
(1997) 07 DEL CK 0073

In the Delhi High Court

Case No : ITA No's. 361, 4079 and 7195/Del of 1994;

RAM PIYARE SATISH KUMAR and Others

APPELLANT

Vs

INCOME TAX OFFICER.

RESPONDENT

Date of Decision : 05-07-1997

Acts Referred:

Citation : (1997) 59 TTJ 352

Judgement

BY THE BENCH :

The assessees in all these appeals are carrying on their business as wholesale dealers of cloth in Shori Market, Rohtak.

2. The President, Rohtak wholesale Cloth Merchant Association, Rohtak submitted application dt. 8th January, 1997 before the Tribunal stating that appeals in the cases of various dealers of cloth of Shori Market, Rohtak involving consideration of similar grounds based on identical facts may be consolidated and heard together. It was also stated in the said application that the main order in such group of cases has been passed by the learned CIT(A) in the case of Ram Piyare Satish Kumar (ITA No. 361/Del/1994), which has been followed by him in the similar appeals of other dealers. All these appeals were, Therefore, consolidated and heard together.

Facts relating to the main grounds in all these appeals and the findings given by the Departmental authorities thereon.

3(a). The facts relating to the main grounds raised in all these appeals are as under : The Investigation Wing of the IT Department made certain investigations, as a result of which, they collected certain information from the various transport firms/companies indicating that the various dealers of cloth carrying on their business at Rohtak received consignment of several bales of cloth from Ahmedabad, Surat and Amritsar. On the basis of such material obtained as a result of investigation made by the Investigation Wing, the AOs made addition on account of unexplained investment made for making such

unrecorded purchases as well as in respect of unaccounted profit derived on such suppressed sales.

3(b). The learned representatives of both sides submitted that it will be sufficient to examine the facts of the main case of Ram Piyare Satish Kumar for asst. yrs. 1990-91 to 1992-93 as the entire facts and basis of additions made in all other cases are similar, except that the number of unrecorded purchases of bales of cloth and the consequent amount of additions based thereon are different.

3(c). It will, Therefore, be imperative to reproduce hereunder the facts and findings given by the AO in the assessment orders in case of Ram Piyare Satish Kumar for asst. yrs. 1990-91 to asst. yr. 1992-93.

3(d). Facts and findings given by the AO in assessment order for asst. yr. 1990-91

"Owing to certain investigations made by the investigation wing of the Department, certain information was collected from the registers of certain transporters firms which showed consignments of several bales of cloth to the assessee. According to this information, the assessed had received 512 consignments from Ahmedabad, Bombay, Surat and Amritsar during the period 5th April, 1989 to 25th July, 1991. After verification, Investigation Wing found that 93 entries did not find place in the books of account of the assessee. This information was passed on to this office.

6. During the assessment proceedings before me, it is seen that the following entries were not found recorded by the assessed in his regular books of accounts for the financial year 1989-90 relevant to the asst. yr. 1990-91.

S. No.

G.R. No.

Date of purchase

Date of receipt

No. of bales

1.

377062

08-4-89

08-4-89

1

2.

377162

08-4-89

08-4-89

4

3.

378243

18-4-89

20-4-89

1

4.

379720

18-4-89

20-4-89

4

5.

209563

25-4-89

28-4-89

3

6.

384105

30-5-89

03-6-89

1

7.

207668

07-6-89

11-6-89

2

8.

387884

26-06-89

29-06-89

3

9.

387335

28-06-89

01-07-89

2

10.

387881

03-07-89

06-07-89

3

11.

58133

15-12-89

16-12-89

1

12.

59653

24-12-89

25-12-89

1

13.

61336

03-01-90

04-01-90

3

14.

65344

22-01-90

22-1-90

1

15.

66204

29-01-90

30-01-90

1

16.

69434

15-02-90

15-02-90

1

17.

69563

16-02-90

16-02-90

1

18.

72395

02-03-90

1

19.

417407

09-03-90

1

20.

74589

12-03-90

1

21.

75692

19-03-90

1

22.

76245

21-03-90

1

Total No. of bales

38

7. The assessed was confronted with the findings as above with regard to the unrecorded purchases and his statement was recorded on 15th March, 1993. In his deposition Shri Satish Kumar, partner has confirmed and affirmed that the firm had purchased the above mentioned bales of cloth and that the above purchases were not recorded in the books of account. He was asked to state from whom the goods have been purchased. It was replied that the goods had been purchased from Bombay, Surat, and Ahmedabad and since the parties did not give him the bills, the names and addresses of the seller parties cannot be made available and further that he is unable to recollect the names of these parties. The assessed was further asked to mention the quality of the cloth and then it was stated that the quality of cloth was that of inferior type of terrycot, silk and that the purchase price of bales varied from Rs. 5,500 to Rs. 6,000 per bale. The assessed was asked to state as to whether he was in possession of any evidence whereby the cost of any/each bale could be specifically determined. It was stated that the basis for estimating the cost of the goods was the purchase price of the goods purchased from Amritsar and Surat in respect of the purchases recorded in the regular books of accounts and in support of its contention the assessed also submitted bills which would show the cost of the bale in respect of the recorded entries.

8. The assessed was further asked as to what was the investment made in the purchase of the unrecorded goods. It was stated by the assessed that no amount was invested in the goods as it has been purchased on credit basis. The assessed was then asked to give the names of the parties from whom the goods were purchased on credit. The assessed once again stated that since he did not possess the bills, he did not remember the names of the parties from whom the goods were purchased. The assessed was further asked as to how much profit he had made. It was stated that he had made profit of Rs. 15,000 on these 38 bales which comes out to Rs. 394 per bale.

9. Thus, it can be seen from the deposition of the assessed that :

(a) he admitted that purchases were outside the books of accounts.

(b) that he admits that there is no evidence to identify the person from whom the goods were purchased and neither he is able to recollect the names of the persons from whom the goods were purchased.

(c) that he claims that no investment whatsoever was made for these purchases and the goods were purchased on credit basis.

(d) the value of goods varied from Rs. 5,500 to Rs. 6,000 per bale.

(e) that the profit per bale is approx. Rs. 394.

10. From the above, it is clear that the assessed had been purchasing outside the books of account in respect of 22 consignments Constituting 38 bales, the details of which have been given in the foregoing paragraphs. The assessee stands that he does not know the names of the parties from whom the goods were purchased on credit is unbelievable. Such unrecorded purchases are usually made in cash and in the unlikely event, the credit transactions had been entered into it would show that the goods were received from a known party with whom the assessed had transacted earlier and the assessee's creditworthiness was commercially established with the seller of the goods. Only under these circumstances, the assessed would be in a position to identify easily the person from whom the goods were purchased. Even if it is assumed for a moment, that the goods purchased on credit, the assessed have to show the date of payment made to the seller which has never been done by the assessee. Furthermore, these transactions were entered into in the normal course of business as is evident from the fact that the goods consigned from the same station and through the same transporter have partly been recorded and partly unrecorded by the assessed in his books of accounts. The goods that were purchased on credit, the assessed would have to show that the date of payment made to the seller which has never been done by the assessee. Furthermore, these transactions were entered into in the normal course of business as is evident from the fact that the goods consigned from the same station and from the very transporter have partly been recorded and partly been unrecorded by the assessed in his books of accounts. The goods that were not recorded would normally be paid in cash. Furthermore, the assessed is not in a position to submit even a single scrap of paper to show that the goods were purchased on credit basis and from whom such goods were purchased. This fact is only in the knowledge of the assessed and it is not possible for me to exactly draw any conclusion except that the purchases were made in cash.

11. Whether the goods were purchased on credit or in cash, the assessed cannot take a stand that no investment was made for the purchase as even for credit purchases, an investment is made but only the accounts are settled after a certain period of time. Therefore, the assessee's contention that since the goods were purchased on credit and no investment was made is wholly untenable and unacceptable. As far as the cost of the goods as well as profit of the assessed

earned thereon is concerned, the assessed has not produced any direct evidence which would show the cost of the goods purchased and quality thereof. In fact the cloth is of various varieties and, Therefore, his estimation about the cost of the goods cannot be taken as supported by any evidence. Furthermore the profit allegedly made by the assessed is also devoid of any evidence.

12. Thus, what is left before me is to estimate the investment made for the purchase of cloth outside the books of account in respect of 22 consignments Constituting 38 bales from Amritsar and Surat. As far as the goods in which quality is not known, an average cost is taken. Normally, the assessed had purchased silk from Amritsar and as per the transporters register too in these consignments the quality of goods were that of art silk. I have examined the books of accounts, and some recorded purchase vouchers of the assessee. I have also examined the profit which is shown by the assessed in his revised return of income. It is seen that the assessed has shown profit on this unrecorded goods by taking average cost of the bale of Rs. 7,500. As the quality of this whole of the cloth is not available and the assessed has not led any evidence to throw any light on the quality of this unrecorded cloth and since the exact quality of cloth is only in the knowledge of the assessee, who has preferred to be silent on this aspect, a fair value has to be relied upon for the purpose of purchases price shown by the other wholesale dealers in the same locality. It has been noticed that in the case of Gulshan Kumar & Co., Shori Market, Rohtak, for the asst. yr. 1990-91, who is presently assessed to tax with ITO, Ward-I, Rohtak, the cost has been shown and remitted at Rs. 8,640. The said bale of cloth was purchased from artisan. On the basis of account books of the assessee, purchase vouchers which are recorded in the books of accounts, value of one bale taken by the assessed in his revised return of income, further the value of such bale admitted by the other assessed and considering all factors being judicious and fair to the assessee, I am adopting the cost of one bale at Rs. 3500.

13. Now the question which arises is as to what is total undisclosed investments made in the purchases. In view of the fact that the assessed has not led any evidence so as to throw any light on the transactions and since the transactions entered into by the assessed are in the knowledge of the assessed and fair adoption has to be relied upon. It is normal pattern of any trade that goods are purchased and sold after a certain period of time and out of sale proceeds, expenses are accounted for and as such capital keeps on circulating. The assessed was also confronted vide this office letter dt. 22nd January, 1993 to show cause as to why the entire cost of purchases of bales be not included as undisclosed investment of the assessed in his hand. The assessed vide its reply dt. 25th February, 1993, has contended as under :

(i) that the goods were purchased on credit basis and hence there is no investment made by the assessed in the purchase of the alleged 38 bales.

(ii) that the payments were made to the persons from whom the purchases were made after the sale of goods.

(iii) that the assessed had normally purchased the goods on credit.

(iv) and that the burden of proof was on the Department to establish the fact that the undisclosed investment has been made.

As mentioned earlier, the assessee's contention that goods were purchased on credit and, therefore, no investment was made is contrary to the commonsense and is, therefore, untenable and unacceptable. In the assessee's case, it is seen that he had an opening stock of Rs. 3,62,067 and total sales shown at Rs. 79,41,388 and hence the circulation of the opening stock comes out of 22 times.

14. I have gone through the books of account and other available material to examine the circulation of the stock. On the whole my impression is that the assessed makes a payment roughly after a period of 7 to 10 days for the purchases so made by him. As discussed earlier, the assessed made purchases in cash as such goods were also sold in cash. Hence, the circulation of the stock would be faster as cash transaction of purchases and sales have been made more frequently than the credit transaction. In this case, the assessed has purchased 5 bales of cloth on 8th April, 1989, which were not found recorded in the books of account. These 5 bales were received by the assessed on 8th April, 1989. Thus, being fair and judicious, I have taken the peak for calculation the unexplained investment of the assessed in purchase for one day which is most reasonable and minimum and in applicability and in the instant case the peak for one day comes out to 5 bales. However, the adoption is being made to the best of my ability and also as per the material available on record, considering all the factors and being judicious and fair to the assessee, who has preferred to be silent on this issue, I am constrained to make such adoption on this basis. The undisclosed purchases and sales which could have generated to give the assessed sufficient funds for making next investment, I am adopting one day purchases i.e. for 8th April, 1989, which was made outside the books of account, for calculating the investments made for purchasing the goods and being worked out hereunder :

Rs.

(a) The assessed has made unrecorded purchases on 8th April, 1989 of 5 bales of cloth and by applying an average value of one bale at Rs. 8,500, the undisclosed investment in the 5 bales comes out to Rs. 42,500 added after treating income from undisclosed sources under s. 69 of IT Act, 1961

42,500

(b) The assessed has shown a profit on the unrecorded goods at Rs. 15,000 on 38 bales of cloth by taking the cost of one bale at Rs. 7500 @ 5.5 per cent. I am not disturbing the rate of profit as shown by the assessed itself. During the year he has purchased 38 bales of cloth, hence profit comes to Rs. $38 \times 8500 \times 5.5$ per cent = 17,765

17,765

(c) Hence total addition to extent of Rs. 42,500 + 17,765 = 60,265 treating the sale to the undisclosed income of the assessed will be made to the other income of the assessed

60,265

The AO thus made an addition of Rs. 60,265 as assessee's income from undisclosed sources. However, while computing the taxable income, the AO deducted the amount of Rs. 15,000 being profit on unrecorded goods shown by the assessed in the revised return."

3(e). The AO in the case of Ram Piyare Satish Kumar made addition on similar basis in asst. yr. 1991-92 as under :

Reproduced from p. 6 of the assessment order :

"(a) The assessed has made unrecorded purchases on 13th May, 1990 of 6 bales and by applying average value of a bale of Rs. 8500 the undisclosed investment in the bales comes out to Rs. 51,000

51,000

(b) Hence the assessed has made investment out of the undisclosed money in these unrecorded goods to the extent of Rs. and the same is to be added in the income of the assessed under s. 69 of the IT Act.

(c) Less : profit earned by the assessed in the previous unrecorded sales of 13 bales before this transaction and the profit earned on it comes to Rs. 4972 ($8,500 \times 13 \times 9/100 \times 2 = 4,972$)

4,972

46,028

(d) The assessed has shown a profit on the unrecorded goods at Rs. 30,000. During the period under consideration the assessed has purchased 94 bales of cloth outside the books of accounts. The total value of the goods comes to Rs. 7,99,000 and by applying the net rate of profit @ 4.5 per cent (the suppressed profit comes to Rs. 35,955)

35,955

81,983

(e) Declared by the assessed in the return

30,000"

3(f). In asst. yr. 1992-93 in the case of the same assessed viz. Shri Ram Piyare Satish Kumar after discussing the facts in almost similar manner, the AO arrived at the following conclusion :

"5.2 The assessed has purchased 2 bales of cloth from Amritsar as under from

which the total peak investment is calculated :

S. No.

Date of purchase

Date of receipt

No. of bales

1.

6th May, 1991

2

From the above, it is clear that the assessed has purchased 2 bales which can be taken as the minimum number of bales purchased by the assessed during these days and total peak undisclosed investment comes to Rs. $8,700 \times 2 = 17,400$

5.3 Since the goods were purchased outside the station, as admitted by the assessed itself, there are always expenses on freight, etc. which are estimated @ 2 per cent of the cost price, as held by the CIT(A), Rohtak in similar cases of Shori Market, Rohtak and the total expenses of freight comes to Rs. $17,400 \times 2$ per cent = Rs. 348.

5.4 Thus the total unexplained investment made by the assessed comes to Rs. $17,400 + 340 = 17,740$. For this year unexplained investment comes to Rs. 17,400 in this case. Assessment for asst. yr. 1991-92 was completed on 8th December, 1993, and addition of Rs. 81,983 was made. By adjusting this amount the unexplained investment from undisclosed sources comes to Nil. Hence, I am not making any addition in this year as unexplained investment."

The assessed had surrendered/declared extra income of Rs. 12,000 as unrecorded goods, which was included in the assessed income as income from undisclosed sources.

4(a) The CIT(A) considered the submissions made on behalf of the assessed as well as by the AO. The AO highlighted the relevant facts and findings given by him in the assessment order. The gist of arguments advanced on behalf of the assessed and the findings given by the CIT(A) in paras 15 and 16 of his order for asst. yr. 1990-91 in the case of aforesaid assessed are reproduced hereunder :

"15. At the time of hearing of the appeal, learned counsel Shri Jain submitted that for years together, assessed has been purchasing materials from Bombay, Surat, Amritsar and Ahmedabad and other places. These four cities are pioneer in textile manufacturing and business. assessed is at mercy of the manufacturers and wholesale commission agents of the said cities. It is a trade practice that some of the commission agents in those cities do not issue bills. Shri Jain submitted that assessed has to procure materials for its own trading to carry out the business. Learned counsel submitted that assessee, on good faith accepted

certain transactions which were not recorded in the books of account but it does not mean that any investment was made for the purchase of unrecorded materials. Shri Jain vehemently argued that the practice in the trade is that payments to the sellers are made after the assessed firm sells goods. He contends that the seller are paid after Realizing prices after the firm could sell the produce. For that period of time, the seller was kept as a creditor. Shri Jain further submitted that it was on such understanding that the seller despatches the goods to the assessee. Shri Jain also submitted that assessed also surrendered Rs. 15,000 as profit on unrecorded purchases. It is argued that there is no material in the possession of the learned AO to specifically pinpoint any unrecorded investment inasmuch as he did not carry out investigation in respect of Amritsar sellers. Shri Jain drew my attention to the prevailing circumstances of Punjab and stated that it is difficult for the assessed to pinpoint the names of the sellers. This was more so because in absence of any documentation the commission agent (sellers) could deny their own transactions for their own ulterior purposes. Learned counsel further submitted that even at the time of computing total volume of unrecorded transactions, learned AO was wrong to take price of one bale at Rs. 8,500 instead of correct price of Rs. 6,500.

16. I have carefully considered the submissions of the learned counsel and facts of the case. There is no hard facts before the Department that the assessed carried out transactions of purchase outside the books except the admission of the assessed to that effect. It is apparent that investigation was not carried out by the learned AO. He did not call for the sellers of Amritsar nor could he allow any facility of cross-examination to the assessee. In this background, it would be wrong to ask the assessed to identify the sellers, specially in view of prevailing conditions of Punjab. At the same time if the assessed had to carry out business, he had (sic-to) accept lots of material from Amritsar and other stations. Learned AO computed investment of Rs. 42,500 in the initial purchases of the merchandise. Learned counsel Shri Jain submitted that there is no initial investment inasmuch as the lots were received on credits. Payments were made after the sale of produce. It was also contended that their practice of credit purchases is proved by assessed account which reflected that it has been transacting this business in similar manner along with other parties. Learned AO proceeded in a presumptive manner. At the same time, it is difficult to accept the contention of the learned counsel that there was no basic investment. Even if the assessed did not pay to the seller, it had to undertake transport charges, payment of octroi, etc. from its own coffer. Considering the entire gamut of case, I am of the opinion that estimate of investment @ 2 per cent on total unrecorded purchases were Rs. 6,460 ($3,23,000 \times 2/100$). Learned AO has made addition of Rs. 42,500. Appellant gets a relief of Rs. 36,040. This ground is partly allowed."

4(b). The CIT gave the following findings in relation to addition made on account of profit on unaccounted sales of the unrecorded bales of cloth in asst. yr. 1990-91 :

"17. Ground No. 6(c) challenges an addition of Rs. 17,765 on account of gross profit on bales. assessed disclosed profit of Rs. 15,000 on unrecorded sales. Learned AO increased the profit to Rs. 17,765. He was of the opinion that gross profit rate of 5.5 per cent was applicable. Learned counsel Shri Jain submitted that learned AO adopted higher G.P. rate. I have considered his submissions. In view of my finding given in ground No. 2 above, the addition made by the learned AO at Rs. 2765 (17,765-15,000 disclosed by the assessee) is deleted. Appellant gets a relief of Rs. 2765."

4(c). The CIT(A) in his order for asst. yr. 1991-92 directed the AO to restrict the addition made on account of investment for unrecorded purchases to 2 per cent and accordingly directed him to follow his order for asst. yr. 1990-91. Such findings were given by the CIT(A) while dealing with ground Nos. 6 and 7 raised before the CIT(A). Ground No. 6 relates to addition of Rs. 46,028 made for unexplained investment for such purchases. Ground No. 7 relates to estimation of profit of Rs. 35,955 on unrecorded sales by the AO as against profit of Rs. 30,000 declared by the assessee. The CIT(A) while dealing with ground Nos. 6 and 7 has mentioned the amount of addition of Rs. 46,028 only and has directed the AO to restrict the said addition to 2 per cent of unrecorded purchases but has not given any specific finding relating to addition of extra profit of Rs. 5,955 (35,955 - 30,000).

4(d). In asst. yr. 1992-93 the CIT(A) has observed that no addition has been made by the AO on account of unexplained investment for unrecorded purchases, hence the ground raised by the assessee, being infructuous and misconceived, is dismissed.

5. In cases of all other assesseees, the AO has given complete details of unrecorded purchases in like manner and have made additions on similar manner. The CIT(A) has followed his order in the main case.

Gist of various grounds raised by the assesseees in relation to the aforementioned main issue in the various appeals under consideration

6. The grounds raised by the assesseees in their respective appeals for various years under consideration in relation to the main issue can be briefly stated as under :

(a) The CIT(A) has erred in upholding the addition made on account of investment @ 2 per cent on the total unrecorded purchases of the bales of cloth;

(b) The CIT(A) has erred in confirming the price of unrecorded bale of cloth as determined by the AO as against the estimate of purchase price submitted by the assessed for the purpose of working out the addition on account of unexplained investment made for purchasing the unrecorded bale of cloth [such as the CIT(A) has erred in confirming the price at Rs. 8,500 instead of Rs. 6,500 of each unrecorded bale in asst. yr. 1990-91 in the case of Ram Piyare Satish Kumar].

Gist of various grounds raised by the Revenue in the cross-appeals relating to

main issue in cases of these assessees

7. The grounds raised by the Revenue in their appeals in the cases of these assessees for the various years in relation to the aforestated main issue can be briefly stated as under :

(a) The CIT has erred in deleting a substantial part of the addition made by the AO in respect of unexplained investment made for unrecorded purchases [such as the CIT(A) has erred in deleting the addition of Rs. 36,040 out of addition of Rs. 42,050 made by the AO in the case of Ram Piyare Satish Kumar in asst. yr. 1990-91] by directing the AO to restrict such addition only to the extent of only 2 per cent of the total amount of unrecorded purchases of cloth made by the assessee;

(b) The CIT has erred in deleting the addition of extra profit determined by the AO on unrecorded sales beyond what was surrendered by the assessed (such as the CIT(A) has erred in deleting the addition of Rs. 2765 made by the AO in the case of Ram Piyare Satish Kumar in asst. yr. 1990-91 by estimating profit on unrecorded sales at Rs. 17,765 as against profit of Rs. 15,000 surrendered by the assessed in the revised return].

8. Shri G. C. Sharma, learned senior Advocate, contended that there is no material on record, which can justify any addition on account of unexplained investment for unrecorded purchases of cloth. He explained that no initial investment is required to be made by the assessees, as the unrecorded bales of cloth were sent to them by the suppliers on credit. Payments were made by the assessed dealers to the suppliers after the sale of goods in consonance with the practice prevailing in the market. He submitted that this contention has been accepted by the CIT(A). The CIT(A) has, however, observed that even if such a contention is accepted, these dealers had to make payments for transport charges, octroi, etc. from their own coffers. In view of this, the CIT(A) has sustained the addition to the extent of 2 per cent of total amount of unrecorded purchases. Mr. Sharma further contended that total expenses incurred on freight, octroi, etc. was only about 2 per cent and addition of entire 2 per cent of total purchases is patently wrong and unjustified because the alleged purchases were made in various lots on different dates. The learned lawyer further stated that even if it is assumed that freight and octroi expenses were incurred out of unexplained funds, the said expenditure, being of a revenue nature, is clearly allowable as a business expenditure.

8.1. Shri Sharma, further submitted that the AO had grossly erred in making addition for unexplained investment in respect of peak quantity of bales of cloth purchased on any one day in the year under consideration. Addition of peak value of cloth bales purchased on any one day has been made on the basis of an erroneous presumption that cash was paid on the date when such goods were received. Such a presumption is not supported by any material or evidence on records. On the other hand, the addition of such peak purchase price is contrary

to the common practice prevailing in the entire market and is also against the observation made in para 14 of the assessment order, where the AO has observed that assessed makes the payment roughly after a period of 7 to 10 days. The addition made by the AO was, Therefore, wrong and unjustified.

8.2. The learned counsel further submitted that the representatives of the Rohtak Wholesale Cloth Mercantile Association and the assessed dealers discussed the matter with the AO, CIT, Chief CIT and Member, CBDT on several occasions. After discussions, all the concerned dealers (appellants/Respondents) submitted their revised returns in which reasonable and adequate amount of profit on such unrecorded transactions were included in conformity with such discussions. The AO, Therefore, ought to have accepted the income shown in the returns/revised returns submitted pursuant to such discussions. The learned counsel also submitted copies of letters dt. 22nd February, 1993, and 28th December, 1992, submitted by the Association to the CBDT.

8.3. The learned counsel placed reliance on the judgment of Hon'ble Allahabad High Court in the case of Ashok Kumar Rastogi vs. CIT (1992) 106 Taxation 30 to support his contention that no addition can be made on account of any unexplained investment for alleged unrecorded purchases.

8.4. Shri Sharma, the learned Senior Advocate further contended that the CIT has wrongly sustained the purchase price of each bale of cloth taken by the AO at Rs. 8500. The AO has brought no material on records to justify the rate of Rs. 8,500 per bale. He contended that the CIT(A) ought to have accepted the average rate of Rs. 6500, as contended on behalf of the assessee.

8.5. Shri Sharma, strongly urged that the grounds raised by the assessed in relation to the main issue should be allowed and the grounds raised by the Revenue in their appeals in the cases of all these assesseees should be dismissed.

9. The learned Departmental Representative placed strong reliance on the elaborate reasons mentioned in the assessment order. He submitted that the AO was extremely just and fair in making addition on account of unexplained investment for peak unrecorded purchases made only on the date throughout the year instead of making addition for the total amount of unrecorded purchases. The CIT(A) has grossly erred in granting substantial relief by directing the AO to restrict such addition to only 2 per cent of the total amount of unrecorded purchases made in the relevant year.

9.1 The learned Department Representative further submitted that the assessed did not furnish any details about the names and addresses of the Suppliers nor they have given any material to support their contention that price of each bale of cloth should be taken at Rs. 6,500. The AO has given valid basis for adopting the price of Rs. 8,500 per bale.

9.2. The learned Departmental Representative further contended that the CIT(A) has also erred in deleting the addition of extra profit on unrecorded sales made

by the AO in addition to the profit surrendered by the assesseees in their revised the returns. He submitted that it is incorrect on the part of the assessed to say that profit on suppressed turnover of unrecorded purchases was surrendered on the basis of discussions with the IT authorities. There is no material on record to support such contention.

9.3. The Departmental Representative also pointed out that the facts of the judgment of Hon''ble Allahabad High Court relied upon by the learned lawyer are clearly distinguishable. In that case, no basis was given for addition of unexplained capital made by the AO. In the present case, the AO has given the date wise details of unrecorded purchases in the respective assessment orders. The assessed have admitted the fact of making such unrecorded purchases. He further submitted that all payments for such unrecorded purchases have been made in cash in violation of the provisions of s. 40A(3). The AO could make addition of entire amount of unrecorded purchases. But he has been extremely fair and reasonable in making addition of the purchase price of peak purchase made on any one day. The CIT(A) ought to have confirmed the entire addition made in respect of unexplained investment for purchase of unrecorded cloth bales and he also ought to have confirmed the addition made in respect of profit on such unrecorded turnover.

10(a). We have carefully considered the submissions made by the learned representatives of both sides. We have also gone through the orders of the learned Departmental authorities and have also perused all other documents to which our attention was drawn during the course of hearing.

(b) It was the common contention of the learned representatives of both sides that it will be sufficient to examine the facts of the main case of Ram Piyare Satish Kumar, as the relevant facts in the cases of all other assesseees are almost similar. We will, Therefore, confine and concentrate on the scrutiny and examination of the facts recorded in the orders of the Departmental authorities in the aforesaid case.

(c) The officers of the Investigation Wing of the Department have made deep and thorough investigation of the relevant facts and have ascertained the list of specific items of unrecorded purchases of cloth by these dealers. The AOs have given complete details of such unrecorded purchases of cloth with full particulars as to its G.R. No., date of purchase, date of receipt of goods from the transport firm/companies and the number of bales purchased. The assesseees were confronted with such details and they have duly admitted the fact of having made such unrecorded purchases. The assesseees have themselves surrendered profit on sale of such unrecorded goods purchased by them by filing returns/ revised returns.

The first main question which, Therefore, requires our consideration is whether these dealers were required to make initial investment of their own funds for carrying out such unaccounted and unrecorded purchases. It has been submitted

on behalf of the assesseees that no investment was required to be made for this purpose, as the goods were supplied by the various suppliers on credit and the purchase price was paid by all these dealers after Realizing the sale proceeds of such unrecorded goods. On the other hand, the AO has observed that goods consigned from the same station and through the same transporter have partly been recorded and partly unrecorded by the assessed in his books of accounts. In the normal course of business, the payment of purchase price of unrecorded goods will be made instantly in cash. The AO further observed that even if it is assumed that such goods were supplied on credit, the assessed cannot take a stand that no investment was made for such purchases, as the account of such unrecorded purchases are also settled after a certain period of time, and it is not necessary that on all occasions the dealers could realise the entire sale proceeds of such unrecorded purchases prior to the date when payment of such credit purchases were made. The AO in para 14 of the assessment order in the case of Ram Piyare Satish Kumar for asst. yr. 1990-91 has inter alias given the following findings; "on the whole my impression is that the assessed makes a payment roughly after a period of 7 to 10 days for the purchases so made by him". The AO has further observed in the same para that circulation of the unrecorded stock would be faster. Keeping these facts in view, the AOs has taken the peak quantity of unrecorded bales of cloth purchased on any one day for working out the amount of unexplained investment made for such unrecorded purchases.

22.3 It may be relevant and imperative to examine the ratio of capital employed on the recorded turnover accounted for in the books of accounts. A perusal of the balance sheet of Ram Piyare Satish Kumar as on 31st March, 1990 (p. 33 of paper-book) reveals the following position of capital employed by the partners in the said firm :

Name of the Partner

Opening Capital

Share of Profit

Withdrawals

Closing Balance (2 + 3 - 4)

1

2

3

4

5

Satish Kumar

82,075

29,363

18,430

93,008

Harish Kumar

91,235

29,363

13,490

1,07,108

Smt. Vidyawanti

97,950

20,634

625

1,17,959

2,71,260

79,360

32,545

3,18,075

The recorded sales as per the audited trading and P&L a/c placed at p. 34 of the paper-book was Rs. 79,41,388. It means that for making recorded turnover of Rs. 79,41,388 the assessed required capital of Rs. 2,71,260, which comes to 3.41 per cent of the turnover.

22.4. The AO on p. 7 of the Assessment Order for asst. yr. 1990-91 has observed as under :

"In the assessee's case, it is seen that he had an opening stock of Rs. 3,62,067 and the total sales shown at Rs. 79,41,388 and hence the circulation of opening stock comes out to 22 times."

It means that goods purchased and accounted for in the books could be normally sold within a period of 16 days from the date of purchase 365 days 22 times ratio of stock with turnover.

22.5. The question which thereafter requires determination is whether the capital required for unrecorded transactions on the facts of the present cases should be more or less than the ratio of capital employed with recorded turnover (i.e. 3.41 per cent). The AO has himself observed that these dealers make payment of purchases so made by them roughly after a period of 7 to 10 days. The AO also

observed that the circulation of the unrecorded stock (purchases) would be faster. If that be so, the unrecorded goods purchased by these assesseees could be sold in cash comparatively in a shorter period or in other words these assesseees could realise the sale price of unrecorded goods more quickly. All the dealers of cloth of Shori Market, who are the appellants in the present appeals as well as the office bearers of their Trade Association represented before the Departmental authorities that normally the payment of purchase price of unrecorded purchases were made after realisation of the sale proceeds of such goods. Such a contention is substantially supported by the aforesaid facts and ratios worked out on the basis of recorded figures of capital employed, stock and the recorded turnover coupled with the aforesaid findings given by the AO in para 14 of the assessment order in the case of Ram Piyare Satish Kumar for asst. yr. 1990-91. But the aforesaid facts and ratios cannot support the assesseees contention that no investment at all was required to be made for such unrecorded purchases. These facts and circumstances only indicate that the ratio of capital required for unrecorded purchases may be lower as compared to ratio of capital employed on the recorded turnover. The argument of the learned counsel that CIT(A) by sustaining the addition to 2 per cent of the total unrecorded turnover by way of unexplained investment has disallowed the entire expenses for freight and octroi, is also not tenable, as such an addition has been sustained by the CIT(A) in respect of unexplained investment required for making such unrecorded purchases and direct expenses like freight and octroi, etc. incurred in relation to such purchases.

(g) In view of the aforesaid facts and discussions and in view of the elaborate reasons given in the orders of the CIT(A), we are of the considered opinion that the CIT(A) has rightly directed the AO to sustain the addition in respect of unexplained investment at 2 per cent of the total value of unrecorded sales of the unrecorded goods purchased by the assessee. We do not find any justification in interfering with the finding given by the CIT(A) in this regard.

(h) The next submission made on behalf of the assessed is that the CIT(A) has erred in confirming the price of unrecorded cloth bale @ Rs. 8,500 per bale taken by the AO as against Rs. 6,500 for the purpose of computing the amount of addition made in respect of unexplained investment for unrecorded purchases.

On a careful consideration of the entire relevant facts, material and evidence existing on records and after considering the submissions made by the learned representatives of the parties, we are of the view that the CIT(A) rightly confirmed the price of Rs. 8,500 per bale taken by the AO for the purpose of making addition in respect of unexplained investment for unrecorded purchases of cloth. The AO has observed that the assesseees did not furnish any details about the quality and purchase price of unrecorded goods purchased by them. They have not supplied the names and addresses of the suppliers. The AO, Therefore, had to estimate the purchase price of such unrecorded goods. The AO had taken into consideration the average cost by examining purchase vouchers

of purchases recorded in the books of accounts, the purchase price paid by other dealers in the same market viz. Gulshan Kumar & Co. The AO has given convincing reasons in para 12 of the assessment order in the main case of Ram Piyare Satish Kumar for asst. yr. 1990-91 for adopting the cost of one bale at Rs. 8,500. The learned counsel relied upon the contents of representations made before the CBDT in which certain general details were furnished by the Trade Association of such dealers. In our view, the CIT(A) has confirmed the price of unrecorded purchases per bale estimated by the AO after a careful consideration of the entire relevant facts and material on record. We, Therefore, do not find any justification in interfering with the view taken by the CIT(A) in relation to this point also.

(i) The next point relating to the main issue, which has been raised by the Revenue in their appeals in the cases of concerned dealers for the concerned years is that the CIT(A) has erred in deleting the addition made by the AO in respect of profit on suppressed turnover of unrecorded goods purchased by these dealers.

It will be worthwhile to state the relevant facts of the illustrative case of Ram Piyare Satish Kumar for asst. yr. 1990-91 in this regard. The assessed surrendered profit of Rs. 15,000 on unrecorded sale of 38 bales of cloth. The AO estimated such profit at Rs. 17,765 by calculating profit @ 5.5 per cent on sale of 38 bales @ Rs. 8,500 per bale. Thus net addition of Rs. 2,765 was made under this head.

The CIT(A) has observed that the assessed disclosed profit of Rs. 15,000 on unrecorded sales. It was argued on behalf of the assessed that AO has adopted higher G.P. rate of 5.5 per cent. This shows that it was incorrect on the part of the AO to state that the assessed had himself declared the profit of Rs. 15,000 on the basis of profit rate of 5.5 per cent on 38 bales valued @ Rs. 7,500 per bale. The profit of Rs. 15,000 appears to have been shown on an ad hoc basis. The CIT(A) deleted the said addition of Rs. 2,765 (17,765 - 15,000).

We have considered the submissions made by the learned representative of the parties. The sale value of 38 bales @ Rs. 8,500 per bale comes to Rs. 3,23,000. The profit of Rs. 15,000 declared by the assessed works out to 4.6 per cent. The assessed has declared G.P. rate of 4.01 per cent on the recorded sales. In our view, the CIT(A) has, Therefore, rightly deleted the addition made in the declared profit on suppressed sales amounting to Rs. 2,765. The facts in all other cases are stated to be almost similar. Therefore, we are of the view that in all cases, where the CIT(A) has given a specific finding deleting such addition and the Revenue has raised a specific ground against such deletion, the ground so raised by the Revenue has no merit. However, in cases where the CIT(A) has not given any specific finding in relation to such a ground and no specific ground has been raised by the assessed or the Revenue, we cannot give any finding in the absence of a specific ground. The order passed by the CIT(A) is, Therefore, confirmed in relation to this issue also.

(j) In some of the cases, the CIT(A) has partly sustained the addition made by the AO on account of profit on suppressed turnover. For instance, in the case of Shri Lajpat Rai, Rohtak (ITA No. 6854/Del/94) for asst. yr. 1991-92, the AO made an addition of Rs. 1,66,821 by applying profit rate of 5.5 per cent on sale of unrecorded cloth bales estimated at Rs. 30,33,123. The CIT(A) after considering the submissions made on behalf of the assessed directed the AO to apply net profit rate of 3 per cent and also directed the AO to give credit of profit already surrendered by the assessed in the return/revised return of income. These assesseees, where part amount of addition made on account of profit on sale of suppressed sales of unrecorded purchases have been sustained, have raised a ground in their respective appeals against confirmation of such part amount of additions.

The learned counsel for the assessed did not submit any arguments in relation to such a ground taken in some of these appeals.

We have carefully gone through the orders of the learned CIT(A) in all such cases. In the case of Shri Lajpat Rai for asst. yr. 1991-92, the CIT has confirmed the profit rate of only 3 per cent as against the profit rate of 5.5 per cent applied by the AO. In the case of Ram Piyare Satish Kumar, the profit surrendered by that party at Rs. 15,000 works out to 4.6 per cent on their unrecorded purchases made in the relevant year.

Likewise the CIT(A) has sustained an addition of Rs. 4,260 in case of Kumar Trading Co. (ITA No. 458/Del/94) for asst. yr. 1990-91. In this case also the CIT(A) observed that AO had applied same rate of profit on unrecorded sales, which was shown by the assessed on recorded sales. The CIT(A), however, directed the AO to give credit of profit on unaccounted sales surrendered by the assessee. The view of the CIT(A) is reasonable and justified.

Similarly, the CIT(A) has sustained an addition of Rs. 9,367 in the case of Harbans Lal Harminder Pal (ITA No. 459/Del/94) for asst. yr. 1990-91. In this case also, the CIT(A) has sustained the same, as the AO has worked out the addition on the basis of G.P. rate declared by the assessed on recorded turnover, which, in our view, is justified.

We are, Therefore, of the opinion that the CIT(A) has sustained such part amount of addition in such cases after a very careful consideration of all the relevant facts and circumstances. We do not find any justification in interfering with the view taken by him in relation to such grounds raised in various appeals by the assessee.

(k) In some of the appeals, the assesseees have raised some more grounds relating to the main issue relating to unrecorded purchases of cloth bales. It has been mentioned that the AO has erred in determining the total number of unrecorded bales. The AO has not confronted the assessed with the material gathered behind the back of the assessee. There is no evidence on record to prove that the assessed made such unrecorded purchases as alleged in the

assessment order.

Mr. Sharma, the learned counsel for the assessed did not dispute the factual details of the unrecorded purchases made by these dealers, as mentioned in the assessment orders. The AO has given complete details of such unrecorded purchases with necessary particulars as to G.R. No., date of receipt, number of bales etc. Most of the dealers have specifically admitted the correctness of such details of unrecorded purchases worked out by the Investigation Wing/AO after thorough investigation and verification with the books of all the concerned dealers. We, Therefore, do not find any justification in interfering with the view taken by the CIT(A) in this regard.

(l) In some cases, the AO, in asst. yrs. 1991-92 and 1992-93 has adopted the price of unrecorded cloth bales at Rs. 8,700 per bale, as against price of Rs. 8,500 taken in asst. yr. 1990-91. After considering the material existing on records, we do not find any justification in interfering with the view taken by the CIT(A).

(m) In view of the foregoing discussions, the orders passed by the CIT(A) in relation to all the issues relating to the main ground are confirmed. The grounds raised both by the assessed as well as by the Revenue in respect of the aforesaid main grounds are rejected.

11. The next common grounds, which are the subject-matter of consideration in various appeals by these assesseees as well as by the Revenue relate to disallowances made by the AO out of various expenses debited in the P&L a/c.

It was the common contention of the learned representatives of the parties that it will be sufficient to look into the nature and facts relating to such disallowances made in the illustrative case of Ram Piyare Satish Kumar.

The AO in the case of Ram Piyare Satish Kumar made the following disallowances in asst. yr. 1990-91 :

Head of Expenditure

Total expenses claimed

Disallowed by the AO

Relief granted by CIT (A)

Disallowance confirmed by CIT (A)

Rs.

Rs.

Rs.

Rs.

Miscellaneous expenses

7,041

1,000

1,000

Nil

Commission

22,199

2,000

2,000

Scooter expenses & depreciation

5,991

(1/5th disallowed)

1,247

1,450

244

1206

(1/6th sustained)

Tea expenses

10,849

5,847

5,423

424

traveling expenses

17,669

3,000

1,000

2,000

It was contended by the learned representatives that petty disallowances in similar manner were made in few other cases. The CIT(A) after considering relevant facts and details of each such disallowances has decided such grounds by granting relief in respect of some disallowances and confirming the remaining

disallowances.

(b) After considering the submissions made by the learned representatives of the parties and after going through the orders of the learned Departmental authorities. We are of the considered opinion that the CIT(A) after a careful consideration of the relevant facts, details, nature and quantum of disallowances made out of various expenses, has arrived at a proper and justified conclusion. We do not find any justification in interfering with the view taken by the CIT in relation to such disallowances out of expenses in all relevant appeals under consideration. The various grounds raised in the appeals by the assessed and by the Revenue in all the concerned cases with regard to disallowances out of various expenses have no merit and are accordingly rejected.

12(a) The next common ground raised by the Revenue in their appeals in the cases of various dealers relates to deletion of addition made in the declared trading results by the AO.

(b) The learned representatives of both sides submitted that the facts relating to the additions made by the AO in the declared trading results are same, as in the illustrative case of Ram Piyare Satish Kumar. The order passed by the CIT(A) deleting the trading additions are also based on same reasoning as given in the appellate order passed by him in the aforesaid case. It will, Therefore, be sufficient to consider the facts of the said illustrative case.

(c) The AO in the case of Ram Piyare Satish Kumar for asst. yr. 1990-91 made an ad hoc addition of Rs. 5,000. The AO observed that G.P. rate of 4.01 per cent declared by the assessed is low as compared to G.P. rate of 4.10 per cent shown by him in asst. yr. 1989-90. The AO also gave details of G.P. rate shown by other dealers.

He also observed that the assessed did not maintain day-to-day variety-wise and quantity-wise stock register. The assessee's declared turnover was Rs. 79,41,388. The AO made an addition of Rs. 5,000 in asst. yr. 1990-91.

In asst. yr. 1991-92, the assessed declared G.P. rate of 4.38 per cent on sales of Rs. 79,65,507. For similar reasons, the AO made an ad hoc addition of Rs. 5000.

In asst. yr. 1992-93, the assessed declared G.P. rate of 4.32 per cent on sales of Rs. 97,18,049. The AO observed that the assessed has shown G.P. rate of 4.9 per cent in asst. yr. 1991-92 (the declared G.P. rate mentioned in assessment order for asst. yr. 1991-92 is 4.38 per cent). The defects pointed out were almost similar as mentioned in assessment orders for asst. yrs. 1990-91 and 1991-92. The AO estimated the sales at Rs. 97,45,631 and applied G.P. rate of 4.7 per cent and thereby made an addition of Rs. 27,582.

(d) The CIT(A) after considering the relevant material and submissions made on behalf of the assessed gave following finding in para 5 of his order :

"I have carefully considered the submissions of the learned counsel and the

assessment order. It is now a trite law that it is unjustifiable to compare G.P. rate of any particular year with earlier years. It is also not proper to compare G.P. rate with other traders. It is not customary for any trader to attain any ideal gross profit rate. I borrow support from the following judgments :

(a) International Forest Co. Vs. Commissioner of Income Tax,

(b) J.A. Trivedi Brothers Vs. Commissioner of Income Tax,

(c) Md. Umer Vs. Commissioner of Income Tax, and

(d) B.F. Varghese (No. 2) Vs. State of Kerala, .

After considering the facts and circumstances and the settled legal position, the addition is deleted. Appellant gets a relief of Rs. 5,000. This ground is allowed."

In asst. yr. 1991-92 and asst. yr. 1992-93, the CIT(A) deleted the said additions of Rs. 5,000 and Rs. 27,580 by following his order in assessee's case for asst. yr. 1990-91.

(e) The learned Departmental Representative relied upon the reasons mentioned in the assessment orders and submitted that the CIT(A) ought to have confirmed the trading additions made by the AO in all the cases.

The learned counsel submitted that all these dealers have maintained proper books of account. The entire purchases and sales are supported by vouchers. The assessee had also maintained quantitative details. It was not possible to maintain quality-wise day-to-day stock records. He submitted that assessee has surrendered profit on suppressed turnover of unrecorded purchases. The CIT(A) has, Therefore, rightly deleted the additions made by the AO in the declared trading results.

(f) We have carefully considered the submissions made by the learned representatives of the parties.

The correctness of the fact that entire purchases and sales recorded in the books of account are fully supported by vouchers and by the entries made in the regular books of account has not been disputed by the AO in the assessment orders nor by the learned Departmental Representative before us. The absence of day-to-day quality-wise stock record or the fact that G.P. rate declared in any of the years is lower as compared to earlier years or compared to other dealers by itself cannot justify invoking of the proviso to s. 145(1) or s. 145(2). The AO on the basis of some specific mistake or discrepancy has to give a specific finding as to whether the proviso to s. 145(1) or s. 145(2) is applicable on the facts of the case. No such specific finding has been given by the AO. It is also impossible to expect any dealer to declare similar G.P. rate from year to year. The G.P. rate depends on various factors and may vary from year to year and from case to case. Before placing reliance on the G.P. rate declared by other dealers, the burden lies upon the AO to supply basic details relating to such other cases. After providing such details of other cases to the respondent assessee, the AO was

first required to examine whether the facts of such other cases are comparable with the facts of these assesseees. No such exercise has been carried out by the assessed in the present cases. The profit on sale of unrecorded purchases have been separately offered by these assesseees for tax by including such income in the revised returns. In view of all these facts and in view of the reasons mentioned in the orders of the CIT(A), we are of the considered opinion that the CIT(A) has rightly deleted the additions made in the declared trading results. In the appeals, where the Revenue have raised such a ground regarding deletion of trading addition in the appeals under consideration, the same are rejected.

13. Some of these assesseees in their respective appeals such as in ITA Nos. 5430/Del/94, 5431/Del/94, 457/Del/94, 4488/Del/94, 456/Del/94, 4487/Del/94, 6344/Del/94, 6346/Del/94 and 6447/Del/94 have raised ground relating to levy of interest under s. 234B/234C. The CIT(A) has directed the AO to grant consequent relief. No arguments were advanced by the learned counsel for the assessed in relation to such grounds. Even on merits, the grounds so raised by the assesseees have no merit. The provisions of s. 246 do not provide for any appeal against levy of interest under s. 234B, 234C, etc. The appellants have not shown as to how can they deny their liability to be assessed in respect of such interest in toto. Therefore, in our view, such grounds raised by assesseees in the concerned appeals have no merit and the same are accordingly rejected.

14. In the case of Rampal Richhpal Kashmiri Lal for asst. yr. 1991-92 (ITA No. 4142/Del/94), the assessed has inter alia, raised a ground that the CIT(A) has erred in giving direction to add Rs. 28,000 as surrendered income which is already included as per income computed in para No. 12 of the assessment order.

After going through the orders of the learned Departmental authorities, we consider it just and proper to direct the AO to verify this fact and give credit of the said sum of Rs. 28,000 shown as extra income (profit) on suppressed sales, by the assessed himself, if such credit has not already been granted while making addition on account of profit on unrecorded sales.

15. The Revenue in its appeal No. 7396/94 in the case of Ram Piyare Satish Kumar for asst. yr. 1992-93 has raised a ground that the CIT(A) has erred in directing the AO to charge interest under s. 234B up to determination of income under s. 143(1)(a).

(b) The CIT(A) has given the following finding in the aforesaid case for asst. yr. 1992-93 :

"As far as interest under s. 234B is concerned, similar issue has been decided by me in the case of Besheshar Lal Kapoor Chand, Rohtak, vide my order dt. 1st December, 1993 in appeal No. 17/40/RTK/1993-94, for the asst. yr. 1990-91 (copy enclosed) in which learned AO was directed to charge interest under s. 234B up to the date of determination of income under s. 143(1)(a) of the IT Act. Being identical issue in this case, learned AO is directed to follow the same directions as in that case. Regarding charging of interest under s. 234C, he is

directed to charge the same as per law after giving consequential relief arising out of this order."

(c) The learned Departmental Representative submitted that CIT(A) ought to have held that no appeal is maintainable against levy of interest under s. 234B of the Act. The learned counsel for the assessed supported the order of the CIT(A).

(d) We have carefully considered the submissions made by the learned representatives of the parties. Since the assessed has not denied its liability in respect of levy of interest under s. 234B of the Act, no appeal against the quantum of interest is maintainable. The CIT(A) has, Therefore, erred in entertaining such a ground of appeal, because s. 246 does not specifically provide for an appeal against levy of interest under s. 234B. Apart from this, the provisions of s. 234B of the Act have been amended by the Finance Act, 1995, with retrospective effect from 1st April, 1989, which provides that where a regular assessment is made, interest under s. 234B will be charged up to the date of such regular assessment. The Revenues appeal in relation to this ground is, Therefore, allowed.

16. The appeal in the case of Subhash Chander proprietor Bishan Das Kashmiri Lal, ITA No. 1875/Del/94 for asst. yr. 1991-92 is directed against the order of Dy. CIT(A), who has set aside the assessment order and restored it back to the AO for making a fresh assessment as per the directions given by him in the case of Birbal Naresh Kumar for asst. yr. 1990-91. The facts of this case are similar as that in the case of Birbal Naresh Kumar in ITA No. 1944 to 1946/Del/94 decided by the Tribunal vide order dt. 22nd April, 1997. In view of the elaborate reasons given in the said order passed by the Tribunal, the order of the Dy. CIT(A) in the present appeal is set aside and the Dy. CIT(A) is directed to decide the assessee's appeal afresh on merits keeping in view the directions given by the Tribunal in the case of Birbal Naresh Kumar (supra).

17. In the result, Revenues appeal No. 7396/Del/94 in the case of Ram Piyare Satish Kumar for asst. yr. 1992-93 is partly allowed as indicated in para 15 of the order. Appeal in the case of Rampal Richhpal Kashmiri Lal for asst. yr. 1991-92 in ITA No. 4142/Del/94 is partly allowed only for the limited purpose of directions given in para 14 of this order. The appeal in the case of Subhash Chander, ITA No/ 1875/Del/94 is treated as allowed for statistical purposes, as indicated in para 16 of the order. All the remaining appeals by the assessed and the Revenue are dismissed.