

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. **82 to 86/CHD/2022**
निर्धारण वर्ष / Assessment Years : 2013-14 to 2017-18

M/s. DSG Papers Pvt. Ltd., 6, Green View Colony, Patiala-147 001.	बनाम	The ACIT / DCIT, Central Circle, Patiala.
स्थायी लेखा सं./PAN NO: AACCD 1450 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Adv.
राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 07.06.2022
उद्घोषणा की तारीख/Date of Pronouncement : 29.07.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

All these appeals have been preferred by the Assessee as per the following details:-

S. No.	ITA No.	Assessment year	CIT(A) order dated
1	82/Chd/ 2022	2013-14	24.12.2021
2	83/Chd/ 2022	2014-15	24.12.2021
3	84/Chd/ 2022	2015-16	24.12.2021
4	85/Chd/ 2022	2016-17	24.12.2021
5	86/Chd/ 2022	2017-18	31.12.2021

1.1 Since these appeals involved identical issues, they were heard together and are being disposed off by this common order for the sake of convenience.

2.0 The facts in brief for the assessment year 2013-14 in ITA No. 82/Chd/2022 are that the assessee is a Private Limited Company engaged in the business of manufacturing of paper and paper products. The return of income for the relevant assessment year was filed on 28.09.2013 declaring a loss of Rs. 3,01,960/- whereas the book profit in terms of section 115JB of the Income Tax Act, 1961 (hereinafter called 'the Act') was computed at Rs. 3,27,62,297/- The case was selected for scrutiny. The assessment in terms of section 143(3) of the Act was completed on 20.03.2016 at the returned income and further at an income of Rs. 3,42,59,028/- in terms of section 115JB of the Act. Subsequently, revisionary proceedings were initiated for assessment year 2013-14 u/s 263 of the Act and vide order dated 31.08.2017, the Ld. Pr. Commissioner of Income Tax (PCIT), Patiala set aside the assessment order and directed the Assessing Officer (AO) to pass a fresh assessment order. The assessment subsequent to the revisionary proceedings was completed on 26.12.2018 wherein the income of the assessee was assessed as per the original assessment order passed u/s 143(3) of the Act on 20.03.2016.

2.1 Meanwhile, there was a search and seizure operation on 05.08.2016 on the business premises of the assessee by the Directorate

General of GST Intelligence and the search was also conducted on one Shri Sanjay Dhawan, Ex-President of the assessee company as well as three-four dealers of the assessee company and information was passed on by the Intelligence Wing of GST to the Income Tax Department that the assessee company had been allegedly suppressing its turn over by way of not accounting for the sales by under invoicing the sales. During the course of search at the residential premises of Shri Sanjay Dhawan, parallel invoices of goods manufactured and sold by the assessee company were allegedly recovered. The evidence of under valuation of sales was allegedly in the form of statements of third parties recorded u/s 14 of the Central Excise Act, 1944. There was also allegedly evidence of unaccounted sales and under- valuation of accounted sales made to third parties in the form of e-mail communication between the Assessee Company and third parties. Statements of Shri Sanjay Dhawan as well as one Shri Shiv Charan Lal, the Ex-Dispatch Incharge of the assessee company were also recorded u/s 14 of the Central Excise Act, 1944 which allegedly pointed out towards issuance of parallel invoices by the assessee company. As per the information available, there was evidence of unaccounted sales to third parties in the form of delivery sheets etc. In view of this information, the AO proceeded to reopen the assessee's case u/s 148 of the Act by recording reasons for the same.

2.2 During the course of re-assessment proceedings, the AO proceeded to reject the books of account maintained by the assessee u/s 145(3) of the Act and, thereafter, proceeded to complete the re-assessment at an

income of Rs. 46,36,749/- after making an addition of Rs. 31,40,021/- on account of additional net profit by applying the net profit rate of 4.42%. The alleged undisclosed sales for the year were computed at Rs. 3,62,60,331/-

2.3 Aggrieved, the assessee carried the matter before Ld. First Appellate Authority challenging the rejection of books of account and also challenging the addition on merits. The Ld. CIT(A) partly allowed the appeal of the assessee. The Ld. CIT(A) upheld the action of the AO in rejecting the books of account but gave part relief in respect of additional net profit by holding that the average net profit rate of 3.64% was to be applied rather than 4.42% thereby sustaining the addition only to the extent of Rs. 16,02,706/-.

2.4 Now the assessee has approached this Tribunal challenging the order of the Ld. First Appellate Authority by raising the following grounds of appeal:

1. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the rejection of books of accounts of the assessee without considering the facts of the case & material available on records.*
2. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the addition of Rs. 16,02,706/-, made by applying net profit (Declared by the assessee) @ 4.42% on suppressed sales, ignoring the fact that the said books of accounts were already rejected u/s 145(3) of the Income Tax Act, 1961. Thus such additions must be deleted by reversing the findings of the CIT(Appeal).*

3. *That the Ld. CIT(A) has erred in confirming the action of NIL the Ld. A.O. confirming the addition without considering the fact that the said addition is based on findings of excise authorities and the Id. Assessing officer has failed to conduct any independent enquiry in the matter and NO addition can be made on the basis of such findings when, Excise laws and Income tax laws are totally independent.*
4. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. by not allowing the interest income of Rs. 10,82,322/- to be reduced from net profit to calculate addition by applying Net Profit Rate of 4.42% on suppressed sales.*

3.0 In ITA No. 83/Chd/2022 pertaining to assessment year 2014-15, the brief facts of the case are that in this year, the return of income was originally filed on 29.11.2014 declaring income of Rs. 2,46,90,000/- under the normal provisions of the Act and income of Rs. 3,52,95,302/- in terms of provisions of section 115JB of the Act. The assessee's return was originally processed u/s 143(1) of the Act and, subsequently, on receipt of information from the Directorate General of GST Intelligence with respect of the search conducted by the Excise Department on the assessee as well as its related parties, the dealers and customers, the assessee's case was reopened in terms of section 147 read with section 148 of the Act as was done in assessment year 2013-14 also. The re-assessment proceedings were completed at an income of Rs. 3,70,15,860/- after allowing the benefit of set off of brought forward losses for assessment year 2013-14 and after making an addition of Rs. 1,08,88,127/- in respect of additional net profit earned by the company

by applying net profit rate of 4.19%. The alleged undisclosed sales for the year were computed at Rs. 1,46,95,491/- by the AO. In this year also, the AO rejected the books of account u/s 145(3) of the Act.

3.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the rejection of books of account as well as challenging the addition on merits. In this year also, the Ld. CIT(A) partly allowed the appeal by upholding the rejection of books of account but gave relief to the assessee in respect of additional net profit earned by applying the net profit rate of 3.64% in place of 4.19% thereby sustaining the addition only to the extent of Rs. 6,15,741/-.

3.2 Now the assessee has approached this Tribunal challenging the order of the Ld. CIT(A) by raising following grounds of appeal:-

- 1. That the Ld. CIT(A) has erred in confirming the action of NIL the Ld. A.O. regarding the rejection of books of accounts of the assessee without considering the facts of the case & material available on records.*
- 2. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the addition of Rs. 6,15,741/-, made by applying net profit (Declared by the assessee) @ 4.19% on suppressed sales, ignoring the fact that the said books of accounts were already rejected u/s 145(3) of the Income Tax Act, 1961. Thus such additions must be deleted by reversing the findings of the CIT(Appeal).*
- 3. That the Ld. CIT(A) has erred in confirming the action of NIL the Ld. A.O. confirming the addition without considering the fact that the said addition is based on findings of excise authorities and the Id. Assessing officer has failed to conduct any*

independent enquiry in the matter and NO addition can be made on the basis of such findings when Excise laws and Income tax laws are totally independent.

4. *That the Ld. CIT(A) has erred in confirming the action of Ld. A.O. by not allowing the interest income of Rs.11,35,772/- to be reduced from net profit to calculate addition by applying Net Profit Rate of 4.19% on suppressed sales.*

4.0 In ITA No. 84/Chd/2022, for assessment year 2015-16, the original return of income was filed on 31.10.2015 declaring an income of Rs. 1,58,54,752/- and the assessment was completed u/s 143(3) of the Act on 28.08.2017. Subsequently, in view of the information received from the Directorate General of GST Intelligence, reassessment proceedings were initiated in this assessment year also and the assessment was completed at an income of Rs. 4,29,30,912/- after making an addition of Rs. 2,32,47,931/- by applying the net profit rate of 3.64%. The alleged suppressed turnover was computed at Rs. 16,63,62,468/-. The AO proceeded to reject the books of account in this year also.

4.1 On appeal, the Ld. CIT(A) upheld the rejection of books of account but allowed relief in respect of net profit by holding that the rate of 3.34% (as declared by the assessee) was to be applied as against the average net profit rate of 3.64% thereby sustaining the addition on this account only to the extent of Rs. 55,56,506/-.

4.2 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT(A) by raising following grounds of appeal:

1. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the rejection of books of accounts of the assessee without considering the facts of the case & material available on records.*
2. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the addition of Rs. 55,56,506/-, made by applying net profit (Declared by the assessee) @ 3.34% on suppressed sales, ignoring the fact that the said books of accounts were already rejected u/s 145(3) of the Income Tax Act, 1961. Thus such additions must be deleted by reversing the findings of the CIT(Appeal).*
3. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. confirming the addition without considering the fact that the said addition is based on findings of excise authorities and the Id. Assessing officer has failed to conduct any independent enquiry in the matter and NO addition can be made on the basis of such findings when Excise laws and Income tax laws are totally independent.*
4. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. by not allowing the other income of Rs.38,28,229/- i.e. interest income of Rs. 13,76,764/- and Foreign Exchange Fluctuations of Rs.24,51,465/-, to be reduced from net profit to calculate addition by applying Net Profit Rate of 3.34% on suppressed sales.*

5.0 In ITA No. 85/Chd/2022 for assessment year 2016-17, the return of income was filed on 17.10.2016 declaring income of Rs. 56,27,280/- after claiming deduction u/s 80IA of the Act to the tune of Rs. 1,37,74,817/-. The book profits declared u/s 115JB of the Act in this year were at Rs. 3,31,15,328/-. The return was processed u/s

143(3) of the Act. Subsequently, in view of the information received by the Department from Directorate General of GST Intelligence, the assessee's case in this year was also reopened u/s 147 read with section 148 of the Act. The re-assessment was completed at an income of Rs. 4,93,03,011/- after making an addition of Rs. 2,84,00,292/- in respect of additional net profit earned on suppressed turn over by applying net profit rate of 3.64% after rejecting the books of account. The alleged suppressed turnover in the year was computed at Rs. 20,67,53,177/- by the AO.

5.1 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the rejection of books of account as well as challenging the addition on merit and the Ld. First Appellate Authority, while upholding the rejection of books of account, allowed relief in respect of net profit on suppressed sales by holding that the net profit rate of 3.15% (as declared by the assessee) was to be applied rather than the net profit rate of 3.64% . This resulted in the addition on this account being sustained only to the extent of Rs. 65,12,725/-.

5.2 Now the assessee has approached this Tribunal challenging the order of the Ld. CIT(A) by raising following grounds of appeal:-

- 1. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the rejection of books of accounts of the assessee without considering the facts of the case & material available on records.*

2. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the addition of Rs. 65,12,725/-, made by applying net profit (Declared by the assessee) @ 3.15% on suppressed sales, ignoring the fact that the said) books of accounts were already rejected u/s 145(3) of the Income Tax Act, 1961. Thus such additions must be deleted by reversing the findings of the CIT(Appeal).*
3. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. confirming the addition without considering the fact that the said addition is based on findings of excise authorities and the Id. Assessing officer has failed to conduct any independent enquiry in the matter and NO addition can be made on the basis of such findings when Excise laws and Income tax laws are totally independent.*
4. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. by not allowing the other income of Rs.35,16,692/- i.e. interest income of Rs. 20,16,067/- and Foreign Exchange Fluctuations of Rs. 15,00,625/-, to be reduced from net profit to calculate addition by applying Net Profit Rate of 3.15% on suppressed sales.*

6.0 In ITA No. 86/Chd/2022 for assessment year 2017-18, the return of income was filed declaring total income of Rs. 92,01,120/- and the book profits u/s 115JB of the Act were declared at Rs. 4,01,66,753/-. The assessee's case had been selected for scrutiny and, subsequently, since the Department was in receipt of information from the Directorate General of GST Intelligence, such information was also incorporated during the course of assessment proceedings u/s 143(3) of the Act. The assessment was completed at an income of Rs. 3,97,89,949/- after making an addition of Rs. 1,63,86,976/- on account of additional net

profit earned on suppressed sales by applying the net profit rate of 3.64% after rejecting the books of account. The AO calculated the alleged suppressed sales at Rs. 4,71,44,275/- for this assessment year.

6.1 Aggrieved, the assessee carried the issue before the Ld. First Appellate Authority challenging the rejection of books of account as well as the addition on merits. Although the Ld. CIT(A) upheld the rejection of books of account, he gave part relief in respect of net profit earned on suppressed sales by holding that the net profit rate of 3.12% (as declared by the assessee) was to be applied rather than the average net profit rate of 3.64%.

6.2 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT(A) by raising following grounds of appeal:-

- 1. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the rejection of books of accounts of the assessee without considering the facts of the case & material available on records.*
- 2. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. regarding the addition of Rs. 14,70,900/-, made by applying net profit (Declared by the assessee) @ 3.12% on suppressed sales, ignoring the fact that the said books of accounts were already rejected u/s 145(3) of the Income Tax Act, 1961. Thus such additions must be deleted by reversing the Findings of the CIT(Appeal).*
- 3. That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. confirming the addition without considering the fact that the said addition is based on findings of excise authorities and the Id. Assessing officer has failed to conduct any independent enquiry in the matter and NO addition*

can be made on the basis of such findings when Excise laws and Income tax laws are totally independent.

4. *That the Ld. CIT(A) has erred in confirming the action of the Ld. A.O. by not allowing the other income of Rs. 47,09,238/- i.e. interest income of Rs. 22,41,950/- and Foreign Exchange Fluctuations of Rs. 24,67,288/-, to be reduced from net profit to calculate addition by applying Net Profit Rate of 3.12% on suppressed sales.*

7.0 At the outset, the Ld. AR submitted that his arguments for assessment years 2013-14 and 2014-15 would almost be identical, whereas, for assessment years 2015-16, 2016-17 and 2017-18, the arguments again would be identical. It was submitted that the assessee had been maintaining regular books of account in all the captioned years under appeal and the same were also subject to audit. It was submitted that the sales and purchases were fully vouched and no defects were ever found in the maintenance of books of account in any of the years under consideration. He also submitted that even the percentage of yield was constant throughout five years and for this purpose he drew our attention to page 226 of the paper book, wherein, yield report in the years under consideration has been tabulated. The same is being reproduced hereinunder for ready reference:-

DSG Papers Private Limited					
Yield Reports for FY 2011-12 to 2016-17 & for the period 01.04.2016 to 31.07.2016					
	Financial Year	Imported Waste Paper (MTS)	Raw Material Consumption (MTS)	Finished Goods Production (MTS)	Yield %
Complete Year	2011-12		32,555	23,102	70.96
Complete Year	2012-13		33,683	23,540	69.89
Complete Year	2013-14	752	29,194	22,384	74.75
Complete Year	2014-15	5,761	22,844	21,472	75.06
Complete Year	2015-16	7,279	28,301	24,690	69.39
Complete Year	2016-17		40,545	29,115	71.81
For the period 01.04.2016 to 31.07.2016	2016-17		14,911	10,323	69.23

7.1 It was further submitted that, thus, it could not be said that the results returned by the assessee company were at any such variance as would call for rejection of books of account and would also mandate profit estimation. It was further submitted that the assessee has been regularly maintaining the quantitative details in respect of stock and the consolidated figures for each year under appeal with respect to raw material consumed in quantity as well as opening and closing details of raw material have been duly incorporated and reflected in the Tax Audit Report. It was submitted that the AO has not pointed out any defect or discrepancies in the quantitative details so produced. It was also submitted that there was no allegation of any misappropriation and incorrect recording of transactions relating to purchases, sales or expenditure or percentage of yield, as recorded in the books of account. It was submitted that the only reason for the impugned additions was the information of search by the Excise Authorities in the premises of the assessee as

well as on Shri Sanjay Dhawan who was the Ex-President of the company and had earlier worked in the company from year 2009 to year 2013. It was submitted that the search had also been carried out on certain dealers of the assessee like S/Shri Gulshan Gaba, Naveen Salley and Sudhir Sethi. It was submitted that during the course of search on the premises of Shri Sanjay Dhawan, certain invoices (being 225 in number) were found and in the said invoices, the registration numbers of vehicles belonging to the assessee company were also mentioned which led the AO to form an incorrect belief that the assessee's income for the captioned years had escaped assessment. It was submitted that the Excise Authorities had also recorded the statements of third parties like S/Shri Gulshan Gaba, Naveen Salley and Sudhir Sethi as well as of Manoj Kumar, the Director of the assessee company. It was submitted that the AO had relied upon that statements of S/Shri Sanjay Dhawan Gulshan Gaba, Naveen Salley and Sudhir Sethi to make the impugned additions but had totally ignored the statement of Shri Manoj Kumar, the Director of the assessee company wherein he had completely denied having made any out of books sales or having issued any parallel invoices in the name of the assessee company. It was submitted that the parallel invoices were recovered from the premises of Shri Sanjay Dhawan against whom the Director Shri Manoj Kumar had already filed a complaint, prior to the date of search for having stolen bill books, bilties, cash and other electronic items. It was submitted that the AO

had also proceeded to record the statement of one Shri Shiv Charan Lal, who was an Ex- employee of the company, wherein, the said Ex-employee had accepted that parallel or fake sale invoices were issued and the goods were being transported through vehicles owned by the assessee company and further that these fake invoices were destroyed, once the consignment was delivered. It was submitted that if this statement was correct, how come these invoices were recovered from the residence of Shri Sanjay Dhawan?.

7.2 The Ld. AR further submitted that in his statement Shri Manoj Kumar, Director of the company had rebutted all the statements made by the third parties as well as the Ex-employee and the Ex-President of the company and had specifically stated that Shri Sanjay Dhawan was a disgruntled employee who had been removed from the post of President and against whom a compliant had already been filed. It was submitted that Shri Manoj Kumar had also pointed out in his statement that Shri Shiv Charan Lal also had left the company prior to the date of search and as such the statement of Shri Shiv Charan Lal had no evidentiary value. Our attention was also drawn to the statement of Shri Shiv Charan Lal recorded by the AO wherein he had accepted that he had alleged creation of fake invoices under pressure from the Excise Authorities. It was submitted that, therefore, in the absence of any incriminating material and only by placing reliance on the fake invoices seized from the residence of

Shri Sanjay Dhawan, against whom the assessee company had already filed a complaint and FIR, the AO could not have legally made any addition on account of alleged suppressed sales.

7.3 The Ld. AR further submitted that the FIR filed against Shri Sanjay Dhawan for theft of company's documents, which included sales invoices, bilty booklets, rubber stamps etc., was itself sufficient evidence to prove that the assessee had not made any undisclosed sales and that all these fake invoices had been created by Shri Sanjay Dhawan to put the assessee company under financial pressure and litigation. Our attention was drawn to the copy of the FIR and other complaints made in this regard and placed at pages 260 to 265 of the paper book.

7.4 It was further submitted that as far as assessment year 2013-14 was concerned, the original assessment was completed u/s 143(3) of the Act vide order dated 23.03.2016 which was subject to proceedings u/s 263 of the Act and subsequently consequential assessment was also framed at the same income without any further addition and, therefore, revisiting the same assessment for a third time was not to be sustained.

7.5 The Ld. AR also drew our attention to the reply filed by the assessee company in response to the show cause notice issued by Excise Authorities wherein it had been expressly stated that the recovery of documents from the residence of third parties had no relevance since Shri Sanjay Dhawan had already left the employment

with the company three years prior to the date of search and as such no reliance could have been placed on such documents which were manipulated. It was submitted that Shri Sanjay Dhawan was a hostile witness holding a grudge against the company and, therefore, no reliance should be placed on the documents in this regard. The Ld. AR placed reliance on the numerous case laws, wherein, it had been held that any entry found of loose papers in the premises of third party without any corroborative evidence, cannot be made the basis for addition.

7.6 It was further submitted that the AO had proceeded to calculate the alleged suppressed turn over on a completely wrong footing i.e. on the basis of the statements of Jalandhar and Ludhiana based dealers without there being any corroborative evidence to support the same.

7.7 The Ld. AR further submitted that the assessee company had sought cross examination of all the dealers and had requested the AO to issue summons to them for the purpose of cross examination but no such opportunity was granted and the AO proceeded to make the impugned additions based on their statements which was illegal and unsustainable in terms of the judgement of the Hon'ble Apex Court in the case of Andaman Timbers Industries Vs. Commissioner of Central Excise reported in (2015) 81 CTR (SC) 241. It was submitted that in this judgement, the Hon'ble Apex Court had held

that no reliance can be placed on the statement of such persons, if no opportunity of cross examination is afforded to the person concerned

7.8 It was further submitted by the Ld. AR that the statement of Shri Shiv Charan Lal about the transporting of goods in the company's own vehicles was false. Our attention was drawn to the copies of the sample invoices placed at pages 291 to 296 of the paper book (which are copies of the regular invoices for transporting of goods in the vehicles owned by the assessee and which had duly been recorded in the books of account) and referring to the said invoices, it was submitted that as per the Chart placed at page 307 of the paper book there were numerous discrepancies in the invoices recovered from the residence of Shri Sanjay Dhawan. This Chart is being reproduced herein in under for ready reference:-

Discrepancies in Invoices recovered from residence of Sanjay Dhawan											
S No	Invoice No	Destination	Date	Time Out	Truck No	Truck No	Date	Issue of Invoice	Destiantion	Invoice No	Time Gap
1	1584	Bathinda	5/11/2012	13.20 PM	PB10W-9885	9885	5/11/2012	19.57 PM	Jalandhar	1594	6.37
2	1602	Bathinda	8/11/2012	11.30 AM	PB11AH-8136	8136	8/11/2012	18.00 PM	Jalandhar	1608	6.30
3	1613	Bathinda	9/11/2012	16.30 PM	PB11AH-8136	8136	9/11/2012	16.40 PM	RAMPURAPHUL	1614	0.00
4	1607	Bathinda	9/11/2012	11.00 AM	PB11AH-8137	8137	9/11/2012	17.15 PM	Jalandhar	1614	6.15
5	1642	Bathinda	15/11/2012	11.00 AM	PB11AH-8136	8136	15/11/2012	16.20 PM	Ludhiana	1652	5.20
6	1667	Bathinda	18/11/2012	10.30 AM	PB10W-9885	9885	18/11/2012	9.40 AM	RAMPURAPHUL	1668	0.00
7	1768	Bathinda	2/12/2012	12.15 PM	PB11AH-8136	8136	2/12/2012	18.00 PM	Ludhiana	1770	5.45
8	1786	Bathinda	5/12/2012	11.30 AM	PB11AH-8137	8137	5/12/2012	16.30 PM	Jalandhar	1788	5.00
9	1790	Bathinda	6/12/2012	13.30 PM	PB11AH-8136	8136	6/12/2012	17.00 PM	Jalandhar	1790	3.50
10	1818	Bathinda	12/12/2012	11.20 AM	PB10W-9885	9885	12/12/2012	18.10 PM	Ludhiana	1822	6.50
11	1862	Bathinda	21/12/2012	11.10 AM	PB11AH-8136	8136	21/12/2012	17.00 PM	Jalandhar	1872	5.50
12	1895	Bathinda	27/12/2012	12.00 PM	PB11AH-8136	8136	27/12/2012	19.00 PM	Jalandhar	1904	5.00
13	198	Bathinda	7/5/2013	11.20 AM	PB11BA-4823	4823	7/5/2013	18.00 PM	Jalandhar	204	6.40

7.9 Referring to the Chart, the Ld. AR submitted that the time gap shown for completing the journey was unrealistic and it was

practically impossible to transport the goods by the same vehicle in such quick succession. It was further submitted that on account of distance from one city to another city as per timings mentioned in the above Chart and considering the time required for loading and unloading, it could not have been possible for the vehicle to make a second trip within few hours on the same day considering the distance between the factory and the first destination. The Ld. AR submitted that these submissions were also made before the lower authorities but the same were not given due consideration.

7.10 Referring again to the yield chart, which has already been reproduced in the preceding paragraph No. 7.0, the Ld. AR submitted that there is no iota of evidence that any expenditure towards purchases of raw material, chemicals etc. or expenditure towards extra labour charges or power required for manufacturing the extra yield was incurred. It was submitted that there was no significant variation in percentage of yield from year to year and, therefore, the allegation of extra production being sold through fake invoices or being adjusted through under-valuation is totally misconceived and based merely on conjectures and surmises. It was submitted that in absence of any corroborative evidence having been found to justify the addition and the case having been built only upon the oral statements of some dealers as well as the statement of Shri Sanjay Dhawan, the impugned additions were liable to be deleted. In this

regard, he placed reliance on numerous case laws which have been filed in the paper book and have been taken on record.

7.11 The Ld. AR, while challenging the findings of the Ld. CIT(A), further submitted that although the Ld. CIT(A) had given partial relief by applying the average net profit rate, he has sustained the computation of suppressed sales which is entirely based upon the statement of Shri Shiv Charan Lal, the third parties as well as Shri Sanjay Dhawan. It was submitted that the same was not sustainable in view of the assessee not having been afforded any opportunity to cross-examine the said parties. It was further submitted that other observation of the Ld. CIT(A) that the assessee had availed the benefit of the Dispute Resolution Scheme of the Central Excise Department, cannot be taken as a justification for the sustenance of addition for the simple reason that this scheme was formulated to end litigation under the Central Excise Laws and the assessee cannot be put to a disadvantage under Income Tax Law if it has availed the benefit of this scheme.

7.12 For assessment years 2015-16, 2016-17 and 2017-18, it was submitted that the basis for addition is only the statements of S/Shri Gulshan Gaba, Naveen Salley and Sudhir Sethi, and no tangible or corroborative material etc. have been found in this regard either from the premises of the assessee or from the premises of other parties which would justify the additions on account of suppressed

turn over and further application of net profit rate on the basis of earlier assessment years.

7.13 The Ld. AR further submitted that certain evidences were also extracted from the electronic records of one party M/s B.M Paper Mart, Delhi (reproduced at pages 6 &7 of the assessment order) and the AO has mentioned that these invoices have not been recorded in the books of account of the assessee company and has made the addition by treating the cash portion mentioned in such electronic records as suppressed turn over. The Ld. AR submitted that this addition was based on the statement of one Shri Manish Jain of B.M.Paper Mart but again the assessee was not afforded any opportunity to cross-examine Shri Manish Jain in spite of having made a specific request to do so. The Ld. AR submitted that, thus, the additions were not sustainable more so for the reason that the identity of the person sending the e-mails to M/s B.M.Paper Mart had not been established and, therefore, the addition based on such unverified electronic records was not sustainable. The Ld. AR drew our attention to the noting made by the AO at pages 6 &7 of the assessment order wherein he has mentioned that the series of the alleged unrecorded bills pertaining to June 2015 were as under:-

- a) CC 204
- b) CC 205
- c) CC 213
- d) CC 212
- e) CC 219
- f) CC 220

7.14 It was submitted that even if the statement of Shri Manish Jain is taken as correct then also as per the assessee's regular books of account, almost the same series of bills should have been existing, whereas, as per the regular books of account for the month of June 2015, the invoice series is 700. Our attention was drawn to the sample invoice placed at pages 297 to 306 of the paper book in this regard and it was submitted that, thus, the entire additions have been made by relying on irrelevant and incorrect allegations and were liable to be deleted.

7.15 Arguing for the issue in appeal in assessment year 2017-18, our attention was drawn to copy of the loose sheets, as seized from the premises of Shri Gulshan Gaba at Jalandhar on 05.08.2016, which contained certain notings with respect to the quantity and value of goods. The Ld. AR submitted that these loose sheets did not carry the name of the assessee and although Shri Gulshan Gaba had again given an oral statement that these notings were on account of paper supplied by the assessee company, it was submitted that this had already been denied by the assessee company before the AO in the statement of Shri Manoj Kumar, the Director of the Company on 16.11.2019. It was submitted that these loose sheets being a third party evidence, having no name of the assessee or signature of the assessee or of even any representative of the assessee, in the absence of any cross-examination having been allowed to the assessee even after a specific request, had no

evidentiary value and, therefore, the same could not be used for the purpose of making impugned addition on account of suppressed turn over.

7.16 The Ld. AR further submitted that ground No.4 in the assessee's appeals for assessment years 2015-16, 2016-17, 2017-18 were not being pressed.

8.0 In response to the various arguments advanced by the Ld. AR, the Ld. Senior Departmental Representative (Sr. DR) vehemently argued that it was not in dispute that S/Shri Sanjay Dhawan, Shiv Charan Lal as well as Gulshan Gaba and Naveen Salley and Sunil Sethi had accepted before the Central Excise Authorities during the course of search carried out by the Excise Authorities that the assessee company had been making out of book sales by under billing of invoices by Rs. 4 to Rs. 10 per kg. and that the payment for under invoicing was being settled in cash. The Ld. DR further submitted that it was also a fact on record that the invoices were seized from the residential premises of Shri Sanjay Dhawan and further the dealers had also confirmed that these invoices pertained to transactions with them which were not accounted in the books of account of the assessee. The Ld. DR drew our attention to pages 8 & 9 of the assessment order wherein the AO has summarised the sample invoices seized from the premises of Shri Sanjay Dhawan and it was submitted that no further evidence was required to corroborate the same. The Ld. Sr. DR also referred to the statements of

S/Shri Naveen Salley, Gulshan Gaba and Sudhir Sethi to demonstrate that both the lower authorities have rightly confirmed the unaccounted turn over. It was submitted that the AO has even explained the modus operandi being followed out by the assessee in this regard and it was submitted that the statement of the three parties were identical in as far as the modus operandi of the assessee company was concerned. He also submitted that the assessee was duly confronted with all the statements and the assessee did not offer any explanation in this regard and further submitted that since the assessee had no explanation to offer, the cross-examination was not necessary. It was further submitted that earlier, even Shri Manoj Kumar, the Director had accepted the fact of under invoicing and suppression of sales in his statement and it was only at a later stage that this statement of acceptance was retracted. It was submitted that the retraction by Shri Manoj Kumar was an afterthought and should not be accepted and the addition should be upheld based on his acceptance before the lower authorities.

8.1 The Ld. Sr. DR also referred to the statement of Shri Shiv Charan Lal, Ex-employee, which has been reproduced at pages 23 to 30 of the assessment order and made a particular reference to the Question Nos. 6, 7, 9 and 12, wherein the said Ex-employee has explained the modus operandi of issuing parallel invoices.

8.2 Similarly, in respect of the e-mails having been recovered from M/s B.M. Paper Mart and sent by one Shri Sunil Kumar, part time employee of the assessee company, the Ld. Sr.DR submitted that such

statement could not be ignored in the light of the statement of Shri Manish Kumar, Director of M/s B.M. Paper Mart, who also had accepted the fact of under invoicing by the company.

8.3 With respect to the assessee's argument regarding the opportunity of cross examining not having been allowed, the Ld. Sr. DR submitted that each and every facet of the assessee indulging in under invoicing and suppression of sales is borne out from the invoices recovered from the premises of Shri Sanjay Dahwan and also from the statements of the dealers as well as the Ex-employee of the company and nothing more was required to prove the allegation against the assessee company with respect to the under billing and suppression of sales and as such the assessee does not deserve any leniency just because cross-examination did not happen.

8.4 It was further submitted that the assessee having opted for the Dispute Resolution Scheme of the Excise Department in a way pointed out that the assessee had accepted that it had indulged in malpractices.

9.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the four statements namely of Shri Gulshan Gaba, Proprietor of M/s Amit Papers, Shri Naveen Salley, Prop of M/s Ess Ess Sales Corporation and Shri Sudhir Sethi, Proprietor of M/s J.S. Enterprises and also of Shri Manish Jain, Proprietor of M/s B.M. Papers Mart. We have also gone through the statement of Shri Shiv Charan Lal, an Ex- employee of the company. We

have also perused the copies of some of the invoices which were recovered from the residence of Shri Sanjay Dhawan based on which it has been alleged that the assessee company was engaged in making unaccounted sales through under billing of invoices. We note that it is an undisputed fact that during the course of search proceedings conducted by the Central Excise Authorities, neither at the premises of the assessee company nor from any other premises, any other evidence with regard to undisclosed sales was found except for the invoices recovered from the residence of Shri Sanjay Dhawan and the impugned additions on account of the undisclosed / additional net profit on search alleged unaccounted sales have been made only on the basis of invoices recovered from the residence of Shri Sanjay Dhawan as well as the statements of S/Shri Gulshan Gaba, Naveen Salley, Sudhir Sethi, Manish Jain and Shiv Charan Lal. It is also an undisputed fact that the assessee had specifically requested the AO to provide an opportunity to it to cross- examine these four persons but such opportunity was not granted and the AO brushed aside the request of the assessee for the opportunity to cross- examine these persons by simply observing that since the assessee had no explanation to offer, there was no requirement for giving any such opportunity. Thus, the fact remains that the AO had proceeded to make the impugned additions on the basis of statements recorded behind the back of the assessee and without giving any proper opportunity to the assessee to rebut the same by cross examination. It is a settled law that unless and until the allegations are

supported by adequate and supporting corroborative evidence, the addition so made would not have any feet to stand on. However, the Department failed to follow this cardinal principle of providing adequate opportunity for rebuttal of evidence being sought to be relied upon.

9.1 It is also a fact on record that Shri Sanjay Dhawan from whose premises, the 225 invoices were recovered, was the Ex- President of the assessee company who left the company in the year 2013 itself whereas the search had taken place in 2016. It is also borne out from the records that the assessee company had lodged an FIR against Shri Sanjay Dhawan alleging theft of documents of the company like invoices, bilty books etc. as well as the rubber stamp of the company. This fact, along with the evidence of having filed the FIR and other complaints was duly brought to the notice of the AO during the course of assessment proceedings but the same was not given any consideration by the AO and the AO chose to rely on such invoices recovered from the premises of Shri Sanjay Dhawan for the purpose of computing the alleged unrecorded sales. Even though, the assessee company had demonstrated with ample evidence that Shri Sanjay Dhawan was a disgruntled employee of the company whose intentions were not above board and who could have possibly indulged in some kind of malpractice to put the assessee company into unnecessary financial trouble and litigation, the AO chose to build the foundation of the case of the Department entirely on such invoices which were not admissible as

evidence on stand-alone basis. Unfortunately, even the Ld. First Appellate Authority did not give any credence to this very important submission of the assessee and proceeded to confirm the quantum of the alleged unrecorded sales without appreciating a probability that Shri Sanjay Dhawan could have very well forged the documents to the disadvantage of the assessee company due to strained relations between the assessee company and Shri Sanjay Dhawan. It would not be out of place to again underline the fact that the complaints as well as the FIR against Shri Sanjay Dhawan had been filed by the assessee company much before the date of search by Central Excise Authorities and, therefore, by no stretch of imagination it can be inferred that the act of filing of the complaints and FIR was an after thought by the assessee company. In light of this factual matrix, the reliance of the Department on the aforesaid invoices, in our considered opinion, has little persuasive value.

9.2 We have also gone through the Chart placed at paragraph No. 7.8 above which has been filed by the Ld. AR, wherein, it has been demonstrated that the allegation that unrecorded goods were being transported by vehicles owned by the assessee company is incorrect in as much as, it has been depicted in the above said chart that it was physically impossible for the same vehicle to have delivered goods at two different stations within a short span of time on the same day when time is required not only for movement of goods from one station to

another but time is also required for loading and unloading of goods. A perusal of this chart would make it very clear that by taking into consideration the distance from one station to another, the same vehicle could not have been deployed for transporting the next consignment on the very same day. We note that this submission was also raised by the assessee both before the Excise Authorities as well as before the Income Tax Authorities but the same did not find any favour with them. We note from the order of the Income Tax Authorities below that they have not even considered these submissions of the assessee but have simply proceeded to compute the quantum of alleged recorded sales. Thus, for this reason also, the reliance of the Department on the invoices fails to meet the test of logic and reasonableness.

9.3 We have also gone through the statement of Shri Shiv Charan Lal, Ex-employee of the company, wherein, he has stated that parallel invoices were destroyed after the consignment of unrecorded sales had been delivered and, therefore, if this statement is assumed to be correct then the recovery of such parallel invoices from the premises of Shri Sanjay Dhawan is in complete contradiction of the statement of Shri Shiv Charan Lal. Thus, apparently either the statement of Shri Shiv Charan Lal is incorrect or the parallel invoices recovered from the premises of Shri Sanjay Dhawan are the invoices which were not generated by the assessee company. In such a scenario, the reliance of the Department on these invoices does not hold good.

9.4 We also note that initially Shri Manoj Kumar, the Director of the assessee company had accepted the practice of the assessee company of issuing parallel invoices and of making sales outside the books of account but this acceptance was later on retracted. This retraction by Shri Manoj Kumar is available on record and we also note that the AO, while making impugned additions based on an alleged unrecorded turnover, did not point out towards any corroborative evidence recovered from the premises of the assessee which would indicate that the assessee company was engaged in either making parallel invoices or undervaluing the invoices or making sales outside regular books of account. Here again, the denial of cross-examination by the Income Tax Authorities has a significant bearing on the final outcome of this batch of appeals for the simple reason that the AO has relied upon those statements which had been recorded at the back of the assessee and the assessee was not given any opportunity to effectively to rebut the same. This is in the very teeth of the judgement of the Hon'ble Apex court in the case of M/s Andaman Timber Industries (supra) wherein it has been specifically held that where the party is being adversely affected by the statement of a third party, denial of cross-examination of such effected party would not be in accordance with law. The Hon'ble Apex Court in its judgement in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (supra) held as under:-

“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses

were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority.

9.4.1 A similar view has been taken by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Rajesh Kumar (2008) 306 ITR 27(Delhi.) wherein it has been held as under:-

“That the material collected by the Department behind the back of the assessee was used against him without disclosing the material or giving an opportunity to cross-examine the person whose statement had been used by the Department against the interest of the assessee. There was violation of the principles of natural justice.”

9.4.2 Similarly, the Hon'ble Delhi High Court in the case of CIT Vs Dharam Pal Prem Chand Ltd. (2007) 295 ITR 106 held as under:

"That the Assessing Officer had based his assessment order on the report obtained from the research institute. The correctness of that report itself having been under challenge by the assessee who had not only filed objections thereto but also sought permission on several occasions to cross-examine the

analyst even agreeing to pay the necessary expenses, the report could not automatically have been accepted. Since the Assessing Officer did not permit the correctness or otherwise of the report to be tested, there was a clear violation of the principles of natural justice by him in relying upon it to the detriment of the assessee. Even if the strict rules of evidence may not apply to assessment proceedings, the basic principles of natural justice would apply to the facts of the case."

9.4.3 On a similar issue, the Hon'ble Madhya Pradesh High Court in the case of Prakash Chand Nahta Vs CIT (2008) 301 ITR 134 held as under:

"That as the Assessing Officer had not summoned R in spite of the request made under section 131 of the Act, the evidence of R could not have been used against the assessee and in the absence of affording a reasonable opportunity of being heard by summoning the said witness the assessment order was vitiated."

9.5 Therefore, in our considered opinion, in absence of such cross-examination having been allowed to the assessee and also in view of no incriminating material having been recovered from any of the premises searched, coupled with the fact that the statement of Shri Shiv Charan Lal, Ex-employee itself states that the parallel invoices used to be destroyed after the delivery of the consignments, the very foundation to make the additions on account of unrecorded sales stands demolished. The fact that parallel invoices were recovered from the Ex-President after three years of his having left the assessee company under

circumstances in which the assessee company had already filed complaint and FIR against him (Shri Sanjay Dhawan) also does not support the case of the Department in as much as the Department should not have placed complete reliance without any corroborative evidence on such documents when the conduct of Shri Sanjay Dhawan itself was under suspicion. Therefore, in view of the above narrated factual matrix and after duly considering the various evidences which the Department has relied upon for making the impugned additions, we are of the considered opinion that the additions based on such alleged unrecorded sales do not have any sound basis and, therefore, for assessment years 2012-13 and 2013-14, the impugned additions on account of additional net profit earned on alleged unrecorded sales are liable to be deleted. It is so ordered accordingly.

9.6 Coming to the similar additions made in assessment years 2015-16, 2016-17 and 2017-18, it is seen that the basis of addition is e-mail communication received from the electronic records of M/s B.M.Paper Mart and the said e-mail has been allegedly sent by one Shri Sunil Kumar, part time employee of the assessee company. The AO has reproduced the extract of the e-mail in the assessment order and further the Department has relied upon the statement of Shri Manish Jain of M/s B.M. Paper Mart for the purpose of computing the alleged unrecorded sales. However it is to be noted that when Shri Sunil Kumar was summoned by the AO, he specifically denied having any knowledge

about the e-mail saying that e-mail id from which the purported e-mail was sent did not belong to him. In an answer to another question posed by the AO regarding the contents of the e-mail and also with reference to record No. 39 containing 265 pages, Shri Sunil Sharma expressly stated that he had signed on the first and last page under pressure and that further he did not agree with its contents. Thus, Shri Sunil Kumar has specifically denied having any knowledge about the transactions on which the impugned additions were based. It is further seen that even after Shri Sunil Kumar had made a specific denial with respect to having sent the e-mail and also with respect to having any knowledge about the contents of record No.39, both the lower authorities of the Income Tax Department did not give any credence to such denial of Shri Sunil Kumar but proceeded to make the impugned additions based on the statement of Shri Manish Jain and, therefore, this action of the Income Tax Department cannot be held to be sustainable in the eyes of law specifically because the AO did not make any independent inquiries prior to making the impugned additions but simply relied on the third party evidence without bringing on record any corroborative further evidence. In the present appeals, it is undisputed that no corroborative evidence has been found from the business premises of the assessee and the Income Tax Authorities have simply relied on the contents of the e-mail and the statement of Shri Manish Jain without leading further evidence which could strengthen the case of the Department and, therefore, we are unable to agree with such action of the Department in

placing its entire reliance on such third party evidence without there being any corroborative evidence to make the impugned additions. Once again, we would like to refer to the statement of Shri Shiv Charan Lal, an Ex-employee, who has categorically stated that the assessee company used to destroy the alleged parallel invoices once the consignment was delivered. This statement of Shri Shiv Charan Lal goes contrary to the fact of invoices being recovered during the search at the residential premises of Shri Sanjay Dhawan. It is also worth noting that as per the e-mail print out for June 2015, the bill numbers are running into series of 200 whereas as per the regular books of account the serial numbers of the invoices for the month of June 2015 is in the series of 700 onwards. Thus, this apparent contradiction casts a doubt on the veracity and the evidentiary value of the invoices recovered from the premises of Shri Sanjay Dhawan. Accordingly, on an overall view of the factual matrix of the case and for the various reasons as aforementioned in the preceding paragraphs, we are of the considered opinion that the Department could not have validly made the impugned additions by placing sole reliance on the invoices recovered from the residence of Shri Sanjay Dhawan as well as on the statement of the various third parties viz. S/Shri Gulshan Gaba, Naveen Salley and Sudhir Sethi which were recorded at the back of the assessee without giving the opportunity to the assessee to cross examine them. Also, for the reasons mentioned in the preceding paragraphs, the impugned additions could not have been made on the basis of the statement of Shri Manish Jain and the

electronic record discovered from the premises of the M/s B.M Paper Mart, Delhi because the origin of the e-mail was not established. Therefore, we have no option but to direct the deletion of the impugned additions in all the five years under consideration. It is so directed accordingly.

9.7 As far as the issue of rejection of books of account is concerned, since we have already allowed the relief to the assessee on merits of the case by holding that the impugned additions are not sustainable, the question of rejection of books of account assumes only academic interest, and therefore, it is not being adjudicated at the present juncture.

10.0 In the final result, the entire five appeals stand partly allowed.

Order pronounced on 29.07.2022.

Sd/-

(N. K. SAINI)
Vice President
Dated : 29.07.2022
“आर.के.”

Sd/-

(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar