not been purchased by the assessee, but the same had been added as unaccounted purchases which was contradictory because unaccounted purchases were those which had actually been purchased by an assessee but not recorded in the books of accounts. With regard to the second part of the addition, the ld. AO had not denied the purchases of Rs.95,09,136/- but had doubted the genuineness of the purchase, since invoice numbers used by the assessee firm differed from invoice numbers issued by M/s Kesarwani Zarda Bhandar, in whose case they were found to be issued to some other party. The ld. CIT(A) concluded from the same that the inference was that may be the assessee purchased goods from some other party or that the assessee did not purchase any goods from M/s Kesarwani Zarda Bhandar. But ultimately, she made the addition turning the amounts as unaccounted purchases. Pointing these out, the ld. CIT(A) held that the findings of the ld. AO was full of contradictions. But he thereafter proceeded to record the fact that essentially, she was not satisfied with the genuineness of the purchases shown by the assessee firm and proceeded to examine how far the same was justified. He concluded that the undisputed fact was that the head office had taken the figures of purchases from the details mentioned on the computer system and such purchase ledger had been produced by the assessee before the ld. AO during assessment proceedings. Furthermore, the audit report and final accounts had been prepared by the assessee from the data maintained on the computer system at Purna, Bhiwandi. Even the ld. AO had based the assessment of total income on the balance-sheet and P & L account filed along with the return of income. Therefore, the books of accounts, on the basis of which the audit report

were prepared, could not be discarded altogether. The Id. CIT(A) observed that if the assessee did not make the purchases of Rs.1,71,64,492/- against the invoices recorded in the books of M/s Kesarwani Zarda Bhandar, then its quantitative tally will reflect some flaws. He pointed out that stock statement had been submitted by the assessee along with valuation which showed the opening stock, rate, opening value, purchases in terms of quantity, purchases in terms of value, sales in terms of quantity, sales in terms of value, closing stock in terms of quantity and value against the different items dealt with by the assessee concerned. He pointed out, that these exhaustive details clearly showed that there could not be sales without corresponding quantity of purchases. He, therefore, concluded that the cross checking of value and quantity, leads to the conclusion that the assessee had made purchases to the tune of Rs.1,71,64,492/-. He further observed that the payments had been made to M/s Kesarwani Zarda Bhandar by banking channels or book entries. He observed, that the Id. AO had simply brushed aside the explanation offered by the assessee as an afterthought and given importance to the seized register only, but the Id. AO had been silent on the authenticity of the audit report, balance-sheet and profit and loss account, which had been prepared by the assessee and audited by auditor, collecting the data from the accounts maintained on the system. Holding that the facts as borne out from the maintenance of purchase ledger on the computer system from which the final accounts were ultimately prepared, documents relating to transportation, payments to M/s Kesarwani Zarda Bhandar against the purchases through banking channels or book entry and complete details of quantitative tally with details of valuation, clearly indicated that the findings of the Id. AO that the purchases amounting to Rs. 1,71,64,492/- were out of books, was completely incorrect. With regard to the addition of Rs.95,09,136/-, the Id. CIT(A) noted the submission of the assessee that the in register marked A-24 M/s Kesarwani Zarda Bhandar had recorded sales tax invoice number but in the goods

receipt register impounded from Purna, Bhiwandi, the invoice number recorded was the Central Excise invoice number. He also recorded the reason for difference in serial number of tax invoice and excise invoice i.e. that there was certain sale of scrap materials which were non-excisable. The Id. CIT(A) verified the same from the invoices presented and found that the description contained in certain sales tax invoices, was identical to excise invoices recorded in the goods receipt register, even though their numbers did not match. He concluded that the transactions recorded by M/s Kesarwani Zarda Bhandar and M/s Kesarwani and Co. matched in every respect, except the invoice number and the reason for the mismatch had been explained by the assessee. Therefore, he held that the addition of Rs.95,09,136/- made by the Id. AO was on account of confusion and if the Id. AO had tried to examine the matter in detail, she would have found the reason for the difference in the invoice numbers and not made this addition. Therefore, he found this addition fit to be deleted and accordingly deleted the entire addition of Rs.2,66,73,629/-.

4. Ground No. 3 of the Department's appeal relates to reducing the addition of Rs.2,08,367/- under diesel expenses to Rs.1,00,000/- without appreciating the fact that a transporter was used only for diversion of income and making of bogus expenses under the head freight. In ground no. 3 of its C.O., the assessee supported the deduction of the addition to Rs.1,00,000/- by the Id. CIT(A). However, in ground no. 2 of appeal in ITA No.393/Alld/2014, the assessee opposed the retention of this addition along with the other additions sustained by the Id. CIT(A), with respect to other disallowances made by the Id. CIT(A), which we shall take up later.

5. The facts of the case are that the Id. AO made an addition of Rs.10,08,367/- on account of diesel expenses because the assessee could not produce the log book for the running of trucks. The issue had been discussed by the Id. AO while dealing with the addition of Rs.2,66,73,629/- on account of bogus purchases. The Id. AO asked the assessee to furnish details in respect of trucks, hiring with reference to log

books, expenses related thereto, copy of hiring agreement, if any, and the details of claim of depreciation and TDS. The assessee submitted before the Id. AO that it owned three trucks during the year which was attached to a transporter on hire basis. Depreciation was claimed on WDV method. On consideration of various details submitted by the assessee, the Id. AO noticed that M/s Kesarwani Zarda Bhandar had shown transportation of goods through Amritsar Transport Company by a truck which was stated to be owned by the assessee and observed that this raised many questions regarding how the goods had been received by the assessee. The Id. AO held that the name of the transporter had been used for claiming bogus expenses under the head freight, by the sister concern. She, therefore, disallowed diesel expenses amounting to Rs.10,08,367/-. While doing so, she pointed out that both the assessee and M/s Kesarwani Zarda Bhandar had their units at Mumbai and therefore, the transportation of goods was bogus. In response, the assessee submitted that the assessee had only offered explanation with regard to trucks that had been given by it on hire and not about the trucks that were owned by the assessee and were being used for its own purpose. It enclosed a list of trucks that were owned by the assessee and used by it for its own purposes (12 in all of which 03 were given for hire) and also submitted that the diesel expenses were on account of these vehicles. The submission was forwarded to the Id. AO for his examination wherein the Id. AO noted this new explanation offered by the assessee, but submitted that the assessee had not been able to produce the log books and could only produce self-made vouchers. Therefore, since the assessee had not submitted any evidences which could show the utilization of its vehicles for transportation of its goods, the disallowance was justified. In response to this remand report, it was submitted that vouchers relating to diesel expenses had been test checked, found to be correct and recorded in the books of accounts maintained by the assessee in the normal course of business. Therefore, the disallowance of the entire amount was

arbitrary and unjustified. Now, it was submitted that out of 14 commercial vehicles only two were given on hire and the rest were run by the assessee for its own business. Against the 02 vehicles given on hire, income of Rs.1,20,000/- had been offered for tax. The remaining vehicles diesel expenses were absolutely to be incurred by the assessee and since such expenses had not been proved as bogus or inflated, they could not be legally disallowed. Therefore, considering the scale of operations of the assessee, the diesel expenses amounting to Rs.10,08,367/- were very reasonable and genuine to be allowed.

6. In Ground No. 4, the Department has contested the decision of the Id. CIT(A) to delete the addition of Rs.2,95,217/- made by the Id. AO on account of unexplained expenditure. The facts of the matter are that the partners of the firm makes expenditure even without availability of cash in the Deshawar account. It was also noted that sometime the cash is withdrawn from the Deshawar account without the earlier withdrawals having been spent. She inferred that such practices were evidence for undisclosed income. She prepared a table in the assessment order to point out such so called discrepancies and thereafter, she added back the same in the hands of the assessee. The assessee explained that maintaining Deshawar account was a business expediency on the lines of practice followed year after year. It was further submitted that there were some inadvertent mistakes in the ledger of the Deshawar account with regard to opening balance, but the Id. AO did not accept the contention of the assessee and held that it was manipulating the account by claiming bogus purchases and inflated expenses. She raised the question of the need of maintaining of the Deshawar account and held it was only a means of generating unaccounted money. In appeal, the assessee submitted that the Deshawar account had been maintained by the assessee overtime and recognized by the Department year after year and through this account, regular business expenditure was made under different heads. It was submitted that this was basically an interest account

being used for various cash payments. Cash was transferred to this account through partners or representatives from time to time to make cash payments. At times, when there was excess cash, that was also transferred to Deshwar account for security and various other reasons, without exhausting the earlier transfers. Maintaining this account was a business policy and system which had been approved by the income tax department in the past. Therefore, it should not have been disallowed as per the principle of consistency relating the inferences drawn by the ld. AO for unexplained expenditure / utilization for non-business or personal purposes. It was submitted that the allegations were totally incorrect and neither based on material or any evidence indicating the utilization of Deshwar account for any non-business purposes by any of the partners. It was further submitted that there was an opening balance of Rs.3,02,948/- as on 1.04.2009 which was not mentioned in the ledger at the time of seizure by the Department. However, if the same was considered, then there was no unexplained payment through Deshwar account without there being sufficient availability of cash. This could be verified from the audited balance-sheet. The submission of the assessee was forwarded to the ld. AO for his comments. The ld. AO submitted that it was evident from the print out taken from the CPU marked as KZ-1, that in the balance-sheet and P & L account, the figure of expenses was much less than the expenses claimed. So it was established that the cash was utilized by the partners and bogus expenses were debited. In response to this remand report, the assessee submitted that the matter had been considered by the ld. CIT(A) in the appeal of M/s Kesarwani Zarda Bhandar for the A.Y. 2010-11 and the additions made by the ld. AO had been deleted. The Ld CIT(A) held that the ld. AO has not been able to show that the balances with the partners were out of unaccounted sources of income. Nor had the ld. AO been able to show that these balances represent bogus expenses. The ld. CIT(A) brought out the purpose of the Deshwar account and pointed out that the

ld. AO had not rebutted the submission of the assessee on the practical aspect of maintaining the Deshwar account. Accordingly, he deleted the addition.

7. In Ground No. 2 of its appeal, the assessee has also agitated the decision of the ld. CIT(A) to retain an addition of Rs.63,866/- on account of Surti expenses, Rs.9,984/- on account of Telephone expenses, Rs. 7,257/- on account of vehicle expenses, Rs.49,486/- on account of depreciation expenses and Rs.7,000/- on account of repair and maintenance expenses. These additions were made by the ld. AO on account of the fact that marketing and petrol expenses (out of surti expenses) were not fully vouched or were claimed through self-made vouchers and therefore, did not yield themselves to verification. The assessee submitted that the expenditure claimed was genuine and incurred in the normal course of business exclusively and necessarily for the business purposes of the assessee and were recorded in the regular books maintained by assessee and supported by vouchers. The ld. AO had also failed to specify any specific deficiency in the maintenance of books of accounts but made vague / general remarks that they were not fully vouched. Looking to the nature and size of the business, the Surti expenses amounting to Rs.12,77,328/- were very reasonable and genuine and no disallowance was called for. The ld. CIT(A) observed that the payments in respect of the claim of Surti expenses were made by way of cash and these self-made vouchers were not amenable to verification. Therefore, the possibility of leakage could not be ruled out and he sustained the addition to 50% to the disallowance i.e. Rs.63,866/-. With regard to telephone expenses, vehicle expenses and depreciation expenses, the ld. AO observed that personal utilization of the telephone and vehicles could not be ruled out by the assessee therefore, the ld. AO made a disallowance @ 20% of the claim. The ld. CIT(A) observed that while the assessee had contested such additions as being based on conjectures and surmises, he found that it is not as though it had maintained a call register for all telephone calls and log book for the use of cars to

verify the purposes of telephone calls made and journeys undertaken. Therefore, the personal usage could not be ruled out and to that extent, the ld. AO was correct but he in the interest of justice, he restricted the addition to 10% of the claimed amount and gave relief for the rest. With regard to the repair and maintenance expenses, the ld. AO observed that a sum of Rs.91,851/- had been claimed as repairs and maintenance expenses on account of vouchers that were produced being self-made. He, therefore, made a disallowance of 15% of this amount to Rs.13,778/-. The assessee submitted that some expenditures were inevitable and there was no need to doubt the same as the expenditure was genuine, incurred in the normal course and only for the purposes of business of the assessee. However, the ld. AO had failed to specify any specific deficiency in the maintenance of books of accounts or vouchers. The ld. CIT(A) observed that in many cases issue of external vouchers was not practical. However, he observed that the genuineness and authenticity of payments by way of cash without external vouchers could not be verified. He, therefore, sustained the addition to the extent of Rs.7,000/-. The assessee in para 5 of its cross objection, has also opposed these additions.

8. Ground No.3 of the assessee's appeal relates to disallowance of interest of Rs.32,116/- to non-bearing sundry creditors without considering the facts of the case and the decision of the courts on this issue. This ground was subsequently not pressed by the ld. AR before us and therefore does not require further discussion.

9. Both the Department and the assessee have come in appeal before us as above and presented their arguments with respect to the ld. CIT(A's) order. Shri. Neel Jain, ld. CIT DR (hereinafter referred to as the 'ld. CIT DR') appeared on behalf of the Revenue. He took us through the order of the ld. AO and pointed out that the ld. AO had brought materials on record to show that sales of Rs.87,94,292/- were being suppressed. It was submitted that on perusal of the stock that was found on the date of search, it was observed that on certain dates, the sale of goods as per the

cash memos on challans were more than what was recorded in the stock register. Some examples of the same had been highlighted by the ld. AO in his assessment order. On the basis of sales and purchases as shown by the assessee and found from seized materials, the trading account of the assessee firm had been drawn up by the ld. AO, which on comparison with the sales declared during the course of assessment proceedings showed a difference of Rs. 87,94,292/-. It was submitted that since the discrepancy had been worked out on the basis of materials seized during the search, the ld. CIT(A) was not justified in deleting the same and reducing it to Rs.1,00,000/-. With regard to the disallowance of Rs.2,66,73,629/-, which had been deleted by the ld. CIT(A), the ld. CIT DR took us through the assessment order in order to show that the ld. AO had brought sufficient material on record to indicate that the sales shown by M/s Kesarwani Zarda Bhandar had not been reflected in the books of accounts of M/s Kesarwani and Co, and furthermore that some of the goods stated to have been received by M/s Kesarwani and Co., had been found to be sold to other parties, as per the invoices issued by M/s Kesarwani Zarda Bhandar. Therefore, there were good reasons to make this disallowance. With regard to the disallowance of diesel expenses, the ld. CIT DR pointed out that in the absence of log books and proper vouchers, the expenses could not be proved and therefore, the expenses were justifiably disallowed. Similarly, on account of Deshawar account, he submitted that funds had been spent without balance in the accounts and therefore, this was only a means of bogus expenditure. Finally, with regard to the estimated disallowances made by the ld. CIT(A), he pointed out that these had either been made on account of the fact that the assessee had not maintained proper documentation to show utilization exclusively for the purposes of business, or had not maintained proper vouchers to justify the expenses in itself. It was, therefore, submitted that the disallowance made by the ld. AO were justified. With regard to the addition on account of disallowance of interest, it was submitted that since the

ld. AR of the assessee was not pressing this ground, no arguments were required from the side of the Revenue.

10. On the other hand, Shri. Praveen Godbole, C.A. (hereinafter referred to as the 'ld. AR') appeared on behalf of the assessee and argued the case. It was submitted that the order of the ld. CIT(A) was well reasoned order after considering all the facts of the case. The ld. AO had not disclosed the source of the sales and purchases as computed by her in the ledger shown in the assessment order. On the contrary, the assessee had re-casted the trading account on the basis of the figures shown by it in the audited accounts and that showed that it had shown more purchases and more sales and also greater profit than what was reflected in the trading account cast by the ld. AO. The fact that there was a difference between the figures of sales shown in the trading account cast by the ld. AO and the figure of sales as reflected in the assessee's books of accounts was not a ground to suggest that the sales were suppressed because the return had been filed on the basis of the figures reflected in audited accounts and a larger figure of sales had been shown in the said audited accounts in addition to a greater gross profit. Furthermore, it was argued that the ld. AO had made a wrong comparison, because she had compared figures up to to 27.08.2009 (in the seized material) with the figures submitted up to 31.08.2009 during the assessment proceedings. Hence, on this account alone, the mismatch was evident. It was submitted that if the corresponding dates were compared then the difference was only Rs.29,45,936/- and this could also be reconciled if the ld. AO had disclosed the source from which she had prepared the figures of purchases and sales. It was also submitted that the print outs that the assessee had been confronted with contained erroneous figures because there were the result of improper command given to the computer based accounting software. This was evident from the fact that the trial balance was for 17 months instead of 05 moths and the credit sales account did not show balance against any transaction. In

the circumstances, the addition could not be sustained. With regard to the disallowance of Rs.2,66,73,629/-, it was submitted that the purchases from M/s Kesarwani Zarda Bhandar were recorded in the computerized accounts and the backup of the data on the computer system was taken by the search party as per Annexure A-1 from 9/10 Sheetal Apartment, Andheri East, Mumbai. When the invoices of M/s Kesarwani Zarda Bhandar were compared with this computerized purchase register, there was no discrepancy whatsoever. The discrepancy was on account of the fact that certain employees had maintained a manual register for their own memory, which was incomplete therefore, he argued that no adverse inference could be taken on this basis. Id. AR further argued that the mismatch in invoice numbers between the invoices issued by M/s Kesarwani Zarda Bhandar and received by M/s Kesarwani and Co., was on account of the fact that certain sales tax invoices were issued by M/s Kesarwani Zarda Bhandar for sale of scrap (which was not an excisable commodity) and it was the sales tax invoices that were entered in the books of Kesarwani Zarda Bhandar, whereas the excise invoices were entered in the manual receipt register maintained by the assessee firm. Hence, there was mismatch because different sales tax invoice numbers were written in the account of M/s Kesarwani Zarda Bhandar as compared to excise invoice numbers of M/s Kesarwani and Co,. However, the Id. CIT(A) had rendered a finding after deep examination, that there was no discrepancy in the quantities or value and therefore, the order of the Id. CIT(A) was fit to be upheld. With regard to diesel expenses, it was submitted that the assessee owned many trucks (14 in total) of which only three had been given for hire. Therefore, the diesel expenses were justified as they were made for running of the assessee's own trucks that were used wholly and solely for business purposes. With regard to additions on account of Deshawar accounts, it was submitted that the Id. CIT(A) had clearly pointed out that the Id. AO had not been able to prove that the balance of cash in the hands of the partners of

the firm and expenditure without balance of cash in the Deshwar accounts were bogus expenditure. He had recorded his findings that when business is run by the partners of the firm, in view of practical difficulties and realities, the partners could incur expenditure out of their own pockets to meet the exigencies and later take money to square up the accounts. Furthermore, the disallowances could only be made by examining the relevant cases of expenditure. The Id. AO had not made out a case that balances with partners were out of unaccounted sources of income of the firm. Therefore, the case of the Id. AO that balances represent bogus expenditure was made on the basis of conjectures and surmises. With regard to estimated disallowances sustained by the Id. CIT(A), it was submitted that the expenditure on Surti expenses and repair and maintenances were regularly made, were solely for business purposes and there was no finding that any of the expenditures were either not genuine or not made for the purposes of business of the assessee and therefore, there was no basis to sustain an ad hoc disallowance. With regard to disallowances made out of telephone expenses and vehicle expenses and corresponding reduction of depreciation expenses, it was submitted there was no finding that the partners had utilized the telephones or the cars of the firm for their personal use and therefore, the disallowance of these expenditures were completely unjustified. It was, therefore, prayed that while the deletions made by the Id. CIT(A) were supported in the cross objection, the assessee in its appeal was contesting even the amounts that were sustained by the first appellate authority.

11. We have duly considered the facts and circumstances of the case. At the very outset, it is pertinent to point out that this is an assessment under section 143(3), covering the final year of the search, where no previous assessment or processing has taken place, since the return was filed after the date of search and therefore, the entire field is open to the Id. AO and the Id. CIT(A) for examination and for making of disallowances, where their examination does not yield results to

their satisfaction. With these comments, we may examine the individual additions as decided by the ld. CIT(A).

12. The first ground is with regard to sustenance of an addition of Rs.1,00,000/- out of an addition of Rs.87,94,292/- made on account of suppressed sales. We have gone through the order of the ld. CIT(A) and we have also seen the order of the ld. AO. The ld. AO has prepared a trading account on the basis of seized material, but she has not specified at any point of time as to what this seized material was i.e. she has not identified the seized material. Therefore, the figures of purchases and sales as prepared by her, cannot be cross verified to determine their correctness or otherwise. Furthermore, it is observed that the return has been filed on the basis of the regular books of accounts of the assessee which have been audited, and the figures of purchases and sales that had been entered in those books, both for Mumbai branch and overall, are more than the figures of purchases and sales reflected in the trading account of the ld. AO. Even the figure of gross profit declared by the assessee for the period, is more than the gross profit reflected in that trading account. Therefore, a case of suppression of sales is not made out, because the returns have been filed, not on the basis of this unidentified seized material, but on the basis of the books of accounts which declares more purchases, more sales and more profit. Furthermore, the ld. AO has clearly erred in comparing two incomparable periods, as a result of which the quantum of addition becomes incorrect. As has been pointed out by the assessee, where the figures as on 27.08.2009 to be compared, the excess recorded in the assessee's books is only Rs.29,45,936/-. Furthermore, since this is in excess of, and not less than the amount recorded in the said seized material, no case of suppression of sales is made out on this account. We, therefore, are in agreement with the findings of the ld. CIT(A) and we uphold his decision to delete additions to the extent of Rs.86,94,292/- on this account. With regard to the decision of the ld. CIT(A) to sustain an addition of

Rs.1,00,000/-, we observe that the Id. CIT(A) has clearly pointed out that the assessee has not been able to submit any convincing explanation to the discrepancies noted in its books of accounts for the branch office at Chandkheda at Ahmedabad for the month of April, 2009. Considering the quantum of discrepancies, he has deemed it fit to disallow a sum of Rs.1,00,000/- after rejecting the books of accounts under section 145(3) to this limited extent. We do not see any infirmity in the order of the Id. CIT(A). As the first appellate authority, he has the power to step into the shoes of the Id. AO and do what the Id. AO did not do. In this particular case, since the assessee could not satisfy the Id. CIT(A) with regard to the discrepancies in its accounts maintained at Chandkheda, Ahmedabad, his decision to reject those accounts and sustain an addition of Rs.1,00,000/- on this basis, to prevent leakage of Revenue is upheld. Ground No. 1 of the Department's and Ground No. 1 of the assessee's appeal are both dismissed while Ground No. 1 of the assessee's cross objection is allowed.

13. With regard to the decision of the Id. CIT(A) to delete the addition of Rs.2,66,73,629/- on account of unaccounted purchases, we observe that the Id. CIT(A) has passed a detailed order, in which he has thoroughly analyzed the findings of the Id. AO in the light of the submissions of the assessee and he has also personally verified the invoices, before coming to a conclusion that the submissions made by the assessee are justified. We also observe that there is no discrepancy between Annexure-A 24 of M/s Kesarwani Zarda Bhandar and the computerized books, of which CD backup was taken as Annexure A-1 of Panchnama dated 20.07.2009 at 9/10 Sheetal Apartment, Andheri East, Mumbai. The assessee has presented these computerized accounts before the Id. AO and the Id. CIT(A). It is on the basis of these computerized accounts, that the final accounts of the assessee have been drawn up. The Department had a backup of these computerized accounts and could easily have cross checked as to whether what was being submitted by the

assessee was actually contained in the computer backup marked A-1 or not. This, the Id. AO has not done. Instead, he has simply disregarded the said computerized accounts. This, in our opinion is not correct. The backup of the computerized data is as much a part of the seized material as the manual receipt register and considering that the final accounts were prepared on the basis of the computerized accounts, where all these sales made by M/s Kesarwani Zarda Bhandar were reflected, we are of the opinion that addition of Rs.1,71,64,492/- on the basis of entries missing in the manual receipt register cannot be held to be purchases made outside the books of accounts, if they are entered in the computerized accounts, which were backed up at the time of search. Furthermore, we observe that the sales made by the assessee concern have not been doubted and that no sales can be made without corresponding purchases. Therefore, we are in agreement with the Id. CIT(A) in his decision to delete the addition made on account of purchases to the tune of Rs.1,71,64,492/-. With regard to the addition of Rs.95,9,136/- on account of mismatch of invoices issued by M/s Kesarwani Zarda Bhandar and the invoices entered in the goods receipt register of M/s Kesarwani and Co., we observe that the Id. CIT(A) has examined the issue in depth and come to a finding that the discrepancy is properly explained on account of four extra sales tax invoices issued by M/s Kesarwani Zarda Bhandar, for sale of scrap and packing material and by the fact that while M/s Kesarwani Zarda Bhandar have entered the tax invoice numbers in their registers, the employees of the assessee's firm have entered the excise invoice numbers, in the goods receipt register. The Id. CIT(A) has, after comparing the different numbered invoices demonstrated that they were for the same transaction, both in terms of quantity and quality. Therefore, we are in complete agreement with his decision to delete the addition of Rs.95,9,136/- on this account. Ground No. 2 of the Departmental appeal is accordingly dismissed while Ground No.2 of the assessee's Cross Objection is allowed.

14. With regard to the decision of the Id. CIT(A) to retain an addition of Rs.1,00,000/- on account of diesel expenses because the Id. AO had made the addition of Rs.10,08,836/- on the basis of a wrong presumption that the assessee had only three trucks which were placed on hire, but it was subsequently discovered that the assessee had fourteen trucks, we observe that since the addition was made on a wrong premise, the decision to delete it was in order. However, we also observe, that the Id. CIT(A) noted the failure of the assessee to submit any details with regard to the diesel expenditures, as called for by the Id. AO and therefore, we hold that he was fully justified in sustaining a disallowance of Rs.1,00,000/- on this account, in view of the failure of the assessee to produce log book and proper vouchers for this expense, that could rule out the possibility of leakage. Accordingly, we uphold the order of the Id. CIT(A) in this regard. Ground No.3 of the Department's appeal is dismissed, the claim contesting the retention of Rs.1,00,000/- in ground no. 2 of the assessee's appeal is also rejected while ground no. 3 of the assessee's Cross Objection is allowed.

15. With regard to the Id. CIT(A's) decision to delete the addition of Rs.2,95,217/- made by the Id. AO on account of unexplained expenditure, we are in agreement with the views of the Id. CIT(A) that the Id. AO has not been able to show that the balances with the partners were out of unaccounted sources of income. Nor has the Id. AO been able to show that these balances represent bogus expenses debited to profit and loss account. The disallowance of expenses is, therefore, on account of speculations. The Id. CIT(A) has clearly brought out the purpose of the Deshwar account and pointed out that the Id. AO had not rebutted the submission of the assessee on the practical aspect of maintaining the Deshwar account. We note that the Id. AO has not noticed any bogus expenses from the Deshwar account or in the profit and loss account therefore, the addition made has been rightly been

deleted and we concur with the same. Ground No.4 of the Department's appeal is dismissed while Ground No.4 of the assessee's Cross Objection is allowed.

16. Ground Nos. 5 and 6 of the Department's appeal are general in nature and do not require adjudication.

17. Coming to the assessee's appeal. With regard to the sustenance of disallowance of Rs.63,866/- on account of Surti Expenses and disallowance of Rs.7,000/- on account of repair and maintenance expenses, We observe that the Id. CIT(A) has sustained the disallowance because the assessee was not able to submit any third party vouchers to support the claim of expenditure and that the expenses had been made in cash. Therefore, he held that the nature of the expenses was such that leakage could not be ruled out and verification was difficult. In the circumstances, he allowed deduction of 50% of the amount originally disallowed in the case of Surti expenses and Rs.7000/- out of original disallowance of Rs.13,778/- on account of repair and maintenance. We have considered the submissions of the assessee in this regard. Considering that this is an assessment under section 143(3) and both the Id. AO and the Id. CIT(A) were entitled to satisfy themselves about the completeness and correctness of the assessee's accounts, which the assessee could not fulfill, we are in agreement with the decision of the Id. CIT(A) to disallow a portion of expenditure on account of un-vouched and unverifiable expenses. However, we feel that disallowance of 50% of those expenses is on the higher side. Once, the overall necessity of expenditures under that head are accepted, it would be unfair to hold that the account had been inflated to the extent of 50%, merely because the assessee was not in a position to produce external vouchers for these cash expenses. Accordingly, we reduce the disallowance to 25% of the amount originally claimed and restrict the disallowance to Rs 31,933/- in the case of Surti expenses and Rs.3,500/- in the repair and maintenance expenses. With regard to sustenance of disallowance of Rs.9,984/- out of telephone expenses, Rs.7,257/- out

of vehicle expenses and corresponding disallowance of depreciation of Rs.49,486/- on account of personal use, we observe that during the course of search, no evidence had been found that indicated personal use of either the telephone or the vehicle by the partners. In the circumstances, to assume from the fact that call register or log book had not been maintained, that the vehicles of the assessee firm were used by the partners for their personal purposes is speculative. We do not think that there is sufficient basis for sustaining these additions which have been purely made on surmises and conjectures. Accordingly, we delete the same. Ground No. 2 of the assessee's appeal is accordingly, partly allowed. Ground No. 5 of the assessee's Cross Objection is also partly allowed.

18. Ground No. 3 of the assessee's appeal relates to the disallowance of interest of Rs.32,116/- paid to loan bearing sundry creditors. Since, the ld. AR has not pressed this ground of appeal, it is dismissed as withdrawn. Ground No. 4 of the assessee's appeal is general in nature and does not require adjudication. Ground No.6 of the assessee's Cross Objection also does not require adjudication.

19. In the result, appeal in ITA No. 429/Alld/2014 being the Department's appeal is dismissed, appeal in ITA No.393/Alld/2014 being the assessee's appeal is partly allowed and CO No.24/Alld/2014 arising out of ITA No.429/Alld/2014 is also 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**

*ITA No. 393/Alld/2014*  
*ITA No.429/Alld/2014*  
&  
*C.O. No.24/Alld/2014*  
*M/s Kesarwani & Co.*

Copy forwarded to:

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

By order  
Sr. P.S.