



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं/.ITA Nos.111 to 113/RJT/2024

निर्धारणवर्ष /Assessment Years: 2013-14 to 2015-16

Krupalu Metals Pvt. Ltd Plot No..4345, GIDC, Phase-III, Udhyog Nagar, Jamnagar-361008	बनाम/ vs.	Income Tax Officer, National Faceless Assessment Centre, Delhi/DCIT, Circle-3, Jamnagar
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: <b>AADCK6122 B</b>		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sarvesh Gohil, Ld. AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr-DR

सुनवाई की तारीख/Date of Hearing : 27/02/2025

घोषणा की तारीख/Date of Pronouncement : 22/05/2025

**आदेश / ORDER**

**PER BENCH:**

Captioned three appeals, filed by the assessee, pertaining to Assessment Years (AYs) 2013-14 to 2015-16, are directed against the separate orders, passed by the National Faceless Appeal Centre (NFAC), Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld.CIT(A)'] under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), all dated 16.02.2024, which in turn arise, out separate assessment orders passed by



National Faceless Assessment Centre, Delhi/Deputy Commissioner of Income-tax, Circle-3, /Assessing Officer, u/s 147 r.w.s 144B r.w.s. 143(3) of the Act.

2. Since the issues involved in all these appeals are common and identical; therefore, we have clubbed these appeals and heard together, and a consolidated order is being passed for the sake of convenience and brevity. For the sake of convenience, the grounds as well as the facts narrated in ITA No.111/Rjt/2024, for assessment year 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3.The grounds of appeals raised by the assessee in “*lead*” case in ITA No.111/Rjt/2024, for assessment year ( A.Y.) 2013-14, are as follows:

*“1. The grounds of appeal mentioned as below are without prejudice to one another.*

*2. The Ld National Faceless Appeal Centre (CIT Appeal) now and in the following paragraphs referred to as NFAC has erred in facts as in law also by passing the impugned order without considering the facts & circumstances of the case & detailed submissions of the assessee which is against the principle of natural justice & equity of law.*

*3. The Ld. NFAC has grievously erred in facts as also in law while passing the impugned order making unjust addition in income by totally relying on the information received from Excise Department & without investigating of its own and bringing any material facts /evidence which is not tenable in the eyes of law and therefore the said impugned order needs to be set aside.*

*4. The Ld. NFAC, dismissed the appeal without following the principles of natural justice and equity of India as the Ld NFAC has finalized the Assessment with variation/ Addition to the total income of the Appellant without Providing VC Hearing although the same has been specifically requested by the appellant as on 06/02/2024 which is totally bad in eyes of law and against the principle of natural justice settled by the Apex Court.*

*5. The Ld. NFAC Alleged in its impugned Order that on appellant's request, Notice under section 250 was issued scheduling the hearing through Video Conferencing on 09.02.2024 at 3.00 PM, However, there was no response from the appellant to the said opportunity granted for hearing which is far from truth and facts of the circumstances of the case for the reason that the said letter was issued to the assessee requesting*



*assessee to respond by 09.02.2024 in case assessee wish to avail the VC. The letter referred to by the Ld. NFAC did not mention that the VC is fixed on 09.02.2024. The appellant has responded to the notice of availment of the opportunity through Video Conferencing as on 06/02/2024 itself much before the date 09.02.2024. Such misstatement in the impugned order passed by the Ld. NFAC itself exhibits the punitive nature of the Ld. NFAC which hurriedly passed the order without extending the opportunity of PH through VC. On this ground alone the impugned order needs to be set aside.*

*6.TheLd NFAC decided the Appeal and passed order u/s 250 of the Income Tax Act without first verifying the with the Honorable CESTAT for the status of appeal filled before the CESTAT which is per se illegal particularly when the appellant had specifically submitted in its reply regarding status of the appeal with CESTAT. Had the Ld. NFAC verified the status, the Ld. NFAC would have come to know that the said appeal has been disposed off in favour of the appellant as on 31.01.2024.*

*7. The Appellant would like to draw the findings of the CESTAT in their order having No. FO/A/10281/-10290/2024-EX [DB] Dated 31/01/2024, against the adjudication order passed by the Commissioner of Central Excise Rajkot, O.I.O. RAJ-EXCU-000-PR.COM-63-16-17 dated 15/12/2016. In the order by Honorable CESTAT dated 31/01/204 has completely set aside the findings in the adjudication order of Excise Commissioner dated 15/12/2016. Hence, the entire Re Assessment proceeding does not survive as the case was reopened on the basis of the information in this case was received from the office of the Commissioner of Central Goods & Service Tax, Rajkot vide letter F.No. IV/06-62/CEP/2014-15/663, dated 06.11.2017.*

*8. Further, the sole ground on basis of which the entire income Tax proceeding was re-opened, loose its important as the Central Excise order which has been challenged to the higher authority for Excise Proceedings, Customs Excise And Service Tax Appellate Tribunal (CESTAT) had decided issue in favor of assessee and said order passed by CESTAT had achieved finality. Hence the Pillar of the whole belief itself nullified hence, the entire Re opening proceeding is null and void.*

*9. On the facts and circumstances of the case the NFAC has erred both in facts as in law by upholding the Ld AO's action of making addition without considering the facts and circumstances of the case as the income tax proceedings are initiated based on an order made by the Central Excise Department, and that order is subsequently set aside or overturned by CESTAT. Hence, the entire proceeding needs to be annulled and set aside as the same."*

4. Brief facts *qua* the issue are that assessee company has e-filed its return vide acknowledgement number 807845991300913 for the A.Y. 2013-14 on 30.09.2013, declaring total income at Rs. NIL. The assessee is engaged in the business of manufacturing of various kinds of brass & copper items. The information in this case was received from the office of the Commissioner of



Central Goods & Service Tax, Rajkot vide letter F.No. IV/06-62/CEP/2014-15/663, dated 06.11.2017 and as per the information the business premises of the assessee were searched by the Central Excise Officers of Rajkot Commissionerate on 05.01.2015. During the search proceedings incriminating documents were found and seized revealing that this company was showing less production in their daily stock account/suppressing their finished stock and removing the excisable finished goods clandestinely without disclosing in their regular books of account. Therefore, notice u/s 148 of the Act was issued by the assessing officer on 05.09.2019 after getting prior approval of the Ld. Pr.CIT, Jamnagar and the same was served upon the assessee.

5. In response of the notice 148 of the Act, the assessee has requested to consider their return filled, as on 30.09.2013, as return of the income, vide reply dated 28.02.2021. Notice u/s 143(2) of the I.T. Act, was issued to the assessee on 30.06.2021. Various notice u/s. 142(1) of the IT Act alongwith questionnaire were issued and served upon the assessee.

6. In response to the notices, the assessee has uploaded the submissions from time to time and furnished various details relevant to the assessment. Further, on question regarding stock registers the assessee is replied the following:

Sl.No.	Particulars	Submission
5	Please provide stock registers with month-wise closing stock details in respect of each item for the relevant financial year giving quantity details and value.	Copy of stock registers in respect of each item for the relevant financial year is attached herewith as per Annexure-5. Moreover, we would like to submit the facts that assessee company is engaged in manufacturing of brass sheets which is the finished goods.
		We have produced before your honour the summary of the inwards and outward quantity years and also produced the details of the items-wise raw materials and then transferred to the finished goods and finished goods quantity.  Moreover, we would like to submit the facts that total value of closing stock is



		33,22,513/- out of which value of closing stock of brass scrap is 6,67,623/-, value of closing stock of brass sheets is 19,63,749/- value of closing stock of zinc is 1,09,691/- for which the quantity details are given as per Annexure-5. Above  And includes foundry material of Rs.2,96,200/- and furnace oil of Rs.1,85,250/-
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7. The assessing officer noted that vide the Annexure-5, the assessee has submitted only one page stock summary for the year instead of month wise closing stock details in respect of each item for the relevant financial year giving quantity details and value.

8. The assessing officer noted that as per the information received from office of the Ld.Pr.Commissioner, Central Excise Customs and Service tax, Rajkot, the assessee has clandestinely removed manufactured finished goods of copper and brass sheets valued at Rs.22,58,68,936/-during the period 22.11.2012 to 05.01.2015, thereby evading the excise duty to the tune of Rs.3,20,30,376/-. The financial year wise bifurcation of unaccounted production/sales is arrived as under:-

Financial year	unaccounted
Production/sales	
2012-13 (Nov-2012 to March-2013)	1,77,03,604/-
2013-14	9,61,20,728/-
2014-15	11,20,44,604/-
Total:	22,58,68,936/-

The unaccounted production and clandestine removal of excisable goods pertaining to F.Y. 2012-13 relevant to A.Y. 2013-14 is reported at Rs.1,77,03,604/-. During the search proceedings, the Central Excise Authorities, certain incriminating documents (inventoried as per "Register PA-1, PA-2, PA-3



& PA-4 to the Panchnamadtd 05.1.2015) were seized and statement of Shri JagdishbhaiParshottambhai Kataria, director of M/s. Krupalu Metals Pvt. Ltd. and Shri ManishbhaiParshottambhai Kataria, Manager of the company who has maintained books of account and they admitted clandestine clearance/removal/sale of the manufactured finished goods on which they have not paid central excise duty. It was categorically admitted by Shri JagdishbhaiParshotambhai Kataria that all entries in the above mentioned incriminating documents pertained to unaccounted production/sales and that the payment for the sales were received in cash only. The Central Excise Authorities have also recorded the statement of some of the buyer parties and they have also admitted that they have purchased from M/s. Krupalu Metal Pvt. Ltd. without bills and that payments were being made in cash. It means all transactions were not recorded in regular books of account of the assessee.

9. The assessing officer further noted that respective buyers have also admitted in their statements recorded u/s.14 of the Central Excise Act, 1944 to have purchased unaccounted goods without invoices from the assessee company. Particularly amongst them are mentioned hereinbelow:

Sl. No.	Name of the persons	Amount
1	Shri RasiklalKalyanjibhai Bhut, proprietor of M/s Depak Products, Jamnagar	1,72,45,178/-
2	M/s Arihant Corporation, Jamnagar	1,08,74,095/-
3	M/s Shree Ambika Industries, Jamnagar	4,32,696/-
4	M/s Alakh Metal Product, Jamnagar	33,76,064/-
5	Shri HarshadbhaiPranlalBorsaniya, Proprietor of M/s Alloy Components, Jamnagar	70,81,357/-
6	Shri RashikbhaiParshottambhaiKateshiya, Proprietor of M/s Vadachi Products, Jamnagar	80,31,784/-
7	M/s Sanjari Press Products, Dared, Jamnagar	72,40,405/-
8	Shri VishalkumarHasmukhbhai Rabadiya	62,52,799/-

All the aforesaid persons have categorically admitted that they have purchased the goods without Central Excise invoices from assessee-company as detailed



in the work sheet prepared on the basis of seized documents from the premises of the assessee- company and that they have made the payments in cash to the assessee towards the said purchases.

10. The assessing officer therefore observed that overall findings of the action carried out by the Central Excise Department revealed that the assessee has carried out, without invoices, the clandestine removal of manufactured finished goods of Copper and Brass Sheets weighing 6,20,198.480kgs, valued at Rs. 25,91,45,436/- during the period 22.11.2012 to 05.01.2015, thereby evading the excise duty to the tune of Rs.3,20,30,376/- during the given period. For the clandestine removal of the said finished goods of Copper and Brass Sheets valued at Rs.25,91,45,436/-, finished goods valued at Rs.1,77,03,604/- fall in the financial year 2012-13, relevant to the assessment year 2013-14. The clandestine removal of finished goods of Copper and Brass Sheets valued at Rs. 1,77,03,604/- represents the unaccounted sales affected by the assessee during the year under consideration as the said transactions are not recorded in the assessee's regular Books of account.

11. Therefore, assessing officer was of the view that considering the rate of gross profit 25% of such unaccounted sales as reasonable, the gross profit on these unaccounted sales of Rs.1,77,03,604/- comes to Rs.44,25,901/- (25% of Rs.1,77,03,604/-) which requires to be added to the total income of the assessee.

12. Apart from the above, on analysis of the information gathered from the Excise Department, it was noted by assessing officer that the assessee has altogether affected unaccounted sales accumulating Rs.1,77,03,604/- during the year. In view of the addition on account of unaccounted sales resulting in the enhancement of gross profit by Rs.44,25,901/- as proposed above, further addition of Rs.1,32,77,703/- (Rs. 1,77,03,604/- (-) Rs.44,25,901/-) is required to



be made u/s 69 of the Act considering the unrecorded investment in purchase of raw material and subsequent manufacturing expenditure on unaccounted raw material.

13. The assessee was given an opportunity by way of show cause notice as to why assessment should not be completed as per draft assessment order on 15.09.2021 fixed for compliance by 20.09.2021. The assessee uploaded its submission on 19.09.2021. Reply of the assessee was examined by the assessing officer on merits and same was not found tenable. During the assessment proceedings the assessee requested for personal hearing through video conferencing(VC) on 21.09.2021. Considering the request of the assessee video conferencing was granted to assessee on 22.09.2021 for 24.09.2021 at 03:00 PM. On the given dated and time video conferencing was successfully concluded. During the course of VC, the Authorized Representative (AR) of assessee elaborated all facts again on which he has made written submission earlier. Later on, assessee submit its reply on 25.09.2021. After careful examination of VC and submission, it is concluded that the assessee has not given any new fact or material on record, it just repetition of written submission. Rebuttal to written submission as well as VC is discussed in succeeding sub-paras.

(i) The assessee is simply relying upon the facts that its books of accounts audited by certified CA and books of accounts are regularly maintained. In this regard, it is to be brought to knowledge that CA audit books of accounts etc. on the basis of documents/records etc. produced before him. The findings of Central Goods & Service Tax/Excise Department cannot be set aside by the assessee simply by saying that books of accounts were audited by Chartered Accountants.

(ii) The assessee reliance that proposed show cause notice is simply as per assessment order of F.Y. 2014-15 year cannot be accepted. As no new facts



emerges in current year, case was reopened on the basis of information received from Excise Department and the assessee has not placed any objection to reopening of case. Hence, it was in the knowledge of assessee to support this reply by submitting copy of ITR of companies who has shown job work done from the assessee in their P&L Account. Simply filing confirmation will not suffice the purpose.

(iii) The assessee itself admitted that additions made by authority is further challenged and is under litigation and not finally reached to the conclusion.

Since matter has not attained finality with regard to additions made by Central Excise, Customs and Service Tax Department. Assessment is being framed on the basis of status of Central Excise, Customs and Service Tax Department order as on date.

Further, the assessee filed appeal against assessment order passed u/s 143(3) of Act on 19.12.2017 for A.Y. 2015-16 is pending for adjudication in which the grounds of scrutiny were same.

(iv) The assessee has not submitted copy of P&L account and balance-sheet of M/s. Ally Corporation to prove that buyer did not accepted the sales theory and its job works. No details of TDS etc. furnished by the assessee.

(v) Facts and circumstances are same as in F.Y. 2014-15, the assessee seeks opportunity to cross object buyers. Revenue has relied upon the information received and reopened the case after following due procedure. Statements are recorded by Central Goods & Service Tax/Excise Department. Cross examination will be allowed to assessee by Central Goods & Service Tax/Excise Department as initial statement recorded by them. If assessee has in knowledge that buyers has retracted their statements then assessee should have brought on record the findings of



Central Goods & Service Tax/Excise Department thereon. It is at the fagend, the assessee is trying to delay the time barring proceedings.

(vi) The assessee's contention that profit margin should be added even if it is assumed that same is undisclosed or suppressed sale. This theory of assessee is not acceptable and AO has correctly adopted the figures.

(vii) The assessee has not placed any evidence on record that this is job work and not sale by way of submitting copy of ITR, P&L account, Balance Sheet, TDS return etc. of the parties with whom alleged transactions made.

(viii) On the basis of facts and circumstances, AO has correctly adopted the figures of G.P of Rs.2,40,30,182/- which is as per show cause notice. However, assessee was free to substantiate its claim with documentary evidences, which assessee failed even in response to draft assessment order.

(ix) Applicability of section 69 is correctly applied by AO. The contention of assessee that AO has adopted as per copy of A.Y. 2015-16 is not correct. However, facts and circumstances in all assessment year remains same and assessee is not able to distinguish the facts of these assessment year involved.

(x) Every assessment year is different assessment is correct but the facts in all assessment years remains same and accordingly same view is taken. The assessee fails to distinguish these assessment years involved with documentary evidences.

(xi) Assessee contention regarding faceless assessment was afforded every possible opportunity by way of issuing notice alongwith questionnaire on 29.09.2020, 15.02.2021, 22.02.2021, proposed show cause notice with



draft assessment order on 16.09.2021 and video conferencing on 24.09.2021. Proper opportunity is afforded to the assessee.

(xii) The assessee has made reliance upon certain judgements. The same are examined and not found maintainable on the facts and circumstances discussed in assessment order clearly while making additions. Further, order of Central Excise, Customs and Service Tax Department stands as on date.

(xiii) On crux issue of assessee, the same are dealt in details above at relevant place,

14. In view of the above discussion and on the basis of materials available on records, following additions were made by assessing officer to the total income of the assessee for the year under consideration:

(i) On account of estimated Gross Profit of Rs.44,25,901/- (i.e. 25% of total unrecorded sales of Rs. 1,77,03,604/-). Accordingly, an addition of Rs. 44,25,901/-was made to the total income of the assessee.

(ii) An amount of Rs. 1,32,77,703/- after deducting the G.P. of Rs.44,25,901/-from the total unaccounted sales of Rs. 1,77,03,604/-, as the unaccounted investment in business towards the purchase of raw material and subsequent manufacturing expenditure on unaccounted raw material u/s 69 of the Act. Accordingly, an addition of Rs. 1,32,77,703/- is made to the total income of the assessee and to be taxed as per provisions of section 115BBE of the Act.

15. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has dismissed the appeal of assessee observing as follows:



“6.6 I have carefully considered the relevant and material facts on record, in respect of the issue raised in this Ground of appeal, as brought out in the assessment order, the written submissions made during the appellate proceedings, and as contained in the order of the Central Excise Authority (Order dated 15.02.2016 passed by Pr. Commissioner, Central Excise, Customs and Service Tax, Rajkot). The moot point is whether, in the given facts and circumstances, the addition of estimated Gross Profit on unaccounted sales, and addition on account of unexplained investment towards purchase of raw material and related manufacturing expenditure, was justified I find that this issue has to be addressed having regard to all the relevant and material facts relating to the impugned transactions of unaccounted sales of finished goods. The undisputed facts are that the appellant company is engaged in manufacturing of Brass Sheets and Copper Sheets, which are excisable items. The factory premises of the appellant company were searched by the Officers of Central Excise Commissionerate, Rajkot on 05.01.2015 in presence of Shri JagdishbhaiParshottambhaiKatariya & Shri NavinbhaiParshottambhai, both the Directors of M/s Krupalu and Shri ManishbhaiParshottambhaiKatariya, their brother and Manager of the firm. During the search proceedings, certain incriminating documents, being registers PA-1, PA-2, PA-3 and PA-4 inventoried as per Panchnama dated 05.01.2015, were seized. On being asked, Shri JagdishbhaiParshottambhaiKatariya, Director and Shri ManishbhaiParshottambhaiKatariya, Manager of the appellant company admitted that these were private registers maintained by them to keep account of clandestine clearance of manufactured finished goods on which Central Excise Duty was not paid. They also explained that these registers contained details of buyers of said goods and the amounts received from buyers. Shri JagdishbhaiParshottambhaiKatariya further admitted that all entries relate to unaccounted sales and the payments were received in cash only. The search action revealed that the appellant company was showing less production in their Daily Stock Account and thereby removing the excisable finished goods clandestinely.

6.7 During the search proceedings of Central Excise Department, the data relating to clearance of manufactured finished goods maintained in these private registers were entered in the computer, and printouts were taken in presence of witnesses i.e. both the Directors and the Manager of appellant company. It was found from the said data that the total of all the unaccounted sales was Rs. 22,58,68,936/- during the years from 2012-2015 During investigation, statements of various persons, belonging to the appellant company, were recorded under section 14 of the Central Excise Act, 1944, who further substantiated the above findings of search action, -

1. Statement of Shri Jagdishbhai ParshottambhaiKatariya, Director of the appellant company recorded on 05.01.2015, and further statements recorded on 16.02.2016 and 19.02.2016,
- 2 Statement of Shri Dama Amit Mudjibhal, Supervisor of the appellant company recorded on 05.01.2015,
- 3 Statement of Shri Sanghani Rajnikant Chhaganbhai, Supervisor of the appellant company recorded on 05.01.2015,

6.8 Furthermore, Shri JagdishbhaiParshottambhaiKatariya, Director of the appellant company was arrested on 21.01.2015, during investigations, and was subsequently released on bail by the order dated 13.02.2015 of Hon'ble Gujarat High Court.during



*further investigations, premises of different buyers of the clandestinely removed finished goods were searched and their statements were recorded under section 14 of the Central Excise Act, 1944; wherein the respective buyers also admitted that they purchased brass and copper sheets from the appellant company without invoices, and had made payments therefore in cash; -*

- 1 Statement of Shri RasiklalKalyanjibhai Bhut, Proprietor of M/s Deepak Products, Jamnagar recorded on 09.02.2015,*
- 2. Statement of Shri Malay Rajendra Mehta, Partner of M/s Arihant Corporation recorded on 09.02.2015,*
- 3. Statement of Shri Sunil Durgeshbhai Bhatt, Partner of M/s Shree Ambica Industries, Jamnagar recorded on 24.11.2015,*
- 4. Statement of Shri Vipul DhirajlalRupapara, Partner of M/s Alakh Metal Product, Jamnagar recorded on 16.02.2016,*
- 5. Statement of Shri HarshadbhaiPranlalBorsaniya, Proprietor of M/sAlloy Components, Jamnagar recorded on 16.02.2016,*
- 6. Statement of Shri RasikbhaiParshotambhalKateshiya, Proprietor of M/s Vadachi Products, Dared, Jamnagar, recorded on 23.03.2016,*
- 7. Statement of Shri Jenul Abedin Ebrahim Darjada, Authorised Person of Mis Sanjari Press Products, Dared, Jamnagar, recorded on 23.03.2016,*
- 8. Statement of Shri VishalkumarHasmukhbhai Rabadiya, Proprietor of Mis M.K. Enterprise, Dared, Jamnagar, recorded on 28.03.2016,*

*6.9 Statement of Shri ArjunbhaiNarandasbhaiKatarmal, a scrap vendor, was also recorded under Section 14 of the Central Excise Act, 1944, wherein he admitted that he had supplied raw materials to the appellant company without Invoices/bills and has received payment in cash in lieu thereof*

*6.10 A detailed Show-Cause Notice (SCN) dated 30.03.2016 was issued by the Central Excise Authority (i.e. Principal Commissioner, Central Excise Commissionerate, Rajkot) to the appellant company and other persons concerned, duly confronting them with the above findings of the search action and post search investigation, along with copies of all statements and documents relied upon. The said Central Excise Authority, after considering the written/oral submissions made by the appellant company and other persons, has reverted the following final findings of fact, in their order dated 15.12.2016, on the main allegation of clandestine removal of excisable goods without payment of Central Excise duty; -*

*"19.1 I find that M/s. Krupalu Metals Pvt. Ltd., Jamnagar, are Central Excise registered assessee, engaged in manufacture of various excisable Brass products. During the search operation, various documents were seized from the factory premises under Panchnama dated 05.01.2015.*

*19.2 I find that during search proceedings under Panchnama on 05.01 2016, Shri JagdishbhalParshottambhaiKotadiya, Director of M/s Krupalu and Shri ManishbhaiParshottambhaiKatariya, Manager of M/s Krupalu admitted that among seized records/documents, some of the private registers contains the*



*details of their unaccounted sales of finished goods manufactured and clandestinely cleared by them; that the said finished goods were illegally cleared by them without payment of Central Excise duty and without invoices: that these registers also contains the details of the amount received in cash from such sales from the buyers; that since these sales were illegal therefore, transactions were in cash only, that both the Directors were aware about such transactions; that the entries in these registers were made either by him, Shri Navinbhai another Director, Shri Manishbhai or by any other person of his firm who was present at the time of clearances of such sales, on their instructions*

*19.3 I find that during the search panchnama, in presence of the panch witnesses, the data available in those registers were entered in computer of the factory and thereafter print-outs of the same were taken and on the basis of the said information, it has been ascertained that M/s. Krupalu had clandestinely cleared finished goods, as under,-*

Year	Sales figures (in Rs.)
2012-13 Dcember-2012 to April-2013	1,77,03,604/-
2013-14 (1) Aprl-2013 to August-2013	2,3,54,160/-
2013-14 (2) October-2013 to March-20214	7,27,66,568/-
2014-15 (1) April 2014 to August-2014	6,08,89,620/-
2013-14 (2) Septemer-2014 to December-2015	5,11,54,984/-
Total	22,58,68,936/-

*19.4 During search proceedings, physical stock of finished goods was also verified and it was found that there was a shortage of 1,934.000 Kgs of Brass Sheets and 617.000 Kgs of Copper Sheets, as compared to the stock shown in their Daily Stock Account on 05.01.2015. Shri JagdishbhaiParshottambhaiKatariya, Director of M/s Krupalu, admitted that the said shortage of their finished goods was due to their sale of finished goods without invoice(s) and without payment of Central Excise duty.*

*19.5I further find that during investigations, statement of Shri Dama Amit Mudhibhai, Supervisor of M/s Krupalu was recorded on 05.01.2015, under section 14 of the Central Excise Act, 1944, wherein he has admitted that they were receiving raw material i.e. scrap locally through Chhakda Rickshaw and he used to prepare receipt chalans (Vivek duplicate/triplicate) similarly he used to prepare dispatch challans (Vivek duplicate/triplicate). Shri Sanghani Rajnikant Chhaganbhai, another Supervisor of M/s Krupalu, in his statement dated 05.01.2016, recorded under section 14 of the Act has also admitted that he had made entries in the seized registers containing details of their sale to various buyers, on the instructions of Shri JagdishbhaiKatariya and Shri ManishbhaiKatariya. Shri Jagdishbhai Parshottambhai Katariya, Director of M/s Krupalu, in his statement dated 05.01.2016, have categorically admitted that they were notdoing job-work of any party and they were selling goods manufactured by their firm only. Regarding shortage of finished goods found during the search proceedings, he admitted that the said shortage was due to their sale of finished goods without bills/invoices. He has further admitted that the seized 5 registers contains details of their sales without bills; that according to the details taken out from these registers, they had cleared finished goods totally valued at Rs. 22,58,68,936/-, and he agreed to it.*



19.6 I find that during investigations of the case, statements of various buyers (Noticee Nos. 3 to 10) were recorded under Section 14 of the Central Excise Act, 1944, and each of the said buyer has categorically admitted that they had received finished goods manufactured by M/s Krupalu, and details of the same are as mentioned in the seized registers. Shri ArjunbhaiNarandasbhaiKatarmal, a scrap vendor (Trader), in his statement dated 19.02.2016, which was recorded in presence of Shri JagdishbhaiParshottambhaiKatariya, Director of M/s Krupalu, has admitted that he had supplied scrap to M/s Krupalu without any invoice and received payment of the same in cash from them. He has also confirmed that the details of such transactions were as shown in the seized registers.

19.7 Thus, I find that the details in the seized 5 registers were pertaining to their sales of finished goods without bills and accordingly they had cleared/sold 6,20,198.480 Kgs of finished goods ie. Brass/Copper sheets without invoices/bills and without payment of Central Excise duty, during the period from 22.11.2012 to 05.01.2015.

19.8 I find that on the basis of the data contained in the 5 seized registers and the print-outs of the said data prepared during the panchnama, seized records/documents/accounts, an Annexure "B", has been prepared which contains the details of total clearances made by M/s Krupalu without bills during the period from 22.11.2012 to 05.01.2015. The data contained in the Annexure "B" corroborate the charges made in the SCN regarding clandestine manufacture and clearance of various Brass products by M/s Krupalu, during the above period. Accordingly, it has been ascertained that M/s Krupalu have clandestinely cleared total quantity of 6,20,198.480 Kgs of excisable Brass products, valued at Rs. 25,91,45,436/-, without invoices/bills. during the period from 22-11-2012 to 05-01-2015, in contravention of the provisions of Rule 4 read with Rule 8 of the Central Excise Rules. 2002, in as much as they have removed the excisable goods without discharging the Central Excise duty Rule 6 ibid, in as much as they have failed to assess the duty payable on the excisable goods manufactured and cleared by them clandestinely, Rule 10 ibid, in as much as they have failed to maintain true and correct daily stock account of the goods manufactured and cleared; Rule 11 ibid, in as much as they have failed to issue Central Excise invoice(s) in respect of clandestinely cleared finished goods and Rule 12 ibid, in as much as they have failed to file the prescribed proper return showing correct quantity and value of their finished products."

6.11 Furthermore, the said Central Excise Authority, after considering the written/oral submissions made by the appellant company and other persons, has reverted the following final findings of fact in their order dated 15.12.2016, on the alleged role of buyers in clandestine clearance of excisable goods; -

24.2.1 I find that each of the above mentioned co-notices, (as stated at Sl. No. 1 to 8 above) in his respective statement, recorded under Section 14 of the Act, has categorically admitted about his role in the clandestine clearance of finished goods by M/s Krupalu Metals Pvt. Ltd., Jamnagar, during the relevant time. ShnJagdishbhaiParshottambhaiKatariya, Director of M/s Krupalu, in his statements dated 05.01.2015, 16.02.2016 and 19.02.2016 has admitted about clandestine manufacture and clearance of finished goods from M/sKrupalu without payment of duty and selling it to above mentioned various buyers. He has further stated that the print-outs of the data available in the seized registers, from their factory premises contained details of finished goods manufactured and sold by them without payment



of duty and it also contained details of the buyers of such goods and payment received in cash from these buyers.

24.2.2 In this regard, I find that the Notice Nos. 3 to 10 (who have purchased goods from M/s Krupalu, and which were cleared clandestinely by M/s. Krupalu, without any invoices and/or without payment of duty payable thereon), in their respective statements have confirmed this fact and inter alia, admitted that the details contained in the seized registers and other documents, also pertain to the finished goods purchased by them from M/s Krupalu, without invoices and without payment of duty, and the payment in respect of such goods has been made by them in cash to M/s Krupalu. On the basis of the information, contained in the said seized documents and as admitted by each of them in their respective statement, the value of goods purchased by these buyers (Noticees), and the amount of duty involved on such goods, has been worked out, as per details shown in Annexures "A-1", "A-2" and "B" to the show Cause Notice dated 30.03.2016, which reveals that these co-noticees have purchased clandestinely cleared goods from M/s. Krupalu, without invoice(s) and without payment of duty, as detailed in the table below:

Sr.no.	Notice No. in the show cause notice	Name of the notice (S/Shri)	Value of the goods purchased by the noticee in column-3, from M/s Krupalu, without invoice(s) and without payment of duty, as per details available in seized documents, computer/laptop	Amount of duty involved in respect of goods mentioned in column-4 (Rs)
1	2	3	4	5
1	3	Shri Kalyanjibhai Bhut, Partner of M/s Deepak Products, Jamnagar	1,72,45,178/-	21,31,504/-
2	4	Malay Rajendra Mehta, partner of M/s Arihant Corporation, Jamnagar	1,08,74,095/-	13,44,038/-
3	5	Sunilbhai Durgeshbhai Bhatt, Partner of M/s Shree Ambica Industries, Jamnagar	4,32,696/-	53,481/-
4	6	Vipul Dhirajlal Rupapara, partner of M/s Alakh Metal Product, Jamnagar	33,76,064/-	4,17,282/-
5	7	Harshadbhai Pranlal Brsaniya, Proprietor of M/s Alloy Components, Jamnagar	70,81,357/-	8,75,256/-
6	8	Rasiklal Parshottambhai Kateshiya, Proprietor of M/s Vadachi Products, Jamnagar	80,31,784/-	9,92,728/-
7	9	Jenul Abedin Ebrahim Darjada, Authorised person of M/s Sanjari Press Products, Jamnagar	72,40,405/-	8,94,914/-
8	10	Vishalkumar Hasumkbbhai Rabadiya, Proprietor of M/s M.K. Enterprise, Jamnagar	62,52,799/-	7,72,846/-



6.12 In view of the above, I find that the AO has made the impugned additions of the basis of very specific, credible and reliable information as to clandestine removal of manufactured finished goods (namely brass and copper sheets) from the factory premises of the appellant company, over the period from 2012 to 2015. These factual findings are supported by a plethora of evidence, including the private Registers seized containing the record of unaccounted sales, statements of Director, Manager and Supervisor of the appellant company recorded during search and post-search investigation, statements of buyers of the clandestinely removed finished goods recorded during post search investigation etc. The appellant was duly confronted with these factual findings by way of the SCN dated 30.03.2016 issued by the Central Excise Authority, whereby the appellant was also provided copies of statements relied upon etc. The entire factual gamut of the case, including the quantity-wise and year wise details of the excisable finished goods removed clandestinely without payment of Central Excise Duty, the value of finished goods so removed, and the active role of buyers of the finished goods so removed, has been clearly brought out in the final order dated 15.12.2016 passed by the Central Excise Authority. The present status of the case is that an appeal is pending before the Customs, Excise and Service Tax Tribunal (CESTAT). However, even during the pendency of the said appeal, the factual findings reverted in the final order of the Central Excise Authority have to be regarded as the correct and conclusive statement.

6.13 During the present appellate proceedings, the appellant, on his part, has not been able to bring on record even an iota of evidence, which can prove the contrary. The appellant has merely made certain bald assertions, and unverified allegations, which are not substantiated by any documentary evidence. The various technical and legal pleas taken by the appellant have been addressed and dealt with by the AO adequately at Para 10 I of the assessment order. The contentions raised by the appellant during the appellate proceedings are rejected, on similar grounds, being devoid of merit. On the given facts, I do not find any reason, whatsoever, to interfere with the additions made by the AO in the assessment order, primarily on the basis of the factual findings, emanating from the search action and post-search investigations conducted by the Central Excise Authorities, as discussed above.

6.14 The appellant has pleaded that he was not allowed any opportunity to cross-examine the buyers. I do not find any substance in this objection. The appellant was duly confronted with all the findings of the search action, by way of the SCN dated 30.03.2016 issued by the Central Excise Authority. along with copies of the incriminating material, including copies of the statements of buyers. The response of the appellant to the said SCN, by way of written and oral submissions, was duly taken into account by the Central Excise Authority, before passing the final order. These facts are duly recorded in the final order dated 15.12.2016 passed by the Central Excise Authority. The appellant has not been able to bring on record any evidence to suggest that the buyers have subsequently retracted their statements.

6.15 The appellant has raised another objection as to manner of quantification of additions made. The appellant has pleaded that only the Net Profit rate, as shown by the appellant company in various years, should be adopted for working out the profit element embedded in the unaccounted sales for the year. I do not find any force in this contention. In this case, the manufactured finished goods have been removed clandestinely from the factory premises of the appellant company, mainly with the



*intention to evade payment of Excise duty thereon, over a period of three years. This is an act of infringement of law for which penalty to the tune of Rs. 3.20 Crore has been imposed on the appellant company under Section 11AC of the Central Excise Act, 1944, apart from raising a demand of Central Excise Duty of an equivalent amount, vide order dated 15.12.2016 passed by the Central Excise Authority. Further, the corresponding purchase of raw material, as also the sale of finished goods so removed, have been made totally in cash, which are not recorded in the books of account. On these facts, I do not find any justification for applying the Net profit rate, which has been shown by the appellant in respect of the recorded transactions of purchase of raw material, manufacturing activity and sale of finished goods. As such, I concur with the action of the AO in applying the estimated GP rate of 25 percent on the unaccounted sales of finished goods, which were removed clandestinely from the factory premises without payment of Central Excise Duty, and payments therefor were received in cash.*

*6.16 The appellant has relied on a plethora of judgements in support of the position that even in case of unaccounted sales, only the profit element embedded therein should be added to taxable income. However, on a careful consideration, I find that the cases relied upon by the appellant on this issue are of no avail, as those are distinguished on facts. Firstly, in the present case it would not be correct to state that AO has added the entire amount of unaccounted sales. Infact, AO has made addition of estimated Gross Profit only in respect of the unaccounted sales (G.P. of Rs. 44,25,901/- estimated at the rate of 25 percent of the unaccounted sales aggregating to Rs. 1,77,03,604/-). The remaining addition has been made on account of unexplained investment under section 69, towards purchase of raw material and manufacturing expenditure in relation to the said unaccounted sales. Secondly, this is not one of those cases where purchase bills were found to be raised against bogus entities, whereas the actual supplies were sourced from the grey market. In the present case, the assessee is a manufacturer, the manufactured finished goods have been removed from the factory clandestinely without payment of Central Excise Duty thereon; the entire sales of finished goods and corresponding purchase of raw material (sourced from local scrap vendors) was totally in cash, not recorded in books of accounts.*

*6.17 The appellant has raised another plea that there was no basis for making the addition in respect of the balance amount under section 69, in absence of any incriminating material. In the present case, AO has made addition on account of unexplained investment under section 69, towards purchase of raw material and manufacturing expenditure in relation to the said unaccounted sales. The addition is duly supported by factual findings of the search action, as discussed in detail in the preceding paragraphs. In particular, the following evidence brings out that the corresponding purchase of raw material (and consequently the manufacturing expenditure related thereto) were also not recorded in books of accounts, -*

*1. Statement of Shri Dama Amit Mudjibhai, Supervisor of the appellant company recorded on 05.01.2015, wherein he has admitted that the raw material i.e the Brass and Copper scrap was procured locally from Jamnagar and the same was entered in the inward Challan Book.*

*2. Statement of Shri Sanghani Rajnikant Chhaganbhai, Supervisor of the appellant company recorded on 05.01.2015, wherein he has admitted that the raw material i.e.*



*the Brass and Copper scrap was being procured locally from Jamnagar, and the same was entered part-wise in the registers.*

*3. Statement of Shri ArjunbhaiNarandasbhaiKatarmal, a scrap vendor, recorded on 19.02.2016 wherein he admitted that he had supplied scrap to the appellant company without any invoices and received payment for the same in cash.*

*7.17.1 The relevant part in the order dated 15.12.2016 passed by the Central Excise Authority, on the issue of purchase of raw material in cash from local scrap vendors, is reproduced as under:*

*4.1 A statement of Shri Dama Amit Mudjibhai, Supervisor of M/s. Krupalu was recorded on 05.01.2015, wherein he has, inter alia, stated as under:*

*1. that he was looking after the work of inward/receipt of raw materials and outward / dispatch of finished goods from the factory and was responsible for making the entries of the same in the respective challan book;*

*2. That the raw material i.e. the Brass and Copper scrap was procured locally from Jamnagar by M/s. Krupalu and the same was entered in the inward Challan Book (Vivek Duplicate/Triplicate);*

*3. That the finished goods after weighing were packed and entered in the outward challan book and through this challan, the finished goods were either sent to the transporter for outstation dispatch or if the buyers of their finished goods were local, then by Chhakda rickshaw to the respective places;*

*4. That the inward / receipt challan books (Vivek Duplicate/Triplicate). which were seized under the panchnama dated 05.01.2015, were regarding the raw materials received in the factory premises and that he was manually maintaining these challan books in his own hand writing from the time he had joined M/s. Krupalu;*

*5. That the outward/dispatch challan books (Vivek Duplicate /Tnplicate), which were seized under the panchnama dated 05.01.2015, were regarding the finished goods manufactured by M/s. Krupalu and he was manually maintaining these challan books in his own hand writing from the time he had joined M/s. Krupalu;*

*6. That in his absence, the entries were being made by Shri Sanghani Rajnikant Chhanganbhai, another Supervisor of M/s. Krupalu,*

*7. That he had made entries in these registers on directions of Shri Jagdishbahi Katanya, Director and Shri ManishbhaiKatariya, manager of M/s. Krupalu.*

*4.2A statement of Shri Sanghani Rajnikant Chhaganbhai, Supervisor of M/s. Krupalu was recorded on 05.01.2015, wherein he has, inter alia, stated as under:*

*1. that he was looking after the work of inward/receipt of raw materials and outward / dispatch of finished goods from last two years and he was responsible to make entries of the same in the registers;*



2. That the raw material i.e. the Brass and Copper scrap was being procured locally from Jamnagar and the same was entered part-wise in the registers;

3. That the finished goods after weighing were packed and entered in the outward challan book and through this challan, the finished goods were either sent to the transporter for outstation dispatch or if the buyer was local, then by Chhakda rickshaw to the respective places;

4. That the entries of these dispatches of finished goods were entered party-wise in the registers;

5. That on perusal of the seized inward (purchases) registers he stated that these registers were regarding the raw materials received in the factory premises and that he was manually maintaining these registers in his own hand writing from the time he had joined M/s. Krupalu;

6. That on perusal of the seized outward (sales) registers he stated that these registers were regarding the goods manufactured in the factory premises and that he was manually maintaining these registers in his own hand writing from the time he had joined M/s. Krupalu;

7. That he had made entries in these registers on directions of Shri Jagdishbhai Katariya, Director and Shri Manishbhai Katariya, manager of M/s. Krupalu.

8. A statement of Shri Arjunbhai Narandasbhai Katarmal, a scrap vendor was recorded on 19-02-2016, in presence of Shri Jagdishbhai Katariya, Director of M/s Krupalu, wherein, he has, inter alia, stated as under, -

1. that for the last six to seven years, he had been collecting the brass scrap from various manufacturers and electric motor rewinding shop keepers etc. and the scrap so accumulated, was supplied by him to manufacturers of brass products, as per their requirements;

2. On being asked about invoice(s) in respect of goods received and supplied, he stated that he purchased the goods without invoice(s) and also sold the same without invoice(s);

3. that he received the payments in cash towards the sales of such scrap from M/s Krupalu and similarly also made payments in cash towards such scrap purchases;

4. that on being shown Page Nos. 19, 18 & 19 and 198 20 of the registers resumed under Sl. Nos. PA-8, PA-5 and PA-7 respectively of Annexure-A to the Panchnama dated 05-01-2015, wherein the business transactions with M/s Krupalu are recorded, on perusal, he accepted that the details therein were regarding the brass scraps supplied by him to M/s Krupalu without invoices.”

6.18 The appellant has further contended that the buyers had supplied the goods to the appellant for carrying out job work, and the goods were in turn returned to them by the appellant company after completion of job work. This



*plea is not supported by the facts found in the course of search action, and the post-search investigation, conducted by the Central Excise Authorities. Shri Jagdishbahi ParshottambhaiKatariya, Director of the appellant company, in his statement recorded on 05.01.2015 has categorically admitted that they were not doing any job-work for any party. and they were selling goods manufactured by their firm only. Furthermore. the audited annual accounts of the appellant company also do not suggest that the appellant company was involved in any kind of job-work activity. The relevant part in the order dated 15.12.2016 passed by the Central Excise Authority, on the issue of job work, is reproduced as under,*

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*4.3 A statement of Shri JagdishbhaiParshottambhaiKatariya Director of M/s Krupalu was recorded on 05.01.2015, wherein he has, inter alia, stated as under,-*

- 1. After perusal of the Panchnama dated 05.01.2015 of search proceedings statements dated 05.01.2015 of Shri Dama Amit and of Shri Sanghani Rajnikant Chhaganbhai, both Supervisors of M/s Krupalu, he agreed with the correctness of the contents therein,*
- 2. that the raw materials were purchased mainly from traders/sellers of Jamnagar local market and that the main final products were Copper and Brass Sheets:*
- 3. that M/s. Krupalu were not undertaking any kind of job-work (labour work) of any party:"*

*6.19 To sum up, I find that the additions made by the AO towards estimated GP rate on unaccounted sales, and unexplained investments towards purchase of raw material and manufacturing expenditure, are duly supported by factual findings and a plethora of evidence emanating from the search action and post search investigation conducted by the Central Excise Department, including certain Private Registers inventoried as PA-1, PA-2, PA-3 and PA-4 to the Panchnama dated 05.01.2015, statements of Directors and Supervisors of the appellant company, statements of buyers of the clandestinely removed finished goods, statements of local scrap vendors, recorded on various dates. The appellant was duly confronted with these findings by the Central Excise Authority, along with copies of the incriminating material and statements of various persons. I also find that the appellant, either in the course of assessment proceedings or during the appellate proceedings, has not been able to bring any documentary evidence on record, which can prove or even remotely indicate any fact to the contrary. The objections raised, and pleas taken, by the appellant against the additions made are mostly technical in nature, which have been adequately dealt with in the preceding paragraphs. The contentions of the appellant, as such, are bereft of any merit, hence **rejected**.*

*6.20 In the case of CIT Vs KuwerFibres (P) Ltd. (2017) (77 taxmann.com 345 (Delhi), Hon'ble Delhi High Court has held that where purchases of raw material was made outside books of account and proper accounting or reconciliation could not be made by assessee, value of investment and estimated profits on basis of GP rate had to be adopted. Hon'ble Court also upheld that where statements recorded were corroborated by other materials, there was no justification to reject such statements, which merely explained the documents seized. The SLP filed against this High Court ruling has been dismissed by the Supreme Court in this case, reported at (2023) (146 taxmann.com 467) (SC)*



*6.21 Hon'ble Rajasthan High Court in the case of Vimal Singhvi Vs ACIT (2015) (55 taxmann.com 309) (Rajasthan) has upheld that where assessee recorded bogus purchases and, moreover, values of opening stock/closing stock were not open for verification, authorities below were justified in rejecting books of account and making addition to assessee's income by adopting higher GP rate.*

*6.22 Hon'ble ITAT, Delhi in the case of JCIT Vs System Controls & Transformers (P.) Ltd. (2018) (89 taxmann.com 96 (Delhi Trib.) has upheld that when there are sufficient grounds for making best judgment assessment and there is a reasonable basis for estimate made, appellate authorities will be without any jurisdiction to interfere with quantum of addition made by Assessing Officer in best judgment assessment*

*7. In view of the totality of facts and circumstances of the case, and the prevailing position of law applicable, as discussed in preceding paragraphs, the additions made by the AO on account of estimated Gross Profit of Rs.44,25,901/- (by applying 25 percent Gross Profit rate on unaccounted sales), and on account of unexplained investment of Rs.1,32,77,703/-towards purchase of raw material and related manufacturing expenditure, is found to be in order; hence sustained. Accordingly, these Grounds are **dismissed**."*

16. Further aggrieved by the order of Ld.CIT(A), the assessee is in appeal before us.

17. Learned Counsel for the assessee, submitted that impugned order was passed by Ld.CIT(A) without considering the facts and circumstances of the case, which is against the principle of natural justice. The Ld. Counsel for the assessee submitted to this effect that assessee has raised Ground No.2, which clearly states that despite of details furnished by the assessee along with documents, the Ld. CIT(A) has neither considered the documents of the assessee nor submission of the assessee which is against the principle of natural justice and for that assessee has raised ground No.2. The Ld.CIT(A) also ignored the fact that Excise Department has issued the notice and on the basis of such notice reopening was done by the Ld.CIT(A), which is not tenable in law. In ground No.4, assessee as raised special grievance that assessee was not provided hearing of video conference, although the same has been requested by the assessee on 06.02.2024, which it totally bad in law and against the principle of natural justice. In ground No.5 assessee has raised the plea that notice u/s 250



was issued scheduling the video conference hearing, however, the assessee was not provided opportunity of hearing. Therefore, the order of Ld.CIT(A) has been passed in haste and hurriedly manner, without providing opportunity of personal hearing through video conference. Therefore, it is against principle of natural justice.

18. The Ld. Counsel for the assessee, on technical issue of reopening of assessment u/s 147 r.w.s. 148 of the Act, stated that entire re-assessment proceedings does not survive, as the assessee's case was reopened on the basis of information received from the Central Goods & Service Tax, Rajkot. Therefore, information received from the office of Commissioner of Central Excise Rajkot, is not a tangible material, hence reassessment proceedings should be quashed.

19. On merit, Ld. Counsel for the assessee, submitted that there is no any material which shows that the assessee has removed the goods without payment of excise duty, and the central excise authorities do not have any material in their possession, which shows that assessee has not paid the tax in accordance with law. Therefore, addition should not be made by the Assessing Officer.

20. On the other hand, Ld.CIT-DR for the Revenue submitted that ground No.2, ground No.4 and ground No.5 have been raised by the assessee, before the Tribunal stating that Ld.CIT(A) has not granted personal hearing during video conference and passed impugned order in haste and in hurriedly manner, which is against the principle of natural justice.

21. On technical ground of reopening of assessment u/s 147/148 of the Act, on the basis of information received from the office of Commissioner of Central Excise, Rajkot, the Ld.CIT-DR for the Revenue submitted that it is covered against the assessee by the judgment of Hon'ble jurisdictional High Court in the



case of Pushpak Bullion(P) Ltd. vs. DIT (2016) 71 taxmann.com 326 (Guj) . Therefore, Department can reopen the assessment, based on the information received from the Central Goods & Service Tax and Excise Department.

22. On merit, Ld.CIT-DR for the Revenue submitted that assessee has removed the goods from the factory without paying excise duty, and VAT. Therefore, the assessee has not paid the income tax, on such sales, which is removed without paying excise duty. Therefore, the special enquiry could be conducted in this case whether assessee offered sale for taxation purpose, on the goods which were removed from the factory, without paying the excise duty and VAT. Therefore, suitable instructions should be given to the Assessing Officer to examine this aspect or the Ld.CIT(A) may call for the remand report to that effect from the Assessing Officer, if the matter is remitted back to the file of the learned CIT(A).

23. We have heard both the parties and perused the materials available on record. We have deliberated the case law relied by Ld.DR for the Revenue. We note that in ground No.2, ground No.4 and ground No.5, the assessee has raised mainly grievance before the Bench that impugned order passed by Ld.CIT(A) was without giving proper opportunity to the assessee and without providing personal hearing through video conference. These grounds of appeal, raised by the assessee, are reproduced below for ready reference:

*“2. The Ld National Faceless Appeal Centre (CIT Appeal) now and in the following paragraphs referred to as NFAC has erred in facts as in law also by passing the impugned order without considering the facts & circumstances of the case & detailed submissions of the assessee which is against the principle of natural justice & equity of law*

*4. The Ld. NFAC, dismissed the appeal without following the principles of natural justice and equity of India as the Ld NFAC has finalized the Assessment with variation/ Addition to the total income of the Appellant without Providing VC Hearing although the same has been specifically requested by the appellant as on 06/02/2024 which is totally bad in eyes of law and against the principle of natural justice settled by the Apex Court.*



5. *The Ld. NFAC Alleged in its impugned Order that on appellant's request, Notice under section 250 was issued scheduling the hearing through Video Conferencing on 09.02.2024 at 3.00 PM, However, there was no response from the appellant to the said opportunity granted for hearing which is far from truth and facts of the circumstances of the case for the reason that the said letter was issued to the assessee requesting assessee to respond by 09.02.2024 in case assessee wish to avail the VC. The letter referred to by the Ld. NFAC did not mention that the VC is fixed on 09.02.2024. The appellant has responded to the notice of avilment of the opportunity through Video Conferencing as on 06/02/2024 itself much before the date 09.02.2024. Such misstatement in the impugned order passed by the Ld. NFAC itself exhibits the punitive nature of the Ld. NFAC which hurriedly passed the order without extending the opportunity of PH through VC. On this ground alone the impugned order needs to be set aside.*”

We note that assessee stated in ground No.4 that the impugned order was passed by Ld.CIT(A) in haste and hurriedly manner, without *Providing VC hearing although the same has been specifically requested by the appellant as on 06/02/2024.* In ground number 2 the assessee stated that Ld CIT(A) passed *“the impugned order without considering the facts & circumstances of the case & detailed submissions of the assessee which is against the principle of natural justice & equity of law”* In ground No. 5, the assessee stated that learned CIT(A) made the misstatement in his order and did not provide the facility of hearing through video conferencing therefore, *“Such misstatement in the impugned order passed by the Ld. NFAC itself exhibits the punitive nature of the Ld. NFAC which hurriedly passed the order without extending the opportunity of PH through VC.*

24. From the above grounds raised by the assessee it is vivid that assessee was not provided opportunity of hearing by the learned CIT(A) and order was past without providing VC hearing, therefore it is against the principle of natural justice. We agree with the assessee to the effect that assessee hasn't been provided opportunity to plead his case successfully during the appellate proceedings and therefore it is against the principle of natural justice. Had



Ld.CIT(A) granted personal video conference hearing the assessee properly the result and decision of Ld.CIT(A) would have been different. We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in partesua* (no person shall be a judge in his own case) and *audialterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the ld. CIT(A). We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, all these appeals of the assessee are treated as allowed.

25. Before parting we would like to clarify that assessee has raised the legal ground and challenging the reopening of assessment u/s. 147/148 of the Act, in the appeal memo alongwith Form 36. We note that as per ld DR for the Revenue, relied on the judgements of the Jurisdictional, Hon'ble Gujarat High Court in



the case of Peass Industrial Engineers (P.) Ltd., [2016] 73 taxmann.com 185 (Gujarat) has held that, where after scrutiny assessment Assessing Officer received information from Investigation wing that two well known entry operators of country provided bogus entries to various beneficiaries, and assessee was one of such beneficiary, Assessing Officer was justified in reopening assessment. Another case of Hon`ble High Court of Gujarat, in the case of Yogendrakumar Gupta [2014] 46 taxmann.com 56 (Gujarat) has stated that where subsequent to completion of assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee. Therefore, in assessee`s case the reopening of assessment based on the notice of the excise department/information from the excise department is valid. However, on the other hand, Ld. counsel for the assessee submitted that assessing officer cannot reopen the assessment based on the information of counsel Excise, and based on notice of Central Excise department.

26. We also note that in order to raise additional legal ground, the assessee need to pray before the Bench as per Rule 11 of the ITAT Rules, which the assessee has not done. The legal ground raised by the assessee before the Tribunal, first time, by challenging the re-assessment proceedings u/s. 147/148 of the Act should be as per Rule 11 of the ITAT Rules, as such a legal ground, has never been raised by the assessee before the authorities below and it is being raised first time before the Tribunal, therefore it should be as per Rule 11 of the ITAT Rules, which the assessee has failed to do so. The Income Tax Appellate Tribunal (ITAT) Rules, specifically Rule 11, allows an assessee to raise a new legal ground before the Tribunal even if it was not raised before the Assessing



Officer or the Commissioner of Income Tax (Appeals). The Rule 11 of the ITAT Rules, 1963 states:

*"The appellant shall not, except by leave of the Appellate Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal; but the Appellate Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Appellate Tribunal under this rule:*

*Provided that the Appellate Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."*

Therefore, new legal grounds can be raised before the ITAT for the first time with the leave (permission) of the Tribunal. Such additional legal ground of the assessee should be accompanied with prayer of the assessee, which the assessee has failed to do so. The Tribunal has discretion to admit such grounds if they are purely legal and do not require investigation of new facts. Therefore, based on these facts and circumstances the grounds relating to challenging the reopening of assessment u/s. 147/148 of the Act, are adjudicated by us. Besides, as we have remitted three appeals to the file of Ld CIT(A), therefore assessee may if so desire may raise legal issue before Ld. CIT(A).

27. In the result, assessee's appeal ITA No.111/Rjt/2024 is allowed for statistical purposes.

28. Since the issues have been adjudicated by taking the "**lead**" case in ITA No.111/RJT/2024, for A.Y. 2013-14. Since the facts are similar and identical, therefore,our instant adjudication shall apply *mutatis mutandis* to other appeals of assesseees also.

29. In combined result, assessee's appeals ITA Nos.112 & 113/Rjt/2024 are allowed for statistical purposes, in above terms.



**Order is pronounced in the open court on 22/05/2025.**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**न्यायिकसदस्य/JUDICIAL MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 22/05/2025

DKP Outsourcing Sr.P.S

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकरआयुक्त/ CIT
- आयकरआयुक्त(अपील)/ The CIT(A)
- विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

आदेशसे/By order,

सहायकपंजीकार  
आयकरअपीलीयआधिकरण ,राजकोट