आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./ IT(SS)A No. 140 and 141/Ahd/2013

निर्धारण वर्ष/Asstt.Year: 2009-2010 and 2010-11

WITH

Cross Objection No.148/Ahd/2013

IN

Asstt.Year : 2010-11

DCIT, Cent.Cir.2(4) Ahmedabad.	Vs	Komal Tex Fab P.Ltd. Survey No.167/1687 Nr. Balaji Textile Narol-Sarkhej Road Ahmedabad 382 405. PAN : AAACK 6150 C

आयकर अपील सं./ ITA No. 572/Ahd/2013

निर्धारण वर्ष/Assessment Year: 2009-2010

Komal Tex Fab P.Ltd. Survey No.167/1687 Nr. Balaji Textile Narol-Sarkhej Road Ahmedabad 382 405. PAN : AAACK 6150 C	Vs	DCIT, Cent.Cir.2(4) Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Revenue by :	Shri O.P. Vaishnav, CIT-DR
Assessee by :	Shri S.N. Soparkar, AR

सुनवाई की तारीख/Date of Hearing : 30/07/2019

घोषणा की तारीख /Date of Pronouncement : 21/10/2019

O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER : The ld.CIT(A) has decided appeals of the assessee for the Asstt.Year 2009-10 and 2010-11 vide separate orders dated 28.1.2013. The assessee and Revenue both are in cross-appeals for the Asstt.Year 2010-11, whereas in the appeal of the Revenue for the Asstt.Year 2009-10, the assessee has filed CO bearing No.148/Ahd/2013. Since common issues are involved, therefore, we heard all the appeals and CO together and deem it appropriate to dispose of them by this common order.

2. The grounds of appeal taken by the Revenue read as under:

IT(SS)A.No.140/Ahd/2013:

1. *The ld.CIT(A)has erred in law and on facts in deleting the addition of Rs.8,10,850/- made on account of disallowance of cash payment to contractors.*
2. *The ld.CIT(A)has erred in law and on facts in deleting the addition of Rs.1,38,03,648/- made on account of unaccounted sales-merchandisers.*
3. *The ld.CIT(A)has erred in law and on facts in deleting the addition of Rs.48,812/- made on account of disallowance of foreign travel expenses.*

IT(SS)A.No.141/Ahd/2013:

1. *The ld.CIT(A)has erred in law and on facts in deleting the addition of Rs.8,95,670/- made on account of disallowance of cash payment to contractors.*
2. *The ld.CIT(A)has erred in law and on facts in deleting the addition of Rs.67,08,014/- made on account of shortage of stock of yarn.*

3. A perusal of the above quantum which have been deleted by the ld.CIT(A) in both the years would reveal that tax effect by virtue of order of the ld.CIT(A) in these appeal is less than Rs.50 lakhs in each year. Though, these appeals were heard on 30.7.2019, but before the pronouncement of the order, the CBDT has issued instruction bearing

no.17 of 2019 dated 8.8.2019,vide which it has prohibited subordinate authorities from challenging order of the CIT(A) where tax effect by virtue of relief given by the CIT(A) is less than Rs.50 lakhs.

4. After perusal of the above CBDT Instruction, we are of the view that the present appeal of the Revenue falls within the purview of the CBDT Instruction cited (supra). It is not in dispute that tax effect on the disputed addition is not more than Rs.50 lakhs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeals of the Revenue deserve to be dismissed. They are dismissed.

However, it is observed that in case on re-verification at the end of the AO it can be demonstrated that the tax effect is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act. In view of the above, the appeals of the Revenue are dismissed due to low tax effect.

5. Now we take the appeal of the assessee for the Asstt.Year 2009-10 and CO filed in Asstt.Year 2010-11.

6. First common issue involved in the appeal as well as in the CO is that the ld.CIT(A) has erred in confirming the addition of Rs.8,10,850/-

and Rs.8,95,670/- in the Asstt.Year 2009-10 and 2010-11 respectively. These additions were made by the AO by making disallowance out of labour payments to contractors.

7. Brief facts of the case are that a search under section 132 of the Income Tax Act was carried out at the premises of Komal Group on 6.8.2009 and notice under section 153A was issued and served upon the assessee. In response to the notice, the assessee has filed its return of income on 6.6.2011 declaring total loss at Rs.5,18,136/- in the Asstt.Year 2009-10. In the Asstt.Year 2010-11, the assessee has filed its return of income on 15.10.2010 declaring total income at Rs.1,96,87,270/-. Notices under section 143(2) were issued in both the years. After hearing the assessee, the ld.AO has passed assessment order under section 143(3) r.w.s section 153A on 30.12.2011.

8. It emerges out from the record that Department had able to lay its hand on the material exhibiting the fact that the assessee has inflated its labour payments. A reference in this connection was made towards page nos.25 and 26 of Annexure A/58 found and seized during the course of search. The AO has compared payment made to the contractors as per details in the hard-disc seized as well as payment to contractors as per the profit & loss account. On a detailed analysis, he found that the expenses were inflated. Ultimately, 5% of the payments towards the contract for labour payments have been disallowed. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

9. The ld.counsel for the assessee fairly conceded that the detailed analysis with regard to this issue has been made by the AO right from Asstt.Year 2004-05. It is travelled upto the Tribunal in the Asstt.Year 2007-08 and 2008-09 vide IT(SS)A.No.98 & 99/Ahd/2013. The Tribunal has upheld the disallowance. He placed on record copy of the Tribunal's order dated 16.2.2018. The ld.DR also relied upon the order of the Tribunals in the earlier years.

10. On due consideration of the above facts and circumstances, and in the light of the Tribunal's order and the stand taken by the assessee, we do not find any error in the finding of the ld.CIT(A) on this issue in both the years. Hence, this ground of appeal is rejected in both the assessment years. In other words, ground no.1 of ITA No.572/Ahd/2013 and ground no.1 of CO No.148/Ahd/2013 are rejected.

11. Ground no.3 in IT(SS)A.No.572/Ahd/2013 is connected with ground no.2 in CO No.148/Ahd/2013.

12. The grievance of the assessee in both these grounds is that the ld.CIT(A) has erred in confirming the addition of Rs.1,38,03,648/- and Rs.67,08,014/-. The facts on all vital points are common on this issue in both the years. Therefore, for the facility of reference we take the facts from the Asstt.Year 2009-10.

13. Brief facts of the case are that according to the AO, during the course of search at the premises of Komal Texfeb Pvt.Ltd. certain loose papers bearing no.1 to 79 inventorised as annexure A/61 were found

and seized. A perusal of these pages revealed that they contained details of items purchased, from whom these were purchased, opening balance of the material, inward quantity, outward quantity and the closing balance. On the basis of these details, the ld.AO has worked out shortage of 191928. Kgs. He proposed to make average sale price of finished fabrics at Rs.195/- and why it should not be construed that the assessee has sold fabrics out of books amounting to Rs.3,74,26,007/-. The assessee has submitted a detailed reply and after going through that reply, the ld.AO has worked out the shortage at 70787 kgs. instead of earlier worked out at 191928 kgs of fabrics. He made addition of Rs.1,38,03,648/- by adopting average sale price of Rs.195 /- per kg. Before the ld.CIT(A), the assessee has filed written submissions which has been reproduced by the CIT (A) and reads as under:

> "3.6 It is further submitted that whenever Assessee receives any goods for job work, agreed ratio of shortage, normal losses, is clearly mentioned in sales order: which are agreed upon by both Assessee and third party. The copies of such sale! orders were also submitted to the Assessing Officer and shortages claimed by Assessee as mentioned in loose paper and Tally Software is within the agreed percentage of shortage. It is submitted that whenever any third party has agreed with ratio of shortages, Assessing Officer was not justified in not accepting the actual shortages occurred during the process and treating it as sales outside Books of Account. The tabular chart is prepared for showing the example of shortages on the basis of loose paper! found during the course of search.

Particulars	Inward* opening quantity (Kgs)	Shortage	% of shortage
Bodyline Impex Pvt. Ltd	34252.66	1342.53	1 3.92
Dixcy Textile Pvt. Ltd.(Tirupur)	159226.57	8078.00	I 5.07
Ram International	43239.00	4153.00	i 9.60
V & S International Pvt.Ltd.(Gurgaon)	72620.72	1879.00	2.59 i

3.8 In view of what is stated herein above, the learned Assessing Officer has failed to appreciate that loose paper found during the course of search reflects actual shortages of the goods for 70,787.94 kgs and not sales outside the Books of Account. She ought to have appreciated that -

(i) In the process of converting grey cloth into finished fabric, shortages are bound to happen and shortages shown by appellant is within the agreed ratio of shortages with third party on whose behalf goods were received on job work basis.

(ii) During the course of search, the Director of Appellant Company has categorically stated that shortages of 8 to 9% are bound to happen in the process of converting grey cloth to finished fabric which depends on quality of fabric, type of process, type of designs, etc.

(iii) The "NIL" noted adjacent to closing balance in loose sheet prepared on the basis of excel sheet refers to actual shortages occurred during the i process and same was already recorded as such in Tally Software before the date of search. Even the Assessing Officer has not disputed the basic fact that entries of shortages are already entered in Tally Software before the date of search; ;

(iv) The part explanation regarding duplication of entries and actual job work sale has been accepted by Assessing Officer from same loose paper and entries in Tally Software hence she was not justified in rejecting the balance explanation regarding shortages which is also reflected in same loose paper and Tally Software. Whenever there was actual sale, same was already reflected as job work sales in Books of Account hence presumption of Assessing Officer that shortages noted and claimed in Tally Software is actual sale not recorded in Books of Account is incorrect.

It is an accepted principle of interpretation of documents that they **should be read as a whole, as persons of common prudence will read them.**

They cannot be read in bits and parts to suit the convenience of one party or the other. Reliance in this regards is placed on the following decisions:

1. Navjivan Oil Mills V. CIT [2001] ITR 417 (Guj).
2. Glass Lines Equipment & Co. Ltd. V. CIT [2002] 253 ITR 454 (Guj).
3. Biren V. Savla V. Acit [2006] 155 Taxman 270 (Mum.).
4. Dhanvarsha Bulders & Developers (P.) Ltd. V. DCIjT [2006] 102ITD 375(Pune).

(v) During the course of search, no incriminating material was found which suggests that appellant has sold fabric outside Books of Account. Even Assessing Officer has not brought on record any evidences which can suggest that fabric of 70,787.94 kgs claimed as shortages was sold outside the Books of Account. The entire addition has been made by Assessing Officer on presumption that such shortages are sold outside Books of Account which cannot be accepted. It is treaty of the law that no addition can be made on presumption without bringing any corroborative evidence more particularly when documents found during the course of search, entries recorded in Tally Software before the date of search along with the statement of Director and sales orders of third party clearly suggests that appellant has rightly claimed 70,787.94 kgs as shortages.

(vi) It is an undisputed fact that Annexure - A/61 seized from the premises of appellant refers to inward, outward of goods pertaining to job work activity carried out by Assessee. Even Assessing Officer has accepted that the transactions noted in loose paper referred to job work activity carried out by Assessee. In view of such facts

whenever Assessee has received goods from third party as job work, third party has direct control on goods sent to Assessee for job work activity and its subsequent receipt and whenever any material is received less in comparison with agreed terms and conditions of receipt of finished goods, they would definitely claim loss from Assessee. In view of these facts Assessee **cannot sell the goods belonging to the third party and there cannot be any account for presumption that sales is carried out outside Books of accounts belonging for goods to third party.**

3.9 Without prejudice to above, while making the impugned addition has not given any reasoning for not considering 73.97 kg out of 1,11,092.94 kg sale between 19th March, 2009 and 31st March, 2009. The only contention Officer for not giving the credit of 73.97 kg was that the said quantity pertains to the earlier years i.e. prior to A.Y. 2009-10. Such discrimination for giving the credit of actual sale has no logical/legal base. In view of the same the relief to that extent for Rs.14,424/- should be given."

14. The ld.CIT(A) has not dealt with any of the submissions by the assessee, rather, rejected them summarily by recording the following finding:

"6.3 From the assessment order, it is found that all the explanation given by appellant have been already considered by AO and only after that it was concluded that shortage of 70787.94 kg of finished fabric has not been satisfactorily explained by appellant. The explanation regarding duplication of entries has been already considered by AO and credit for the same has been given. I therefore hold that addition of Rs. 1,38,03,648/- made by AO is justified under the circumstances narrated in the assessment order. Ground no. 4 is thus dismissed."

15. Similar are the facts and the finding of the CIT(A) in the Asstt.Year 2010-11. The ld.counsel for the assessee submitted that the ld.CIT(A) has not applied his mind on the details submitted by the assessee. He has not looked into the facts. Nothing was found during the course of search. The shortage which has been worked out by the AO is a normal shortage in this line of business, and it could not be construed as excessive, out of which finished goods are sold out of books. The ld.DR was unable to controvert the contentions of the ld.counsel for the assessee.

16. We have considered rival submissions and gone through the record carefully. A perusal of brief finding recorded by the CIT(A) would reveal that the od.CIT(A) has not considered any material on the record as well as arguments of the assessee pleaded in the written submissions. Thus, the impugned order cannot be branded as a speaking order. At this stage, we would like to make reference to the judgment of Full Bench of the Hon'ble Punjab & Haryana High Court in the case of Roadmaster Industries of India P.Ltd. Vs. ACIT, 303 ITR 138 (P&H) wherein Hon'ble Court has considered large number of judgments at the end of Hon'ble Supreme Court as well as at the end of Hon'ble High Courts in order to propound why reasons are necessary in support of conclusions of any adjudicating authority. In order to appraise ourselves as well as to the ld.First Appellate Authority about the importance of assigning reasons, we deem it appropriate to take note of the following finding from this judgment:

> *"4. On a perusal of impugned order, even the counsel for the revenue could not dispute that the order passed by the CIT cannot be termed to be a speaking order which could stand in judicial scrutiny. As to whether in exercise of quasi-judicial powers, the authorities are required to pass orders by giving reasons in support thereof is well-settled by a series of judgments by the Hon'ble Supreme Court of India.*
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> *5. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala AIR 1961 SC 1669, while dealing with an order passed by the Central Government in exercise of its appellate powers under section 111(3) of the Companies Act, 1956, in the matter of refusal of a company to register the transfer of shares, Hon'ble the Supreme Court observed :*
>
> > *". . . If the Central Government acts as a Tribunal exercising [quasi] judicial powers and the exercise of that power is subject to the jurisdic- tion of this Court under article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order. . . ." (p. 1678)*
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> *6. Another Constitution Bench of Hon'ble the Supreme Court in Bhagat Raja v. Union of India AIR 1967 SC 1606 considered the question*

whether while exercising revisional power under section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with Rules 54 and 55 of the Mineral Concession Rules, 1960, the Central Government was required to give reasons in support of its decision and held :

> *". . . The decisions of Tribunals in India are subject to the supervisory powers of the High Courts under article 227 of the Constitution and of appellate powers of this Court under article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word 'rejected' or 'dismissed'. In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. . . ." (p. 1610)*

7. In Travancore Rayons Ltd. v. Union of India AIR 1971 SC 862, Hon'ble the Supreme Court observed :

> *". . .The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power." (p. 866)*

8. In Mahabir Prasad Santosh Kumar v. State of UP AIR 1970 SC 1302, Hon'ble the Supreme Court while quashing the cancellation of the petitioner's licence by the District Magistrate, observed :

> *". . . Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just." (p. 1304)*

9. In Woolcombers of India Ltd. v. Woolcombers Workers' Union AIR 1973 SC 2758, Hon'ble the Supreme Court quashed the award passed by the Industrial Tribunal on the ground that it was not supported by reasons and observed :

> *". . .The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi-judicial authorities to this Court by special leave granted under article 136. A judgment which does not disclose the reasons will be of little assistance to the Court. . . ." (p. 2761)*

10. The same view was reiterated in Ajantha Industries v. CBDT AIR 1976 SC 437 and Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India AIR 1976 SC 1785.

11. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, a Constitution Bench reviewed various judicial precedents on the subject and observed:

> *"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Court to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other*

considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and Tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decisions are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge." [Emphasis supplied] (p. 1995)

12. In Testeels Ltd. v. N.M. Desai, Conciliation Officer AIR 1970 Guj. 1, a Full Bench of Gujarat High Court speaking through P.N. Bhagwati, J. (as his Lordship then was) made a lucid enunciation of law on the subject in the following words:—

"The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set up. The administrative authorities having a duty to act judicially cannot therefore decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision-making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under article 226 and the Supreme Court under article 32 of the Constitution. These Courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said Courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then, they will be subject to judicial scrutiny and correction." (p. 1)

13. Keeping in view the above settled principles of law and applying the same in the facts and circumstances of the present case, we are of the view that the order passed by the CIT does not satisfy the pre-requisites of a speaking order, as the same does not contain reasons to support the order."

17. In the light of the above, if we visualize written submissions and finding given by the ld.CIT(A), then it is apparent that such finding does not contain any adjudication on the submissions of the assessee and not sustainable. Therefore, we set side finding of the ld.CIT(A) on this issue in both the three years. We restore this issue to the file of the ld.CIT(A) for re-adjudication. The

ld.CIT(A) shall keep in mind judgment of Full Bench of Hon'ble Punjab & Haryana High Court while re-adjudicating this issue.

18. Ground no.2 in ITA No.572/Ahd/2013 and Ground No.3 in CO No.148/Ahd/2013.

19. In these grounds, grievance of the assessee is that the ld.CIT(A) has erred in confirming the disallowance of Rs.48,812/- and Rs.1,07,031/- which have been disallowed out of foreign travel expenses. The ld.counsel for the assessee conceded that this issue has been decided against the assessee.

20. We have considered rival submissions and gone through the record carefully. It emerges out from the record that the expenses were incurred on travel of Smt.Sayraben Bagrecha for a trip to Hong Kong. She is not an employee. No evidence of technical, professional qualification of Smt.Sayraben was filed. Therefore, the assessee failed to establish that these expenses were incurred for the purpose of business. Considering the finding recorded by the ld.Revenue authorities, we do not find any merit in these grounds of appeal in both the years. These ground of appeal are rejected.

21. Ground No.4 in ITA No.572/Ahd/2013.

22. The grievance of the assessee is that the ld.CIT(A) has erred in confirming the addition of Rs.1,83,94,205/-.

23. Brief facts of the case are that during the course of search, profit & loss account of the assessee-company for the period 1.4.2006 to 31.3.2009 was found and seized as per page no.14 of the Annexure A/56. Further page no.21 of the same annexure contained profit & loss account of the assessee-company from 1.4.2009 to 6.8.2009. The net profit has been show in negative at (-)1.44% whereas the ratio as per page no.21 for the period from 1.4.2009 to the

date of search i.e. 6.8.2009 had come to 9.95%. According to the AO, there is no reason for showing net loss after search, and therefore, he estimated net profit at 4% on the sales and made addition f Rs.1,83,94,205/-. Dissatisfied with action of the AO, the assessee carried the matter in appeal. The ld.CIT(A) has confirmed the addition by recording the following finding:

> *"7.3 Arguments of the appellant have been carefully considered. It is found that during the year, appellant has filed return declaring total loss of Rs.5,18,136/-. The total turnover during the year is of Rs.45,98,55,131/-. The reasons given by appellant such as increase in cost of power and gas, increase hi consumption of colour chemicals and higher interest cost can affect NP to some extent, but it is not acceptable that these factors alone will result in NP of -1.34%. Moreover, various defects have been pointed out by AO in the books of accounts maintained by appellant. Even during the course of search, discrepancy in the stock and cash was found/Shortage in finished goods, fabric and yarn claimed by appellant was not found to be fully verifiable. Keeping in view all these facts, I hold that rejection of books of accounts and estimation of NP by AO is justified. Moreover keeping in view the NP declared by appellant itself in other years, estimation of NP at 4% on the sales is also justified. Thus, addition of Rs. 1,83,94,205/- is confirmed. Ground no. 5 of appeal is thus dismissed."*

24. The ld.counsel for the assessee at the outset contended that no defects were pointed in the books of accounts, and unless books are rejected and found defective, profit cannot be estimated. He relied upon the judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. Vikram Plastics, 239 ITR 161 (Guj). He further contended that the ld.CIT(A) has not considered any submissions made by the assessee supported by the books of accounts. Therefore, according to the assessee, the finding of the ld.CIT(A) deserves to be set aside. On the other hand, the ld.CIT-DR relied upon the orders of the ld.CIT(A).

25. We have duly considered rival submissions and gone through the record carefully. Section 145 of the Act provides the mechanism how to compute the income of the Assessee. According to sub-section 1, the income chargeable under the head profit and gains of business or profession or income from other source shall be computed in accordance with the method of accountancy employed by an Assessee regularly, subject to sub-section 2 of Section 145 of the Act. Sub-section 2 provides that the Central Government may notify in the official gazette from time to time, the Accounting Standard required to be followed by any class of Assessee in respect of any class of income. Thus, it indicates that income has to be computed in accordance with the method of accountancy followed by an Assessee i.e. cash or mercantile, such method has to be followed keeping in view the Accounting Standard notified by the Central Government from time to time. Sub clause 3 provides a situation, that is, if the Assessing Officer is unable to deduce the true income. On the basis of method of accountancy followed by an Assessee than he can reject the book result and the assessee's income according to his estimation or according to his best judgment. The Assessing Officer in that case is required to point out the defects in the accounts of Assessee and required to seek explanation of the Assessee qua those defects. If the assessee failed to explain the defects than on the basis of the book result, income cannot be determined and Assessing Officer would compute the income according to his estimation keeping in view the guiding factor for estimating such income.

26. In the light of the above, we have perused the impugned order, and find that the ld.CIT(A) has not dealt any of the submissions made by the assessee. Simple reason assigned by the AO is that net profit was higher during the accounting period before the search; whereas after the search it has come down. Both the authorities have not taken into consideration whether any justifiable reasons are there for such lowering down of the profit. Since, order of the

ld.CIT(A) is totally silent on this aspect, and she has not discussed the submissions of the assessee, therefore, we deem it appropriate to set aside this issue to the file of the ld.CIT(A) for re-adjudication.

27. In the result, both the appeals of the Revenue are dismissed. Appeals of the assessee for the Asstt.Year 2009-10 and cross objection are partly allowed.

Pronounced in the Open Court on 21st October, 2019.

Sd/-	**Sd/-**
(PRADIP KUMAR KEDIA)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**