IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 2293/Del/2013
AY: 2008-09

Rose Advertising (P) Ltd. CD 12, Vishaka Enclave Pitampura New Delhi 110 088 PAN: AAACR 1077 M	vs.	ITO, Ward 15(4) New Delhi

ITA No. 2827/Del/2013
AY: 2008-09

ITO Ward 15(4) New Delhi	vs.	Rose Advertising P.Ltd. CD 12, Pitampura Vishakha Enclave Delhi 110 034

ITA No. 2294/Del/2013
A.Y: 2009-10

Rose Advertising (P) Ltd. New Delhi	vs.	ITO, Ward 15(4) New Delhi

&

ITA No. 2828/Del/2013
AY: 2009-10

ITO, Ward 15(4), N.Del.	vs.	Rose Advtg. P.Ltd., N.Del.
(Appellant)		**(Respondent)**

Assessee by : Sh. Ved Jain, Adv.
And Sh. Pranjal Srivastava, Adv.

Department by : Sh. F.R.Meena, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

These are Cross Appeals for the Assessment year (A.Y.) 2008-09 and 2009-10. As the issues arising in all these appeals are common, for the sake of convenience they are heard together and are disposed of by way of this common order.

2. Facts of the case:- The assessee is a Company and is carrying on the business of an Advertising Agency. It filed its return of income for the A.Y. 2008-09 on 27.9.2008 declaring total income of Rs.9,96,00,424/- and for the A.Y. 2009-10 on 30.9.2009 declaring Rs.17,84,270/-. The assessments for both the A.Ys were completed u/s 143(3) of the Income Tax Act, 1961 (the Act). The Assessing Officer (A.O.) assessed the total income of the assessee for the A.Y. 2008-09 at

Rs.3,87,28,170/- and for the A.Y. 2009-10 at Rs.2,79,67,100/-.

2.1. On appeal the First Appellate Authority (FAA) granted part relief in both the years. Aggrieved, both the assessee as well as the Revenue are in appeal before us.

2.2. We have heard Mr.Ved Jain, the Ld.Counsel for the assessee and Shri F.R.Meena, Ld.Sr.D.R. on behalf of the Revenue. We have carefully considered the rival contentions, the papers on record, the orders of the authorities below.

3. We would dispose of the issues that arise in these appeals ground-wise, after considering the facts on record and submissions of both the parties as well as case laws cited.

4. We first take up the assessee's appeal in ITA 2293/Del/13 for the A.Y. 2008-09.

5. Ground no.1 is general in nature.

6. Ground no.2A and 2B are disputing the disallowance of Rs.62,46,183/- being expenditure incurred by the assessee for construction and fabrication of Dhallows.

6.1. Facts of this disallowance are, M/s Delhi Waste Management Pvt.Ltd. entered into an agreement with one M/s

Green Line, for construction of Dhallows. The assessee entered into an agreement with M/s Green Line by which this work of constructions of Dhallows was entrusted to the assessee. As per the terms of the agreement the sites were handed over to the assessee on 1.9.2006 and the agreement was valid from 1.9.2006 to 18.12.2009. The assessee claimed the expenditure incurred by it on the construction/fabrication of Dhallows by spreading the same over a period of three years. The A.O. disallowed the claim on the following grounds.

"1. No specific obligation of the assessee to undertake renovation of the dhallows.
2. Absence of Agreements between the assessee and the contractors who constructed them.
3. Common nomenclature/description on Bill/invoices raised for construction of dhallows.
4. Absence of any digital evidence so as to prove the condition ,of the dhallows before and after the renovation/construction by the assessee.

6.2. The assessee carried the matter in appeal.

6.3. After admitting additional evidence and calling for remand report the Ld.CIT(A) observed as follows

"6.2 The objection of the Assessing Officer and the rejoinder of the appellant for considering the additional evidence, as reproduced above, has been considered. In lieu of natural

justice, the report of the Assessing Officer on examination of the evidence on merits is being considered. On this ground of appeal, the Assessing Officer submitted his report on merit dated 3/12/2012 as under.

With reference to disallowance of amortization claimed on expenses incurred on construction of Dhallows of Rs. 62,46,183/-.

During the course of assessment proceedings for the captioned assessment year, it was noticed that the assessee company had entered into an agreement with M/s Green Line, who in turn had already entered into an agreement with one M/s Delhi Waste Management Private Limited, which company was principal contractor of MCD for contract of operate, maintain and manage the depilated dhallows.

It was observed that huge expense was incurred by the assessee company during the captioned assessment year on renovation/construction of dhallows, which the assessee had contended, were in bad and depilated condition. The copies of the agreement between MCD and Delhi Waste Management Pvt. Ltd. and further agreements between Delhi Waste Management Pvt. Ltd and one M/s Green line and lastly that of M/s Green Line awarding the contract to operate, maintain and manage the dhallows at various locations in Delhi had been placed on records during the assessment proceedings.

Analysis of cumulative perusal of these agreements and the relevant observations in this regard had been elaborately contained in the assessment order for the captioned assessment year and also is not being further discussed for the want of

brevity.

Nonetheless the major observations for disallowance of expenses incurred pertained to:-

1. *No specific obligation of the assessee to undertake renovation of the dhallows.*
2. *Absence of Agreements between the assessee and the contractors who constructed them.*
3. *Common nomenclature/description on Bill/invoices raised for construction of dhallows.*
4. *Absence of any digital evidence so as to prove the condition ,of the dhallows before and after the renovation/construction by the assessee.*

In this regard, the assessee had not filed any new evidence, so as to fortify his contentions. However, during the course of remand proceeding, the assessee has furnished detailed photographs of the dhallows showing the extent of renovation/construction got carried/undertaken by it through various contractors.

The assessee had also been contending that the requisite finance/loan for renovation was *sanctioned to it, by M/s Karnataka Bank Limited, as per page3 75 to 77 of the paper book. It is noticed from these pages that 63 no. of Dhallows had been offered as collateral security of the value of Rs.189 lakhs by the assessee to its bank. Also page 75 of the paper book reveals that an amount of Rs.100 lakhs has been sanctioned by the bankers as term loan for erection, repair and maintenance and to carry out advertisement in dhallow (garbage Station).”*

6.4. Thereafter the Ld.CIT(A) held as follows:

(a) The expenditure on construction/fabrication incurred by the assessee results on a benefit of enduring nature and is not of revenue in nature. The Dhallows are not owned by the assessee company and are on lease for the period of more than three years.

(b) Dhallows are like a base or structures for putting up display boards and are akin to a land or building leased out only for the purpose of putting up hoardings for display of advertisement.

(c) The liability to renovate any such site will be with the owner of the site so that it can be used for the purpose of displaying the advertisememt. The assessee company can thus not claim that it was its liability to replace to reconstruct the Dhallows. Even if it is presumed that the renovation of the Dhallows was carried out by the assessee company for the purpose of display of advertisements, the expenses are clearly capital in nature and it has been incurred on the land or site on which the advertisements are displayed. Thus the disallowance made by the A.O. was upheld on the ground that the expenditure is in the capital field.

(d) Since the ownership of the Dhallows vests with the MCD, depreciation was not admissible on this expenditure.

7. After hearing rival contentions we hold as follows.

8. At page 53 to 57 of the paper book a copy of the concession agreement between MCD and M/s Delhi Waste Management P.Ltd. is placed. At pages 58 to 71 of the paper book, a copy of the agreement between Delhi Waste Management Pvt.Ltd. and M/s Green Line is placed. At pages 72 to 88 of the paper book, a copy of the agreement between M/s Green Line and the assessee company has been placed. A perusal of these agreements and the other papers on record demonstrate that the expenditure has been incurred by the assessee in pursuance of the agreement entered into with M/s Green Line. Para 4 of the agreement specifically states that the agreement shall be co-terminous with the agreement between M/s Green Line and M/s Delhi Waste Management Pvt.Ltd. The assessee has taken credit facilities from M/s Karnataka Bank for construction/fabrication of these Dhallows. The assessee submitted bills and vouchers as evidence of having incurred this expenditure. Confirmation letters from contractors, as well as photographs and copies of bank

statements evidencing payments to contractors have also been filed. The loan was specifically granted by M/s Karnataka Bank for the purpose of construction and renovation of Dhallows. On the face of such overwhelming evidence, in our view the Ld.CIT(A) has rightly upheld the genuineness of the expenditure incurred.

8.1. Hence this issue of genuineness of expenditure is decided in favour of the assessee.

9. Now we take up the issue of allowability of this expenditure. The contract as per the agreement is for the period of three years. The assessee was required to incur expenditure on certain property which was not owned by the assessee. The assessee earned revenues for incurring this expenditure. The benefit that accrues to the assessee for incurring this expenditure is spread over a period of three years. Under these circumstances the conclusion of the Ld.CIT(A) that the expenditure is in the capital filed, in our view is not correct. The assessee, as a contractor and agreement holder has incurred certain expenditure wholly and exclusively for the purpose of his business. The nature of the expenditure is construction and renovation of Dhallows, on a

property which does not belong to him. There is no enduring benefit that arises to the assessee. The expenditure is in the revenue field.

9.1. The CBDT in its Circular no.09/2014 dt. 23rd April, 2014, on the issue of construction of expenditure incurred for the development of road/ highways, which assets do not belong to the assessee at para 4, 5 and 6 held as follows.

"4. There is no doubt that where the assessee incurs expenditure on a project for development of roads/highways, he is entitled to recover cost incurred by him towards development of such facility (comprising of construction cost and other pre-operative expenses) during the construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of the agreement. Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. vs. CIT in 225 ITR 802allowed spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on an infrastructure project for development of roads/highways under BOT agreement may be treated as having been made/incurred for the purposes of business or profession of the assessee and same may be allowed to be spread during the tenure of concessionaire agreement.

5. in view of above, Central Board of Direct Taxes, in exercise of the powers conferred under section 119of the Acthereby clarifies that the cost of construction on development of infrastructure facility of roads/highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act.

6. The amortization allowable may be computed at' the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortized evenly over the period of concessionaire agreement after excluding the time take for creation of such facility."

9.2. In our view, the spirit of this Circular applies to the facts of the present case, as there is no doubt that the assessee has incurred expenditure in pursuance of a contractor on an asset not owned by it the benefit of which is for a period of three years.

9.3. The CBDT relied on the decision of the Hon'ble Supreme Court in the case of Madras Industrial Corporation Ltd. vs. CIT (1997) 225 ITR 802. The Mumbai Bench of the Tribunal in the case of ITO vs. Shreyas Shipping Ltd. (2002) (5) TMI 203-ITAT Bombay H Bench in its order dt. 24th May, 2002 had at para 17 held as follows.

"17. From the discussion in the foregoing paragraphs we find that the legal position in nutshell is that computation of income under the heads 'Profits and gains of business or profession' or 'Income from other sources' should be made in accordance with the method of accounting regularly employed by the assessee as long as the method of accounting is such as income may properly be deduced therefrom. In such a scenario we find it hard to accept the proposition that under the Income-tax Act there is watertight compartmentalisation of expenditure to be either allowed in one single year as revenue expenditure or to be disallowed altogether as capital expenditure. As a matter of fact, the complexities and variety of businesses that assessees do carry on would simply militate against such inflexible approach. There are hundreds of assessments being completed in the cases of builders and construction firms based on' Project Completion Method'. Under this method, even revenue expenditure incurred by the assessee year after year is simply carried forward as "Work-in-progress" to be finally reckoned with in the year when the project is substantially completed or sales are substantially executed. These cases are standard examples of deferred revenue expenditure. There can be myriad similar situations. Having regard to this, Hon'ble Supreme Court have held in the case of Madras Industrial Investment Corpn. Ltd., that the general rule that revenue expenditure must be allowed in its entirety in the year in which it is incurred admits of exceptions and on the contrary there may be cases where rigid observations of the general rule may result into a very distorted picture of the profits of a particular year."

9.4. The concept of deferred revenue expenditure is not new to Income Tax law. When the income is to be matched with the expenditure year wise, the expenditure is spread over the period of contract.

9.5. In view of the above discussion and taking strength on the Circular of the CBDT no.09/2014, and as the claim of the assessee is apread over three years, we are of the considered opinion that the claim of the assessee for deduction of only 1/3rd of the expenditure for each year should be allowed.

9.3. In the result ground no.2 is allowed.

10. Ground no.3 and 4 are against an addition of Rs.3 lakhs and Rs.2,50,000/- respectively being share application money received, from two different persons u/s 68 of the Act. The Ld.CIT(A) had upheld this addition on the ground that:

(a) the confirmation received by the assessee from M/s Electronic Galary India Pvt.Ltd. has certain discrepancies and that in the case of Shri Manohar Lal Gupta, the bank statement of the party could not be furnished.

10.1. On a careful consideration of these submissions, we find that the assessee has filed (i) an affidavit from the parties confirming the transaction, (ii) confirmation of account, (iii) PAN details, (iv) copy of Income Tax returns of those persons. In the case of M/s Electronics Galary of India Ltd. a copy of bank statement. Only in the case of Shri Manohar Lal Gupta, the assessee could not obtain the copy of his bank account. The assessee has discharged its burden of proof. The A.O. has not done any investigation or verification. He simply rejected the evidence filed by the assessee. There is no enquiry by the A.O.

10.2. On these facts we examine the legal position.

a) In the case of CIT vs. Gangeshwari Metal P.Ltd. in ITA no.597/2012 judgement dt. 21.1.2013, the Hon'ble High Court after considering the decisions in the case of Nova Promoters and Finlease Pvt.Ltd. 342 ITR 169 and judgment in the case of CIT vs. Lovely Exports 319 ITR (Sat.5)(S.C.) held as follows.

"As can be seen from the above extract, two types of cases have been indicated. One in which the Assessing Officer

carries out the exercise which is required in law and the other in which the Assessing Officer (sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect-

"Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs.l,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs. 55,50,000/- and not Rs.l,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found

correct. As such the unexplained amount is to be taken at Rs.55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance4 sheet, etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs. 55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings under Section 271(1)(c) are being initiated separately. "

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the

Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act, 1961.

Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law. "

The case on hand clearly falls in the category where there is lack of enquiry on the part of the A.O. as in the case of Gangeshwari Metals (supra).

b) In the case of Finlease Pvt.Ltd. 342 ITR 169 (supra) in ITA 232/2012 judgement dt. 22.11.2012 at para 6 to 8, it is held as follows.

"6. This Court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income Tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the ROC in relation to the share application, affidavits for the directors, form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the

investigation report and the statement of Mr.Mahes Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of S. 68 of the Income Tax Act, 1961.

7. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

8. The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it

is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators, such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under Section 68, the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material."

14. Thus a clear distinction has been made out in cases where the AO has conducted certain investigations and in cases where the AO merely rejected the evidences filed by the assessee and made an addition based on presumptions."

10.3. Applying the propositions laid down in these case laws to the facts of this case, we have to necessarily delete these additions, as the assessee has discharged the burden of proof that lay on it and the A.O. has not conducted any enquiry and has not brought any evidence on record in

support of the addition. In the result these additions are deleted.

10.4. In the result ground nos. 3 and 4 are allowed.

11. Ground no.5 is against the disallowance of commission expenses paid to persons covered u/s 40A(2)(b) of the Act. The AO had made a disallowance of Rs.70,70,512/- and that there is no basis for payment of such commission. The Ld.CIT(A) restricted the addition to Rs.6,54,982/- on the ground that the commission was paid to persons covered u/s 40A(2)(b) of the Act.

12. After hearing rival contentions we find that the assessee had submitted confirmations from Mr.Pranav Jindal and Ms. Supriya Jindal and also the copies of their income tax returns wherein the commission has been duly accounted, for along with copies of bank statements. The details of the services rendered by the parties, the contracts received as a result of such services rendered have been furnished. The A.O. issued notices u/s 133(6) of the Act to the parties and

they have responded to these notices and confirmed the transactions. Under these circumstances we hold that the payment of commission is genuine. We also note that the commission paid to these parties have been accepted by the Revenue in the earlier years. So on the principle of consistency also this finding of the A.O. is to be reversed.

12.1. The Ld.CIT(A) justified the disallowance on the ground that:

(a) their statements have not been recorded u/s 133(6)/133(1) of the Act by the A.O.;

(b) no specific justification was filed by the assessee;

(c) These persons are son and daughter in law of the Director of the assessee company;

12.2. We do not see any merit in disallowing this claim of the assessee on these grounds.

12.3. If the AO has not recorded a statement, then how can the assessee be held responsible for it. Merely being relatives of the Directors does not go to prove that the claim is false. The assessee has filed details as to the services rendered by these two people. Hence we uphold the contentions of the assessee and allow this appeal of the assessee.

12.4. In the result this appeal of the assessee is allowed.

13. This brings us to the Revenue's appeals in ITA 2827/Del/13 for the A.Y. 2008-09. The grounds of Revenue read as under.

"1. The Ld.CIT(A) has erred in law and on facts in allowing the relief to the assessee on the basis of the additional evidences filed by the assessee during the appellate proceedings.

2. The Ld.CIT(A) has erred in law and on facts in admitting the said additional evidences without giving speaking reasons which is an essential condition laid down in Rule 46A(2) of the Income Tax Rules for admission of such evidences.

3. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal."

14. After hearing rival contentions we find that the Ld.CIT(A) admitted the additional evidence on the ground of natural justice. The schedule of hearing and the opportunity given by the A.O. are brought out from pages 12 to 14 of the Ld.CIT(A)'s order.

Under these circumstances we are of the considered opinion that the additional evidences filed by the company under Rule 29 of the ITAT Rules should be admitted in the interest of justice. While doing so we rely on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Text Hundred Industries Ltd. (2013) 351 ITR 57 wherein it is held as under.

"13. The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motto action of the Tribunal. The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well settled that the procedure is handmade of justice and justice should not be allowed to be choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect."

The Hon'ble Delhi High Court in the case of CIT vs. Virgin Securities & Credits P.Ltd. 332 ITR 396 at para 8 held as follows.

"8. The aforesaid contention appears to be devoid of any merit. It is a matter of record that before admitting the additional evidence, the CIT (A) had obtained remand report from the AO. While submitting his report, the AO had not objected to the admission of the additional evidence, but had merely reiterated the contentions in the assessment orders. it is only after considering the remand report, the CIT(A) had admitted the additional

evidence. It cannot be disputed that this additional evidence was crucial to the disposal of the appeal and had a direct bearing on the quantum of claim made by the assessee. Plea of the assessee which was taken before the AO remains the same. The AO had taken adverse note because or non-production of certain documents to support the plea and it was in these circumstances the additional evidence was submitted before the CIT(A). It cannot be said not is it the case of the Revenue that additional evidence is not permissible at all before the first appellate authority. On the contrary, Rule 46A of the Act permits the (IT (A) to admit additional evidence if he finds that the same is crucial for disposal of the appeal. In the facts of this case, therefore, we are of the opinion that on this aspect, no substantial question of law arises

14.1. Applying the propositions laid down therein to the facts of the case on hand we find no infirmity in the order of the Ld.CIT(A) in admitting additional evidence under Rule 46A. In the result this appeal of the Revenue stands dismissed.

15. We now take up ITA 2294/Del/13 which is the assessee's appeal for the A.Y. 2009-10.

16. Ground no.1 is against the disallowance of deferred revenue expenditure on construction of Dhallows. This issue has arisen during the A.Y. 2008-09 in assessee's appeal as

ground no.1. Consistent with the view taken therein we allow this ground of the assessee.

16.1. Ground no.2 is on the disallowance of commission amounting to Rs.8,70,750/- by the Ld.CIT(A) u/s 40A(2)(b) of the Act. This issue is identical with ground no.5 for the A.Y. 2008-09. Consistent with the view taken therein this ground of the assessee is allowed.

17. Hence this appeal by the assessee for the A.Y. 2009-10 is allowed.

18. ITA 2827/Del/13 is revenue's appeal for the A.Y. 2009-10. Both the grounds of Revenue dispute the action of the Ld.CIT(A) in admitting additional evidence under Rule 46A.

18.1. This issue is similar to the issue dealt by us in the Revenue's appeal for the A.Y. 2008-09. Consistent with the view taken therein we dismiss this appeal of the Revenue.

19. In the result both the appeals of the assessee in ITA nos. 2293/Del/13 for the A.Y.2008-09 and 2294/Del/13 for the A.Y. 2009-10 are allowed. Both the appeals by the Revenue in ITA 2826/Del/13 for the A.Y. 2008-09 and ITA 2828/Del/13 for the A.Y. 2009-10 are dismissed.

Order pronounced in the Open Court on 30th Sept.2016.

Sd/-	Sd/-
(KULDIP SINGH)	**(J. SUDHAKAR REDDY)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: the 30th Sept. 2016

- *Manga*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR

ITAT, New Delhi