

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND
SHRI A.L. GEHLOT, ACCOUNTANT MEMBER**

ITA No. 6380/M/2009
Assessment Year: 2005-06

Chawla Brothers Pvt. Ltd.,

'Poorna Asha Building',
317, Narshi Natha Street,
Masjid Bunder, Mumbai – 400 009.

... Appellant

Vs.

Asstt. Commissioner of Income-tax,

Central Circle 10, Mumbai.

...Respondent

Appellant by : Mr. A.V. Sonde
Respondent by : Mr. Ajitkumar Sinha

ORDER

PER A.L. GEHLOT, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A)-37, Mumbai, passed on 09.11.2009 for the assessment year 2007-08.

2. The assessee has raised the following grounds of appeal:-

"1. The learned CIT(A) erred in confirming the addition of Rs. 5,58,44,128/- made by the Ld. AO on account of the alleged unexplained investment made in the following stock items/categories as at the day of survey:

Sr.No.	Particulars	Amount (Rs.)
A	62, items of packed finished oil inventorised by the survey party and alleged to be not recorded in the stock register (RG1) of the appellant	21528076
B	Branch stock (i.e. stock at branches) alleged not to be recorded/reflected in stock register (RG1) maintained at the head office/factory at Chandivali, Mumbai.	24907144
C	Stock given for packing and lying with	

	<i>the packer Viz., India Veg. products on the day of survey alleged not to be recorded/reflected in the stock register/RG1 of the appellant</i>	34,01,646/-
<i>D</i>	<i>Stock of chemical materials alleged not to be recorded in the stock register(RG1) of the appellant</i>	18,83,464/-
<i>E</i>	<i>On account of the alleged discrepancies in respect of 33 items (on a net basis)</i>	41,16,798/-
		5,58,44,128/-

2. *It is respectfully submitted that the order of the learned CIT(A) is against the principles of natural justice.*

3.1. *The learned CIT(A) erred in sustaining addition of Rs. 3,28,679/- made u/s 68 in respect of cash found in the course of survey at the factory/head office at Chandivali.*

3.2 *The learned CIT(A) erred in sustaining addition of Rs. 66,675/- made u/s 68 in respect of cash found in the course of search at the registered office.*

4. *The learned CIT(A) erred in confirming the levy of interest u/s 234B and u/s 234C.*

3. Briefly the facts of the case are that the assessee is a private limited company engaged in the trading and manufacturing of edible oils and vansaspathi which is conducted under the name of Kamani Oil Industries, a proprietary Concern of the assessee company. The assessee filed its return of income on 31.10.2007 declaring total income of Rs. 4,86,88,205/-. An action u/s 132 of the IT Act was conducted in the Sukhwani/Chawla Group Cases of which the assessee is a member. The warrant of search authorization u/s 132 of the Act was issued in the name of the assessee, which was executed on 14/6/2006. Consequently, a survey u/s 133A has also been conducted in the office premises of the assessee at Bhandup.

3.1 The AO noted the facts that during the course of survey action on 14/6/2006 physical inventory of stock was taken in respect of stock found in the factory premises at Chandivli Estate, Sakivihar Road, Mumbai – 400 072. The inventories from branches

were also called for by the survey team. During the course survey statement of Shri Prakash N Chawla was recorded wherein while replying answers to question No. 14 Mr. Chawla confirmed the physical inventory as correct inventory. The survey party obtained a tentative trading account from the assessee for the period from 1/4/2006 to 14/6/2006. As per that trading account the closing stock worked out at Rs. 22,18,23,787/-. However, the actual stock found was at Rs. 21,91,56,285/-. The AO further noted that the survey party compared the physical stock found with figures of RG-1 register maintained by the assessee. The survey party found discrepancies in around 33 items with the R.G.1 and physical inventory. The AO further noted that the copies of RG-1 register/stock book produced do not contain all the items of raw material, work in progress, finished products and bye-products, therefore these items could not be compared. On comparison excess stock of Rs. 1,49,08,100/- was found. This excess stock was found only against 33 items appearing in RG1 book whereas as per physical inventory there were 62 items of packed finished oils which have not been entered in the RG-1 register. The value of this stock is Rs. 2,15,35,076/-. Similarly stock at branch valued Rs. 2,83,08,790/- (which are branch stock CPD, Branch stock bulk and item given for packing) and chemical materials valued at Rs. 18,83,464/-. The value of minus stock as per physical verification list comes to Rs. 10788302/-. The AO after considering all these the excess stock found was valued at Rs. 5,58,44,128/- which included excess stock of Rs. 14905100/- reducing the deficit stock at Rs. 10788302/-, as follows:-

A) Physical stock of 62 items of packed finished oil	2,15,35,076
B) Branch stock (2,49,07,144+34,01,646)	2,83,08,790
C) Excess stock of 33 items	1,49,05,100
D) Chemical materials	<u>18,83,464</u>
Total	6,66,32,430
Less: Deficit stock of 33 items	<u>1,07,88,302</u>
Excess stock	5,58,44,128

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3.2 The AO did not accept the explanation & reconciliation given by the assessee on the following grounds:

- i) Even though the assessee had given a reconciliation statement now it could not be verified with the factual position as on the date of survey.
- ii) The assessee should have explained these differences & the reconciliation there of in the course of survey itself.
- iii) The explanation rendered by the assessee was not fully supported.

3.3 The AO made the addition of Rs. 5,58,54,128/- on account of unexplained investment in stock.

3.4 The assessee contended before the CIT(A) that survey party did not ask any specific question to Mr. Prakash N. Chawla in respect of stock inventory computed by them that during the course of survey. The book stock was duly reconciled by the physical stock and the minor differences were due to valuation and that no major differences were detected. It was also contended that a chart explaining the reconciliation of each and every items were also filed vide letters dated 26.11.2008 and 10th December'08. The CIT(A) called for remand report from the AO. The remand report filed by the AO has been reproduced by the CIT(A) at pages 10 to 16 of his order. The CIT(A) had given a copy of remand report to the assessee and the assessee submitted his reply against the same, which has been reproduced by the CIT(A) at pages 16 to 20 of his order. The CIT(A) called for second remand report from the AO, which was reproduced by the CIT(A) at pages 20 to 26 of his order. A copy of this 2nd remand report was also given to the Assessee for comments. The assessee also furnished comments on the second remand report, which has been reproduced and discussed by the CIT(A) at pages 26 to 54 of his order. The CIT(A) noted in brief the facts and observations of the AO and contention of the assessee at pages 54 to 63 of his order. The CIT (A) relied upon the following decisions:-

- 1) V. Rajan Vs. CIT [1974] 96 ITR 64 (Mad.)
- 2) CIT Vs. Ashok Textiles (P) Ltd. [1983] 141 ITR 785 (Ker) – against which assessee's special leave to appeal has been

dismissed by the Supreme Court vide Ashok Textiles (P) Ltd. V. CIT [1981] 138 ITR (St.) 1.

3) Ramanlal Kacharulal Tejmal V. CIT [1984] 146 ITR 368 (Bom.)

4) Badri Prasad Rameshwar Prasad Vs. CIT [1996] 219 ITR 441, 448-49(MP)

5) CIT Vs. G. Anandrajan [1997] 228 ITR 664, 667-68(Ker.)

6) Unique Construction Company Ltd. Vs. JCIT [2003] 260 ITR 189 (Cal.)

7) Vimla Stores Vs. CIT [2009] 308 ITR 89 (Pat.)

3.5 Finally, after reproduction of remand reports and assessee's submissions, the CIT(A) held as under:-

“2.3.14 Having regard to the facts and circumstances of the case and in the light of the various decisions discussed in the preceding paragraphs, addition of Rs. 5,58,44,128/- on account of unexplained investment in stock charged to tax u/s 69 of the Act is confirmed.”

4.1 The learned AR reiterated the submissions, which were made before the revenue authorities. The learned AR submitted that the appellant maintains RG – 1 register (stock register) for raw material (separate for imported & local) & for finished products. The appellant also maintains production records giving details of raw materials issued for production and production of finished products on a daily basis. Thus the movement of raw material from purchase to production is recorded in the raw material stock register, production records & finished goods stock register. He further submitted that the goods sent to branches are recorded in the stock register of factory as issued / transferred to branches. Each branch maintains its own stock registers giving details goods received, goods sold & goods in stock. In respect goods sent for packing, the stock register of factory contains the entry both for goods sent for packing & goods received back after packing and a separate stock register is maintained for stock lying with packer M/s Indian Veg. Oil for packing. In respect of chemical, stores etc. separate stock records are maintained.

4.2 The learned AR submitted that on the date of survey, statement of Prakash Chawla, Director of the assessee was taken u/s 133A. At Q.No.17 (Page no. 48 of paper book), of the statement, the survey party put a question of discrepancy of Rs.26 Lakhs odd in stock shown in tentative trading account prepared on date of survey and physical inventory taken by the survey party. To this query an answer was made that the average G.P. ratio was applied while working out the trading a/c (Tentative) & hence there is no discrepancy as book stock is matched with physical stock. The contention of the appellant was duly accepted by the survey party in the appraisal report (at page no. 362 of paper book) Copy of tentative trading a/c is reproduced in remand report dated 30.3.09 (appraisal report of survey party at page no. 362 of paper book).

4.3 Further there was another question No.7 put up to in which the Director was asked whether physical inventory made was correct. To this it was answered that the physical inventory made was correct and to authenticate it copy of RG-1 register (stock register) were also provided to the Survey Party. (Page no. 96 to 128 of paper book). Besides these two questions, no other question or undisclosed material, papers were found or put forward to the director to express any discrepancy in stock or excess or shortfall in stock. Apart from the above, no statement of any other person was recorded and what was impounded by / submitted to the Survey party was as under :

- a) Physical inventory of stock (prepared in the course of survey)
- b) Copies of faxes from branches
- c) Statement of accounts for the year ended 31 st March, 2006
- d) Trading account for the year 2000-2001 to 2005-2006 & provisional trading account from 01.04.2006 to 14.06.2006.
- e) List of C & F agents.
- f) List of bank accounts
- g) Cash book from 01.06.2006 to 14.06.2006.
- h) Cash book of Bodaram & Sons, Indu Oil & Soap & H.B. Chawla Charitable trust from 01.06.2006 to 14.06.2006.
- i) Daily Production sheets

4.4 In addition to that, copies of RG-1 register, stock transfer sheet from 01.06.2006 to 13.06.2006 for stock transferred to branches were also taken over by the Survey party. By this the search & survey had ended. No disclosure of any type was asked for nor was any other material pointed out to show that there was not any discrepancy or excess stock nor shortfall of stock was pointed. Only other thing that was made was that the premises at Narsi Natha Street and factory premises were searched / surveyed and cash found was inventories which was not seized. A reconciliation of cash found during search was also filed on the same day and a statement of Kachomal Khatri was recorded, who explained the cash being collection of debtors of etc. The search team & survey party respectively did not seize the cash.

4.5 In the course of survey, the survey party had compiled a physical inventory of stocks at the factory premises of the appellant. The survey party had also compiled stock at various branches by calling for the stock details from each of the branches. The stock with M/s Indian Veg Oils, the packer was also compiled. The branches, C & F agents & M/s Indian Veg. Oil (packer) were not covered under the survey action. Hence the stock of branches inventories, C & F agents & M/s Indian Veg. by the survey party was actually a book stock of the appellant.

4.6 The list of physical inventory compiled by the survey party is enclosed by the appellant with his paper book at page no. 72 & 73. The stock inventoried by the survey party was valued at Rs.21,91,56,235/- as under:

Sl. No.	Description	Value (Rs.)
1	Raw Oil	10,66,09,779
2	Work In Progress	1,75,83,143
3	Finished Products	4,42,30,314
4	By Products	8,89,183
5	Packed Finished Oils	21,53,076
6	Branch Stock CPD	1,36,49,875

7	Branch Stock Bulk	1,12,57,269
8	Coconut oil Given For Packing	34,01,646
	Total	21,91,56,235

4.7 In addition to the above there was no act, action, material, evidence collected/seized by the search/survey party. No proceedings under Rule 112 or any other proceeding was called for by the ADI and the search/survey on the assessee had ended on 15.6.06.

4.8 The learned AR submitted that subsequently a return of income for A.Y. 2007-08 was filed suo-moto on 31.10.2007. The AO issued 153A notices for A.Y. 2001-2002 to 2006-07 on 16.3.2007 and issued a 143(2) notice and not notice u/s. 153A for A.Y. 2007-08 on 14.10.2008. Returns for A.Y. 2001-2002 to 2006-07 were filed u/s 153A and they were accepted and no addition made thereon. Assessments for those years were made on 29.12.2008, the same date assessment made for A.Y. 2007-2008. He further submitted that the appellant had not declared any additional income following the survey. However in the course of assessment proceedings the learned Assessing Officer for the first time pointed out that there were some discrepancies in the physical stock as compared to the book stock & RG-1 register by given a paper during the course of assessment proceedings on 20.11.2008 (At page no. 191 to 193). Thereafter again on 26.11.2008. The learned AR submitted that during the course of assessment proceeding, the appellant submitted exhaustive explanation along with complete documentary evidence in respect of each item mentioned above vide its letter dated. 26.11.2008. The appellant summarized and explained in detail the alleged difference in quantity of raw and refined oil in inventory as per physical verification and as per RG - 1 register as on 14.06.2006 7.00 a.m. For the purpose of ready reference the copy of that letter is reproduced as under:-

“26.11.2008
The ACIT, Central Circle - 10,
ITAT Building,
Mumbai.

RE : M/s KAMANI OIL INDUSTRIES
(PROP.: CHAWLA BROTHERS PVT. LTD.)
ASSESSMENT YEAR : 2007 - 2008
SUB : SUBMISSION OF DETAILS

Sir,

In continuation of our submission, as required by your good office, under the instructions of our above mentioned client, we are submitting herewith following details and explanation :

1. Kindly refer to the statement of quantity details given by you in the last hearing containing quantitative details of 33 items. (Pg. 191 to 193)
2. As per the above list, quantity as per physical verification was compared with quantity as per RG - 1 register **as on 14.06.2006 at 07.00 a.m.**
3. From the above statement, it can be observed that of the 33 items, 13 items does not show any discrepancy between quantity as per physical verification and quantity as per RG - 1 register.
4. Of the above statement the items can be broadly bifurcated into 2 parts namely:
 - Crude/ Raw Oil
 - Refined Oil
5. The crude oil is the raw material to make refined oil.
6. Following is the extract of chart showing the difference in quantity of raw oil as per physical verification & as per RG - 1 Register.

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification (M.T.)</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 a.m. (M.T.)</u>	<u>Difference In Quantity (M.T.)</u>
3	Crude Palm Kernal Oil (Tank No.8 & 11)	996.891 (Pg. 191)	997.080 (Pg. 224, 225)	(-) 0.189
5	Crude Palm Oil (Tank No.7 & 10)	1042.551 (Pg. 192)	1042.601 (Pg. 226, 227)	(-) 0.050
25	Coconut Raw	284.680 (Pg. 193)	291.398 (Pg. 228)	(-) 6.718
26	Groundnut Raw	171.592 (Pg. 193)	189.206 (Pg. 231)	(-) 17.614
28	Raw Mustered	6.347 (Pg. 193)	12.793 (Pg. 234)	(-) 6.446

7. RE : CRUDE PALM KERNEL OIL (TANK NO. 8 & 11)

- a. The quantity of crude palm kernel oil (Tank no 8 & 11) was wrongly mentioned as 997.080 M.T. instead of 996.891 M.T. (Kindly find enclosed herewith the copy of RG – 1 Register in support of the same, marked as Annexure : 1). (Pg. 224, 225)
- b. Hence in fact there was no difference in the quantity of raw oil as per physical verification & as per RG – 1 register.

8. RE : CRUDE PALM OIL (TANK NO. 7 & 10)

- a. The quantity of Crude Palm oil (Tank no. 7 & 10) was wrongly mentioned as 1042.601 mt. instead of 1042.551 mt. (Kindly find enclosed herewith the copy of RG – 1 Register in support of the same, marked as Annexure : 2). (Pg. 226, 227).
- b. Hence in fact there was no difference in the quantity of raw oil as per physical verification & as per RG – 1 register.

9. RE : COCONUT RAW

A) The extract of the chart showing difference is reproduced below.

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
25	Coconut Raw	284.680 (Pg. 193)	291.398 (Pg. 228)	(-) 6.718

B) In the above chart it may be observed that the quantity of only loose material as per physical verification (Pg. 72) was compared with quantity of loose material plus packed material as per RG – 1 on 14.06.06 at 7.00 a.m.

C) Hence while preparing the above chart the following items were left out:

Name Of The Product	Quantity	Quantity (In M.T.)
Kamani (15 Kg Tin)	219 (Pg. 229)	3.285
Kamani (5 Kg Jar)	624	3.120
CPD (Small boxes)	(Pg. 229)	0.313
	TOTAL	<u>6.718</u>

D) In support of the same we are submitting herewith the production sheet dtd. 13.06.2006, (Pg. 229) the closing stock of which becomes the opening stock as at 14.06.2006. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.

E) It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 230) & duly signed by the income tax officer.

F) Hence once the above items are considered, there is no difference in quantity as per physical verification & as per RG – 1 Register.

10. RE : GROUND NUT RAW

a. The extract of the chart showing difference is reproduced below.

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
26	Groundnut Raw	171.592 (Pg. 193)	189.206 (Pg. 231)	(-) 17.614

b. In the above chart it can be observed that the quantity of only loose material as per physical verification (Pg. 72) was compared with quantity of loose material plus packed material as per RG – 1 on 14.06.06 at 7.00 am.

c. Hence while preparing the above chart the following items were left out. (pg. 232)

<u>Name Of The Product</u>	<u>Quantity</u>	<u>Quantity (In M.T.)</u>
Svity (15 Kg Tin)	341	5.115
Svity (15 ltr Tin)	236	3.221
Svity (15 ltr Jar)	141	2.115
Svity (10 ltr Pouch)	161	1.465
Svity (5 ltr jar)	312	5.679
Svity (20 ltr Bottles)	1	0.018
(pg. 232)	TOTAL	17.614

a. In support of the same we are submitting herewith the production sheet dtd. 13.03.2006 (Pg. 232), the closing stock of which becomes the opening stock as at 14.06.2006. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.

b. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 233) & duly signed by the income tax officer.

c. Hence once the above items are considered, there is no difference in quantity as per physical verification & as per RG – 1 Register.

11. RAW MUSTERED

a. The extract of the chart showing difference is reproduced below.

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
28	Raw Mustered	6.347 (Pg. 193)	12.793 (Pg. 234)	(-) 6.446

- b. In the above chart it may be observed that the quantity of only loose material as per physical verification (Pg. 72) was compared with the quantity of loose material plus packed material as per RG - 1 on 14.06.06 at 7.00 a.m.
- c. Hence while preparing the above chart the following items were left out : (Pg. 235)

Name Of The Product	Quantity	Quantity (In M.T.)
Jai kissan (15 Kg Tin)	107	1.605
Jai kissan (1ltr. Bottles)	6	0.109
Jai kissan (1ltr. Pouch)	142	2.584
Jai kissan (500 ml Bottles)	52	0.946
Jai kissan (200 ml Bottles)	19	0.346
Jai kissan (15ltr. jar)	47	0.855
(Pg. 235)	TOTAL	6.446

- d. In support of the same we are submitting herewith the production sheet dtd. 13.03.2006 (Pg. 235), the closing stock of which becomes the opening stock as at 14.06.2006. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- e. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 236) & duly signed by the income tax officer.
- f. Hence once the above items are considered, there is no difference in quantity as per physical verification & as per RG - 1 Register

12. RE : REFINED OIL :

Following is the extract from the chart showing the difference in the quantity of various refined oils as per physical verification & quantity as per RG - 1 register on 14.06.06 at 7.00 a.m.

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
7	Coconut Oil Refined	76.313 (Pg. 192)	84.368 (Pg. 237)	(-) 8.055
8	Ground Nut Oil Refined	74.240 (Pg. 192)	85.401 (Pg. 240)	(-) 11.161
9	Sunflower Oil Refined	11.240 (Pg. 192)	138.501 (Pg. 243)	(-) 127.261
10	Palm Kernel Oil Refined	59.371 (Pg. 192)	70.906 (Pg. 246)	(-) 11.535
11	Palmolive Oil Refined	353.341 (Pg. 192)	383.400 (Pg. 249)	(-) 30.059

12	Soya bin Oil Refined	5.946 (Pg. 192)	17.504 (Pg. 252)	(-) 11.558
14	Corn Oil Refined	5.707 (Pg. 192)	7.755 (Pg. 255)	(-) 2.250
15	Tilly Oil Refined	45.827 (Pg. 192)	45.962 (Pg. 258)	(-) 0.135
16	Vanaspati Stock	246.765 (Pg. 192)	223.814 (Pg. 264)	(+) 22.951
17	Margarine Stock	Nil (Pg. 192)	3.735 (Pg. 261)	(-) 3.735
19	RPO (Refined / Raw Palm Oil)	94.972 (Pg. 192)	Nil	(+) 94.972
21	RSBO (Refined S.B. Oil)	5.946 (Pg. 192)	Nil	(+) 5.946
22	RPKO (Refined Palm Kernel Oil - Raw)	59.371 (Pg. 192)	Nil	(+) 59.371
23	RCNO (Refined C.N. Oil Raw)	76.313 (Pg. 192)	Nil	(+) 76.313
24	Refined Tilly Oil	45.827 (Pg. 192)	Nil	(+) 45.827

13. a) From the above chart it can be observed that the following items are considered twice :

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>
12	Soya bin Oil Refined	5.946 (Pg. 192)
21	RSBO (Refined S.B. Oil)	5.946 (Pg. 192)
15	Tilly Oil Refined	45.827 (Pg. 192)
24	Refined Tilly Oil	45.827 (Pg. 192)
10	Palm Kernel Oil Refined	59.371 (Pg. 192)
22	RPKO (Refined Palm Kernel Oil - Raw)	59.371 (Pg. 192)
7	Coconut Oil Refined	76.313 (Pg. 192)
23	RCNO (Refined C.N. Oil Raw)	76.313 (Pg. 192)

b) Hence there is no difference as far as Sr.No. 21 (RSBO (Refined S.B. Oil), 22 (RPKO (Refined Palm Kernel Oil - Raw), 23 (RCNO (Refined C.N. Oil Raw) & 24 (Refined Tilly Oil) is concerned.

14. RE : REFINED PN (PALM) OIL (SR. NO. 19)

- a. Refined Palm Oil is already considered at Sr. No. 13 & where your good office has accepted that there was no difference in quantity as per physical verification & quantity as per RG - 1 Register.
- b. The quantity RPO (Refined Palm Oil) at Sr. No. 19 was wrongly taken of WIP Stock instead of finished stock. (Pg. 72 item no. 6 of Work In Progress table)
- c. The WIP Stock of RPO as on 14.06.2006 was already considered & accepted by your good office

15. RE : COCONUT OIL REFINED (SR. NO. 3)

- a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
7	Coconut Oil Refined	76.313 (Pg. 192)	84.368 (Pg. 237)	(-) 8.055

- b. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 238)

Name Of The Product	Quantity	Quantity (In M.T.)
Cocosilver	429	6.435
Cocosilver	108	1.620
(Pg. 238)	TOTAL	8.055

- c. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 238) which shows the closing stock of refined coconut oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 239) & duly signed by the income tax officer.
- e. Hence, it can be seen that there was no difference in the quantity of refined coconut oil.

16. GROUND NUT OIL REFINED (SR. NO. 8).

- a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
8	Ground Nut Oil Refined	74.240 (Pg. 192)	85.401 (Pg. 240)	(-) 11.161

- b. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 241)

Name Of The Product	Quantity	Quantity (In M.T.)
Jawan (15 Kg. Tin)	185	2.775
Klassic (15lt. Tin)	311	4.245
Jawan (15 Kg. jar)	10	0.150
Klassic (15lt. Jar)	3	0.041
Klassic (5lt. Jar)	217	3.950
(Pg. 241)	TOTAL	11.161

- c. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 241) which shows the closing stock of refined groundnut oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 242) & duly signed by the income tax officer.
- e. Hence, it can be seen that there was no difference in the quantity of refined groundnut oil.

17. SUNFLOWER OIL REFINED (SR. NO. 9).

- a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
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List				
9	Sunflower Oil Refined	11.240 (Pg. 192)	138.501 (Pg. 243)	(-) 127.261

- b. While comparing the quantity, through oversight quantity as per physical verification was wrongly taken as 11.240 instead of 111.240, hence the difference of 100 M.T. (See Page 72 item no. 3 of finished products & 192)
- c. As also while comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 244)

Name Of The Product	Quantity	Quantity (In M.T.)
Arithmetical Error		100.000
Komal (15 Kg. Tin)	222	3.330
Komal (15lt. Tin)	339	4.627
Komal (15 Kg. jar)	18	0.270
Komal (15lt. Jar)	106	1.447
Komal (5lt. Jar)	556	10.119
Komal (20lt. Pouch)	395	7.189
Komal (20lt. Bottle)	10	0.182
(Pg. 244)	TOTAL	127.164

- d. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 244) which shows the closing stock of refined sunflower oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- e. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 245) & duly signed by the income tax officer.
- f. Hence, it can be seen that there was no difference in the quantity of refined sunflower oil.

18. PALM KERNEL OIL REFINED (SR. NO. 10).

- a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

Sr. No. As	Description Of Item	Quantity As Per Physical	Qty As Per RG As On 14.06.06 at 7.00 am	Difference
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<u>Per List</u>		<u>Verification</u>		
10	Palm Kernel Oil Refined	59.371 (Pg. 192)	70.906 (Pg. 246)	(-) 11.535

b. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 247)

Name Of The Product	Quantity	Quantity (In M.T.)
Krisp (15 Kg. Tin)	738	11.070
Krisp (15 Kg. jar)	31	0.465
(Pg. 247)	TOTAL	11.535

c. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 247) which shows the closing stock of refined palm kernel oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.

d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 248) & duly signed by the income tax officer.

e. Hence, it can be seen that there was no difference in the quantity of refined palm kernel oil.

19. PALMOLIEN OIL REFINED (SR. NO. 11).

a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
11	Palmolien Oil Refined	353.341 (Pg. 192)	383.400 (Pg. 249)	(-) 30.059

b. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 250)

Name Of The Product	Quantity	Quantity (In M.T.)
Fry Well (15 Kg. Tin)		
Golden Yellow(15 Kg. Tin)		
	960	14.400
Fry Well (15 Kg. Jar)		
Golden Yellow(15 Kg. Jar)		
	649	9.735
Golden Yellow(1lt. Pouch)	651	5.924
(Pg. 250)	TOTAL	30.059

- c. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 250) which shows the closing stock of refined palmolien oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 251) & duly signed by the income tax officer.
- e. Hence, it can be seen that there was no difference in the quantity of refined palmolien oil

20. SOYABIN OIL REFINED (SR. NO. 12)

- a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
12	Soya bin Oil Refined	5.946 (Pg. 192)	17.504 (Pg. 252)	(-) 11.558

- b. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 253)

Name Of The Product	Quantity	Quantity (In M.T.)
Right (15 Kg. Tin)	505	7.575
Right (15 Kg. Jar)	261	3.915
Right (15lt. Tin)	5	0.068
(Pg. 253)	TOTAL	11.558

- c. 1
- d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 254) & duly signed by the income tax officer.
- e. Hence, it can be seen that there was no difference in the quantity of refined Soya bin oil

21. CORN OIL REFINED (SR. NO. 14)

- a. The chart showing difference in quantity as per physical verification & quantity as per RG – 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
14	Corn Oil Refined	5.707 (Pg. 192)	7.755 (Pg. 255)	(-)2.250 (Actually it should be (-) 2.048)

- b. The difference between stock as per physical verification & stock as per RG – 1 register should have been (-) 2.048 m.t. i.e. 5.707 m.t. (-) 7.755 m.t. Hence, this typographical error needs to be rectified.
- c. While comparing the quantity, your good office has compared the quantity of loose stock as per physical stock (Pg. 72) with quantity as per loose stock plus packed stock as per RG – 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 256)

Name Of The Product	Quantity	Quantity (In M.T.)
Kornstar (15 lt. tin) (Pg. 256)	150	2.048

- d. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 256) which shows the closing stock of refined corn oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.
- e. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 73) (Also refer production sheet on Pg. 257) & duly signed by the income tax officer.

f. Hence, it can be seen that there was no difference in the quantity of refined corn oil

22. TILLY OIL REFINED (SR. NO. 15)

a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
15	Tilly Oil Refined	45.827 (Pg. 192)	45.962 (Pg. 258)	(-) 0.135

b. While comparing the quantity, your good office has compared the quantity of loose stock (Pg. 72) as per physical stock with quantity as per loose stock plus packed stock as per RG - 1 Register. In other words your good office has not considered the quantity of packed stock as on 14.06.06 at 7.00 am. The details of which are as under: (Pg. 259)

Name Of The Product	Quantity	Quantity (In M.T.)
15 kg. Tins	9 (Pg. 259)	0.135

c. In support of the same, kindly find enclosed herewith the production sheet of 13.06.06 (Pg. 259) which shows the closing stock of refined tilly oil as on 13.06.06 which becomes the opening stock of 14.06.06 at 7.00 am. It may be noted that at the time of survey, the above production sheet was already considered & examined by your good office.

d. It may also be noted that the above said items of packed oil were already considered in the stock statement of 14.06.2006 (Pg. 72) (Also refer production sheet on Pg. 260) & duly signed by the income tax officer.

e. Hence, it can be seen that there was no difference in the quantity of refined tilly oil

23. RE : MARGARINE STOCK (SR. NO. 17)

a. The chart showing difference in quantity as per physical verification & quantity as per RG - 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
17	Margarine	Nil	3.735 (Pg. 261)	(-) 3.735

- b. Actually margarine stock has to be included in the vanaspati stock only & as such your good office has included the same in vanaspati stock only.
- c. However through oversight your good office has tried to compare it separately again as separate material, which is not proper. Hence as such there is no difference in margarine stock also.

24. Re : Vanaspati Stock (Sr. No. 16)

- a. The chart showing difference in quantity as per physical verification & quantity as per RG – 1 Register is produced below:

<u>Sr. No. As Per List</u>	<u>Description Of Item</u>	<u>Quantity As Per Physical Verification</u>	<u>Qty As Per RG As On 14.06.06 at 7.00 am</u>	<u>Difference</u>
16	Vanaspati Stock	246.765 (Pg. 192)	223.814 (Pg. 264)	(+) 22.951

- b. Your good office may observe that while preparing the statement of difference in quantity, through over sight your good office has taken WIP Stock of Vanaspati instead of taking packed stock of Vanaspati. (See item no. 5 on Page 72 in the table of Work In progress)
- c. As a known fact WIP Stock is never entered in RG – 1 Register.
- d. Kindly find enclosed herewith the item wise break up of Vanaspati stock which almost matches with the stock as per RG – 1 register as submitted to your good office. (Pg. 265)

<u>Name Of The Product</u>	<u>Quantity</u>	<u>Quantity (In M.T.)</u>
Chokita 25kg BIB	540	
Konfex 25Kg BIB	1227	
K2000 25Kg BIB	55	
Kita 25Kg BIB	649	
Kotina 25Kg BIB	328	
	2799.000	69.975
Karuna (15 Kg. Tin)	475	
Kachori (15 Kg Tin)	450	
	925.000	13.875
Karuna 1 ltr pouch	281	5.041

Karuna 500 m l pouch	13	0.233
Rachana K - care(15 Kg Tin)	419	
Rachana (15 Kg Tin)	112	
Konfex (15 Kg Tin)	370	
Koolex (15 Kg Tin)	1198	
Rachana C - 35 (15 Kg Tin)	950	
Komplete (15 Kg Tin)	2	
	3051.000	45.765
K2000 15Kg Tin	35	0.525
Komplete 15 Kg BIB	2430	
K puff 15 Kg BIB	1393	
Rachana 15 Kg BIB	220	
Klassic 15 Kg BIB	260	
K puff Delux 15 Kg BIB	965	
K puff Super 15 Kg BIB	297	
	5565.000	83.475
Kream 14 Kg BIB	50	
G 40 14 Kg BIB	31	
	81.000	1.134
Drums	18	3.420
	TOTAL	223.443

e. Hence in fact there was only nominal difference in the stock of vanaspati oil.

25. a. From the above submissions your good office may observe that the assessee has maintained proper & accurate details of stock which matches with the physical stock verification as carried out by your good office at the time of Survey conducted U/s 133A conducted on 14.06.06.
- b. The above difference as shown by your good office was mainly due to the repetition of some refined stock items, ignoring the stock of packed material & due to typographical error.

c. *In fact even at the time of survey, your good office was duly satisfied with the stock records as it was perfectly matching with the Physical stock verification carried out by your good office & in fact that was the reason that no further queries were raised & questioned were asked while recording statement at the time of survey.*

27. To further simplify the submission, Kindly find enclosed herewith the chart showing reconciliation of each items along with the explanation for the same.

Hope the above will suffice your purpose. Kindly let us know if you good office seek any further clarification on this issue.”

4.9 The learned AR submitted that the AO did not accept the assessee's submissions merely on the fact that the assessee could not furnish reconciliation before the survey party otherwise survey party would have been apprised of all these practices of recording of the stocks of the assessee and they would not have found such excess at the end of the survey action. The learned AR submitted that the AO made addition on the ground that the reconciliation filed by the assessee cannot be verified with the factual position as on the date of survey. The learned AR submitted that the AO made the addition merely on the ground that the difference in stock has been pointed out in appraisal report given by the survey party. The learned AR referring to page 194 of assessee's paper book, where a detailed explanation and reconciliation has been filed before the AO vide letter dated 26th Noveber'08 pointed out that some items have been added twice on account of some different description of items e.g. "coconut oil refined" of which physical quantity found 76.313, which is item No. 7 of the list at page 199 of assessee's paper book and the same quantity is there at item no. 23, which is described as "RC No. (Refined and C.N. Oil raw)" at quantity 76.313, paper book page No. 192. Similar is the position in respect of S.No. 10 "palm kernel oil refined" and S.No. 22 "RPK (Refined Palm Kernel Oil - raw)". The learned AR explained and pointed out the reasons of difference by reconciling each item of addition as under:-

4.10 The learned AR submitted that the Addition of Rs. 2,15,35,076/- on account of packed stock was unjustified in as much as It is known fact that the RG - 1 contains item wise (oil wise stock) & not the brand wise stock. The stock recorded in RG - 1 will be the total of loose stock & packed stock. The nomenclature

written in the list of physical inventory prepared by the survey party (Pg. 73) is the brand name of the product & not the name of oil. The same was duly explained by Mr. Prakash Chawla in his statement recorded during the course of survey in reply to Q. 3 (Pg. 41). He further submitted that Oil wise reconciliation of loose stock & packed stock was submitted before the A.O. & the reconciliation was prepared based on the papers impounded / collected by the survey party on the date of survey itself i.e. on 14.06.2006. However without pointing out any discrepancy, the Ld. A.O. proceeded to make an addition & the same was blindly confirmed by the Hon. CIT (A). The fact that the stock recorded in RG - 1 will be the total of loose stock & packed stock was evident from the daily production sheet also which also was impounded by the survey party on 14.06.2006. Instead of considering the material / evidence produced before the AO (which was very well available with him right from the date of survey i.e. on 14.06.2006 itself) & instead of giving his independent finding, The Ld. A.O. opted to rely upon the appraisal report & to make a huge addition of Rs. 2,15,35,076/- & the same was confirmed by the Hon. CIT (A) without assigning any reasons. It may be noted that even in appraisal report, the survey party has duly accepted the stock of Rs. 21,91,56,285/- (consist of raw oil, WIP, finished goods, packed goods, branch stock, stock given to Indian Veg. Oil for packing) as book stock & as regards the alleged discrepancy it is clearly written that the opportunity to explain the differences should be given to the assessee. However ignoring such instructions, The A.O. opted to neglect the voluminous submissions of the appellant & make the additions solely relying on the observations in appraisal report & even the CIT (A) opted to confirm the additions. In view of the above, the addition of Rs. 2,15,35,076/- is highly unjustified & may please be deleted.

4.11 The learned AR submitted that total addition RS 2,83,08,790 (the Addition of Rs. 2,49,07,144/- on account of branch stock and stock of Rs. 34,01,646/- lying with M/s Indian Veg. (Packers) sent for packing) the above addition was unjustified in as much as The stock as recorded in the physical inventory statement on

14.06.2006 was indeed the book stock given by the appellant to the survey party as the branches were never got searched or surveyed. So there can not be any addition for undisclosed stock. It was already explained on the date of survey itself by Mr. Prakash Chawla that the stock is lying at branches & depot vide reply to question no. 16. (Page 46) & Vide reply to Q. 4 Mr. Prakash Chawla gave the list of branches & C & F agents (Page 41) (Pg. 183-184) It is only from the books of the assessee the details of stock transferred to the concern branches was obtained & the same was independently verified by the survey party by collecting the stock data from individual branches & the Survey Team did not find any independent evidence that the stock as declared by the branches is excess. While working out margins of the company on 14.06.2006, Branch sales was duly considered by the survey party. (Pg. 179) The account of the company is liable to audit under the Companies Act, 1961 as also under S. 44 AB of The Income Tax Act. The learned AR further submitted that by taking entire stock at branches as unexplained excess stock, the CIT (A) really failed to appreciate the fact that if that be the case, how the assessee executed sales from branches from 1st April'06 up to 14th June'06 & even thereafter. It sounds so illogical that the assessee can make sales without really having any stock in the books. However neglecting such hard facts, the Learned assessing officer proceeded to make a huge addition of Rs. 2.49 crore by giving illogical reason that the same was suggested by the survey party in the appraisal report. Above all these, the Ld. A.O. readily accepts the opening stock, purchases/transfer, sales & closing stock & still opts to make a huge addition of the stock of one particular day which is ridiculous. The contention of the learned assessing officer that the assessee could not furnish any stock records to show as to how the goods sent to branches were accounted is grossly incorrect as on the date of survey itself i.e on 14/06/2006 itself the assessee has submitted the details of goods transferred to the branches to the survey party. The assessee has also produced the stock register maintained by the branches before the learned assessing officer for his verification. As it is evident from assessment order that the learned

assessing officer really has no reasons to make such a huge addition except the reason that the same was suggested in the appraisal report. Even at the time of remand proceedings, The Ld. A.O. could not point out any discrepancy nor confronted to the assessee with any further questions & still he proceeded to suggest the addition made by him is proper & the same may be confirmed. It may be noted that even in appraisal report, the survey party has duly accepted the stock of Rs. 21,91,56,285/- (consist of raw oil, WIP, finished goods, packed goods, branch stock, stock given to Indian Veg. Oil for packing) as book stock & as regards the alleged discrepancy it is clearly written that the opportunity to explain the differences should be given to the assessee. However ignoring such instructions, The A.O. opted to neglect the voluminous submissions of the appellant & make the additions solely relying on the observations in appraisal report & even the CIT (A) opted to confirm the additions. It was duly explained to the Learned assessing officer at the time of assessment proceedings as also at the time of remand proceedings that RG-1 register maintained at head office (factory) contains the stock lying at factory either as raw material or as finished goods. Stock transferred at branches are reduced from the stock register of factory & entered in the stock register of the concern branch. Evidence that stock was transferred to branches was produced before the AO in assessment and remand proceedings. By letter dt. 22.7.09, all evidences were filed with the AO in remand proceedings & the same was again produced before the Hon. CIT (A). The evidences that were filed in remand and assessment & appeal proceedings & before the Hon. CIT (A) regarding branch transfer are as under:

- (a) RG-1 register showing outward transfers (sales & branch transfer).
- (b) Branch Stock register showing inward and outward register (final sale) by branches.
- (c) Accounts of the appellant as on 31.3.2006 in asst. proceedings of Asst. Year 2006-07 where closing stock was declared which to some extent was stocks of the year.

(d) Further the details of Stock Transfer to branches from 1.6.2006 to 13.06.2006 were extracted from the books of the assessee & the same was impounded by the Survey party. (Copy enclosed).

(e) Daily production sheets reflecting transfer to branches.

(f) Branch transfer invoices

(g) Copy of transport receipts for the goods transferred to branches

(h) Declaration filed before the sales tax authorities for goods transferred from factory to branches duly stamped by sales tax authorities.

(i) Bill of transporter, payment voucher for payment made to transporters by cheque & stamped receipt issued by transporter for payments made to him.

The learned AR submitted that thus the CIT (A) erred in holding that stock belonging to the branches of the day is excess stock and erred in stating that no material and evidences were filed with the AO. The learned AR submitted that the learned assessing officer without assigning any reason simply taking shelter of the appraisal report proceeded to make a huge addition of Rs. 2.49 crore which is highly unjustified and against the principles of natural justice.

In respect of Addition of stock of Rs. 34,01,646/- lying with M/s Indian Veg. (Packers) sent for packing the learned AR submitted that The addition of Rs. 34,01,646/- for stock lying with M/s Indian Veg. Oil (Packer) is highly unjustified in as much as Stock recorded by the survey party was indeed the book stock given by the assessee to the survey party as the packer M/s Indian Veg. were never got searched or surveyed. So there cannot be any undisclosed stock (Pg. 74). It is only from the books of the assessee the details of stock lying with M/s Indian Veg. was obtained by the survey party. The Survey Team did not find any independent evidence that the stock as declared by the appellant as lying with M/s Indian Veg. is excess. In the statement of Shri Prakash Chawla on the date of survey itself it was stated that the stock are transferred to Indian Veg. For Packing (Page 46 - Q. 16).RG - I register contains all inward & outward entry for stock transferred

to & received from M/s Indian Veg. by way of separate column itself. (Pg. 120) & the said RG – 1 register was duly impounded by the survey party on the date of survey itself i.e. on 14.06.2006. Separate stock register is duly maintained by the assessee for stock lying with M/s Indian Veg. (Packer) which was duly produced before the A.O. for his verification (Pg. 295). All the evidences like delivery challan for issue of material, delivery challan issued by M/s Indian Veg. etc. was duly filed before the A.O. (Pg. 269-285) (Pg. 286-344) (Pg. 349-352). However the Hon. CIT (A) ignoring such exhaustive addition proceeded to confirm the said addition. It may be noted that even in appraisal report, the survey party has duly accepted the stock of Rs. 21,91,56,285/- (consist of raw oil, WIP, finished goods, packed goods, branch stock, stock given to Indian Veg. Oil for packing) as book stock & as regards the alleged discrepancy it is clearly written that the opportunity to explain the differences should be given to the assessee. However ignoring such instructions, The A.O. opted to neglect the voluminous submissions of the appellant & make the additions solely relying on the observations in appraisal report & even the CIT (A) opted to confirm the additions. In view of the same the addition of Rs. 34,01,646/- for stock lying with M/s Indian Veg. as undisclosed stock is highly unjustified & may please be deleted.

4.12 In respect of Addition of Rs. 41,16,798/- being difference of excess stock 33 items of Rs. 1,49,05,100/- and deficit stock of 33 items of Rs. 1,07,88,302/- the learned AR submitted that the above addition was highly unjustified in as much as There were number of typographical error in the statement of discrepancy in 33 items as given by the Ld. A.O. during the course of assessment proceedings. The errors were pointed out during the course of assessment proceeding itself. For Sun flower oil refined the quantity as per physical inventory prepared by the survey party is 111.240 M.T. (Pg. 72) but the A.O. wrongly took that as 11.240 M.T. (Pg. 192). It was pointed out that one such instance of error leads to an addition of as much as Rs. 45,00,000/-. However ignoring

such hard facts, the Ld. A.O. proceeded to make such addition. It was also submitted that the stock recorded in RG – 1 register is the aggregate of both i.e. loose stock & packed stock. Item wise reconciliation was also submitted on 26.11.2008 itself & the same was supported by the papers impounded by the survey party on the date of survey itself. However ignoring the entire submission, The Ld. A.O. proceeded to make an addition of Rs. 2,15,35,076/- as undisclosed packed stock & worked out the deficiency into the stock. At many places taking the same item twice which was never appearing in the physical inventory list as prepared by the survey party on 14.06.2006, the Ld. A.O. proceeded to work out a huge excess stock. In spite of proving the same beyond doubt, The Ld. A.O. proceeded to work out a huge excess stock & added the same as undisclosed stock. At some places the Ld. A.O. proceeded to make an addition on the basis that the WIP stock is not recorded in RG – 1 register ignoring the fact that the RG -1 register is meant only for raw material & finished goods. It can never contain the WIP stock. It may be noted that even in appraisal report, the survey party has duly accepted the stock of Rs. 21,91,56,285/- (consist of raw oil, WIP, finished goods, packed goods, branch stock, stock given to Indian Veg. Oil for packing) as book stock & as regards the alleged discrepancy it is clearly written that the opportunity to explain the differences should be given to the assessee. However ignoring such instructions, The A.O. opted to neglect the voluminous submissions of the appellant & make the additions solely relying on the observations in appraisal report & even the CIT (A) opted to confirm the additions. In view of the above, the addition of Rs. 41,16,798/- is highly unjustified & may please be deleted.

4.13 In respect of the addition of stock of Rs. 18,83,464/- of Chemical Material as undisclosed stock the learned AR submitted that The above addition was highly unjustified in as much as It is a known fact as also it is clearly written on the Rg – 1 register itself that the RG – 1 register is meant for maintaining the stock of raw material & finished goods. It can never contain the stock of

chemical material. However ignoring such facts the Hon. CIT (A) proceeded to confirm an addition of Rs. 18,83,464/- Separate stock records for chemical material were duly maintained by the appellant & the same was duly shown to the survey party, the A.O & to the Hon. CIT (A). However without pointing out any deficiency in it, the Ld. A.O. proceeded to make the addition & the same was confirmed by the Hon. CIT (A). In view of the above, the addition of Rs. 18,83,464/- is highly unjustified & may please be deleted.

4.14 The learned AR submitted that CIT (A) also without appreciating reconciliation and explanation furnished by the assessee sustained addition merely after reproducing remand report file by the AO and reply of the assessee. The learned AR submitted that the ratios of the decisions relied upon by the CIT (A) is in respect of where excess stock was found whereas in the case of the assessee there were no excess stock therefore those decisions are distinguishable on facts.

5. The learned DR relied upon the orders of the revenue authorities and submitted that the AO has made the addition after considering assessee's submissions and appraisal report of survey party. He further submitted that in his appraisal report final conclusion and finding was given by the survey party. The learned DR further submitted that before the CIT(A) the AO has submitted the remand reports wherein he dealt with all the contentions of the assessee and submitted his arguments. The CIT(A) confirmed the addition after considering the submissions of the assessee and remand reports of the assessee. The learned DR while referring to page 57 to 59 of the paper book submitted that the AO has given reasons for making addition. The learned DR submitted that there was difference in physical stock and RG-I register on the date of survey. The learned DR has also relied upon the decisions which have been relied upon by the CIT(A).

6. We have heard the learned representatives of the parties, perused the record and gone through the decisions cited. The

admitted facts of the case are that the assessee maintained regular books of account following recognized method of accounting. The assessee has shown 10.22% of G.P. for the year under consideration as against 6.78% GP of last year. Search and seizure actions were carried out on 14.6.2006. During the course of survey, a tentative trading account for the period 01.04.2006 to 14.06.2006 was prepared applying GP rate, wherein the closing stock was worked out for Rs. 22,18,23,787/-. The physical stock found on the date of survey was Rs. 21, 91, 56,285/-. The survey party compared the physical stock found with the figures of RG1 register maintained by the assessee. Some discrepancies were noticed as per RG-1 register and physical stock inventory prepared at the time of survey. The contention of the assessee is that the assessee has reconciled the discrepancies item-wise. The detailed reconciliation was submitted before the AO vide letter dated 26th November, 2008. The AO was of the view that the assessee could not reconcile the differences before the survey party. The reconciliation filed by the assessee before the AO could not be verified with the factual position as on the date of survey. What exactly submitted by the AO before the CIT(A) in the second remand report is reproduced below from pages 21 & 22 of CIT(A)'s order:-

“Comments on para 2(a):

6. Before making any comments on the above para or subsequent paras it is mentioned that the survey party has listed out 33 items as shown in the appraisal report on the basis of the copies of RG1 sheets (35 in oil) provided by the assessee. On that basis only the chart (Annexure 3) was prepared showing how the RG1 sheets relate with each item mentioned by the survey party for bringing out the discrepancies and the stock as per inventory of stock found and prepared by the survey team covering the stock of the said RG1 sheet. From the same it may be noticed that the survey party has compared all the 35 RG1 sheets given to them with the stock found and after that only they have arrived at the conclusion that there was excess stock valued at Rs. 41,16,798/- (Rs. 1,49,05,100 – Rs. 1,07,88,302/-).

In regard to the submission for item No. 21 as per above para it is stated that the same represents the RG1 Sheet 17 meant for refined oil vanaspathi RSBO and as on the survey date as per the RG1 sheet the balance stock was nil. The assessee

claims that this is a repetition of item No. 12 of the A.R. This is not acceptable because the survey party referred RG1 sheet No. 24 meant for Raw Oil – Soyabean for item No. 12. Hence both the items are different in terms of RG1 sheets. The survey party has taken stock from finished products which would be fitting for RG1 sheet 17. Because RG1 Sheet 24 is of Raw Oil. For the deficiency of stock mentioned against Sr.No. 12 the assessee submit that this is because the survey party did not consider packed items. Accordingly, it claimed that packed goods of items 44 and 45 of inventory are the goods covered by the RG1 sheet under reference of Sr.No. 12. Here again there is still difference as per table given below. The assessee's claim against the difference as per Annexure 7 is that the dispatched items upto 4.00 pm has to be considered and the inventorised goods are as at 4.00 pm of the survey date. The same is new submission not available at the time of assessment or as per survey report and cannot be considered. Further item No. 12 is of raw oil and the packed finished goods cannot match with same. It further stated that the survey party has used the term Refined SB Oil while making the physical inventory and hence there is confusion stock considered. It cannot be accepted because whenever physical inventory of stocks are taken at a premises, assessee's helps are sought to take correct name and serial nos. and details of the items as per assessee's guidelines only such inventories are prepared always. In the case of the assessee it cannot be an exception. In regard to the claim of packed goods not considered for the deficiencies it must not be deliberate on the part of the survey party in the case of the assessee and only because the assessee then would not have made such claims. And that is the reason the survey party noticed that the packed goods inventorised turned out to be excess stock and out of stock register. It is a fact that there is no written recording of the survey team of the facts found and understood during survey action which would have supported how they could report the excess stock. However, the assessee's submission can also be accepted only after rejecting the facts found and reported by the survey team as totally wrong. The submissions of the assessee therefore could be an after thought to save the tax facilities on such excess stock worked out. Hence the addition may be treated as correct made."

6.1 From the above, we find that the case of the revenue is that once difference in stock is noticed by the survey team at the time of survey that is the final finding and the assessment is to make accordingly. To examine this aspect of the matter we would like to go through the scheme of the Act regarding survey and assessment.

6.2 Chapter XIII C provides certain powers to the revenue authorities. Section 132 provides the power of search and seizure.

Section 132A provides Powers to requisition books of account, etc. Section 133 of the Act provides Power to call for information. Section 133A provides Power of survey. Section 133A states that notwithstanding anything contained in any other provision of this Act, an Income-tax authority may enter any place within the limits of the area assigned to him, or any place occupied by any person in respect of whom he exercises jurisdiction, or any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place, at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act. An Income-tax authority acting under this section may, if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies there from, impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him: make an inventory of any cash, stock or other valuable article or thing checked or verified by him, record the statement of any person which may be useful for, or relevant to, any proceeding under this Act. If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under sub-section

(1) of section 131 for enforcing compliance with the requirement made. The main reason for enacting provisions regarding survey in s. 133A of the Act is that survey represents a comparatively easy method for detection of evasion of tax. The objectives in conducting survey are to find out-

- 1) whether the persons carrying on business maintain regular books of account or whether they prepare account books at the end of the year for the purpose of filing the return,
- 2) whether they make correct entries in those books of account,
- 3) whether cash in hand and stock-in-trade tally with the entries in the account books,
- 4) whether there are documents indicating unaccounted purchases and sales etc., and (v) whether there exist other valuable article of things connected with business which are not disclosed in books of accounts.

6.3 Survey operations are of assistance in detecting new assesseees and to verify, in a broad way, the correctness of returns of existing assesseees. Survey operations are carried on in business premises only and that too during business hours and do not involve seizure of books of account, cash, stock or other valuable article or thing. It only involves preparation of factual report of what is seen by survey officers in business premises and such factual report is of assistance in making final assessment. In respect of surveys undertaken for check of accounts, cash and stock, it is not uncommon for the survey officers to note that no books are maintained or those books which are maintained are incomplete. There are cash and stock differences or that there is no timely record of the transactions. This would constitute valuable information for them to reject the accounts which may be produced at the time of hearing. Unless a taxpayer is able to show that there are primary records from which reliable accounts could be written, there is vulnerability on the part of the taxpayers. Survey is not intended to be a substitute for assessment in the sense that there is no power to make summary assessment as is possible in consequence of search by way of an order under section 132(5)

earlier and under Chapter XIV-B. As the survey is done without any formal notice and usually involves an element of surprise, it is possible to know the true nature and extent of the business activities of the assessee vis-à-vis his records. It means that where it is found that there is no discrepancy; the fact found in survey should serve as an opportunity to the taxpayer to prove the correctness of his accounts as found in a contemporaneous check. On the basis of above discussion, it can be summarized that an appraisal report prepared at the time of survey party is valuable information to reject books of account. The appraisal report is not a final assessment but it is of assistance in making assessment.

6.4 Provisions related to assessment are provided in Chapter XIV of the Act. section 143 provides that where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then, an intimation shall be sent to the assessee specifying the sum so payable Section 142 provides inquiry before assessment for the purpose of making an assessment under this Act. The AO assumes jurisdiction in rejecting the books of accounts of the assessee by virtue of section 145 of the Income-tax Act relating to "Method of accounting" which reads as under:-

“145 (1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with the method of accounting regularly employed by the assessee.

Provided that in any case where the accounts are correct and complete to the satisfaction of the assessing officer but the method employed is such that, in the opinion of the assessing officer, the income cannot properly be deduced there from, then the computation shall be made upon such basis and in such manner as the assessing officer may determine.

Provided further....

Provided also.....

(2) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or

where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.”

6.5 Sub-section (2) above has following ingredients:

- (a) AO being not satisfied about the correctness or completeness of the accounts of the assessee;
- (b) the very meaning of the correctness and completeness of the accounts; and
- (c) making of an assessment in the manner provided in section 144.

6.6 Above two ingredients (a) and (b) are relevant for rejection of the accounts of the assessee. If the assessing officer comes to the conclusion that there is under estimation of profit, he must give facts and figures in that to demonstrate that impugned method of accounting adopted by the assessee results in under estimation of profit and is therefore rejected. Otherwise the presumption would be that the entire exercise is revenue neutral.

6.7 In the light of above discussions if we considered the facts of the case under consideration we find that the AO has not rejected books of account .On perusal of record, we find from tax audit report, form 3CD that the assessee was maintaining regular books of account including main cash book for factory, bank book, purchase register, sale register, expenses register, travel book, ledger, stock record, debit note register, credit note register and sale returned register. Similar books of account were maintained for branches also. In form No. 3CD as per clause 28, the auditor is to furnish quantity details of opening stock purchased during the year, sales during the year and closing stock. The auditor has given such quantity details in Annexure-XIV of his report. As per that schedule, closing stock was 3,634.672 MTS, which is tallied with the quantity details maintained in RG-1 Register i.e. the assessee furnished copies of form 3CD and copies of RG-1 Register and summary thereon, which have been placed on record. During the

courses of survey no material found which show that the assessee has sold goods out of books of account. The AO made addition as some differences were found in stock at the time of survey. It cannot be the matter of arguments that such differences itself represents the income of the assessee unless it is correlated how this difference of raw material and finished stock became the income of the assessee. The assessee furnished the explanation and necessary reconciliation from time to time before the AO and the CIT(A). A detailed reconciliation submitted to AO vide assessee's letter dated 26th November, 2008, which has been reproduced above in Para No.4.8 of this order. A perusal of reconciliation furnished by the assessee, we notice that quantity of crude palm kernel oil tank No. 8 & 11 was wrongly mentioned as 1997.080 MT instead of 996.891 MT. The assessee had furnished copy of RG1 register, in support of that apparent mistake, which is appearing at pages 224 & 225 of assessee's paper book. From the said reconciliation, we find that there was apparent mistake in noting down the figures. Similar is the position in respect of quantity of crude palm kernel oil. The difference (-) 0.050 explained by the assessee by supporting evidence from RG-1 register, of which copy placed at pages 26 & 27 of the assessee's paper book. The assessee has also explained coconut oil raw item about quantity of difference (-) 6.78 by saying that certain items have been left out for considering in the chart. The assessee has explained each item of difference of 6.718. In respect of refined oil, the submission of the assessee is that certain items have been considered twice. The assessee has furnished the full details of those items in its reconciliation. In respect of Sunflower refined oil vide Sl. No. 9, the assessee while reconciling the difference pointed out that due to oversight the quantity as per physical verification was wrongly taken as 11.24 instead of 111.240. It appears from the record that the AO and CIT(A) both have not considered the explanations and reconciliations filed by the assessee because the AO was of the view that that the assessee should have explained these differences and the reconciliation in the course of surveys itself. The AO observed that the reconciliation furnished did not

help to the assessee as the same cannot be verified by stock as on the date of survey. In other words it can be said that the AO and CIT (A) have not considered the recompilation given by the assessee and if they had considered, it there are no adverse notings noted by them regarding assessee's explanation and reconciliation. If the revenue authorities failed to considered or considered and not pointed out any adverse remarks or finding otherwise, the addition cannot be sustained. As regards AO's observation that difference of sock found at the time of survey was the final finding, in this regards we may state that facts noted at the time of survey, these may be valuable information for the AO to reject the accounts. The appraisal report of survey team is of assistance in making final assessment but that itself cannot become a final assessment. Such report and facts collected at the time of survey are always subject to explanation and reconciliation by the assessee which can be explained either at the time of survey or after the survey before the AO at the time of assessment. Survey is not intended to be a substitute for assessment. We therefore do not agree with view of revenue that the differences in stock pointed out in appraisal report of the survey party are final for assessment for the AO; this contention of the revenue is rejected.

6.8 If we consider the addition made by the AO from another angle, we find that the tentative trading account prepared at the time of survey for the period 01.04.2006 to 14.06.2006, the quantification of the closing stock was comes to Rs. 22,18,23,787/- as against physical stock found was Rs. 21,91,56,285/-. When the closing stock was found less, then the closing stock worked out on the basis of trading account applying GP rate, the addition cannot be made unless it is found that the stock was sold out of books of account. As stated above, in the case under consideration, during the course of survey and search, no material was found that the assessee has sold the goods out of books of account. The assessee furnished a bifurcated trading account for the period 01.04.2006 to 14.06.2006(i.e. search) and survey from 15.06.2006 to 31.03.2007, the same is reproduced below:-

Particulars	From 1.4.06 to 14.6.06	From 15.6.06 to 31.3.07	From 1.4.06 to 31.3.07	Particulars	From 1.4.06 to 14.6.06	From 15.6.06 to 31.3.07	From 1.4.06 to 31.3.07
To opening stock	176932516	219156285	176932516	By Sales	614728953	2838692960	3453421913
To Oil Purchases	559357932	2295123479	2854481411	By closing stock	219156285	250858847	250858847
To sales tax	-	122705007	122705007				
To Margins	97594790	452567036	550161826				
	833885238	3089551807	3704280760		833885238	3089551807	3704280760
Margin%	15.88	15.94	15.93				

6.9 On perusal of the above bifurcated trading account, we find that the GP shown up to the period of search and survey is 15.88% and GP for subsequent period the survey and search from 15.6.06 to 31.03.2007 is 15.94%. The calculation of consolidated GP for whole year is 15.93%. We may mention here that as stated earlier that the revenue is not disputed about the opening stock, purchases and sales but they disputed only about the closing stock. They are also not disputing GP shown for the post survey period 15.6.2006 to 31.3.2007. Under these facts and circumstances if we accept the revenue's case, then, the trading for the period 1.4.2006 to 14.06.2006 should be as under:-

Trading Account 01.04.2006 to 14.06.2006

To Op. stock	176932516	By Sales	614728953
To purchases	559357932	By stock (physical on 14.6.2006)	219156285
To gross profit G.P. rate 15.88%	97594790		
	833885238		833885238

6.10 The gross profit should be Rs. 15,34,38,918/- (9,75,94,790 Gross Profit as per the books of account plus the amount of addition of Rs. 5,58,44,128/-). The physical stock found at the time of search and survey as on 14.6.2006, which is closing stock for the bifurcated trading account was Rs. 21,91,56,285/-. On the basis of these figures on recasting trading account the calculation of the GP rate comes to about 70%, which is apparently an abnormal GP. Such GP rate was never shown by the assessee nor does it appear from the material available on records that such GP rate was prevailing in the market in the line of business of the assessee. The revenue has accepted the lower GP rate ranges from 15 to 16% roughly. This is a case of survey and search and in absence of material found in search and survey operations, such

GP calculation and the addition is a notional addition. If the AO did not accept the assessee's reconciliation in such a case, the AO has to apply the provisions of section including rejection of books u/s 145 of the Act and make the best judgment assessment applying section 144. After rejecting of books of account estimation of income on the basis of prevailing gross rate in the same line of business or gross profit rate declared by the assessee in past is a reasonable basis. If we examine the case from this angle, we find that the assessee has shown a reasonable & acceptable gross profit, therefore, no further addition is warranted. It may also be noted that the learned AR pointed out that the AO while completing the block assessment no such addition was made.

6.11 Apart from the above, we find that during the course of survey, the physical stocks with the branches were taken on the basis of statement furnished by the assessee from its branches. The physical stock inventory taken partly by physical counting and partly on the basis of details given by the branches cannot be said to be a correct method of taking physical stock during the survey. Under the circumstances, though the assessee has not disputed inventory physical stock found for Rs. 21,91,56,285/- but certainly the reconciliation furnished by the assessee is required to be considered in the light of the fact that the stock of branches were taken on the basis of statement given by the assessee from branches. Under the circumstances, it can be held that it is a case of survey where the normal procedure was adopted for taking physical inventory of all items of stock though the assessee is not disputed that method adopted and to compare with the stock register i.e. RG-1. If there is a difference and the same could not be explained by the assessee, then only, the addition is warranted but in the case under consideration, as stated above, the physical stock of branches taken itself on the basis of statement submitted by the assessee, which cannot be said to be a physical stock as per the procedure. Therefore, the comparison itself is incorrect. However, the assessee has explained each and every item of difference by reconciliation. The AO and CIT(A) both have failed to

point out how the reconciliation submitted by the assessee was incorrect. It cannot be the matter of arguments that such differences itself can not represent the income of the assessee unless it is correlated how this difference of raw material and finished stock became the income of the assessee. The assessee engaged in the business of trading and manufacturing of edible oil and vanaspathi. This is a case of search u/s 132 as well as survey u/s 133A of the Act. During the courses of survey and search, some material must found showing that the assessee has sold the goods out of books of account. Since in the case under consideration, no such material was found, therefore, it cannot be said that the assessee has sold the goods out of books of account, therefore, there is any income which was not recorded in the books of account. Merely on the basis that at the time of survey, some differences were found in stock that does not mean that there will be an automatic addition on account of differences. Such differences are always subject to explanation & reconciliation. In the case under consideration, the assessee has reconciled the differences with reasons and the revenue authorities did not point out anything contrary that how the reconciliation done by the assessee was incorrect. In the light of above discussion, we are of the considered view that no addition is warranted, therefore, we delete the addition of Rs. 5,58,44,128/-.

7. Ground No. 3 is in respect of addition of Rs. 3,28,679/- and Rs 66,675/- made u/s 68/69A of the Act in respect of cash found in the course of survey at the time of factory at head office and in respect of cash found in the course of search at registered office. The addition made by the AO has been confirmed by the CIT (A) observing that the assessee did not taken ground in the appeal filed before him and also the AR was on argued on the matter. In respect of the addition of RS 3,28,44,128/- the CIT(A) observed that the assessee failed established under which circumstances the assessee kept cash of those parties. There were no nexuses between the cash found and that parties having cash balance with the assessee.

8. The contention of the assessee is that the assessee furnished complete reconciliation of cash found at the time of survey for Rs. 4,01,843, which is reproduced below:-

Name of the concern	Amount (Rs.)
Chawla Brothers Pvt. Ltd. (Proprietor of M/s Kamani Oil Industries) Pg. No. 540)	333,179.00
Bodaram & Sons (Pg. No. 541)	20,755.56
Indu Oil & Soap (Bhandup) (Pg. No. 542)	44,968.75
H.B. Chawla Charitable Trust (Pg. No. 543)	3,000.00
Total	401,903.31

9. It is the submission of the assessee that cash balance as per petty cash book found in the course of survey has not been considered in the above reconciliation as the same was found in order. The assessee filed copy of cash book of the relevant pages, which has been placed on record. The learned AR submitted that the assessee did not taken the ground before the CIT (A) in respect of addition of Rs. 66,675/-, therefore, this part of the ground is not pressed.

10. We have heard the learned representatives of the parties and perused record. The assessee filed explanation with evidence, under that circumstance the revenue authorities have to go through those e evidences and record the reasons why they are not accepting the explanation filed by the assessee. In the case under consideration it is admitted fact that it was explained by the assessee that cash of their other concerns were also with the assessee at the time of search. The assessee files reconciliation along with copies of cash books of those concerns. There is no finding that the cash balance shown in the cash book was not with the assessee or the cash balances were used by those concerns for some other purpose. Under the circumstance such evidence cannot be rejected merely on the basis of presumption. We therefore inclined to delete the addition, however the learned AR has not pressed the addition of Rs. 66,675/-, therefore, the same is confirmed and the balance addition is hereby deleted.

11. Ground No. 4 is in respect of charging of interest u/s 234B and 234C. Charging of interest u/s 234B and 234C is consequential in nature. The AO is directed accordingly.

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

Pronounced in the open court on this 4th day of May, 2010.

**Sd/-
(D. MANMOHAN)
VICEPRESIDENT**

**Sd/-
A.L. GEHLOT)
ACCOUNTANT MEMBER**

Dated: 4th June, 2010.

Copy to:-

- 1) *The Appellant.*
- 2) *The Respondent.*
- 3) *The CIT (A) concerned.*
- 4) *The CIT concerned.*
- 5) *The Departmental Representative, "D" Bench, I.T.A.T.,
Mumbai.*

By Order

// true copy //

Kv

*Asst. Registrar,
I.T.A.T., Mumbai.*