IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH 'A' BENCH

BEFORE SHRI G.E.VEERABHADRAPPA (PRESIDENT) AND SHRI B.R.MITTAL(JUDICIAL MEMBER)

ITA No.5188/Mum/2009: Assessment Year: 2000-01
ITA No.5189/Mum/2009: Assessment Year: 2001-02
ITA No.5190/Mum/2009: Assessment Year: 2002-03
ITA No.4600/Mum/2011: Assessment Year: 2003-04
ITA No.4601/Mum/2011: Assessment Year: 2004-05

Arrey Drugs & Pharmaceuticals Ltd., 203, Sahakar Bhavan, 340/346, Nasrshi Natha Street, Masjid, Mumbai-09 PA No.AAACA 5253A	Vs.	I.T.O. 6(1)(1) Mumbai.
(Appellant)		(Respondent)

Appellant by : Shri N.M.Porwal
Respondent by: Shri C.G.K. Nair

Date of hearing: 5.7.2012
Date of pronouncement: 13.7.2012

ORDER

Per B.R.Mittal, JM:

The assessee has filed these appeals for assessment years 2000-2001 to 2002-03 all dated 25.6.2009 and assessment years 2003-04 to 2004-05 both dated 22.3.2011 against orders of ld CIT(A), Mumbai.

2. Since most of the grounds and facts in all these appeals are common, we heard these appeals together and dispose off the same by a common order for the sake of convenience.

3. The relevant facts are that assessee is a company dealing in the business of manufacturing and trading in pharmaceuticals drugs, chemicals, etc. On the basis of information received by the Investigation Wing of the Income tax Department, Unit-I, Mumbai, from the Crime Branch, Mumbai Police that the assessee company was involved in the adulteration of petroleum products, the AO initiated reassessment

proceedings by issuing notice u/s.148 of the I.T.Act, 1961 for all the assessment years under consideration i.e. A.Ys. 2000-2001 to 2004-05.

4. Firstly, we take up appeal for assessment year 2000-2001 being **I.T.A. No.5188/M/2009.**

5. The assessee has filed concise grounds of appeal which are as under:

"1. On the facts and in the circumstances of the case, ld CIT(A) erred in confirming the following additions:

(i)	Depreciation	:	Rs.34,26,233
(ii)	Admn. Expenses:		Rs. 1,05,694
(iii)	Donation	:	Rs 9,000"

6. In respect of Ground No.1(i), the relevant facts are that assessee debited depreciation of Rs.49,68,365. The AO disallowed the claim of depreciation stating that the assessee company closed down the production and, therefore, there is no reason to allow depreciation on the assets of the company. Being aggrieved, assessee filed appeal before ld CIT(A).

7. Ld CIT(A) called for a Remand Report from the Assessing Officer as the assessee contended that as per tax audit report, assessee had been trading only during the year. The AO submitted his Remand Report vide letter dated 23.4.2009, copy placed at pages 26 to 30 of PB. The AO in the Remand Report (para 7) stated that assessee filed a list of assets during the remand proceedings under the head "plant and machinery" on which depreciation is claimed, but no documentary evidence is produced. The AO in the Remand Report has further stated that assessee filed a letter dated 25.2.2008 stating; *inter alia*, that during the year, manufacturing activity was stopped due to loss, however the other trading and business activity was on wherein, major part of the machinery were used for conversion, mixing and storage purposes. In lieu of the use, the depreciation has been claimed during the financial year relevant to assessment year 2000-2001. The AO stated that assessee has failed to furnish/produce the documentary evidence called for to prove that the machinery was put to use during the year and in the absence of any documentary evidence, the claim of the assessee for depreciation

was rightly disallowed. In view of above, ld CIT(A) vide para 6.3 of the impugned order, has stated as under:

> "6.3 I have duly considered the submissions of the AR and I find that the assessee has closed down manufacturing activity. Hence, no depreciation is allowable on plant and machinery used by the assessee for manufacturing. However, depreciation on other assets like building, motor car, etc, is allowable irrespective of the fact that whether any manufacturing was done by the assessee or not. The AO is directed to allow depreciation as per Income tax Act/Rules on building and motor cars, etc except on the plant and machinery used by the assessee for manufacturing activity. Since no manufacturing was done by the assessee, no depreciation is allowable on plant and machinery. This ground of appeal is partly allowed."

Hence, assessee is in further appeal before the Tribunal.

8. During the course of hearing, ld A.R. reiterated the facts as stated before the AO during the course of remand proceedings that the assessee discontinued its manufacturing activity due to loss but it had been trading during the year. Ld A.R. also referred to pages 11 & 12 of PB and submitted that there was sale of Rs.52.27 crores in the financial year relevant to assessment year under consideration. He submitted that during the course of trading business, assessee used its plant and machinery for storage purpose. However, assessee could not support the said statement with any documentary evidence that plant and machineries were used by the assessee during its trading business.

9. Ld D.R. also submitted that no evidence has been placed on record by ld A.R. and therefore, the order of ld CIT(A) be confirmed.

10. We on consideration of submissions of ld representatives of parties and in the absence of any documentary evidence on record, that the assessee used plant and machinery during the course of its trading activities as submitted before us, we do not find any reason to interfere with the order of ld CIT(A). Hence, we reject Ground No.1(i) of appeal taken by assessee.

11. In Ground No.1(ii), the assessee has disputed the order of ld CIT(A) in confirming a sum of Rs.1,05,694 out of Rs.4,76,220 disallowed by the AO under the head "administrative expenses"

12. During the relevant assessment year, assessee debited an amount of Rs.8,52,435 as administrative expenses. The AO stated that the assessee company was closed down during the year 1999 but still debited an amount of Rs.8,52,435 as administrative expenses for which no proof or evidences were produced. Therefore, the AO disallowed 50% of the claim of the assessee which comes to Rs.4,76,220 and added to the taxable income of the assessee. Being aggrieved, assessee filed appeal before ld CIT(A).

13. Ld CIT(A) asked the AO to submit remand report. Ld CIT(A) stated that the AO in his remand report, reiterated that assessee could not able to produce evidence of Rs.1,05,694 as under:

"a)	Conveyance	:	Rs.24,436
b)	Professional-others	:	Rs. 1,580
c)	Motor car-others	:	Rs.45,753
d)	Travelling exp.	:	Rs.10,220
e)	Sundry expenses	:	Rs. 3,737
f)	Office repairs-others	:	Rs.19,968
			Rs.1,05,694"

In view of above, ld CIT(A) confirmed the disallowance of Rs.1,05,694 as the assessee could not produce supporting evidences. Hence, assessee is in appeal before the Tribunal.

14. During the course of hearing, ld A,.R. could not controvert the findings of ld CIT(A) that the assessee could not produce documentary evidences in respect of above amount of Rs.1,05,694 disallowed by the AO save and except stating that documents were seized by the Crime Branch of Maharashtra Police.

15. Since the assessee has not been able to furnish details of the above expenses, which could be substantiated by documentary evidence, we following the decision of Hon'ble Delhi High Court in the case of **Goodyear India Ltd. v. Commissioner of Income-tax,** 246 ITR 116 (Del) uphold the order of ld CIT(A) and reject Ground No.1(ii).

16. In respect of Ground No.1(iii), the AO disallowed the claim of the assessee as the assessee could not produce the receipts to justify the claim. Ld CIT(A) confirmed the action of the AO after observing that even during the remand proceedings, assessee could not produce any evidence for the said amount of alleged donation of Rs.9,000. During the course of hearing also before us, ld A.R. could not controvert the findings of ld CIT(A). Hence, we uphold the order of ld CIT(A) to disallow the claim of the assessee of Rs.9,000 under the head "donation". Hence, ground No.1(iii) of concise ground of appeal is rejected.

17. Now we take up appeal for assessment year **2001-02 being I.T.A. No.5189/M/2009.**

18. The assessee has taken following grounds:

"On the facts and in the circumstances of the case, ld CIT(A) erred in confirming the following additions:

(i)	Loss by theft	:	Rs.2,10,000
(ii)	Admn. Expenses	:	Rs.3,03,215
(iii)	Entertainment exp.	:	Rs.1,82,629"

19. In respect of Ground No.1(i) of appeal, it was observed at the time of hearing that the said ground is not arising out of orders of authorities below. However, ld A.R. submitted that at the time of remand proceedings sought by the CIT(A), the assessee furnished copy of FIR before the AO for theft of Rs.1,60,000 and referred to pages 45 to 51 of PB. He further submitted that assessee had also written of Rs.50,000 as sundry debtor since assessee failed to produce any evidence with regard to theft like FIR etc. To substantiate his submission, he referred copy of remand report placed at pages 32 to

36 of PB. Ld D.R. submitted that the order of ld CIT(A) is silent on this issue and, therefore, the matter could be restored back to his file for his consideration.

20. On consideration of above submissions of ld representatives of parties and also considering para 8 of the remand report placed at pages 32 to 36 of PB r.w. 45 to 51 of PB, we restore the issue to the file of ld CIT(A) to decide the claim of the assessee in respect of Rs.1,60,000 on merits by a speaking order. However, in respect of balance amount of Rs.50,000, no submissions were made by ld A.R. We also observe that the assessee failed to produce any documents at the time of remand proceedings and, accordingly, the AO could not verify the claim of the assessee. Hence, the claim of Rs.50,000 made by the assessee is rejected. Accordingly, Ground No.1(i) is allowed in part for statistical purposes by restoring it to ld CIT(A) to decide afresh after giving opportunity of being heard to both parties.

21. In respect of Ground No.1(ii)and (iii), ld A.R. submitted that same are not pressed for. Accordingly, Ground No.1(ii) and (iii) of the revised grounds of appeal taken by the assessee are dismissed as not pressed.

22. The assessee has also taken an additional ground which reads as under:

> "On the facts and in the circumstances of the case, ld CIT(A) erred in not appreciating Explanation 5 to Sub-section 1 of Section 32 of the Income tax Act, 1961. He failed to appreciate that the provisions of sub-section 1 of Section 32 shall apply whether the assessee company has claimed the deduction or not in respect of depreciation in computing its total income for the assessment year 2001-02."

23. At the time of hearing, ld A.R. submitted that said additional ground taken by the assessee is not pressed for as Explanation 5 to sub-section 1 of Section 32 is not applicable to the assessment year 2001-02. Hence, additional ground of appeal taken by the assessee is rejected.

24. Now we take up appeal for assessment year **2002-03 being I.T.A. No.5190/M/2009.**

25. In this appeal, the assessee has filed concise ground of appeal which reads as under:

> "On the facts and in the circumstances of the case, ld CIT(A) erred in confirming the additions towards administrative expenses at Rs.1,97,524."

26. The assessee claimed an amount of Rs.6,51,392 as administrative expenses. The AO disallowed 50% of the claim of assessee which comes to Rs.3,25.700 on the ground that no proof or evidences have been filed by the assessee. The assessee filed appeal before ld CIT(A). Ld CIT(A) stated that assessee could not file details of vouchers in respect of expenses, details of which are given in para 6.2 at page 4 of the impugned order, aggregating to Rs.1,97,524. Accordingly, ld CIT(A) disallowed the claim of Rs.1,97,524 out of Rs.3,25,700 disallowed by the AO. Hence, assessee is in appeal before the Tribunal.

27. At the time of hearing, ld A.R. could not dispute the findings of ld CIT(A) that assessee failed to produce any evidence in respect of disallowance of administrative expenses sustained by ld CIT(A). Hence, we do not find any reason to interfere with the order of ld CIT(A). Accordingly, Ground of appeal taken by assessee is rejected.

28. The assessee has filed additional ground as under:

> "On the facts and in the circumstances of the case, ld CIT(A) erred in not appreciating Explanation 5 to Sub-section 1 of Section 32 of the Income tax Act, 1961. He failed to appreciate that the provisions of sub-section 1 of Section 32 shall apply whether the assessee company has claimed the deduction or not in respect of depreciation in computing its total income for the assessment year 2002-03."

29. During the course of hearing, it was conceded by ld A.R. that above additional ground is not arising out of orders of authorities below. Ld A.R. also conceded that assessee did not make any claim for depreciation before the AO and no details were filed before him. However, ld A.R. submitted that the list of plant and machineries were filed during the course of remand proceedings before the AO. He submitted that a direction could be given to the AO to allow the claim of depreciation to the assessee as applicable to it. However, ld D.R. submitted that the said additional ground should not be admitted as it is not arising out of orders of authorities below nor assessee made any claim before the authorities below for claim of depreciation. The assessee also did not

file any details to claim depreciation before the authorities below. He submitted that additional ground should be rejected.

30. Considering the facts of the case, as mentioned hereinabove, we agree that the claim of depreciation of the assessee by way of additional ground before us is not maintainable as no details were filed by the assessee before authorities below. Moreover, to adjudicate this ground, a proper verification of facts are required to be considered. The relevant facts were not admittedly made available by the assessee during the assessment proceedings and/or before the first appellate authority. If the additional evidences as contended by ld A.R. are admitted at this stage, the matter would go back to AO for verification and to adjudicate the claim of the assessee afresh. The assessee has not given any reasons as to why the said facts could not be placed before authorities below or when ld CIT(A) sought remand report from the AO. A similar issue came up before the Tribunal, Mumbai Benches in the case of Jay Bharat Co.op. Housing Society Ltd vs ITO, 125 ITD 90 (Mum). In the said case, the assessee being a co-operative society claimed receipt as exempt from tax. The AO did not entertain the assessee's claim. Ld CIT(A) approved the order of AO. The assessee raised a new ground before the Tribunal that the said amount in question was not taxable on the ground of mutuality. The Tribunal held that the issue raised by the assessee before the Tribunal require a proper verification of facts and the relevant facts were not available on record or in the assessment proceedings. It was held that if one would admit the said ground, then the matter would be required to go back to AO for verification and the order for directing the AO to verify the facts and adjudicate the claim of the assessee. It would be against the spirit of the judgment of Hon'ble Supreme Court in the case of Goetze (India) Ltd vs. CIT, 284 ITR 323 (SC). Therefore, it was held that the claim of the assessee with regard to doctrine of mutuality could not be entertained at the Tribunal stage. In the case before us, there is no dispute to the fact that there was no claim of the assessee for depreciation before the authorities below and the said claim is raised by the assessee before the Tribunal for the first time. Considering the facts of the case and the fact that no details were filed before the authorities below to consider the claim of the assessee for depreciation, we are of the considered view that additional ground for claiming depreciation is not maintainable as claim of the assessee for depreciation depends on the factual details which the assessee

failed to furnish not only in the return filed but also during the course of assessment proceedings as well as before ld CIT(A). Hence, we reject the additional ground taken by the assessee.

31. Now we take up the appeal for assessment year **2003-04 being I.T.A. No.4600/M/2011.**

32. In Ground No.1 of appeal, assessee has disputed the order of ld CIT(A) in confirming the addition of Rs.5,09,955 on account of cash in hand.

33. The AO has stated that as per return of income in the balance sheet schedule-8 under the head 'cash and bank balance', cash balance is shown at Rs.5,09,555. The AO has stated that in the absence of any proof/details, the said amount is added to the income of the assessee. In the first appeal, ld CIT(A) confirmed the action of AO by observing that assessee failed to furnish any details or produce books of account. Hence, assessee is in appeal before the Tribunal.

34. At the time of hearing, ld A.R. referred page 21 of PB which is schedule to audited balance sheet and stated that in the head 'cash and bank balance', the assessee has shown cash balance on hand at Rs.5,09,555.72 as on 31.3.2003. He submitted that the said entry is appearing in the books of account which was duly audited. Ld D.R.could not dispute the above facts.

35. Considering the fact that the said amount of Rs.5,09,555.72 is appearing in the balance sheet which is duly audited, we do not find any justification to treat the said amount as undisclosed income of the assessee. Hence, we delete the addition of Rs.5,09,555 by reversing the orders of authorities below. Therefore, Ground No.1 of appeal is allowed.

36. In Ground No.2 of appeal, assessee has disputed the order of ld CIT(A) in confirming the disallowance of 50% of expenses claimed by the assessee under the head "administrative expenses".

37. The AO in para 7.2 of the assessment order has stated that assessee debited an amount of Rs.26,56,303 as administrative expenses. He stated that assessee company was closed down during the year 1999 and that assessee has failed to produce proof or evidences for debiting the amount of Rs.26,56,303 as administrative expenses. The AO in absence of requisite proof of the claim of the assessee disallowed 50% of the claim which comes to Rs.13,28,150 and added to the income of the assessee.

38. In the first appeal, ld CIT(A) has stated that assessee produced copies of bills worth Rs.1,28,945 only. He has further stated that the expenses aggregating to Rs.11,99,205 were incurred in cash supported by internal vouchers. Ld CIT(A) has stated that for remaining amount of Rs.13,28,150, assessee failed to produce any proof or the books of account. He has stated that the remand report was sought from the AO and assessee could not produce any supporting evidence or books of account. In view of above, ld CIT(A) confirmed the action of AO. Hence, assessee is in appeal before the Tribunal.

39. At the time of hearing, ld A.R. referred page 61 of PB and submitted that the disallowance for the assessment year 2003-04 is excessive as compared to the disallowance made in the preceding assessment year. He referred to page 61 of PB which contains a chart from A.Y. 1999-2000 to 2002-03 and stated that the percentage of expenses allowed were 79.79%, 87.68%, 76.44& and 69.59% respectively from A.Ys. 1999-2000 to 2002-03 and, therefore, the disallowance, if any, is to be made in the assessment year under consideration i.e. A.Y. 2003-04, proportionately following the preceding assessment year. Ld D.R. supported the orders of authorities below and stated that assessee failed to produce proof or books of account for the claim of expenses and, therefore, order of ld CIT(A) be confirmed.

40. We have carefully considered the orders of authorities below and submissions of ld representatives of parties. We have also perused page 61 of PB to which our attention was drawn by ld A.R. Ld A.R. has not disputed the fact as stated by ld CIT(A) that assessee produced copy of bills only for Rs.1,28,945. Further, expense of Rs.11,99,205 was incurred in cash which was supported by internal vouchers and for the balance amount of Rs.13,28,150, assessee failed to produce any particulars or books of

account. The Hon'ble AP High Court in the case of **Commissioner of Income-tax v. Transport Corporation of India Ltd.,** 256 ITR 701 (AP) held that unsupported payment is not deductible. Further, Hon'ble Apex Court has held in the case of CIT vs. Calcutta Agency CO., 19 ITR 191 (SC) that if assessee fails to establish the fact necessary to support his claim for deduction u/s.37(1), the claim is not admissible. Hon'ble Madras High Court has held in the case of **Ratnaswami (K.S.) v. Additional Income-tax Officer,** 42 ITR 568 (Mad) that the claim can be disallowed if the assessee has not established that amount in question has been wholly and exclusively laid out for the purpose of business. Since in the case before us, assessee has not been able to furnish the requisite proof to establish that the expenses aggregating to Rs.13,28,150 which has been disallowed by authorities below, was incurred wholly and exclusively for the business purposes of the assessee, we do not find any merit in the contention of ld A.R. Hence, we uphold the order of ld CIT(A) and reject ground No.2 of appeal taken by assessee.

41. In Ground No.3, assessee has disputed the order of ld CIT(A) in disallowing the commission expenses of Rs.20,02,250.

42. The relevant facts as stated by ld CIT(A), are that the assessee under the administrative head also paid a commission of Rs.20,02,250. The assessee was asked to explain the said payment but the assessee did not furnish any details. Therefore, the AO in the absence of any record or proof, disallowed the claim of the assessee vide para 7.3 of the assessment order. Being aggrieved, assessee filed appeal before the CIT(A).

43. It was contended before the CIT(A) that the said commission was payable to M/s. Gurudev Chemox Industries, Bangare and was paid in F.Y. 2003-04 i.e. relevant to assessment year 2004-05. Ld CIT(A) has stated that notice under section 133(6) of the I.T.Act was issued which was returned back by the postal authorities with the remarks "addressee left". He has stated that no further verification could be done and the assessee was also unable to explain the services rendered by M/s. Gurudev Chemox Industries, Bangare, for which commission was paid to them. Ld CIT(A) has stated that even during remand proceedings, assessee failed to substantiate with evidence. Hence,

ld CIT(A) confirmed the disallowance made by the AO. Accordingly, the assessee is in further appeal before the Tribunal.

44. During the course of hearing, ld A.R. reiterated the above submission. He further referred page 129 of PB which is a copy of banks statement and submitted that the sum of Rs.20 lakhs was paid by cheque to M/s. Gurudev Chemox Industries, Bangare. Ld A.R. further referred to page 130 of PB which is a copy of certificate dated 29.3.2005 of the recipient of the alleged commission. Save and except the above document, assessee could not furnish any other evidence. Further, assessee sought permission to file additional evidence alongwith affidavit. The same were found to be copy of ledger copies for the period 1.4.2002 to 31.3.2003 running into pages 1 to 97 of PB. During the course of hearing, a query was raised to the assessee whether the TDS was deducted on the alleged payment of commission to M/s. Gurudev Chemox Industries, Bangare. Ld A.R. could not reply anything to establish as to whether any TDS was deducted on the payment of alleged commission. On the other hand, ld D.R. supported the orders of authorities below and submitted that even during the remand proceedings, assessee has not placed any evidence on record to justify the alleged claim of payment of commission.

45. We have considered the orders of authorities below and submissions of ld representatives of parties. Considering the fact that assessee has not been able to establish whether any service was received to the assessee for the alleged payment of commission of Rs.20,02,250 to M/s. Gurudev Chemox Industries, Bangalore. Merely filing of said certificate at page 130 of PB does not establish that any service was received to the assessee on account of which the said commission payment was alleged paid to the assessee to M/s. Gurudev Chemox Industries, Bangalore. In the absence of any documents on record, we do not find any reason to interfere with the order of ld CIT(A). Hence, ground No.3 is rejected.

46. In Ground No.4, assessee has disputed the order of ld CIT(A) in confirming the addition by debiting Rs.19 lakhs being cash deposited in bank.

47. The AO has stated that on perusal of bank statement of Corporation Bank account No.6252 from 3.4.2002 to 31.3.3003, the assessee company has deposited in cash Rs.19 lakhs. He has stated that assese was unable to produce books of account as well as details etc. He has further stated that assessee was unable to prove that these are sales transactions. Accordingly, the AO has considered the said amount of Rs.19 lakhs as unexplained cash credit and added to the income of the assessee. Being aggrieved, assessee filed appeal before ld CIT(A).

48. On behalf of assessee, it was contended that assessee company sold materials to Crystal Chem Industries at Vapi, Gurudev Chemox Industries at Bangalore and Sweta Enterprises at Surat in the year 1998-99 and 1999-2000, which were recovered during the assessment year 2002-03. Subsequently, the said cash was deposited into bank. It was stated that the assessee was having various customers at the said places and they were called and goods were sold on the spot for cash. The assessee has stated that no data was kept for party-wise sales. It was further explained that the sundry debtors were reduced to the extent of goods sold. Ld CIT(A) did not agree with the contention of the assessee and stated that assessee failed to produce any documentary evidence in support of his claim. He has further stated that the claim made by the assessee with regard to reduction in sundry debtor is not verifiable from the return of income. He has further stated that the claim of the assessee with regard to unexplained cash credit is not verifiable. Ld CIT(A) has further stated that during the remand proceedings, assessee has shown inability to produce books of account and supporting documents stating that the books of account are still in the custody of various law enforcement agencies. Ld CIT(A) confirmed the action of AO as no new evidence was produced by the assessee before the AO during the remand proceedings. Hence, the assessee is in appeal before the Tribunal.

49. During the course of hearing, ld A.R. reiterated the facts as stated before the authorities below. He further submitted that in the preceding assessment year such claim made by the assessee on account of sale of the returned goods was allowed by ld CIT(A) and, therefore, there is no justification not to accept the claim for the assessment year under consideration.

50. Ld D.R. supported the order of ld CIT(A) and submitted that in the absence of any document of the said cash deposit aggregating to Rs.19 lakhs, in the bank of the assessee out of sale of returned goods, ld CIT(A) is justified to confirm the action of AO. He submitted that even in the remand proceedings, assessee could not produce any evidence to substantiate his submission.

51. We have considered the orders of authorities below and submissions of ld representatives of parties. It is a fact that assessee has not been able to produce any evidence regarding the sale of returned goods from the above named three parties. Ld A.R. conceded to ld CIT(A) that no data was also kept for sale of the said goods. Therefore, the contention of la A.R. is not supported by any document and in the absence of which, we do not find any reason to interfere with the order of ld CIT(A). Accordingly, we uphold the order of ld CIT(A) by rejecting ground No.4 taken by the assessee.

52. Now we take up appeal for assessment year **2004-05 being I.T.A No.4601/M/2011.**

53. In ground No.1 of appeal, the assessee has disputed the order of ld CIT(A) in confirming Rs.4,39,472 on account of cash in hand as appearing in the balance sheet.

54. The facts and the reasoning given by authorities below for making the aforesaid addition of Rs.4,39,472 are similar to ground No.1 of appeal for assessment year 2003-04, which we have discussed hereinabove in para 35. Considering the reasoning given by us in para 35 hereinabove, we delete the addition of Rs.4,39,478 by allowing ground No.1 taken by the assessee.

55. In Ground No.2 of appeal, assessee has disputed the order of ld CIT(A) in confirming the disallowance of 50% of the expenses under the head "administrative expenses".

56. The assessee has debited an amount of Rs.3,65,764 under the head "administrative expenses". The AO disallowed 50% of the claim of the assessee i.e. Rs.1,82,880 as assessee could not produce requisite proof of incurring the expenses. Ld CIT(A) confirmed the action of AO after observing that assessee could produce details of the expenses of Rs.1,36,500 and for Rs.46,380, was incurred in cash were supported by internal vouchers. Ld CIT(A) has stated that no supporting or original vouchers were furnished by the assessee. He has further stated that during the remand proceedings, assessee could not produce books of account and other supporting documents. Thus, ld CIT(A) confirmed the action of AO to disallow the sum of Rs.1,82,880. Hence, assessee is in appeal before the Tribunal.

57. During the course of hearing, ld A.R. made his submissions on the line of submissions made in Ground No.2 of appeal for assessment year 2003-04, which, we have mentioned hereinabove.

58. Considering the reasoning and facts of the case as mentioned hereinabove in para 40 while disposing off Ground No.2 of appeal for assessment year 2003-04, we uphold the order of ld CIT(A) and reject Ground No.2 of the appeal taken by the assessee.

59. In Ground No.3, assessee has disputed the order of ld CIT(A) in confirming the addition of Rs.36,20,000 made by the AO for cash deposit in bank during the year.

60. During the course of hearing, ld A.R. made his submissions on the line of submissions as made in Ground No.4 of appeal for assessment year 2003-04.

61. This ground is similar to ground No.3 for assessment year 2003-04 which we have discussed in paras 47 to 50 and for the reasons given by us in para 51 hereinabove, we uphold the order of ld CIT(A) and reject ground No.3 taken by the assessee.

62. In the result, appeals for assessment year 2000-2001 and 2002-03 are dismissed, appeal for assessment year 2001-02 is allowed in part for statistical purposes and appeals for assessment year 2003-04 and 2004-05 are allowed in part.

Pronounced in the open court on 13th July, 2012

Sd/- (G.E.VEERABHADRAPPA) PRESIDENT	Sd/- (B.R. MITTAL) Judicial Member

Mumbai, Dated 13th July , 2012
Parida

Copy to:
1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals),14, Mumbai
4. Commissioner of Income Tax, 6, Mumbai
5. Departmental Representative, Bench 'A' Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI