

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH. T.S.KAPOOR, ACCOUNTANT MEMBER**

**I.T.A .No.-2453/Del/2013
(ASSESSMENT YEAR-2007-08)**

DCIT, Central Circle-2, New Delhi. (APPELLANT)	vs	Delco India Pvt. Ltd., A-22, Green Park Main, New Delhi. PAN-AAACD4357J (RESPONDENT)
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**I.T.A .Nos.-2925-2926 /Del/2013
(ASSESSMENT YEARS-2007-08 & 2008-09)**

Delco India Pvt. Ltd., A-22, Green Park Main, New Delhi-110016. PAN-AAACD4357J (APPELLANT)	vs	ACIT, Central Circle-2, New Delhi (RESPONDENT)
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Appellant by	Sh. Sanjay Prasad, CIT DR
Respondent by	Sh.Ved Jain, CA & Renu Jain, CA

Date of Hearing	07.05.2015
Date of Pronouncement	16. 06.2015

ORDER

PER DIVA SINGH, JM

The present batch of 3 appeals are being decided by a common order for the sake of convenience. Whereas ITA No.2925/Del/2013 and ITA No.2453/Del/2013 are cross appeals filed by the Assessee and the Revenue in 2007-08 Assessment Year assailing the correctness of the order dated 22.02.2013 of CIT(A)-III, New Delhi. ITA No.-2926/Del/2013 is also Assessee's appeal assailing the correctness of the separate order dated 22.02.2013 of the CIT(A) stated to be on facts identical to the earlier appeal of the assessee. In view of the fact that additions are based in both the years on the very same

seized documents qua M/s Smridhi Sponge Iron thus reference is being made to the facts in ITA No.2925/Del/2013 for 2007-08 Assessment year as it was a common stand of the parties before the Bench that the arguments made therein would fully apply to the issues arising in ITA No.-2926/Del/2013 also. Accordingly in view of the above stated factual position the facts relatable to 2007-08 Assessment year are being referred to wherein the grounds raised by the Revenue in ITA No.2453/Del/2013 read as under:-

1. *“On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.1,47,78,159/- out of total addition of Rs.2,68,11,454/- made by the Assessing Officer on account of undisclosed income out of regular books of account of the assessee.*
2. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*
3. *The appellant craves leaves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. The Ld. AR appearing on behalf of the assessee submitted that although qua the re-opening the assessee has raised Ground Nos.-1-3 in 2007-08 Assessment year however on account of the instructions received from his client he would be confining his arguments only on the merit of the additions for both the years as the assessee does not want to press the jurisdictional issue agitated in 2007-08 Assessment Year. In view of the above only the grounds which are being agitated by the assessee are reproduced hereunder:-

4. *“On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining an addition of Rs.1,20,33,295/- on account of transaction pertaining to M/s Smridhi Sponge.*
- 5 (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in making addition on the basis of impounded documents.*
- (ii) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the above addition by misinterpreting the provision of section 292C of the Act.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not taking the investigation to logical conclusion by cross verification from the Smridhi Sponge, despite the assessee providing all cooperation and information about the whereabouts of Smridhi Sponge.*
- 7.(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in arbitrarily presuming the figures on loose sheets to be the transaction related to purchases by the assessee from Smridhi Sponge.*
- (ii) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the*

appellant that the addition has been made by AO by indulging into surmises and conjectures, without even understanding and identifying the nature of the product or the transaction.

8(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the affidavit filed by the assessee, of having no business relationship whatsoever with M/s Smridhi Sponge.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in assuming that the transactions are related to the assessee without any iota of corroboration and linking any transaction with the business of the assessee.

9(i) Without prejudice to the above and in the alternative, the learned CIT(A) has erred both on facts and in law in confirming addition of Rs.20,60,108/- as G.P. calculated on the basis of trading account made by AO.

10. Without prejudice to the above and in the alternative the learned CIT(A) has erred both on facts and in law in making an addition of Rs.99,73,187 on account of minimum capital required to carry on the business, without there being any basis for the same.

11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in applying debtors to sales ratio of 35.86% even without ascertaining the nature of the transactions for computing the capital requirement.

12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in taking aggregate of sale of two years while computing capital requirement of RS.99,73,187/- for the year under consideration.

13. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

3. The relevant facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as “Act”) was carried out by the Investigation Wing on 26.02.2009 on *Shri Ram Hari Ram Group* of cases. It is a matter of record that the case of the present assessee amongst others was also covered u/s 133A of the Act during the course of the search and survey in the group cases of *Sri Ram Hari Ram*. A perusal of the assessment order shows that as per the Appraisal Report, during the course of the search/survey at the business premises of M/s Delco India Pvt. Ltd. at E-21/B-1, Extension Mohan Coop Ind. Area, Mathura Road, New Delhi on 26.02.2009, loose papers pertaining to the assessee company were found and impounded. Subsequently the case was centralized in Central Circle-2, New Delhi by CIT, Delhi-IV, New Delhi u/s 147 of the Act vide his order F.No.-CIT-IV/Centralization/149/2009-10/2298 dated 30.11.2009. The record shows

that referring to the documents found, the AO takes into consideration the Annexure-2 wherein amongst other pages specific pages 11-14 contained details of transactions with M/s Smridhi Sponge. The Assessing Officer considering these documents observed that they pertained to 2007-08 & 2008-09 assessment year. Accordingly in view thereof the case of the assessee for these two years was re-opened after recording of reasons.

3.1 The re-opening was assailed by the assessee in the assessment proceedings and also in the appellate proceedings unsatisfactorily however, since the same is not under challenge in the present proceedings, reference to the facts relatable to the same do not require any mention except the fact that the assessee in response to the notice received declared income of Rs.1,46,690/- identical to what was filed in 2007-08 Assessment Year originally on 31.10.2007. Similarly for 2008-09 Assessment Year, return identical to what was originally filed was again filed in compliance to the re-opening of the proceedings in 2008-09 Assessment Year also.

3.2. Considering the returns; the seized documents and taking note of the fact that the assessee was mainly engaged in the “manufacture of metal container” the AO required the assessee to explain the documents found and seized in respect of the transactions with M/s Smridhi Sponge for the two years. In response thereto the assessee as per record is found to have submitted that the documents do not pertain to it. The said submission was supported by filing an affidavit to the said extent. Alongwith the same, the assessee as per record relying upon its efforts on the web searches of the said concern maintained with the Registrar of societies (hereinafter referred to as “the ROC” and the official income tax site) submitted the assessment details of M/s Smridhi Sponge as well as list and names and addresses of its Directors including the mailing address of M/s Smridhi Sponge.

3.3. Taking note thereof, the AO accordingly issued notice u/s 133(6) of the Act at the given address of M/s Smridhi Sponge requiring the said concern to furnish copy of the ledger account for the business carried out with M/s Delco India Pvt. Ltd. The notice was received back unserved with the remark “left”. In view of these facts, the AO considering that the entries on the pages which the assessee was required to explain and co-relate with its books of accounts

remained unverifiable and unexplained, he concluded that in the absence of any verification the assessee company had relations with M/s Smridhi Sponge and was dealing in business with it out of its books of account. Summary of entries/transactions on page 11 -14 of the seized documents was extracted by him in para 6.2 of the assessment order and addition was made as undisclosed income u/s 68 in view of the following facts:-

“Page no. 14 & 13 contains transactions of purchases and payment made to Smridhi Sponge during A.Y. 2007-08 are recorded. The summary compiled are transactions with Smridhi Sponge at page no. 14 and 13 is as under:

		<i>Page no.14</i>	
<i>Payment</i>	<i>16255557</i>	<i>Opening Balance</i>	<i>9000</i>
		<i>Total purchases</i>	<i>14197743</i>
		<i>Payment received</i>	<i>1027300</i>
		<i>Freight</i>	<i>921000</i>
		<i>Total</i>	<i>16155043</i>
		<i>Balance</i>	<i>100514</i>
	<i>16255557</i>		<i>16255557</i>
<i>Opening Balance</i>	<i>100514</i>	<i>Page no.13</i>	
<i>Payment</i>	<i>9495789</i>	<i>Purchases</i>	<i>11478441</i>
<i>Service Tax</i>	<i>2433</i>	<i>Freight</i>	<i>543000</i>
<i>Balance</i>	<i>2425138</i>		
<i>Total</i>	<i>12021441</i>	<i>Total</i>	<i>12021441</i>

On the basis of above trading account has been worked out as under:

		<i>Sale</i>	
<i>Page no. 14</i>			
<i>Purchases</i>	<i>14197743</i>	<i>Payment</i>	<i>162555577</i>
<i>Freight</i>	<i>921000</i>		
<i>Page no. 13</i>			
<i>Purchases</i>	<i>11478441</i>	<i>Payment</i>	<i>9495789</i>
<i>Freight</i>	<i>543000</i>		
<i>Total</i>	<i>27140184</i>	<i>Estimated G.P. @</i>	<i>2,78,11,4</i>
		<i>8% (25751355 x 8%)</i>	
		<i>2060108</i>	
<i>G.P.</i>	<i>2060108</i>	<i>Closing stock (at cost)</i>	<i>1388829</i>
<i>Total</i>	<i>29200283</i>	<i>Total</i>	<i>2920028</i>

In view of the above discussion, it is held that the above sale of Rs. 25751355/- (16255557 + 9495789 + 2060108) has been made out of books. “

6.3. *“As the assessee has not recorded purchase made from M/s Smridhi Sponge in the books of account, the payment made along with estimated G.P. is added to the income of the assessee as undisclosed income in view of the provisions of Sec.68 at Rs.2,68,11,454/-*

(2,68,11,454/- (25751355 + 2060108-10,00,000 being amount received from M/ s Smridhi Sponge)."

4. Aggrieved by this, the assessee came in appeal before the CIT(A) where apart from assailing the additions on merit the re-opening was also challenged. The challenge failed and the Ground Nos.-1-3 assailing the same have been raised but have been given up as not pressed in the present proceedings.

4.1. On the merits of the addition, the submissions advanced by the assessee and the conclusion of the CIT(A) thereon has been recorded at pages 8 – 17 of the impugned order wherein the CIT(A) while upholding the G.P. addition of Rs. 20,60,108/- gave part relief to the assessee in terms of para 7.15 to 7.18 in the following manner:-

7.15 "I, therefore, upheld the gross profit addition of Rs.20,60,108, however I have my own reservations with the AD's action of adding the entire sale proceeds as income outside the books of accounts of Rs. 2,78,11,454 and giving benefit of just Rs. 10,00,000 on account of purchases.

When any person makes both, sales and purchases outside the books of accounts (as is the case now), there is always some money locked up in debtors and he does require some minimum amount with himself, to carry on the business outside the books of accounts, because business is a continuous activity and all the purchases and sales does not happens on one single day. Therefore when documents suggests that an assessee has made sales and purchases both outside the books, than in that case, in my humble view by applying the accounting concept of peak theory or telescoping, two additions are called for i.e.

(a) one on account of gross profit earned and

(b) minimum capital requirement to carry the business activity outside the books of accounts.

7.16 To arrive at the capital required to carry business outside the books of accounts, I find from the appellant financial accounts that during the year under consideration the Debtors to Sales Ratio is 35.86%

Debtor = Rs.55.30 lacs

Sales = Rs.154.28 lacs

Debtor to Sales Ratio = $\frac{55.30 \times 100}{154.28} = 35.86\%$

Thus at any given point of time on an average 35.86% of sales will always be locked up in Debtors, which is the minimum capital requirement to carry on the business activity outside the books of accounts.

7.17 Applying, the same percentage of 35.86% to the total sales of Rs.4,71,68,832 (Rs.2,78,11,454) in Assessment Year 2007-08 and Rs. 1,93,57,378 in Assessment Year 2008-09) which is made by the appellant outside the books of accounts (as per the notings on the documents seized during the survey operation at the appellant's premises}, the minimum capital required to carry the volume of

business outside the books of accounts comes to Rs.1,69,14,743 (RsA,71,68,832x35.86%).

7.18 Hence from the above discussion, I hold that on the basis of impounded documents which relates to two assessment years i.e. 2007-08 and 2008-09 the following additions deserves to be made:

Assessment Year 2007-08:

(a) gross profit calculated on the basis of Trading account made by the AO on the basis of notings in the impounded document. Rs. 20,60,108

(b) Minimum capital required to carry on the business outside the books i.e.

<i>Capital determined x</i>	<i>Sales for Assessment Year 2007-08</i>	
<i>as per para 7.17</i>	<i>Total sales as per impounded documents</i>	
<i>1,69,14,743</i>	<i>x 2,78,11,454</i>	
	<i>4,71,68,832</i>	<i>Rs.99,73,187</i>
		<i>Rs.1,20,33,295</i>

Assessment Year 2008-09:

(a) gross profit calculated on the basis of Trading account made by the AO on the basis of notings in the impounded document. Rs. 14,33,880

(b) Minimum capital required to carry on the business outside the books i.e.

<i>Capital determined X</i>	<i>Sales for Assessment Year 2008-09</i>	
<i>as per para 7.17</i>	<i>Total sales as per impounded documents</i>	
<i>1,69,14,743</i>	<i>x 1,93,57,378</i>	
	<i>4,71,68,832</i>	<i>Rs. 69,41,555</i>
		<i>Rs.83,75,435</i>

The appellant thus gets a relief of Rs.1,47,78,159 (Rs.2,68,11,454 minus Rs.20,68,108 minus Rs.99,73,187), out of the total addition of Rs.2,68,11,454 made in Assessment year 2007-08."

5. Aggrieved by this finding, both the assessee and the Revenue are in appeal before the Tribunal.

6. The Ld. AR addressing his appeal submitted that in his arguments he would not only be addressing the grounds raised by the assessee but he would also address the assessee's stand on the grounds raised by the department. On query the Ld. CIT DR stated that he has no objection if the arguments are first advanced by the Ld. AR. In the said background the arguments were first advanced by the Ld. AR. Before advancing his arguments on the grounds raised, the Ld. AR stated that he would first want to invite attention to certain relevant documents on record. For the said purpose, attention was invited to copy of the seized documents placed at pages 44 -47 of the Paper Book on the basis of which additions have been made in the two years. Drawing attention to Paper Book page No.-48 and 49 it was submitted that these are notices issued by the department requiring the assessee to file a return in compliance

to the notice issued u/s 148 and the reply of the assessee received in the AO's office on 05.10.2010 respectively. A detailed questionnaire u/s 143(2) it was submitted was issued on 12.10.2010, copy of which is placed at pages 51 to 56 of the Paper Book wherein the specific question No.-22 at page 55 of the said Paper Book is raised relating to the seized documents. The reply thereto it was submitted is at pages 57-62 and reply to the specific question is at pages 60 to 62. For the sake of convenience, we first reproduce the specific query of the AO u/s 143(2):-

22. *“During the course of survey at the business premises of M/s Delco India Pvt. Ltd., loose papers and documents were found and impounded from the premises of the company. The page no. 11 to 14 of Annexure A-2 of the impounded material, are account of M/s Smridhi Sponge and entries of huge amount are recorded for the period ranging between November 2006 to December, 2007, i.e. the period pertains to F.Y. 2006-07 and F.Y. 2007-08. The entries for F.Y. 2006-07, i.e. relevant to A.Y. 2007-08 are as under:*

<i>Page no. 14</i>	<i>Payment made of Rs.1,62,55,557/-</i>
<i>Page no. 13</i>	<i>Payment made of Rs. 95,96,303/-</i>

6.1. In reply to the said query, it was submitted the assessee filed a detailed reply dated 26.11.2010 denying any transactions with the said concern. The reply it was stated is at pages 57-62. These assertions, it was submitted were supported by documents at pages 63 to 65 from the ROC site and the income tax official site. These evidences given to the AO, it was submitted in appeal were further supplemented by moving a petition under Rule 46 A dated 29.10.2012 before the CIT(A). However to revert back to the evidence before the AO, attention was invited to the following submissions dated 26.11.2010 before the AO:-

***- “That assessee company has never undertaken any transaction with M/s Smridhi Sponge
- That assessee company is not aware of where about of M/s Smridhi Sponge.
- That details found during survey might be of some one who visited the assessee's office and used the assessee's computer for mail of the account found or might have left the some one unknowingly.”***

6.2. Attention was further invited to the very same page i.e paper Book page 61 so as to submit that the assessee carrying out a search through the internet became aware of certain relevant information which it was presumed that the department would be interested in to reach the true facts of M/s Smridhi

Sponge. Accordingly it was submitted that the following specific information was shared with the AO so as to justify that the assessee had no dealings with the said concern and the appropriate enquiries qua the seized documents may be made from the said concern or the Assessing Officer of M/s Smridhi SPong directly:-

“The assessee company has undertaken a search through internet and have collected certain details about M/ s Smridhi Spong Ltd.

1. Office Address

**23, Netaji Subhash Road,
Kolkata, West Bengal - 700001**

2. *Company Registration No.:-*

067187

3. *PAN*

AADCS 70181

4. *Jurisdiction*

WBG/W/113/4

5. *Directors Particulars*

**Particulars of Directors –
Copy Of the extracts taken
from internet enclosed.”**

(emphasis provided)

6.3. Inviting attention to Paper Book pages 44-47 which is a copy of the seized document wherein reference is made to payment by two specific cheque numbers by some concern called “Galaxy”, it was submitted that the efforts of the assessee resulted in identifying “Galaxy” as M/s Galaxy Exports (P). Ltd. who was as per record was engaged in the business of manufacturing M.S.Ingot where “Sponge Iron” is one of the basic raw materials. Inviting attention to Paper Book page 47 it was submitted “Iron Ore” is a commodity dealt in by M/s Smridhi Sponge. The address of this concern it was submitted was also given and the search of the assessee demonstrated that M/s Galaxy Export admittedly had business interactions with Smridhi Sponge. Apart from that address the assessee also gave the information of the specific bank account wherefrom the two cheques mentioned at Paper Book page 44 were honoured and again a request was made to enquire from the specific bank of M/s Galaxy Exports and the Directors of the said concern also whose particulars were also provided. These submissions made to the AO on 26.11.2010 at Paper Book page Nos.-57-62 were heavily relied upon to show that repeatedly the AO refused to carry out necessary enquiries so as to gather, the correct facts and instead/kept insisting that the assessee had dealings with the said concern based on no facts. The relevant extract of assessee’s detailed reply at pages 61-62 is reproduced hereunder for ready-reference:-

Regarding Galaxy

1. "Further enquiry on internet sites reveals following details regarding one of the name appearing in loose sheet (in the account of M/s. Smridhi Sponge Ltd) viz., GALAXY. It is a private limited company **having registered office at P-25 Prince cap street 1st Floor Kolkata, West Bengal. The complete name of the company is M/s. GALAXY EXPORTS PRIVATE LIMITED. The list of directors of M/s. Galaxy Exports (P) Ltd is also enclosed.**

2. M/s. Galaxy Exports (P) Ltd is manufacturer of M.S. Ingot and Sponge Iron is one of the basic raw material for production of M.S. Ingot.

3. **M/s. Galaxy Exports Private Limited is operating Bank Account bearing No.1021 with PNB Jamshedpur, the branch is located at Ashiana Complex and branch code is 2894.** Following two cheques have been encashed from above account of the M/s. Galaxy Exports (P) Ltd

-4/12/07	MR.JUN ch.No.177699	Rs.2500000/-
9/12/07	MR.JUN ch.No.186001	Rs.1500000/-

The amount of above cheques are appearing in loose sheet found during search in respect of M/s. Smridhi Sponge."

(emphasis provided)

6.4. Heavily relying upon these facts, evidences and arguments made before the AO where the assessee was requesting in good faith to the AO to carry out the necessary inquiries and investigations directly with the said concerns, their Directors, their bankers or their Assessing Officer as the assessee never had any transactions with M/s Smridhi Sponge apart from the information made available from the internet searches, it was submitted that apart from the sole effort made by the AO in the face of the overwhelming unimpeachable evidence of third party sources was that he sent notice u/s 133(6) to the Kolkata address of M/s Smridhi Sponge which returned unserved. No further effort was considered necessary surprisingly by the AO. The unreasonable attitude it was submitted was further compounded by not confronting this fact to the assessee. As a result of this the assessee in appeal it was submitted filed fresh evidences. Copy of these it was submitted is at pages 66 to 69 of the Paper Book. Specific attention was invited to the following submissions at page 67 of the Paper Book to highlight the grievance of the assessee:-

- "Secondly, AO never dispose of the objections raised by the assessee against reasons for opening the assessment u/s 148 of I.Tax Act. It is pertinent to note that while giving reply of questionnaire no. 22 (Regarding reasons for opening of assessment u/s 148 of I.Tax Act) it was categorically replied by assessee vide letter dt 26.11.2010 that it never has any transactions with alleged M/s Simridhi Sponge and also provided to AO following particulars of M/s Smirdhi Spong.

- *Particulars of M/s Simridhi sponge as per the official records of the registrar of companies. Particulars include address of the company, date of incorporation etc.*
- *List of directors of the company along with their address.*
- *PAN of M/s Simridhi Sponge and jurisdiction of assessing officer as available in official records of I.Tax Site.*
- *Particulars of M/s Galaxy Exports (P) Ltd. and name of the Bankers, its address and account no. "M/s Galaxy" has issued two cheques of Rs.25 lacs and Rs.15 lacs respectively to M/s Simridhi Sponge and its details has been given at page no 11 of Annexure A-1 of seized documents.*
- *Thus assessee on one hand categorically dismissed that it never had any dealing with M/s Simridhi sponge ans also filed affidavit to confirm of having no relationship with M/s Simridhi Sponge and one other hand also provided sufficient details regarding where about of M/s Simridhi Sponge with evidence. **However, AO never dispose of the objection raised by the assessee regarding having any transaction with M/s Simridhi Sponge. Thus AO has failed and here to the applicable provision of I.Tax Act.***
(emphasis provided)

6.5. In the above background, it was his submission that it is surprising that despite these facts, the AO insists that the assessee is answerable for explaining the transactions found on its computer with M/s Smridhi Sponge. The assessee's answer has all along been on record as no transactions were ever done by the assessee with the said concern who was a stranger to the assessee. It was his submission that the assessee has done what it could have done best in the circumstances where he is called upon to explain the transactions of a stranger. It was submitted that the assessee has never said that the documents were not found from its computer. The explanation has repeatedly been offered that some person may have used the computer to e-mail or take a print out or whatever and the unconnected facts of M/s Smridhi Sponge may have remained on its computer but the facts remains that the assessee had no interaction with the said concern. Apart from the fact that the specific unrelated documents were found it was vehemently argued there is no other evidence with the department to insist that the assessee had transactions with the said concern. Nothing has been placed on record to rebut the repeated denial of the assessee on record including the denial on

affidavit. With the vast resources at the command of the department it was argued these assertions on affidavit remain unrebutted. Addressing the facts, it was submitted the nature of business of the assessee it was submitted is entirely different. The assessee it was submitted is a manufacturer of containers; the group i.e *Sri Ram Hari Ram Group* is a jewelers group and the seized document refer to transactions in “Iron Ore” which is not the raw material of the assessee whose raw material necessarily is steel. However, Smridhi Sponge and Galaxy Exports on the other hand as per ROC site and the facts in the seized documents evidently show are dealing in M.S.Ingot and “Iron Ore” is a raw material for this. Thus the CIT(A) while confirming the findings of the AO has erred in holding that there was a similarity in the business of the assessee and M/s Smridhi Sponge whereas the facts in reality are to the contrary. It was his submissions that judicial precedent is clear and well-settled in assessee’s favour as when it can be demonstrated that the findings and conclusions are based on wrong facts then the conclusion becomes vitiated. However, the assessee, it was his submission would not want to rely on judicial precedent and proposition of law only as on facts itself the assessee has a very strong case. Thus although on demonstrating that a finding on incorrect facts cannot stand the scrutiny of law in appellate proceedings however the strange reluctance of the department in looking where they should look needs to be given a serious consideration. More than the actions it is the inactions of the department it was submitted which becomes questionable. It was submitted that for the efforts done by the assessee which ideally should have been done by the department it was submitted that instead of carrying the enquiry to its logical conclusion the authorities have instead viewed the efforts of the assessee with suspicion and forget about lauding the assessee have instead caste aspersions on the efforts of the assessee who out of the compulsions and necessities of needing to save itself from the consequences of the additions on unrelated facts has all along given relevant facts searched diligently on the official government sites and made available to the department. It was his submission that it is presumed that the search and seizure efforts of the department are for the purposes of unearthing undisclosed income, thus where as per the seized documents transactions

found from the assessee's premises transactions with the said concern is denied the denial remains unrebutted the assessee on the other hand demonstrates the connections of M/s Smridhi Sponge with M/s Galaxy why is there a reluctance with the department to proceed against them. The payments therein it was submitted admittedly were made in cheques and also by cash by various parties, particulars of two of them are available with the Revenue instead of acting on them the efforts have been viewed by the Revenue with suspicion and the assessee is criticized for coming out with new facts. It was his submission that when a person is put in such a situation to defend himself on the basis of some document unconnected with it then will not that person make an all out effort and endeavour seeking the help of friends, relatives, agents, technology etc. to save himself and explain the documents to the best of his ability. These efforts made in good faith it was submitted should have been praised and not viewed with suspicion. It was his submission what stopped the department from making necessary inquiries from either the Directors of M/s Smridhi Sponge or the Assessing Officer of M/s Smridhi sponge or the concern who has honoured the cheque payment to M/s Smridhi Sponge namely M/s Galaxy Exports (P). Ltd. or the Bankers of M/s Galaxy Exports. The details of the cheque and the transacted amounts it was submitted tallied with the details of withdrawal from the specific account where the branch code, the city and the address of the concerned banks of M/s Galaxy Exports were all given and tallied. Similarly even for M/s Smridhi Sponge the PAN and the tax jurisdiction of the said concern including the names and particulars of the Directors of M/s Smridhi Sponge their shareholders and shareholding pattern, their long lasting interaction demonstrated from the Balance sheets filed with ROC stood addressed. In the said circumstances, it was his submission what stopped the department from making necessary enquiries from the said concern remains unaddressed. However reverting to the evidences before the CIT(A) referred to at page 69 of the Paper Book, the following details it was submitted were provided:-

- *“Copies of documents filed by M/s. Simridhi Sponge with ROC for financial year 2006-07 and 2007-08 along with copies of audited annual accounts, documents also provide latest particulars of M/s. Simridhi Sponge.*

- *Copies of latest particulars of 'M/s. Galaxy' viz; M/s. Galaxy Export (P) Ltd as per the records of ROC.*
- *Address of main bankrs of M/s. Smridhi Sponge with Account No.”*

6.6. Referring to the said page, it was further emphasized that the assessee's representative visited M/s Smridhi Sponge Ltd. at Jamshedpur office and made efforts to obtain confirmation from M/s Smridhi Sponge's however referring to Paper Book page 69, these efforts did not succeed as the assessee being a total stranger to M/s Smridhi Sponge the said concern refused to oblige. The submissions are extracted from the said page hereunder:-

“It is pertinent to note that assessee effort to collect evidence etc has failed as M/s. Smridhi Sponge has denied to response to the request of the assessee's representative who visited them at Jamshedpur office after receipt of the assessment order.”

6.7. In this background, petition to file fresh evidence before the CIT(A) was moved, copy of the same it was stated is at page Nos.-70-75 of the Paper Book filed. The assessee assailed the repeated adamancy of the AO before the CIT(A) for not carrying out the due and necessary enquiries in the manner which he was supposed to make. The following submission before the CIT(A) extracted from page 70 of the Paper Book relied upon are extracted hereunder for ready-reference:-

“That AO issued notice u/s 133(6) at the given address of M/s Smridhi Sponge at Calcutta almost after a year (after providing him such details) and that too at the address of the company at Calcutta, however, no notice appeared to have served to directors despite their address was provided to AO.

During the assessment proceedings assessee provided following details about M/s Smridhi Sponge Ltd.

1. *Particulars of the company given address of Registered office of the company, year of incorporation etc.*
2. *PAN of company as available at I.Tax Site.*
3. *Particulars of directors viz; name residential address, year of appointment.*

Assessing officer made no efforts whatsoever to enquire from Assessing Officer of M/s Smridhi Sponge about any transaction with assessee company. AO can trace the assessing officer of M/s Smridhi Sponge by making suitable enquiry at appropriate level.”

(emphasis provided)

6.8. Heavy reliance was placed on record, efforts made in good faith to trace M/s Smridhi Sponge Ltd. during the assessment proceedings, these

submissions are found addressed in the following submissions made before the CIT(A), and are extracted from page 71 of the Paper Book for ready-reference:-

*“During assessment proceedings AO never informed the assessee about non-compliance of notice u/s 133(6) of I.T. Act served on M/s Smridhi Sponge Ltd. The assessee provided following address which **was available in ROC site, as on 12.09.2010 (Assessee filed print of ‘Company/LLP Master Data down loaded from ROC official site).** Copy enclosed.*

*Smridhi Sponge Ltd.
23 Netaji Subhash Road,
Kolkata*

However, on 25.10.12 following address of M/s Smridhi Sponge Ltd. is available at ROC site.

*Room No. 3AB, 3rd Floor,
Bishnu Residency
193, Netaji Subhash Road
Kolkata, West Bengal-700040*

It is quite possible that alleged company changed the address during the period from 13.09.2010 to before the date of service of notice u/s 133(6) of I.T. Act.

(emphasis provided)

6.9. Attention was also invited to the following bonafide efforts of the assessee to assist the department in its quest to trace income relatable to the seized documents. These submissions are extracted hereunder from page 72 of the Paper Book :-

“Assessee has down-lodged Financial statements and Annual Return filed by the M/s Smridhi Sponge with ROC for F.Y. 2006-07 and F.Y. 2007-08 and has noted following relevant details which can be co-related with seized loose sheet.

*It has been noted from Audited Accounts of M/s Smridhi Sponge Ltd. that they are availing **overdraft Bank facilities mainly from Union Bank of India, SSI, Jamshedpur Branch. The assessee has collected the address Branch which is as under:-***

*Union Bank of India
Jamshedpur-SSI Finance Branch
Opp. Ram Mandir, Bistupur
Jamshedpur, Jharkhand
Phone No. 06572435129*

*That it has been noted from seized documents (Annexure A-1 Page No. 11 to 14) that **M/s Smridhi Sponge has transactions with ‘M/s Galaxy’.** It has also been noted from list of sundry debtors as on 31.3.2008 (Ref Page No.26) **down loaded from ROC site and enclosed with application under Rules 46A for A.Y. 2008-09)** that name of **M/s Galaxy Exports Pvt. Ltd. is appearing with***

outstanding balance of Rs.122,04,722/-. There is every possibility that M/s Galaxy mentioned in seized loose paper at Page No.11 is the same firm as mentioned in the list of sundry debtors as on 31.3.2008 viz; Galaxy exports Pvt. Ltd.

That as per director's report for financial year 2006-07 and 2007-08 address of the company is the same which assessee has provided to AO viz; 23, Netaji Subhash Road, Kolkata. "

6.10. Inviting attention to the Index of the Paper Book filed, it was submitted that the assessee in the form of additional evidence has placed the following details and evidence before the ACIT:-

11. "Copy of Application of Additional Evidence filed before ACIT dated 29.10.2012	Page 70-76
- Form 23AC of Samridhi Sponge Ltd.	Page-77-82
- Copy of Balance Sheet of Samridhi Sponge Ltd. for the year ended 31st March 2007	Page 83-102
- Copy of Form 23ACA of Samridhi Sponge Ltd.	103-106
- Copy of Form 20B alongwith Annual Return	107-119
- Detail of Registered Office & Share Capital of (a) Samridhi Sponge Ltd.	120-121
(b) Galaxy Exports Pvt.Ltd.	122-123

6.11. Inviting attention to Paper Book page Nos.-124 – 127, it was submitted that even in the Remand proceedings, the only action taken by the AO after initially objecting to the admission of the fresh evidence in the Remand Report was that notice was sent to the new address of M/s Smridhi Sponge Ltd. at Kolkata u/s 133(6) and also at Jamshedpur which as per record came back with the comment "left" and "addressee left" respectively. It was his argument that these comments do not mean that the said concern was not in existence and it merely suggests that the postman did not then find the said concern there thus it was argued nothing turns on the said comments. It was also his argument that what stopped the AO to carry out the necessary verification from the AO of M/s Smridhi Sponge Ltd. the details were available with him and this aspect has not been addressed by the Revenue. Attention was also invited again to the index of the Paper Book wherein at Serial No.-13, the following information as per record was provided to the Revenue:-

13. Copy of Rejoinder to Remand Report dated 13.02.2013 filed before ACIT	Page-128-132
- Detail of Registered Office & Share Capital of Samridhi Sponge Ltd.	Page-133-134
- Copy of confirmation of Delco India Pvt.LTd.	Page-135
- Copy of Confirmation of Samridhi Sponge Ltd.	Page-136

- **Details of Directors of Samridhi Sponge Ltd.** Page-137

6.12. Taking us through the documents filed and co-related with the seized documents it was his submission that where on facts the assessee repeatedly states that it had no interactions with M/s Smridhi Sponge and the repeated statement is supported by an affidavit, the nature of work of the two concerns being entirely different has been addressed where the seized documents demonstrate that M/s Smridhi Sponge had interactions with M/s Galaxy Exports whose complete particulars like that of Smridhi Spogne are filed alongwith bank details, PAN details etc why does the Revenue it was questioned not want to look into these unimpeachable evidences. Referring to the detailed evidences on record it was his submission that the Revenue instead of making due and necessary enquiries has chosen to pick on a soft target that is the assessee who is connected to a jewellers business as the assessment order itself demonstrates that the search was primarily conducted on the *Sri Ram Hari Ram Group* of cases and one of the Directors of the assessee is related to the said Group.

6.13. Inviting attention to the judgements relied upon by the CIT(A), it was his submission that they have been wrongly applied on facts. In support of the arguments made, the Ld. AR had filed his written submission and the arguments were advanced on the basis of the same, accordingly for the sake of brevity the reliance placed in Ld. AR's own words is reproduced hereunder:-

S.No.	Assessee	Ld. AO	Remarks
At the time of Assessment	<p>Letter dated. 26.11.2010 (PB pg. 62)</p> <p>-Official Address of the Smridhi Sponge, Co. Registration No. PAN Jurisdiction and Particulars of Directors MCA address was also given to the assessee.</p> <p>-Details related to Galaxy as mentioned in the Seized documents whatever could be gathered online was communicated to the AO.</p> <p>-Its Activities/Nature of Business Bank Account Details, its Branch, Registered office.</p>	<p>-No efforts were made by Ld. AO in response to the details filed by the assessee in respect of those seized documents and issued order on 26/12/2011.</p> <p>-AO never informed to the assessee that notices u/s 133(6) was issued to M/s Smridhi Sponge and received unserved.</p> <p>Even Assessment</p>	

		order is silent about these facts.	
<p>At the time of Appellate Proceedings before CIT</p>	<p>Submission dated 29.10.2012) PB pg. 70-76</p> <p>-Assessee has provided new address of Smridhi Sponge Dated 25.10.2012 by downloading from ROC Website.</p> <p>-A Representative of assessee company also visited Jamshedpur-Tata Nagar to meet staff of the co. And refuse to comment upon the matter and inform that they will only provide details to the department.</p> <p>_Financial Statements of M/s Smridhi Sponge Ltd were submitted with Application</p> <p>-Bank Address of Smridhi Sponge was also provided.</p> <p>-Correlation between Galaxy word in that document and in Audited Financials were established.</p> <p>-After receipt of Remand Report assessee communicated to the LD. CIT</p> <p>-Assessee sent one letter dtd. 20-09-2012 to one of the director and also sent his representative to the factory in Jharkhand however, no response was received. However, through a Iron & Steel Broker, assessee has received letter dtd. 11.10.2012 signed by the director in which it was confirmed that they have no transaction with the assessee company.</p> <p>-It was also informed to the department that assessee is making effort to pursue Smridhi Sponge to send those documents directly to department in the form of reply to notice issued u/s 133(6) of the Income Tax Act.</p>	<p>Letters sent to Jamshedpur Address and New Kolkata Address as well by the Ld. AO while matter was on remand. However letters were again unserved.</p> <p>Fact that the Letter dated 11.10.2012 was received was denied by Ld. CIT and alleged that appellant wanted to drag and delay the issue.</p>	<ol style="list-style-type: none"> 1. No letter is sent to the bankers of Smridhi Sponge Ltd. 2. No letter has been sent to Galaxy Exports. 3. Assessee said that Letter dated 11.10.2012 has been received. 4. Assessee has never said that this reply had been received on 11.10.2012.

- (i) CIT vs Babu Mohan lal AryaSmarak Educational Trust (High Court of Allahabad) ITA No.-303 of 2013;
- (ii) ACIT vs Vatika Greenfiled (P.) Ltd. ITAT Delhi [2009] 121 TTJ 208 Delhi;
- (iii) ACIT vs Dr. Kamla Prasad Singh 3 ITR 533 [2010] ITAT Patna Bench;
- (iv) CIT Panchkula vs M/s Khosla Ice & General Mills, Punjab & Haryana High Court 2013 (1) TMI 451;
- (v) ACIT vs Buldana Urban Co-op Creidt Society Ltd. 23 ITR (Trib) 411; and
- (vi) Alliance Hotels vs ACIT 142 ITD 270 (Mumbai Tribunal).

6.14. Referring to the seized documents it was submitted that a perusal of the same would show that the business in the case of M/s Smridhi Sponge was conducted by cheque as well as cash and clinching particulars of M/s Smridhi Sponge and atleast one other concern with whom it interacted with namely M/s Galaxy Exports is available with the Revenue and despite this for reasons best known to the concerned officers they repeatedly show no desire or effort to bring those concerns within the tax net and not bothering with the fact that as a result of this repeated inaction they have caused heavy losses to the Revenue in collecting the just and due taxes from them which ideally should have been their primary concern the Assessing Officer and the CIT(A) have satisfied themselves by picking a soft target wrongly on facts. It was his submission that the assessee is ready to co-operate in any further investigation of the AO however, the assessee can not be saddled with the additions with which the assessee is not concerned because as far as the assessee is concerned these are “dumb documents”, although for the Revenue the documents are not dumb as on the basis of these documents even a layman can see that income which presumably has not been disclosed to the tax authorities can be brought to tax. Accordingly it was his submission that the addition made on facts deserves to be deleted. These arguments it was his submission would address the departmental appeal as well as the assessee’s appeal. In the eventuality the assessee it was submitted does not succeed on merits in its appeal than on quantification and the manner in which the computation has been done by the AO and CIT(A) were also strongly assailed. However the arguments thereon are not being addressed at this stage and would be referred to by us only if the assessee fails on the main plank of its arguments.

7. The Ld. CIT DR relying upon the findings recorded in the assessment order submitted that his arguments also would also not only address the grounds in the Revenue’s appeal but would also address the appeal of the assessee for both the years. Referring to the facts it was his submission that on facts it is evident that the assessee is engaged in the business which was not disclosed to the Revenue. Relying upon the assessment order and even the impugned order, it was his submission that the manner in which the assessee is coming up with information about the M/s Smridhi Sponge Ltd. repeatedly

giving different addresses, it demonstrates the falsity of the pleadings of the assessee in stating that it has no interaction with the said concern. In the face of the various details of these concerns given by the assessee, both the authorities it was submitted have rightly rejected the false claim of the assessee and held that the assessee on facts had interactions with M/s Smridhi Sponge Ltd. which are not recorded in its books of accounts. These arguments of the assessee it was submitted have been strongly deprecated by the CIT(A) who has rightly dis-believed the confirmation belatedly relied upon stated to be from M/s Smridhi Sponge Ltd., copy filed at Paper Book page 136 relied upon by the assessee dated 11.10.2012. Referring to the impugned order it was submitted that the assessee's version has rightly been rejected and has been fully addressed by the CIT(A) in para 7.3 & 7.4 of his order so as to hold that the assessee is not disclosing the true facts in para 7.5. Heavy reliance was placed on these findings in para 7.5. For ready-reference, these are reproduced hereunder:-

7.5 "The computer print outs of documents found and impounded during the survey from the appellant's premises and the entries recorded therein clearly show that the appellant is not disclosing the true state of its affairs and dealing with Smridhi Sponge and is not coming out with clean breast. The initial onus as per section 292C of the Income Tax Act is on the appellant to explain the nature of the transaction recorded on the paper found from his premises."

7.1. Accordingly on the basis of these facts and the judgements of the Hon'ble Delhi High Court in the case of CIT vs Sonal Constructions 28 taxmann.com 127 (Delhi) relied upon by the CIT(A), it was submitted since the seizure of documents was from the possession of the assessee in terms of the provisions of section 292(C) of the Act the burden it was submitted has not been discharged by the assessee. The addition on facts it was submitted has been rightly made in his hands. Qua the relief granted by the CIT(A), reliance was placed upon the assessment order. It was his submission that the assessee has sent the department on a wild goose chase all over the country. Acting on the information provided the AO as per record it was submitted has sent notice u/s 133(6) which returned unserved. The fact that this was not confronted to the assessee as per the arguments before the CIT(A), it was submitted that even if it is not disputed the fact remains that additional evidence which the assessee sought to place before the CIT(A) was permitted

and despite the objections of the AO, the notices were directed to be sent through the AO to the new addresses provided by the assessee. These notices sent it was submitted have also come back with the comment "left". In these facts having carried out the entire enquiry as per the information provided by the assessee, the arguments that the addition is not warranted on facts it was submitted is not correct. The burden placed on the assessee u/s 292(C), it was submitted has not been discharged and the income has rightly been added in the hands of the assessee.

8. In reply the Ld. AR reiterated the submissions advanced emphasis was laid on the fact that the bonafide efforts of the assessee in addressing the seized documents are duly and diligently made available to the AO repeatedly informing the said authority that the assessee has no dealings with the said concern alongwith the request to the AO to "please investigate" from the other concerns. Attention was invited to Paper Book page 128 which addresses the Remand Report (at pages 125 to 127) of the AO where he reports that the notices sent to the new address also came back unserved from the Kolkata address with the comment "left" and Jamshedpur as "addressee left". It was submitted that these comment itself prove that the said concern did exist at these addresses. Addressing the reply filed by the assessee at page 128 onwards it was stated that the information provided was as per the ROC records and there is no change in any particular of the M/s Smridhi Sponge Ltd. in the public domain demonstrated by the downloaded print outs from the ROC site. The addresses of Kolkata and Jamshedpur Main office and factory office respectively continued to remain the same on the site. Addressing the information provided as confirmation of the assessee's version by the Director of M/s Smridhi Sponge Ltd. dated 11.10.2012 it was stated the CIT(A has viewed this too with suspicion. Inviting attention to Paper Book pages 130 and 131, it was submitted would bring out the following facts which were brought to the notice of the CIT(A) and were again relied upon heavily on behalf of the assessee:-

"The assessee also made efforts to directly contact the company (M/s Smridhi Sponge Ltd.)/director vide its letter 20.09.2012. The letter was addressed to one of the director Sh. Om Prakash resident of 20, Tube Rose Lane, Ashiana Garden Sorari Jamshedpur. Assessee also sent its representative to factory

located at Mohitpur, Sini Distt, Seraikela KHARSWA JHARKHAND. However, no initial response was received regarding traction if any M/s Smridhi Sponge Limited had with the assessee during F.Y. 2006-07 and F.Y. 2007-08.

Recently through a Iron & Steel Broker assessee has received letter dt. 11.10.2012 signed by director of SSL Sh. Om Praksh. Copy enclosed. The contents of the letter dt. 11.10.2012 are reproduced below:

Reg: Transaction with your company during F.Y. 2006-07 and 2007-08

Sir,

With reference to your letter on above subject, wherein you have informed that during a survey of I.T Authority certain statement have been found in your premises in relation to transactions by parties entered with our company during F.Y. 2006-07 and 2007-08.

We hereby confirm that our company has never made any transaction of sale/purchase or receipt/payment with your company during F.Y. 2006-07 and F.Y. 2007-08.

Yours faithfully,
For Smridhi Sponge Ltd.
Sd/-
Director”

The assessee is making all efforts to pursue M/s Smridhi Sponge Ltd to sent the above letter directly to the department with the copy endorsed to the assessee. However, it appears that unless any communication is made by department address to SSL even in the form of a copy of earlier's letter sent by AO u/s 133(6) of the I.T. Act with endorsement to the assessee, SSL is reluctant to respond to the department directly.

(emphasis provided)

8.1. Inviting attention to the seized documents, it was re-iterated that there was no similarity in the line of assessee's business as the assessee admittedly was searched as a result of search carried out in a jewelers group and the director of the assessee being related to the said group was roped in. Admittedly there was no similarity in a jewelers business; manufacturer of metal container and the business of M/s Smridhi Sponge who as per the seized documents was dealing in "iron ore". The seized documents it was submitted pertained to dealings in "iron ore" in the name of M/s Smridhi Sponge who had interactions with "Galaxy" who as the record shows was dealing in M.S.Ingot and its raw material was "iron ore" the bank transactions show the inter-connection between these two concerns. Nothing relatable to the assessee has been brought on record till date. Accordingly in the facts of the present case, it

was his submission that the addition has wrongly been made in the hands of the assessee and deserves to be deleted.

9. Since the arguments of the CIT DR have also been filed by way of written submissions which also addresses the issue of re-opening which need not be addressed as the issue has not been agitated before us. Accordingly we refer to *Kahan Udyog v Commissioner of Income Tax* [2013] 38 taxmann.com 261 (Delhi) relied upon by the Revenue wherein addition u/s 69C for unrecorded unexplained expenditure had been made. Reliance was also placed on *Hiren Vasantlal Shah v. Assistant Commissioner of Income Tax* [2012] 19 taxmann.com.241 (Guj.) and *Commissioner of Income-tax v. Sonal Constructions* 28 taxmann.com 127 (Delhi) for the proposition that the seized documents constitute undisclosed income of the assessee in terms of section 292C of the Act so as to justify the addition made.

9.2. Further relying upon the principle laid down by the Apex Court in the case of *Dhakeshawari Cotton Mills vs CIT* 26 ITR 775 (SC) and *Homi J Gheesta vs CIT* 41 ITR 135 (SC) it was submitted that there was no need for the department to prove by way of a direct evidence that the specific sum was an income in the hands of the assessee as the AO is not fettered by technical rules of evidence and he is entitled to act on material which may not be accepted as evidence in a Court of law and since the documents were found from the premises of the assessee, the burden of proving that it was not so was cast upon the assessee. For which purpose, reliance was placed upon section 106 & 144 of the Indian Evidence Act. The relevant extract filed in the written submission is reproduced hereunder for ready-reference:-

“According to the Indian Evidence Act, presumptions can be made regard to certain facts by the Court unless rebutted by the assessee. In this case, facts regarding possession of the document showing trading transactions sale and purchase with Smridhi Sponge in the computers of the assessee has not been rebutted.

106. Burden of proving fact especially within knowledge- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

114. Court may presume existence of certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”

10. We have heard the rival submissions and perused the material available on record. On a careful consideration of the same including the facts and evidence and the judicial precedent pleaded by the parties in support of their respective claims, we deem it appropriate to first refer to the material available on record. A perusal of the assessment order shows that the assessee was covered u/s 133A in the search and seizure operation u/s 132 of the income Tax Act, 1961 carried out by the Investigation Wing on 26.02.2009 on *Shri Ram Hari Ram Group* of cases. The record further shows that as per para 5, the assessee company was mainly engaged in the business of manufacturing of metal container. From the business premises of the assessee admittedly specific documents found mentioned in para 6 of the assessment order described as Annexure A-2 were seized. The AO took notice of specific pages 11-14 of Annexure A-1 which showed that they pertained to M/s Smridhi Sponge Ltd. The assessee accordingly was required by the AO to explain the entries made therein as a presumption was drawn that the seized documents pertained to the assessee. The copy of the detailed notice issued u/s 143(2) is appearing at pages 57 to 62. The relevant query raised has been reproduced in the earlier part of this order. The assessee as per record is found to have stated vide reply dated 26.11.2010 that these documents do not pertain to the assessee. The statement made as per record has also been supported by an affidavit. These facts are found recorded in the assessment order itself. Alongwith the denial supported by an affidavit the assessee as per its reply dated 26.11.2010 is also found to have provided the assessment details of the said company alongwith the names of the Directors and the mailing address of the said concern. The detailed reply on record has also been reproduced in the earlier part of this order and stands unrebutted on record. These facts are also evidenced from para 6 of the assessment order and reproduced hereunder:-

6. *“During the course of survey, loose papers were found and impounded from the business premises of the assessee company as Annexure A-2. At page no.11 to 14 of Annexure A-1, these pages are in respect of transactions with M/s Smridhi Sponge. The assessee was asked to furnish the details of these entries on each of the pages and correlate with the books of accounts. **In response, the assessee submitted that these do not pertain to it, and has filed affidavit in support of its contention. The assessee has also submitted the assessment details of M/s Smridhi Sponge***

as well as its directors' and the mailing address of M/s Smridhi Sponge."

(Emphasis provided)

10.1. It is also a fact on record that acting on the information, the AO sent notice u/s 133(6) of the Act to the address provided by the assessee. The fact that it returned "unserved" is found recorded in para 6.1 of the assessment order. On these facts, the addition made was challenged. It is seen that the CIT(A) accepting the arguments of the assessee that the notice u/s 133(6) returned unserved was not confronted to the assessee permitted the assessee to produce additional evidence. The fresh evidence it is seen consisted of Form 23AC of M/s Smridhi Sponge Ltd. which is the Form in which the balance sheet is filed before the ROC for the said concern of the year ended 31.03.2007. On the basis of the same, it was claimed that M/s SMridhi Sponge Ltd. was a genuine business concern in existence despite the claim that notices returned unserved. The address was stated to be correct at page 77 in the first address given to the AO these facts were downloaded from the ROC site. The notice returned unserved presumably because notice was sent at the fag end of the assessment proceedings as per submissions of the assessee before the CIT(A), reproduced in the earlier part of this order. The copies of Directors Report, the Auditors's Report; Copy of form 23ACA of M/s Smridhi Sponge Ltd.; copy of Form 20B alongwith annual return filed before the ROC disclosing its authorized share capital etc. were also filed; details of registered office and the details of authorized share capital of M/s Smridhi Sponge Ltd. and M/s Galaxy Exports (P). Ltd. as per record at pages 70 to 123 were also filed. The record shows that the CIT(A) confronted the said evidence to the AO who as per record issued notice u/s 133(6) to the changed address at Kolkata of M/s Smridhi Sponge Ltd. and also to the branch/factory premises at Jamshedpur. These notices as per record also came back unserved. This fact was duly confronted to the assessee. The record shows that in its re-joinder to the Remand Report the assessee vide its reply dated 13.02.2013 has again carried out a fresh search on the web from the ROC site etc. and stated that the details of registered office and share capital of M/s Smridhi Sponge Ltd. as per page 128 to 132 alongwith the specific supporting Annexures as print outs of downloaded from the ROC and income tax site and

a confirmation etc. at pages 133 to 137 of the Paper Book were relied upon. A perusal of the same shows that according to the search from the ROC records as on 17.01.2013, the address disclosed was the same. The assessee supported its claim by copy of its letter dated 28.09.2012 to M/s Smridhi Sponge Ltd. and copy of letter of M/s Smridhi Sponge Ltd. dated 11.10.2012 stated to be received alongwith copy of the assessee's letter addressed to the AO dated 15.11.2010 received through Iron & Steel Brokers signed by Mr. Om Prakash a Director of M/s Smridhi Sponge Iron whose name and address has all along been provided to the AO found mentioned at page 65 of the paper Book and also at page 137 of the Paper Book. It is also seen that copy of particulars as per ROC records of M/s Galaxy Exports (P). Ltd. were also again filed in support of the claim that the continued efforts of the assessee in tracing the said concern show that the very same results qua its address and that of the directors are shown in the public domain by the said concern. Accordingly it is seen that a request to cross-check the information again including the confirmation dated 11.10.2012 from the Director of M/s Smridhi Sponge Ltd. were relied upon. These facts are reproduced in the earlier part of this order affirming the assessee's stand stating that M/s Smridhi Sponge Ltd. never had any transactions with the assessee.

10.2. The record shows that these facts, evidences and the said confirmation of assessee's version was dismissed by the CIT(A) holding as under:-

*7.3. "The AO again issued a notice under section 133(6), but this notice was too again received back, with the remarks of postal authorities "Left". **Now when this fact was informed to the appellant on 14.1.2013, the appellant again came with a different story on 13.02.2013 that they have contacted the director of Smridhi Sponge and through one iron and steel broker they have procured a letter dated 11.10.2012 from Smridhi Sponge, in which the director of Smridhi Sponge have stated that Smridhi Sponge has no dealing with the appellant company."***

***The above submission of the appellant cannot be relied upon and it appears that the appellant wants to delay and unnecessary drag the issue.** If the appellant had received a letter dated 11.10.2012 from the director why the same was informed now on 13.01.2013, and was not attached with, when the application under Rule 46A was filed at the appellate stage on 22.10.2012, when he provided the new address of Smridhi Sponge at Jamshedpur and the copy of Rule 46A application was filed with the AD and AD was requested to make the inquires with the Smridhi Sponge at their new address at Jamshedpur.*

7.4 The so called alleged confirmations letter dated 11.10.2012 having procured from the director of Smridhi Sponge and not filed with the undersigned with the Rule 46A application on 29.10.2012 and even on any of the subsequent dates of hearings viz. 12.12.2012, 14.01.2013, 28.01.2013 and 12.01.2013, clearly shows that all is not well the appellant state of affairs, as on the one hand he states that they had no dealing with Smridhi Sponge and on the other hand they had the new addresses as well as able to contact the Director of Smridhi Sponge.”

(emphasis provided)

10.3. In the above-mentioned peculiar facts, we find that considering the fact that the information was available on the computer print out found from the assessee's premises the CIT(A) invoking the provisions of section 292C and relying upon the judgement of the Hon'ble Delhi High Court in the case of Sonal Construction (cited supra) and CIT vs Indeo Airways P. Ltd. (ITA No.- 1620 and 1622/2010) and the judgement of the Gujarat High Court in the case of ACIT vs Hiren Vasantlal Shah 19 Taxman 241 dismissed the objection of the assessee and came to the conclusion that since the impounded documents were found from the assessee's business premises necessarily the presumption that they relate to transactions with M/s Smridhi Sponge outside the assessee's books of accounts. However on the quantum of the additions partial relief was given which is challenged by the Revenue. The said finding has been challenged by the assessee.

10.4. In the context of the above facts on record, we find that where we have called upon to consider the provisions of section 292C of the Act, it is appropriate to first set out the specific provision:-

292C. (1) "Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped,

executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.”

10.5. In the facts of the present case, the evidence on record is that the impounded documents by way of a computer print out were found from the premises of assessee's business. The record shows that the assessee confronted with the seized material by the AO has filed a reply dated 15.11.2010, copy of which is placed at pages 57 -62 denying the same. Apart from that the following details as per page 56 were provided to the AO:-

- *“That assessee company has never undertaken any transaction with M/s Smridhi Sponge*
- *That assessee company is not aware of where about of M/s Smridhi Sponge.*
- *That details found during survey might be of some one who visited the assessee's office and used the assessee's computer for mail of the account found or might have left the some one unknowingly.”*

“The assessee company has undertaken a search through internet and have collected certain details about M/s Smridhi Spong Ltd.

1. Office Address
23, Netaji Subhash Road,
Kolkata, West Bengal - 700001
2. Company Registration No.:- 067187
3. PAN **AADCS 7018I**
4. **Jurisdiction** **WBG/W/113/4**
5. **Directors Particulars** **Particulars of Directors -
Copy Of the extracts taken
from internet enclosed.”**

1. “Further enquiry on internet sites reveals following details regarding one of the name appearing in loose sheet (in the account of M/s. Smridhi Sponge Ltd) viz., GALAXY. It is a private limited company having registered office at P-25 Prince cap street 1st Floor Kolkata, West Bengal. The complete name of the company is M/s. GALAXY EXPORTS PRIVATE LIMITED. The list of directors of M/s. Galaxy Exports (P) Ltd is also enclosed.

2. M/s. Galaxy Exports (P) Ltd is manufacturer of M.S. Ingot and Sponge Iron is one of the basic raw material for production of M.S. Ingot.

3. M/s. Galaxy Exports Private Limited is operating Bank Account bearing No.1021 with PNB Jamshedpur, the branch is located at Ashiana Complex and branch code is 2894. Following

two cheques have been encashed from above account of the M/s.Galaxy Exports (P) Ltd

-4/12/07 MR.JUN ch.No.177699 Rs.2500000/-

9/12/07 MR.JUN ch.No.186001 Rs.1500000/-

The amount of above cheques are appearing in loose sheet found during search in respect of M/s. Smridhi Sponge.”

In this respect it is submitted as under:-

-That assessee company has never undertaken any transaction with M/s Smridhi Sponge.

- That assessee company is not aware of where about of MIs Smridhi Spong except above details.

It is requested to undertake enquiry from above bank or other source particulars of which might have given in the Page No. 11-14 of Annexure A-2 impounded during survey.

In the light of above it is requested to your goods elf to issue your notice to directors and to Smridhi Sponge Ltd. to enquire the details if any transactions have been undertaken with the assessee company.

Assessee on its part will also try to find further details if found and will submitted the same.”

(emphasis provided)

10.6. A perusal of the same shows that the assessee denied having any transaction with M/s Smridhi Sponge Ltd. and made a claim that it may have belonged to someone who may have visited the assessee's office. The present case is not only a case of simple denial but the denial is on affidavit. The assessee as per record is also found to have made efforts to trace the said concern. The internet search conducted admittedly as per record has made a mention of specific Kolkata's address as per ROC site on a specific date. Admittedly one notice was sent to it that too after a lapse of almost a year which came back unserved. It is also seen that apart from that the assessee has also made efforts to give PAN details and also the jurisdiction of the AO where M/s Smridhi Sponge was being assessed. The record demonstrates that the AO chooses to rely more on postal authorities and makes no effort to cross check the information from the AO of M/s Smridhi Sponge who admittedly had many transactions in cash with some parties. M/s Smridhi Sponge as per record was not a dummy entity but a functional thriving entity. What repeatedly emerges from the above-mentioned facts and evidences is that the assessee during the assessment proceedings and in the appellate proceedings makes an all out mammoth exercise to give the details of M/s Smridhi Sponge Ltd. and also traces the two specific cheque numbers mentioned in the seized

documents which were paid by the bankers of M/s Galaxy found mentioned as “Galaxy” in the seized documents however surprisingly for unstated reasons the department sits back after issuing notices to the address provided of M/s Smridhi Sponge relying blindly on section 292C of the Act only on the rationale that the print outs had been founded from assessee’s premises and thus they necessarily disclosed the assessee’s undisclosed transactions with the said concern. The said conclusion of the tax authorities is completely misplaced on facts. A perusal of section 292C shows that a statutory presumption can be drawn where any documents is found in possession of a person in the course of a search or survey that it belongs to “such a person”. A presumption is also drawn that the contents of such a document are true. The presumption having been drawn as per law is required to be confronted and the documents as per record have been confronted. Whether the onus placed upon the assessee in a given set of facts is discharged or not has to be seen from the replies of the assessee based on facts. However, the law is well settled that the presumption is rebuttable. In the facts of the present case, the assessee has denied having any transactions with M/s Smridhi Sponge and has also denied consequently the contents of the seized document as relatable to it; the denial as per the assessment order is also on an affidavit; the particulars available in the public domain procured through the internet searches from the ROC and the official income tax sites as per print outs of the downloads are relied upon. The fact that these were unimpeachable third party evidences that too from the official government sites goes without saying. In these facts, merely sending notices to the addresses provided on the ROC site cannot be said to be rebutting the evidence on record namely that M/s Smridhi Sponge, assessed to tax in a specific jurisdiction in Kolkata manufacturing M.S.Ingot and Sponge Iron, having specific address as per ROC site receiving payments in cash and cheque as per the seized documents qua which presumption u/s 292C operates towards their correctness; wherein two specific cheques were honoured by Punjab National Bank at Jamshedpur whose account number was “1021”; , branch code and factum of the payments made on behalf of the M/s Galaxy Exports as the same “Galaxy” found mentioned at Paper Book page 47 (Seized documents) also dealing in “Iron Ore” were provided; where the

names and addresses of the Directors of both the companies; their authorized share capital; details of their balance sheets as per ROC site; Auditor's, Reporters etc. are all given. The fact that these were relevant unimpeachable evidence has not been doubted. In these facts the reluctance of the tax authorities to address this issue and to carry the enquiries to the logical conclusion is a glaring fact of deliberate inaction. The repeated inactions speak louder than the half heated actions undertaken. The evidences remains un rebutted on record. No effort to co-relate the assessee's alleged undisclosed transactions with M/s Smridhi Sponge appear to have been addressed so as to demolish the consistent claim on record that it had no dealings with the said concern. In such a background the departmental stand that the level of information available with the assessee proved that the assessee had interactions with the said concern is adding insult to injury. The reluctance to act on the information provided is surprisingly unfortunate. We fail to understand why no efforts whatsoever as per record were made by the AO either in the assessment proceedings or Remand proceedings to obtain relevant information from the Assessing Officer of M/s Smridhi Sponge Ltd. an entity with a thriving business and enquire into the information in its possession to its logical conclusion by tracing possible transactions not disclosed to the tax authorities. The fact which repeatedly emerges is that the information which comes to the knowledge of the AO repeatedly is not acted upon. The possible reasons for this reluctance with which we need not concern ourselves in the present proceedings however, may be a case of serious concern for the department. The silence of inaction speaks much louder than the frenzy of the misdirected actions necessitating a pro-active department to address the fest spreading malaise lest the tools of search and seizure are reduced to a farce. The repeated inactions speak louder than the half-hearted actions taken. We are of the view that as far as the assessee is concerned the onus to address the seized documents qua which a statutory presumption has been drawn stands fully discharged.

10.7. In view of the above, detailed reasoning in the peculiar facts on record and our reasoning thereon having considered the statutory provision and the judgement relied upon by the Revenue, we find that the ground nos.4 to 8

raised by the assessee have to be allowed. The onus placed upon the assessee is a rebuttable onus and on facts the same has been discharged. The onus thus having shifted to the department casts a duty upon the Revenue to act upon the information made available to them and take action thereon. As far as the assessee is concerned, the income has wrongly been assessed in its hands. There is nothing in the seized documents or anywhere also on record to show that the assessee was dealing in undisclosed transaction with M/s Smridhi Sponge. The judgements relied upon by the tax authorities and the parties before the Bench proceed on facts peculiar to their own as such do not require a detailed mention. Suffice it to say that in the case of Sonal Construction, the document under question was not a computer print out but a handwritten document which was claimed by another partner to be in the handwriting of another partner; the handwritten document was accepted as relatable to the assessee by the other partner who claimed to recognize the handwritten note reflecting undisclosed transaction in specific projects of the said company. Similarly in the facts of Hiren Vasantlal Shah, the assessee accepted the seized document as rough working in his own handwriting however it was disputed that acting thereon no loan was given. This explanation of the assessee on facts consistently before the two appellate authorities was rejected and this position on facts was confirmed by the Hon'ble High Court of Gujarat. Thus it is seen that the said decision also proceeds on facts peculiar to its own. The reliance placed by the Id. CIT DR that burden cast upon the assessee to prove that it was not so; or that the AO cannot be fettered by technical rules of evidence are well-settled legal position and in the facts of the present case do not help the Revenue in any way as the onus on the assessee is a rebuttable onus and having rebutted the onus it shifts on the Revenue. Similarly it is seen that the principle followed in the case of Indeo Airways is entirely distinguishable as it lays down the proposition that correctness of the contents of the books is to be presumed. In the facts of the present case the efforts of the assessee in linking through the cheque numbers mentioned in the seized documents of M/s Smridhi Sponge with "Galaxy" mentioned therein as M/s Galaxy Exports having a specific bank account with PNB at Jamshedpur proves the correctness of the documents it is

only their relation with the assessee which remains unproved. The efforts of the assessee through third party evidences that too by way of information on the government web sites in public domain by way of making information available from the ROC and income tax sites gives more than sufficient information to the tax department to act thereon which for reasons best known to the concerned officers remains unaddressed however, as far as the assessee is concerned the onus to meet the statutory presumption stands discharged. No corroborative evidence, infact no evidence whatsoever has been placed on record to show in the face of the assessee's efforts and stand that the document pertains to the assessee.

11. Accordingly in view of the above detailed finding on facts which turns on facts peculiar to the present case we hold that Ground Nos.-4 to 8 in ITA No.-2925/Del/2013 deserves to be allowed. Ordered accordingly. While coming to the above conclusion the decisions and propositions of law relied upon by the parties and the tax authorities have been taken into consideration. A detailed reference specifically to those is refrained from as the finding is based on facts which are peculiar to the case at hand. Accordingly, the remaining grounds in assessee's appeal do not require to be adjudicated upon. In view of the above finding the departmental appeal is dismissed.

12. Since in ITA No.-2526/Del/2013 the sole issues raised by the assessee addresses the addition made on the basis of seized documents addressed in ITA No.2926/Del/2013 which has been held to be not relable to the conclusion that the assessee had any undisclosed transaction with M/s Smridhi Sponge and the additions made in 2007-08 Assessment Year have been deleted. Accordingly following the reasoning and conclusion therein the addition made in the present appeal is also deleted and the assessee's ground is allowed.

13. In the result, the appeals of the assessee are allowed and the departmental appeal is dismissed.

The order is pronounced in the open court on 16th of June 2015.

Sd/-
(T.S.KAPOOR)
ACCOUNTANT MEMBER

Dated: 16/06/2015

Amit Kumar/Anil Kumar Verma

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI