

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “बी” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.374/PUN/2014
निर्धारण वर्ष / Assessment Year : 2005-06

M/s. Floorings,
C/o. Arihant Granites,
16A, Himalaya Estates,
Shivajinagar,
Pune – 411 006
PAN : AABFF1816C

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-4(3),
Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.475/PUN/2014
निर्धारण वर्ष / Assessment Year : 2005-06

DCIT, Circle-4,
Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Floorings,
C/o. Arihant Granites,
16A, Himalaya Estates,
Shivajinagar,
Pune – 411 006
PAN : AABFF1816C

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1286/PUN/2014
निर्धारण वर्ष / Assessment Year : 2006-07

M/s. Bhikshu Granimart,
16A, Himalaya Estates,
Shivajinagar,
Pune – 411 006
PAN : AABFB9420C

.... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-2(2),
Pune

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1330/PUN/2014
निर्धारण वर्ष / Assessment Year : 2006-07

DCIT, Central Circle-2(2),
Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Bhikshu Granimart,
16A, Himalaya Estates,
Shivajinagar,
Pune – 411 006
PAN : AABFB9420C

.... प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak & Shri P.D. Kudwa
Revenue by : Shri Mukesh Jha , JCIT

सुनवाई की तारीख / Date of Hearing : 03.04.2018	घोषणा की तारीख / Date of Pronouncement: 13.04.2018
--	--

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are total of 4 appeals and they consist of 2 sets of cross appeals under consideration involving two different assessees and two different assessment years. ITA Nos.374 and 475/PUN/2014 pertains to the assessee – M/s. Floorings and are filed against the order of CIT(A)-II, Pune, dated 17-10-2015 for the Assessment Year 2005-06. Further, the appeals ITA Nos. 1286 and 1330/PUN/2014 pertains to the assessee – M/s. Bhikshu Granimart and are filed against the order of CIT(A)-IV, Pune, dated 19-03-2014 for the Assessment Year 2006-07. The issues involved are interconnected. For the sake of convenience, cross appeal-wise and assessee-wise appeals are taken up for adjudication in the following paragraphs.

We shall first take up the cross appeals pertaining to M/s. Floorings for the Assessment Year 2005-06.

ITA No.374/PUN/2014 – By Assessee
(M/s. Floorings - A.Y. 2005-06)

2. Grounds raised by the **assessee** are extracted here as under :

“On the facts and circumstances of the case and in law :-

1. *The Hon CIT(A) erred in confirming the order of the AO disallowing Rs.13,39,000 u/s.40A(3) on estimated purchases of Rs.66,85,000*

reflected in the Profit & Loss Account of undisclosed income to match the estimated profit declared on unrecorded credit and cash sales.

2. The Hon CIT(A) and the AO failed to appreciate that in the survey action conducted at the assessee's business premises, no documents evidencing unrecorded cash purchases were found and that the additional income of Rs.16,60,716/- declared for the year is based on the estimated profit declared by the assessee to the survey party following the survey on 27-04-2005.

3. The Hon CIT(A) and the AO failed to appreciate that the disallowance u/s.40A(3) is not based on any entry or evidence of cash payment of a sum exceeding a sum of Rs.20,000 towards purchases for the year.

4. The appellant pleads that the disallowance made u/s.40A(3) is not justified and pleads that his appeal be allowed.

5. The appellant pleads that its claims are legitimate and allowable and craves leave to add to, alter, amend, modify or withdraw any or all grounds of appeal."

3. Briefly stated relevant facts of the case include that the assessee is a firm and is engaged in trading of Tiles. This is the first year of the assessee. There was search and seizure action on the Jain Marble group of cases on 27-04-2005. The search resulted in discovery of incriminating documents pertaining to M/s. Floorings and the high-sea sales. Statements of Shri Vinay S. Jain and Shri Dilip S. Jain were recorded. Assessments in this case were completed u/s.153C of the Act. Assessee originally filed the return of income on 31-10-2005. Assessee did not disclose any income in the return filed in response to section 153A of the Act. However, the AO quantified the assessed income at Rs.85,43,830/-. AO made certain addition of Rs.13,37,000/- invoking the provisions of section 40A(3) of the Act, Rs.47,71,360/- on account of unexplained business income and Rs.15 lakhs on account of expenditure.

4. During the First Appellate proceedings, the CIT(A) granted part relief to the assessee and confirmed the addition made on account of 40A(3) of the Act.

5. Aggrieved with the confirming of the addition, assessee is in appeal vide ITA No.374/PUN/2014. Further, aggrieved with the deletion of additions made by the AO, the Revenue is in appeal vide ITA No.475/PUN/2014.

ITA No.374/PUN/2014 - By Assessee
(M/s. Floorings - A.Y. 2005-06)

6. Relevant facts relating to the solitary issue regarding the addition u/s.40A(3) of the Act raised by the assessee include that the AO examined the books of account and found, in the purchase account, that the assessee reported purchase of goods in cash in the financial statements amounting to Rs.66,95,000/-. AO invoked the provisions of section 40A(3) of the Act and disallowed 20% of the same which works out to Rs.13,39,000/-. The same is added to the income returned by the assessee.

7. During the First Appellate proceedings, assessee submitted that the reported cash purchases actually are not really cash purchases in literal sense of it. Infact, the said purchases constitute notional entries which are required to be passed in books to match up to the unaccounted sales offered by the assessee during search and seizure action. Assessee offered unaccounted sales amounting to Rs.1,14,89,135/- about which there is no dispute as assessee offered the same to tax in the search action. As per assessee, there are no unaccounted sales without unaccounted purchases. Considering the submission of the assessee, the CIT(A) rejected the assessee's submission and confirmed the addition made by the AO. CIT(A) considered the fact of assessee's own admission on the cash purchases and the entries in the books of account about the cash purchases. Contents of Para No.4.2 to 4.4 of the order of the CIT(A) are relevant.

8. On this issue, before us, Ld. Counsel for the assessee brought our attention to the facts and submitted that the issue now stands covered in favour of the assessee by virtue of the decision of the Tribunal in the case of Shri Sanjay Javerilal Jain Vs. DCIT – ITA Nos. 268 to 271/PN/2014, dated 27-11-2015. He drew our attention to the contents of Para No.8 to 11 of the said order of the Tribunal and submitted that, in a case where unaccounted sales were made, there is requirement of showing unaccounted purchases. For the purpose of books, such unaccounted purchases have to be reflected in the books as cash purchases. They are actually not cash purchases in a literal sense. In those circumstances, the said entries need not be considered as sacrosanct and invoke the provisions of section 40A(3) of the Act. On similar facts, the Tribunal decided the issue in favour of the assessee as discussed above.

9. Ld. DR for the Revenue relied on the orders of the AO and the CIT(A).

10. We heard both the sides on this issue relating to invoking of the provisions of section 40A(3) of the Act in respect of the said notional entries. There is no dispute on the fact and it is only a case of interpretation if the notional cash purchases so reflected in the books of account for the purpose of book entries for meeting the requirement of matching the unaccounted sales offered in the return of income, attract the provisions of section 40A(3) of the Act. For this legal proposition, we rely on the order of the Tribunal in the case of Sanjay Javerilal Jain Vs. DCIT (supra). For the sake of completeness of the order, we extract the said findings of the Tribunal given at Para Nos. 8 to 11 here as under :

“8. The Ld. Authorized Representative on behalf of the assessee vehemently emphasized at the outset that the assessee has declared the income against the respective assessment years by way of returned

income as agreed before the survey team and has sacrosanctly honored his commitment. He next submitted that the declarations made against the various years in appeal are only estimated income based on unaccounted sales which declaration remains undisputed by the Assessing Officer. The year-wise statement of undisclosed income outside the regular books of account were summarized year-wise to arrive at the estimated income declared in the respective assessment years. The Ld. AR thereafter invited our attention to the Profit & Loss Account for declaration of such undisclosed income as appearing at Page No.16 of the Paper Book and submitted that the only figure in the said Profit & Loss Account which can be evidenced qua the survey proceedings, is the resultant net profit of Rs.3,00,055/-. The figure of sales, purchases, closing stocks, etc. are only estimates. The assessee has shown estimated purchase of Rs.5,48,295/- merely to reconcile and match the sale and net profit declared in the survey proceedings. The alleged unaccounted purchases of Rs.5,48,295/- which is the basis of disallowance of Rs.1,09,785/- under section 40A(3) of the Act is not backed by any documentary evidences. No evidence was found for such estimated purchases and purported cash payment thereon in the course of search/survey. He, therefore, submitted that the impugned purchase is merely a balancing entry to match the declarations made at the time of survey unconnected to any tangible evidences. Thus, the action of the Assessing Officer in invoking section 40A(3) of the Act on such estimated purchases is not justified and uncalled for. The Ld. AR submitted that once the estimated profit on unaccounted sales has been declared in the survey and accepted by the Revenue without any demur, there is no justification to make further disallowance under section 40A(3) of the Act, which will result in further increase in the estimated profits declared. To support the proposition that once the income has been estimated by applying GP rate, further disallowance under section 40A(3) of the Act is not called for, he relied upon the decision of the Hon'ble Madras High Court in the case of CIT vs. S. Mohammad Dhurabudeen, (2008) 4 DTR 218 (Mad.) and the decisions of the Pune Bench of the Tribunal in the case of (i) DCIT vs. Shri Narendra Mithailal Agrawal in ITA No.811 & 808/PN/2010, order dated 26.09.2012; (ii) Kirtikumar Vishnudas Bhutada vs. ACIT in ITA No.207/PN/2007, order dated 14.05.2012; and (iii) Satishkumar Vishnudas Bhutada vs. ITO in ITA Nos.1522, 1619 & 1620/PN/2011, order dated 19.04.2013.

9. The Ld. Departmental Representative on behalf of the Revenue, on the other hand, submitted that the order of the CIT(A) is well reasoned and does not call for interference. He further relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Sai Metal Works, 241 CTR 377 (P&H) and the decision of the Hon'ble Gujarat High Court in the case of Hynoup Food and Oil Industries, 290 ITR 702 (Guj.) for the proposition that the provisions of section 40A(3) can be applied even in respect of purchases outside the books.

10. In rejoinder, the Ld. Authorized Representative on behalf of the assessee submitted that the decision in the case of Satishkumar Vishnudas Bhutada (supra) relied upon has duly considered the decision in the case of Sai Metal Works (supra) relied upon by the Ld. Departmental Representative wherein it was held that the provisions of section 40A(3) of the Act cannot be applied where admittedly profit has been estimated in the absence of maintenance of books of account. Similarly, the decision of the Hon'ble Gujarat High Court in the case of Hynoup Food and Oil Industries (supra) has also been taken into account in the case of Shri Narendra Mithailal Agrawal (supra).

11. We have considered the rival submissions, orders of the authorities below and perused the case laws relied upon. The only question for determination is whether estimated purchases entry in the Profit & Loss Account prepared for reconciliation and matching the estimated declared

*income from unrecorded sales at the time of survey are subjected to disallowance under section 40A(3) of the Act on the assumption that these purported unaccounted purchases are impliedly made in cash. We notice that there has been consistent plea of the assessee that the estimated purchases are only in the nature of balancing entry to arrive at the pre-determined profit from undisclosed sale transactions as declared in survey which has remained uncontroverted by the Revenue. Another noticeable fact is that the income declared from these unaccounted transactions are consistent with the estimated income declared in the course of survey. **It is also undisputed fact that the estimated purchases stated to be a balancing accounting entry to arrive at the income declare towards unaccounted business activities is not corroborated by any tangible evidence found during the course of search/survey. In other words, the alleged cash purchases as shown in the Profit & Loss Account prepared to declare the unaccounted income is not backed any underlying document. We find that the Pune Bench of the Tribunal in the case of Kirtikumar Vishnudas Bhutada (supra) after taking cognizance several decisions of various High Courts on the issue has held in essence that once the income emanating from unrecorded and undisclosed transactions outside of account are declared and accepted, no additional disallowance under section 40A(3) of the Act is called for. Respectfully following the decision of the Pune Bench of the Tribunal, we hold that further disallowance under section 40A(3) on purported unaccounted purchases is not justified in the facts of the case and therefore is directed to be deleted.***

11. From the above, it is a decided legal proposition that the cash purchases reported in the financial statements, i.e. a notional entries made for the purpose of matching the unaccounted sales discovered during the search/survey actions do not attract the provisions of section 40A(3) of the Act. In principle, these provisions are deemed provisions and there is a requirement for fulfillment of certain conditions for successfully and validly invoking the provisions of section 40A(3) of the Act before any disallowance is made under these provisions.

The provisions of sub-section (3) of section 40A are extracted here as under :

“3. Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.”

For applying the above provisions, there is need for (1) incurring any expenditure, (2) making payment to a person in a day, (3) the payment so paid need to exceed sum of ten thousand rupees. From the records, it is evident, it is not the case of the Revenue that the assessee fulfilled the above conditions for successfully invoking the provisions of section 40A(3) of the Act. The decision of the Tribunal in the case of Sanjay Javerilal Jain (Supra) strengthens the above line of interpretation. Considering the settled legal proposition, we are of the opinion that the issue raised in this appeal now stands covered in favour of the assessee by virtue of the decision of the Tribunal (supra). Therefore, we are of the opinion that the order of the CIT(A) on this issue requires to be reversed and in favour of the assessee. Accordingly, the ground Nos. 1 to 4 raised by the assessee stands allowed. Ground No.5 is general in nature and the same is dismissed as general.

12. In the result, appeal of the assessee is partly allowed.

We shall now deal with the Revenue's appeal in the case of M/s. Floorings.

ITA No.475/PUN/2014 – By Revenue
(M/s. Floorings - A.Y. 2005-06)

13. Grounds raised by the **Revenue** are as under :

“1. The Ld.CIT(A) erred in holding that stock valued at MRP of Rs.1,08,78,350/- belonged to the assessee and not M/s. Bhikshu Granimart without appreciating the fact that in the course of survey action, stock of Rs.1,08,78,350/- was found in the assessee's godown by the survey party the packing boxes also contained the name of M/s. Bhikshu Granimart.

2. The Ld.CIT(A) erred in adopting the G.P. margin of 32% as against 14.7% adopted by the Assessing Officer when the assessee did not produce any evidence to support its claim for adopting the margin of profit at 32% either in the course of assessment as well as appellate proceedings.

3. The Ld.CIT(A) erred in directing to adopt the profit at Rs.16,60,706/- as against Rs.47,71,360/- without appreciating the fact that the profit of Rs.47,71,360/- without appreciating the fact that the

profit of Rs.47,71,360/- was offered by the assessee itself after reducing the stock of Rs.31,01,054/-.

4. The Ld.CIT(A) erred in deleting the addition of Rs.15 lacs holding that the assessee firm had adequate funds to source purchases and accepting the assessee's contention that undisclosed sales were sourced out of disclosed purchases, which is not the common commercial practice followed by a prudent businessman.

5. The Ld.CIT(A) erred in not appreciating the fact that the introduction of capital of Rs.90 lacs was not evidenced by the cash book as it depicted meager daily balances of Rs.2 to 3 lacs.

6. The appellant craves leave to add, alter or amend any or all the grounds of appeal."

14. Ground No.1 by the Revenue relates to finding of the CIT(A) with regard to the stock of Rs.1,08,78,350/.

15. Relevant facts on this issue include that assessee has a sister concern M/s. Bhikshu Granimart. The same is engaged in the business of trading in Granite and Marbles. During the year under consideration, M/s. Bhikshu Granimart imported tiles and the same were sold at high-seas to its sister concern named M/s. Floorings. During the survey action on the assessee, the survey team found in the Godown of the assessee that the said stock of goods bearing the name of M/s. Bhikshu Granimart. As per the entries in the books of the assessee, the value of such stock at MRP works out to Rs.1,08,78,350/-. Eventually, AO considered the same as a stock pertaining to M/s. Bhikshu Granimart and the same was treated as excess stock of M/s. Bhikshu Granimart. AO did not adjust the stock of the assessee to that extent. Contents of Para No.9 along with its subparagraphs of the order of AO in the case of M/s. Bhikshu Granimart are relevant. AO did not give any corresponding discount in the stock account of the assessee.

16. During the First Appellate proceedings, CIT(A) gave a finding on the said stock stating that the stock pertains to the assessee under

consideration and not to that of M/s. Bhikshu Granimart. CIT(A) relied on the book entries, sales invoices, correspondence filed with the custom authorities, payment transactions etc. before giving such a finding. Aggrieved with the same, Revenue is in appeal before us.

17. On hearing both the parties, we perused the orders of the CIT(A) and noticed that the said conclusion by the CIT(A) was given after considering various facets of the transactions under consideration. Contents of Para No.3.5 of the order of CIT(A) are relevant in this regard and therefore, the same are extracted here as under :

“3.5 I have considered the submission made by the appellant and perused material on record. The contention raised by the appellant that stock valued at Rs.1,08,78,360/- during the course of survey action u/s.133A on 27-04-2005 at Wagholi belonged to him had been rejected by the Assessing Officer during the assessment proceedings. The inventory of the stocks were made by during the survey party with the help of the workers present at the godown & was valued at MRP of Rs.2,14,67,498/- and the partners of the firm were not present at the business premises during the survey action. These stocks valued at MRP also contained imported stocks valued at Rs.1,08,78,360/-, which was taken to be belonging to another concern M/s. Bhikshu Granimart (or BG) based on the said name marked on some of the packing boxes. The contention raised by the appellant before the Assessing Officer that the said stocks belonged to them and not BG as the same were purchased from them on the basis of Highseas Sales was rejected by the Assessing Officer. The basis on which the Assessing Officer had arrived at the aforesaid finding appears to be the assessment order passed in the case of Bhikshu Granimart wherein the said amount of Rs. 1,08,78,360/- had been added by the Assessing Officer. The evidences furnished by the appellant do not appear to have been examined by the Assessing Officer during the assessment proceedings. Even during the remand proceedings, the Assessing Officer has been guided by the findings made in the assessment order ignoring the documentary evidence furnished by the appellant. The appellant in fact had furnished the purchase bills, high-seas agreement, bills of entry and landing, bank statement and the books of accounts for the purchases of ceramic tiles during the period June 2004 to September 2004 from Bhikshu Granimart. During the assessment proceedings these stocks lying with the appellant in its godown were found by the survey party on 27.04.2005 inventorized and valued at MRP at Rs. 1,08,78,360/- and considered to be relating to M/s Bhikshu Granimart on the basis of markings on the packing material. However, it is seen that the purchase of the stock by the appellant was carried out much before the survey/search action and the same had been disclosed in regular books of account by both the concern viz. Floorings i.e. the appellant and M/s BG. The evidences filed by the appellant during the assessment proceedings as well as during the appellate proceedings clearly indicates that M/s BG had sold ceramic tiles on High-seas basis to the appellant from the letters submitted to the Asst. Commissioner of Customs, Nhavasheva and also the purchase bills, bill of landing and the High Seas agreement entered into between BG and the appellant and the subsequent payments made by the appellant. In

fact, the entire transaction of purchase of ceramic tiles had been completed before the search/survey action and hence the inference drawn by the Assessing Officer is based on an incorrect understanding of the fact. Hence the contention of the appellant that the stock of Rs. 1,08,78,360/- treated to be belonging to M/s BG by the Assessing Officer and not of the appellant being factually and legally incorrect is found to be true in view of the fact and material on record brought out by the appellant. Thus the aforesaid stock valued at MRP 1,08,78,360/- is held to be belonging to the appellant firm as against M/s. BG held by the Assessing Officer.”

18. It is an undisputed fact that high-sea sales are made by M/s. Bhikshu Granimart to the assessee and the same are entered in the books of the assessee and the stock is kept in the godown of the assessee too. However, the packing material of the said stock do bear the name of the seller. Requisite payments were also made by the assessee as per entries in the books. In such circumstances, the stock cannot belong to M/s. Bhikshu Granimart. In our view, the AO erred in disturbing the stock of M/s. Bhikshu Granimart on hand and AO erred in not granting corresponding adjustment to the stock of the assessee on the other. Considering the above, we are of the opinion that the order of CIT(A) is fair and reasonable and does not call for any interference on this issue. Accordingly, Ground No.1 raised by the Revenue is dismissed.

19. Ground No.2 raised by the Revenue relates to reduction of margin by 32% as against 14.7% adopted by the AO.

Relevant facts include that the assessee is a wholesaler dealer in ceramic tiles and not engaged in retail business. AO adopted 14.87% gross profit margin on the said goods. CIT(A) adopted 32% gross profit. Contents of Para No.3.6 of the order of CIT(A) are relevant. Aggrieved with the order of CIT(A) Revenue raised the issue vide Ground No.2.

20. Ld. Counsel for the assessee filed the written submissions. In the submissions, he stated that assessee imported the ceramic and wall

tiles in bulk as a wholesaler. Assessee is not having any show room for its sales. He further stated that MRP mentioned is the final selling price to the customers which includes the margin earned by the assessee as a wholesaler/retailer. Assessee valued the stock at the cost price whereas the survey party valued the stock at MRP. Therefore, the order of the CIT(A) adopting 32% gross profit as against 14.87% adopted by the AO needs to be confirmed.

21. On the other hand, Ld. DR for the Revenue relied on the order of AO.

22. After hearing both the sides and perusing the orders of the Revenue, we find the conclusion drawn by the CIT(A) at Para No.3.6 is relevant and the same is extracted as under :

“3.6

*The explanation furnished by the appellant of retailers margin ranges between 15 to 18%, in view of substantial investments for maintenance of showroom as well as the explanation of the appellant before applying rate of GP to arrive at cost of stocks as on 27-4-2005. The Assessing Officer has only noted that the appellant has not supported its contention about 30 to 32% margin of MRP. The appellant's GP margin for the year is 14.87%, however, as the stock inventorised by the survey party has been valued at MRP (i.e. market retail price) hence the deduction of GP to arrive at cost of goods should range between 30 to 33%, i.e. *14.87% GP of the appellant plus 15 to 18% margin of the retailers/distributors). Thus, taking into account the aforesaid fact the Assessing Officer ought to have deducted 32% GP to arrive at the cost of stocks as against 14.87% taken by the Assessing Officer to work out the said cost of stocks in hand as on 27-04-2005. Hence the margin of 32% for the working of cost is realistic and logical and the Assessing Officer is directed to adopt the same for arriving at cost of stocks as on 27-04-2005.”*

Considering the above, we find the CIT(A) has appreciated the fact that assessee is a wholesaler and rightly adopted 32% gross profit on the sales. Therefore, the finding given by the CIT(A) is fair and reasonable and does not call for any interference. Accordingly, Ground No.2 raised by the Revenue is dismissed.

23. Ground No.3 by the Revenue relates to deletion of addition of Rs.31,01,054/- (sic) by the CIT(A) on account of undisclosed sales. Assessee declared profit of Rs.16,60,706 in its return of income. However, based on the profit and loss account prepared by the assessee, AO treated Rs.47,71,360/- as profit and inferred that assessee is trying to mislead the facts and thus disallowed Rs.31,10,654/-. CIT(A) after analyzing the trading account of the assessee deleted the addition made by the AO. Challenging the order of CIT(A) revenue raised the present issue vide Ground No.3 of its appeal.

24. Before us, Ld. Counsel for the assessee filed the following written submissions on this issue :

“The learned CIT(A) has discussed this issue in para 3.7 of the order. He has appreciated the contention of the assessee that the profit on the undisclosed sales was worked out at Rs.16,60,706/- and not Rs.47,71,360/- as held by the A.O. He has considered the figure in change in stock which was not considered by the A.O. It is submitted that the addition is rightly deleted by the CIT(A). The income worked out by the A.O. of Rs.47,71,360/- on the sales of Rs.1,14,89,135/- result in profit margin @ 41.5% which is not possible. The learned A.O. did not appreciate the correct facts of the case while making the addition and accordingly, the same is rightly deleted by the CIT(A).”

25. Ld. DR for the Revenue relied on the order of the AO

26. We heard both the sides. On perusing the order of CIT(A), we find it relevant to extract the finding given by the CIT(A) at Para No.3.7 of his order :

“3.7 The learned CIT(A) has discussed this issue in para 3.7 of the order. He has appreciated the contention of the assessee that the profit on the undisclosed sales was worked out at Rs.16,60,706/- and not Rs.47,71,360/- as held by the A.O. He has considered the figure in change in stock which was not considered by the A.O. It is submitted that the addition is rightly deleted by the CIT(A). The income worked out by the A.O. of Rs.47,71,360/- on the sales of Rs.1,14,89,135/- result in profit margin @ 41.5% which is not possible. The learned A.O. did not appreciate the correct facts of the case while making the addition and accordingly, the same is rightly deleted by the CIT(A).”

Considering the same, we find the order of CIT(A) is fair and reasonable. Therefore, we do not find any reason to deviate from the said finding of the CIT(A) on this issue.

27. Ground No.4 by the Revenue relates to deletion of Rs.15,00,000/- by the CIT(A) on account of introduction of capital.

28. Relevant facts include that assessee introduced capital of Ra.90 lakhs in the firm and utilized the same for making purchases. However, rejecting the explanation made addition of Rs.15 lakhs being initial investment to purchase the goods. Before the First Appellate proceedings, assessee explained the introduction of Rs.90 lakhs by the partners of the firm which resulted in unaccounted sales of Rs.1.14 crores giving the details. As per the assessee, average sales works out to Rs.36 lakhs per month and corresponding monthly purchases works out to Rs.26 lakhs and therefore, the capital contribution was adequate enough for making the unaccounted purchases. Assessee contended that AO having verified the books of account has not commented anything adverse. CIT(A) deleted the entire addition made by the AO. Aggrieved with the order of CIT(A) the revenue is in appeal before us.

29. Before us, Ld. Counsel for the assessee filed the following written submissions :

“The learned A.O. had made an addition of Rs.15,00,000/- as introduction of initial capital for making undisclosed sales. The learned CIT(A) has discussed this issue in paras 5 to 5.3 of his order. It was explained to him that the addition made of Rs.15,00,000/- was not justified at all. It was also clarified that the partners of the assessee firm had introduced an amount of Rs.90,00,000/- which was available for making purchases and therefore, there was no reason to make any addition on account of undisclosed investment in the absence of any evidence .. The assessee submits that the addition has been rightly deleted by the CIT(A) and the grounds raised by the dept. may kindly be dismissed.

30. Ld. DR for the Revenue on the other hand relied on the order of the AO.

31. We heard both the sides and perused the order of CIT(A) on this issue. We find it relevant to extract the conclusion of the CIT(A) given at Para No.5.2 and the same is reproduced here as under :

“5.2 I have considered the submission made by the appellant and perused material on record. The addition of Rs.15 lacs towards the introduction of initial capital to purchase unaccounted stocks has been made on presumption and on ad hoc basis which is not based on any particular document or any evidence found during the course of search/survey action. The appellant firm is seen to have commenced business on 8th May 2004 and the partner’s capital contribution of Rs.90 lacs has been utilized by the appellant to make purchases on the goods traded. The appellant’s total sales included the undisclosed sales of Rs.1,14,89,135/- amounted to Rs.3,95,80,854/- which works out to an average sale of 36 lacs per month and correspondingly the monthly purchases works out to Rs. 26 lacs as is evident from the material on record. Hence the contribution of capital by the partner of Rs. 90 lacs was adequate to make three and a half month purchases if the undisclosed cash sales of 10.54 lacs (being Rs.1,14,89,135/- for 11 months) the appellant’s purchases gets explained out of the disclosed funds and the monthly rotation thereof. The material on record indicates that the part of the sales made by the appellant remained to be accounted in the books of account and the infusion of capital to the extent of Rs.90 lacs in the firm and utilized to make purchases appear to be logical and the undisclosed sales arising out of the disclosed purchases and rotation of undisclosed cash sales proceeds. The Assessing Officer has restored to the said addition based on presumption that such expenditure on purchase may have been incurred. However, it is seen that the appellant firm had adequate funds to source purchases and, therefore a separate addition of Rs. 15 lacs was not called for Further, there is no evidence to indicate or any incriminating material relating or reflecting the introduction of capital to have been found during the search/survey action and in its absence the addition made by the Assessing Officer on suspicion and presumptions is not liable to be sustained.”

From the above, we find the order of the CIT(A) is a reasoned one and therefore it does not call for any interference from our side. Accordingly, Ground No.4 raised by the Revenue is dismissed.

32. In the result, appeal of the Revenue is dismissed.

We shall now deal with the cross appeals pertaining to M/s. Bhikshu Granimart for the A.Y. 2006-07.

ITA No.1286/PUN/2014 - By Assessee
ITA No.1330/PUN/2014 - By Revenue
(M/s. Bhikshu Granimart - A.Y. 2006-07)

33. Grounds raised by the Assessee and the Revenue are extracted as under :

Grounds by Assessee :

“On the facts and circumstances of the case and in law :-

1. *The Hon CIT(A) erred in confirming the Addition of Rs.19,66,533/- made by the AO on account of variation in value of stock found during survey action. The appellant pleads that the addition is not justified.*

2 (i) *The Hon CIT(A) erred in confirming the order of the AO disallowing Rs.11,09,100/- u/s.40A(3) on estimated purchases of Rs.55,45,500/- reflected in the Profit & Loss Account of undisclosed income to match the estimated profit declared on unrecorded credit and cash sales.*

(ii) *The Hon CIT(A) and the AO failed to appreciate that in the survey action conducted at the assessee’s business premises, no documents evidencing unrecorded cash purchases were found and that the additional income of Rs.11,09,100 declared for the year is based on the estimated profit declared by the assessee to the survey party following the survey on 27-04-2005.*

(iii) *The Hon CIT(A) and the AO failed to appreciate that the disallowance u/s.40A(3) is not based on any entry or evidence of cash payment of a sum exceeding a sum of Rs.20,000/- towards purchases for the year.*

3. *The appellant pleads that its claims are legitimate and allowable and craves leave to add to, alter, amend, modify or withdraw any or all grounds of appeal.”*

Grounds by Revenue :

“1. *On the facts & in the circumstances of the case and in law the Ld.CIT(A)(C) erred in holding that the excess stock valued at Rs.1,08,78,360/- found during search/survey belonged to the firm M/s. Floorings, an associate concern of the assessee, when the assessee could not prove the same with evidence either at the time of search/survey or at the time of assessment proceedings.*

2. *On the facts & in the circumstances of the case and in law the Ld.CIT(A)(C) erred in giving relief to the assessee in respect of excess stock valued at Rs.1,08,78,360/- found during search/survey belonged to the firm M/s. Floorings, an associate concern of the assessee, relying on the decision of the Ld.CIT(A)-II, Pune, without confronting the findings of the Ld.CIT(A)-II to the Assessing Officer and without giving any opportunity to him to rebut the findings of the Ld.CIT(A)-II, Pune.*

3. *On the facts & in the circumstances of the case and in law the Ld.CIT(A)(C) erred in giving relief to the assessee in respect of excess stock valued at Rs.1,08,78,360/- found during search/survey belonged to the firm M/s. Floorings, an associate concern of the assessee, relying on the decision of the Ld.CIT(A)-II, Pune, without bringing out any material to confront the reason on basis of which the Assessing Officer made the addition.*

4. *The order of CIT(A) may be vacated and that of the Assessing Officer be restored.*

5. *The appellant craves leave to add, alter, amend, and modify any of the above grounds of appeal.”*

We shall take up the **Assessee's** appeal first in the case of M/s Bhikshu Granimart.

ITA No.1286/PUN/2014 – By Assessee
(M/s. Bhikshu Granimart - A.Y. 2006-07)

34. Ground No.1 raised by the assessee – M/s. Bhikshu Granimart relates to confirming addition of Rs.19,66,533/- made by the AO on account of variation in value of closing stock found during survey action. Relevant facts include physical counting of the stock was done and excess stock of Rs.1,28,44,893/- was found on the date of search. Assessee vide its submission dated 07-12-2007 submitted his explanation. The said submissions of the assessee were extracted in Para No.9.1 of the assessment order. Rejecting the explanation given by the assessee, the AO disallowed the said excess stock amounting to Rs.1,28,44,893/- as undisclosed investment and added the same to the total income of the assessee apart from invoking the provisions of section 271(1)(c) of the Act.

35. During the First Appellate proceedings, CIT(A) confirmed the addition made by the AO. Contents of Para No.10.5 of the order of CIT(A) are relevant.

36. After hearing both the sides on this issue, we find it relevant to reproduce the finding given by the CIT(A) at Para No.10.5 of his order here as under :

“10.5 I have given careful consideration to these contentions of the appellant. Upon perusal of the assessment order, it is seen that the above submissions regarding the stock reconciliation were made by the appellant before the AO for the first time on 7-12-2007 whereas the search in the appellant’s case had taken place on 27-04-2005. At the time of the survey, no reservations were made by the persons representing the appellant and the issues raised in the letter of 7-12-2007 as regards appellant’s stock lying elsewhere, stock belonging to other group entities lying at the appellant’s premises, difference on account of inner/outer measurement scrap valued as regular stock, differences in value adopted by the Department etc. were never raised at that time. Therefore, when the issues were raised for the first time before the AO after the lapse of more than 2 and a half years, and that too, without any supporting evidence, it was not possible, in my view, for the AO to verify the facts with any degree of certainty as the necessary evidence would have long since disappeared. For these reasons, the contentions of the appellant are hereby rejected. As regard the contention that on a similar issue, the matter had been decided in favour of the appellant in the case of Shri Vinay S. Jain, upon perusal of that order I find that the decision in that case turned on its own particulars facts and the decision was not entirely on the merits of the reconciliation presented by the appellant. Accordingly, having considered the submissions of the appellant carefully, I do not find any reason to interfere with decision of the AO as regards the amount of Rs.19,66,533/-. The addition is therefore confirmed to that extent. Accordingly, this ground of appeal may be treated as partly allowed.”

From the above, it is evident that the assessee could not justify difference in the closing stock with supporting evidences. Therefore, the order of CIT(A) sustaining the addition in the hands of the assessee is justified. Therefore, Ground No.1 raised the assessee is dismissed.

37. Ground No.2 with its sub-grounds raised by the assessee – M/s. Bhikshu Granimart in this appeal are akin to the grounds of appeal raised by the assessee – M/s. Floorings for the A.Y. 2005-06. This is a case where notional cash purchases were shown in the books of account for the purpose of meeting the requirement of matching unrecorded sales. However, the said amount was taxed under the search/survey action on the assessee. In this year under consideration, Rs.55,45,000/- was shown as estimated purchases in cash. AO applied

the provisions of section 40A(3) of the Act and disallowed 20% of the same which works out to Rs.11,09,100/-. CIT(A) confirmed the same by elaborately reading the entries as cash purchases ignoring the other circumstantial variations.

Similar issue came up for adjudication in the case of M/s. Floorings – ITA No.374/PUN/2014 and we have held the same in favour of the assessee relying on the order of the Tribunal in the case of Sanjay Javerilal Jain Vs. DCIT (supra). Contents of Para No.8 to 11 of the order of Tribunal are relevant which are already extracted in the Para No.9 of this order. Therefore, Ground No.2 along with its sub-grounds raised by the assessee in the case of this assessee are also allowed with similar reasoning.

38. Ground of appeal No.3 raised by the assessee is general in nature and therefore, the same is dismissed as such.

39. In the result, appeal of the assessee is partly allowed.

ITA No.1330/PUN/2014 - By Revenue
(M/s. Bhikshu Granimart - A.Y. 2006-07)

40. The only ground raised by the **Revenue** in this appeal relates to the addition of Rs.1,08,78,360/- and the relevant facts are already discussed in connection with Ground No.1 of the appeal of the Revenue for A.Y. 2005-06 in the case of M/s. Floorings vide ITA No.374/PUN/2014.

41. After hearing both the sides on this issue and on perusing the orders of the Revenue, we have upheld the finding of the CIT(A) on this issue that the stock belongs to M/s. Floorings and not M/s. Bhikshu Granimart. Reasons for the same are already extracted while deciding the issue in favour of the assessee. Considering the same, we are of the

opinion that all the grounds raise by the Revenue are required to be dismissed.

42. In the result, appeal of the Revenue is dismissed.

43. To sum up, the appeals of both the assesseees are partly allowed and the appeals of the Revenue in respect of both the assesseees are dismissed.

Order pronounced in the open court on this 13th day of April, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

(D. KARUNAKARA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 13th April, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-II/IV, Pune
4. CIT-II/IV, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune