

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.307/Nag./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Central Circle-2(2), Nagpur Appellant

v/s

Shri Dharampal Ramkumar Agarwal
290, Satnami Lay Out, Wardhman Nagar Respondent
Nagpur 440 008 PAN – ABHPA2471M

Assessee by : Shri Sachin V. Luthra
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

ORDER

PER K.M. ROY, A.M.

The instant appeal by the Revenue is emanating from the impugned order dated 08/03/2016, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2011-12.

2. The Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in allowing additional evidence under rule 46A whereas the assessee's case is not covered by the exceptions provided under rule 46A of the I.T. Rules.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.65,62,158/- made on account of unexplained cash and valuables by admitting additional evidence under rule 46A of the I.T. Rules.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.50,47,355/- made on account of unexplained cash and valuables by admitting additional evidence under rule 46A of the I.T. Rules.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs. 16,49,620/- made on account of unexplained rent from shops by admitting additional evidence under rule 46A of the I.T. Rules.

5. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.5,52,87,300/- made on account of unexplained investment in shops by admitting additional evidence under rule 46A of the I.T. Rules.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained expenditure of Rs. 38,95,237/- by admitting additional evidence under rule 46A of the I.T. Rules.

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained cash and interest expenditure of Rs. 42,30,068/- by admitting additional evidence under rule 46A of the I.T. Rules.

8. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained sales of Rs.4,54,32,217/- by admitting additional evidence under rule 46A of the I.T. Rules.

9. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained expenditure of Rs. 2,10,092/- by admitting additional evidence under rule 46A of the I.T. Rules.

10. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained investment in land purchase amounting to Rs. 2,61,040/-by admitting additional evidence under rule 46A of the I.T. Rules.

11. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of unexplained freight income of Rs. 18,80,000/- by admitting additional evidence under rule 46A of the I.T. Rules.

12. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of treatment of agricultural income of Rs.3,43,000/- as business income by admitting additional evidence under rule 46A of the I.T. Rules.

13. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.42,36,000/- as unexplained cash deposits, by admitting additional evidence under rule 46A of the I.T. Rules.

14. Any other ground that may be urged at the time of hearing.”

3. Facts in Brief:- The assessee is a director in a number of Group companies and has shown income derived on account of salary, rent, interest and other income. On 16/03/2011, a search and seizure action was conducted in assessee's group cases namely M/s. Shree Agarwal Coal India Pvt. Ltd. The assessee herein is one of the members of this group. For the year under consideration, the assessee filed its return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*") disclosing total income of ₹ 1,15,87,350. Subsequent to the search and seizure action conducted under section 132 of the Act, on 27/09/2012, statutory notice under section 153A of the Act was issued. The Assessing Officer concluded assessment under section 143(3) r/w section 153A of the Act by making following additions after examining the Profit & Loss Account, Tax Audit Report determining total income of ₹ 20,88,76,440.

1.	<i>Gold ornaments, Silver articles found at residence. Protective addition</i>	₹ 65,62,158
2.	<i>Gold ornaments, Silver articles etc. found in bank locker and cash. Addition on protective basis</i>	₹ 50,47,355
3.	<i>Estimation of rental income from property at Indore addition on protective basis</i>	₹ 16,49,620
4.	<i>Investments in shops at Indore. Addition on protective basis.</i>	₹ 5,52,87,300
5.	<i>Expenses as per para 9 treated as undisclosed income</i>	₹ 38,95,237
6.	<i>Interest treated as un-explained as per para 10</i>	₹ 42,30,068
7.	<i>Sales estimated as per para 11</i>	₹ 4,54,32,217
8.	<i>Unexplained Expenses estimated as per para 12</i>	₹ 2,10,092
9.	<i>Investments in purchase of land treated unexplained para 13</i>	₹ 2,61,040
10.	<i>Estimation of freight received as per para 14</i>	₹ 18,80,000
11.	<i>Agricultural income treated as business income as per para 15</i>	₹ 3,43,000
12.	<i>Loan from Shree Agrawal Fin. Corp. treated as deemed dividend u/s 2(22)(e) as per para 16</i>	₹ 6,82,55,000
13.	<i>Cash deposits with H.D.F.C. bank treated as undisclosed income. As per para 17</i>	₹ 42,36,000
		₹ 19,72,89,087

The assessee being aggrieved by the additions so made by the Assessing Officer, filed appeal before the first appellate authority.

4. The learned CIT(A), vide impugned order, however, directed to delete all the additions right from Sr. no.1 to 13, made by the Assessing Officer excluding the addition on account of unaccounted unexplained expenditure of ₹ 2,10,092 at Sr. no.8 in the aforesaid table. The relevant observations of the learned CIT(A) are as under:—

"32. I had carefully considered the assessment order, reply of assessee, and remand report. I am of the opinion that the assessee has failed to demonstrate this expenditure was recorded in regular books of account. Further, the assessee was unable to prove that this expenditure was incurred wholly and exclusively for purpose of business by the assessee. The AO has clearly stated in the remand report that this expenditure cannot be related to entries in the cash book. 32. I had carefully considered the assessment order, reply of assessee, and remand report. I am of the opinion that the assessee has failed to demonstrate this expenditure was recorded in regular books of account. Further, the assessee was unable to prove that this expenditure was incurred wholly and exclusively for purpose of business by the assessee. The AO has clearly stated in the remand report that this expenditure cannot be related to entries in the cash book."

Upon issuance of the impugned order passed by the learned CIT(A), the assessee is in further appeal before the Tribunal.

5. Before us, the learned Departmental Representative, Shri Sandipkumar Solanke, placed reliance on the assessment order by submitting that the addition was correctly made by the Assessing Officer and hence prayed that the assessment order be upheld. He further submitted that considering the absolute non-cooperation of the assessee during the assessment proceedings, it was not proper on the part of the learned CIT(A) to admit the additional evidences. The learned CIT(A) had not mentioned anything in his

order as to how conditions of Rule 46A are satisfied in the case to restore the matter to the file of the Assessing Officer for obtaining the remand report and that none of the ingredients of Rule 46A are satisfied in this case. The learned D.R. further contended that the observations of the Assessing Officer in the remand report is not considered by the learned CIT(A) in its true sense and deleted the additions without completely analysing the issues and conclusion drawn by the Assessing Officer in the remand report and, therefore, considering the totality of the circumstances, it would be appropriate to set aside the impugned order passed by the learned CIT(A).

6. On the other hand, the learned Counsel the learned Counsel, Shri Sachin V. Luthra, appearing for the assessee made following point-wise arguments:-

"1) No incriminating documents or, undisclosed assets, cash, jewellery etc. was found. The assessee's accountant was present in Income tax office with books of accounts, documents, papers etc. on various dates but however, due to some reasons, the AO did not record his presence and declined to see the books of accounts, documents, papers produced. The assessee had also filed adjournment application on date of hearing. Assessee counsel also appeared on several occasions but his attendance was not marked. Since the assessee was not able to submit the details due to above reasons, the assessee approached the higher authorities before completion of assessment proceedings stating the fact that its accountant and staff was not allowed to submit the details or to produce books of account. Copies of letters written to higher authorities, namely Income Tax Officer (Vig)-I; CIT (central Circle); CBDT Ministry of Finance, GOI, New Delhi are enclosed herewith wherein the assessee has stated about the injustice caused by officers and has also mentioned the name of the concerned officers.

In view of the above, it is clear that, it was not a case where assessee did not appear before the AO but the assessee was prevented by sufficient cause from producing books of accounts and details before the AO in this case. There was gross injustice caused to the assessee as the assessee's submissions were ignored by the AO. The AO did not verify the books of account, bills, vouchers and other documents and had made all the additions on basis of surmises and conjectures.

In light of the above findings, the CIT(A) has admitted the additional evidences u/r 46A after considering all facts of the case and had called for remand report from the AO in regard to each addition made in the assessment orders. The CIT(A) had judiciously allowed additional evidences u/r 46A allowing sufficient time both to the assessee and the department. Thus, the cases are thoroughly verified by the department during remand and appeal proceedings.

ii) Regarding the additions, the AR relied on CIT(A) order.

6. We have gone through the assessment order, the grounds of appeal, written submission made by the appellant and the order of CIT(A). After hearing both the parties and perusing the materials on record, we address the issues raised in the appeal on a point-wise basis."

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record.

8. Ground no.1, raised by the Revenue relates to admission of additional evidence under Rule 46A of the I.T. Rules, 1963, by the learned CIT(A).

9. The Revenue, before the learned CIT(A), lodged its objection stating that the assessee's case is not covered by the exceptions provided under the said rule. We have gone through the provisions of Rule-46 (supra) and examined the facts and circumstances of the present case. We note that the provisions of Rule 46A permits the learned CIT(A) to admit additional evidence only under certain circumstances which include circumstances such as when the appellant is prevented by sufficient cause from producing evidence before the Assessing Officer. In this case, the learned CIT(A) found that the assessee was prevented from furnishing certain documents as 'a' was not allowed by the Assessing Officer during the assessment proceedings. We find the substance in the contention of the learned Counsel for the assessee that compliant letters were filed by the assessee before the assessment was

completed. This fact is noted and considered by the learned CIT(A) in its impugned order which are also quoted by the learned Counsel for the assessee in the submissions made before us. In this regard, it is relevant to quote the below Para-6 & 7 of the impugned order passed by the learned CIT(A) for better appreciation of facts:-

"The assessee has highlighted the grievance petitions filed by assessee during the assessment proceedings in which allegations have been made of harassment. The assessee has enclosed correspondence made by him before the Income-tax authorities complaining that his submissions were not accepted by the AO. In his submissions dated 27.11.2013 during the appellate proceedings, the assessee has also alleged gross injustice in his case during the assessment proceedings stating that the evidences produced by him were being ignored by the AO.

During appellate proceedings, the assessee has highlighted the background in which the assessments in the case were completed by the AO as per the complaint of alleged harassment".

10. As could be seen from the above, the learned CIT(A) highlighted gross injustice and harassment faced by the assessee in assessment proceedings. The learned CIT(A) had taken due cognizance of complaints filed by the assessee before assessments are completed. The learned CIT(A) had discussed his findings regarding allowability of additional evidence under rule 46A in the impugned order passed by him. Thus, in our considered opinion, the learned CIT(A) has passed a speaking order on this issue. As crux of above observations, the learned CIT(A) had considered all relevant background while allowing additional evidence under Rule 46A (supra). In our view, the learned CIT(A) has rightly admitted the additional evidence under Rule 46A after satisfying that all the conditions were met. The Assessing Officer was granted full opportunity to verify all books of accounts, bills,

vouchers, bank statements, seized material, etc., during remand proceedings along with replies filed by the assessee before the learned CIT(A). We further find that the contravention of provisions of Rule 46A made by the learned CIT(A) does not arise in this case, as both, the assessee and the Assessing Officer have been provided with adequate opportunity and the remand report obtained from Assessing Officer. The assessee was also allowed to file its point wise response to remand before the Assessing Officer. As could be seen from the record, the learned CIT(A) had taken adequate measures to grant equal opportunity of being heard to both assessee and the Assessing Officer as well. Keeping in view the circumstances as explained above, we are in full agreement with the learned CIT(A) in allowing the assessee to furnish additional evidences under Rule 46A, which the learned CIT(A) was absolutely correct in his part to admit the additional evidences without which the proper income of the assessee could not be determined in the interest of justice. Here, we wish to place reliance on the judgment of the Hon'ble Delhi High Court in CIT v/s Virgin Securities and Credits P. Ltd., [2011] 332 ITR 396 (Del.) wherein the Hon'ble Court held that the CIT(A) should admit the additional evidence if he finds that the same is crucial for the disposal of the appeal. Further, the decision of the CIT(A) is supported by the decision of the Co-ordinate Bench of the Tribunal rendered in Bhavya Lakhani Traders & Suppliers (P) Ltd. ITA no.5409/Del./2010, A.Y. 2006-07, vide order dated 16/10/2012, wherein the Tribunal held that the CIT(A) is empowered to admit additional evidence under Rule 46A if the assessee is prevented from presenting evidence before the Assessing Officer. We, therefore, left with no

choice but to uphold the decision of the learned CIT(A) in admitting the additional evidence and hold that no contravention of the provisions of Rule 46A (supra) has occurred in the instant case. Thus, the challenge of Revenue in admitting the additional evidence by the learned CIT(A) under Rule 46A (supra) has no legs to stand. Consequently, upholding the impugned order passed by the learned CIT(A), ground no.1, raised by the Revenue stands dismissed.

11. In grounds no.2 to 5, raised by the Revenue, following additions / disallowances made by the Assessing Officer.

1.	<i>Gold ornaments, Silver articles found at residence. Protective addition</i>	₹ 65,62,158
2.	<i>Gold ornaments, Silver articles etc. found in bank locker and cash. Addition on protective basis</i>	₹ 50,47,355
3.	<i>Estimation of rental income from property at Indore addition on protective basis</i>	₹ 16,49,620
4.	<i>Investments in shops at Indore. Addition on protective basis.</i>	₹ 5,52,87,300

12. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. As could be seen from the above, the additions were made on protective basis by the Assessing Officer. The learned CIT(A) has not given direct finding in his impugned order that the investments made by the assessee remained unexplained. Rather, the Assessing Officer made these additions on estimate basis which reflects that the Assessing Officer was not certain about making these additions and hence the learned CIT(A) directed to delete such additions which the Assessing Officer made on protective basis. It is relevant

to quote below Para-11 of the impugned order passed by the learned CIT(A) for ready reference:-

"The addition at sl.no.i) to iv) above are made by the A.O. on substantive basis in the case of assessee's Wife, Smt. Rajkumari Dharampal Agrawal (for A.Y. 2011-12) and on protective basis in the hands of the assessee. The additions have been dealt with in the case of Smt. Rajkumari Dharampal Agrawal holding that the investment and incomes concerned related to Smt. Rajkumari Dharampal Agrawal and not to the assessee.

Therefore, the additions at Sl. No.i) to iv) [additions of ₹ 65,62,158, ₹ 50,47,355, ₹ 16,49,620 & td 5,52,87,300] are deleted in the case of the assessee, Shri Dharampal Agrawal."

13. Similar addition of ₹ 1,16,09,513, is made in Smt. Rajkumari Agrawal, in A.Y. 2011-12, which is appeal before us. It is pertinent to note here that a protective addition is made as a safeguard in cases where the exact quantification of concealment or the nature of the income is uncertain and inconclusive. Essential ingredients of charge should exist in order that protective assessment becomes substantive assessment. In this regard, we rely on the decision of the Co-ordinate Bench of the Tribunal, Jaipur Bench, rendered in DCIT v/s Pallavi Mishra, [2021] 191 ITD 13 (Jai.). However, given that the Assessing Officer failed to substantiate their allegations with specific evidence, we find that the addition on a "protective basis" does not have sufficient grounds to stand the test of law. Therefore, we are of the opinion that this addition being made without adequate justification or evidence, which deserves to be deleted. Moreover this addition is made in case of Rajkumari Agarwal. The same addition cannot be made in hands of assessee twice which tantamount to double taxation on same amount. It is surprising to note that the learned CIT(A) has deleted the issue of investment in the

hands of Smt. Rajkumar Agarwal, which was made in shops situated at Indore and against this the Revenue is not in appeal. Accordingly to us, the learned CIT(A) has correctly concluded that Smt. Rajkumari Agarwal, has to be considered as true owner of the investments as well as the real person where the income is accrued. In conclusion, we are in agreement with the learned CIT(A) who has correctly deleted the additions made by the Assessing Officer and we find no reason to interfere with their decision. Hence, this additions of ₹ 65,62,158, ₹ 50,47,355, ₹ 16,49, 620 and ₹ 5,52,87,300, are deleted. We make it clear that Revenue must refrain from taking diametric opposite stands in the very self some issue in different cases. Thus, grounds no.2 to 5, raisedt by the Revenue are dismissed.

14. Ground no.6, raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained expenditure of ₹ 38,95,237.

15. Here, the learned CIT(A), vide his impugned order at Para-16, directed to delete the addition and while directing so, he observed as under:-

"16. I have considered the assessment order, submission of assessee, remand report and response of assessee to the remand report. It is seen that the AO has made this addition on basis of seized document which was found during the search and seizure operations.

Assessee has produced documents along with written explanation that this quotation was for Shree Agrawal Coal India P. Ltd. and the work of repairs to building was started in FY 2011-12. The AO has not made a finding based on any definite evidence that this expenditure was incurred by the assessee and the same was not recorded in regular books of account. The AO has added the amount merely stating that the assessee has not produced books of accounts and any evidence to substantiate his claim.

In the remand proceedings, the assessee furnished before the AO the ledger of said expenses which has been verified by the 'AO. The genuineness of this quotation and expenses incurred in FY 2011-12 by Shree Agrawal Coal India Pvt. Ltd. is not disputed by the AO. The expenditure is debited in the books of

M/s. Shree Agrawal Coal India Ltd. in financial year 2011-12. The repair work relates to its office premises at Devikripa, Wardhaman Nagar, Nagpur as per assessee's submission dated 01.12.2014. I have gone through the relevant seized documents (copy of which have been submitted by the assessee on 24.02.2016 on record) in which no details of payments are mentioned. The documents appears more in the nature of the quotation in which discount of Rs. 13,79,000/- also is mentioned.

In the facts of the case, after considering the evidences and submissions of the assessee, the addition of Rs.38,95,237 is held as unjustified and is ordered to be deleted. The AO is accordingly directed."

16. Considering the above findings, in our opinion, the issue does not require further discussion and we hold that the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. The Assessing Officer has accepted the correctness of this expenditure of ₹ 38,95,237 in his remand report. Therefore we decline to interfere with the impugned order passed by the learned CIT(A) which is hereby upheld by deleting the addition of ₹ 38,95,237. Thus, ground no.6, raised by the Revenue is dismissed.

17. Ground no.7, raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained cash and interest expenditure of ₹ 42,30,068.

18. The learned CIT(A) has deleted this addition vide Para-21 of the impugned order, which is relevant to quote hereunder:-

"21. The findings in the assessment order, submission of the assessee, AO's remand report and assessee's response to the remand report are considered carefully. It is seen that addition was made by AO in the hands of assessee as documents of Shree Agrawal Finance India P. Ltd. were seized from assessee's premises. It appears that the addition was made by the AO mainly due to the mention of word 'cash' in the seized documents. On the left side of the documents, it is noted that the loans were taken in cheque. Normally, in that situation, the loans would not be repaid in cash. However, as argued by the

assessee, the word 'cash' appears to have been used loosely since in accounting parlance, cash flow is frequently used in which cash as well as bank transactions are represented in the incoming and outgoing position of the finances of a particular concern. The AO has not adduced any corroborative evidence to prove that the loans were repaid in cash outside the books.

In remand proceedings, the assessee has furnished before the AO various documents such as copy of ledger account, bank statement, chart showing details of Interest paid on the unsecured loans and TDS effected on the said interest etc. Shree Agrawal Finance India Pvt. Ltd. had accepted the said unsecured loans in regular course of finance and lending business, and had made payment of interest through banking channels, TDS was made from interest amount and paid to the government account as submitted by the assessee and stated by the AO in his remand report. The AO, in the assessment proceedings, has not proved that there was any cash payment involved at all in the transaction. Shree Agrawal Finance India P. Ltd. which is a company in which the assessee is a director is engaged in the business of finance and money lending. In the remand report, the AO has stated that he has verified and these transactions in books of account of Shree Agrawal Finance India Pvt. Ltd. The AO has stated that in the remand report that the assessee furnished copies of relevant ledger statements from the accounts of M/s. Shree Agrawal Finance India Pvt. Ltd. and also filed copies of HDFC Bank account of this company showing these payments.

On the facts discussed above, it is held that the addition made by the AO of Rs 42,30,068/- is unjustified and the addition is ordered to be deleted. AO is directed accordingly."

19. Considering the above findings, in our opinion, the issue does not require further discussion and we hold that the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. The said addition is hereby directed to be deleted as the assessee has furnished the documents and explained that the transaction executed is to the satisfaction of the Assessing Officer during remand proceedings.

20. Ground no.8, raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained sales of ₹ 4,54,32,217.

21. The learned CIT(A), vide impugned order at Para-26, directed to delete the said addition by observing as under:-

"26. The findings of the assessment order, submission of the assessee, AO's remand report and assessee's response are carefully considered. The AO has treated the figure of "4,54,32,217" as unaccounted income and added the amount as undisclosed income converting this figure into rupees. It is seen that the seized documents are titled as 'WARDHA POWER COMPANY, PVT.LTD (HYEDRABAD) ANALYSIS REPORT'. During the remand proceedings, assessee has submitted details before the AO stating that the transportation of coal is done by Shree Transport Agrawal India (Proprietor Mr. Dharampal Agrawal). The coal is supplied as per the purchase orders from Wardha Power to Shree Agrawal Coal India Pvt. Ltd. for coal and Shree Agrawal Transport India is engaged in transportation of said coal. Assessee had produced books of account, bills, vouchers, bank statement etc of assessee and Shree Agrawal Coal India Pvt. Ltd. (SACIPL) before the AO in remand proceedings. The assessee is proprietor of Shree Agrawal Transport India' which is engaged in transportation of coal mainly sold by Shree Agrawal Coal India Pvt. Ltd. The assessee has emphasized that Shree Agrawal Transport is not engaged in trading of coal. The seized documents under discussion are in the nature of workings for the month of July, 2010 of calorific value of the coal supplied by Shree Agrawal Coal India Pvt. Ltd. (SACIPL) to Wardha Power Company Ltd. (WPC). The calorific value per unit is in kcal per kg. 323. The coal sold by SACIPL was subjected to the laboratory test by WPC. The seized papers contains analysis of moisture (in %), ash (in %), volatine matter (in 8), fixed carbon (n %) and gross calorific value (GCV)in Kcal/Kg.

The assessee has, during the appellate proceedings and in the remand proceedings reconciled the quantity of coal in the seized documents pertaining to July, 2010 with the books of accounts of Shree Agrawal Coal India Pvt. Ltd. (SACIPL). There are no amounts mentioned in the seized documents. The figure "4,54,32,217" mentioned in the seized documents does not represent an amount. It is only the measure of the calorific value of the coal supplied by SACIPL to Wardha Power Company Pvt. Ltd. The AD has not appreciated the facts in proper perspective in the assessment proceedings or in the remand proceedings.

On the facts in the case, it is held that the addition of Rs.4,54,32,217/-by the AO in assessment is not justified. The addition is ordered to be deleted. The AO is directed accordingly.

22. Considering the above findings, the issue do not require further discussion as the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Thus, the addition of ₹ 4,54,32,217 deserves to be deleted, as the Assessing Officer has made

addition without any concrete basis, or corroborative evidence has been brought to our notice by the learned Departmental Representative. Accordingly, upholding the impugned order passed by the learned CIT(A) on this issue, we direct the Assessing Officer to delete the addition. Ground no.8, raised by the Revenue stands dismissed.

23. In ground no.9, the issue raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained expenditure of ₹ 2,10,092, relevant to a function.

24. The learned CIT(A), vide impugned order at Para-32, upheld the said addition made by the Assessing Officer by observing as under:-

"32. I had carefully considered the assessment order, reply of assessee, and remand report. I am of the opinion that the assessee has failed to demonstrate this expenditure was recorded in regular books of account. Further, the assessee was unable to prove that this expenditure was incurred wholly and exclusively for purpose of business by the assessee. The AO has clearly stated in the remand report that this expenditure cannot be related to entries in the cash book.

On the facts, on the issue, it is held that the expenditure of Rs. 2,10,092/- has been incurred by the assessee outside the books of accounts and is unexplained in the hands of the assessee. In any case, the assessee has failed to prove that the expenditure was recorded in the books or was incurred for the purpose of business.

Therefore, the addition made by the AO is upheld and confirmed. The AO is accordingly directed."

25. The assessee had failed to prove that the expenditure was recorded in the books or was incurred for the purpose of business, therefore, the learned CIT(A) has upheld the said addition. During the first appellate proceedings, the assessee failed to prove that the same was reflected in books Hence, the said addition made by the Assessing Officer at ₹ 2,10,092 is hereby upheld by

confirming the impugned order passed by the learned CIT(A) on this count. Thus, ground no.9, raised by the Revenue being contrary to records is dismissed being infructuous

26. Ground no.10, raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained investment in land purchase amounting to ₹ 2,61,040.

27. The learned CIT(A), vide impugned order at Para-37, directed to delete the said addition by observing as under:-

"37. I have considered the assessment order, submission of assessee, remand report, response of assessee to it, evidence produced before AO. It is seen that the assessee has purchased the land in question from accounted funds. The payment is accounted for in assessee's regular books of accounts. The sale deed, bank statement, bills etc., are also filed by assessee. In remand proceedings, the AO has stated that out of the payment of Rs. 2,51,000/- made to the seller, Shri Siddharth Maske, payment of Rs. 2,00,000/- was made by the assessee by demand draft purchased through cheque no. 723863 of HDFC Bank and balance payment of Rs. 51,050/- was explained from cash book. The assessee has pointed out in submission earlier dated 01.12.2014 that the AQ had made addition of Rs. 2,61,040/- even though the amount mentioned in the seized document was Rs. 2,51,000/-. The amount of Rs. 2,40,000/- was paid through banking channels and remaining amount of Rs. 11,000/- through the cash book.

After considering the facts on the issue, it is held that the investment made by the assessee is explained from the books of account. It is held that the addition of Rs.2,61,040/- made by the AO is unjustified and is ordered to be deleted. The AO is accordingly directed."

28. The assessee has explained the source of investment in land of ₹ 2,61,040 to the satisfaction of the Assessing Officer during the remand proceedings. The assessee has explained the source of investment in land. Considering the above findings, the issue does not require further discussion as the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Thus, the addition of ₹

2,61,040, is hereby deleted by upholding the impugned order passed by the learned CIT(A). Ground no.10, raised by the Revenue is dismissed.

29. Ground no.11, raised by the Revenue relates to the addition made by the Assessing Officer on account of unexplained freight income of ₹ 18,80,000.

30. The learned CIT(A), vide impugned order at Para-42 to 44, directed to delete the said addition by observing as under:-

"42. I have considered the assessment order, submission of assessee, remand report, assessee's response to the remand report and the documentary evidences produced during appeal. The assessee is engaged in the business of transportation and derived income from transport, interests and rent. The AO made the addition stating merely that the assessee failed to produce books of accounts and no supporting evidences and explanations were furnished by the assessee.

43. In remand proceedings, the assessee has furnished details of freight income before AO which the AO has acknowledged in his remand report. The Tax Invoices are also filed before the AO. The AO has accepted the evidences filed by assessee and cross checked with freight income. The AO has not stated anything contrary to assessee's claim in his remand report. In appellate proceedings, the assessee has furnished the details and evidences to prove that the amounts in the seized documents were duly recorded in the books of accounts. The assessee has made submission dated 05.02.2016 24.02.2016 explaining the seized documents. The assessee has reconciled the outward vouchers with the books of accounts.

44. On the facts of the case, considering the assessee's submission and the remand report, it is held that these are genuine business transactions which are accounted for in the assessee's books. It is therefore held that the AO was not justified in making the addition of Rs. 18,80,000/-. In the result, the addition of Rs.18,80,000/- is ordered deleted and AO is accordingly directed."

31. The assessee has furnished details of freight income as per seized documents and matched it with income recorded in books of accounts. The Assessing Officer has accepted in his remand report that this income is recorded in regular books of accounts. Considering the above findings, we are

of the view that the issue does not require further discussion as the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Accordingly, upholding the impugned order passed by the learned CIT(A), we delete the addition made by the A.O. on this count. Ground no.11, raised by the Revenue is dismissed.

32. Ground no.12, raised by the Revenue relates to the addition made on account of treatment of agricultural income of ₹ 3.43,000, as business income.

33. The learned CIT(A), vide impugned order at Para-49 to 51, directed to delete the said addition by observing as under:-

"49. During the appellate proceedings, the evidences are produced by the assessee and the same are examined by me. The 7/12 extracts of the land and the crops grown on 11 hectares were examined. Out of the total land of 19 hectares, 8 hectares of land is padit (non-arable). The sample bills of sale of the agricultural produce were produced by the assessee which were examined. It is seen that on the total cultivated land of 11 hectares, the assessee has shown total receipts of 445000/- and net agricultural income of 343000/- The net agricultural income per acre is approximately Rs. 13192/-. The supporting evidences of cultivation and sales of the produce as well as the expenses incurred on cultivation have been furnished.

50. In the circumstances, I do not find any merit in the action of the AO to treat the agricultural income as false claim by the assessee. There is no evidence adduced by the AO to the contrary or to negate the claim of the assessee. The AO has not appreciated the evidences produced by the assessee in the assessment proceedings and has wrongly concluded that the addition made in the assessment order was justified.

51. In the result, the addition made by the AO of Rs.3,43,000/- towards the agricultural income taxable business income is ordered to be deleted. AO is directed accordingly.

34. The assessee had proved that he has carried out agricultural activities and produced supporting evidences in remand proceedings. Considering the

above findings, the issue doesn't require further discussion and CIT(A) has correctly deleted the additions made by the AO based on the remand report. The addition is deleted as the assessee proved agricultural income. Accordingly, upholding the impugned order passed by the learned CIT(A), we delete the addition of ₹ 3,43,000, on account of agricultural income made by the Assessing Officer on this count by upholding the impugned order passed by the learned CIT(A). Thus, ground no.12, raised by the Revenue is dismissed.

35. Ground no.13, raised by the Revenue relates to the addition of ₹ 42,36,000 on account of unexplained cash deposits.

36. The learned CIT(A), vide impugned order at Para-60 to 62, directed to delete the said addition by observing as under:-

"60. I have considered submission response of assessee, it, to the assessment order, remand report, assessee's the documentary evidence produced before AO in remand proceedings. I observe that assessee is engaged in business of transportation, finance and drilling business. derived agricultural Also the assessee income. The has explained that the cash deposits were made from the cash received from various sources of income of the assessee. The AO made the addition in the assessment order merely stating that the books of accounts and details were not produced by the assessee.

61. In remand proceedings, the AO has verified the documentary evidence filed by assessee and Cross checked it with bank accounts and books of account of assessee. The AO had not pointed out any deficiency /error in books of accounts etc. The AO has not stated anything contrary to assessee claim in his remand report. The AO has stated in the remand report that the assessee filed copies of cash book folios and bank statements in which the sources of cash deposits of the 18 entries aggregating Rs. 42,36,000/- was explained.

62. Therefore, I am of the considered opinion that these are genuine business receipts which accounted for in the books of the assessee. are In the facts and circumstances, it is held that the AO was not justified in making the addition of Rs. 42,36,000/-In the result, the addition of Rs.42,36,000/- is ordered to be deleted and AO is accordingly directed."

37. The Assessing Officer had accepted in his remand report that the above cash deposit is recorded income in regular books of accounts by the assessee. Considering the above findings, the issue does not require further discussion and the learned CIT(A) has correctly deleted the additions made by the Assessing Officer which is based on the remand report. Since this source of cash deposit of ₹ 42,36,000, is accepted by the Assessing Officer in his remand report, the addition deserves to be deleted. Accordingly, upholding the impugned order passed by the learned CIT(A), the ground no.13, raised by the Revenue stands dismissed.

38. While parting with this order, we wish to mention here that in light of the overall facts and circumstances, evidence on record and the reasoning provided by the learned CIT(A) with regard to other grounds of appeal, we are inclined to agree with the findings and decisions of the learned CIT(A) in all the grounds of appeal right from grounds no.1 to 13 and uphold the impugned order passed by the learned CIT(A). The CIT(A) has appropriately addressed the issues raised by the Assessing Officer with respect to grounds as stated above, which is further corroborated by favourable remand report of the Assessing Officer. After thoroughly reviewing the case, we are of the considered view that the learned CIT(A) has correctly deleted/confirmed the additions made by the Assessing Officer and we find no reason to interfere with the findings and/or decisions of the learned CIT(A).

39. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 15/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur