

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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER  
AND  
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.379/Alld/2013  
Assessment year:2010-11

M/s Kesarwani Zarda Bhandar, Sahson, Allahabad PAN:AADFK6279N (Appellant)	Vs.	Jt.C.I.T., Central Circle, Allahabad.  (Respondent)
---	-----	---

I.T.A. No.12/Alld/2014  
Assessment year:2010-11

Jt.C.I.T., Central Circle, Allahabad.  (Appellant)	Vs.	M/s Kesarwani Zarda Bhandar, Sahson, Allahabad PAN:AADFK6279N  (Respondent)
--	-----	--

Assessee by	Shri Praveen Godbole, C.A.
Revenue by	Shri Amlendu Nath Mishra, CIT(D.R.)

**ORDER**

**PER SUBHASH MALGURIA:J.M.**

These cross appeals have been filed by the assessee and by Revenue against the impugned appellate order dated 30/09/2013 passed by learned Commissioner of Income Tax (Appeals) ["CIT(A)" for short] pertaining to

assessment year 2010-11. The grounds raised by the assessee and Revenue are reproduced as under:

**I.T.A. No.379/Alld/2013 (Assessee's Appeal)**

- "1. *That in any view of the matter the order passed u/s 153A(b) of the I.T. Act dated 22.12.2011 is bad both on facts and in law and vide such order income as determined and the same as confirmed is highly unjustified, incorrect in the facts and circumstances of the case.*
2. *That in any view of the matter the addition of Rs.2,32,73,571.38 as maintained by the CIT(A) by alleging suppressed production without any search material is unjustified, incorrect and illegal in the facts and circumstances of the case.*
3. *That in any view of the matter addition of Rs.19,86,573.00/- maintained by the CIT(A) in respect of purchases of perfumery items from M/s Cosmo Elmek, Varanasi by alleging bogus purchase is highly unjustified and incorrect in the facts and circumstances of the case.*
4. *That in any view of the matter addition of Rs.3,58,05,157/- made by the A.O. by alleging extra sales and her action as confirmed by the CIT(A) is highly unjustified and incorrect in so far as in the trading account for the period from 01.04.2009 to 27.08.2009 figure of closing stock was not correctly taken and even the A.O. also failed to consider and draw trading account in the order for the period from 28.08.2009 to 31.03.2010, hence the addition is unwarranted and liable to be deleted.*
5. *That in any view of the matter, entire basis adopted by the assessing officer in respect of addition of Rs.3,58,05,157/- is incorrect and the such addition made in a very general causal manner ignoring the true and real facts of the case as the figure of closing stock as on 27.08.2009 taken on the basis without any search material hence addition is unwarranted.*
6. *That in any view of the matter addition of Rs.17,90,328/- made and confirmed by the two lower authorities by alleging bogus*

*liability is unjustified and incorrect in the facts and circumstances of the case.*

7. *That in any view of the matter the disallowance under various heads of claimed business expenses such as entertainment expenses, shop expenses, telephone expenses, generator expenses, motor vehicle expenses and petrol expenses as made and confirmed by the two lower authorities is highly unjustified and incorrect in the facts and circumstances of the case.*
8. *That in any view of the matter the disallowance of Rs.3,08,045/- under the head freight and cartage (Outward) as made and maintained by two lower authorities is unjustified and incorrect in so far as in earlier years in similar set of facts no such disallowances were made nor there is any provision in the income tax act to disallowance a genuine claim of expenses on the percentage basis therefore the disallowance deserves to be deleted."*

#### **I.T.A. No.12/Alld/2014 (Revenue's appeal)**

- "1. *That the Ld.CIT(A) has erred in facts and circumstances of the case by allowing a relief of Rs.5,43,98,595/- even though the facts brought on records have been admitted by the assessee himself. Moreover, the Ld. CIT(A) has relied heavily on the working of other concern instead of giving weightage to the fact of the present case where the assessee has himself admitted the larger percentage of yield.*
2. *That the Ld.CIT(A) has erred in law and facts in allowing relief relying on the facts of another case without establishing that facts of that case were identical to the present assessee.*
3. *That the Ld. CIT(A) has erred in law and facts in applying a percentage yield of 90% when he himself without assigning any reasons has arrived at a different average rate of 91.33% as this rate itself was not applicable as the facts of the cases are not identical.*
4. *That the Ld. CIT(A) has erred in law and facts in determining his own yield of production without pointing out any defect in AO's working of yield and thus substantiating his own 'Best judgment' in place of AO's 'Best judgment' which is required as*

*per provisions of 144 of the IT Act without properly appreciating the discrepancies in accounts and non verifiable expenses.*

5. *That the Ld. CIT(A) has erred in law and facts in reducing the disallowance by Rs.73,16,513/- on account of bogus purchases even though the facts brought on records by the AO have been admitted by the CIT(A).*
6. *That the order of the Ld. CIT (A) being erroneous in law and on facts needs to be vacated and the order of the A.O. be restored."*

2. The facts of the case, in brief, are that a search operation u/s 132 of the Income Tax Act, 1961 ("the Act" for short) was carried out by Revenue on 27/08/2009. In response to notice u/s 142(1) of the Act, dated 31/01/2011, return of income was filed by the assessee showing an income of Rs.1,66,99,236/- on 23/02/2011. Vide assessment order dated 22/12/2011 passed by the Assessing Officer u/s 143(3) of the Act, the assessee's total income was determined at Rs.16,17,03,481/- (rounded off to Rs.16,17,03,480/-). Aggrieved, the assessee filed appeal in the office of the learned CIT(A). Vide impugned appellate order dated 30/09/2013, the assessee's appeal was partly allowed by the learned CIT(A). Now both Revenue and the assessee are in appeal in Income Tax Appellate Tribunal against the aforesaid impugned appellate order of the learned CIT(A).

3. The dispute regarding the addition of Rs.7,76,72,166/- (on account of suppression of production, alleged by the Assessing Officer in the assessment order) is common in appeals filed by Revenue as well as by the assessee. Out of the aforesaid addition of Rs.7,76,72,166/-, the learned CIT(A) deleted an amount of Rs.5,43,98,595/- and sustained the remaining addition of Rs.2,32,73,571/-. Revenue is in appeal against relief given by learned CIT(A) and assessee is in appeal against addition sustained.

4. At the time of hearing before us, learned A.R. for the assessee drew our attention to order dated 15/07/2014 of Co-ordinate Bench of Income Tax Appellate Tribunal, Allahabad for assessment years 2004-05 to 2009-10 in the case of the assessee in I.T.A. No.06/Alld/2013 to I.T.A. No.11/Alld/2013. In these assessment years the yield disclosed by the assessee was 84.69%, 84.04%, 85.08%, 83.80% and 83.80% respectively. After detailed discussion and analysis of relevant facts, applicable law and case laws, the Income Tax Appellate Tribunal accepted the aforesaid yield for A.Y. 2004-05 to 2009-10 and deleted all the additions made by the Assessing Officer. The Tribunal, in the aforesaid order dated 15/07/2014, held after examining the case of the assessee from every possible angle, authorities below were not justified in making or confirming any addition against the assessee. The learned A.R. for the assessee further submitted that the yield disclosed by the assessee in the present assessment year was 84.59%, which is, broadly, in the same range as the yield in the earlier five assessment years as mentioned earlier. He also drew our attention to the fact that the decision of learned CIT(A) on this issue in the impugned appellate order dated 30/09/2013 is based on his estimation of yield at 90%. In the aforesaid five earlier assessment years also, the learned CIT(A) had estimated the yield at 90%. However, the Co-ordinate Bench of the ITAT, Allahabad in the aforesaid order dated 15/07/2014 had rejected the yield of 90% adopted by the learned CIT(A) and had given direction to accept the yield disclosed by the assessee at 83.80% and 83.80%, 84.04%, 84.69% and 85.08% respectively in those five assessment years. The learned A.R. for the assessee submitted that the computation done by the Assessing Officer for making the aforesaid total addition of Rs.7,76,72,166/- was based on even more excessive estimation of yield. He submitted that the issue regarding the yield in the case of the assessee is already settled by

the aforesaid order dated 15/07/2014 of Co-ordinate Bench of the ITAT, Allahabad, which accepted the yield percentage in the range of 83.80% and 83.80%, 84.04%, 84.69% and 85.08% respectively. As the assessee's yield in this assessment year is also in the same range, the learned A.R. for the assessee submitted that the yield as disclosed by the assessee should be accepted in this assessment year also. In this regard in support of his submissions, learned A.R. for the assessee also mentioned that no incriminating materials were found in the course of aforesaid search conducted u/s 132 of the Act on 27/08/2009, and that no discrepancy was found in the stock of materials. He also mentioned that the item manufactured by the assessee is subject to Excise Act and detailed records of raw material and finished goods as well as production are regularly maintained by the assessee in compliance with the Excise Act. He also mentioned that no defect was found by the Income Tax Authorities or by the Excise Authorities in the books of account and records maintained by the assessee. The learned CIT, D.R. for Revenue supported the order of the Assessing Officer, stating that the manufacturing results shown by the assessee were not reliable. He placed heavy reliance on the assessment order passed by the Assessing Officer.

5. In the course of appellate proceedings before the Income Tax Appellate Tribunal, the following documents were filed from the assessee's side in the form of paper books:

Sl	Particulars
1.	Form No-36
2.	Statement of Facts
3.	Grounds of Appeal before Hon'ble Court
4.	Copy of order passed by the Commissioner of Income Tax, Allahabad dated 30.09.2013
5.	Copy of statement of facts filed before C.I.T. (Appeal)
6.	Copy of grounds taken before CIT(Appeal)
7.	Copy of assessment order passed by the assessing officer passed u/s 153 A dated 22.12.2011

**PAPER INDEX**

<b>S.No.</b>	<b>Particulars</b>
1.	Written Submission in the light of order dated 13.09.2013 of the Commissioner of Income Tax (Appeals). Allahabad
2.	Comparative chart of trading result.
3.	Chart showing yield percentage as per assessee and as per the Commissioner of Income Tax (Appeals).
4.	Chart showing working of alleged suppressed production by the Commissioner of Income Tax (Appeals).
5.	Comparative yield chart as per assessee and the assessing officer along with working.
6.	Comparative position of main item of stock found on the date of search as per Panchnama and of stock register maintained by the assessee.
7.	Copy of A/c of M/s Cosmo Elmek, Varanasi from whom perfumery items purchased—copy from the books of assessee
8.	Confirmation letter of M/s Cosmo Elmek, Varanasi in respect of transitions with the assessee.

9.	Letter of M/s Cosmo Elemik, Varanasi for confirmation of Vat Registration and Bank A/c Number with the name of the bank.	45
10.	Chart showing break-up of purchases of Perfumery items from M/s Cosmo Elmek, Varanasi for A.Y.2010-11.	46
11.	Photocopy of Three Invoice of Cosmo Elmek, Varanasi	47-49
12.	Photo copy of DGR register.	50-53
13.	Affidavit of Shree Krishna Chandra Kesarwani	54-60
14.	Written Object of the assessee dated 25.09.2009 in respect of valuation of stock taken by search party on 27.8.2009 along with chart.	61-131
15.	Trading Account as prepared by the assessee as per the accepted book of accounts for the period 01.04.2009 to 27.08.2009 (Before Search) and for the period 28.08.2009 to 31.03.2010 (After Search).	132
16.	Summaries Trading account as prepared by the assessee as per the accepted books of accounts for the F.Y. 2009-2010 (i.e from 1 <sup>st</sup> April-2009 to 31 March-2010.	133
17.	Brief of manufacturing process of Tobacco.	134-139
18.	Assessee's comment on remand report furnished by the assessing officer after examination of books of accounts.	140-156
19.	Photocopy of written submission filed before the Commissioner of Income Tax (Appeals). For the A.Y. 2010-2011	157-282
20.	Photocopy of the Audit report for the assessment year 2010-11	283-322
21.	<b>Chart prepared in the light of Audit report of comparable cases.</b>	323
22.	<b>Photocopy of reply filed on the basis of comparable cases brought by the Commissioner of Income Tax (Appeals).</b>	324-350

23.	Photocopy of statement of Kailash Chandra recorded on the date of search.	351-360
24.	Photocopy of reply to notice dated 11.07.2011 along with photo copy of notices.	361-493
25.	Photocopy of sundry creditors for expenses.	494-495
26.	Photocopy of chart of expenses under various heads disallowed by the assessing officer.	496-505

Sl. No.	Particular	F
1	Short facts of the case in penalty appeal.	
2	Copy of petition regarding question framed by the Department before the Hon`ble Allahabad High Court against the order of Hon`ble Tribunal vide order dated 15/7/14.	
3	Copy of decision of Hon`ble Tribunal Allahabad Bench dated 22.11.2024 for A.Y. 2004-05 to 2009-10	
4	Copy of decision of various High Courts and other ITAT Benches on issue of penalty show cause notice-notice must clearly specified nature of offence.	
5	List of citations whereby penalty was deleted along with copy of decisions including decision of Hon`ble Supreme Court in the case of K.C. Builders Vs. ACIT 265 ITR 562.	

6. We have heard the rival parties and have gone through the material placed on record. We find that the Co-ordinate Bench of the ITAT, in the aforesaid order dated 15/07/2014 has accepted the yield percentage in the range of 83.80% and 83.80%, 84.04%, 84.69% and 85.08% respectively. Relevant portion of the order dated 15/07/2014 of the Income Tax Appellate Tribunal is reproduced below:

*"8. Issue No.2 : (Addition on account of suppressed production:) This issue arises in all the assessment years under appeals. The parties have referred to the facts from the impugned order for the assessment year 2004-05. Therefore, for the purpose of disposal of all the appeals on this issue facts are taken from the impugned order for the assessment year 2004-05. In the Assessment Order the A.O. examined the manufacturing process of Zarda from raw materials consumed. In the first step raw tobacco (whole leaf) is boiled in water to take out its 'ark' known as "Raw Kimam". The residual waste i.e. tobacco (whole leaf) is rendered useless and is thrown. In the second step, various spices are baked, grinded and sieved to convert them into powder form. The recovery of powder depends upon the moisture contents, quality of spices and losses in the process. Spices used in this process are vegetable products hygroscopic by nature. In the third step, aromatic spices are boiled and distilled in perfumery substance. The residual waste of such aromatic spices becomes useless and thrown. The recovery of the perfume varies from time to time and its quality depends on the quality of the spices, its moisture contents and number of times of distillation repeated. The raw tobacco (tobacco leaf) is sieved to remove its dust contents, then it is coloured with the mixture of raw Kimam, powder of spices and compound of glycerin water. The moist tobacco is then dried in sunlight on the open roof to remove its water contents and then packed in gunny bags. The tobacco at this stage is called coloured tobacco. In such process there is some gain in weight of tobacco which depends on several factors. The coloured tobacco is mixed with compound of chemicals, perfumery substances and menthol and then is stored in drums for 2-3 days for absorption of odour, flavor and taste. Thereafter it is spread on plastic sheet for drying. After this process, 'silver vark' in addition to the above mixture is mixed in the final product 'Zarda'. The Zarda is manually filled in unit containers and pouches which are then packed and sealed.*

*8.1 The A.O. has produced Annexure D & E of form 3CD i.e. audit report for the financial year ending as on 31.03.2004. The same is reproduced as under:-*

TOBACCO

Particulars	Opening Stock (Kgs)	Purchase (Kgs)	Total (Kgs)	Closing Stock (Kgs)	Storage Loss (Kgs)	Consumption (Kgs)
TOBACCO LEAF	431627.500	920852.000	1352479.500	433285.500	0.000	919194.000
WHOLE LEAF	34474.000	32441.000	66915.000	6288.000	0.000	60627.000

TOBACCO DUST	0.000	0.000	0.000	0.000	0.000	0.000
Total	466101.500	953293.000	1419394.500	439573.500	0.000	979821.000

OTHER RAW MATERIALS

Particulars	Opening Stock (Kgs)	Purchase (Kgs)	Total (Kgs)	Closing Stock (Kgs)	Storage Loss (Kgs)	Consumption (Kgs)
CHEMICALS & PERFUMES	35469.000	86441.450	121910.450	36999.000	0.000	84911.450
SILVER & SILVR VARK	532.000	3994.758	4526.758	1173.512	0.000	3353.246
MASALA	64612.300	122986.800	187599.100	80370.800	0.000	107228.300

QUANTITATIVE DETAILS OF FINISHED GOODS

Particulars	Quantity Manufactured (Kgs.)	Quantity Sold (Kgs)	Closing Stock (Kgs)
Bhola Chhap Zaf Patti	590705.800	590695.100	0.000
Bhola Yellow Zaf Patti	242858.800	242858.800	0.000
Bhola Red Zaf Patti	9563.000	9558.000	5.000
Chandani Patti	44126.000	44126.000	0.000
SPL Pan Chhap Zaf Patti	1290.000	1290.000	0.000
Pan Zarda	1100.000	1100.000	0.000
Shahi Zarda	550.000	550.000	0.000
Total	890193.600	890177.900	5,000

8.2 The A.O. has observed that quantitative details of work-in-progress have not been shown in the audit report but only estimated cost is given. No books of account were shown for the year under consideration during the course of search and seizure proceedings. Those were produced during the course of assessment proceedings. Thereafter, the A.O. has given comparative chart of ratio of production for the financial years relevant for Assessment Years.2004-05 to 2010- 11 as per para 32 of form 3CD, as under:-

	A.Y.04-05	A.Y.05-06	A.Y.06-07	A.Y.07-08	A.Y.08-09	A.Y.09-10	A.Y.10-11
G.P./Turnover	21.47%	21.31%	19.28%	17.17%	14.77%	14.25%	14.39%
N.P./Turnover	02.75%	06.94%	08.99%	04.92%	3.23%	2.72%	3.16%
Stock/Turnover	37.91%	43.63%	45.22%	43.59%	0.86%	0.01%	NA
Material consumed/finished goods	77.34%	77.53%	79.52%	81.43%	98.93%	98.75%	99.05%

8.3 The A.O has remarked that the assessee has not maintained the details of consumption of raw material at various stages. The ratio of consumption of whole leaf with Kimam has not been explained. It was, further, stated that approximately 200 gm of Kimam is produced in one Kg of whole leaf consumed. It was told to the A.O. that the product of raw Kimam is taken out after gap of 15 to 20 days. The A.O. has examined the difference of production (based on production register of Kimam) for F.Y. 2007-08 and found that there is no certain ratio of production of Kimam vis-à-vis the consumption. The assessee has not shown opening and closing stock of Kimam in all the assessment years under consideration. In another observation the A.O. remarked that in addition to its own production the assessee purchased Kimam from other parties namely Gupta Traders, Sultanpur, Prop. Smt. Shakun Devi, the sister concern of assessee. The husband of the proprietor is also partner of the assessee firm. The assessee has not maintained stock details of consumption of purchased Kimam. The assessee has also not maintained the details in respect of goods handed over to Karigars for mixture of tobacco and Kimam. During the course of discussion, the A.O. came to know that masala consists of several items, viz. Gond, Kateela, Kulanjan, Peepar, Kapoor, Kuchari, Hauber, Musali (Satawar), Muskdana, Dal Chini, Pipramool, Mulethi, Soth, Tulsi Beej, Brahami Patti, Kusum Phool, Tomar Beej, Lohban, Dhoop Ral, Mansalo Phool, Laung, Brass, Taj Moti, Nakhala, Chadila Phool, Pachauli Patti, Bal Char (Jatamasi), Keshar, Javitri, Sugandh Bala, Balum Powder, Mongra Safron, Kethiya, Nakh, Talish Pat, Nagar Motha, Ekangi, Elayachi, Bakchi, Sugandh Chemical, Narak Choor etc. The assessee firm also manufactured the perfumes from masala over and above perfumes purchased from other parties. The A.O. has remarked that quantitative details of consumption

*have not been maintained. To this, the assessee replied to the A.O. that the same is not practically feasible. The production of perfumes, from masala, highly depends on the ingredients of masala. The A.O. is of the view that in spite of the use of costly ingredients like Kesar, the details of daily consumption are not available. The assessee has also not maintained stage wise details of consumption of spices to mix with the raw tobacco and compounding of the same with the glycerin water. As stated, there is gain in weight in the process of mixing glycerin water with raw tobacco leaf. As regards, the removing of dust content from the raw tobacco before colouring, the A.O. observed that the audit report does not have any percentage of dust. No details are available regarding evaporation of aroma from ingredients and perfumery items. The A.O. has also observed that the Kimam is semi liquid item and would not evaporate. The A.O. also remarks that the consumption, purchase and stock of sandal wood oil are not verifiable and also that the purchases of sandal wood oil were found to be bogus. The assessee did not explain the ratio of mixture of perfumes and silver in the final product. To the submission of the appellant that modvetable items are recorded in excise record, the A.O. remarked that there are incoming entries of various modvetable items but those are issued as one in whole and the quantity of each item cannot be ascertained separately. The Silver Vitran Register was also not produced stated to be missing. In the Silver Vitran Register for subsequent assessment years, the difference was found in the closing stock and opening stock. There are no details of quantity of 'silver vark' received back from Karigars. There are no details of issue of 'Silver vark' for manufacturing. The assessee submitted before the A.O. that the silver items are kept in the custody of partners / managements and the same were released as and when required. There was no need to maintain stock register for the 'silver vark'. With regard to the consumption of 'silver vark' the A.O. asked the assessee to produce some Kamgars for examination but as stated by the A.O. Kamgars were not produced nor were their addresses furnished. There are no details of percentage of evaporation of aroma from ingredients and perfume items. To the issue that details of packing materials were also not maintained, the assessee submitted before the A.O. that it is not practically possible to maintain the consumption of containers, boxes, pouches, cotton, gunny bags etc. on day to day basis. In the assessment order the A.O. has mentioned that the details of all the ingredients in terms of quantity have not been maintained. All the items other than tobacco have been clubbed together under the name 'other materials'. Percentage of material consumed and finished goods varied substantively year after year.*

*8.4 The A.O. further proceeded to discuss the facts and findings related to subsequent years as according to her the issues are common for all the assessment years involved. In this context she made reference to inquiry related to purchase invoice No.172 dated 23.11.2006 for Rs.27,21,888/- for the purchase of 150 Kg of sandal oil issued by M/s Sarita Industries, Prop.*

*Sri Rakesh Narayan Gupta, 105/682, Chandrika Devi Chauraha, Deputy Ka Padao, Kanpur. On inquiry conducted by the Deputy Director of Income Tax (inv.)-1, Thane from Regional Transport Officer, Thane Range it was found that the vehicle which was allegedly used for the transportation, No. MH 04 – 8300 is Bajaj Chetak Scooter 1990. The said letter of RTO was confronted to the assessee and the A.O. also asked the assessee to produce Sri Rakesh Narayan Gupta for examination. Subsequently the A.O. issued a summons u/s 131 to the above person. Sri Rakesh Narayan Gupta sent a letter for the adjournment on medical grounds and requested for time after 15.12.2011. Subsequently the statement of Sri Rakesh Narayan Gupta was recorded during the course of assessment proceedings who submitted that the vehicle number was wrongly mentioned in the invoice and the correct vehicle number was MH 04 AW – 8300 and he also gave the address of the vehicle owner. The A.O. again conducted the inquiry through DDI (Inv.), Thane who reported that a summons could not be served on the person named Kashi Nath B. Bhoir, 97, Kherivali, Khsrivali, Wada, Post Office Gorhe, VI A Wada, Thane. It was stated by the investigation authority, based on the report of an inspector, that above named person did not exist at the address. The local inquiry also revealed that no such person exists there.*

*8.5 In a statement on oath during the course of survey u/s 133A in the business premises of Sarita Industries on 08.09.2009, Prop. Sri Rakesh Narayan Gupta categorically stated that, office go-down and residence are all situated at 105/682, Chandrika Devi Chauraha, Deputy Ka Padao, Kanpur. The A.O. also states that no staff was found during the survey. The A.O. also conducted inquiry through her Inspector, who submitted the report that there was no go-down and signboards displayed the firm's name and the name of a furniture shop. In a further inquiry, ITA Nos.358 & 374 to 378/Alld./2014 ITA Nos. 06 to 11/Alld./2014 35 the A.O. found that Sri Rakesh Narayan Gupta, in his bank account with State Bank of India, withdrew the cash immediately after the deposit of the drafts. The A.O. also noticed discrepancy in the cheque numbers in the ledger account of assessee in the books of Sarita Industries for the F.Y.2006-07 on the comparison of the entries in the bank statements of the assessee firm. In a post search inquiry conducted by investigation unit, it was discovered that the goods as per invoice no.173 and 176 dated 23.11.2006 and 22.12.2006 were sent through Car No. UP 78B – 6780 which is 1992 model. The weight of the goods was 350 Kg and 100 Kg respectively. The A.O. noticed that the vehicle is LMV tracker through which goods were allegedly sent from Kanpur to Sahson, Allahabad. In a further inquiry the A.O. found that perfumes from M/s Cosmo Elemek, Varanasi, M/s S.P. Upadhyaya Fragrance Pvt. Ltd.,*

*Varanasi, M/s Deepak & Co., Varanasi, M/s Sanjay & Co., Varanasi were transported by LMVs. The A.O. collected the details of the vehicles allegedly used for transportation from the RTO office, Varanasi. As per the details obtained from RTO office, Varanasi, the vehicles were Maruti WagonR, Tata Sumo and Maruti Swift. The ADIT (Inv.) recorded the statement of the owner of the vehicle No. UP 65Y – 3901 u/s 131(1A). The owner Sri Chandra Shekhar Tripathi categorically denied the use of the said vehicle for the transportation of alleged goods. On the basis of the above statement, the A.O. inferred that no goods were transported by the aforesaid vehicles. The A.O. also examined the weight transported by these vehicles in respect of given invoices. The A.O. has quoted the statement of Sri Chandreshwar Tiwari to support her finding. Further, the A.O. remarked that voluminous liquid perfume was allegedly transported by Maruti Swift and Maruti Wagon-R from Varanasi to Sahson, Allahabad. Transportation of huge quantity, for example 960 Kg, 707 Kg, 565 Kg, 725 Kg in small cars is not possible. The A.O. remarked that by no stretch of imagination, the perfume weighing above quantity could be transported to a distant place. Secondly, these are not commercial vehicles used for commercial purposes. In another remark, the A.O. found that the explanation that parties supplying the goods charged on FOR basis was not correct as transport charges have been mentioned in the invoices of Sarita Industries. The assessee did not furnish any reply to the statement of Chandra Shekhar Tripathi on having been confronted by the A.O. On the strength of above investigation, the A.O. stated that the purchases are bogus. The A.O. found her inference fortified on the finding that details of consumption are not maintained and assessee did not furnish the details of consumption of perfumes and sandal wood oil. The cash generated out of bogus purchases is utilized in the construction of building, purchase of land, foreign travel, purchase of gold bar and jewellery. Accordingly, the A.O. held that the accounts of the assessee are fabricated by bogus purchases, consumption and stock.*

*8.6 The A.O. further proceeded to work out the percentage of yield of consumption of 'other materials' on the basis of audit report furnished during the course of assessment proceedings. The A.O. remarked that the quantitative details of opening and closing stock of work-in-progress have not been given in the audit report and those are available in terms of value only. During the course of assessment proceedings assessee submitted the quantitative details of opening and closing stock of WIP, details of production and issue of coloured*

tobacco. The details as produced in the assessment order are reproduced herein under:-

Details of consumption of raw tobacco and production of finished goods as per assessee

Consumption of Raw tobacco in Kg.	Adjusted consumption in Kg.	Production of finished goods in Kg.
Raw tobacco 919194.000	838742.500	890193.600
Opening balance of WIP ± 88819.550		
1008013.550		
Closing balance of WIP - 169271.050		
838742.500		

Details of production and issue of coloured tobacco

Opening stock of WIP in Kg.	Coloured tobacco produced in Kg.	Total in Kg.	Production of Zarda in Kg.	Closing stock in Kg.
88819.550	970645.100	1059464.650	890193.600	169271.050

8.7 The A.O. further observed that Kimam is not included in the consumption figures, which is manufactured from whole leaf as stated by the assessee and 200 gms of kimam is extracted out of 1 kg of whole leaf. The whole leaf is used only in manufacturing of kimam. After manufacturing of Kimam the waste of whole leaf is not used further. During the year under consideration, the consumption of whole leaf was 60, 627 kg. for manufacturing of Kimam. The production of kimam as per books was 13,643 kg. The assessee also purchased kimam from Gupta Traders, Sultanpur. As per the submission, the total consumption of kimam during the year under consideration was stated to be 36,091 kg. On the basis of WIP, kimam and consumption, the A.O. worked out the percentage of consumption as under:-

Items	Quantity of consumption in Kg.	Quantity of finished goods in Kg.	%age of consumption
Raw tobacco leaf after considering CB of WIP	749922.950	890193.600	84.24
Chemicals and perfumes	84911.450		9.54
Silver and silver-vark	3353.246		0.38
Masala	107228.300		12.05
Kimam	36091.000		4.05
WIP	88819.550		9.97

8.8 By making arithmetic calculations, the A.O. has shown that the coloured tobacco produced during the year should be 8,01,374.050 kg. The tobacco leaf has been consumed at 7,49,922.950 kg (8,01,374.050 – 51,451.100 – the balance after consumption) during the year under consideration. The A.O. recast the consumption of raw materials as under:-

Tobacco Leaf	7,49,922.950 kg
Other materials	2,31,583.996 kg
Opening WIP	88,819.550 kg
Total consumption	10,70,326.496 kg
Total percentage of consumption	120.33%

8.9 From the details, the A.O. worked out the output of other materials which remains 51,451.100 kg from 2,31,583.996 kg. Accordingly, the yield is worked out as under:-

Tobacco leaf consumed -	749922.950
Add: Opening WIP -	<u>88819.550</u>
	838742.500
 Add: Other materials remained after Consumption as per assessee	 51451.100
Final product as shown by assessee	890193.600

Total %age of yield = 83.17

8.10. The A.O. has proceeded to analyze the consumption of 'other materials'. The total consumption of other materials was 2,31,583.996 kg. The production was stated to be 51,451.100 kg. Thus, as per this working the yield is only 22% and remaining 78% is stated to have evaporated. The A.O. commented that this yield is not acceptable in the absence of day to day records of consumption of other raw materials. The percentage of consumption of raw tobacco leaf was worked out to 84.24%. The consumption of other materials at 26%. WIP was 88,819.550 kg. Thus, total percentage of consumption was worked out to 120.23% as against 77.34% shown in the audit report. The A.O. referred to the statement of the assessee that at the stage of colouring, the tobacco gains the weight. Then in another observation, the A.O. has remarked that as per the assessee, percentage of yield was about 106%. The A.O. referred to the audit report, as per which the percentage of material consumed with reference to finished goods was ranging from 77.34% for A.Y.2004-05 to 99.05% for A.Y.2010-11. Then the A.O. has extracted the submission of the appellant in which the assessee stated that column 32 of the audit report speaks of amount whereas percentage of yield should be given in terms of

*quantity. The A.O. has produced the statement of Sri Krishna Chandra Kesarwani mentioned above and remarked that no specific reply was given on the ratio of consumption and percentage of yield. The results of the assessee vary from year to year as regards percentage of consumption vis-à-vis yield. On the strength of the discussion, the A.O. held that the actual yield was only 83.17% as against the claim of 106%. In this respect, the A.O. has also referred to the statement of Sri Kailash Chandra Kesarwani, partner of the firm, recorded on oath on 04.09.2009 in which he had stated that he would not disclose the issue of consumption and yield on account of trade secrecy and surrendered Rs.50,00,000/- for this reason.*

*8.11 Finally after extracting the statement of Sri Kailash Chandra Kesarwani, the A.O. concluded as under:-*

*"From the statement, it is very clear that assessee is suppressing its production and for which it has been surrendered at the time of search and seizure proceedings. The average percentage of yield comes to 105.66% as per above submission of assessee. Clearly, if 100 Kg. of items is consumed then 105.66 Kg. of finished goods would receive. Total production has been shown 890193.600 Kg. as against total consumption of raw materials at 1070326.496 kg. (838742.500 + 231583.996). Thus, total production worked out as 1130906.975 Kg. (1070326.496 x 105.66%). As the assessee has shown finished products at 890193.600 Kg., there will be suppression in production by 240713.375 Kg. not shown by the assessee. Cost of goods produced comes to Rs.289/- per Kg. as per detail shown in the audit report. The value of above suppressed production comes to Rs.6,95,66,165/- which is added to the income of the assessee firm on account of suppression of production in manufacturing of ZARDA for the year under consideration."*

*9. Addition of Rs.6,95,66,165/- was challenged before the Id. CIT(A) and the assessee's written arguments before him are reproduced as under :*

*"19. Regarding addition of Rs. 6,95,66,165/- by alleging Suppression of production (Ground No.4 to 20): That in this regard the assessing officer has discussed the matter in para 2 to the para-8 of the assessment order. For making such a huge addition in arbitrary manner the assessing officer has narrated the facts in 27 pages of the assessment order but such a lengthy and clumsy discussions in the assessment order are not based on any search material or any other positive material brought on record nor any defect was pointed out in the books of account. The major portion of the assessment order (27 pages) contains simply reproduction of statement of Kailash Chandra in eight (8) pages, issue of purchase of sandal wood from M/s Sarita Industries on 26.11.2006 which relates*

*to Assessment Year 2007-08 in 5 pages, charts from our audit reports in 4 pages. Thus likewise in other pages the assessing officer has reproduced details of production process furnished by the appellant and also various charts as appearing in the audit reports. The other discussion is that no details of percentage of evaporation of aroma, no ingredients and perfumery items have been maintained, no detail of silver leaves consumption has been produced, no percentage of dust has been shown in the audit report, no opening and closing stock of Kimam has been shown. In this manner the assessing officer proceeded by making all her efforts to give a different colour away from the truth to mislead the higher authorities to make a show as how much hard labour was put to make the said high pitched addition under reference by mentioning hypothetical and misunderstanding the facts and figures.*

*20. That in the present case main arbitrary and illegal addition of Rs. 6,95,66,165/- was made by the assessing officer on account of alleged suppressed production. The similar type of addition has been made uniformly in all the subsequent assessment years. In this way it is necessary to bring the facts about the business results of the assessee firm to your kind knowledge which are as follows :*

A.Y	Profit before Salary to Partners and Depreciation	Net Profit
2004-2005	1,34,40,749.47	90,01,169.47
2005-2006	2,72,25,321.32	2,22,65,272.32
2006-2007	3,35,12,098.96	2,83,73,514.96
2007-2008	2,09,53,302.73	1,53,71,921.73
2008-2009	1,67,76,395.23	1,08,84,426.23
2009-2010	1,53,12,230.72	95,35,365.72

2010-11

1,73,13,670.63

1,14,86,998.63

*That from the above chart it will appear that the appellant disclosed progressive income year after year but net effect has been ignored from consideration by the learned authorities.*

*21. That during the entire assessment proceeding only a single notice dated 11.07.2011 was issued connected with the production activities and such notice is a common notice by mentioning the assessment year 2004-05 to assessment year 2010-11 and in compliance to the said notice a voluminous reply in 109 pages (copy enclosed) explaining there in each and every points was filed justifying the books results and thereafter the assessing officer framed the assessment orders in her own designed calculations purely based upon surmises and conjectures and it is also very important to consider before making such a huge addition that neither any mind was applied nor before making such huge addition proper opportunity was given to the appellant by the assessing officer. Hence on this ground also the addition made is arbitrary and uncalled for*

*22. That notice dated 11.07.2011 is a common notice issued in syncline manner which fact itself proves the seriousness taken by the assessing officer because according to assessing officer alleged suppression of production was only there in all the seven years of assessment which she completed because search was conducted though no incriminating material was found in the search although in the last 45 years similar type of accounting was there in the assessee's same nature of business which was accepted and there was no allegation of suppression of production even in the assessments which were made under Section 143(3) of the IT Act, 1961 by various higher authorities of the Department.*

*23. That since the allegation of alleged suppression of production is a common issue in all the subsequent years, therefore it is necessary to deal the same separately in all respective years by considering the facts and figures of those years which has been ignored by the assessing officer as she developed a concocted and common theory for all the years which is wrong and against facts & law. Therefore it is necessary to briefly touch upon the background of captioned dispute that the appellant is a registered firm and came into existence in the year 1967 and is engaged in business of manufacture and sale of chewing tobacco known as 'Tobacco'. The appellant firm is assessed to income tax from the very beginning and in respect of such business activities the appellant maintained voluminous books of accounts, which are audited and the audit report is filed alongwith the return year after year. In the present case in the past number of assessments were framed U/s 143(3) of*

*the Income Tax Act'1961 either by the rank of JCIT or DCIT. Copies of the orders are enclosed in the paper book at pages no. \_\_\_\_\_. In this regard in para no.4 on page no. 7 of the written submission, observations of the assessing officer regarding our books of account have been mentioned. Thus our book results, trading results, production activities and norms, consumptions and yields of various raw materials and production, sales, and profit etc. every thing was accepted by the department in past in Toto by passing a well reasoned and speaking assessment order Under Section 143(3) of the Income Tax Act and not Under Section 143(1) of the Income Tax Act but unfortunately no cognizance was given to those earlier assessment records although apprised in the written submissions filed before the assessing officer though during the assessment year under consideration also similar method and manner of books of accounts and production/consumption norms as in the past years have been adopted and maintained by the appellant.*

*24. That in this regard there is an another very important point/facts to be considered by your good self is that this issue was already raised and considered during Assessment Year 1999-2000 where vide assessment order dated 22.03.2002 passed under Section143(3) of the Income Tax Act while an identical addition of Rs. 3,40,69,013/- was made under the head manufacturing account/ suppression of production on the similar ground as has been done in the present assessment under Section 153A(1)(b) of the Act. A photo copy of the assessment order dated 22.03.2002 is placed in the paper book at page no. \_\_\_\_\_. The then assessing officer has discussed the facts and his observations are appearing at page 6 to 10 of the order for making the said arbitrary addition, which are reproduced as under:-*

*"That a survey under Section 133A of the Income Tax Act was conducted at the business premises of the assessee on 05.11.98 where various stock was found. It was found that except tobacco no stock register of any other material is being kept. No day to day consumption of other items are maintained. Then vide order-sheet entry dated 18.02.2002 it was asked from the assessee that in absence of consumption of other materials why the production and consumption should not be taken on the basis of production and consumption shown by him during the Financial Year 1998-99."*

*"Then vide reply dated 04.03.2002 the assessee stated that the assessee has manufactured Tobacco, which is subjected to excise duty on production and for which all details have been maintained under the Central excise*

*rules and regulations and according to which figures have been submitted for this year also which is quite true and correct."*

*25. That thereafter the assessing officer examined the books of account and noted number of defects to invoke provisions of Section 145(3) of the Income Tax Act and by applying his own designed ratio/format he estimated the value and worked out the addition ignoring the factual position and explanation of the assessee then the appellant had no other option but to file First Appeal against the said assessment order before the first appellate authority. The then learned CIT (Appeal) heard the appeal and by considering the entire facts of the case deleted the addition vide his order dated 10.12.2002. A photo copy of the Order of the Commissioner of Income Tax (Appeals) is enclosed in the paper book at page no. \_\_\_\_\_. The observations of the then learned Commissioner of Income Tax (Appeal) as per para 7 (at page \_\_\_\_\_) of his order are reproduced hereunder:-*

*"I have considered the facts of the case and find merit in the arguments of the appellant. I agree that the addition is not based on any hard fact but on certain presumptions. From the Assessing Officer's Order it is clear that during survey proceeding under Section 133A of the Income Tax Act no incriminating document or material was found to give reason to conclude excess production or out of books sales or yield or out of books purchase of raw materials. There is less expenditure on account of consumption of raw material to produce more end product. Instead of appreciating better result in comparison to earlier years the assessing officer has assumed that the assessee might have consumed out of books purchased to show better yield. Why the answer will do this is not explained. Provisions of Section 69 of the Income Tax Act does not apply to fictitious excess stock based on estimate of possible consumption determined by mathematical Calculations. The finding of the Assessing Officer is without any tangible evidence and it is based on inferences involving unwarranted assumption. Accordingly the addition of Rs. 3,40,69,013/- made by the Assessing Officer Under Section 69 of the Income Tax Act is deleted."*

*26. That the department went into Second Appeal against the aforesaid order of the learned Commissioner of Income Tax (Appeal). The Hon'ble Income Tax Appellate Tribunal, Allahabad Bench heard the appeal and vide their order dated June 2006 as per ITA No.126/A/09 dismissed the departmental appeal. A copy of the*

*Income Tax Appellate Tribunal's Order is enclosed in the paper book at page no. \_\_\_\_\_ and in this regard observations/findings of the Hon'ble Tribunal as mentioned at page 8 in last para no. 9 of the order are reproduced hereunder:-*

*"However, again as discussed above, we have held that there is no warrant for invoking the provisions of Section 145(3). It automatically follows that the imaginary exercise undertaken by the assessing officer is futile and hence the additions cannot be sustained. Moreover during the survey, no incriminating was found. No irregularity with regard to books of account is found and therefore the Commissioner of Income Tax (Appeal) deleted both the additions. We agree with his conclusion."*

*27. That now in the year under consideration at present second time such an huge addition has been again made by observing that there was suppression of production but before saying so the assessing officer failed to invoke provision of section 145 (3) of the I.T. Act. though sales and gross profit as shown were accepted. In this way the approach of assessing officer in the A.Y. in question is not judicious approach rather arbitrary approach as compared to A.Y 1999-2000. Sir In the entire order there is no whisper of Section 145 (3) of the I.T. Act or rejection of account, sales or gross profit meaning thereby that the addition was made on own whims and calculation and not on any concrete material and alleged suppressed production was created by the assessing officer only on her own whims and illogical surmises, wrong calculations and misunderstanding of the nature of incomes with set mind and to justify the search and also to please the higher authorities and to debar the assessee from getting proper justice from her end. Thus the huge addition was made by Assessing Officer. without any adverse or incriminating material brought on record nor found in search. Likewise before making such addition provision of section 145 (3) of the I.T. Act was not invoked, purchase, sale and closing stock have been accepted hence entire addition is illegal and baseless. This shows also that even principles of consistency is missing in the order.*

*28. That, Sir, similar and identical formula/ basis have been adopted for making addition for alleged suppressed production in all the assessment years 2004-05 to 2010-11 whereas appellant has adopted and followed the same method/manner/pattern for maintaining books of accounts and production process for manufacturing Tobacco on commercial principles since inception of the firm and there is no change in any way therefore the arbitrary addition made by the assessing officer by alleging suppressed*

*production is unjustified and illegal. It is also submitted that the production of tobacco is an excisable items and the production has been accepted by the Central Excise Authorities and excise duty has also been paid on the clearance of the manufactured goods from the godown under control of Central Excise Department and our declared sales was accepted year after year and in view of this fact no such addition could be made. Kindly consider Allahabad High Court decision as reported in 320 ITR 116 in the case of CIT Vs. Mascot (India) Tools & Forges Pvt. Ltd. (Copy of the order at page .... Of the paper books)*

*29. That Sir, the most important fact that even for the year under consideration i.e. Assessment Year 2004-05, originally the assessment was made Under Section 143(3) of the act vide order dated 19.12.2006 by the Deputy Commissioner of Income Tax, who examined the books and other details on various dates of hearing by calling various details which will appear from the order-sheet entries written by the then assessing officer, copies of the order sheet are in the paper book at page no. \_\_\_\_\_. Similarly the copies of order sheet in respect of present assessment under Section 153A(b) of the act is enclosed at Page -.... of the paper book. Kindly compare the same with the order sheet of block proceeding which shows the manner of the examination of records/facts adopted by the assessing officer which is absolutely casual. The order sheet entry is an important document of the assessment records so please consider the manner and give weightage to original order sheet entries and the approach of the then assessing officer.*

*30. That in this case a search action under Section 132(i) of the Income Tax Act was conducted by the department at the business and residential premises of the partners of the appellant firm. As a consequence of the search, the assessing officer framed the impugned assessment order under Section 153A (b) of the act. But Sir, in the entire assessment order there is no whisper of any search material or any new evidence found in the search rather the entire additions/disallowances have been made only on the basis of the same books of accounts which were produced in the original assessment proceedings under Section 143(3) of the Income Tax Act and accordingly a well reasoned and speaking assessment order was framed Under Section 143(3) of the Income Tax Act.*

*31. That in this regard copy of order sheet entries for the assessment year 2004-2005 written by the assessing officer in original assessment proceeding is enclosed at page ... of the paper book and from the order sheet entry it will appear that on number of dates hearing was fixed and relevant queries were made with regard*

*to trading result, expenses etc and in compliance to those queries various replies details/ informations / documents were furnished before the assessing officer and after thorough scrutiny of the same though the assessing officer was satisfied but she framed the assessment order by discarding all such facts/ details furnished and made the arbitrary addition which is unjustified and illegal. Sir, in the original assessment books result was accepted whereas in the proceeding u/s 153 A(1)(b) of the I.T. Act again on the same book of accounts addition was made by alleging suppression of production which is not correct and out of purview of section 153A(1)(b) of the I.T. Act. The provision of section 153A(1)(b) of the I.T. Act is not meant for repetition of proceedings and to draw different view as above in present case.*

*32. That sir the trading result position for the assessment year under consideration and for earlier two assessment years are as under:-*

Assessment year	Declared sales	Gross profit	Gross profit rate	Result in assessment
2002-03	26,17,95,483	5,90,90,630	22.57%	Accepted u/s 143(3)
2003-04	33,09,13,848	7,06,23,739	21.34%	Accepted u/s 143(3)
2004-05 (under consideration)	32,76,14,467	7,03,55,084	21.47%	Accepted u/s 143(3) and now in dispute u/s 153A(b)

*That from the above chart it will appear that overall position is progressive which was accepted by the assessing officer and more so regarding trading result there is no adverse view in the assessment order under consideration. Sir, there is no dispute with regard to Opening Stock, purchases, Sales & Closing Stock as well as gross profit and when everything was found in order and nothing adverse has been recorded in the order then there is no justification to proceed to make incorrect/ uncalled for addition by brushing-aside the entire facts, explanations, past-records, Submissions, and earlier assessments and results etc. The most important fact is that in the whole assessment order there is no whisper of Section 145(3) of the Income Tax Act which proves that the assessing officer was fully satisfied with our books of accounts/ method of account. The only provision in the Income Tax Act is Section 145 which empowers the Assessing Officer to reject the books for making addition, if any. But in this present case on this issue the Assessing Officer is silent though she devised a colourful statistical formula prepared according*

*to her own whims and wishes to justify the arbitrary addition made in absence of any search material brought on record and without any adverse finding made for invoking section 145 of the I.T Act. That in this regard the Hon'ble supreme court in 319 ITR page 3 in the matter of CIT Vs Flexi Pack in SLP Civil No 18112 of 2009 held as under – Copy enclosed page ..... of paper books.*

*" That no substantial question of law arose from the order of the Tribunal, that there was no question of going into estimation without rejection of the books which has been properly maintained in the regular course. The Tribunal held that the assessing officer had not invoked the provisions of section 145 of the Act and therefore, there was no justification for not accepting the book results."*

*That sir the above view is the view of the highest authorities and their view is to be considered as the law of land and therefore the same must be given absolute weightage accordingly.*

*33. That Sir during the course of the search operation in the appellant's factory (manufacturing place) the search party did not find any suppressed production lying in the premises due to which there is no adverse finding about closing stock in the assessment order nor any adverse findings about trading results. The search party prepared the inventory of raw materials and finished products but since no suppressed production was found in the premises nor any hidden place was unearthed by the search party, where any such alleged suppressed production was lying then Sir a question arises for consideration and adjudication before your goodself is that after all where such alleged suppressed production has gone specially when there is no allegation about EXIT of suppressed production by the Excise authorities (Central Excise) because the excise-duty is leviable at the point of EXIT (clearance) from the godown of the goods under the strict supervision of Central Excise Authorities nor in this regard any query was put to the appellant before framing the assessment order. In fact no discrepancies in the production was found but the discrepancy of alleged suppressed production was created by the Assessing Officer on her own estimation though the accuracy of the account maintained by the appellant had not been doubted or challenged during the year or also during last 45 years by the authorities of Income Tax, Sales Tax or Excise departments.*

34. *That, Sir the books of account are supported by purchase vouchers, vouchers for expenses, Stock records registers and Excise records etc. therefore hypothetical and imaginary calculations for deriving of alleged suppressed production as has been made in the present assessment order, cannot be treated as authentic and no specific mistake in the book of account has been pointed out and mentioned in the order by the Assessing Officer in the Assessment Order. During the year under consideration when turnover is on higher side and G.P. Rate is also more or less same then there is no justification to corner the appellant's books of accounts for making an arbitrary addition based on assumption and estimation for alleged suppressed production. Thus inspite of all these facts the Assessing Officer made huge addition which is total disregard of complete records, and specific and precise details submitted by the appellant which is indeed an arbitrary and unjustified addition. The procedure of framing assessment is of judicial nature and in making the assessment, the Assessing Officer must proceed on judicial and accountancy principles which is completely lacking in this case. Moreover the appellant explained entire stage wise manufacturing process of Tobacco to the Assessing Officer in writing and also produced details of various materials and ingredients used in the manufacturing process and also requested the Assessing Officer to visit the appellant's place of manufacturing to see and understand the entire manual process but neither the Assessing Officer visited nor considered the real facts nor mentioned anything about this in the assessment order.*

35. *That in support of above contention, the appellant invites your's kind attention to the decision of Hon'ble jurisdictional High Court of Allahabad reported in 320 ITR 116, (Alld) in the case of CIT Vs MOSCOT (India) Tools & Forgings in which the Hon'ble Court held as under:-*

*(i) Income from undisclosed sources-Addition-Alleged suppressed sale-Tribunal found that sales declared by the assessee are of excisable goods and the correctness of declared sales is supported by regular books of account which have duly been audited by the auditors- Sales recorded in the books of account are supported by various excise registers, which are periodically checked*

*and verified by the excise authorities - It is beyond comprehension that any addition on account of alleged suppressed sales can be made without any valid basis whatsoever on record-Findings recorded by the Tribunal are based on appreciation of fact and material available on record and there is no illegality or infirmity in the order passed by the Tribunal- No interference is called for.*

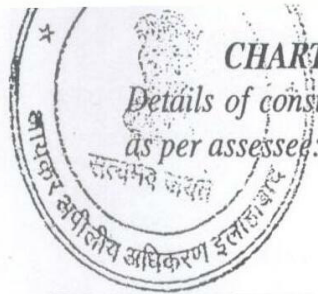
*(ii) Accounts - Rejection - Estimation of income - Books of account are supported by the purchase vouchers, vouchers for expenses, stock records, excise records and therefore, hypothetical and imaginary calculation of GP Rate cannot be made unless some specific mistakes in the accounts are pointed out - It is not disputed that the turnover and GP rate declared by the assessee in the year under consideration is better as compared to preceding year - In the absence of any specific instances of mistakes in the books of account and other records, the book results cannot be rejected on the basis of any such hypothetical calculations based on erroneous presumptions- Findings of Tribunal based on appreciation of material did not call for interference.*

*That Sir in the light of the aforesaid decision since appellant's books of account are true and correct as the same have duly been audited by the auditors and declared sales recorded in the books of accounts are also supported by various excise registers which are periodically checked and verified by the excise authorities and accepted therefore the addition on count of alleged suppressed production as made by the Assessing Officer is highly unjustified and illegal in view of the decision reported in 337 ITR page 541 (Bombay) search addition should be confined to the material discovered in search.*

*36. That regarding addition made by alleging suppressed production, it is submitted that observations and findings of the assessing officer in the order are incorrect and contrary to the actual facts and figures of the case. The assessing officer made the addition based on presumptions ignoring the norms, true facts and explanations furnished by the appellant. In reality tables reproduced in the assessment order at page 16 of the assessment order are based on the information, already*

*available in the audit report of relevant assessment years and a biased attempt has been initiated to draw adverse inference by the assessing officer which is totally incorrect as the same does not match with our actual nature of manufacturing process inserted in production chart as already explained above. Moreover from the entire order it is clear that the assessing officer made all her efforts only to find out the consumption of raw materials in one Kg. of finished goods by twisting the audit figures in a designed fashion to make the addition ignoring the true facts and real production norms.*

*That the assessing officer has reproduced certain chart at page 14- 16 of assessment order which require your kind consideration to solve the issue:*



**CHART - A (As per Page 14 of Assessment Order)**

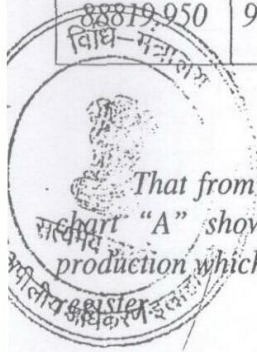
*Details of consumption of raw tobacco and production of finished goods as per assessee:*

<i>Consumption of raw tobacco in kgs.</i>	<i>Adjusted consumption in kg</i>	<i>Production of finished goods in kg.</i>
<i>Raw Tobacco</i> 919194.000	838742.500	890193.600
<i>Op Bal of WIP</i> + <u>88819.550</u>		
1008013.550		
<i>Cl. Bal of WIP</i> - <u>169271.050</u>		

<u>838742.500</u>		
% of consumption 94.22 % (838742.500/ 890193.600)		
% of yield 106 % (890193.600/ 838742.500)		

**Details of Production and Issue of Coloured Tobacco**

Opening Stock of WIP in Kgs	Coloured tobacco produced in Kgs	Total in Kgs	Production of Tobacco in Kgs	Closing Stock in Kgs
88819.950	970645.100	1059464.650	890193.600	169271.050



That from the above chart marked as Annexure "A" it is submitted that chart "A" shows consumption at 94.22 % from adjusted consumption to production which is true and correct. The figure is supported by day to day stock

**CHART - B (As per Page 15 of Assessment Order)**

Items	Quantity of consumption in kgs	Quantity of finished goods in kg.	% age of consumption
Raw tobacco leaf after considering OB & CB of WIP	749922.950	890193.600	84.24
Chemical and perfumes	84911.450	(a)	9.54
Silver and silver-work	3353.246	(b)	0.38

Masala	107228.300	(c)	12.05
Kimam	36091.000	(d)	4.05
WIP	88819.550		9.97
<b>TOTAL</b>	<b>1070326.496</b>		<b>120.23</b>

That with regard to chart marked as Annexure "B" it is submitted that while considering the quantity of consumption assessing officer has included figures of chemical and perfume, silver and silver vark, masala and kimam marked as "a", "b" "c" and "d" and worked out total consumption at 1070326.496 kgs and also worked out yield at 120.23 % as against 94.22 % as declared by the assessee .

**CHART – C (As per Page 16 of Assessment Order)**

Tobacco leaf	749922.950 Kgs	
Other materials	231583.996 Kgs	<b>Total of a to d as per chart "B"</b>
Opening WIP	88819.550 Kgs	
Total consumption	1070326.496 Kgs	

That chart "C" is based on chart "B" for working out % of consumption

**CHART – D (As per Page 16 of Assessment Order)**

Tobacco leaf consumed	749922.950
Add: Opening WIP	88819.550
<b>TOTAL</b>	<b>838742.500</b>
Add : Other materials remained after consumption as per assessee	51451.100
Final products as shown by assessee	890193.600

That in chart "D" the assessing officer has calculated final production at 890193.600 kgs which is correct. In this way % of yield has been worked out at 83.17 % [ (890193.600/ 1070326.496) X 100]. The said yield as worked out at 83.17 % is incorrect in so far as the total consumption was taken at 1070326.496 kgs because while considering other materials shown at 231583.996 kgs the evaporation/wastage percentage was not considered and excluded rather ignored. Thus if percentage of evaporation/wastage is taken into account and excluded

then the actual consumption comes to 838742.500 kgs and not 1070326.496 kgs as shown as per chart "A" above. In this way the correct percentage of yield is as under:

	By Assessee	By Assessing officer
Final products as shown (No dispute)	890193.600	890193.600
Total consumption	838742.500	1070326.490
percentage of yield	106.24 %	83.17 %

37. That thus the assessing officer in fact totally ignored and discarded the actual evaporation/wastage of other materials used in production appearing in chart "B" where as such evaporation/wastage has been allowed year after year being normal feature in this nature of business. Therefore the whole confusion arises only because the quantum of evaporation and normal process loss was ignored which is the cause of deriving alleged suppressed production. In this connection it is further submitted that in the year 1990-1991 a survey was conducted by the excise department for verification of stock and they alleged that there was excess stock of tobacco as a result pilot experiment was also conducted by the excise authorities and thereafter they, arrived at a conclusion that the increase in weight on account of the addition of chemicals, perfumes, menthol etc was purely temporary and the weight by and large come to the level of the weight of coloured leaves. Therefore the excess in weight found at the time of verification of the stock by the officers was on account of the addition of chemicals perfumers and other volatile substances and this increase in weight was purely temporary and the actual weight nearly settled down to the level of the weight of the coloured leaves after completion of the process of the manufacturing and was accounted for. In this way the higher authorities of the Central Excise department also held that in such type of nature of manufacturing of tobacco there is wastage process loss and evaporation loss of ingredients used/ mixed and the same are temporary due to which the ultimate result is that there was no increase in weight accepted by Central Excise Appellate Tribunal in assessee's own case.

38. That the assessing officer considered the item of other material such as perfume, chemicals, silver and silver vark, kimam, masala at 231583.96 kgs whereas after evaporation it comes to 51451 Kgs. Thus the difference of 180132.996 kgs is shortage in weight (kgs) due to evaporation in normal process and processing loss and not weight of suppressed production as claimed by the assessing officer.

39. That like wise another mistake committed by the Assessing Officer is that percentage of yield as admitted by assessee at 106 % as per chart marked as annexure "A" above was applied again on total alleged consumption at 1070326.496 kgs. In this way the alleged production was worked out to 1130906.975 Kgs ( $1070326.496 \times 105.66\%$ ) as per working of the Assessing Officer at page 27 para 8 of the assessment order. The difference comes to 60581.00 kgs (113096- 1070326 ) In this way the alleged total

*production was worked out at 1130906.975 kgs as against 890193.600 kg as shown by the assessee. Due to such haphazard working alleged suppression of production was worked out at 240713.375 kgs and in this way by applying cost of production at 289.00 per kg a huge addition of Rs. 6,95,66,165/- has been made. Since the so called suppressed production as worked out by the assessing officer at 240713.375 kgs is nothing but reduction in weight of material due to evaporation normal processing loss of 180182.996 kgs and 60581 kgs on account of difference in alleged production as worked out by applying percentage of yield on alleged consumption. The total of alleged shortage and difference in alleged production was worked out to 240713 (180132+ 60581). Thus the assessing officer has made addition all together on different logic without considering nature of manufacturing process, nature of ingredients used and explanation given by the appellant which is highly unjustified.*

*40. That at page 25 of the assessment order the assessing officer has alleged that no specific reply was given on ratio of consumption and percentage of yield which is absolutely incorrect in so far as at page 18 of the same assessment order a chart is reproduced from which it will appear that there is different in yield percentage figures in the A.Y. 2004-2005 to A.Y. 2007-2008 and yield percentage figures of A.Y. 2008-2009 to A.Y. 2010- 2011. Such difference is there only due to method of yield percentage working as adopted by the auditors and not due to any manipulation as alleged by the assessing officer. Sir, If a uniform method is adopted in all the assessment years then there will be no difference at all in the yield percentage figures in any of the years but the Learned assessing officer never tried to understand this fact and made such a irrelevant allegation based on her own wishes to justify the addition and search. Actually these two ratio – (i) the accounting ratio of material consumed/finished goods produced (as per class 32 of Form 3CD) (ii) the percentage of yield of the principal raw material (as per class 28 of Form 3CD) are altogether different in nature and purpose and the same can not be compared with each other as compared by the Ld. Assessing officer without understanding this true fact.*

*41. That at page 25 of the assessment order the assessing officer stated that in the course of search operation in the statement no specific reply was given on ratio of consumption and percentage of yield whereas the assessee explained all the items used in production of Tobacco, their consumption and opening and closing stock. But the assessing officer failed to examine the past records which proves that such temporary shortage is caused due to evaporation and normal processing loss at stages of the manufacturing processes as a*

*regular features which was accepted by the department. Thus to support and to give strength to the assessment order the assessing officer in the order stated that the assessee failed to state the ratio of different constituents mixed to get one kg of product of tobacco when the assessee stated only this that because it is a trade secret and nobody can compel to state the trade secret. The amount of Rs. 50,00,000.00 was also surrendered only with the intention to purchase peace of mind and to avoid litigation. Sir, there could be thousand and one reason for offering some amount for taxation which is quiet usual in the search and survey. The department is no stranger to the same fact but it is not correct on the part of assessing officer to take shelter for such surrender to misuse it whereas such surrender was made to buy peace of mind from the department and settle the matter and also to stop the assessing officer from repeated persuasion of telling the ratio of consumption.*

*42. That in the course of search no incriminating material was found relating to present year which could have been added back in the proceeding under section 153A(1)(b) of the I.T. Act. Prior to date of search the return of income for the assessment year 2004-05 to assessment year 2008-09 had already been filed under section 139(1) of the act accompanied by all the requisite documents and proceeding under section 143(1) of the act stood completed except the year 2004-05 which was made under section 143(3) of the income tax act. The details regarding opening stock, purchase, sales, closing stock and consumption of materials for the production of Tobacco for each year under consideration were also placed before the authorities below. This fact has not been disputed by the revenue. The audit report also contains the facts of production of each year which were accepted from year after year and no dispute was ever raised by the department. The matter of consumption / alleged suppressed production can by no means be created as a fresh or new issue and finding created by the assessing officer in the present order passed is based on assessing officer's own imagination ornamentally during the search assessment since all details regarding consumption / production were before the department prior to the search. Sir, if department had any doubt regarding the same, it could have been raised during the regular assessment proceedings upto assessment year 2004-05 and not in the proceeding under section 132(1)/ 153 A(b) of the Act. When no incriminating material was found in the course of the search relating to any of the assessment year of the block period then the original assessment for such year could not be disturbed on the ground of alleged suppressed production through wrong working and own colourfull calculations of the assessing officer. In view of above factual and legal position the addition in question on account of so called suppressed production in*

*a uniform manner for assessment year 2004-05 to 2010-11 are not corresponding to such material found during the course of search therefore the addition made in the pre-search assessment year is unjustified and illegal.*

*43. That without prejudice to above, it is found that having not rejected the books of account of the assessee for all the years under consideration, the assessing officer derived a colourful statistical formula prepared in general and vague manner which is not based on any real facts or figure found in the course of search but were applied uniformly in order to work out certain production in hypothetical manner. The assessing officer simply discussed various facts in general way as discussed in different para of the assessee's submissions and worked out unrealistic figures for suppressed production for the purpose of making addition. Infact and in real sense the method of computing so called suppressed production is not justified in absence of any sound basis for the same. Sir, it is an admitted fact that each year of the assessment is independent and since no adverse evidence or any new evidence was found in the course of search reflecting any adverse impact then why such addition. Sir, from the nature of addition it appears that simply because the assessing officer, while framing the assessment order under section 153A (1)(b) of the act, had no other way out but to make the addition in haphazard manner with a view to justify the search because no material was found in the course of search. Thus the appellant prays that when nothing was found in the course of search which facts also appear from the assessment order therefore the original assessments for the assessment years 2004-05 to 2010-11 could not be disturbed in all fairness and justice.*

*44. That Sir, all these details were furnished before the assessing officer also for consideration during the assessment proceeding but the same were totally ignored without assigning any reasons or justification. The Assessing officer failed to understand and consider the real facts such as:-*

*a) That the appellant manufacture and sale 'Tobacco' and the product is subjected to the excise act/rules and regulations.*

*b) That complete statutory records were maintained as required under the control of the excise Act/Rules made there under. Those records from the stage of raw tobacco to the sale of branded Tobacco were periodically checked and verified by the officials of the Central Excise Department. This is an important fact that in the assessment order neither the Assessing Officer has mentioned it nor pointed out any defect*

*regarding maintenance of excise records. Moreover broad steps of the manufacturing process have already been explained.*

*c) That with a view to survive in the business market it is not possible for the appellant to disclose its tradesecrete.*

*d) From the aforesaid brief account/ details the yield during the various stages of manufacturing process can not be uniform on account of the fact that the raw materials are purchased largely from agricultural produce or vegetable products, some of which are hygroscopic in nature and some are volatile. The consumption of silver leaves and other perfumery items varies on account of the various manual process and nature of the business as explained above.*

*45. That on the basis of charts as reproduced at para 36 above the assessing officer has tried her level best to make the issue clumsy and has narrated her concocted theory by attacking on the consumption of raw materials in a wrong way and with ill motive only. True facts were submitted before the Assessing Officer again and again that there is no fixed rate of ratio or parameter for the consumption of various raw materials in the manufacturing process of the Tobacco as the same always varies at the stages of production processes /depending upon quality of raw materials used and quality of Tobacco manufactured by taking into account need in the market and level of like business competition as well as also loses in the process but since the assessing officer was adamant to make the addition at any cost therefore these true facts were ignored. The nature of manufacturing process / stages from inception of the firm are also same and similar and already accepted by the department in past, therefore the consumption and product cannot be derived at one to one ratio but the assessing officer failed to understand this simple and established fact and by ignoring the same a wrong working was manipulated and inserted to justify the addition which is incorrect.*

*46. That in this regard the assessing officer at the end at page number 27 of the assessment order has concluded her justification to make the addition by alleging suppressed production in a cyclostyle manner in all the respective assessment years of the block period. Even language word by word is same which is now reproduced here under :*

*"From the statement, it is very clear that assessee is suppressing its production and for which it has been*

*surrendered at the time of search and seizure proceedings. The average percentage of yield comes to 105.66% as per above submission of assessee. Clearly, if 100 kgs. Of items is consumed then 105.66 kg of finished goods would receive. Total production has been shown 890193.600 kgs as against total consumption of raw material at 1070326.496 kgs (838742.500+231583.996). Thus total production worked out as 1130906.975 kgs (1070326.496 X 105.66%) As the assessee has shown finished products at 890193.600 kgs, there will be suppression in production by 240713.375 kgs not shown by the assessee. Cost of goods produced comes to Rs. 289/- per kgs as per details shown in the audit report. The value of above suppressed production comes to Rs. 6,95,66,105/- which is added to the income of the assessee firm on account of suppression of production in manufacturing of ZARDA for the year under consideration."*

*That from the above, it will appear that the cause of the addition according to the assessing officer is only this that the assessee surrendered Rs. 50 lac at the time of search with an intention to save the trade – secret but while framing the assessment order the assessing officer failed to consider the statement of surrender correctly in its true spirit and tried to take disadvantage of the said surrender when such surrender was in good faith and only on persuasive query on the point of ratio of raw tobacco consumption and production and as a matter of fact it was a heavy surrender in volume as such adverse inference of the same has been wrongly taken for making a stand for the addition which is unjustified.*

*That likewise the contention of the assessing officer that if 100 kg of items is consumed then 105.66 kgs finished goods would receive is totally incorrect because the assessing officer failed to understand this fact that it does not happen so in the production of tobacco and result of final product never comes in 1 to 1 ratio in comparison to the materials and ingredients used in the production, because it involves dust, wastage, evaporation and other processing losses, so, sir kindly consider this aspect in its practical background. For example, while preparing a cup of tea, its various ingredients such as water, milk, sugar, tea-leaf are mixed in a cup and heated and after getting essence and colour of the tea leaf and other ingredients used, the wasted-tea leaf bags are thrown out, thus here also we do not get similar weight of tea and sugar etc as of weight of all the used ingredients nor the quantity increases. So sir similar position is here also in our production and in its true perspective only assessments in all the earlier years have been done by accepting our norms of production since the inception of the firm.*

*That the assessing officer miserably failed to mention the fact in the assessment order that where such suppressed production have gone and thus now it is an important issue for your kind adjudication.*

*47. That Sir the most important fact for consideration at your end is that the assessing officer worked out the alleged production of 1130906.975 Kgs. whereas in reality our production is 890193.600 Kgs only. In this way an artificial differences of 40713.375 Kgs of alleged excess production was created by the Assessing Officer but the assessing officer miserably failed to state that for such alleged excess production from which source the raw tobacco (Base Raw Material) had come and where the sales effected or stock/ kept and left from the eyes of central excise department because the assessing officer has accepted our opening stock, purchases, sales and also closing stock of raw tobacco and other materials including finished goods. And when these four major heads have been accepted then a natural question arises there for consideration of your goodself that from which source the raw tobacco (Base Raw Material) used in the so called excess production had come specially when the raw tobacco shown by us is based on day to day stock excise register with quantity wise. Meaning thereby that consumption of the raw tobacco, as per books, used for declared production is true and accepted by the Department and left quantity is in closing stock which was also accepted by the Assessing Officer. Moreover no loose paper or any incriminating document indicating any such suppressed production, purchase of raw tobacco was found during the course of the search. Although it is a known fact that our entire production/sale is subject to the excise duty and till date no case was ever made by the excise department or Income Tax Department or Sales Tax Department that any suppress purchase of raw tobacco, production and sales were made nor in this regard there is any whisper in the assessment order. For your convenience a chart is enclosed at page no. \_\_\_\_\_ of the paper book showing the consumption of raw tobacco and quantity of the production compared with the working of alleged suppressed production done by the assessing officer. In this connection it is also necessary to mention here that our earlier assessments were made after thorough scrutiny and passed under Section 143(3) of the Income Tax Act. Copies of the orders are at page no. \_\_\_\_\_ to \_\_\_\_\_ of the paper book. So kindly consider observations of various senior officers of the department in their orders and please compare the same with the present assessment order passed under Section 153A(b) of the Income Tax Act. In the referred chart earlier years position of consumption of the raw tobacco in the production has also been given based on which it is clear that on declared consumption the*

*department has accepted our declared production. Therefore there is no sense to create artificial excess production without giving the source of raw tobacco used for such alleged suppressed production and proving its sales or stock and excise duty paid on such excess production and thus it puts a serious question on judicious approach of the concerned assessing officer.*

*48. That in this regard a 2nd chart is enclosed at page no. \_\_\_\_\_ of the paper book for your kind convenience which is based on our books of accounts and audit report. From this chart it will appear that there is no dispute in respect of consumption of raw tobacco whereas for the first time in the history of the case doubts in respect of other materials used in the production have been raised and details of which is appearing in col. no. 4 of the said chart. From the chart it will also appear that in other materials (such as chemicals, perfumers, silver & silver verk, various types of other ingredients, kimam and masala etc) there is loss/shortage on account of processing wastage, evaporation and dust etc and as a result weight of some other materials/ ingredients gets reduced and ultimately by mixing the same in the raw tobacco such nominal weight increases and it contains taste/essence of those other items and this system/processing of manufacturing of our product has already been accepted by the department since the date of inception of the firm including the assessment year under consideration of which assessment was framed under Section 143(3) of the Income Tax Act but simply because a search was conducted though no incriminating materials was found in the course of the search and also the present assessing officer was not ready to understand the process as a result a theory of suppressed production was created by the assessing officer according to her own wishes to make huge addition without considering the true facts and factors as elaborated above. In this regard a decision of the jurisdiction High Court reported in 320 ITR Page 116 is fully applicable in the appellant's case as the facts of the case are identical and copy of the order is at page no. \_\_\_\_\_ of the paper book.*

*49. That from the said relevant chart at page no. \_\_\_\_\_ kindly consider the working of assessing officer. Sir, the assessing officer considered the quantity of other materials in same ratio (1:1) which is absolutely incorrect. Meaning thereby that various ingredients, masala & spices etc. were mixed in the raw tobacco as it is without processing and no benefit of process loss in to weight/quantity was allowed. In this way the quantity of production by considering the weight of other materials as it is (1:1) and over and above yield percentage of 105.66% was again applied by the Assessing officer in each year due to which figure of artificial suppressed production was*

*increased and worked out by the assessing officer which is absolutely baseless. Sir, the process of manufacturing of tobacco is a technical matter and Zarda is not manufactured in the manner as suggested/calculated by the Assessing Officer. Sir fact is that since the assessing officer could not understand the entire manufacturing process as a whole due to which such type of confusion was designed/created by the assessing officer and Sir, if tobacco is manufactured in the manner as calculated/ decided by the assessing officer then the said Zarda shall be hardly purchased by any consumer/user because in Zarda, its taste & flavour is most important aspects & which only attracts the consumers.*

*50. That Sir already we have put an example for preparation of cup of tea in para 46 above similar position is there also in our production of Zarda and therefore in its true perspective only assessments in all the earlier years have been made by accepting our norms of production since the date of inception of the firm. Thus in nut-shell the theory of alleged suppressed production as launched by the assessing officer is there due to following reasons:-*

*(i) In using other ingredients/materials apart from the raw tobacco, processing wastage/shortage/ evaporation was not allowed when in earlier years including the year under consideration the same were allowed.*

*(ii) The assessing officer considered quantity of other ingredients/materials in comparison to the production in 1:1 ratio which is at all not possible nor actual manufacturing way of Zarda.*

*(iii) The yield of percentage as applied twice by the assessing officer, first from raw tobacco to finished production at flat rate and again applying yield percentage on production which is wrong and impractical.*

*Thus the entire working of the alleged suppressed production done by the assessing officer in haphazard way is baseless and far away from the real working based on commercial principles.*

*51. That the 3rd important issue is that the department is taxing us on the value of production as worked out by the assessing officer treating the entire value as income and not on real income when the law is settled that the income tax is leviable on real income only based on a working done on commercial principles. Sir the production is final outcome of the various materials used for the production. In para 27 of the order the assessing officer has stated that the total production is worked out to 240713.375 Kgs @ Rs.*

*289/- kgs value of which comes to Rs. 6,95,66,165/-. The assessing officer has clearly stated that it is the value (Cost) of such suppressed production and the same has been added to the income of the assessee firm on account of alleged suppressed production. Likewise at page 35 of the assessment order where the income has been computed, the assessing officer has stated that the income of the assessee is computed as under and there also the assessing officer has added the amount of the suppressed production, Sir it is not a judicious way to tax sale, production, and purchases etc. but in the appellant's case the department travelled beyond the procedures of the Income tax law and principles of accountancy and judicial parameter of observing the real income and not to tax the artificial income in the garb and suppressed production by ignoring the real income and commercial principles. Thus it is a patent and glaring mistake on the part of the assessing officer to tax the amount of alleged artificial production worked out by the assessing officer because in the production costs various other elements are also involved. The assessing officer nowhere has stated in the order that there was suppression of sale and purchases nor she mentioned anything about payment of excise duty on the finished goods derived out of such alleged suppressed production or whether the excise duty was charged and paid on each and every exhibit item of finished goods. Moreover there was no finding of excise department that any excise duty was suppressed then question of taxing the alleged suppressed production as worked out by the assessing officer does not arise. The records go to show that there is no finding nor any material referred in the assessment order about the suppression of investment in acquiring the alleged suppressed production. Sir total sales or total production cannot be regarded as profit/ income of the assessee. In support of this the assessee rely on following decisions.....*

- 1- (2003) 263 ITR 610 (MP)*
- 2- (2002) 258 ITR 654 (Guj)*
- 3- (2008) 304 ITR 52 (MP)*
- 4- (2008) 302 ITR 63 (Guj)*
- 5- (2011) 12 ITR 748 (ITAT Delhi Bench)*

*To sum up the whole submissions on the point of the addition of the amount of alleged suppression of production of tobacco and addition of Rs 6,95,66,165/- treating such amount as income of the assessee. The questions to be considered for adjudication by the Learned appellate court are broadly as under : -*

- 1- Whether when the assessee maintained regular and proper books of accounts duly audited by chartered accountant year*

*after year and the nature of business of the assessee is that of excisable goods and past history of the assessee is neat and clean and whether without invoking the provisions of 145 (3) of the I.T. Act and rejecting the books of accounts maintained by assessee merely on whims and wrong understanding of the material facts of the case any trading results addition on the ground of alleged suppressed production could be made.?*

*2- Whether considering the nature of business of assessee i.e chewing tobacco manufacturing and its sales in the absence of any material on record that the assessee made purchases/ obtained base raw material i.e tobacco was obtained from any other sources which was used in the manufacturing of chewing tobacco and thus suppressed production?*

*3- Whether in search made on 27.08.2009 any such material was found and seized which could have been given a clew that the assessee was indulged in suppressing the production of finished production i.e. chewing tobacco?*

*4- Whether on the ground that the assessee could not justify the consumption of other raw materials which was quite in large number in the production of one kg of manufactured tobacco would justify the presumption of suppressed production?*

*5- Whether keeping in view the practical difficulties of a trader/manufacturer in the case of tobacco, Where large number of other raw materials are required to be used and also through various process mixed in obtaining finished products, Is it practicable to tell the ratio of the same in spite of the fact that it was trade secrete of the assessee which was asserted in statement by the appellant u/s 132(4) of the Act at the time of search?.*

*6- Whether where the business is of excisable goods and excise duty is levied and paid on the clearance of the finished goods from the factory godowns under the supervision and control of the Central Excise Department, the production and sale could be disbelieved on just whims and surmises of the assessing officer and also without any incriminating material found during the search.*

*7- Whether in any view of the matter and keeping in view the nature of production of chewing tobacco and manufacturing process as already explained earlier and various ingredients used in obtaining the finished product the evaporation/ driage/*

*shortage and process loss disclosed could be disbelieved on hypothetical grounds and surmises and excess production be created and considered on the basis of baseless calculations without considering the above mentioned driage, evaporation and process loss etc?.*

*8- Whether in any view of the mater the alleged suppressed production worked out by the Assessing Officer. and its value as worked out at Rs 6,95,66,165/- could be wholly treated as the income of the assessee in determining the total income as against the judicial views and fiscal statutes as to assessment of real income?.*

*Sir in order to decide the appeal of the assessee on the point of addition of the amount of Rs. 6,95,66,165/- made for alleged suppressed production, the finding on above issues/ point raised are necessary to do proper justice to the case as the question of survival of old established business having clean past history is at stake and unfortunately such nature of addition to the income has been made by the assessing officer in subsequent year also.*

*Sir, according to the assessee's arguments and pleading the answer to the above questions raised are "NO". Hence requested (i) assessment be quashed and (2) that the addition of Rs. 6,95,66,165/- made in total income for alleged suppressed production may kindly be deleted and justice be done.*

*52. That it may further be submitted that instead of taxing the assessee on real income as worked out and declared in the return on the basis of closed books of accounts duly audited, the department is taxing on the artificial alleged production which action is against the fundamental principles./ practice of the income tax law. The real income has been defined in the decision by the Hon'ble Supreme Court reported in 322 ITR of 10 Page 678 wherein it has been observed by the Hon'ble court as under :-----*

*"Income tax is a tax on real income i.e. the profits arrived at on commercial principles subject to the provision of the income tax act"*

*53. That sir, there are well settled laws that sales tax is levied on sale of goods, excise duty is levied on production/ sale of finished goods, service tax is levied on the services provided and likewise the income tax is levied on real income of an assessee but in assessee's case the learned Assessing Officer has violated the settled principles of law by ignoring commercial principles and has taxed on production*

*which is absolutely unjust and arbitrary. Moreover till date the excise authorities never alleged that in any year there is any suppression of excise duty on the part of the assessee. The excise department and income tax department both are departments of the central government of India. Sir till date taxes have been levied by the income tax department on real income of the assessee only but in the year under consideration for the first time department is taxing on the "production" which is a clear mockery of the law and harassment to an old and one of the heavy tax payer assessee of the District, which is not permissible according to the spirit of in the I.T. Act or even against the guidance of Ministry of Finance of CBDT i.e. no uncalled for harassment should cause to the tax payer."*

10. *The submission of the assessee was forwarded to the A.O. for examination and comments. Vide his letter dated 19.08.2013, the A.O. has submitted as under:-*

*"Addition of Rs.6,95,66,165/- on the ground of suppression of production – A. O. in her assessment order has made addition on the ground of suppression of production and main basis of the addition was that the assessee did not provide any evidence which could show what was the itemwise percentage of wastage/evaporation in perfumery items such as chemicals, masala, silver and silver-varak and kimam During the remand proceedings, A.R. of the assessee was asked to provide the percentage of wastage of the items i.e. chemicals, masala, silver and silver-varak and kimam. On 26.07.2013, Shri Sanjay Gupta, A.R. of the assessee replied that it is not possible to quantify the itemwise percentage of the waste item or percentage of evaporation for each item separately. He further submitted that the assessee only weigh the finished goods and gain in the finished goods is 6% approximately which is also recorded in Audit report. Assessee also submitted that he can not disclose the percentage of the perfumery items used in manufacturing of Zarda because it is business secret whose disclosure can harm our business. The assessee was asked specifically to explain the variance in the ratio of material consumed/finished goods mentioned at Page No. 9 of the Assessment Order. A.R. of the assessee submitted that it is because of the different method applied for last three years. The assessee also made written submission in which he had explained the different method. Regarding the variance in the ratio of material consumed, assessee's submission is reliable. Assessee's main submission was that ' there is nothing outside the books of account and the conclusion has been drawn, on which ground addition was made, on the basis of the Audit Report submitted by the assessee itself. Assessee further contended that the addition had been made on the basis of different interpretation of the facts and figures disclosed in*

*the Audit Report. But the assessee could not substantiate his claim by providing item wise chart of weight loss. During the remand proceedings for the A.Y. 2009-10 on 06.08.2013, the assessee explained about the process of manufacturing of Zarda by showing raw material. It was observed that the elements of the raw materials were not being reflected exactly in raw form in finished products, but it was also not clear whether the raw materials, particularly masala is used in grinded form or not because the colour of finished product was different from the colour of raw tobacco. It was also clear that some weight loss is there in the form of useless part of whole leaf tobacco and masala during the process of manufacturing, but what is the percentage of weight loss was not clear.*

*Finding: As the assessee failed to produce any item wise chart of loss in the process of finishing Zarda, it is difficult to fully rely upon the submission of the assessee. Hence, addition made on this ground is correct."*

11. *The copy of remand report received from the A.O. was forwarded to the assessee. Vide their submission dated Nil, the counter comments have been given as under:-*

**"B. Regarding addition of Rs. 6,95,66,165.00 on the allegation of suppression production of Zarda:**

*That in this regard the detailed/ explanation was offered in the statement of fact in Para 19 to 53 at page 29 to 84 of the first paper book which comprises various charts etc. During the remand proceeding again the entire books of accounts including the excise records, stock and production register duly checked by central excise authorities books and records were examined and contentions of the assessee checked and found correct also. The books and records were thoroughly scrutinized by the assessing officer who was fully satisfied with method and maintenance of books of account as a result there is no adverse comment in respect of books of account or method of accounting in the remand report. In the present case a uniform /addition right from the assessment year 2004-05 to 2010-11 as alleged suppressed production which is not based on any seized materials, suppressed production or stock found on search that has been worked out as a uniform percentage of production i.e 105.66 % and thus worked out alleged suppressed production and after deducting the actual production as per regular books of accounts and records duly accepted by the central excise authorities ignoring the truth. In the remand report the only allegation of the assessing*

*officer appears to be that the assessee did not provide any evidence which could show what was the percentage of wastage/evaporation in the perfumery item such as chemical, Masala, Silver and silver vark without considering the nature of business and practical difficulties of the assessee and with these background in remand report a finding was recorded in following manner:*

*"As the assessee failed to produce any itemwise chart or loss in the processing of finished Zarda. It is difficult to fully rely upon the submission of the assessee hence addition made on this count is correct."*

*That in this connection it is necessary to mention here that in the remand proceeding on 06.08.2013 the assessee produced various raw products/materials which are used in manufacturing of Zarda and demonstrated the entire production process and right from tobacco whole leaf for boiling and taking out of liquid kimam only and other raw materials purchased and coloured and mixed with various other ingredients and after understanding the whole system of manufacturing process and production the assessing officer arrived on a conclusion that element of loss/element of evaporation are involved and by considering the various items of raw products and their nature the assessing officer recorded the facts in the order sheet which is enclosed at page .... The relevant contents of the order sheet and in the remand proceedings and facts narrated in following manner.*

*"During the remand proceeding for the assessment year 2009-10 on 06.08.2013, the assessee explained about the process of manufacturing the Zarda by showing raw material. It was observed that the elements of the raw materials were not being reflected exactly in raw form in finished products, but it was also not clear whether the raw materials, particularly masala is used in grinded form or not because the colour of finished product was different from the colour of raw tobacco. It was also clear that some weight loss is there in the form of useless part of whole leaf tobacco and masala during the process of manufacturing, but what is the percentage of weight loss was not clear."*

*That from the above observations of the assessing officer it will appear that the assessee fully explained the whole process of manufacturing of zarda by showing raw materials. The assessing officer also observed that it was clear that some weight loss is there in form of whole leaf tobacco and masala during the process of manufacturing. In this way a claim of loss/wastage/evaporation has been duly accepted by the department so the issue of loss/evaporation/wastage has finally concluded.*

*But unfortunately the assessing officer worked out the production on own whims considering that the production of finished product is the excess which resulted in working out alleged suppressed production.*

*That the assessing officer slightly doubted that masala is used in grinded form or not and to this affect it is submitted that for grinding work two big machines are installed in the factory premises long ago and through those machines grinding work goes on regularly. So the question of doubt in this regard does not arise. Photo of grinding machines which are installed in factory premises are enclosed herewith. The assessee also made a request to assessing officer to visit of factory premises but not considered the assessee's request as a result in reality the manufacturing process was not examined properly by the department to do proper justice. In these background we are enclosing herewith photograph of manufacturing process in respect of manufacture of raw kimam, process of converting spices into powder form, process of manufacturing of coloured tobacco, process of manufacturing of perfume and process of manufacturing of branded chewing tobacco. The entire photographs clarify that the entire manufacturing process is handmade and wastage/ evaporation as admitted by your goodself is true and correct.*

*That in this way now no dispute is left about the fact of wastage/evaporation/element of loss in the production activity do arise and in this background finding recorded by the assessing officer that the addition is correct is nothing but miserable to support illegal addition already made by the then assessing officer in wrong way. Sir, once the assessing officer was satisfied that element of wastage/evaporation is involved in materials used in production of Zarda then allegation of suppress production does not arise. There is no dispute with the department about the consumption of raw tobacco which is the main item of production of Zarda i.e. 95% of total production which is supported by day to day stock excise register as maintained in regular way as per the norms of Central excise law and duly checked by them and on the basis of production register excise duty has been paid and thus in such situation to support the addition in remand proceeding is nothing but miscarriage of justice.*

*That in the remand report there is no reference or any adverse remark on the following issue:-*

*(a) That the assessee is maintaining the books of accounts in the systematic manners which are supported by day to day stock register and method of accounting has been accepted by the department in earlier year from the year of inception of business.*

*(b) That in earlier year trading result was never disturbed though number of assessment were framed u/s 143(3) of the Income Tax Act by the various higher authorities of the department so as per the principles of consistency addition made is unwarranted as the assessing officer is bound to give cognizance to the past records.*

*(c) That in the assessment year 1999-2000 for the first time in the history of the case an identical and similar addition of Rs. 3,40,69,013.00 was made under the head suppress production which was deleted in appeals and no reference filed even before the High Court. Thus the assessee's case is well covered by decision passed by the appellate court.*

*(d) That in the entire block period of assessment there is no whispers about the invoking of provision of section 145(3) of the act and once the said provision for rejection of account was not invoked then the addition made is unwarranted because for rejection of account invoking of provision of section 145(3) is a mandatory requirement. In this regard there are various decisions in support of the assessee including the decision of apex court and various High Courts etc and list of case law is at page 100 enclosed onward.*

*(e) That the most important facts has been ignored that manufactured tobacco (Product) Zarda is subject to excise duty and for this purpose necessary details as per central excise rules and regulation are maintained which are periodically checked by the central excise authority and also audited/periodically and till date nothing adverse found in any year and in this way clean chit was given to the assessee by the central excise authority in the light of books maintained. Sir, during the year excise duty paid is amounting to Rs. 19,52,49,186/- The assessee's case is well covered by the decision of Allahabad High Court which is reported in 320 ITR Page 110, CIT Vs. Mascot (India) Tools Limited. Copy of the decision at page 267 to 275 of second paper book and a copy of the same is also attached herewith for ready reference.*

*(f) That the assessing officer measurably failed to state and locate the source for manufacture of suppress production in the entire block assessment specially when purchase, sales, opening and closing stock has been accepted. In this regard a chart is enclosed in paper book and photo copy of same is enclosed herewith for your kind consideration.*

*(g) That it is also a fact that in the course of survey proceeding u/s 133A in assessment year 1999-2000 as well as in search proceeding u/s 132 of the income tax act conducted on 27.08.2009 no*

*incriminating material, no suppression of stock, no loose paper was found hence there is no whisper in the order about adverse material. In this way the entire discussion/addition in the order are based on regular books of account therefore liable to be deleted.*

*(h) That during the assessment in question gross profit rate was progressive and in all the block assessment order in subsequent year trading result is accepted and not disturbed nor any adverse finding in this regard recorded in any order.*

*(i) That from the assessment order it will appear that sales, purchases, closing stock are not in dispute and when all the heads of trading accounts are not in dispute. Hence the theory of suppressed production launched by the assessing officer is liable to be spunged.*

*(j) That the assessing officer failed to state where such alleged suppressed production as worked out has gone and how disposed off closing the eyes of the central excise department. During the search or survey even no excess stock unaccounted cash or investment was found by the department and specially when till date there was no dispute by the side of excise authority about suppression of excise duty.*

*(k) That it is an admitted fact that there is no fixed rate/ratio/parameter for consumption of various raw material used in manufacturing process as the same always varies at the stage of production depending on quality of raw material, atmosphere and moisture etc hence the percentage of consumption and production basis year after year.*

*(l) The assessing officer has worked out artificial production at 11,30,906.975 kgs. as compared to real production 8,90,193.600 kgs. In this way artificial difference i.e. alleged suppressed production as created/worked out in production is 2,40,713.375 kgs but the assessing officer failed to state the fate of such extra production and likewise failed to state where such extra production has gone and also failed to state position of excise duty because the assessing officer has accepted the payment of excise duty as per production and as per regular books of accounts.*

*(m) That the assessing officer applied yield percentage twice first from the stage of raw tobacco to finished product and flat rate again applied yield percentage on production which is not correct.*

*(n) That alternatively without admitting, the whole of the alleged suppressed production cannot be legally treated as the income of the*

*assessee for the purposes levy of tax thereon because other outgoing are also to be considered for making such production hence only the element of net profit on such alleged amount could be considered and as such from all angles the addition of Rs. 6,95,66,165/- as income unjustified and uncalled for. The assessee relies on following decisions :*

*263 ITR Page 610 (Copy enclosed)*

*258 ITR Page 654 (Copy enclosed)*

*11 ITR Page 476 (I.T. at Report) (Copy enclosed)*

*(o) That the sales tax authorities also examined our books year after year and the said authorities accepted declared result and there is no dispute till date i.e. the sale tax authorities accepted the turnover as per the books.*

*(p) The Central Excise authorities issued several times for performance in payment of excise duty by issuing "SAMMAN PATRA AND COMMENDATION CERTIFICATE" under the signature of Commissioner, Customs, Central Excise and Service Tax Allahabad. This certificate itself proved that sanctity of books. The Copy of the certificate are enclosed herewith for your ready reference.*

*(q) That the above facts were placed before the concerned assessing officer in the written submission in details but while preparing the remand report the assessing officer nowhere disagrees with the facts as stated above as there is no adverse remark in the remand report.*

*(r) That in the second paper book various decisions have been cited by the assessee and photocopy of those decisions also enclosed but due cognizance was not given by the assessing officer while preparing remand report.*

*That in these backgrounds the remand report prepared without giving due weight to whole facts and legal position is no judicially correct facts narrated above."*

*12. The Id. CIT(A) considering the explanation of the assessee and the material on record did not justify the calculation made by the AO for the purpose of making addition, however, considering the comparable cases, reduced part of the addition. The assessee as well as the Revenue are in appeal on this ground. The findings of the Id. CIT(A) in para 5.15 are reproduced as under :*

*"5.15 Decision:*

*With reference to issue of suppression of production the A.O. started the discussion from page 2 of the assessment order in which first of all, she has thrown light on the process of manufacturing of Zarda. Thereafter, she has summarily remarked that the appellant has not shown the quantitative details of work in progress in the audit report. Then the basic commentary on the maintenance of books of account by the A.O. is that the details of consumption at various stages have not been furnished, therefore, the process is not open to verification. Another objection of the A.O. is that the ratio of consumption of different items of raw material has not been explained on the pretext of secrecy. The A.O. has also examined the genuineness of purchases of sandal wood oil and on the facts given in the foregoing paras, she proved that the purchases were bogus. The A.O. also found discrepancy in the consumption of packing materials as there are no records for issuance and consumption.*

*The appellant states that the addition is not based on any search material nor was any discrepancy pointed out in the books of account. The appellant's argument is that in the past its book results were accepted in Toto. The A.O. was faulty in deviating from past practice when the method and manner of books of account and production / consumption norms, followed from year to year, have not changed. The appellant has also given reference to addition of Rs.3,40,69,013/- made on identical issues for A.Y. 1999-2000 which was in pursuance of survey proceedings u/s 133A and the same was deleted by the first appellate authority. The appeal of the department against the order of Commissioner of Income Tax (Appeals) was dismissed. It is also alleged that the A.O. has made the addition without invoking the provisions of section 145(3) of the I.T. Act. It is also submitted that the production of tobacco is an excisable item under the supervision of Central Excise Department. The appellant has relied on the decision of Hon'ble Allahabad High Court in 320 ITR 116 in the case of C.I.T. Vs. Mascot (India) Tools & Forges Pvt. Ltd. The provisions of Section 153A are not meant for repetition of proceedings and to have different view on the concluded matters. To support the arguments, the appellant has relied on the decision of the Hon'ble Supreme Court in the matter of C.I.T. Vs. Flexi Pack in SLP (C) No.18112 of 2009 reported in 319 ITR Page 3. The Hon'ble Court held that there was no question of going into estimation without rejection of books of account, properly maintained in the regular course. Another argument put forward by the appellant is that the search and seizure action did not result in the discovery of any suppressed production lying in the premises, so no adverse finding could be given on the production of the finished products.*

*The department could not find any hidden place to store the suppressed production. There is no allegation about exit of suppressed production by the Central Excise, the duty is leviable at the point of exit. The process of manufacturing was explained to the A.O. but the A.O. did not visit the manufacturing process. Relying on the decision of Allahabad High Court in the case of Mascot (India) Tools & Forges, the appellant has argued that no addition on account of suppression of sale can be made without any valid basis when the goods were excisable and correctness of the declared sales is supported by regular books of account, duly audited by the auditors. No G.P. rate addition can be made unless some specific mistakes in the accounts are pointed out. The A.O. has not considered the evaporation wastage of percentage in arriving at her working of suppressed production. The appellant has also referred to one survey conducted by the excise department in the year 1991 for verification of stock in which they alleged that there was excess stock of tobacco found as a result of pilot experiment. They reached the conclusion that the increase in the weight on account of addition of chemicals, perfumes, menthol etc. was purely temporary and the weight of the coloured leaves come almost to the same level after evaporation. Loss of weight on the use of other materials for example perfumes, chemicals, silver and silver vark, kimam and masala etc. is on account of evaporation and processing. The surrender of Rs.50 lakh was only with the intention to purchase peace of mind and to avoid litigation. But the surrender did not represent the acceptance of suppression of production. The yield during the various stages, manufacturing process cannot be uniform as the raw materials are largely agricultural produce or vegetable products, some of which are hygroscopic in nature and some are volatile. There is no fixed rate of ratio or parameter for the consumption of various raw materials in the manufacturing process of the tobacco. The yield always varies on account of quality of raw materials used. The consumption and product cannot be matched at 1 to 1 ratio but the A.O. failed to understand this simple fact. The appellant has given the example of preparation of a cup of tea wherein various ingredients such as water, milk, sugar, tea leaf are mixed and heated, after getting the essence and colour of the tea, leaf and other ingredients used are thrown out. It is argued that the A.O. has not held that there was any suppression of sale or purchases.*

*On going through the discussion of the facts, specially on the maintenance of stock register, one thing is clear that the appellant has not maintained the production account reflecting stage wise consumption and yield. When the entire process of manufacturing is opaque, it is very difficult, rather impossible, for an Assessing Officer to accept the disclosed results. The maintenance of production*

*register is very vital aspect when the assessment is related to yield in the manufacturing process. As per the provisions of section 44AA of the I.T. Act, the persons refer to in the said provisions, shall keep and maintain such books of account and other documents as may enable the A.O. to compute his total income in accordance with the provisions of this Act. The purpose of maintaining books of account and accounting standards related to the maintenance are that the account should be transparent, understandable, relevant for the purpose for which they are made and be reliable. In certain types of businesses, the absence of stock register or a quantitatively or qualitatively tallied manufacturing account can be a material ground for rejection of books [Namasivayan Chettiar (SN) Vs. C.I.T. (1960) 38 ITR 579 (SC), C.I.T. Vs. British Paints (India) Ltd. (1991) 188 ITR 44 (SC), Bimal Kumar Anant Kumar Vs. C.I.T. (2007) 288 ITR 278 (All.)].*

*In timber business, timber is sold with reference to length, girth and weight of timber, a stock account merely with reference to number of logs cannot be accepted as stock account capable of verification [C.I.T. Vs. Saatal Kattha & Chemical Pvt. Ltd. (2008) 296 ITR 197 (MP), Kachwala Gems Vs. JCIT (2007) 288 ITR 10 (SC)]. It is clear that when the business processes are complex, it is imperative that its relevant details could be ascertained at any stage. Where there is no record of details regarding wastage, shortage, shrinkage and like, the rejection of books has been upheld [Orissa Fisheries Development Corpn. Ltd. Vs. CIT (1978) 111 ITR 923 (Ori.)]. The valuation of work in progress at the end of the year is of great importance in certain cases. In the audit report, the assessee has not shown quantitative details of work in progress; the same was produced only during the assessment proceedings. The production account is a necessary account for manufacturing business, so much so that in the case of a shoe manufacturer, where production register and information as to consumption of raw materials in the form of an issue register are not maintained, besides other imperfection in wages account, rejection of accounts and estimate of income, which was held, cannot be avoided. The said decision was given by the Hon'ble Allahabad High Court in the case of Omax Shoe Factory Vs. The Commissioner of Income Tax reported in 281 ITR 288 (All). In the instant case the A.O. found that the assessee did not maintain any production register, day to day consumption of raw material was also found not properly maintained, the A.O. rejected the books of account. The Hon'ble High Court held that:*

*"7. Admittedly, assessee is the manufacturer and exporter of leather shoes, therefore, it was necessary to maintain production register and day to day record of*

*production and consumption register of raw material. Unless the consumption register for raw material and the production register relating to the manufactured goods are maintained, the production can not be verified.*

*8. Apart from non-maintenance of production register and the rawmaterial consumption register, Assessing-Authority also found that proper accounts relating to the payment of wages have also not been maintained. In our view, the aforesaid reasons are sufficient to invoke the proviso to Section 145(1) of the Act.*

*9. In the case of Raza Textiles Ltd. v. Commissioner of Income Tax reported in 86 ITR page 673, the Division Bench of this Court up-held the rejection of account in the absence of production register. The Division Bench held as follows:-*

*"In the absence of a register indicating the supply of yarn issued from the spinning department to the weaving department it is plain that there is no possibility of co-relating the supply of yarn and the production of cloth. Therefore, there was no way of checking whether the production of cloth shown in the books represents the true figure of production. The system of records adopted by the assessee is inadequate and does not afford an effective method of determining the true income, profits and gains so far as the production of cloth is concerned."*

*10. In the case of Bharat Milk Products v. Commissioner of Income Tax reported in 128 ITR page 682, the Division Bench of this Court in the absence of day to day manufacturing or production account, justified the applicability of the proviso to Section 145(1) of the Act. The Division Bench of this Court observed as follows:-*

*"The proviso further says that even if the accounts are correct and complete but the method employed is such that the income cannot properly be deduced therefrom, the ITO can compute the income upon such basis and in such manner as he may determine. In the instant case it has been found as a fact and it was not disputed before us that the assessee did not maintain any day-to-day manufacturing and production account and the question is whether on account of this defect the accounts of the assessee could be rejected. In our*

*opinion, the answer to this question has to be in the affirmative.”*

11. *In the case of Arya Confectionary Works v. Commissioner of Income Tax reported in 143 ITR page 184, the Madhya Pradesh High Court also held applicability of the proviso to Section 145(1) of the Act in the absence of non-maintenance of day-to-day record of consumption of the raw-materials and production of finished goods. It has been further held that mere maintenance of quantitative details did not establish the fact that the assessee had maintained a day-to-day stock account of raw-material and finished goods. The Court up held the view of Tribunal that the income could not be properly deduced from the accounts maintained by the assessee, therefore, application of proviso to Section 145(1) of the Act has been held justified.*

12. *In the case of Awadhesh Pratap Singh Abdul Rehman and brothers v. Commissioner of Income Tax reported in 210 ITR page 406, the Division Bench of this Court has up-held the rejection of books of account on the ground that neither the stock register was maintained nor sales were found verifiable in the absence of cash memo.*

13. *In the case of Bastiram Narayan das Maheshwari v. Commissioner of Income Tax reported in 210 ITR page 438, the Division Bench of Bombay High Court has up held the rejection of books of account and the application of the proviso to Section 145 in the absence of day-to-day manufacturing account of Bidi including quantity of Bidi manufactured daily, figures of Bidi leaves consumed per day in the factory.*

14. *In the case of Commissioner of Sales Tax, U.P. Lucknow v. Girja Shanker Awanish Kumar reported in Supreme Court (1996) 11 SCC page 648, books of account of the dealer was rejected for non maintenance of manufacturing account as required under Section 12(2) of the U.P. Sales Tax Act. Section 12(2) requires to maintain stock register in respect of raw-materials as well as products obtained at every stage of production. Apex Court held that if a stock book as contemplated under Section 12(2) of U.P. Sales Tax Act, is not maintained, it leads to the conclusion that the account books are not reliable or that particulars are not properly verifiable. Though, the judgment is under the U.P. Sales Tax Act but is relevant in the context of the present case.*

15. *The decision cited by the learned counsel for the assessee reported in 26 ITR page 159, 38 ITR 152 and 83 ITR 484 are not applicable to the present case. They were the cases of traders and not the manufacturer. It may be mentioned that there is nothing on record to show that in the previous year, assessee has maintained books of account in the similar fashion and its books of account have been accepted.*

16. *In view of foregoing discussions, question referred above, is answered in affirmative in favour of revenue and against the assessee. There shall be no order as to cost."*

*Admittedly, the appellant whose case is before me, is the manufacturer of Zarda and it has not maintained production register on day to day basis to reflect the consumption and yield at any given stage. In accordance with the decision of Hon'ble Allahabad High Court in the case of Bharat Milk Products vs. Commissioner of Income Tax reported in 128 ITR page 682, the absence of day to day manufacturing or production account, justified the applicability of proviso to Section 145(1) of the Act. Even if the accounts are correct and complete but the method employed is such that the income cannot properly deduced, the ITO can compute the income upon such basis and in such manner as he may determine. The decision of Hon'ble Supreme Court in the case of Commissioner of Sales Tax, U.P. Lucknow vs. Girja Shanker Awanish Kumar (1996) 11 SCC page 648, referred to in the above cited decision is very important to the issue at hand. In the cited case, the books of account of the dealer were rejected for non maintenance of manufacturing account as required u/s 12(2) of the U.P. Sales Tax Act. The said section of Sales Tax Act requires to maintain stock register in respect of raw materials as well as products obtained at every stage of production. Apex Court held that if the stock book as contemplated u/s 12(2) of U.P. Sales Tax Act, is not maintained, it leads to the conclusion that the account books are not reliable. Though the judgment is under the U.P. Sales Tax Act, it is relevant in the context of the present case.*

*The A.O. has gone at length dealing with the issue of purchase of sandal wood oil and has established that certain purchases were not genuine. On the facts that the appellant has not maintained production register to ascertain stage wise consumption and yield on day to day basis coupled with the fact that certain purchases of sandal wood oil are not found to be genuine, it can be held that the books of account of the assessee are not reliable which*

*can give complete and true picture to deduce the profits therefrom. Though the A.O. has not expressly mentioned invoking the provisions of Section 145(3) of the I.T. Act, the whole discussion is focused on rejecting the books of account u/s 145(3) of the I.T. Act. To remove any doubt, I reject the books of account of the assessee u/s 145(3) of the I.T. Act by virtue of the powers of C.I.T.(A) u/s 251 of the I.T. Act.*

*Before proceeding further, it is important to discuss the decision of the Hon'ble Supreme Court in the case of C.I.T. vs. British Paints (India) Ltd. (1991) 188 ITR 44, the Hon'ble Court held that it is not only the right but the duty of the A.O. to consider whether or not the books disclose true state of account and the correct income can be deduced therefrom. It is incorrect to say that the officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questioned in the past. There is no estoppel in these matters and the officer is not bound by the method followed in the earlier years. So the arguments of the assessee that when its books of account have been accepted in the past cannot be disturbed in future when the same system of accounting is maintained, deserves to be rejected. The appellate authority can also reject the books of account as per the decision of Hon'ble Supreme Court in the case of C.I.T. vs. McMillan & Co. (1958) 33 ITR 182.*

*Now, let us examine the fallout and consequences of rejection of books of account. The rejection of the book results is a step-in-aid to the officer to compute the correct income on some reasonable and proper basis. As pointed out in C.I.T. Vs. Pilliah & Sons (Ky.), the estimation of turnover or profit rate or disallowance of claims of expenditure, shortage, wastage should be based on some material and cannot be arbitrary. As held in Shamsheer Ali Abdul Hussain vs. C.I.T. (1945) 13 ITR 240 (Nag.), surrounding circumstances may be taken into account in estimating the income where the books are unreliable. The A.O. has computed the production of Zarda not only by taking the weight of all the raw materials including Kimam, Spices, Menthol, Perfumes, Glycerin, Silver and Silver Vark etc., the same weight in the finished products, she had also increased the production by 6% on a wrong interpretation referring to the submission of the appellant. There is no dispute as regards the weight of raw tobacco in the finished product. There may rather be some weight gain or weight loss depending upon the moisture content. But as regards the ratio of weight of other materials mentioned above in the finished product, the same deserves better understanding and consideration. In this respect even the A.O. has considered the manufacturing process of Zarda. In the submission*

*before the A.O. during remand proceedings, the appellant has explained the manufacturing process by enclosing photographs of each stage from page 76 to 104. Here I will consider those processes which may result in wastage and residuals. In the process of manufacturing of Kimam, it is explained that, whole leaf tobacco is put in big containers for boiling along with the water. The Ark i.e. raw kimam is taken out from the containers. The residuals / waste become useless and are thrown away. The photographs of residuals / waste are given on page 79 of the paper book 3. The spices are dried under the sun, those are baked and grinded. This process also results in certain weight loss as the skin of the spices is removed before grinding. The tobacco, mixed with the spices and raw kimam and glycerin is spread on the roof for drying, obviously to remove the water content. Then the appellant has explained the process of making aroma. In this process, the spices are put in boiling water, the same is distilled in base oil i.e. perfumery substances. The process obviously creates the residuals of spices because at this stage the spices are used to make the perfume only. The appellant has enclosed a photograph given on page 98 of the paper book depicting the residuals of used spices to make the perfume. The coloured tobacco mixed with chemicals, perfumes and menthol is spread for drying. There is again loss of weight in the form of water content. The description of the above process clearly indicates that the ratio of production vis-à-vis the consumption of raw materials cannot be one to one. There has to be generation of residuals and the process of evaporation.*

*Now I would analyze the method of computation of the suppression of production as dealt with by the A.O. The A.O. has analyzed the quantitative details of raw materials and finished goods given in the audit report in column 28 of 3CD report. Though the A.O. has attempted to analyze the consumption of raw material and semi finished products for getting the finished products, in the process, the A.O. has also carried out some infructuous exercises.*

*Apart from taking the quantitative details from audit report, the A.O. has also obtained the quantitative details of work in progress which is not part of details in the 3CD report. To this the appellant invited my attention to column 28 which requires the quantitative details of the principal items and byproducts. Therefore, the appellant has not shown the figures of work in progress in the said audit report. The work in progress has been shown only in the profit & loss account in terms of value. During the course of assessment proceedings the A.O. asked the assessee to produce the details of work in progress in terms of quantity also. Accordingly, the assessee furnished the quantitative details of work in progress and*

*the same was used by the A.O. for computing the percentage of yield. The A.O. has given the details of raw material used on page 16 of the Assessment Order as under:*

<i>Tobacco leaf</i>	<i>:</i>	<i>749922.950 Kg.</i>
<i>Other materials</i>	<i>:</i>	<i>231583.996 Kg.</i>
<i>Opening WIP</i>	<i>:</i>	<i><u>88819.550 Kg.</u></i>
<i>Total consumption</i>	<i>:</i>	<i>1070326.496 Kg.</i>

*Total %age of consumption = 120.23.*

*The yield with reference to above use of raw material is as under:-*

<i>Tobacco leaf consumed -</i>	<i>749922.950</i>
<i>Add: Opening WIP -</i>	<i><u>88819.550</u></i>
	<i>838742.500</i>
<i>Add: Other materials remaining after Consumption as per assessee</i>	<i>51451.100</i>
<i>Final products as shown by assessee</i>	<i>890193.600</i>
<i>Total %age of yield =</i>	<i>83.17.</i>

*Here too the arithmetic calculations as made by the A.O. are important to understand. First, the consumption has been shown 120.23%. This is actually the figure of total consumption with reference to yield of finished product i.e. as under:-*

<i>Total Consumption :</i>	<i>10,70,326.496 Kg.</i>
<i>Weight of finished product :</i>	<i>8,90,193.600 Kg.</i>
<i><math>\frac{10,70,326.496}{8,90,193.600} \times 100</math></i>	<i>120.23%</i>

*The yield has been calculated at 83.17% by the A.O. The same can be understood as under:-*

$$\frac{8,90,193.600 \times 100}{10,70,326.496} = 83.17\%$$

*The figures what they represent, are explained.*

*As regards the percentage of consumption with reference to yield, the A.O. has remarked that the percentage of consumption with reference to raw tobacco leaf used during the year under consideration is 120.23% whereas in column 32 of the audit report*

*the same has been shown at 77.34%. During the appellate proceeding before me the appellant pointed out that the A.O. misunderstood the figures of material consumed vis-à-vis finished goods produced which is in terms of value in column 32 of the audit report. The A.O. misunderstood it for in terms of quantity. The appellant also explained before me that earlier auditor had given the figures of sales in place of the value of finished goods produced, in the audit reports for Assessment Years 2004-05, 2005-06, 2006-07 and 2007-08. Later these figures have been corrected and the present auditor has correctly taken the figures of finished goods produced only. So the appellant has tried to emphasize that the percentage of consumption of material with reference to finished goods given in the audit reports for above financial years is incorrect. The A.O. has quoted the reply of the assessee in this regard on Page 20 of the assessment order. Sri Krishna Chandra Kesarwani, the partner of the firm stated that the ratio is not that of quantity, but that of value of consumption of material to sales in terms of rupee. Secondly, the percentage has been shown against the consumption of raw tobacco only.*

*Now it is important to understand the percentage of yield as shown by the assessee and understood by the A.O. On page 17 of the assessment order the A.O. has shown percentage of yield for financial years 2003-04 to 2009-10. As far as F.Y. 2003-04 is concerned, the same has been shown at 106.13%. In a reply to a question on the ratio of ingredients to produce 1 Kg of finished product, the partner of the firm Sri Kailash Chandra Kesarwani had stated that the ratio is 'trade secret' and he would not reveal the same. The A.O. also relied on the surrender of Rs.50 Lakh for not disclosing the ratio of consumption of raw material. During the course of proceedings before me, the appellant emphasized that the A.O. misunderstood the average percentage of yield computed at 105.66%. The A.O. was of the view that if 100 Kg of items are consumed, the yield would be 105.66 Kg., whereas the appellant argued before me that if 100 Kg raw tobacco (only) is consumed the yield would be 105.66 Kg. But raw tobacco is not the only raw material for the end product Zarda. For manufacturing Zarda, other materials like chemicals and perfumes, masala, kimam, silver and silver vark are also consumed. So if 100Kg of raw tobacco and 20.23 Kg other materials are consumed, the weight of the finished product would be 105.66 Kg. In other words, on the consumption of 120.23 Kg raw material the yield would be 105.66 Kg. But it is pleaded that the A.O. misunderstood the ratio of yield taking that if the weight of all the consumables is 100 Kg the yield would be 105.66 Kg. I notice that this finding of the A.O. is incorrect and invalid with reference to the facts analyzed by her. Therefore, it is clear that the yield of*

*105.66% is with reference to consumption of 120.23% of raw materials. This fact is discussed by the A.O. on page 16 of the assessment order. The ratio of production shown by the appellant is with reference to the consumption of raw tobacco only. Here the appellant has not included the consumption of other materials. In a submission before the A.O., i.e. part of the paper book before me, the assessee had produced before the A.O. the chart of adjusted consumption and production. In respect of F.Y. 2003-04 the adjusted consumption is shown as 8,38,742.500 Kg. The weight of finished goods produced has been shown as 8,90,193.600 Kg. The appellant has pleaded before me that the percentage of production as shown by it should be understood with reference to these figures only wherein the consumption of raw tobacco was 9,19,194 kg less work in progress at 80,451,500 Kg. This chart is on page 359 of the paper book submitted before me. Clearly the consumption of raw materials shown in this table does not include the consumption of other materials mentioned above.*

*The most important issue to be decided is the yield in the form of end product i.e. Zarda. As regards the manufacturing process and the use of raw materials, the assessee explained the same before the A.O. as well as before me. On page 16 of the assessment order, the A.O. has worked out total consumption during the year under consideration which was 10,70,326.496 Kg. This gives the yield of 8,90,193.600 Kg. There is no dispute on the weight of tobacco leaf and opening work in progress in the end product, as shown in the chart prepared by the A.O. and also accepted by the assessee. The only difference and bone of contention is with regard to other materials which remained 51,451.100 Kg in the finished goods while it was used 2,31,583.996 Kg as raw material. The A.O. analyzed the proportion of other materials in the finished product and held that on the use of other materials, the weight in the finished product remains only at 22%, meaning thereby approximately 78% gets evaporated. To explain the loss of weight, the appellant has submitted before me that:-*

*"The major loss is in the use of Whole leaf, Masala and perfumery and chemicals items as detailed on page 222 of the paper book and also explained in Para (i) and (ii) of page 225, Para (v) of page 226 and Para (vii) of Page 227 of paper book in A.Y.2004-2005, the explanation may please be considered.*

*That raw tobacco (Whole Leaf) is boiled in water to take out its ark known as "Raw Kimam". The residual water i.e. tobacco becomes useless and thrown away. Various spices / Masala are baked, grinded and sieved to convert them into a*

*powder form as well as aromatic spices/Masala are boiled in water and the aroma is distilled in base oil i.e. perfumery substance which is repeated till the period to get the required strength of the perfume. These spices / Masala are also mostly vegetable products and hygroscopic in nature and residual waste of such aromatic spices / Masala becomes useless and thrown away. Likewise the coloured tobacco from the second stage is mixed with compound of chemicals, perfumery substances and menthol and is stored in drums for 2-3 days for absorption of adour flavor and taste and then it is spread on plastic sheets for drying. Further likewise the compound of chemicals perfumery items and menthol are volative in nature and evaporate in the atmosphere. All this facts in details brought on record by the assessee."*

*The Income Tax Act and the Courts attach with the A.O. a heavy and onerous responsibility to compute correct income of the assessee when the books of a/c are rejected u/s 145(3) or proviso to Section 145 of the Act. This also requires the A.O. to evaluate not only the facts available on the records of the assessee but also the surrounding facts to arrive at a decision. As discussed in the foregoing paras, the assessee has not maintained stage wise production account to verify the wastage and yield. One has only the volume of raw materials and end product. The intermediary processes are not transparent, viz., how much kimam or perfume is produced on consumption of required raw materials. This means, the production of zarda shown by the assessee cannot be verified. This situation calls for judicious approach by the tax authorities. As discussed above, the A.O. failed to consider two facts important to evaluate the percentage of yield, one, that use of spices and other ingredients, mainly to prepare the flavor & perfume, cannot give yield of equal weight, meaning thereby the residuals & waste are bound to be there, secondly, the yield of 106% was not with reference to the weight of all the materials, it was only with reference to raw tobacco only. Therefore, the working of suppression of production by the A.O. cannot be held to be justified. Under these circumstances, the best practice, to a certain extent universally acceptable is comparability, i.e. to judge the yield in the comparable cases of manufacturing of flavoured tobacco. The assessee has not come forward with any such comparable cases in this line of business. Therefore, I undertook this exercise and collected the audited reports of the two concerns. It may be noted that such figures are not available in the public domain or public data bases. It may also be added that these concerns are also engaged in the manufacturing of the same product. Though, the details of their manufacturing process are not available, it is presumed that they*

*also follow a process more or less same as the appellant uses for the manufacturing. Therefore vide this office letter F.No. CIT(A)/Alld./KZB/2013-14 dated 05.09.2013, the appellant was required to furnish its comments on the contents of my letter and on the production data taken from the respective audit reports i.e. 3CD, column no. 32 :-*

*"To,*

*Kesarwani Zarda Bhandar,  
Sahson, Allahabad*

*Sub: Ratio between production of finished goods with material consumed.*

*Ref: Assessment Years 2004-05 to 2010-11 – reg. –*

*Please refer to the above.*

*2. During the course of hearings, you have challenged the orders of respective assessment years of the A.O. computing the suppressed production. But it has also been noticed that you have not maintained day to day production statements to verify consumption of raw material and yield at every stage. Therefore, I have obtained the copies of some audit reports in the following cases which are also engaged in the business of manufacturing and sale of Zarda. Though, the volume of their business may not be comparable, the manufacturing process may certainly be comparable to a certain extent. These audit reports are for F.Y. 2007-08 in respect of Kishore Zarda Factory, D.51/199, Surajkund, Varanasi (U.P.) and for F.Y. 2011-12 in respect of Sugandhi Snuff King, A-15 Block B-1 Extn., Mohan Co-op. Ind. Area, Delhi Mathura Road, New Delhi – 110044. The reference to the audit reports of different financial years in the above cases is also not material as the manufacturing process remains almost same. The ratio of material consumed to finished goods produced in the above cases as per Column 32(d) of 3CD reports is as under:-*

<i>i) Kishore Zarda Factory</i>	<i>92.29%</i>
<i>ii) Sugandhi Snuff King</i>	<i>90.37%</i>

*You may furnish your comments on the comparability of the yield keeping in view of the above cases. The copy of the audit reports is enclosed herewith. Your comments, if any, may be furnished within a week of receipt of this letter."*

*On the above, the appellant has submitted as under:*

*"With reference to above it is submitted that alongwith the notice dated 05-09-2013 photo copy of two audit reports in the case of M/s Kishor Zarda Factory of Varanasi and M/s Sugandhi Snuff King of Delhi were provided to the assessee and required assessee's comment on the basis of these two comparable cases. In this connection it is submitted that simply on the basis of audit report comparison is too difficult because the audit report do not speak about their manufacturing process where as the assessee elaborately explained/demonstrated the manufacturing process in details in the course of remand proceeding as well as before your goodself. In the remand proceeding the raw materials which are used in manufacturing of zarda were brought to the knowledge of assessing officer as well as raw material also produced before your goodself and photo of manufacturing process of different stages were also brought on records. Thus for comparison one will have to bound to consider the ingredients used for manufacturing of zarda as well as processing of manufacturing of zarda but such thing are absent in the audit report considered as comparable cases. In the course of hearing a voluminous paper books was filed in respect of assessment years 2004-05 to 2010-11 and in the paper book entire stage wise manufacturing process were discussed in detail, various charts were filed therefore the undersigned person requesting your goodself to give weightage to the past record of the assessee past history where different authorities of the department examined our manufacturing process, considered our method of accounting, considered the method and maintenance of books of account, examined our central excise record and then accepted our production as well as trading result year after year including the assessment year 2004-05, 2005-06 and 2006-07. In this case a search operation was conducted on 27-08-2009 and in the course of search operation no incriminating material, no loose paper, no excess stock was found by the search party but simply because a search was conducted therefore as per regular practice of the department book result was disturbed in respect of block period for assessment year 2004-05 (first year of Block) to 2010-11 when in the assessment year 2004-05 after thorough scrutiny book result was accepted by passing an order u/s 143(3) of the income tax act and in A.Y. 2005-2006 and 2006-2007 u/s 143(1) thus these assessment were concluded on the date of search i.e. 27.08.2009.*

*That in this connection it is very necessary to mention here that in assessment year 1999-2000 a huge addition was made on account of suppressed production but considering the nature of business and method of maintaining books of accounts addition were deleted in first appeal and then department filed an appeal before Hon'ble ITAT where the departmental appeal was dismissed as a result book results were accepted in toto. Sir, the assessee firm came into existence in the year 1967 and the founder of the company was Late Sri Bholu Nath Kesarwani who prepared a formula to make zarda and on the same line year after year production work is going on and the same was accepted by the department. The assessee is also registered with the central excise authorities and paying huge excise duty year after year on sale of zarda at the point of exit of goods from the manufacturing premises. The excise authorities also satisfied with our method of accounting. In this way our product/production is under the strict supervision of excise authority as a result excise authority issued recognition certificate from time to time which are also placed on record. These facts required consideration at your end.*

*That, Sir the assessee's industry is not a organized industry in the eyes of law and the entire manufacturing work is handmade work as there is no involvement of machinery in the manufacturing process of zarda. Therefore on different stages losses are liable to be incurred whereas certain losses are visible and as well as certain losses are invisible. Such losses occurred in the course of manufacturing process of zarda. Invisible losses arises because of drying and evaporation wgere as visible losses occurred on account of waste material obtained while processing of kimam, grinding of spices and manufacturing of perfumes. The parties in question (Comparable case) are small and local manufacturer. Their process are different where as we did all various manufacturing work in house such as colouring of tobacco, manufacturing of kimam with whole leaf, grinding of spices, manufacturing of perfume. We manufacture different varities of zarda. The important facts for consideration is that even the taste of finished zarda of assessee's firm and comparable two cases are different which shows that ingredients and formula are not common, so the question of comparison does not arises. We used various types of ingredients for manufacturing of zarda but in the two comparable cases what types of ingredients they used are absent therefore question*

*of comparison with two cases does not arise. Thus in nut shell the entire approach of the assessing officer is nothing but mislead and to ignore the norms of judicial proceeding and commercial principle with the view to determine abnormal income simply to justify search and proceeded hence the undersigned person pray that the books result may please be accepted.*

*Under these circumstances the assessee pray that the two audit report which was enclosed alongwith the letter dated 05-09-2013 liable to be ignored/discarded in all fairness and justice and basis of the same kindly be not adopted for deciding our appeals."*

*I have examined the submission of the appellant refuting the proposition of comparability and find that it lacks necessary substance and reasonable contents. The appellant states that the audit reports of the comparable cases do not speak of the manufacturing process. It is true that the audit reports do not speak of the manufacturing process but here we are concerned about the percentage of yield in the similar manufacturing activity. The appellant has not given any comparable cases to claim them having similar manufacturing process. The appellant has not satisfied me with any cogent reasoning that the cited cases cannot be comparable, as they are also engaged in the manufacturing of flavoured tobacco. In the light of the decision of Hon'ble Supreme Court in the case of British Paints (India) Ltd., the assessing authority is not bound to accept the system of accounting, regularly employed by the assessee, the correctness of which had not been questioned in the past. When the manufacturing process of the assessee not found fully transparent and when the production account does not give determinable picture of production, the book results must be rejected. Another argument by the appellant is that no incriminating material or excess stock was found during the course of search also deserves to be rejected as the A.O. has adversely commented on the stock found during the search, in the respective assessment orders. It is not necessary that direct incriminating evidences only will prove the suppression of production. Indirect and surrounding factors like investments in valuable items, real estate, bogus cash credits, huge expenses on households also prove generation of unaccounted income. The comparison between assessment based on survey relating to A.Y. 1999-2000 (before search & seizure action ) and present assessments is also not fair as the rejection of books of a/c owing to opaque production process and absence of true and correct accounts of yield at each stage is a dominant factor in the cases under consideration. The arguments like*

*past history of assessment, reputation of the firm are also weak in the face of hard facts discussed. As regards the inspection of accounts & audit for/by excise authorities, that carries weight to a limited extent only as it is not clear as to what view the excise authorities have taken with respect to the waste when entire facts and figures of stage wise production are not available even before them. I do admit that there is loss of weight in form of evaporation & residuals in the process of manufacturing. I also admit that the cited cases of comparison may or may not have same or similar process of manufacturing. They may not be manufacturing the perfume (major source of loss of weight), they may be purchasing the perfumery items from the market. But the yield shown by the cited cases does give certain indication of percentage of production in this line of business. Therefore, I hold that the cited cases may be considered as comparable cases as far as the percentage of yield in the manufacturing of zarda is concerned. The average of yield in the cited cases is 91.33% (92.29 + 90.37)/2. Considering the facts (i) There may be slight variation in the percentage of yield depending on the factors of time i.e. from year to year (ii) The use of perfume by direct purchase or by manufacturing in own factory may affect the waste (iii) The processes adopted may vary resulting in variation in production (iv) The quality of raw materials used may also affect the yield and (v) The process of manufacturing of Kimam or its purchase from the market may be a distinguishable feature, especially when the quantity is substantial, I take the percentage of yield @ 90% in the case of the appellant, in all the assessment years under consideration, to take in to account and factor in numerous factors responsible for variation in the production and to average out them, of the total quantity of raw materials consumed. The working of production on the above lines, the production in accordance with this working (in terms of quantity), the suppressed production and the sale value of suppressed production (on the average sale price per kg.) are given in the table form for A.Ys. 2004-05 to 2010-11 as under:*



**Table - A**

A.Y.	Consumption of Raw Material (Raw Tobacco and Other Materials) (in Kgs)	90 % of Coloumn No 2	Quantity Manufactured as per books (in Kgs)	Suppressed Production (3-4)	Average Sale Price per Kgs	Total sale value of Suppressed Production (In Rs) (Col No 5*6)
1	2	3	4	5	6	7
2004-2005	1070326.496	963293.846	890193.600	73100.246	368.030	26903083.68
2005-2006	996506.132	896855.519	843932.800	52922.719	380.290	20125980.73
2006-2007	951155.518	856039.966	799339.000	56700.966	394.730	22381572.39

98

ITA Nos.358 & 374 to 378/Alld./2014  
ITA Nos. 06 to 11/Alld./2014

2007-2008	959679.193	863711.274	816464.000	47247.274	382.930	18092398.52
2008-2009	1109204.482	998284.034	929478.000	68806.034	365.850	25172687.47
2009-2010	1007166.032	906449.429	843983.000	62466.429	411.640	25713680.75
2010-2011	945101.031	850590.928	799434.600	51156.328	454.950	23273571.38

TOTAL 161662974.92

*It may be noted that the A.O. had worked out the value of suppressed production on the average cost price. But that was not correct as concealed production would result in sale to fetch unaccounted income. So while correcting the approach of the A.O., assessment year wise income sustained and relief are also worked out as under:*

**Table - B**

Assessment Year	The value of cost of suppressed production worked out by the A.O.	The sale value of suppressed production as per column no. 7 of Table - A	Relief Allowed
2004-05	6,95,66,165	2,69,03,083.68	4,26,63,081.32
2005-06	6,24,83,585	2,01,25,980.73	4,23,57,604.27
2006-07	6,56,02,962	2,23,81,572.39	4,32,21,389.61
2007-08	6,26,17,961	1,80,92,398.52	4,45,25,562.48
2008-09	7,56,62,496	2,51,72,687.47	5,04,89,808.53
2009-10	7,77,26,717	2,57,13,680.75	5,20,13,036.25
2010-11	7,76,72,166	2,32,73,571.38	5,43,98,594.62

*In accordance with the above, the addition of Rs. 2,69,03,083.68/- on this issue is confirmed. The appellant would get the relief of Rs. 4,26,63,081.32/- for the F.Y. 2003-04, relevant for A.Y. 2004-05."*

13. We have considered the rival submissions and the material on record. The assessee challenged addition of Rs.2,69,03,083/- whereas department challenged deletion of addition of Rs.4,26,63,081/-.

14. The Id. counsel for the assessee reiterated the submissions made before the authorities below. He has submitted that in earlier year, lesser yield of the production has been accepted by the Revenue Authorities. In comparable cases cited by the Id. CIT(A), there are distinguishable features, which are noted at PB 235A of the paper book and even the Id. CIT(A) considered that these cases may not be comparable on facts because the declared turnover of the assessee is more than the turnover declared in the

*comparable cases. In assessment year 1999-2000 similar addition was made by the AO which has been deleted by the Id. CIT(A) and confirmed by the Tribunal. Copies of the orders are filed in paper book at pages 345, 356 and 375. In assessment years 2002-03 and 2003-04, the AO in assessment orders u/s. 143(3) accepted the percentage of yield at 81.69% and 83.62%. The copies of the orders are filed at pages 396 & 392 of the paper book. The AO did not reject the books of account and no specific defects have been pointed out in maintenance of books of account. The accounts are maintained on the same pattern. The Excise and Sales Tax Authorities accepted the manufactured goods and sales, which are binding on the Income-tax Authorities. Tobacco leaves and raw material are agricultural produce and it depends upon the quality of the leaves. The AO made the addition on account of sales, but the entire sales could not be profit of the assessee. The details of each material consumption were explained in the audit report. Copies of the same are filed at pages 206 to 235 of the paper book. On the other hand, the Id. DR relied upon the order of the AO and submitted that the Id. CIT(A) correctly rejected the books of account u/s. 145(3). Even if books are not rejected by the AO, the assessee did not maintain day-to-day record of the production at each stage and even in the appraisal report, the cost of other material etc. have been mentioned. The orders of the Sales Tax Authorities and Excise Authorities are not relevant. The assessee suppressed the sales and rule of consistency should not be applied when facts have been brought on record against the assessee.*

*15. We have bestowed our careful consideration. In assessment year 2004-05, the AO made addition of Rs.6,95,66,165/- by alleging suppression of production. The assessee declared percentage of yield of total raw material to finished goods produced at 83.17%. The AO took it at 105.66% and the Id. CIT(A) restricted the same to 90%. In this way, the Id. CIT(A) reduced the addition and granted relief to the assessee in a sum of Rs.4,26,63,081/- on which the Revenue is in appeal. However, the Id. CIT(A) confirmed the addition to Rs.2,69,03,083/- on which the assessee is in appeal. The basic reason for making the addition was that the details of consumption at various stages have not been furnished. Therefore, the process is not open to verification and further the ratio of consumption of different items of raw material has not been explained on the pretext of secrecy. The assessee, however, explained that there is no material recovered against the assessee during the course of search and no specific defects have been pointed out in maintenance of books of account and in past also on the similar pattern the books of account have been maintained and lesser yield of production has been accepted by the Revenue Department. Even in assessment year 1999-2000 on identical facts, similar addition was made and it was a case of survey u/s. 133A and addition have been deleted. The Id. CIT(A) was of the view that production account is necessary for manufacturing business and the Id. CIT(A) rejected the books of account u/s. 145(3) by using the powers u/s. 251 of the IT Act even if*

*the books were not rejected by the AO. The Id. CIT(A) found that the AO has analysed quantitative details of raw materials and finished goods as were given in the audit report. The Id. CIT(A) also found that though the AO has attempted to analyze the consumption of raw material and semi-finished products for getting the finished products, in the process, the AO has also carried out some infructuous exercise. The AO called for the details of work-in-progress in terms of quantity also which were furnished and same was used by AO for computing the percentage of yield. Thus, the assessee pleaded before the Id. CIT(A) that the AO misunderstood the figures of raw material consumed, vis a vis, finished goods produced, which is in terms of value in the audit report. The AO misunderstood it in terms of quantity. The assessee explained before the Id. CIT(A) that earlier, the auditor has given the figures of sales in place of value of the finished goods produced in the audit report. Later, these figures have been corrected and present auditor has correctly taken the figures of finished good produced only. So the assessee emphasized that the percentage of consumption of material with reference to finished goods given in the audit reports for these financial years is incorrect. The AO also relied upon the surrender of Rs.50,00,000/- made by the partner for the purpose of addition. The assessee pleaded that the AO misunderstood the ratio of yield taking that if the weight of all the consumables is 100 kg, the yield would be 105.66 kg. The Id. CIT(A) on examination of the record found that the findings of the AO are incorrect and invalid with reference to the facts analysed by her. The Id. CIT(A) on examination of the record found that the yield of 105.66% is with reference to the consumption of 120.23 of raw materials. The ratio of production shown by the assessee is with reference to the consumption of raw tobacco only. The assessee has not included the consumption of other raw materials. Thus, the finding of fact recorded by the AO against the assessee was found to be incorrect. The Id. CIT(A) thereafter proceeded to decide the yield in the form of end product, i.e. Zarda. submissions of the assessee was called for on the same and after considering the explanation of the assessee, the Id. CIT(A) noted that the A.O. has to evaluate not only the facts available on the records of the assessee but also the surrounding facts to arrive at a decision in the matter. The Id. CIT(A) noted that the A.O. failed to consider two facts important to evaluate the percentage of yield, one, that use of spices and other ingredients, mainly to prepare the flavor & perfume, cannot give yield of equal weight, meaning thereby the residuals & wastes are bound to be there, secondly, the yield of 106% was not with reference to the weight of all the materials, it was only with reference to raw tobacco only. Therefore, the working of suppression of production by the AO was not found to be justified. It would mean that the Id. CIT(A) did not accept the theory of findings propounded by the AO for the purpose of making the addition. The finding of fact recorded by the Id. CIT(A) rejecting the findings of the AO have not been disputed before us during the course of arguments and have also not been rebutted by the Id. DR through any evidences or material on*

*record. The Id. CIT(A) thereafter proceeded to decide the issue on the basis of comparable cases in the line of the business. The Id. CIT(A) collected the audit reports of two concerns, namely M/s. Kishore Zarda Factory and Sugandhi Snuff King showing ratio of material consumption to finished goods produced in 92.29% and 90.37%. The assessee submitted its objections before the Id. CIT(A) and distinguished the same to say that these are not comparable cases. The Id. CIT(A) accepted that audit reports of these two concerns do not speak of the manufacturing process, but the department is concerned with the percentage of yield. The Id. CIT(A) heavily relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. British Paints ( India ) Ltd., 188 ITR 44 on the proposition that it is incorrect to say that the AO is bound to accept the system of accounting regularly employed by the assessee, the correctness of which has not been questioned in the past. The Id. CIT(A) noted that with regard to inspection by Excise Authorities, the same carries some weight to the limited extent, however, admitted that there is loss of weight in the form of evaporation and residuals in the process of manufacturing. The Id. CIT(A) also admitted that the cited cases of comparison may or may not have same process of manufacturing. They may not be manufacturing the perfumes. The Id. CIT(A), however, considered the same as comparable case with regard to the percentage of yield in the manufacturing of Zarda and took the percentage at 90% in the case of assessee for making the addition as against yield taken by the AO. The Id. CIT(A) also noted that AO had worked out the value of suppressed production on the average cost price but it was not correct as the concealed production would result in sale to fetch unaccounted income. The appeal of the assessee was accordingly partly allowed and both the parties are in appeals before us. These findings of facts given by the Id. CIT(A) clearly prove that the finding of fact given by the AO against the assessee calculating the percentage of yield was not correct and the AO on mere assumption and presumptions and on distorted figures made huge addition against the assessee by enhancing the percentage of yield. Since the case set up by the AO was not accepted by the Id. CIT(A), therefore, the Id. CIT(A) proceeded to decide the case/issue on the basis of comparable cases only. These facts clearly show that the department has no case for interference in departmental appeal and now we have to consider the merits of the additions sustained by the Id. CIT(A). It is admitted fact that no specific defects have been pointed out by the authorities below in maintaining all the books of account by the assessee. It is also not in dispute that the assessee maintained books of account on the same pattern as have been maintained in preceding assessment years. It is also clear that the AO has ignored actual evaporation and wastage of the material used in the production as are appearing in Chart (B) (supra) in submission of the assessee. The Id. CIT(A), however, admitted that there is loss of weight in the form of evaporation and residuals in the process of manufacturing. Therefore, the submissions of the assessee shall have to be accepted for the purpose of believing the books of accounts properly*

*maintained by the assessee. Hon'ble Supreme Court in the case of M/s. Flexi Pack, 319 ITR (Statute)(SC) 3, held that there is no question of going on estimate of income without rejecting the books of account of the assessee. In the case of assessee, it is admitted fact that the books of account of the assessee have not been rejected by the AO u/s. 145(3) of the IT Act. The Id. CIT(A) heavily relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. British Paints (India) Ltd., 188 ITR 44, in which the facts are clearly distinguishable from the facts of the case of the assessee. In this case, the assessee company was engaged in the manufacture and sale of paints, had, as a consistent practice, valued its goods in process and finished products exclusively at cost of raw materials totally excluding overhead expenditure. The ITO held that there was no justification to recognize a practice of valuing stock otherwise than in accordance with well recognized principle of accounting which require the stock to be valued at cost (raw material + expenditure) or market price whichever was lower. The AAC and the Tribunal confirmed the view of the AO. However, the High Court reversed the order of the Tribunal. In the background of these facts it was held that any system of accounting which were likely to result in distorted picture of true state of business for computing chargeable income. The AO is not bound to accept the system of accounting regularly employed by the assessee. However, in the case of present assessee despite it is a case of search, no recovery of any incriminating material was made in search to prove any suppression of sales or stock. The Id. CIT(A) accepted that the concealed production would result in sales to fetch unaccounted income, but no such concealed production or sales outside the books of account were found against the assessee. It is admitted fact that in assessment year 1999-2000, similar addition was made by the AO against the assessee which have been deleted by the Id. /CIT(A) and the order of the Id. CIT(A) has been confirmed by the ITAT, Allahabad Bench vide order dated 07.06.2006. Copy of the order is placed on record at page 345 of the paper book. In assessment year 2002-03 and 2003-04, the AO accepted the percentage of yield at 81.69% and 83.62% under regular assessment orders u/s. 143(3) of the Act. In assessment year 2004-05 under appeal, the AO also accepted the yield of 83.17% u/s. 143(3) dated 19.12.2006 prior to search. PB-387 is the copy of assessment order which is supported by order sheet to show that the AO examined the books of account and all materials before accepting the book results of the assessee with regard to manufacturing / production and the sales. Since the system of accounting regularly employed by the assessee, the correctness of which had been questioned by the Revenue in past and after examination of the records and material produced by the assessee, book results have been accepted on the identical facts by the Revenue Department, therefore, the decision in the case of British Paints India Ltd. (supra) would not apply against the assessee. No case is also made out before us that the percentage of yield shown by the assessee in past was against any Rule or the law. The G.P. rate declared by assessee is almost*

*same as declared in preceding years. We may note here that it is well settled principle of law that even if the principle of res judicata does not apply to the Income-tax proceedings, but the income-tax authorities shall have to follow the principle of consistency. We rely upon the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT, 193 ITR 321, the decision of M.P. High Court in the case of Godavari Corporation, 156 ITR 835, decision of Supreme Court in the case of Union of India vs. Satish Panalal Shah, 249 ITR 221 and the decision of Delhi High Court in the case of Escorts Ltd., 338 ITR 435. Therefore, identical issue considered and decided in earlier years in favour of the assessee by the AO as well as by the Tribunal in various years should have been followed by the authorities below on the identical issue. It is also not in dispute that the end product, i.e., Zarda is excisable item/goods and subjected to inspection and control by the Excise Authorities and it is admitted fact that the Excise Department accepted the manufactured goods and cleared the goods manufactured on duty paid. Such a circumstance also supports the explanation of the assessee that there is no suppression of the yield. The case of the assessee is squarely covered by the decision of Allahabad High Court in the case of CIT vs. Mascot (India) Tools and Forgings Pvt. Ltd., 320 ITR 110. It is also not in dispute that the sales have been accepted by the Sales Tax Authorities. Therefore, there is no question of any suppression of sales in the case of assessee and as noted above, no material was found during the course of search of any sales made by the assessee outside the books of account. Hon'ble Madras High Court in the case of CIT vs. Anandha Metal Corporation, 273 ITR 262 held that when the valuation of stock accepted by the Sales Tax Authorities is binding on the incometax Authorities. We may also note here that though Id. CIT(A) has invoked his powers u/s. 251 of the IT Act for the purpose of rejection of books of account u/s. 145(3), which have not been rejected by the AO, but there is no observation in the appellate order if the Id. CIT(A) while using such powers, issued any show cause notice to the assessee for taking any adverse inference which has not been taken by the AO in the assessment order. Therefore, such powers should not have been used against the assessee without affording opportunity of being heard to the assessee. The authorities below have also considered the statement of partner Shri Kailash Chand adverse in nature who has made surrender of Rs.50 lacs in the assessment year 2010-11, but it is not considered that in his statement, the partner has stated that the books of account are complete in all respect and in anticipation of some discrepancies, surrender of Rs.50,00,000/- is made for the assessment year 2010- 11. It was also on account of that the assessee did not reveal the trade secretes. Therefore, the same may not be relevant for assessment years under appeals and could not be said to be adverse in nature to take different percentage of yield. The Id. CIT(A) also noted at page 90 of the impugned order that the AO had worked out the value of suppressed production on the average cost price, but the same is not correct as concealed production would result in sale to fetch*

*unaccounted income. These findings of the Id. CIT(A) also suggest that even part addition sustained by the Id. CIT(A) and the addition made by the AO was wholly unjustified. Hon'ble Gujrat High Court in the case of President Industries, 258 ITR 654 held that there is no finding that goods sold outside the books of account were acquired from unexplained sources. The value of entire sale outside the books cannot be added. Only profit margin may be added. This view was re-confirmed in its later decision in the case of Samir Synthetics Mill, 326 ITR 410 (Guj.). Therefore, the addition maintained by the authorities below was highly unjustified. The Id.CIT(A) though cited the alleged comparable cases of M/s. Kishore Zarda Factory and Sugandhi Snuff King, but admitted in the impugned order that the cited cases of comparison may or may not have the same or similar process of manufacturing. They may not be manufacturing the perfumes, which is major source of loss of weight. They may be purchasing the perfumery items from the market. It would suggest that these were not the comparable cases to be cited against the assessee. The assessee has filed the complete details of sales declared by the assessee and these two concerns at page 235A of the paper book to show that in the case of Kishore Zarda Factory in assessment year 2008-09, the declared sales were Rs.1.19 crores and in the case of Sugandhi Snuff King for assessment year 2012-13 the declared sales of Rs.3.99 crores were shown. However, in the case of assessee for assessment year 2004-05, the declared sales were 32.76 crores and in the remaining assessment years under appeals, the declared sales were more so at Rs.32.09 crores, 31.55 crores, 31.26 crores, 33.73 crores and 35.04 crores. The findings above and the findings given by the Id. CIT(A) that they may not have similar process of manufacturing would suggest that these are not the comparable cases to be considered for the purpose of making part addition against the assessee. Once Ld. CIT(A) did not accept findings of AO to calculate yield of production, Ld. CIT(A) should not resort to adopt comparable cases because the foundation of making addition by AO has completely been demolished. Hon'ble Rajasthan High Court in the case of Gotan Lime Khanij Udyog, 250 ITR 243 held that on mere rejection of books of account, does not mean the addition shall have to be necessarily made against the assessee. Hon'ble Privy Council in the case of Laxmi Narain Badri Das, 5 ITR 170 held that estimate of income should be fair. The AO should not act dishonestly or vindictively or capriciously. His knowledge of previous returns, local knowledge, circumstance of assessee are to be considered to arrive at fair and proper estimate of income. Hon'ble Delhi High Court in the case of Aero Club 336 ITR 400 held that the assessment should be on rational basis. Profit margin declared by the assessee cannot be rejected arbitrarily. It is well settled law that taxes should be collected on real income and not on imaginary income. In case of assessee, admittedly, the book results on almost same percentage of yield were accepted in earlier years in scrutiny proceedings by the AO as well as by the Tribunal. Nothing was found against the assessee during the course of search i.e., any excess stock or sales made*

*outside the books of account. Therefore, going by some illogical calculations based on figures provided in the audit report, the AO should not have made huge additions against the assessee, which is also not approved by the Id. CIT(A). Therefore, on mere comparison of cases without bringing adequate material on record, the Id. CIT(A) should not have sustained part addition without considering the principle of law that the entire sales would not be profit of the assessee. Considering the above discussion and examining the case of the assessee from every possible angle, we are of the view that the authorities below were not justified in making or confirming any addition against the assessee. We accordingly, set aside the orders of the authorities below and delete the entire addition in assessment year 2004-05. In the result, the appeal of the assessee is allowed and the departmental appeal is dismissed on this issue.*

*15.1 This issue is arising in the remaining appeals for the assessment year 2005-06 to 2009-10 under appeals before us in which the assessee has declared percentage of yield at 84.69%, 84.04%, 85.08%, 83.80% and 83.80%. The AO took the percentage of yield at 105.66% and the Id. CIT(A) restricted the addition by taking the percentage of yield at 90% as has been taken in assessment year 2004-05. The assessee as well as the revenue are in cross appeals on the identical issue. By following the order for the assessment year 2004-05 above, we set aside ITA Nos.358 & 374 to 378/Alld./2014 ITA Nos. 06 to 11/Alld./2014 113 the orders of the authorities below and delete the entire additions. In the result, all the remaining appeals of the assessee are allowed and the departmental appeals are dismissed on this issue."*

6.1 No material facts have been brought for our consideration to persuade us to take a view different from the view already taken by Co-ordinate Bench of Allahabad Tribunal in the aforesaid order dated 15/07/2014. In view of the foregoing discussion and respectfully following the aforesaid order of the Co-ordinate Bench of Allahabad Tribunal dated 15/07/2014, we direct the Assessing Officer to accept the yield percentage disclosed by the assessee in this assessment year. Accordingly, the relief of Rs.5,43,98,595/- given by the learned CIT(A) in the impugned appellate order dated 30/09/2013 is sustained and the addition of Rs.2,32,73,571/- sustained by the learned CIT(A) is deleted. In effect, the entire addition of Rs.7,76,72,166/- on account of excess production is directed to be deleted.

7. The second issue in the appeal filed by Revenue is regarding the addition of Rs.73,16,513/- on account of disallowance of alleged bogus purchase. Out of this addition, an amount of Rs.53,29,940/- was deleted by learned CIT(A) in the impugned appellate order dated 30/09/2013 and the remaining amount of Rs.19,86,573/- was sustained. Both Revenue and assessee are in appeal in Income Tax Appellate Tribunal, on this issue against the impugned appellate order of the learned CIT(A).

7.1 The learned A.R. for the assessee submitted that in similar facts and circumstances, additions have already been deleted by Co-ordinate Bench of Allahabad Tribunal in assessment years 2006-07, 2008-09 and 2009-10. He drew our attention to the relevant portion of the aforesaid order dated 15/07/2014 of Co-ordinate Bench of Allahabad Tribunal, relevant portion of which is reproduced below:

*23. Issue No. 6 (Bogus Purchases):*

*In assessment year 2006-07, the Revenue has raised ground No. 5, challenging the deletion of disallowance of Rs.16,11,270/- on account of bogus purchases. The assessee claimed before the Id. CIT(A) that the purchase was made from M/s. Cosmo Elmek, Varanasi which was wrongly treated as bogus purchase by the AO. Copy of the account was filed before the AO from the books of account on the invoice, Tin Number, name of the banker, telephone number and payment ITA Nos.358 & 374 to 378/Alld./2014 ITA Nos. 06 to 11/Alld./2014 125 made through drafts have been mentioned. The AO discussed this issue in the assessment order with regard to enquiry made for purchases made from M/s. Sarita Industries and the vehicle number was found different. On further enquiry, the AO found that perfumes have been purchased from M/s. Cosmo Elmek, Varanasi and other parties. The AO collected the details of use of vehicle for supply of the material. The owner of the vehicle denied use of vehicle for transportation of goods. Therefore, the AO inferred that no goods were transported and ultimately purchases were found to be bogus. The Id. CIT(A) asked for the break-up of the purchase of the amount in question and the vehicle used for supply of the material. The assessee submitted before the Id. CIT(A) that the purchases have been made genuinely from this party. The AO started enquiry in the case of Sarita Industries, but made addition of*

*different party in assessment year under appeal. M/s. Cosmo Elmek is genuine party. Its PAN and telephone numbers were furnished. It was explained that payments were made through demand draft and all entries are recorded in the books of account. Part payments were made in the assessment year under appeal and for balance amount, sundry creditor account is shown. The purchases of perfumes were made from this party. The AO has not made out any case that the expenses incurred have not been entered into the book of account. In earlier year, the AO examined the same party and did not make any addition. Remand report from the AO was also called for.*

*24. The Id. CIT(A) found the contention of the assessee to be correct that the AO discussed this issue with regard to the purchase made from M/s. Sarita Industries, Kanpur and thereafter observed that the purchases were made from Cosmos Elmek, Varanasi. The Id. CIT(A) found this party to be genuine and assessed to Sales Tax also and sale in their case have been accepted by the Sales Tax Authorities. Their books of account are audited. No material was found during the course of search to hold that the bogus purchases from this party have been made. Payments were found to have been made of these purchases through different demand drafts. The Id. CIT(A), therefore, found that purchases should be genuine and accordingly deleted the addition.*

*25. On consideration of the rival submissions we do not find any justification to interfere with the order of the Id. CIT(A) in deleting the addition. The assessee has made out a case that genuine purchases have been made from M/s. Cosmos Elmek and the purchases are entered into the books of accounts. The payments are made through bank drafts, which are also entered into the books of account. No material was found during the course of search to prove that it was bogus purchase. The sales made by M/s. Cosmo Elmek have been accepted by the Sales Tax Authorities and was genuine party. The AO merely on the basis of test check and statement of the driver of the vehicle, who was not subjected to cross examination, held the purchases to be suspicious, as the transportation by other vehicle was found doubtful. This itself is no ground to consider the purchases to be bogus. No enquiry has been made in respect to the vehicle used for transportation of goods in this case, i.e., vehicle No. UP 65-P-8308. Therefore, the Id. CIT(A) was justified in deleting the addition. Ground No. 5 of the departmental appeal is accordingly dismissed.*

*26. Issue No. 7 (Bogus purchases from M/s. Sarita Industries):*

*This issue arises in assessment year 2007-08 in assessee's appeal. The assessee on ground No. 4, challenged the addition of Rs.27,21,888/- in respect of purchase of perfumery items from M/s. Sarita Industries, Kanpur. The AO conducted enquiry in respect of purchase invoice No. 172 dated*

*23.11.2006 for Rs.27,21,888/- for the purchase of 150 kg of Sandal Oil issued by M/s. Sarita Industries, Kanpur, proprietor Rakesh Narin Gupta. The goods were sent by vehicle No. MH04 – 8300. On enquiry, it was found that it is a Bajaj Chetak Scooter, 1990 Model. Letter of RTO was confronted to the assessee and the AO also asked the assessee to produce Shri Rakesh Narain Gupta, proprietor of M/s. Sarita Industries for examination. The statement of Shri Rakesh Narain Gupta was recorded during the course of assessment proceedings in which he has explained that vehicle Number was wrongly mentioned because the correct number is MH 04-AW-8300. The address of the owner of the vehicle was also given as Shri Kashi Nath, but the report of the department shows that such person was not residing at the given address. No stock at the premises of Shri Rakesh Narain Gupta was found. There was no godown and signboard displayed. The amount was withdrawn immediately in cash after deposits of the drafts. In further investigation, it was found that for invoices Nos. 173 and 176, the material was sent through Car though the weight of the goods was 350 kg and 100 kg. The Tata Sumo which was used for transportation was not a commercial vehicle and owner denied transportation of the goods. The AO, therefore, found that no genuine purchases have been made and these were accommodation entries only. The addition of Rs.27,21,888/- against invoice No. 172 dated 23.11.2006 was accordingly made.*

*27. It was submitted before the Id. CT(A) that the purchases are debited in the books of account and no purchases outside the books of account found. Therefore, there is no question of bogus purchases. M/s. Sarita Industries, Kanpur is a genuine and reputed firm. In preceding assessment year 2006-07 and subsequent assessment years 2008-09, 2009-10 and 2010-11, the purchases from the same party have been accepted by the department. Copies of all the bills of purchases were submitted. It was submitted that in the year under consideration, the assessee made purchases of Rs.1,23,64,142/- and the AO has doubted only the purchases of Rs.27,21,888/- in respect of one bill No. 172 only and rest of the purchases have been accepted. It was submitted that this party has PAN and registered with the Central Excise Authorities. The proprietor has filed affidavit confirming the transaction with the assessee. The payments are made through banking channel, i.e., account payee demand drafts. In the statement of Shri Rakesh Narain Gupta, he has confirmed the transaction with the assessee. Merely no commercial vehicle was used or owner of the vehicle was not found at the given address is no ground to make the addition. The Id. CIT(A), however, did not accept the contention of the assessee and on the basis of different use of vehicle for transportation of goods confirmed the addition.*

*28. On consideration of the rival submissions and the material on record, we do not find any justification to sustain the addition. PB-45 and 46 are*

*the details of the purchases made and payments made through demand drafts and entered into the books of account of the assessee. PB-48 is confirmation made by M/s. Sarita Industries, Kanpur to DCIT for selling their product to the assessee. PB-54 is the statement of Proprietor of M/s. Sarita Industries, Shri Rakesh Narain Gupta in which he has confirmed to have made sales to the assessee during whole of the year in a sum of Rs.1,23,64,142/-. It would, therefore, show that the assessee made genuine purchase from M/s. Sarita Industries. In preceding and subsequent assessment years, the assessee has similarly made purchases from same party which have not been doubted by the Revenue department. It is also interesting to note that in the assessment year under appeal, the assessee made total purchases from M/s. Sarita Industries for a sum of Rs.1.23 crores approximately through six invoices. The AO accepted five purchases and did not make any addition. The AO doubted only purchase through one bill No. 172 without assigning any cogent and specific reason. It appears that the purchase of one bill was not found to be genuine because of particular use of vehicle for transportation or that owner of the vehicle did not confirm the fact of transportation of goods in favour of the assessee. However, the facts and circumstances and the material on record clearly show that the assessee made genuine purchases from M/s. Sarita Industries and payments are made through account payee drafts. Therefore, other considerations noted by the AO for making addition appear to be irrelevant. M/s. Sarita Industries was not found doubtful party because assessed to Income-tax as well as registered with Central Excise Authorities and transactions with this party in preceding and subsequent assessment years have not been doubted. Therefore, merely on the basis of use of vehicle, the book results should not have been rejected by the Id. CIT(A) and no addition should be made against the assessee. The assessee has debited all the purchases in the books of account and no purchases outside the books of account have been found during the course of search. Merely because the party withdrew the amount from bank is not sufficient to discard the explanation of the assessee. Proprietor of M/s. Sarita Industries also filed affidavit before the authorities below confirming the transaction with the assessee. Therefore, such should not have been the reason for treating the purchase to be bogus. In view of the above discussion, we set aside the orders of the authorities below and delete the addition of Rs.27,21,888/-. In the result, ground No. 4 of appeal of the assessee is allowed in assessment year 2007-08.*

**29. Issue No. 8 (Bogus purchases from M/s. Cosmo Elmek):**

*This issue arises in assessment year 2008-09. On ground No. 3, the assessee challenged the addition of Rs.4,54,240/- in respect of purchase of perfumery items from M/s. Cosmo Elmek, Varanasi. The Revenue on ground No. 5 challenged the order of the Id. CIT(A) in reducing the disallowance of Rs.27,59,714/- on the same issue. The assessee challenged the addition of*

*Rs.27,59,714/- before the Id. CIT(A) in respect of purchase from Cosmo Elmek, Varanasi treated as bogus by the AO. The AO conducted the enquiries with regard to M/s. Sarita Industries regarding use of the vehicle in transportation of the goods. In further enquiry, the AO found perfumes purchased from M/s. Cosmo Elmek Varanasi. The AO obtained the details of use of vehicle for transportation of the goods and found that the vehicle was not commercial. The AO mainly with regard to use of vehicle held the purchases to be bogus. The assessee submitted break-up of the purchase of Rs.27,59,714/- before the Id. CIT(A), which is noted at page 18 of the impugned order to show that on various dates, the purchases were made through vehicle No. UP 65 AB 8414. This party was assessed to tax and Sales Tax Authorities accepted their sales. Payments are made through demand drafts and confirmation of the party was also fled. The Id. CIT(A) found this party to be genuine and registered with the Sales Tax Authorities and assessed with Income tax Authorities also. Purchases have been accepted by the Sales Tax department. No material was found during the course of search to prove bogus purchases. The payments are made through demand drafts. It was also found that no inquiry was made in the case of vehicle No. UP-65-AB 8414 used in transportation of goods. No other enquiry was made. The Id. CIT(A) despite these findings confirmed the addition of Rs.4,54,240/- and balance addition of Rs.23,05,474/- was deleted. Both the parties are in cross appeals on this issue.*

*30. On consideration of the rival submissions, we are of the view, this issue is same as is considered in assessment year 2006-07 on issue No. 6 above. Copies of the bills are filed in the paper book along with confirmation of the party. The totality of findings of the Id. CIT(A) proved that M/s. Cosmo Elmek Varanasi is a ITA Nos.358 & 374 to 378/Alld./2014 ITA Nos. 06 to 11/Alld./2014 133 genuine party and sales in their case have been accepted by the Sales Tax Authorities and party also confirmed the transaction with the assessee. We have dismissed the departmental appeal on this issue in assessment year 2006-07 on identical facts. It appears that addition is merely made on account of carrying of the weighted item in the vehicles. However, once it is held by the Id. CIT(A) that no enquiry has been conducted in respect of vehicle used for transportation of the goods, the part addition should not have been maintained. We following the order for the assessment year 2006-07 and considering the above discussion set aside the orders of authorities below and delete the addition of Rs.4,54,240/-. In the result, the appeal of the assessee is allowed ad departmental appeal stands dismissed.*

*31. Issue No. 9 (Bogus purchase from M/s. Cosmo Elmek) :*

*This issue arises in assessment year 2009-10. The assessee challenged the addition of Rs.33,49,264/- on account of purchases made from M/s. Cosmo Elmek Varanasi. The Revenue on ground No. 5,*

*challenged the reducing of disallowance of Rs.1,64,38,134/-. The assessee challenged the addition of Rs.1,64,38,134/- in respect of purchase made from Cosmo Elmek, Varanasi before the Id. CIT(A). The facts are same as are considered in the assessment years 2006-07 and 2008-09 above. The AO on the bass of use of vehicle inferred that the assessee has made bogus purchase. Bifurcation of purchase was submitted before the Id. CIT(A) to show that vehicle used for transportation was UP 65 AB 8414 and UP 65 Y-3901. The assessee made similar submissions as were made in earlier years. The Id. CIT(A) almost gave the same findings. The Id. CIT(A) found some additions should be duplicate in nature and no enquiry was made in respect of concerned vehicle. However, the Id. CIT(A) maintained the addition of Rs.33,49,264/- and deleted the remaining addition of Rs.1,30,88,870/-. Both the parties are in cross appeals.*

*32. The Id. representatives of both the parties submitted that the issue is same as is considered in the assessment year 2008-09. Copies of the bills etc. and confirmation are filed in the paper book. We, therefore, following the order on this identical issue for the assessment year 2006-07 and 2008-09, delete the part addition maintained by the Id. CIT(A). In the result, the appeal of the assessee is allowed and the departmental appeal is dismissed."*

He also drew our attention to the written submissions filed from the assessee's side on this issue, which is also reproduced below:

**Regarding the addition of Rs. 19,86,573.00 by alleging bogus purchases as maintained (Ground No. 9):-**

1- That the addition has been made by the assessing officer by alleging that purchase of perfumery items form M/s Cosmo Elmek C-13/129 Aurangabad, Varanasi is bogus purchase and by generating flimsy and vague ground the assessing officer added the amount of Rs. 73,16,513/- in the total income of the assessee. The assessing officer has discussed the facts in respect of purchase issue only in para 6 of the

Assessment order. The said para contains 6 pages from page No 9 to 14 of the assessment order. From the discussion in the said para it will appear that the maximum portion of the discussion covers about the purchases from M/s Sarita Industries proprietor Rakesh Narayan Gupta of 105/682, Chandrika Devi Chauraha, Kanpur, although there is no dispute with regard to the purchase made from the said party during the year. Any how in para 6 of the order the main focus of the assessing officer is on M/s Sarita Industries and not in respect of M/s Cosmo Elmek (under consideration) which fact itself proves that how and in what manner the issue has been dealt by the Assessing officer to justify her addition and ultimately at page 14 of the order the assessing officer arrived at a conclusion suddenly that the purchases from M/s Cosmo is bogus though the main focus in the para is in respect of the M/s Sarita Industries. For saying bogus purchase the allegation of the assessing officer is that the partner of assessee firm generate cash and utilize the same in investment of construction of building, in foreign trip, in purchase of gold bars and jewellery in cash. On such

hypothetical and baseless allegation/ background the accounts of the assessee firm has been treated as fabricated by manipulating the purchases. Though in reality the assessing officer accepted our trading results as provision of Section 145(3) of the I.T. Act has not been invoked and more over our declared gross profit is also not in doubt. Further no addition in case of concerned partner of the firm was made on account of his foreign trip, nor any unrecorded jewellery was found in the entire search, therefore the observations, comments and findings of the assessing officer is based on her surmises and conjectures hence the same is liable to be sponged and no cognizance is to be given for such baseless observations. In view of all the facts of the case and submissions made above the entire discussion, observations and conclusion are totally incorrect an irrelevant for the year under consideration.

2- That in this connection it is necessary to mention here that during the year total purchases of all materials was of Rs. 29,35,87,468.63 out of which purchases to the extent of Rs. 73,16,513/- only as

made from M/s Cosmo Elmek was declared as bogus purchase by the assessing officer based on her own presumptions. The percentage of such purchase comes to 2.49% which is an important point for your kind consideration as there was a doubt about purchases to the extent of 2.49% only out of the total purchase, which is of course not a judicious approach and which is negligible percentage.

That M/s COSMO Elmek is a genuine and reputed party of Varanasi and deals in purchase and sale of perfumery items. The said party is registered with the Sales tax authorities and their Sales Tax Registration Number is 09183500480 and likewise the party in question is also on income tax record, their PAN is AACPU9718P and the telephone No. of the party is 0542-2421642. The party is maintaining books of account and the transactions with the assessee firm are recorded year after year in their books as well as in the books of assessee. In this regard it is necessary to mention here that party's books of account are audited also. The position of transaction with M/s COSMO

Elmek in earlier years and in the year under consideration are as under:-

A.Y.	Total Purchases	Disputed Purchases	Amount Paid	Mode of Payment	Final Outcome
2004-05	66,40,719.05	NIL	43,65,432.50	Demand Draft	Accepted
2005-06	11,70,676.00	NIL	40,00,000.00	Demand Draft	Accepted
2006-07	16,11,269.75	NIL	20,00,000.00	Demand Draft	Accepted
2007-08	34,04,992.50	NIL	15,11,395.05	Demand Draft	Accepted
2008-09	27,59,713.65	4,54,240.00	72,75,975.90	Demand Draft	Under Consideration
2009-10	1,17,49,910.60	33,49,264.00	1,17,49,910.60	Demand Draft	Under Consideration
<b>2010-11</b>	<b>73,16,513.00</b>	<b>19,86,573.00</b>	<b>1,06,05,000.00</b>	<b>Demand Draft</b>	<b>Under Consideration</b>

That from the above chart it will appear that in the case of appellant earlier number of assessment were framed under Section 143(3) of the Income Tax Act and the purchases have been accepted and likewise purchases from the said party have duly been accepted by the sales tax authorities and form 3B (sales Tax Declaration Form) issued by us to said parties. Apart from this fact in the course of search operation also no material was found about any such alleged bogus purchases though perfumery items were found and appearing in the inventory.

That kindly consider that from the **party's account** it will appear that opening balance in our books as on 01.04.2009 was Rs. NIL which was the closing balance as on 31.03.2009, which was relevant for Assessment Year 2009-10 and the amount is appearing in **Sundry Creditor's head** which is not in doubt and the same position exists in earlier assessment years also where the department has accepted the balances appearing in the party's account.

That during the year various purchases on various dates of perfumery items were made and those invoices were produced before assessing officer also. The payments against the said purchases were made through demand drafts and the drafts were purchased from the bank in the name of the party and the book entries were also passed in the books. But no doubt has been created by the Assessing Officer about such book entries. In this way during the year, earlier years and in subsequent years payments were made to the party through bank. The assessing officer has not doubted the purchase value and therefore not ascertained the

market value of the purchased items. It is not the case of Assessing Officer that there is any mismatch between the item in the invoice and item recorded in books. Even no evidence was brought on record to prove that any expenditure on purchase was made outside the books of account.

That even the provision of section 69 of the Income Tax Act was not invoked and before invoking section 69C of the Income Tax Act, the assessing officer must have some material in her possession indicating that assessee has incurred expenditure which has not been entered in the books but in present case no such material has been brought on record by the assessing officer.

That the assessee has discharged its primary onus regarding purchase from M/s Cosmo Elmek, Varanasi and now the burden was shifted on the department to rebut the same but the department failed in it. So considering in the totality of the facts, circumstances and material on record the addition is unwarranted.

Even from the year of inception i.e. 1967 of the firm till date no such type of addition was made nor any such type of allegation was made by the department. The books were not challenged. The addition made by the assessing officer is based on post search enquiry. Even her statement of the driver of vehicle was recorded behind the back of the assessee which is not permissible as no opportunity was allowed to the assessee to cross examine the driver. In these back grounds it is pertinent to mention here that the purchases, from M/s COSMO Elmek are on FOR basis in which freight are paid by the seller of the goods and we have not to pay any freight. As soon as we received the goods we made entry of the same in our primary records i.e. DGR (Daily Goods Received Register) which are kept at gate and the same is first stage of recording. And maintaining of DGR is our regular practice and in such DGR each and every purchase of every items are recorded and likewise exit of finished goods are also recorded. **In this way DGR is very important books** but the assessing officer failed to give any due credence and cognizance to such books. Thus as compared to

voluminous evidences in support of the purchases under reference the Assessing Officer simply demolished the purchase on the basis of a driver's statement which was never examined by the assessee. Besides, books were never examined, bank payments were not doubted and no cognizance was given to the confirmation of account. All these facts prove that Assessing Officer arrived at her own conclusion on irrelevant materials, observations and conclusions based on her own baseless presumptions and the addition was also made in haste manner.

That in the A.Y. 2004-2005 to A.Y. 2007-2008 the two lower authorities were fully satisfied with the explanation furnished and purchases from M/s Cosmo Elmek and payments made against the said purchases were accepted. The two lower authorities accepted the transaction from M/s Cosmo Elmek as genuine. Thus, in this way according to the two lower authorities for assessment year 2004-05 to 2007-2008 purchase from M/s Cosmo Elmek, the party is genuine party, whereas during the year under consideration on similar set of

facts purchase from M/s Cosmo Elmek has been considered as bogus and the party as non-genuine. In the assessment year 2004-2005 total purchase of Rs. 66,40,719.05, in assessment year 2005-2006 total purchase of Rs. 11,70,676.00, in assessment year 2006-07 total purchases of Rs. 16,11,269.75 and in assessment year 2007-08 total purchases of Rs. 34,04,992.50 from M/s Cosmo Elmek were accepted. In this way according to the two lower authorities M/s Cosmo Elmek of Varanasi is a genuine party in Assessment Year 2004-05 to 2007-08 but in assessment year 2010-2011 the same party on similar set of facts was declared by the two lower authorities as non-genuine, which is wrong and only shows that the two lower authorities were not consistent and fair in considering the facts.

The assessee relies on the following decision.

(a) 135 Taxman 66—

(b) 49 ITD 177 (Bom.)-

(c) 42 ITD 135 (Delhi) -

(d) 77 ITD 71 (Asr.) TM

(e) 154 ITR 244 (Pat).

10. That in the course of hearing of the appeal, the CIT(A) called a remand report on the point of purchases and in the compliance to notice by A.O., book, vouchers, invoices were produced before the concerned A.O., who verified the purchases form books and arrived at conclusion at page 18 of CIT(A) order, who reproduced the finding of the A.O. in following manner :

**“ Finding : regarding contention as per point (a) & (b) above, purchases had been test checked and found there in the books of account, .....**”

But the A.O. stated that the issue is suspicious because of the vehicle used by the seller.

11 That, once the A.O. accepted that after test check, found that purchases were recorded in the books, then it is not the job of the assessee to find out the vehicle used by the seller. It is the look out of the seller. On receipt of the goods the same

are recorded in DGR register and DGR register is not disputed by the two lower authorities.

That the two lower authorities have wrongly considered the purchases made from the genuine, established and old parties since long during the year under consideration and in subsequent years also then there is no justification to consider the purchases as income of the appellant because purchase cannot be termed as income therefore the addition so made and confirmed is highly unjustified and incorrect.

That the Commissioner of Income Tax (Appeals) confirmed a part sum of Rs. 19,86,573/- out of the addition of Rs. 73,16,513/- simply by disbelieving the invoices and the means of transportation of the goods which is unjustified specially when in subsequent years in similar sets of facts the CIT(A) observed at Page 24 and 25 of his order which are as under:-

- a. It cannot be said that the quantity claimed have been transported was practically impossible.

- b. If the issue relating to use of commercial/person carrying vehicle is left aside, which may be a matter of state Government.
  - c. The transportation by other than commercial vehicles may be all together different issue.
  - d. The transportation could not be held suspicious.
  - e. No independent inquiry seems to has been conducted in respect of remaining purchases.
4. That from the above it will appear that inspite of the above observations the Commissioner of Income Tax (Appeals) confirmed a part of the addition without any valid reason ignoring voluminous evidences brought on record in form of confirmation, ignoring the books entries of purchases and sales, ignoring the facts that the payment against the purchases were made through demand draft and in past and subsequent years purchases were accepted thus the part of the addition was not maintained by the Commissioner of Income Tax (Appeals) in appropriate and judicious manner but simply in haste. Even the evidences brought on records were not doubted by the Commissioner of Income Tax (appeals). Therefore the addition made and partly confirmed by the two lower authorities is un-justified and incorrect."

7.2 The learned CIT, D.R. for Revenue relied on the order of the Assessing Officer.

8. We have heard the rival parties and have gone through the material placed on record. The issue is already covered by order dated 15/07/2024 of Co-ordinate Bench of Allahabad Tribunal in which in similar facts and circumstances, the additions on account of bogus purchases were deleted. No distinguishable facts and circumstances have been brought for our consideration to take a view different from the view taken by Co-ordinate Bench of Allahabad Tribunal in aforesaid order dated 15/07/2024. Respectfully following the aforesaid order dated 15/07/2024 of Co-ordinate Bench of Allahabad Tribunal and in view of the foregoing discussion, the relief of Rs.53,29,940/- given by the learned CIT(A) in the impugned appellate order dated 30/09/2013 is sustained and the addition of Rs.19,86,573/- sustained by the learned CIT(A) is deleted. In effect, the entire addition of Rs.73,16,513/- on account of disallowance of alleged bogus purchase is directed to be deleted.

9. In assessee's appeal, in ground No. 4 & 5, the assessee has disputed the addition of Rs.3,58,05,157/-. The Assessing Officer made this addition, holding the same to be extra sales. The relevant portion of the assessment order is at paragraph 11 of the assessment order, which is reproduced below:

11. Now on the basis of sales and purchases shown by assessee and found from the seized materials, trading account of assessee firm for the period 01.04.2009 to 27.08.2009 and 27.08.2009 to 31.03.2010 is drawn as under;

The trading account for the period 01.04.09 to 27.08.2009

Opening stock as shown (as on 01.04.2009)	121362150	Sales	137796184
Purchases	112916402	Closing Stock	63104000
wages	2426789	Stock found at Purna, Bhiwandi- 15056803 Stock of Sahson Valued by partner- 48047197	
Gross Profit		Difference	35805157
	236705341		236705341

From the above trading account, it is clear that credit side is less by Rs. 35805157/-. It means the above stock was sold outside the books of account. Therefore, **Rs. 3,58,05,157/- is added** to the income of the assessee for year under consideration on account of suppressed sales.

9.1 In the impugned appellate order dated 30/09/2013 of the learned CIT(A), the aforesaid addition of Rs.3,58,05,157/- was confirmed. The relevant discussion is at paragraph No. 9 of the impugned appellate order, which is reproduced below for the ease of reference:

11. Now on the basis of sales and purchases shown by assessee and found from the seized materials, trading account of assessee firm for the period 01.04.2009 to 27.08.2009 and 27.08.2009 to 31.03.2010 is drawn as under;

The trading account for the period 01.04.09 to 27.08.2009

Opening stock as shown (as on 01.04.2009)	121362150	Sales	137796184
Purchases	112916402	Closing Stock	63104000
wages	2426789	Stock found at Purna, Bhiwandi- 15056803	
Gross Profit		Stock of Sahson Valued by partner- 48047197	
		Difference	35805157
	236705341		236705341

From the above trading account, it is clear that credit side is less by Rs. 35805157/-. It means the above stock was sold outside the books of account. Therefore, **Rs. 3,58,05,157/- is added** to the income of the assessee for year under consideration on account of suppressed sales.

10. At the time of hearing, the learned A.R. for the assessee submitted that the addition has been made by the Assessing Officer and has been confirmed by the learned CIT(A) because of their erroneous understanding of basic principles of the accountancy. It was submitted by the learned A.R. for the assessee that the Assessing Officer reconstructed the trading account and on the basis of the reconstructed trading account, computed the difference of Rs.3,58,05,157/- on the credit side of the trading account. The learned A.R. for the assessee submitted that the reconstructed trading

account was made by the Assessing Officer for the period from 01/04/2009 to 27/08/2009. However, according to accounting principle, the trading results for the entire financial year i.e. period from 01/04/2009 to 31/03/2010 should be considered and trading results should be computed for the entire financial year (i.e. previous year relevant to assessment year 2010-11) based on which the income of the assessee should be computed for the assessment year under consideration. He submitted that making an allegation of excess sales on the basis of truncated period of the financial year from 01/04/2009 to 27/08/2009 was in contravention of the accounting principles and was inconsistent with the provisions of Income Tax Act. He also contended that in any case, a difference (Rs.3,58,05,157/- in the present case) on the credit side of the trading account can never be taken to be the assessee's income based on even elementary understanding of accounting principles. He submitted that a difference on the credit side can only be taken as the assessee's loss and not assessee's income. He also relied on the submissions made during the appellate proceedings in the office of the learned CIT(A). The learned CIT, D.R. relied on the orders of the Assessing Officer and the learned CIT(A).

11. Both sides have been heard. The materials placed on record have been perused. The submissions and contentions made by learned A.R. for the assessee have some force. The Assessing Officer and the learned CIT(A) have failed to make a case for the aforesaid addition of Rs.3,58,05,157/- on the basis of accounting principles and provisions of Income Tax Act. The Assessing Officer is directed to delete the aforesaid addition of Rs.3,58,05,157/-.

12. In the assessee's appeal there is a dispute regarding addition of Rs.1,17,90,328/-. The Assessing Officer made this addition towards alleged

bogus liability. In the impugned appellate order dated 30/09/2013, the learned CIT(A) confirmed the aforesaid addition of Rs.1,17,90,328/-.

13. At the time of hearing before us, the learned A.R. for the assessee submitted that similar addition was made in the case of the assessee in earlier years; and the issue was decided by Co-ordinate Bench of Allahabad Tribunal in aforesaid order dated 15/07/2024. The issue has been discussed in detail in paragraph Nos. 6 to 17 of the aforesaid order dated 15/07/2024 of Co-ordinate Bench of Allahabad Tribunal (pages 113 to 116). In the aforesaid order, the issue was set aside by Income Tax Appellate Tribunal to the file of the learned CIT(A). The learned A.R. for the assessee submitted that this issue in the present appeal also should be restored back to the file of the CIT(A) with the direction to pass de novo order on this specific issue in accordance with law after providing reasonable opportunity to the assessee. Learned CIT, D.R. expressed no objection to this. No distinguishable facts and circumstances or provisions of law have been brought to our attention by either side to distinguish the facts and circumstances of the present appeals before us, from the facts and circumstances in the aforesaid order dated 15/07/2024 of the Co-ordinate Bench of Allahabad Tribunal. In view of the foregoing and as representatives of both sides are in agreement with this, this issue is restored back to the file of the learned CIT(A) with the direction to pass de novo order on this specific issue in accordance with law after providing reasonable opportunity to the assessee and the Assessing Officer.

14. In assessee's appeal there are disputes regarding disallowances of Rs.74,154/- out of entertainment expenses, Rs.24,819/- out of telephone expenses, Rs.6,705/- out of generator expenses, Rs.58,785/- out of motor vehicle expenses and Rs.44,040/- out of petrol expenses. These

disallowances were confirmed by learned CIT(A) in the impugned appellate order dated 30/09/2013.

15. At the time of hearing before us, learned A.R. for the assessee submitted that these issues are squarely covered by the order of Co-ordinate Bench of Allahabad Tribunal. The relevant discussion is at paragraph No. 20 to 22 of the aforesaid order dated 15/07/2024 (at pages 113 to 124) of the order. In the aforesaid order, the Co-ordinate Bench of Allahabad Tribunal reduced the disallowance to 5% of the total claim. The learned A.R. for the assessee submitted that for this year also, facts and circumstances being similar, the disallowances should be restricted to 5% of the total claim. The learned CIT, D.R. left the matter to the discretion of the Bench. No distinguishable facts and circumstances or provisions of law have been brought to our attention by either side to distinguish the facts and circumstances of the present appeals before us, from the facts and circumstances in the aforesaid order dated 15/07/2024 of the Co-ordinate Bench of Allahabad Tribunal. Respectfully following the aforesaid order of Co-ordinate Bench of Allahabad Tribunal, we direct the Assessing Officer to restrict the disallowance out of aforesaid heads of expenditure to 5% of the total claim.

16. The last remaining issue in assessee's appeal is regarding the disallowance Rs.3,08,045/- out of freight & cartage (outward) expenses. The relevant portion of the assessment order is at paragraph No. 19, which is being reproduced below for the ease of reference:

19. Freight and Cartage on Zarda(Outward) has been debited at Rs.12,32,181/- in the profit and loss account. In the year under consideration, the goods transferred to the branch and M/s Kesarwani and company, Bhiwandi/Mumbai sent through vehicle owned by sistern concern have been found to be bogus and in the case of M/s Kesarwani and company assessee failed to furnish the details of transporter, name and complete address of transporter, agreement, if any, etc., therefore, goods sent through vehicle owned by sister concern are nothing but to claim bogus expenses of freight on that vehicle. Since assessee failed to furnish details of freight on the said vehicles, 25% out of above expenses i.e. **Rs.3,08,045/-** is disallowed and added to the income of the assessee firm.

Subject to above remarks, income of the assessee is computed as under:

Income as shown	: Rs. 1,66,99,236
<u>Add:</u>	
i. Bogus purchases as discussed above	: Rs. 73,16,513
ii. Suppression of production as discussed above.	: Rs. 7,76,72,166
iii. Bogus liability as discussed above	: Rs. 1,54,31,237
iv. Bogus expenditure in Deshawar as discussed	: Rs. 15,06,630
v. Extra sales from undisclosed stock as discussed above	: Rs. 3,58,05,157
vi. Unexplained stock transfer as discussed above (1629600+1629600+1706466)	: Rs. 49,65,666
vii. Disallowed out of entertainment expenses	: Rs. 74,154
viii. Bogus liability under Liabilities as discussed above.	: Rs. 17,90,328
ix. Disallowed out of telephone expenses	: Rs. 24,819
x. Out of Generator expenses	: Rs. 6,705
xi. Out of Maintenance of motor vehicle	: Rs. 58,785
xii. Out of petrol expenses	: Rs. 44,040
<u>xiii.</u> Out of freight and cartage(Outward)as discussed above.	: <u>Rs. 3,08,045</u>
	: Rs. 16,17,03,481
	or
	: Rs. 16,17,03,480

Assessment is, thus, completed on total income of Rs. 16,17,03,480/-. Issue notice of demand and challan. ITNS 150 is enclosed herewith. Charge interest under section 234B and 234C of the I.T.Act,1961. Initiate penalty proceedings under section 271AAA of the I.T.Act,1961.

17. The Assessing Officer disallowed 25% out of the total claim of Rs.12,32,181/- observing that the assessee had failed to furnish the details of transporters, name and complete address of the transporters, agreement if any etc. The aforesaid addition has been confirmed by

learned CIT(A) in the impugned appellate order, the relevant discussion is at paragraph No. 11 at pages 136 to 143 of the impugned appellate order.

18. At the time of hearing, the learned A.R. for the assessee submitted that no query was made by the Assessing Officer during assessment proceedings in respect of these expenses. He also contended that the transportation of goods has not been doubted by the Assessing Officer. He submitted that the aforesaid addition of Rs.3,08,045/- therefore, be deleted. The learned CIT, D.R. relied on the impugned order of the learned CIT(A), and on the assessment order.

19. We have heard the rival parties and have gone through the material placed on record. The basic fact in issue is in dispute, which has not been resolved by the learned CIT(A). While the Assessing Officer alleges that the assessee did not provide details of these expenses; the assessee on the other hand claims that no query was made by the Assessing Officer in respect of these expenses. As the factual matrix regarding this issue is not clear from our records, we restore this issue also back to the file of the learned CIT(A) with the direction to decide this issue afresh in accordance with law after providing reasonable opportunity to the assessee and to the Assessing Officer.

20. No other issues were urged or pressed by either side at the time of hearing. Although several grounds have been raised by the parties in the present appeal, all the grounds of appeal in these cross appeals are treated as disposed of in accordance with our aforesaid directions.

21. In the result, the appeal of Revenue is dismissed and the appeal of the assessee is partly allowed.

(Order pronounced in the open court on 30/06/2025)

Sd/.  
**(ANADEE NATH MISSHRA)**  
**Accountant Member**

Sd/.  
**(SUBHASH MALGURIA)**  
**Judicial Member**

Dated:30/06/2025  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Allahabad