

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“DB” BENCH, AGRA**

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपीलसं./ ITA No.113/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2013-14)**

**&**

**2. आयकरअपीलसं./ ITA No.114/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2014-15)**

**&**

**3. आयकरअपीलसं./ ITA No.115/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2015-16)**

**&**

**4. आयकरअपीलसं./ ITA No.116/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2016-17)**

**&**

**5. आयकरअपीलसं./ ITA No.117/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2017-18)**

**&**

**6. आयकरअपीलसं./ ITA No.118/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2018-19)**

**&**

**7. आयकरअपीलसं./ ITA No.119/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2019-20)**

<b>M/s Mahesh Edible Oil Industries Ltd.</b> 3/14-A, Jungpura-B New Delhi – 110 014.	<b>बनाम/ Vs.</b>	<b>ACIT-Central Circle Agra.</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCM-7102-J</b>		
<b>(अपीलार्थी/Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

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**8. आयकरअपीलसं./ ITA No.157/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2013-14)**

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9. आयकरअपीलसं./ ITA No.159/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2014-15)

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10. आयकरअपीलसं./ ITA No.160/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2015-16)

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11. आयकरअपीलसं./ ITA No.161/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2016-17)

&

12. आयकरअपीलसं./ ITA No.162/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2017-18)

&

13. आयकरअपीलसं./ ITA No.163/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2018-19)

&

14. आयकरअपीलसं./ ITA No.164/Agr/2023  
(निर्धारणवर्ष / Assessment Year: 2019-20)

ACIT-Central Circle Agra.	<u>बनाम/</u> Vs.	M/s Mahesh Edible Oil Industries Ltd. 3/14-A, Jungpura-B, New Delhi – 110 014.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACCM-7102-J</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant /Assessee by</b>	:	Sh. Rakesh Gupta (Adv.), Sh. Somil Agrawal (Adv.), Sh. Shashank Agarwal (Adv.), Sh. Shrey Jain (Adv.) – Ld. ARs
प्रत्यर्थीकीओरसे/ <b>Respondent/Revenue by</b>	:	Sh. Sukesh Kumar Jain, Ld. CIT-DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	13-02-2025
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	25-04-2025

### आदेश / ORDER

#### Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Years (AY) 2013-14 to 2019-20 arises out of separate orders of learned first appellate authority.

However, it is admitted position that the facts as well as issues are substantially the same in all the years. First, we take up cross-appeals for AY 2013-14 which arises out of an order passed by learned Commissioner of Income Tax (Appeals), Kanpur-4, [CIT(A)] on 11-08-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 153A of the Act on 30-12-2021.

### 1.2 The grounds as raised by the assessee read as under: -

1. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order u/s 143(3) / 153A and that too without any basis and without there being any incriminating material found during the course of search.
2. That in any case and in view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and framing the impugned assessment order u/s 143(3) / 153A is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.
3. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in rejecting the books of accounts of assessee u/s 145 and that too without any basis and without appreciating the facts and circumstances of the case.
4. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in referring the matter to the valuation officer u/s 142A and that too without any basis and without appreciating the facts and circumstances of the case.
5. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the adhoc addition of Rs.1,05,67,01,215/- fully as made by Ld. AO on account of alleged bogus purchases u/s 37(1) and has further erred in sustaining the same to the extent of Rs.60,86,59,200/-, more so when no incriminating material was found during the course of search and impugned addition has been made by recording incorrect facts and findings and after rejecting the books of accounts of assessee and without providing the entire adverse material available on record and without providing the opportunity of cross examination of the deponents and without observing the principles of natural justice.
6. That in any case and in view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making addition of Rs.60,86,59,200/- on account of alleged bogus purchases u/s 37(1), is bad in law and against the facts and circumstances of the case.
7. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs.99,56,944/- fully as made by Ld. AO on account of investment made in factory u/s 69B and has further erred in sustaining the addition of Rs.9,77,759/-, more so when no incriminating material was found during the course of search and impugned addition has been made by recording incorrect facts and findings and without providing and entire adverse material available on record and without

providing the opportunity of cross examination of the deponents and without observing the principles of natural justice.

8. That in any case and in view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making addition of Rs.9,77,759/- on account of investment made in factory u/s 69B, is bad in law and against the facts and circumstances of the case.

9. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.8,13,863/-, more so when no incriminating material was found during the course of search and impugned addition has been made by recording incorrect facts and findings and without providing the entire adverse material available on record and without providing the opportunity of cross examination of the deponents and without observing the principles of natural justice.

10. That in any case and without prejudice to the above grounds, additions made in the impugned assessment order are beyond jurisdiction and illegal, also for the reason that such order could not have been made since no incriminating material has been found as a result of search.

11. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order dated 30-12-2021 which is barred by limitation.

12. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned assessment order passed by Ld. AO without there being requisite approval in terms of section 153D and in any case approval, if any, is without application of mind and is no approval in the eyes of law.

13. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 234A, 234B and 234C of the Income Tax Act, 1961.

14. That the appellant craves the leave to add, modify, amend or delete any of the ground of appeal at the time of hearing and all the above grounds are without prejudice to each other.

### 1.3 The grounds as raised by the revenue read as under: -

1. The Ld. CIT(A)-IV, Kanpur has erred in law and on facts in deleting the addition of Rs.44,80,42,015/- out of total addition of Rs.1,05,67,01,2151/- made u/s 37(1) of the LT. Act, 1961, without appreciating the fact that addition on account of 10% of total purchases held to be bogus, was firmly based on incriminating material found during the course of search proceeding as well as independent investigation made by the department and credible inputs from external agencies.

2. The Ld. CIT(A)-V, Kanpur has erred in law and on facts while deleting the addition of Rs.44,80,42,015/- by computing the net profit @ 8% of total turnover, ignoring the fact that the assessee could not prove the genuineness of purchases made by it and the same was held to be bogus on the basis of statement recorded u/s 132(4) of proprietors of entities, who admitted to have provided accommodation entries in lieu of commission. Hence, decision of Ld. CIT(A) to estimate the net profit @ 8% of total turnover in the instant case, is not in accordance with the intent and spirit of section 44AD of the Income Tax Act, 1961.

3. The Ld. CIT(A)-V, Kanpur has erred in law and on facts in directing the AO to verify the investment of Rs. 89,79,185/- out of total addition of Rs.99,56,944/- made u/s 69B of the Act on account of unexplained investment in factory building at Kota, by not appreciating the fact that investment made by the assessee was not disclosed in the books of accounts and AO made addition on the basis of valuation report of DVO.

4. That the order of the CIT(A)-V, Kanpur being erroneous in law and facts be set aside and order of the Assessing Officer be restored.
5. That the appellant craves leave to add alter, adduce or amend any ground or grounds on or before the date of hearing of appeal

1.4 The Ld. AR, Shri Rakesh Gupta (Advocate) advanced arguments for assessee on legal grounds and also assailed quantum additions on merits. Reliance has been placed on various judicial decisions, the copies of which have been placed on record. The Ld. CIT-DR also advanced arguments supporting the assessment orders. The written submissions have also been filed during the course of hearing. Having heard rival submissions, oral as well as written and upon perusal of case records, our adjudication would be as under.

1.5 The assessee being resident corporate assessee is stated to be engaged in manufacturing of mustard oil, soya refined oil and oil cake. The assessee markets the products under the brand name of 'Saloni'. The assessee is having manufacturing facilities at Agra, Kota and Alwar. The impugned assessment has been framed pursuant to search action on the assessee u/s 132(1) on 06-02-2019. The assessee admitted income in regular return of income as filed on 28-09-2013 at Rs.22.72 Crores which was processed u/s 143(1). The return of income was subsequently scrutinized u/s 143(3). Pursuant to search action, notice u/s 153A was issued to the assessee on 29-09-2020 and the assessee offered same return of income on 26-11-2020. The Ld. AO alleged that incriminating documents and books of accounts and evidences were found during the course of search investigations and this belief of Ld. AO forms the very basis of impugned additions in the hands of the assessee.

## **Assessment Proceedings**

2.1 The main thrust of impugned addition stem from the allegation of Ld. AO that the Saloni Group opened multiple proprietary concerns in the name of various persons who were registered as mustard seed traders / brokers. These concerns were actually controlled by the assessee group and the persons holding these concerns were paid commission. On the basis of allegation of bogus purchases, Ld. AO doubted the yield of oil as reflected by the assessee in the regular books of accounts.

2.2 The assessee mainly manufactured mustard oil which would be extracted from mustard seeds. The seeds would generally contain oil content ranging from 36% to 46% and the oil could be extracted by using different technologies / stages of oil extraction viz. Cold Pressed (Kacchi Ghani having yield of around 22% of oil), Hot Pressed expeller (extracts 15% from leftover DOC of cold press) and Solvent Extraction (extract 7% from leftover of hot pressed expeller). The assessee used mix of above technologies in its processing plants and it was capable of extracting 97% to 99% of total oil content available in the mustard seeds.

2.3 Relying on post search enquiries as made by investigation wing, Ld. AO alleged that the assessee inflated purchases by booking bogus purchases from paper concerns which were registered in the name of dummy persons. This practice would reduce production yield of the assessee. These paper concerns were allegedly owned by Shri Shree Bhagwan proprietor of Shree Bhagwan Trading Co. who deposed u/s 132(4) that no business was carried out by his concern and he was providing accommodation entry in lieu of commission. Similar was the

situation with other supplier entity viz. Shri Krishan Kumar Agarwal proprietor M/s K.K. Enterprises.

2.4 The Ld. AO then referred to information received by the department from Commercial Tax, Agra Zone mentioning about three firms through which bogus GST input credit was obtained by the assessee. These concerns were M/s Royal Enterprises, M/s Janta Enterprises, M/s Shri Ram Traders. It was mentioned that these firms issued bogus bills to transfer GST input credit during FY 2018-19. These entities were subjected to survey u/s 133A. The Ld. AO supported his claim by referring to evidences collected from Toll Plaza upon verification of E-way bills as issued by these three concerns. The trucks as mentioned therein did not pass through the toll plaza. These persons allegedly issued bogus bills for sale of mustard seed to assessee without making any actual supplies.

2.5 The Ld. AO also referred to post-search enquiries as conducted from M/s Bankey Bihari Edible Oil who allegedly supplied similar bogus sales bills of mustard oil to the assessee during FY2018-19.

2.6 In the light of all these background facts, Ld.AO doubted the production yield as reflected by the assessee in different years which was tabulated as under: -

No.	AY	Production Yield	Turnover (In Crores)	GP Rate	NP Rate
1.	2013-14	36.71%	1056.70	6.19%	2.24%
2.	2014-15	36.11%	1165.43	8.82%	2.66%
3.	2015-16	36.02%	1290.99	7.49%	3.02%
4.	2016-17	35.81%	1317.25	8.63%	3.63%
5.	2017-18	41.19%	1482.11	9.31%	3.97%
6.	2018-19	36.28%	1378.86	9.41%	4.29%
7.	2019-20	34.9%	1811.50	7.66%	2.97%

2.7 It was further noted that the payments were made to mustard seed selling parties based on in-house lab report of the company regarding mustard oil percentage, moisture etc. and deduction of amount payable was made by issuing debit notes. The data of claim notes was seized from Kheragarh and Corporate office at Sanjay Place. The data was analyzed from working copy of server as seized from assessee's office. The assessee made two types of purchases viz. Conditional purchase of mustard seeds from private parties and unconditional purchase of seeds from government agencies like NAFED. In first case, the assessee released payment based on lab test reports whereas in unconditional purchases, the rates were fixed. The assessee made periodical calculation of the mustard oil content percentage for both conditional and unconditional purchases. The oil content in conditional purchases was shown as 39.32% whereas for unconditional purchases (NAFED), the oil content was shown as 43.71%. To suppress the total yield, 5% point was deducted from NAFED purchases making it 38.71% and accordingly, reverse calculations were made. The Ld. AO drew an inference that average yield could not be below 41% as against average yield of 36% as shown by the assessee in its audited books of accounts. So far as AY 2017-18 was concerned, this was year of demonetization and it would be futile for the company to take accommodation entry of purchases and route back its unaccounted money in demonetized currency. Therefore, the assessee reflected true yield only during AY 2017-18.

2.8 The Ld. AO, at Page No.38, tabulated the purchases made by the assessee from these 6 concerns. The assessee had made purchases from M/s R.K Enterprises for AY 2016-17, Shree Bhagwan

Trading Co. from AYs 2012-13 to 2016-17 and from four remaining parties for AY 2019-20. The same was tabulated / quantified for various years, as under: -

Bogus Firms / AY	2012-13	2013-14	2014-15	2015-16	2016-17	2019-20	Total
M/s KK Enterprises Prop. Krishan Kumar Agarwal					25,41,96,746		25,41,96,746
M/s Shree Bhagwan Trading Co. Prop. Shree Bhagwan	83,47,111	10,42,68,751	68,22,031	5,43,77,066	29,16,16,308		46,54,31,267
M/s Royal Enterprises Prop. Shree Govind						5,57,08,051	5,57,08,051
M/s Janta Enterprises Prop. Shree Govind						21,91,69,175	21,91,69,175
M/s Shri Ram Traders Prop. Daljeet Kumar						3,97,08,722	3,97,08,722
M/s Bankey Bihari Edible Oils Prop. Akash Mittal						4,71,30,630	4,71,30,630
<b>Total Bogus Purchases</b>	<b>83,47,111</b>	<b>10,42,68,751</b>	<b>68,22,031</b>	<b>5,43,77,066</b>	<b>54,58,13,054</b>	<b>36,17,16,578</b>	<b>108,13,44,591</b>

It was observed by Ld. AO that the bogus purchases in respect to first two parties was compiled from the bank statements of the two concerns as the assessee did not produce the ledger of these two parties. There was possibility that the quantum of purchases could be more than what was reflected in the said table.

2.9 The assessee, in its reply, stated that assessee's entire purchase mechanism was through agents. There was no interface with the suppliers. The assessee-company, depending upon its requirements, would digitally flash the purchase requirements to the brokers who, in turn, depending upon their capacity, undertake to supply the same at agreed price. The company had complete trail of purchases starting from placement of order till the point of making actual payments. All these

documents were deeply scrutinized in regular assessment proceedings u/s 143(3) and no discrepancy was observed in the same. The percentage of yield achieved by the assessee was accepted even prior to FY 2011-12 till date. The assessee also asked for copies of statement as relied upon by Ld. AO to support its allegations. It was stated by the assessee that higher yield of 41.19% for AY 2017-18 was based on an inadvertent error since the mustard oil purchased for 13237660 Kg was wrongly included in the production figure. The correct yield was 35.43%.

2.10 However, Ld. AO rejected various submissions of the assessee and held that the assessee's books of accounts were not reliable. The company inflated total purchases through certain accommodation entry of purchases from the concerns registered in the name of dummy persons. The Ld. AO then proceeded to compute the quantum of unaccounted income. Considering yield ratio of 40%, Ld. AO estimated that the assessee had inflated purchases to the extent of 1/10<sup>th</sup> of its total purchases in a year. Accordingly, the quantum of alleged bogus purchases for all the years was computed. The quantum of addition for this year was worked out to be 1/10<sup>th</sup> of turnover on account of alleged bogus purchase which came to Rs.105.67 Crores. Pertinently, Ld. AO disallowed 1/10<sup>th</sup> of the turnover in computation of income despite the fact that it arrived at a conclusion that 1/10<sup>th</sup> of the total purchases were bogus purchases. The said computations are clearly erroneous. By disturbing the production yield in the aforesaid manner by disallowing 1/10<sup>th</sup> of total purchase, the gross profit (GP) rates for various years was thus revised by Ld. AO as under: -

No.	AY	GP Rate as shown by the assessee	Total Purchases (in crores)	Bogus Purchases (in Crores)	Revised GP Rate
1.	2013-14	6.19%	9122.34	91.22*	14.83%
2.	2014-15	8.82%	1066.13	106.61	17.97%
3.	2015-16	7.49%	1128.66	112.86	16.24%
4.	2016-17	8.63%	1164.21	116.42	17.65%
5.	2017-18	9.31%	1224.81	122.48	17.58%
6.	2018-19	9.41%	1206.17	120.61	18.41%
7.	2019-20	7.66%	1624.67	162.46	19.20%

\* In the computation of income, this addition has been made for Rs.105.67 Crores which is 10% of turnover for this year

It could be seen that after adding the alleged bogus purchases, the GP Rate of the assessee rose significantly in all the years.

2.11 The Ld. AO proceed to make another addition of unexplained investment. The office factory situated at NH-27, Baran Road, Village Khetori, Kota was referred to the valuation cell. As per valuation report, the assessee made investment of Rs.99.56 Lacs in construction of the property during this year. As per valuation report, the estimated cost as incurred by the assessee from FYs 2012-13 to 2018-19 was Rs.995.82 Lacs as against Rs.896.23 Lacs as disclosed by the assessee in its regular books of accounts. The declared value, on overall basis, was less by 9.82% as estimated by valuation cell and accordingly, the assessee opposed any such addition. The assessee pointed out various fallacies in the valuation report. However, the Ld. AO rejected the submissions of the assessee and added the amount of Rs.99.56 Lacs as unexplained investment u/s 69B of the Act.

2.12 The Ld. AO made another addition of Rs.8.13 Lacs u/s 69C. The same was on the basis of Page No.45 of LP-3, the contents of which

could not be explained satisfactorily by the assessee. The heading of the page was mentioned as *'Income from RCGR not entered in books'*, *"Note entered in books, expenses paid by RCGR for salt lake building"*. The Ld. AO alleged that these expenses were incurred by the assessee out of its books and accordingly, the same was added as unexplained expenditure in the hands of the assessee. Finally, the returned income of Rs.22.71 Crores was determined at Rs.129.46 Crores and the assessment was framed for this year as well as for subsequent years on similar lines.

### **Appellate Proceedings**

3.1 During appellate proceedings, the assessee vehemently assailed the impugned addition by way of elaborate written submissions. The assessee assailed jurisdiction u/s 153A on the ground that no incriminating material was found during search and therefore, no addition could be made in the hands of the assessee as per settled legal position. The assessee also stated that the assessment order was barred by limitation. On merits also, the assessee raised various arguments to assail the conclusion of Ld. AO. Pertinently, the assessee furnished 21 registers maintained by Mandi Utpadan Samiti, Shamsabad, Agra starting from 10-12-2011 to 05-06-2020 and claimed that these registers of Mandi Samiti being statutory form No. 44(A) should be considered to accept the purchases as made by the assessee from UP dealers. These records had details of each and every vehicle which was transported in the name of the assessee and these record contained date of entry, name of supplier, item of supply, quantity, gate pass no., vehicle no. etc. which would show that actual purchases were made by the assessee. The assessee's submissions as well as additional evidences were

subjected to remand proceedings. The Ld. AO furnished remand report on 05-12-2022 wherein the assessee produced the copies of such registers. The registers were examined on test-check basis for purchases made from M/s Shree Bhagwan Trading Co. and M/s K.K. Enterprises and the entries were found to be corroborating. A field enquiry was also conducted from Krishi Utpadan Mandi, Shamsabad, Agra to enquire whether such registers were prepared by Krishi Utpadan Mandi Samiti and whether the same could be considered as reliable. The inspector's report confirmed that such registers were issued and maintained by above Mandi Samiti. The ITI (OSD) also visited the manufacturing unit of the assessee at Shamsabad, Agra and returned a finding that this unit was extracting mustard oil from raw material which was mostly procured from UP, Rajasthan and MP. After procurement, the raw material was transported to manufacturing unit at Shamsabad through Trucks. The said unit had Cold Pressed and Hot pressed Expeller Techniques. This unit was not having solvent extraction facilities owing to its location falling within the Taj Trapezium Zone (TTZ). However, the Ld. AO still supported the additions as made in the assessment order. Another report was submitted by Ld. AO on 07-08-2023 reiterating the aforesaid position.

3.2 On the basis of aforesaid submissions as well as remand report, Ld. CIT(A), in para 7.4 of the order, observed that the amount of alleged bogus purchases was much more than the figures as taken by Ld. AO which was evident from the registers of Mandi Samiti as furnished by the assessee since the purchases were made from the tainted concerns in other years also. These registers had substantial purchases from all the 6 concerns, The entries in the registers were made in terms of receipt,

date, seller's name, seed / grain detail, variety of seed, estimated weight / amount / measurement, gate pass number, form 9R, sale date, address of purchaser, real weight, measurement, vehicle number and signature of concerned employee of Mandi Samiti. The Ld. CIT(A) then analyzed the details of purchases made by the assessee from these 6 concerns for Financial Years 2012-13 to 2018-19. On the basis of the same, it was clear that the assessee made purchases from tainted concerns in all the years. The assessee did not provide complete purchase details in the assessment proceedings and Ld. AO could not properly analyze the scale of bogus purchases. The purchases were computed with the help of bank statements in case of M/s K.K. Enterprises and M/s Shree Bhagwan Trading Co. In case of M/s Royal Enterprises, M/s Janta Enterprises, M/s Shriram Traders and M/s Bankey Bihari Edible Oils, Ld. AO considered the amount of bogus purchases based on the reports of UP Commercial Tax Authorities. However, in appellate proceedings, the appellant produced registers of Krishi Utpadan Mandi Samiti, Shamsabad (Agra) for all seven searched assessment years from which it was quite evident that the assessee had made substantial purchases from all these concerns in all the years. From the findings of search and from the registers of Mandi Samiti, it was established beyond doubt that books of accounts of assessee, especially the books relating to purchases, were not reliable completely. The assessee did not furnish books of accounts to Ld. AO but during appellate proceedings, the assessee furnished raw set of registers prepared by Mandi Samiti Inspectors in support of its claim that mustard seeds had actually been purchased which was used in the production of mustard oil which was ultimately sold by the assessee. The same would show that the

purchases were more or less reliable and hence, entire alleged bogus purchases could not be disallowed but only part of the same could be disallowed. But the matter of fact was that Ld. AO was barred from verifying all the bogus purchases because the assessee did not produce these details during search assessment proceedings. In the present proceedings, the assessee detailed purchases and consumption of mustard seed for AYs 2013-14 to AY 2019-20 and the percentage of alleged bogus purchases would be as under: -

No.	AY	Purchase of Mustard Seed (in Kg)	Bogus purchase of Mustard Seed from 6 concerns (in Kg)	Percentage of alleged bogus purchases
1.	2013-14	188782007	6199600	3.28%
2.	2014-15	252588623	14972000	5.93%
3.	2015-16	248338259	11868700	4.78%
4.	2016-17	242233350	7957500	3.29%
5.	2017-18	251988634	3482300	1.38%
6.	2018-19	235646705	1304100	0.55%
7.	2019-20	282348412	5104400	1.81%

The assessee did not produce purchase ledgers of these 6 bogus parties and Ld. AO tabulated purchases on the basis of payments made to M/s. Shree Bhagwan Trading Company and M/s. K. K. Enterprises based on the payments received in their bank accounts. In the case of other entities, the purchases were tabulated on the basis of information provided by Commercial Tax authorities. In the appellate proceedings, the appellant, for the first time, produced Mandi Samiti Registers in support of its claim that mustard seeds had actually been purchased. However, there was no correlation of supply of mustard seeds as per these Mandi Samiti Registers and payments made in bank accounts of

these 6 bogus concerns. Further, the records of Mandi Samiti were maintained based on the claims made by the parties who purchase and bring the agricultural products in Agra. There was no mechanism to ensure that the party from whom the assessee claims that the mustard seed was purchased and trucks carrying such agricultural produce were brought, actually belonged to the claimed supplier. Further there was no monitoring of prices of purchased agricultural produce by Mandi Samiti. The search action conclusively proved that the above 6 suppliers were bogus suppliers and they did not actually supply any material to the assessee.

3.3 In the assessment order, Ld. AO, taking average yield to be 40%, reached a conclusion that almost 1/10<sup>th</sup> of purchases were bogus purchases. The assessee challenged the finding and submitted that the Ld. AO did not make any distinction between two units i.e., Shamsabad Unit, Agra and Kota Unit, Rajasthan of the assessee which adopted different extraction processes. In Shamsabad Unit, the assessee used traditional technology and produced Kacchi Ghani whereas in Kota Unit in addition to Kacchi Ghani, solvent extraction process was used to produce mustard oil and (DO) and refined oil. The oil-cake is further processed for solvent extraction and mustard oil (DO) and refined mustard oil is produced due to the same. The Ld. CIT(A) noted that there were significant variations between the yields of two units. In Shamsabad Unit, yield on gross seed varied from 33.19% to 35.22% across the years. The yield was much below the minimum oil content of 39% of mustard seeds of all varieties. Similarly in Kota Unit, the assessee produced final yield up-to 40.34%. It was beyond understanding that the assessee would leave the by-product unutilized

and not extract the oil till the last bit. Finally, Ld. CIT(A) concluded that the books do not pass the yield test. It was finally concluded that the assessee's books of accounts were unreliable.

3.4 On the legal ground of absence of incriminating material, Ld. CIT(A) held that the findings of search were based on detailed findings of search i.e. fund flow analysis of Bank accounts of Shri Shree Bhagwan proprietor of Shree Bhagwan Trading Company and Sh. Krishan Kumar Agarwal proprietor of M/s. K.K. Enterprises. These bank accounts of such bogus concern in which funds have been received from the assessee coupled with the statements on oath recorded from these proprietors were incriminating material qua the assessee. The data relating to the notes containing details of mustard oil percentage in respect of purchases made from different parties was seized from the factory situated at Kheragarh, Agra and Corporate office of the assessee-company at Sanjay Place, Agra and this data was analyzed comprehensively. The data related to oil content of Mustard seed was analyzed from the working copy of server seized from assessee's office. The Ld. AO further produced the scanned documents in the assessment order. In these documents, the assessee had compared costing of mustard seeds. The average percentage of oil was reduced by 5% as was available in case of mustard seeds received from NAFED and then reverse working was done. Further, the findings of search / survey in case of bogus parties i.e. M/s. Royal Enterprises, M/s Janta Enterprises and M/s Shriram Traders was relied upon to frame the assessment. It was clear that the seized material, statements given on oath, bank account statements and fund flows, various hard disk drives and their contents, surveys / inquiries conducted during search and reports

furnished by various authorized officers and income tax authorities constitute 'incriminating material' which was relied upon by Ld. AO in search assessment proceedings of AYs 2013-14 to AY 2019-20. Therefore, the legal ground was rejected. Further, these submissions could not be accepted since it was immaterial whether the impugned additions emanate from the incriminating documents or the discrepancies which have been found in other inquiries. In Sec.153A, there was no restriction that the additions/disallowances could be made only on those issues, which emanate from the seized material or documents. Reference was made to the decision of Hon'ble Kerala High Court in the case of **E.N. Gopakumar (75 Taxmann.com 215)** holding that additions could be made even without any incriminating material found in search.

3.5 Finally, Ld. CIT(A), upheld the rejection of books of accounts u/s 145 and taking cue from Sec.44AD, estimated net profit rate of 8% of turnover in all the years and accordingly, re-computed that quantum of additions on account of alleged bogus purchases.

3.6 On the issue of valuation difference / unexplained investment, the assessee contended that the amount of Rs.89.79 Lacs was already reflected in the financial statements for this year whereas Ld. AO made entire addition of Rs.99.56 Lacs. Accepting the same, directions were issued to Ld. AO to verify the same and restrict the addition to the extent of differential amount. The addition of Rs.8.13 Lacs as made by Ld. AO u/s 69C was also confirmed. Finally, the appeal was partly allowed. Aggrieved, the assessee as well as revenue is in further appeal before us. The revenue pleads for restoration of additions as made by Ld. AO in the assessment order. The assessee assails the additions as made by Ld. AO and also assails the methodology as adopted by Ld. CIT(A) to

estimate the income of the assessee. The assessee has also raised pertinent legal issue that in the absence of any incriminating material as found during search on assessee, no such addition could have been made and the jurisdiction of Ld. AO was bad-in-law.

### **Our findings and Adjudication**

4. From the facts, it clearly emerges that the assessee had filed its regular return of income for this year u/s 139(1) on 28-09-2013 admitting income of Rs.22.71 Crores. The return was initially processed u/s 143(1). Later on, this return was also accepted in scrutiny assessment proceedings u/s 143(3) vide order dated 29-02-2016. The assessment order takes note of the fact that during the course of regular assessment proceedings, the assessee furnished books of account, bills and vouchers for examination and the same were duly examined by Ld. AO. Thereafter, the assessee has been searched on 06-02-2019 and undisputedly, on the date of search, no assessment proceedings were pending against the assessee for AY 2013-14. The regular return of income had already attained finality and this year was thus an unabated year. In such a case, the ratio of decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment year in the absence of any incriminating material found during the course of search on assessee, would squarely apply to the facts of the case.

5. The Ld. AR, referring to various documents on record, demonstrated that no such incriminating material with respect to alleged bogus purchases was found from the assessee's possession during the course of search on the assessee. Upon perusal of assessment order, we find that during the course of assessment proceedings, notices u/s

142(1) were issued by Ld. AO on various occasions viz. 22-11-2021, 01-12-2021, 03-12-2021, 07-12-2021, 09-12-2021, 13-12-2021 and 27-12-2021 which have already been extracted in the assessment order. Upon perusal of the same, It could be seen that Ld. AO has not referred to any incriminating material as found from assessee's premises during search qua alleged bogus purchases which have ultimately led to impugned additions / rejection of books of accounts of the assessee and which form the very basis of substantial additions in the hands of the assessee. In the assessment order, Ld. AO has only referred to pre-search enquiries and post-search enquiries as made by investigation wing in the case of few suppliers to hold an opinion that the assessee made alleged bogus purchases from dummy entities. The said opinion was primarily based on the statement of Shri Shree Bhagwan prop. Shree Bhagwan Trading Co. and Shri Krishan Kumar Agarwal prop. M/s K.K. Enterprises stating that they indulged in providing accommodation entries and no business was carried out by their respective concerns. This opinion is also based on information received from Commercial Taxes Department, Agra vide its letter dated 21-12-2018 alleging that the three concerns viz. M/s Royal Enterprises, M/s Janta Enterprises and M/s Shriram Traders issued bogus bills to assessee to transfer GST input credit. Pertinently, this letter refers to AY 2019-20 only and not to AYs 2013-14 to 2018-19. In fact, no purchases have been made by the assessee from these three concerns during AYs 2013-14 to 2018-19. Thus, the material referred to by Ld. AO in the assessment order was either relating to pre-search period or post-search material or statements recorded from third parties which could not be termed as incriminating material as found during the course of search on the assessee. So far as the search on the assessee

is concerned, the said exercise has not yielded any incriminating material which would establish the fact that the purchases so made by the assessee were non-genuine purchases. The formation of opinion of alleged bogus purchases has triggered Ld. AO to allege that the assessee suppressed production yield in regular books and accordingly, he made impugned additions in the hands of the assessee by estimating higher production yield. However, there is no corroborative material as found from search on assessee to support this opinion. As against this allegation, the assessee has stated that the entire purchase mechanism was through agents and there was no interface with the suppliers. The assessee would digitally flash its raw material requirements to the brokers who would undertake to supply the raw material at agreed price. The company maintained complete trail of purchases starting from placement of orders till the point of making actual payments to the suppliers. In fact, the books of accounts were duly examined during regular scrutiny assessment proceedings u/s 143(3) and no discrepancy was found by Ld. AO in the purchases so made by the assessee. It is another admitted fact that percentage of yield as reflected by the assessee has never been questioned in regular assessment proceedings in any of the years.

6. We also find that the fact that no incriminating material was found qua these purchases has already been accepted by Ld. CIT(A) in the impugned order which has already been elaborated by us in preceding para 3.4. The Ld. CIT(A) concurred that the findings of search in assessee's case were based on detailed findings of search i.e., fund flow analysis of Bank accounts of Shri Shree Bhagwan proprietor of Shree Bhagwan Trading Company and Shri Krishan Kumar Agarwal proprietor

of M/s. K. K. Enterprises. These bank accounts of such bogus concerns in which funds have been received from the assessee coupled with the statements on oath recorded from the proprietors of those two entities were held to be incriminating material in the case of the assessee. However, this material was not found during search on the assessee and the same constitute independent material so far as the assessee is concerned. The production data as analyzed by Ld. AO already forms part of regular books of accounts of the assessee and the said data could not be said to be incriminating material from any angle. It has also been held by Ld. CIT(A) that in Sec.153A, there was no restriction that the additions / disallowances could be made only on those issues, which emanate from the seized material or documents. To support the same, reference has been made to the decision of Hon'ble Kerala High Court in the case of **E.N. Gopakumar (75 Taxmann.com 215)** holding that additions could be made even without any incriminating material found in search. However, this proposition runs contrary to the recent landmark decision of Hon'ble Apex Court in the case of **Pr. CIT vs. Abhisar Buildwell (P.) Ltd. (149 Taxmann.com 399)** holding that no addition could be made for completed assessment in the absence of any incriminating material found during the course of search on assessee. The Hon'ble Court, considering all the earlier decisions holding the field, 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 fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Approving the decision of Hon'ble Delhi High Court in the case of **Kabul Chawala (380 ITR 573)** as well as the decision of Hon'ble Gujarat High Court in **Saumya Construction (P.) Ltd. (387 ITR 529)**, it was held by Hon'ble Court that in respect of completed assessments / unabated assessments, no addition could be made by Assessing Officer in the absence of any incriminating material found during course of search under section 132 or requisition made under section 132A. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT vs. Continental Warehousing Corporation [2015; 374 ITR 645]** which has been followed in subsequent decision in **CIT V/s Gurinder Singh Bawa (79 Taxmann.com 398 05/10/2015)** which deals with a situation where in the original return of income was processed u/s 143(1). It was held by Hon'ble Court that in respect of non-abated assessment, the additions are to be strictly based on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search and undisclosed income or undisclosed property discovered during search. We find that similar is the view of Hon'ble Delhi High Court in **Pr. CIT vs. Meeta Gutgutia (82 Taxmann.com 287)** which has primarily followed the decision of **Kabul Chawla (supra)**. We

also find that Special Leave Petition (SLP) filed by the revenue against this decision has already been dismissed by Hon'ble Supreme Court on 02-07-2018. The ratio of all these decisions would squarely apply to the facts of present case before us. In these decisions, it has been held that concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search. The co-ordinate bench of Ahmadabad Tribunal in the case of **ACIT vs. Real Marketing Pvt. Ltd. (ITSS No.128-133/Ahd/2021)**, relying upon the decision of Hon'ble Gujarat High Court in the case of **Soumya Construction (387 ITR 529)**, confirmed quashing of assessment u/s 153A on the ground that there was no seized material in the case of the assessee. The Ld. AR also referred to various other judicial decisions including the decision of Hon'ble High Court of Delhi in the case of **PCIT vs. Anand Kumar Jain (HUF) (ITA No.23/2021 dated 12-02-2021)**; the decision in **PCIT vs. Best Infrastructure (India) (P.) Ltd. (397 ITR 82)**; the decision in **CIT vs. Harjeev Aggarwal, (290 CTR 263)** and the decision in **CIT vs. Raj Pal Bhatia(333 ITR 315)** holding the same consistent view. The copies of the decisions have been placed on record. All these decisions support the argument of Ld. AR that in the absence of any incriminating material, impugned addition based on alleged bogus purchases could not be made in the hands of the assessee. Respectfully following all these binding judicial precedents, the view of Ld. AO as well as view of Ld. CIT(A) could not be upheld. Accordingly, we would hold that the impugned addition of alleged bogus purchases as made by Ld. AO is liable to be deleted on this foremost legal ground alone. As a natural corollary thereof, consequent rejection of books of accounts by Ld.

CIT(A) on the same very ground and application of presumptive indicative rate of income of 8% u/s 44AD also could not be upheld. If no incriminating material has been found from the assessee qua bogus purchases, the whole basis of rejection of books of accounts by Ld. CIT(A) would stand nullified and no basis would be left with Ld. CIT(A) to reject the books of the assessee and apply estimated profit rate on the turnover of the assessee. We order so. The action of Ld. AO in disallowing the 1/10<sup>th</sup> of total purchases stands nullified. The adjudication of Ld. CIT(A) in rejecting the books of accounts and applying presumptive rate of 8% also stand nullified. The assessee succeeds on this legal ground alone. The corresponding grounds as raised by the revenue stand dismissed.

7. Proceeding further on merits also, we find that Ld. CIT(A) has eventually rejected the books of accounts of the assessee during first appeal and applied presumptive rate of tax of 8% on turnover in terms of Sec.44AD to estimate the income of the assessee. It clearly emerges from inspector's field report that the assessee's Shamsabad unit did not have solvent plant and it only produced mustard oil and oil cake which would have low production yield. The Kota Plant had solvent plant which produces soya refined oil. Therefore, production yield of the two units would differ significantly and no uniform yield rate could be applied in such a case. The inputs for producing the products are mustard seeds and soya seeds which are sourced by the assessee through brokers, government agencies like NAFED and Mandi Utpadan Samiti. The Ld. AO, considering the statement of few suppliers as well as information received from Commercial Taxes department, alleged that these six concerns made bogus supplies to the assessee during AYs 2013-14 to

2019-20 which ultimately resulted into suppression of production yield of the assessee. To bolster its claim, Ld. AO referred to information gathered from toll plaza reflecting no movement of trucks as reflected in the E-way bills. The Ld. AO also analyzed the production yield data to arrive at a conclusion that the yield could not be below 41% in any case. Considering the technology being used by the assessee, the assessee could extract 97% to 99% of total oil content and therefore, the final yield could have been between 39.77% to 40.59% whereas the assessee reflected yield of 36% only. On this basis, Ld. AO disallowed 1/10<sup>th</sup> of the total purchases. The Ld. AO bolsters its claim by stating that the yield of purchases made from NAFED was suppressed by 5% points. However, Ld. AR has tabulated seed purchase data from NAFED as under: -

<b>F.Y.</b>	<b>Total Seed Purchase (Kg)</b>	<b>NAFED Seed Purchase (Kg)</b>	<b>Percentage</b>
2012-2013	18,87,82,007.00	1,34,650.00	0.07%
2013-2014	25,25,88,623.00	24,725.00	0.01%
2014-2015	24,83,38,259.00	-	
2015-2016	24,22,33,350.00	-	
2016-2017	25,19,88,634.00	-	
2017-2018	23,56,46,705.00	-	
2018-2019	28,23,48,412.00	1,02,89,068.00	3.64%

Upon perusal of the same, it could be seen that NAFED purchases have happened only in FYs 2012-13, 2013-14 and 2018-19 and the percentage of purchase is very miniscule in comparison to total seed purchased by the assessee so as to impact assessee's yield significantly. Therefore, application of higher production yield as done by Ld. AO or rejection of books and application of presumptive rate of 8% as done by Ld. CIT(A) could not be held to be justified from any angle. On this very fact alone, the whole basis of rejection of production yield of the

assessee and estimating the higher yield by Ld. AO is liable to be rejected at its threshold. Similarly, the adjudication of Ld. CIT(A) is also liable to be rejected for the same very reason.

As against the findings of Ld. AO, the assessee has amply demonstrated that it maintained comprehensive documentary evidences in regular course of business to establish the genuineness of the purchases so made by it in various assessment years. These documents include Purchase Order, Inward Gate Pass, Purchase bill, Statutory VAT form, E-way bill, transport receipts, weighment slips, physical inspection slips, lab report, goods received note, out gate pass, claim note etc. For the purchases made within UP, the purchases were established by Mandi Utpadan Samiti Receipts / registers and Gate pass. The assessee's case was duly scrutinized u/s 143(3) whereas the assessee furnished books of accounts which were duly been examined by Ld. AO and further, no discrepancy was found in the balances of Sundry Debtors or Sundry Creditors and no quantitative difference in stock was observed by Ld. AO. The assessee also demonstrated that the purchases were made through brokers against commission on which applicable TDS was deducted by the assessee. The assessee maintained complete quantitative details of items produced and raw material consumed by the assessee as mandated by the statute. Even during present proceedings, the assessee duly furnished the details of opening stock, purchases, consumption, sales, closing stock, and yield of raw material, finished products and bi-products from AYs 2013-14 to 2019-20. It was also submitted by the assessee that the purchases were made through brokers who, in turn, engaged the suppliers for the assessee. The complete documents were furnished by the assessee with respect to the

purchases made from all the six tainted parties to establish the complete transaction trail. These documents include the purchase orders, inward gate pass, purchase bill, statutory VAT form, Physical inspection bill, Lab Report, goods received noted, Out Gate Pass and Claim note etc. The payments to the suppliers have duly been made through banking channels. Similar purchases have been made from same suppliers in earlier years which have duly been accepted by the department. In fact, the assessee, vide its various letters during assessment proceedings, demanded cross-examination of the said suppliers who denied making any supplies to the assessee. However, the cross-examination was denied on the ground that the notices issued u/s 133(6) to these suppliers remained un-responded. In such a case, no adverse inference could be drawn against the assessee considering the ratio of decision of Hon'ble Supreme Court in the case of **Kishinchand Chellaram vs. CIT (125 ITR 713)** wherein it was held that the onus would be on revenue to prove its allegation. However, there is no corroborative evidences brought on record which support the conclusion of Ld. AO. Similarly, the Hon'ble Supreme Court in the case of **Andaman Timber Industries vs. CCE (281 CTR 0241)** held that not allowing assessee to cross-examine witnesses by adjudicating authority though statements of those witnesses were made as basis of impugned order, amount to serious flaw which make impugned order nullity as it amounted to violation of principles of natural justice. In the present case, we find that the suppliers making statement against the assessee were witnesses of the department and the same form the very basis of impugned additions in the hands of the assessee and therefore, the onus was on revenue to conclusive establish the fact that the supplies made to the assessee

were bogus supplies. If the statements of these persons are ignored, nothing would be left with Ld. AO to support its allegation of higher production yield. The information received from Commercial Tax Department was in the nature of an indicative opinion only and that too pertaining to AY 2019-20 alone. The same do not conclusively prove that the supplies as made by these suppliers in earlier years were not made. In our considered opinion, the assessee had duly discharged its onus to establish the genuineness of the purchases and the onus was on Ld. AO to rebut the claim of the assessee. However, no independent enquiry is shown to have been made by Ld. AO to bring on record cogent corroborative evidences to substantiate the allegation of bogus purchases. In the absence of such an exercise, no credence could be given to mere allegations. The cited case law of Hon'ble Apex Court in **Andaman Timber Industries vs. CCE (supra)** duly supports the case of the assessee on merits.

8. We further find that pertinently the assessee furnished additional evidences during first appeal which were subjected to remand proceedings. These evidences include statutory registers of Mandi Utpadan Samiti bearing elaborate details of raw material supply to the assessee. The same were subjected to remand proceedings. In the remand report, field enquiries were conducted and a finding was rendered by field inspector that the purchases made from Shree Bhagwan Trading Co. and M/s K.K. Enterprises were found to be corroborating with these registers vis-à-vis purchase details as supplied by the assessee. It was also confirmed that these records were maintained by Mandi Utpadan Samiti and these records were found to be reliable. Another field enquiry established that the assessee adopted

different production methodology at Shamsabad Unit and Kota Unit. The same clearly demolishes the case of the revenue. This being so, the impugned purchases as made from these entities could not be held to be bogus purchases in the absence of any other corroboration thereof. We also quote the decision of Hon'ble High Court of Madras in the case **Smt. B. Jayalakshmi Vs. ACIT (2018) 96 Taxmann.com 486 (Mad.)** holding that the revenue could hardly be held as an aggrieved party in such instance of the Assessing Officer's favorable remand report supporting the assessee's case. The Ld. CIT(A) has observed that the raw material purchased during the year were not commensurate with the payments made to these suppliers. This observation is clearly irrelevant since these suppliers are regular suppliers for the assessee having running account and there is no necessity of any such correlation. Considering all these facts, we would hold that that the action of Ld. AO in making impugned addition by disturbing production yield, which stem from allegation of bogus purchases, could not be sustained in law. Since the said allegation also forms the very basis of rejection of books of accounts by Ld. CIT(A) and application of presumptive estimated profit rate of 8%, this adjudication also could not be upheld. The methodology of Ld. CIT(A) is also liable to be rejected. In other words, the impugned additions as made by Ld. AO and confirmed partially by Ld. CIT(A) by adopting different methodology could not be sustained in law. The purchases as made by the assessee are to be accepted in *toto*. The production yield could not be disturbed as done by Ld. AO and profit could not be estimated by rejecting the books of account as done by Ld. CIT(A). Accordingly, we delete the impugned additions as sustained in the impugned order by applying estimated profit rate of 8% on turnover. The

action of Ld. AO in disturbing the production yield is also rejected. The assessee's corresponding grounds of appeal stand allowed whereas similar grounds as raised by revenue stand dismissed.

9. We similarly find that the alleged excess investment in Kota factory building is not supported by any incriminating material as found during the course of search on assessee. The addition has been made merely on the basis of valuation made by Ld. DVO which is always subjective opinion and could not automatically lead to a conclusion of unexplained investment unless there was some corroborative evidence on record to support the same. It is another aspect that the assessee had amply demonstrated that the valuation difference was less than 10% on aggregate basis which could be considered to be within tolerance range as per various judicial decisions. The Ld. CIT(A) has referred to Page No.45 of LP-3 to support the fact that there was incriminating material for this addition. However, upon perusal of this document as placed on record, we find that this material is not relating to purchase or investment in Kota factory building and the findings of Ld. CIT(A) are erroneous to that extent. Another aspect of the matter is that the difference between the value declared by the assessee and as estimated by District Valuation Officer (DVO) is less than 10%. In the matter of valuation which is always subjective one, some valuation differences are bound to occur. The differential of less than 10%, in our considered opinion, was quite insignificant to allege that the assessee had made unexplained investments particular in the absence of any corroboration thereof. Therefore, this addition could not be sustained on legal grounds as well as on merits. We order so. The assessee succeeds in its corresponding

grounds of appeals. The revenue's corresponding ground stand dismissed.

10. On the issue of addition of Rs.8.13 Lacs as made u/s 69C, the same has been made on the basis of Page No.45 of LP-3. Upon perusal of the same, we, at the outset, find that there is an arithmetical error in as much as total of both the pages comes to Rs.4.44 Lacs and not Rs.8.13 Lacs as taken by Ld. AO since the total of one page has been carried forward to another page and merged in the figure at the other page. This is self-evident from plain reading of the seized documents as placed on record. Therefore, there is excessive disallowance of Rs.3.69 Lacs which stand deleted. Regarding the balance expenditure, no cogent explanation has been furnished before us. Therefore, the remaining addition stand confirmed. The assessee's ground of appeal stands partly allowed.

11. To conclude, the assessee succeeds on Ground Nos.1 to 8 and 10. Ground No.9 stand partly allowed. In Ground No.11, the assessee has raised the issue of limitation. In Ground No.12, the assessee has raised the issue of approval u/s 153D. No substantial arguments have been made on these two grounds and no such infirmities have been shown to us. Ground No.13 qua charging of interest is consequential in nature. Ground No.14 is general in nature. The assessee has preferred additional grounds of appeal on the issue of absence of Document Identification Number (DIN). However, these grounds have not been pressed before us. In the result, the assessee's appeal stands partly allowed. The revenue's appeal stands dismissed.

**Cross-Appeals for Assessment Years 2014-15 to 2017-18**

12. It is admitted fact that the facts as well as issues in these four years are quite identical as in AY 2013-14. This being so, our adjudication as for AY 2013-14 shall *mutatis mutandis* apply to all these four appeals. All the grounds of appeal stand disposed-off accordingly. The assessee's appeals stand partly allowed. The revenue's appeals stand dismissed.

**Cross-appeal for Assessment Year 2018-19**

13. The search has happened on the assessee on 06-02-2019. The assessee filed its regular return of income on 30-10-2018 declaring income of Rs.61.04 Crores and the return was processed u/s 143(1). The time limit to issue notice u/s 143(2) had not expired for this year and accordingly, this year is a case of abated assessment year. The Ld. AO, making allegation of bogus purchases as in earlier years, disturbed the production yield of the assessee and disallowed 1/10<sup>th</sup> of total purchases but ended up disallowing 1/10<sup>th</sup> of turnover of the assessee. The Ld. AO also made addition of alleged unexplained investment for Rs.22.75 Lacs in factory building situated at NH-27, Baran Road, Village Khetori, Kota on the basis of valuation report. The adjudication of Ld. CIT(A) is on similar lines. Facts being *pari-materia* the same as in AY 2013-14 except for the fact that this year was abated assessment year, both these issues, on merits, stand allowed in assessee's favor.

14. In this year. Ld. AO made another addition of Rs.383.71 Lacs. The same was on the basis of certain information stated to be received from JDIT (Inv.) Indore informing that on 22-04-2019, cash of Rs.11 Lacs was seized from the possession of 2 persons namely Sh. Ritesh Agarwal and Shri Aakash. The same led to survey u/s 133A in the case of M/s Sandeep Traders (Prop. Shri Shiv Narayan Dewda). During survey,

incriminating documents of cash purchases by that concern on behalf of the assessee were found and impounded. In the seized documents, there were entries of cash purchases by M/s Sandeep traders on behalf of the assessee. The assessee was accordingly required to explain these transactions. The assessee denied having entered into any such transaction with the said entity and stated that these documents were not connected with the assessee. However, Ld. AO rejected the submissions of the assessee and added the amount of Rs.383.71 Lacs as mentioned in the documents as the income of the assessee as unexplained expenditure u/s 69C.

15. The Ld. CIT(A), considering the statement made during survey on M/s Sandeep Traders, observed that the name of the assessee was mentioned as 'Mahesh' along with the details of Vehicle Numbers, amount of cash payments, date of such payments, Mandi details etc. Therefore, it was clear that the assessee made cash purchase of soybean through M/s. Sandeep Traders from various parties against commission. Therefore, the impugned addition was to be confirmed. However, since books were rejected and profit was estimated @8%, separate addition thereof was not required. Aggrieved, the revenue as well as the assessee is in further appeal before us. The assessee has raised Ground Nos.9 & 10 for the same whereas revenue has raised Ground No.4.

16. From the facts, it emerges that the impugned addition is solely based on survey finding in the case of M/s Sandeep Traders wherein certain documents of cash purchase on behalf of the assessee were allegedly found. However, when confronted to the assessee, the assessee has denied having entered into any such transaction with M/s

Sandeep Traders. It was stated that the impounded documents were not connected with the assessee. In the documents, the assessee's name has been mentioned as 'Mahesh'. It is very clear that the impugned addition is solely based on third-party evidence and no incriminating material to that effect has been found during search on assessee. The assessee has denied having entered into any such transactions with M/s Sandeep Traders. In such a situation, the onus was on revenue to conclusively prove and establish that the assessee had entered into any such transaction with M/s Sandeep Traders. However, there is no corroboration of this fact. We are of the considered opinion that the impugned addition could not be sustained as there is complete denial by the assessee and there is no evidence in the form of any signed documents or any other cogent evidence which could establish that impugned purchases were made by M/s Sandeep Traders on behalf of the assessee. No business relation of the assessee with that entity is shown to have been existing, in any manner. The name of the assessee could not be deciphered from the impugned document. The survey statement has not been confronted to the assessee nor has any opportunity of cross-examination been provided to the assessee. In the absence of any cogent and corroborative evidence against the assessee, the addition as confirmed by lower authorities could not be sustained in law. This addition is more on presumption and suspicion which could not be sustained as per settled legal position. Accordingly, the impugned addition as made by Ld. AO stands deleted. The assessee succeeds in its corresponding grounds. The revenue's ground stands dismissed. The appeal of the assessee stands partly allowed. The appeal of the revenue stands dismissed.

**Cross-appeal for Assessment Year 2019-20**

17. The assessment for this year has been framed on similar lines as for AY 2018-19. The assessee filed its return of income on 31-10-2019 declaring income of Rs.54.31 Crores. The Ld. AO made addition of alleged bogus purchases for Rs.181.15 Crores. The Ld. AO also made addition of alleged unexplained investment for Rs.6.73 Lacs in factory building situated at NH-27, Baran Road, Village Khetori, Kota on the basis of valuation report. The Ld. AO made addition of Rs.22.79 Crores for alleged cash purchases made by M/s Sandeep Traders on behalf of the assessee as found during survey operations on that entity. The adjudication of Ld. CIT(A) is on similar lines. Aggrieved, the assessee as well as revenue is in further appeal before us. Facts being pari-materia the same as in AY 2018-19, all the three issues, on merits, stand allowed in assessee's favor.

18. The Ld. AO made addition of Rs.37 Lacs u/s 69A on account of unexplained cash found during search proceedings. It was noted that cash of Rs.96.69 Lacs was found from the premises of the assessee during search. The cash of Rs.37 Lacs was seized while the remaining cash was not seized as it was reconciled with the cash books as maintained by the assessee. During assessment proceedings, the assessee explained that this amount was received from TATA NAGAR depot at the close of business hour on 05-02-2019 and therefore, the same could not be entered in the cash book on 06-02-2019 i.e., on the date of search. In support, the assessee furnished copy of cash book of TATA NAGAR depot. Upon perusal of the same, it was found that the amount of Rs.37 Lacs was entered in the cash book on 11-02-2019 and not on 06-02-2019. Therefore, Ld. AO added the amount of Rs.37 Lacs

to the income of the assessee. Before Ld. CIT(A), the assessee submitted that this cash was delivered at the premises of the assessee after 8 PM on 05-02-2019 being beyond the office hours and that normal office hours of accounts staff run from 10 AM to 6.30 PM and therefore, this receipt could not be entered in the cash Book on 05-02-2019. On 06-02-2019, the department conducted search and therefore, no entry was possible. The assessee submitted that the concerned book entry could be made in the books only after completion of search on 11-02-2019. The assessee also contended that its accounts were prepared and maintained on SAP system wherein only real time entry could be made and SAP would not allow any back dated entry. The same explain the fact that the entry was made on 11-02-2019 after completion of search. The assessee also submitted the affidavit of the concerned person who physically delivered the cash. The Ld. CIT(A) observed that the submission of the assessee was supported by books of accounts and Ld. AO could not point out any deficiency in the cash book. Since the books were rejected and profit was estimated @8% and seized cash was part of assessee's business activities, no separate addition of the same would be required. Accordingly, separate addition was deleted. Aggrieved, the assessee as well as revenue is in further appeal before us.

19. We find that cash difference was matter of reconciliation. During search, cash of Rs.96.69 Lacs was found out of which Rs.37 Lacs was seized since the remaining cash stood duly reconciled with the cash book of the assessee. During assessment proceedings, the assessee furnished a plausible explanation that the cash was received from one of its depot on 05-02-2019 after office hours. The book entry could not be made due to search on the assessee though physical cash was lying

with the assessee. The entry was subsequently made in the books after completion of search. In support of the same, the assessee has furnished affidavit of the delivery person as well as copies of cash book reflecting such receipt. No defect has been pointed out by Ld. AO in the same. The only reason to make the addition was that the entry was made on 11-02-2019. The same stood explained by the fact that assessee's accounting system would not permit back dated entry. In our opinion, the assessee successfully reconciled the cash discrepancy and it offered a plausible explanation in respect thereof. The Ld. CIT(A) has also concurred with this position. Therefore, this addition, on standalone basis also, is liable to be deleted. We order so. The corresponding grounds of revenue's appeal stand dismissed. The assessee succeeds in its grounds of appeal.

20. In the assessment order, Ld. AO has made certain other additions on the basis of seized loose papers u/s 69C which could be tabulated as under: -

No.	Amount (Rs.)	Basis
1.	Rs.2.50 Lacs	Page Nos. 111 & 112 of LP-3
2.	Rs.1.50 Lacs	Page No.109 of LP-3
3.	Rs.39.65 Lacs	Page No.35 of LP-8
4.	Rs.31.50 Lacs	Page No.2 of Annexure BK-1 of Kota Premises
5.	Rs.56.86 Lacs	Page No.3 of Annexure BK-1 of Kota Premises
6.	Rs.98.69 Lacs	Page No.4 of Annexure BK-1 of Kota Premises
7.	Rs.2.50 Lacs	Repeated Addition (Based on Page Nos.111 & 112 of LP-3)

The amount of Rs.2.50 Lacs has been found noted on Page Nos.111 and 112 of Annexure LP-3. The Ld. AO alleged that the assessee failed to furnish any cogent explanation for these entries. These entries apparently pertain to receipt of Rs.2.50 Lacs from Shri Brij Mohan Rathore and onward payment of Rs.2.38 Lacs to one Shri Sandeep

Upadhyay for some celebrations. Though the assessee denied having made any such transaction, Ld. AO stated that there was no evidence for proposed marriage of daughter of Shri Brij Mohan Rathore (Director). The assessee failed to explain the source of the said cash nor could it furnish explanation for cash transactions of payment and repayment of the same. Therefore, the amount of Rs.2.50 Lacs was added as unexplained expenditure u/s 69C of the Act. The assessee continued to contend that this page did not belong to the assessee-company and the same belonged to Sh. Brij Mohan Rathore (Director).The addition of Rs.1.50 Lacs has been made on the basis of Page No.109 of LP-3. The assessee stated that it was dumb document. However, Ld. AO added the same as unexplained expenditure u/s 69C. The Ld. CIT(A) confirmed both these additions but deleted repeated addition of Rs.2.50 Lacs as mentioned at serial no. 7 of above table.

21. Upon perusal of these documents as placed before us, we find that these documents are in the nature of dumb document only which could not conclusively establish any payment by the assessee. The nature of transaction could not be deciphered from the same. There is no corroboration of these documents. Therefore, the addition of Rs.2.50 Lacs as well as Rs.1.50 Lacs as sustained in the impugned order stand deleted. Another addition as listed at serial no.7 of above table is merely repeated addition which has rightly been deleted by Ld. CIT(A).

22. The addition of Rs.39.65 Lacs has been made on the basis of Page No.35 of LP-8 which is stated be account statement of Shamsabad Unit of the assessee in which 'Mahesh' is mentioned and this page is having total amount of Rs.39,65,581/- dated 30-03-2016 paid on 04.04.2016 and 28-06-2016. The Ld. AO treated the same as expenses incurred out of

the books and added the same as unexplained expenditure u/s 69C of the Act. The assessee contended that this page was not provided to it. The Ld. CIT(A) directed Ld. AO to confront the document to the assessee and re-adjudicate this issue in the light of assessee's explanation.

The addition of Rs.31.50 Lacs has been made on the basis of Page No.2 of Annexure BK-1 as found from Kota factory premises. The same contain payment of Rs.50 Lacs out of which billing is done for Rs.18.50 Lacs and therefore, the remaining payment was considered as coming from undisclosed sources. The assessee stated that this was rough working / rough notes written for remembrance by the document preparer. However, Ld. AO added the same u/s 69C of the Act.

The addition of Rs.56.86 Lacs as found written in the loose papers is an alleged payment by the assessee to one Shri Radhe and accordingly, the same was added u/s 69C.

The addition of Rs.98.69 Lacs has two components i.e., Rs.46.80 Lacs and Rs.51.88 Lacs as allegedly paid to Shri Yogi, Thukral Ji etc. The same was likewise added u/s 69C.

23. Before Ld. CIT(A), the assessee contended that the relied seized papers did not contain nature, details of transaction and years of transactions. These documents were non-speaking documents and the same could not be deciphered properly. In the absence of any corroboration of these documents, no such additions could have been made in the hands of the assessee. However, Ld. CIT(A) rejected the same and held that the assessee failed to furnish cogent explanation for the same and accordingly, all the additions were confirmed. Aggrieved, the assessee is in further appeal before us.

24. We find that the addition of Rs.39.65 Lacs is on mere presumption and suspicion only. Firstly, this loose paper apparently was never confronted to the assessee. Even otherwise, the name on top of the page has been mentioned as 'Mahesh Shamsabad'. There is no conclusive evidence to link this document with the assessee. This paper is more in the nature of dumb document only from which exact nature of transaction could not be deciphered. For the said reasons, this addition could not be sustained in law. We order so.

25. Similarly, upon perusal of Page Nos.2,3 and 4 of BK-1, we find that these documents are non-speaking documents and merely rough working / rough notes which do not convey much meaning. These documents lack essential details viz. year / period, ownership of documents and also the nature of transactions could not be clearly deciphered from the same. There is no corroboration of these documents and no independent enquiries have been carried out on the same. Consequently, these documents, in our considered opinion, are mere dumb documents which do not support the confirmation of impugned additions. By deleting the three additions as made by Ld. AO u/s 69C, we allow the corresponding grounds of appeal as raised by the assessee. The appeal of the assessee stands partly allowed. The appeal of the revenue stand dismissed.

**Conclusion**

26. All the appeals of the assessee stand partly allowed. All the appeals of the revenue stand dismissed. A copy of this common order be placed in respective case files.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.*

Sd/-  
**(SATBEER SINGH GODARA)**  
न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-  
**(MANOJ KUMAR AGGARWAL)**  
लेखासदस्य /ACCOUNTANT MEMBER

Dated: 25-04-2025

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA