

1247

ITA nos. 2909 to 2911/Del/2011
AYs:2006-07 to 2008-09

D.C.I.T., Central Circle-14, Room no. 320, E-2, ARA Centre, Jhandewalan, New Delhi	V/s.	M/s Amrit Timber Products Pvt. Ltd., F/A-45, Shivaji Enclave, Rajouri Garden, New Delhi
[PAN : AABCA 0321 Q]		

(Appellant)	(Respondent)
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Assessee by	S/Shri Ved Jain, Ms. Rano Jain & V. Mohan, ARs
Revenue by	Mrs. Geetmala Mohanany, DR

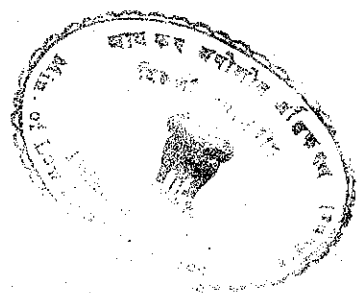
Date of hearing	07-08-2012
Date of pronouncement	01-08-2012

ORDER

A.N.Pahuja:- These appeals filed on 03rd June, 2011 by the Revenue against these separate orders dated 03rd March, 2011 of the Id. CIT(A)-III, New Delhi, for the AYs 2006-07 to 2008-09, raise the following grounds:-

ITA no..2909 /Del/2011[AY 2006-07]

- 1 "On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹20,23,377/- made by the Assessing Officer on account of unaccounted cash sales.
- 2 The order of the learned CIT(A) is erroneous and is not tenable on facts and in law.
- 3 That the appellant craves leave to add, alter or amend any/all grounds of appeal before or during the course of the hearing of the appeal."



I.T.A. No.2910/Del./2011[AY 2007-08]

1. *" Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹23,51,680/- made by the Assessing Officer on account of fall in GP rate.*
2. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹2,74,145/- made by the Assessing Officer on account of difference in sales figure at page 71 and 74 of annexure A-9 seized during search.*
3. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹28,510/- made by the Assessing Officer on account of difference in sales figure mentioned in the seized documents.*
4. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹23,590/- made by the Assessing Officer on account of difference in the figure of expenditure of stores and chemicals mentioned in the seized documents.*
5. *The order of the learned CIT(A) is erroneous and is not tenable on facts and in law.*
6. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

I.T.A. No.2911/Del./2011[AY 2008-09]

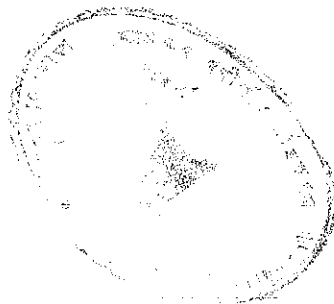
1. *"Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹35,63,200/- made by*

the Assessing Officer on account of unaccounted cash sales.

2. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹14,16,721/- made by the Assessing Officer on account of difference in stock found during search.*
3. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of ₹5,84,873/- made by the Assessing Officer on account of disallowance of direct expenses.*
4. *The order of the learned CIT(A) is erroneous and is not tenable on facts and in law.*
5. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

2. Since similar issues were involved in these three appeals of the same assessee, these were heard simultaneously for the sake of convenience and are being disposed of through this common order.

3. Adverting first to ground no.1 in the appeal for the AY 2006-07, facts, in brief, as per relevant orders are that a search u/s 132 of the Income-tax Act, 1961 (hereinafter referred to as the Act), was conducted in various premises of Arora Group of cases, including the assessee, on 18th January, 2008. The group is managed by two brothers-Shri Gaurav Arora carried on the business of stock/commodity brokerage business through the group companies i.e. M/s Jaypee Capital Services (P) Ltd. and M/s Jaypee Commodities (P) Ltd. while Shri Ganesh Arora was in timber business. Consequent to the search, on the basis of seized documents, a notice u/s 153A of the Act was served upon the assessee on 16.12.2008. In pursuance to this notice, assessee filed on 25.05.2009 return declaring nil income under the normal provisions and book profit of ₹3,64,767/- in terms of provisions of section 115JB of the Act. On perusal of seized documents as per annexure A-9 (page nos. 58 to 60) which



were kachha sale bill in respect of Bhiwani Saw Mill, Chennai[pg. 58 & 59] and Shiv Shakti Industry[pg. 60], the Assessing Officer[AO in short] noticed the following details:-

Bill No. & date	Qty.	Particulars	Rate	Amount [In ₹]
29.11.2005	200 pcs	11.656cbm	17127.78	1,99,641/-
		Banom teak	Amount(x)	60,000/-
			Balance	1,39,641/-
			LST@10%	13,964/-
			Surcharge @5%	698/-
				1,54,303/-
29/11/2005	200 pcs	9.596 cbm	17127.78	1,64,358
		Banon teak	Amount(x)	40,000/-
			Balance	1,24,358/-
			LST@10%	12,436/-
			Surcharge@5%	622/-
				1,37,416/-
25.11.2005	410pcs	22.12cbm	17127.78	3,78,884/-
		Banon teak	Amount(x)	1,25,000/-
			Balance	2,53,884/-
			LST@10%	25,388/-
			surcharge@5%	1,269/-
				2,80,541/-

3.1 To a query by the AO, the assessee replied that these pages did not relate to the assessee but were concerned with Arora Timber International Ltd.. On the basis of this reply, the AO observed that local sales tax and surcharge have been

worked out after reducing a sum of ₹60,000/-, ₹40,000/-, ₹1,25,000/- in the aforesaid billed amount and these were nothing but undisclosed cash receipts of the assessee..

3.2. Similarly, page 64 to 68 to annexure A-9 described number of pieces purchased, container number, type of timber in cubic feet, rate and the total purchase amount was split into invoice amount and cash amount as detailed in para 4.4 of the assessment order. To a query by the AO vide notice dated 11.12.2009, the assessee did not submit any explanation nor even responded to query made vide order sheet entry dated 17.12.2009. Accordingly, while referring to narration in these bills, the AO concluded that the local sales tax and/ surcharge had been worked out on the billed amount after reducing sum of ₹17,98,377/- and therefore, the cash amount of ₹17,98,377/- was treated as undisclosed receipt by the assessee, resulting in total addition of ₹20,23,377/-.

4. On appeal, the Id. CIT(A) deleted the addition, holding as under:-

"6. I have considered the submission made by the assessee as well as the documents available on record. On going through the same, I notice that the issue is regarding the sales stated as per the details of the invoices part of the seized documents. The assessee has stated that these pages have no concern with the assessee. On going through the reply dated 21.12.2009 filed with the Assessing Officer which the assessee has placed in the paper book at page 89. The assessee has not only stated that these papers have no concern with him but has also stated that these papers relate to another concern, namely, M/s Arora Timber International Ltd.

7. It was further stated by the assessee that M/s Arora Timber International Ltd. is also being assessed with the same Assessing Officer and it was also subject to proceedings u/s 153A of the Act. A similar questionnaire was issued by the Assessing Officer in the case of M/s Arora Timber International Ltd. and M/s Arora Timber International Ltd. has stated. "These pages are relating to cash sales to different parties on different dates and all the transactions are properly accounted for in the books of accounts (assessment year 2006-07) for the purpose of verification a reference has been made to copy of account of Bhiwani Saw Mill (entry on 29.11.2005) and Shiv Shakri Woods Industries (entry on

21.11.2005) for the year 2005-06 (assessment year 2006-07) as per paper book page-116.

I have gone through the records and noticed that the part payment of these bills has been received by cheque and these cheques have been accounted for in M/s Arora Timber International Ltd. as evident from the copy of account of the parties stated on the invoices itself. In view of these facts, the Assessing Officer has gone wrong in rejecting the reply of the assessee that these transactions do not pertain to it but pertain to M/s Arora Timber International Ltd. The assessee, having discharged his onus, there was no reason for the Assessing Officer to draw an adverse opinion against the assessee and make addition of the same. Accordingly, the Assessing Officer is directed for the deletion of addition of ₹ 20,23,377/-."

5. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT (A). The Id. DR while supporting the order of the AO contended that the assessee did not file reply before the AO in response to notice dated 9th December, 2009 and ordersheet entry dated 17th December, 2009 regarding cash amount of ₹ 17,98,377/- , revealed from pages 64 to 68 of the Annexure A-9. The Id. CIT(A), without considering the fact that the assessee did not file any reply before the AO, concluded that all the receipts were accounted for in M/s Arora Timber International Ltd. and deleted the addition. The Id. CIT(A) was not justified in deleting the addition without allowing any opportunity to the AO, especially when the AO made the addition in the absence of any reply.

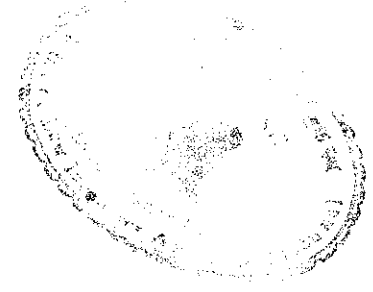
6. On the other hand, the Id.AR on behalf of the assessee contended that since all the relevant invoices, including in respect of ₹ 17,98,377/- were accounted for in the case of M/s Arora Timber International Ltd., the Id. CIT(A) was justified in deleting the addition.

7. We have heard both the parties and gone through the facts. Indisputably and as pointed out by the Id. CIT(A), the assessee pleaded before the AO in letter dated 21.12.2009 [pg. 89 of the PB] that pages 58 to 60 did not relate to the assessee and were, in fact, concerned with M/s Arora Timber International Ltd. The total amount added by the AO on the basis of these three



pages, worked out to ₹2,25,000/- and not the entire amount of ₹20,63,377/-. As regards amount of ₹17,98,377/- added by the AO on the basis of seized pages 64 to 68 of the Annexure A-9, the assessee did not furnish any reply before the AO despite repeated opportunities. There is nothing to suggest that the assessee filed any reply in relation to these pages/nor the Id. AR on behalf of the assessee invited our attention to any such reply. In the absence of any reply, the Id. CIT(A) was not justified in deleting the entire addition of ₹20,23,377/- In fact, a mere glance at the impugned order reveals that the order passed by the Id. CIT(A) is cryptic and grossly violative of one of the facets of the rules of natural justice, namely, that every judicial/quasi-judicial body/authority must pass a reasoned order, which should reflect application of mind by the concerned authority to the issues/points raised before it. The application of mind to the material facts and the arguments should manifest itself in the order. As regards amount of ₹17,98,377/- added by the AO on the basis of seized documents placed at page 64 to 68 of Annexure A-9, the Id. CIT(A) did not make even a whisper in his order nor took cognizance of the finding of the AO that no reply had been filed before the AO despite specific queries raised on 11.12.2009 & 17.12.2009. Only reply referred to by the Id. CIT(A) is dated 21.12.2009 placed on page 89 of the paper book, which relates to query regarding page nos. 58 to 60 of Annexure A-9. Section 250(6) of the Act mandates that the order of the CIT(A) while disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. The requirement of recording of reasons and communication thereof by the quasi-judicial authorities has been read as an integral part of the concept of fair procedure and is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision-making process. Hon'ble jurisdictional High Court in their decision

before Id. CIT(A)



in Vodafone Essar Ltd. Vs. DRP, 196 Taxman 423 (Delhi) held that when a *quasi judicial* authority deals with a *lis*, it is obligatory on its part to ascribe cogent and germane reasons as the same is the heart and soul of the matter and further, the same also facilitates appreciation when the order is called in question before the superior forum. We may point out that a 'decision' does not merely mean the 'conclusion'. It embraces within its fold the reasons forming basis for the conclusion. [Mukhtiar Singh Vs. State of Punjab, (1995) 1 SCC 760 (SC)]. As already observed, the impugned order suffers from lack of reasoning and is not a speaking order on the issue of addition of ₹17,98,377/- made by the AO. In view of the foregoing, especially when the Id. CIT(A) have not passed a speaking order on various issues relating to addition of ₹17,98,377/-, we consider it fair and appropriate to set aside the order of the Id. CIT(A) and restore the matter to his file for deciding the aforesaid issue in relation to addition of ₹17,98,377/-, afresh in accordance with law, after allowing sufficient opportunity to both the parties. Needless to say that while redeciding the appeal, the Id. CIT(A) shall pass a speaking order, keeping in mind, *inter alia*, the mandate of provisions of sec. 250(6) of the Act, bringing out clearly as to whether or not the amount is accounted for in the books of the assessee or M/s Arora Timber International Ltd., as claimed by the Id. AR before us and whether any addition has been made in the assessment of M/s Arora Timber International Ltd. As regards addition of ₹2,25,000/-, since the amount is stated to have been accounted for in the books of M/s Arora Timber International Ltd. and the Id. DR did not place any material before us, controverting the aforesaid findings of facts recorded by the Id. CIT(A) in relation to the said amount, we are not inclined to interfere. With these observations, ground no. 1 in the appeal of the Revenue for the AY 2006-07 is disposed of.

8. Next ground no.1 in the appeal of the Revenue for the AY 2007-08 relates to addition of ₹23.51.680/-. The AO noticed during the course of assessment proceedings that the seized documents pages 74 & 71 of Annexure A-9 reflected the details of total sale for the four quarters prepared for sales tax purpose for the FY 2006-07 at ₹14,635,535/- while as per books sales were shown to be ₹14,361,390/-, resulting in difference of ₹2,74,145/-. On the other hand, the GP rate during the year worked out to 12.5% on turnover of ₹7,06,21,976/-. Since there was fall in GP rate vis-a-vis the preceding year GP rate of 18.1%, the AO asked the assessee to explain. In response, the assessee explained that GP declined on account of increase in imported purchase price of timber while domestic sale price did not increase correspondingly. While submitting comparative working of GP for the AYs 2006-07 to 2008-09, the assessee pleaded that no addition could be made. However, the AO did not accept the submissions of the assessee in the absence of logical explanation and accordingly, added an amount of ₹23.51,680/-, applying GP rate of 15.83% i.e the average GP rate for the AYs 2006-07 to 2008-09.

9. On appeal, the Id. CIT(A) while concluding that correct GP rate for the AY 2008-09 was 8.84% and not 15.83%, deleted the addition, holding as under:-

"6. I also notice that the assessee in maintaining regular books of accounts and stock records and sales and purchase are fully vouched and Assessing Officer has not pointed out any defect or discrepancy in the books of accounts. During the course of the assessment, the assessee has submitted detailed reply to each of the questions raised by the Assessing Officer. The books of account are also audited. The Assessing Officer has also not rejected the books of accounts before tinkering with the trading results. The assessee has also given explanation in its reply submitted to the Assessing Officer on the issue of comparative gross profit stating that the difference is only on account of increase in the imported purchase price whereas the domestic sale price have not increased correspondingly and the impact of the increase in the purchase price could not be passed on to the buyer's sale price and these are the actions which are beyond the control of the assessee as assessee being a single seller cannot effect the

change in the market selling price. I also notice that the assessee has submitted details of the closing stock, opening stock item-wise, quantity-wise and quality-wise with the method of valuation before the Assessing Officer. There is no discrepancy or error in the same. In view of these facts, the Assessing Officer was not justified in ignoring the trading results declared as per the books and applying the ad hoc GP rate merely on the ground that the GP rate during the year is less than the last year or the succeeding year. Accordingly, the Assessing Officer is directed to delete the addition of ₹23,51,680/- made on account of GP rate."

10. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR while referring to findings of the AO in relation to addition of ₹3,26,047/- and ₹23,590/- vehemently argued that the AO rejected the book results in view of various discrepancies noticed during the course of assessment proceedings and applied average GP rate of the three years. On the other hand, the Id. AR on behalf of the assessee supported the findings of the Id. CIT(A).

11. We have heard both the parties and gone through the facts of the case. As is apparent from the facts narrated in the impugned orders, the AO nowhere recorded any finding that the books of account maintained by the assessee were incorrect, rendering it impossible to deduce the profit and despite that he proceeded to apply the GP rate, invoking the principles of best judgment. The Id. CIT(A), on the other hand, concluded that the action of the AO to apply average GP rate, without pointing out any defects in the books of accounts, is totally unjustifiable and therefore, deleted the addition. The Revenue have not placed before us any material, controverting these findings of facts recorded by the Id. CIT(A). We find that the Revenue have not raised any ground in relation to rejection of book results in the appeal before us. Even in response to a specific query by the Bench, the Id. DR did not point out any defects in the books, noticed by the AO. In the absence of any material defects in the books of accounts, audited results could not be rejected. Hon'ble Gauhati High Court in Aluminium Industries (P) Ltd. v. CIT (I.T.R. No. 12 of 1990) observed that a lower rate of gross profit declared by the assessee as compared to the previous year, would

not in itself be sufficient to justify any addition. The mere fact that the percentage of loss or gross profit is high or low in a particular year does not necessarily lead to inference that there has been suppression. Low profit or lower yield is neither a circumstance or material to justify addition of profits. The ratio of the judgments in Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 (SC); Raghbir Mandal Harihar Mandal v. State of Bihar [1957] 8 STC 770 (SC); State of Kerala v. C. Velukutty [1966] 60 ITR 239 (SC); State of Orissa v. Maharaja Shri B.P. Singh Deo [1970] 76 ITR 690 (SC); Brij Bhusan Lal Parduman Kumar v. CIT [1978] 115 ITR 524 (SC); Chouthmal Agarwalla v. CIT [1962] 46 ITR 262 (Assam); R.V.S. and Sons Dairy Farm v. CIT [2002] 257 ITR 764 (Mad); International Forest Co. v. CIT [1975] 101 ITR 721 (J & K) ; M. Durai Raj v. CIT [1972] 83 ITR 484 (Ker); Ramchandra Ramnivas v. State of Orissa [1970] 25 STC 501 (Orissa); Action Electricals v. Deputy CIT [2002] 258 ITR 188 (Delhi) and Kamal Kumar Saharia v. CIT [1995] 216 ITR 217 (Gauhati) indicate that the AO is not fettered by any technical rules of evidence and pleadings, and he is entitled to act on material which are not acceptable in evidence in a court of law, but while making the assessment under the principles of best judgment, the Income-tax Officer is not entitled to make a pure guess without reference to any evidence or material. There must be something more than a mere suspicion to support the assessment. Low profit in a particular year in itself cannot be a ground for invoking the powers of best judgment assessment without support of any material on record.

11.1 The Hon'ble Gujarat High Court in the case of CIT Vs. Amitbhai Gunwantbhai, 129 ITR 573 held that if there was no challenge to the transactions represented in the books then it is not open to Revenue to contend that what is shown by the entries is not the real state of affairs. Secondly, even if for some reason, the books are rejected it is not open to the AO to make any addition on estimate basis or on pure guess work. Since the Revenue have not referred us to any material contrary to the aforesaid findings of the Id. CIT(A), we are opinion that the AO was not justified in rejecting the book results and add an



estimated amount . Hon'ble J & K High Court in the case of International Forest Co. v. CIT [1975] 101 ITR 721 held that in the case of a forest coupe, mere low yield of out-turn compared to earlier years was not sufficient to make an addition. If there was no challenge to the transactions represented in the books, then it is not open to revenue to contend that what is shown by the entries is not the real state of affairs. In the light of aforesaid observations of the Hon'ble Gujrat High Court, considering the facts and circumstances in the instant case, we do not find any infirmity in the findings of the Id. CIT(A) and accordingly, ground no 1 in the appeal of the Revenue for the AY 2007-08 is rejected.

12. Ground no. 2 in the appeal for the AY 2007-08 relates to addition of ₹2,74,145/-. The AO noticed on perusal of the seized document placed at page 74 and 71 of Annexure A-9 that these documents reflected the details of total sale for the four quarters prepared for sales tax purpose for the FY 2006-07 at ₹14,635,535/- while as per books sales were ₹14,361,390/-,resulting in difference of ₹2,74,145/-. Since there was difference of ₹2,74,145/-, the AO asked the assessee to explain. Though the assessee while enclosing copy of sales account and quantitative reconciliation for assessment year 2007-08, explained that the difference was due to following cancelled bills, not accounted for in the books of accounts:

S.No.	Bill No.	Date	Amount(In ₹)
1	07	28 Jan	1951.00
2	11	24 Feb	67,210.00
3	12	26 Feb	<u>2,04,984.00</u>
Total			2,74,145.00

the AO did not accept the submissions of the assessee and added the aforesaid difference of ₹2,74,145/- (1,46,35,535 - 1,43,61,390).

12.1 Further on perusal of page 72 and 65 of Annexure A-9, the AO noticed that as per sales account prepared for the year under consideration and sales shown on these pages, there was difference of ₹28,310/- (27,94,671- 27,66,361). Likewise in store and chemical expenses on page No.72 and 65, there was a difference of ₹23,590/- (35,186- 11,596/-). Accordingly, the AO concluded that the assessee company suppressed sale by an amount of ₹3,02,455/- (2,74,145+28,310) and inflated store and chemical expenses by an amount of ₹23,590/- as mentioned above. Applying a gross profit rate of 7.8%, the AO added an amount of ₹23,592/- to the suppressed sale, resulting in total addition of ₹3,26,047/- besides ₹23,592/-.

13. On appeal, the Id. CIT(A) deleted the three additions as under:-

"I have gone through the records and submissions made by the assessee. On going through, it is noticed that the difference of Rs.2,74,145/- in the quarterly statement for the purposes for sales tax and the sales as per books of accounts represent the amount on account of the cancelled bills. This fact itself has been borne out from the seized documents which has been made the basis by the AO for the above addition. The assessee's explanation is a valid explanation borne out of the record and as such the AO was not justified in drawing adverse inference on this account and making this addition. As regards the difference of Rs.28,310/- in the figures of sales stated at page-65 and page-72 of the seized documents, I notice that the outer figure of sales in both the cases is the same. Page no.72 of the seized document which is placed at Paper Book page-32 shows total sales at Rs.1,43,61,390.35/- which comprises of two figures:

(i)	Sales Manufacturing	1,15,66,719.04
(ii)	Sales trading	<u>27,94,671.31</u>
	Total:	<u>1,43,61,390.35</u>

whereas the seized page no.65 which is placed at Paper Book Page-33, the total sales are the same, that is, 1,43,61,390.36 which comprises of two figures:

(i)	Sale Manufacturing	1,15,95,029.36
(ii)	Sales Trading	<u>27,66,361.00</u>
	Total	<u>1,43,61,390.35</u>

Thus, the total sales in both the seized documents are the same but it is the internal difference between the two figures of manufacturing and trading. In one page, the sale trading is more by Rs.28,310/-, whereas in the other the sales trading is less and the corresponding sale manufacturing figures are in the reverse position. The AO was not justified in just making an addition of Rs.28,310/- on the ground that the sales trading in one document is more as compared to the other ignoring the fact that exactly the same amount is the difference in the sales manufacturing. It is an internal transfer whereby the figures of sale manufacturing and sale trading are different but the ultimate sales in both the documents at 1,43,61,390/- is the same. The assessee's explanation on this point is correct and no adverse inference on this account can be drawn.

10. The AO has further made an addition of Rs.23,592/- by applying a GP rate of 7.8%. Firstly, since the above additions are being deleted, there is no reason for making this addition by applying GP rate. Moreover, the AO otherwise was not justified in making an addition on account of Gross Profit when he has added the entire sales as income of the assessee. In view of this, the AO is directed to delete the entire addition of Rs.3,26,047/- and accordingly, this ground of appeal is allowed.

11. Ground NO.6 is regarding disallowance of Rs.23,590/-. The AO has made this addition on the ground that as per page no.65 of the seized document placed at Paper Book Page 33, the amount on account of stores and chemicals has been shown at Rs.35,186/- whereas as per page-72 of the seized document, the amount stated on account of stores and chemicals is Rs.11,596/-, though the assessee has claimed Rs.11,596/- in the final profit and loss account, still the AO has made this addition of Rs.23,590/-.

12. Before me, it has been submitted by the appellant that the assessee has incurred an expenditure of Rs.35186/- on account of stores and chemicals which is stated at page-65 of the seized document placed at Paper Book page no.33. Out of these expenses, Rs.23,590/- were transferred to the machinery account, since the stores were used for the machinery and hence the same were capitalized as is evident from the ledger account of stores and chemicals and the machinery account at Paper Book Pages-64A and 64B. Thus, the remaining amount of Rs.11,596/- was claimed as revenue expenditure on account of stores and chemicals in the profit and loss account. The assessee has submitted this explanation to the AO vide his letter dated 29.12.2009 and the

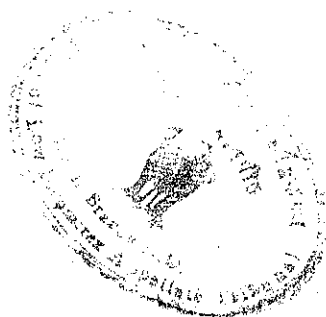
relevant para is on page-63 of the Paper Book. A copy of the store and chemical account and the machine account which is placed at Paper Book Pages-64A and 64B clearly explain the above 0 which has been ignored by the AO.

13. I have considered the submission of the assessee as well as the records. I notice that the assessee has been able to explain the difference. The AO was not justified in making the addition on this account. Therefore, he is directed to delete the addition of Rs.23,590/-. Accordingly, this ground of appeal is allowed."

14. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR while carrying us through the copy of the relevant seized documents supported the order of the AO while the Id. AR on behalf of the assessee relied upon the findings in the impugned order.

15. We have heard both the parties and gone through the facts of the case. As is evident from the aforesaid facts mentioned in the impugned order, the Id. CIT(A) on perusal of the seized documents deleted the additions on the ground that difference of 2,74,145/- in the quarterly statement for the purposes for sales tax and the sales as per books of accounts, represented the amount on account of the cancelled bills while difference of 28,310/- was due to the trading sales in one document being more as compared to the other, ignoring the fact that exactly the same amount was the difference in the manufacturing sales due to internal adjustment. The addition of ₹23,592/- was also deleted, the amount of stores chemicals having been capitalized with the machinery. Consequently, there being no suppression in sales, even GP addition was deleted. The Revenue have not placed before us any material, controverting these findings of facts recorded by the Id. CIT(A) so as to enable us to take a different view in the matter. In the absence of any basis, we are not inclined to interfere. Therefore, ground nos. 2 to 4 in the appeal of the Revenue for the AY 2007-08 are dismissed.

16. Next ground no.1 in the appeal of the Revenue for the AY 2008-09 relates to addition of ₹35,63,200/- on account of unaccounted cash sales. The



AO noticed on perusal of seized document placed at page 69 of Annexure A-9, that this page reflected ply account of M/s Vishal and mentioned quantity, size of ply and door while the entire payment was in cash. To a query by the AO, the assessee replied that the assessee sold goods to M/s Vishal Plywood and received a sum of ₹35,63,200/- while balance receivable as on 31.12.2007 was ₹6,56,053/-. However, the AO did not accept these submissions of the assessee on the ground that the assessee did not submit any confirmatory account nor produced any stock register while the entire sale was stated to have been made in cash. Since the assessee failed to discharge the onus, the AO added the sum of ₹35,63,200/-.

17. On appeal, the Id. CIT(A) deleted the addition as under:-

"4. I have gone through the assessment order and the replies submitted by the assessee. On going through the reply, I noticed that the seized paper is account of M/s Vishal Plywood whereby the total sales of Rs.35,63,200/-have been made. This document gives the nature of the item, quantity, rate and the payment received with balance outstanding at Rs.6,56,053/-. I have also examined the ledger account filed by the appellant before the Assessing Officer whereby these sales have been accounted for in the books of accounts of the appellant. On going through the ledger account, I notice that the amount stated in the ledger account is exactly the same as stated in the seized document. The sales as per this ledger account have been duly accounted for. The assessee has submitted its reply to the Assessing Officer and the Assessing Officer has simply rejected the explanation on the ground that the onus lies on the assessee to furnish the account and confirmation in this regard which the assessee failed to submit its reply. The account has been furnished by the assessee, as explained above, but since the sales are cash and have been included in the income even if it is held that confirmation has not been filed then still same sales, which have already been included, while determining the income, cannot be added again merely on the plea that assessee has failed to file the confirmation. As is evident from the seized document that all these sales have been made in cash and if these sales have been included in the ledger account, as is evident, there is no justification for deriving an adverse inference and adding the same amount again. Accordingly, I direct the Assessing Officer to delete this addition. This ground of appeal is allowed accordingly."

18. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR while carrying us through copy of the seized documents supported the order of the AO while the Id. AR on behalf of the assessee relied upon the findings in the impugned order.

19. We have heard both the parties and gone through the facts of the case. As is apparent from the aforesaid facts and findings of the Id. CIT(A), the amount of ₹35,63,200/- on account of cash sales made to M/s Vishal Plywood, was reflected in the books of the assessee. Since the amount is already included in the sales, the Id. CIT(A) deleted the addition. The Revenue have not placed before us any material, controverting these findings of facts recorded by the Id. CIT(A) so as to enable us to take a different view in the matter. In the absence of any basis, we are not inclined to interfere. Therefore, ground no.1 in the appeal of the Revenue for the AY 2008-09 is dismissed.

20.. Ground no.2 in the appeal of the Revenue for the AY 2008-09 relates to the addition of ₹14,16,721/- on account of difference in stock. During the survey conducted in the premises of the assessee on 18th January, 2008, the authorized officer found stock valued at ₹158,82,191/-, comprising stock lying in business premises open area- ₹56,52,850/-, stock inside the factory building - ₹55,67,226/- and stock of chemicals- ₹46,62,115/-. The supervisor of the assessee company Shri Pradeep Kumar Parihar in a statement recorded on 18.01.2008 in reply to question nos.34 to 36 submitted as under:-

"Q.No.34 You have furnished trial balance as Amrit Timber Products (P) Ltd. 57 KM Milestone, Gandhara More, Ismila, District Rohtak, Haryana. As per this trial balance the opening stock is ₹1,44,65,471/-. Please give bifurcation of the stock as per conformed books of accounts?"

Ans. I have to furnish the bifurcation after consulting the accountant of the company Shri Rajeev Bhalla as under:-

<i>Raw Material</i>	<i>1,31,71,512</i>
<i>Finished products</i>	<i>6,94,498</i>

Others

5,99,460

1,44,65,470

Q.No.35 *I am showing you the inventory of stock prepared as on date of all the stock pertaining to your business of Timber/plywood/Board etc. Do you agree that /the quantity in this inventory has been correctly drawn?*

Ans. *I agree that the physical inventory of the stock has been correctly drawn in my presence and I have no objection to the stock recorded.*

Q.No.36 *As per inventory of stock prepared in all the premise of the company and valuation done by you at cost, it is found that physical stock worth ₹1,58,82,191/- is available where as per account maintained by you in computer the stock in hand as on date works out to ₹1,44,65,470/-. Please explain the difference of ₹14,16,721/-.*

Ans. *Yes I do agree that there is excess stock of ₹14,16,721/- which I am stating this fact after discussing with the accountant of the company Shri Rajeev Bhalla."*

20.1 In the light of aforesaid statement of Shri Pradeep Kumar Parihar, supervisor of the assessee company, the AO asked the assessee to reconcile the stock. In reply, the assessee submitted that physical stock in hand as per books was ₹1,59,61,569/- while stock found during the survey was ₹1,58,82,191/-. There being no shortage, no addition could be made, the assessee argued.. However, the AO did not accept the submissions of the assessee and added an amount of ₹14,16,721/-,

21. On appeal, the Id. CIT(A) deleted the addition, holding as under:-

"6. I have gone through the records and the written submissions filed before me by the appellant. As submitted by the appellant that the Assessing Officer has made a factual error by taking the stock as per books of accounts as on first day of the accounting year, that is April 2007 as against the stock, as per books of accounts on the day of the search which comes to Rs.1,59,61,558/-. I have also seen the balance sheet and the trading account of the immediately preceding year whereby the closing stock has been shown at Rs.1,44,65,470/-. This was the contention of the assessee that the figure of Rs.1,44,65,470/- adopted by the Assessing Officer is right. I have also examined the computation of the stock done by the

assessee as per books of accounts at Rs.1,59,61,558/- which was submitted to the Assessing Officer during the course of the assessment. The assessee, before the Assessing Officer, has submitted a detailed sheet giving the quantity and value of the opening stock, purchases, sales and the stock as on the date of the search. In support thereof, the assessee has also submitted not only the books of accounts but also the stock records. The Assessing Officer has not been able to point out any error or discrepancy in the details submitted and the value of the stock given by the assessee in the assessment order. The Assessing Officer has simply rejected the explanation of the assessee by stating that the same is general in nature and no detailed valuation has been furnished in support thereto. As I notice that this is not correct, the assessee has given detailed explanation and supported the same with not only the valuation of the stock as on the date of the search but also with the opening stock, purchases, sales and the stock on the date of the search. In view of these facts, the Assessing Officer was not justified in deriving an adverse inference and making an addition of Rs.14,16,721/- which, as held above, is otherwise factually incorrect. In view of these facts, the Assessing Officer is directed to delete this addition. This ground of appeal is allowed accordingly."

22. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR while carrying us through copy of return for assessment year under consideration contended that the opening stock shown in the return is ₹1,63,50,645/- as against ₹1,44,65,471/- mentioned by the supervisor in trial balance. On the other hand, the Id. AR supported the findings of the Id. CIT(A).

23. We have heard both the parties and perused the facts of the case. Indisputably, the AO added the difference in stock found during the course of survey on 18.1.2008 and opening stock as per books of accounts of the assessee. Total stock found during survey was ₹1,58,82,191/- while stock of finished products in the audit report is shown at ₹1,44,65,471/- whereas in the reply to question no.34, stock of ₹1,44,65,471/- is detailed as under:-

Raw Material	1,31,71,512
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Finished products	6,94,498
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Others

5,99,460

1,44,65,470

23.1 The Id. CIT(A) after perusing the working submitted by the assessee, giving the quantity, the value of opening stock, purchases, sales and stock as on the date of search, found that stock as per books of accounts worked out to be ₹1,59,61,558/- on 18.1.2008 as against ₹1,58,82,191/- found at the time of survey on 18.1.2008. Since the AO did not dispute the stock worked out by the assessee as per books, accordingly, the Id. CIT(A) deleted the addition. The Revenue has not placed before us any material controverting these findings of facts recorded by the Id. CIT(A) so as to enable us to take a different view in the matter. In these circumstances, we have no alternative but to reject ground no.2 in the appeal of the Revenue for the AY 2008-09.

24. Ground no.3 in the appeal of the Revenue for the AY 2008-09 relates to addition of ₹5,84,873/- on account of direct expenses. The AO noticed that the assessee claimed direct expenses of ₹37,47,005/-, which included factory expenses amounting to ₹5,84,873/- whereas in the preceding year, no such factory expenses were found to have been incurred. To a query by the AO, seeking reasons for claiming factory expenses, the assessee did not submit any reply. Accordingly, the AO added the amount of ₹5,84,873/- to the total income of the assessee.

25. On appeal, the assessee contended that the assessee was maintained regular books of account and all the expenses were incurred in the regular course of business. Therefore, no disallowance could be made. Accordingly, the Id. CIT(A) deleted the addition, holding as under:-

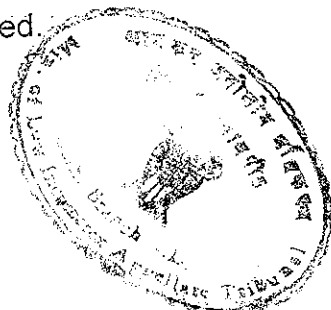
"8. I have gone through the records and the submissions made before me by the appellant. I notice that the assessee has incurred this expenditure under the various heads and the details of these expenses were filed before the Assessing Officer and are forming part of the audited balance sheet and the profit and loss account



submitted along with the return of income. I have seen Schedule-M to the profit and loss account which gives details of the direct expenses. There is a debit on account of factory expenses to the extent of Rs.5,84,873/- during the year with no corresponding expenditure in the last year. I also notice that there have been various expenses in the preceding year with no corresponding expenditure in the current year. This appears to be only a mistake of classification of the expenses. This year the assessee is right in his explanation that this year these expenditure have been corrected under the head factory expenses and this does not mean that these are not genuine expenses incurred during the year. The grievance of the Assessing Officer is that these expenses were not in the previous year and as such need not be allowed. The assessee has been maintaining regular books of accounts which have been audited and these expenses form a part of the regular activities of the assessee's business and as such, I see no reason why the same should not be allowed. Accordingly, I hold that the Assessing Officer was not justified in disallowing these expenses. The Assessing Officer is directed to delete this addition. This ground is accordingly allowed."

26. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR supported the order of the AO while the Id. AR on behalf of the assessee relied upon the findings of the Id. CIT(A) in the impugned order.

27. We have heard both the parties and gone through the facts of the case. Indisputably, the genuineness of expenditure has not been doubted nor it is the case of the AO that the bills in support of these expenses were not available. The Id. CIT(A) found that the assessee was maintaining regular books of account and these expenses formed part of regular business activities of the assessee. Accordingly, the Id. CIT(A) deleted the addition. The Revenue have not placed before us any material, controverting the aforesaid findings of facts recorded by the Id. CIT(A) so as to enable us to take a different view in the matter. In the absence of any material, we are not inclined to interfere. Therefore, ground no.3 in the appeal of the Revenue for the AY 2008-09 is dismissed.



28.. Ground No.2 in the appeal of the Revenue for the AY 2006-07, ground no.5 in their appeal for the AY 2007-08 and ground no.4 in their appeal for the AY 2008-09, being general in nature, do not require any separate adjudication while no additional ground having been raised before us in terms of residuary ground no.3 in their appeal for the AY 2006-07, ground no.6 in their appeal for the AY 2007-08 and ground no.5 in their appeal for the AY 2008-09, accordingly, all these grounds are dismissed.

29. No other plea or argument was made before us.

30. In the result, appeal of the Revenue for the AY 2006-07 is partly allowed for statistical purposes while their appeals for the AY 2007-08 & 2008-09 are dismissed.

Order pronounced in open Court

Sd/-
(R.K. GUPTA)
(Judicial Member)

Sd/-
(A.N. PAHUJA)
(Accountant Member)

NS

Copy of the Order forwarded to:

1. Assessee
2. D.C.I.T., Central Circle-14, Room no. 320, E-2, ARA Centre, Jhandewalan, New Delhi
3. CIT concerned.
4. CIT(A)-III, New Delhi
5. DR, ITAT, 'A' Bench, New Delhi
6. Guard File.

BY ORDER,
सहायक पंजीकार,
Assistant Registrar,
Deputy/Asst Registrar,
ITAT, Delhi
Income Tax Appellate Tribunal
दिल्ली बेंच, ई-दिल्ली
Delhi Benches, New Delhi.