

# Amritlal Harichand Sanklesha, Mumbai vs Department Of Income Tax on 31 December, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "J", MUMBAI

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA Nos. 1495, 4564, 4565 & 1496/M/2010  
Assessment Years: 2004-05, 2005-06, 2006-07 & 2007-08

M/s. Mutha Parasram Dhanaji & Co., Narayanwadi, Station Road, Vs. Kalyan (W) PAN: AAFFM5521R  (Appellant)	Dy. Commissioner of Income- tax, Central Circle-1, Pawar Industrial Estate, 2nd Floor, Edulji Road, Charia, Thane (W)  (Respondent)
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ITA Nos. 1760 & 1759/M/2010  
Assessment Years: 2004-05 & 2007-8

Dy. Commissioner of Income- tax, Central Circle-1, Pawar Industrial Estate, nd 2 Floor, Edulji Road, Charia, Thane (W)  (Appellant)	M/s. Mutha Parasram Dhanaji & Co., Vs. Narayanwadi, Station Road, Kalyan (W)  PAN: AAFFM5521R  (Respondent)
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ITA No. 1758/M/2010  
Assessment Year: 2007-08

Dy. Commissioner of Income- tax, Central Circle-1, Pawar Industrial Estate, nd 2 Floor, Edulji Road, Charia, Thane (W)  (Appellant)	Shri Ramesh Harichand Sanklesha, Vs. 401, Mutha Housel, Shivaji Chowk,  Kalyan (W) PAN: ADRPS0273R  (Respondent)
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ITA No. 1757/M/2010  
Assessment Year: 2007-08

Dy. Commissioner of Income- tax, Central Circle-1, Pawar Industrial Estate, 2nd Floor, Edulji Road,	Shri Amritlal Harichand Sanklesha, Vs. 401, Mutha Housel, Shivaji Chowk, Kalyan (W)
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Charia, Thane (W)  
(Appellant)

PAN: ADRPS0272Q  
(Respondent)

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ITA Nos. 1495, 4564, 4565 & 1496/M/2010

ITA No.1758/

M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh &

Assessee by : Shri H.N. Motiwala & Shri Piyush Chhajed  
Revenue by : Shri S.D. Srivastava, CIT-DR.

Date of Hearing : 14.11.2014

Date of Pronouncement : 31.12.2014

ORDER

Per Sanjay Garg, Judicial Member:

The above titled appeals by the respective assessees as well by the Revenue relating to different assessment years have been directed against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 30.10.09 in ITA Nos.1759, 1757, 1758 & 1760/M/2010 (Revenue's appeals) and dated 30.10.09 in ITA Nos.1495 & 1496/M/2010 (assessee's appeals) and dated 29.01.10 in ITA Nos.4564 & 4565/M/2010 (assessee's appeals). All, the above titled appeals are in relation to additions made on identical issues on the basis of seized material for the corresponding/relevant Assessment Years falling in the block period. Since the facts and issues involved therein are identical in nature, hence the same are taken together for disposal by this common order. For the sake convenience, facts have been taken from ITA 1495/M/2010 for A.Y. 2004-05.

ITA 1495/M/2010 for A.Y. 2004-05 (appeal of the assessee firm)

2. The assessee, a partnership firm is into the business of trading in gold jewellery. A search action u/s 132 of the I.T. Act was carried out on 07.12.2006 by the Income tax authorities in premises of the partners of the firm namely Shri Amritlal Hirachand Sanklesha (Mutha) and Shri Ramesh Hirachand Sanklesha (Mutha). The business premises of the assessee firm was also taken up for survey u/s 133A on 07/12/06.

The original return, in this case for the year under consideration i.e. A.Y. 2004- ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos.1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh 05 had been filed by the assessee u/s 139(1) on 22/10/02, admitting a total income of Rs.38,030/-. The Assessing Officer (hereinafter referred to as the AO), however, assessed the total income of the assessee u/s 143(3) read with section 153C of the I.T. Act at Rs.22,09,530/-. The assessed income, interalia, included Rs.1,05,570/- of income disclosed during search , Rs.4,07,918/- of income estimated on account of interest in financing and Rs.16,96,044/- of income arising from unaccounted stock.

3. Being aggrieved by the order of assessment, the assessee firm preferred appeal before the CIT(A). The Ld. CIT(A) not only confirmed the above stated additions made by the AO but also enhanced the income of the assessee firm by Rs.1005568/- as undisclosed income on account of loose torn slip found during the search from the premises of one of the partners of the firm.

4. The assessee is thus in appeals before us against the action of the CIT(A) against the confirmations of additions as well enhancement of income. Before us, the assessee has taken the following revised grounds of appeal:

"Revised Grounds of Appeal:

1. On the facts and in the circumstances of the case, the learned Assessing Officer erred in assuming the jurisdiction u/s. 153C/153A read with sec.

143(3), without recording of satisfaction that any undisclosed income belonged to the firm.

2. On the facts and in the circumstances of the case, the learned Assessing Officer erred in making addition in the assessment proceedings u/s. 153A read with section 143(3), when there was nothing incriminating found during the course of search, relevant to the A.Y. 2004-05 and therefore no assessment could be made U/s 153A.

3. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in upholding the addition of Rs.4,07,918/- on notional basis and without any evidence found during the course of search as an additional money lending interest.

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4. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax erred in upholding the addition of Rs.16,96,044/- being the value of stock received as gold loan and security deposited from the parties, without appreciating the facts that they were duly recorded in audited books of accounts and also confirmed by third parties in writing and also during the statement recorded in course of assessment proceedings.

5. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax erred in enhancing the income by Rs.10,05,568/- on account of torn papers, purported to be found from one of the partners residence, without appreciating the fact that the said torn papers were not even part of the seized papers and was not recorded in the Panchanama made on the date of search even in case of partner Shri Ramesh Sanklecha.

6. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in enhancing the addition of Rs.10,05,568/- in hands of firm on account of certain torn papers found from the dustbin of one of the partner's residence, without appreciating the fact that the said document was a non-speaking and dumb document.

7. The appellant craves that he leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing."

5. Our findings in respect of the issues raised by the assessee are as under:

Ground No.1

6. This ground has been taken by the assessee for the first time before us only. The assessee has challenged the jurisdiction of the AO to assess the income of the assessee under section 153C read with section 143(3) of the Act on the ground that the satisfaction recorded by the AO for proceeding against the assessee under section 153C was invalid and bad in law. The Ld. A.R. for the assessee has submitted that a perusal of the assessment order passed under section 153C of the Act reveals that the case of the assessee was assigned to the concerned AO i.e. DCIT, Central Circle-1, Thane, on 28.03.07. Whereas the satisfaction recorded under section 153C was dated 27.03.07 i.e. one day prior to the assignment of the case which could not be possible under r ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh the circumstances. Therefore there is a reasonable presumption that the AO had prepared the satisfaction note antedated to fill up the legal lacuna and such a note cannot be said to be a valid satisfaction note in the eyes of law. We may point out here that this case was earlier heard on 26.08.14 and the matter was reserved for orders. However, in the meantime, the Ld. D.R. Shri S.D. Srivastava, moved an application dated 27.08.14 contending that the date of assignment of the case written in the assessment order as 28.03.07 was a typographical mistake. In fact, case of the assessee was assigned to DCIT, CC-1, Thane on 13.03.08. The case of the partners of the assessee firm namely Shri Amritlal Hirachand Sanklesha (Mutha) and Shri Ramesh Hirachand Sanklesha (Mutha) was in fact assigned on 28.03.07. The reference mentioned on the satisfaction note is pertaining to financial year 2007-08 and even the notice to the assessee was also issued on 27.03.08. He therefore has submitted that the date mentioned on the satisfaction note date as '27.03.07' in fact had been wrongly typed instead of date '27.03.08'. He has also placed copy of the assignment order in the case of the assessee dated 13.03.08 and copy of assignment order in the case of partners of the assessee firm dated 28.03.07. In view of the above application, the matter was re-fixed for hearing on this issue. After going through the record produced by the Ld. D.R., the Ld. A.R. has stated at Bar that he does not press this issue. Since the Ld. A.R. for the assessee after going through the record produced by the Revenue regarding the typographical error occurred as to the date mentioned on the satisfaction note, could not controvert the plea taken by the Revenue in this respect, hence this issue is accordingly decided against the assessee.

Ground No.2 & Additional Legal Ground taken during the arguments:

7. Vide Ground No. 2, the assessee has agitated that no incriminating material was found during the search against the assessee hence assessment ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh made u/s 153A was bad in law. During the course of arguments, the Ld. A.R. for the assessee has raised another legal ground though, not taken specifically in the

grounds of appeal. His contention has been that the assessment under section 153C in the case of the assessee was bad in law as no notice as per the provisions of section 153C was issued to the assessee. In fact, the alleged notice was issued under section 153A of the Act. He has contended that in fact the search action was conducted in the case of partners of the firm namely Shri Amritlal Hirachand Sanklesha (Mutha) and Shri Ramesh Hirachand Sanklesha (Mutha) and the firm being distinct entity from its partners under the Income Tax Act, is a third party, hence, as per the provisions, notice under section 153C was required to be issued before framing assessments for the block period in the case of the assessee firm. Since the assessee was not a searched party, the notice issued under section 153A was bad in law and hence the assessments framed in pursuance to issuance of invalid notice have also got invalidated. He has contended that since no notice under section 153C was issued to the assessee, hence the assessment proceedings done under section 153C were bad in law and are liable to be set aside. He has relied in this respect on the decisions of the Delhi Bench of the Tribunal in the case of "Jindal Stainless Steel vs. ACIT" (2009) 120 ITD 301 and further upon the decision of the Hyderabad Bench of the Tribunal in the case of "DCIT vs. ASP Software Solutions Pvt. Ltd." (2013) 36 Taxmann.com 122. He has further relied upon the decision of the Hon'ble Bombay High Court in the case of "Commissioner of Income Tax vs. Tirupati Oil Corporation" wherein the Hon'ble Bombay High Court has held that the undisclosed income of a partner cannot be treated as undisclosed income of the firm under section 158BC without invoking section 153BD and following the procedure as laid down under the said section.

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8. The Ld. D.R. on the other hand, has vehemently contended that in this case all the necessary formalities were completed by the AO and even the assessments for the different years falling in the block period were done in the case of the assessee under section 153C and not under section 153A. He has further contended that merely because upon the notice, the section mentioned was '153A', itself, was not in any way detrimental to or otherwise has affected any right of the assessee. The assessee had never objected to the issuance of such notice and had participated in the assessment proceedings without any objection being raised in this respect. Even no such plea was ever raised before the first appellate authority, so at this stage, it is not open to the assessee to challenge the validity of the notice. He has relied upon the decision of Bangalore Bench of the Tribunal in the case of "ACIT vs. Dilip Kumar Balar"

(2011) 8 ITR (Tri) 229 (Bang.). He has also relied upon the provisions of section 292B of the Act.

9. We have considered the rival contentions of the Ld. Representatives of the parties on this issue. For proper consideration of the matter, we deem it proper to reproduce the relevant provisions of the section 153A and 153C herein below:

"Assessment in case of search or requisition.

153A. Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall--

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

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(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate. Explanation.--For the removal of doubts, it is hereby declared that,--

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

--X-X-X-X-X--

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each

such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :] [Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. (2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year--

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

10. A perusal of the above sections reveals that in case of search action initiated under section 132 of the Act, the AO has to issue notice under section 153A requiring the searched person to furnish the returns of income in respect of six assessment years preceding the year in which the search has been made and assess the income for the said years as per the prescribed procedure. If the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person searched, the AO has to record a satisfaction in this regard and thereafter to hand over the books of account or documents or assets seized or requisitioned to the AO having jurisdiction over such other person and that AO shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A. The aforesaid provision is contained in Chapter- XIV of the Income Tax Act, which contains the procedure for assessment. The provisions of section 153C are in parimateria with the provisions of section 158BD (operative in the block assessment qua search made before 31.5.2003) under Chapter XIV-B, which reads as under :

"158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were

requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [under section 158BC] against such other person and the provisions of this Chapter shall apply accordingly."

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11. Hon'ble Supreme Court in the case of "Manish Maheshwari vs. ACIT", 289 ITR 341 (SC) considering the earlier applicable provisions of section 158BD of the IT Act which are analogous to sec. 153C of IT Act has held that;

"The condition precedent for invoking a block assessment is that a search has been conducted under section 132, or documents or assets have been requisitioned under section 132A. The said provision would apply in the case of any person in respect of whom search has been carried out under section 132A or documents or assets have been requisitioned under section 132A. Section 158BD, however, provides for taking recourse to a block assessment in terms of section 158BC in respect of any other person, the conditions precedent where for are :

(i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act;

(ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and

(iii) the Assessing Officer has proceeded under section 158BC against such other person." (Emphasis supplied by us)

12. We may mention here that the provisions of section 153A are analogous to section 158BC prescribing procedure to be followed in the case of searched person. In the light of above stated legal position, we have to now look into from the facts of the case that whether the AO had followed the prescribed procedure and further that whether such an omission or mistake in service of notice, as has been alleged by the assessee, has resulted into any infringement, curtailment or extinguishment of any right of the assessee which was available to it under the provisions of the law and thereby has in any manner caused prejudice to the interests of the assessee.

13. We find that in the case in hand, the search was conducted in the name/premises of the partners of the firm. Though under the Income Tax Act, the firm has been recognized as a distinct person and is assessable to Income Tax separately, however



the fact remains that the very existence of the firm is ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh dependent upon the existence of the partners. There cannot be a firm without partners. The partners are the persons who control and run the business of the firm. Even the partners individually, jointly and severally can be held liable for the acts of the firm as the liability of the partners, subject to some exceptions, is unlimited. A firm cannot be equated with a company, nor the partners of the firm with that of Directors of a Company. In the background of this legal position, when we go through the facts of the present case, we find that the Partners of the firm, when confronted with certain documents seized during the search action, had admitted that certain income belonged to the firm constituted by them. The firm has been constituted by both the searched persons only and no other person has been the partner in the said firm. The AO before proceeding to assess the income of the firm, has recorded satisfaction note in the cases of the partners of the firm explaining about the documents seized during the search action u/s 132 in the case of partners and thereby observing that he is satisfied that those documents belong to the assessee firm and a notice is required to be issued to the assessee as per the provisions of section 153C of the Act. The AO has drawn his conclusion on the foundation of the tangible material available to him. So there has been no violation of the prescribed procedure so far the recording of the satisfaction is concerned.

14. Second step that is required to be followed as per the provisions of section 153C is the handing over of the material/documents by the AO of the searched person to the AO having jurisdiction over that other person about whom the satisfaction as stated above has been recorded. Incidentally, the AO of the 'searched persons' in this case i.e. partners, as well as of 'that other person' as referred to u/s 153C i.e. the firm in this case has been the same, hence, no handing over of material/documents was required.

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15. The third step to be followed as per the provisions is that after receipt of the material seized/found during search action, the AO having jurisdiction over the person about whom the satisfaction has been recorded has to issue notice and assess the income of that 'other person' in accordance with the provisions of section 153A.

16. There is no denial to the fact that a notice had been issued to the assessee firm in this case as per the provisions of section 153A. Now the contention of the Ld. AR has been that the relevant section mentioned in the notice issued to the assessee was section 153A and not section 153C. We have to see at this stage, as observed above, that whether any prejudice has been caused to the assessee by the omission of the AO in not mentioning section 153C in the notice which was issued not only 'as per' but also 'under' the provisions of section 153A. The purpose of issuance of notice u/s 153A, in

our view, is to call upon and requiring the assessee to furnish the returns of immediately preceding six years and thereafter the AO has to assess or reassess the income for the said six years as per the provisions of the Act. Law has been almost settled on the point that assessment/reassessment cannot be made of the already concluded assessments, if no incriminating material is found against the searched person during search action. So far the provisions of section 153C are concerned, even if we take a broad view stretching wide the provisions of section 153C taking into consideration the principles of natural justice; though are considered stranger to the fiscal statutes; the resultant interpretation that can be drawn will be that since satisfaction is required to be recorded by the AO of the searched person that such material/documents found/seized during the operation, in fact, belong to the 'other person' as referred to u/s 153C, hence under the circumstances, the said 'other person' has to be afforded opportunity to file objections not only against the reopening of the concluded ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh assessments disputing the incriminating nature of the material but also against the manner or regarding the veracity of the satisfaction recorded against him. This opportunity can be availed by him by way of filing objection/reply to the notice issued as required under section 153C of the Act. For the sake of clarity, we deem it fit to mention here that neither any express provision is provided under the act about such an opportunity to be afforded to the assessee nor we are subscribing to any such view or interpretation and keep this debate open, to be discussed and decided in an appropriate case. Restricting ourselves to the facts of this case only, we are just discussing and analyzing the maximum possible view/interpretation that can be taken in favour of the assessee in a given situation and when facts of the case of the assessee are put into that widest possible view, then even in such a situation, whether any rights of the assessee can be said to have been affected or any prejudice can be said to have been caused to the assessee. As observed above, in the present case that the Partners of the firm when confronted with certain documents seized during the search action have themselves admitted that certain income belonged to the firm constituted by them. The firm is constituted by both the searched persons only and no other person has been the partner in the said firm. Shri Ramesh H. Shanklesha, one of the partners made a disclosure of Rs.15 Lacs in the case of the firm including Rs.1,05,570/- offered for the year under consideration. In the return filed on 30/05/08, in response to notice u/s 153A, the assessee returned a total income of Rs.1,01,370/- after claiming remuneration to the partners on such additional income. The original return, in this case had been filed u/s 139(1) on 22/10/02, admitting a total income of Rs.38,030/-. Hence it is not the case of the assessee that no incriminating material was found against the assessee during the search action against its partners. The assessee firm had never raised any objection that no incriminating material was found against it, ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh rather has returned the additional income in pursuance to the notice issued to it. Under such circumstances, the assessee had no case that any incriminating material was not found against it or that the satisfaction recorded by the concerned AO was wrong or vitiated. In the absence of such a case, how can it be said that any right of the assessee has been infringed or affected by mere not mentioning the 'section 153C' in the body of the notice which has been duly issued as per the provisions of section 153A as prescribed therein under the provision of section 153C itself. So in view of the peculiar facts and circumstances of this case, in our view, no prejudice has been caused to the assessee, so far so, the non mentioning of section 153C in the body

of the notice in question is concerned. In view of our above observations, these grounds, taken by the assessee are accordingly decided against the assessee.

### Ground No.3

17. Ground no.3 relates to the addition of Rs.4,07,918/- on account of unaccounted income from money lending. During search in the residential premises of Shri Ramesh H. Shanklesha, partner, certain documents were found and seized including certain documents indicating receipt of interest income on advances. The seized documents revealed details of interest received during the period from 23/10/06 to 06/12/06. AO cross-checked six entries for the interest received recorded in the books of account with that seized papers and found that the amount of interest mentioned in the seized papers was exactly double of the amount recorded in the regular books. The assessee had actually charged interest @ 3 % per month as against 1.5 % per month recorded in the books. On the basis of this revelation, the AO arrived at a conclusion that the assessee was suppressing interest receipt by 50 % and accordingly added a sum of Rs.4,07,918/- to returned income. The assessee, in the books of account, had shown an interest income of Rs.4,07,918/-.

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18. During the appellate proceedings before the Ld. CIT(A), it was submitted by the assessee that the noting found for the period 23-10-06 to 6-12-06, cannot be made the basis for assessment of earlier years without any corroborative evidence for that year, hence, addition made on this account was unwarranted and unjustified. The excerpts of the submission made before the Ld. CIT(A) is as under:

"a. The AO has erred in estimating the interest income on the basis of slips in respect of only 8 parties that too not pertaining to this year. b. The AO has not brought out any evidence to the effect that similar modus operandi existed during the year under consideration also. c. There are about 500 to 600 parties to whom advances have been made and that no such co-relation has been established for other borrowers and earlier periods. d. That no addition can be made on basis of assumption and without having any material on hand."

18.1 However the Ld. CIT(A) did not agree with the submissions made by the assessee and held that that the AO had rightly quantified interest income at 3% per month and added the excess income.

19. Before us, the Ld. AR of the assessee has reiterated his submissions made before the Ld. CIT (A) whereas the Ld. DR has relied upon the findings of the lower authorities on this issue.

We have considered the rival contentions. The AO has made the additions on the basis of the incriminating material found relating to F.Y. 2006-07. The additions for the year under consideration i.e. A.Y. 2004-05 have been made assuming that similar modus operandi might have been adopted by the assessee during this year.

20. We find force in the contention of the Ld. DR that when some incriminating material is found against the assessee showing some method or modus operandi adopted by the assessee leading to concealment or ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh underassessment of income, then in such a case, the burden is on the assessee to prove that similar modus operandi was not adopted in the past. However the fact which cannot be ignored in this case is that the AO had correlated the entries relating to six persons only. Whereas as per the assessee, there were about 500 to 600 persons to whom the advances were made. In our view, it will not be justified to assume that advances were made at the double rate of interest than shown in the books of accounts in relation to all the borrowers. The chargeability of rate of interest also depends upon time to time market conditions as well on the prevalent bank interest rates. There is also no direct evidence on the file that the assessee in the past had charged the interest at the double rate than shown in the books of account from all the persons with whom he had made such transactions. Hence, in view of the overall facts and circumstances of the case, in our view, the interest of justice will be best served if the additions are reduced considering the submission of the assessee that it is not possible that the assessee had been charging same rate of interest from all the borrowers in the past. We accordingly reduce the addition made by the lower authorities on this issue to the extent of 50% of the added amount. This ground is accordingly partly allowed in favour of the assessee.

#### Ground No.4

21. Ground No. 4 relates to the additions of Rs.16,96,044/- on account of unaccounted stock of Gold/ jewellery.

22. During search, a register called GS-12 was found and seized. The closing stock of gold jewellery according to this register stood at 16852.33 gms as against a total stock of gold jewellery of 13159.80 gms shown in the return of income for the year under consideration. Thus, 3692.53 gms of jewellery remained unexplained. The AO valued the same at Rs.16,96,044/- @ ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh Rs.458.67 per gm and accordingly proposed to tax it. The assessee explained that the difference was due to 1400 gm of jewellery received under loan scheme from various parties and another 2300 gms of gold received as security deposit from Karigars (skilled employees) which had not been shown in the return of income as there was no financial implications. The assessee further submitted that though the above mentioned two items were entered in GS-12 register, the same could not to be shown in the return. In support of its explanation, the assessee produced copies of agreement from depositors of gold loan scheme. The assessee also produced these parties before the AO for examination. So also, the karigars were produced before the AO for examination.

23. On examination of the loan parties and karigars, it was found by the AO that all the parties were not having creditworthiness though they all admitted to have given gold jewellery to the assessee firm. The AO asked for further details like proof for purchase by them from various parties, but the assessee failed to provide. The AO further found that, though the assessee claimed to have been giving interest @ 6 % to gold loan parties, the same was not found debited to the books nor was the

loan reflected in the balance sheet. These circumstances led the AO to arrive at a conclusion that 1400 gms of gold jewellery said to have been received as gold loan and 2300 gms said to have been received as security deposits from karigars was an afterthought and accordingly the AO treated it as unexplained investment in stock and taxed it.

24. In appeal before the Ld. CIT(A), the assessee filed detailed submissions in this respect. The relevant portion of which is reproduced hereunder for reference:

"The learned Assessing Officer erred in making the addition of Rs.16,96,044/- on account of difference in stock.

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh As stated by the assessee firm to the assessing officer vide their letter dated 3rd December' 2008 & 26th December 2008 we reproduce the explanation submitted by the assessee as under:

'The quantity as per GS 12 register for the F. Y. 2003-04 shows 16852.33 gms. of gold, whereas as per Annexure-E of the Tax Audit Report for the A.Y. 04-05, shows 13159.80 gms. of gold. Thus there is difference of 3692.53 gms. The difference is mainly due to the following though entered in GSI2 but not effected in financial accounts:

Gold recd. under Loan Scheme	1400 gms
Security Deposits from Karigars	2300 gms.

The firm has a scheme of receiving Gold Loan in physical gold to be returned with interest in gold. The gold loan received is entered in GS12 but not entered in the financial accounts as it does not have monetary impact.

The firm takes security deposit from the Karigars to whom it gives job. The gold received from the Karigars as security deposit is returned only in gold and therefore this also is entered in GS12 but not effected in financial records. Since such gold received either as security deposit or loan is to be returned in physical gold the entries thereof is not reflected in financial accounts as it does not involve any monetary transaction. While preparing final accounts such gold is reduced from the physical stock as per GS12 and the valuation thereof for the purpose of Financial Accounts is done.

I would like to state that while showing the quantitative details in Annexure-E, security deposit of gold amounting to 2300 gms. and gold loan amounting to 1400 gms. has not been reflected in Annexure-E for the F Y 2003-04. But has been included in quantity for the F Y 2004- 05. Thus, your honour will appreciate that the stock as per Annexure-E of 13159.8 + 2300 gms. (security deposit) +1400 gms. (gold loan) when added up it comes to 16859.80 gms. Thus, There is a difference of 7.47

gms.

This shows that even the auditors while preparing the account for the FY 2004- 05 has included the gold loan and security deposits in opening and closing". Further during the second week of December'08 all the Karigars and all the gold loan parties were produced before the assessing officer and all of parties/ karigars were cross verified and their statements were recorded by the assessing officers. Thus your honour will appreciate that in case of the gold loan the firm has entered into the gold agreement and the same are produced for your honours verification and also enclosed is the karigars security deposit confirmations and which were examined by the assessing officer also.

Hence we request your honour that the gold loans and security deposits accepted by the firm is genuine the persons from whom the same were accepted have been crossed verified by the department in the second week of december'08. The appellant firm produced the karigar and the gold loan creditors, thereby proving their identity and they have admitted the loan transactions/deposits to the assessee firm. There are enough judgments to the effects that this is sufficient discharge of onus by the appellant. The capacity of the creditors is not to be proved by the appellant. Reliance is placed on the decision of Nemichand Kothari V/S CIT 264 ITR 254(Gau) and CIT V/s Nevendra Ahuja 290 ITR 453 (MP) (copies enclosed). Hence the proposed addition of Rs.16,96,044/- needs to be deleted."

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh

25. The Ld. CIT(A) after considering the submissions of the assessee confirmed the additions made by the AO on this issue observing as under:

"10.6. In the case of Nemichand Kothari, the Hon High Court Guwahati has taken a view that section 68 of the IT Act does not allow revenue to inquire into the sources of creditors or sub creditors and once the assessee has disclosed the sources from which he has received the loan, his burden stands discharged. The Hon High Court, further, held that it is not the burden of the appellant to show the source of creditor or prove that creditworthiness of the creditors.

10.7 The reliance of the appellant on the above case is totally inappropriate. In the case of Nemichand Kothari, the assessee had introduced loans that had been received by way of cheque and the same had been taxed u/s 68 of the Act on being found that the loan parties were not having creditworthiness.

10.8 Whereas in the case of the appellant, it has been taxed as unaccounted stock of gold jewellery. Moreover, the alleged gold loans are not reflected in the books nor in the audited statement. Further, there is no payment of interest to the gold loan parties though the assessee has claimed to have paid @ 6%. The balance sheet does not reflect this. For the same reasons, the decision of Hon High Court Mumbai in the case of CIT Vs Jitendra Ahluja, is also distinguishable from the case of the appellant.

10.8 In view of the above discussions and decisions, I proceed to hold that the appellant has brought his own unaccounted gold jewellery into business and, therefore, I do not deem it fit to interfere with the order of the AO in this respect. Accordingly, I uphold the action of the AO and dismiss the ground of appeal."

26. Before us, the Ld. AR of the assessee has reiterated the submission which were made before the Ld. CIT(A). The Ld. DR has relied upon the decisions of the lower authorities.

27. We have considered the rival submissions and have also gone through the evidences produced on the file. The assessee has explained the difference of 3692.53 gms of gold stating that out of the said quantity 100 gms were the deposits made by the depositors under the gold loan scheme. The remaining 2300 gms were out of security deposits from Karigars (skilled laborers employed for making of gold jewellery). The assessee has placed on file the copies of the gold loan agreement as well as the confirmations regarding deposit of the gold by the karigars. Both the lower authorities have disbelieved the said documents. Even the said parties to the gold loan agreement and the karigars were also examined by the AO. The AO disbelieved their statements ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh holding that the karigars were of small means and did not have creditworthiness to deposit such high quantity of the gold with the assessee. The AO also observed that though the assessee had claimed to have been giving interest at the rate of 6% to the parties to the gold loan agreement, however, the same was not found debited in the books of account. Even the gold loan was also not reflected in the balance sheet. He therefore held that it was an afterthought of the assessee. We have perused the copies of the gold loan agreement placed on paper book at page No.2 to 29. A perusal of the above stated copies of the gold loan agreement reveals that all the gold loan agreements have been written on stamp paper of the value of Rs.50/-. The assessee has placed 8 copies of the said gold loan agreement entered into with different persons. Surprisingly, every stamp paper for Rs.50/- for each of the gold loan agreement, bears the same serial number i.e. 7545. That means all the 8 stamp papers have been shown to be purchased by the assessee against the one and the same entry in the register of the stamp vendor. Though the agreements have been shown to have been entered on different dates of the month of October and November 2003 but the stamp papers for all the agreements have been purchased in the name of the partner of the assessee firm namely Shri Ramesh H. Sanklesha on the same date i.e. 03.10.03. The assessee has not produced any evidence about the gold loan scheme launched by it. After considering the peculiar fact of purchasing of all the stamp papers against the single entry and thereafter execution of agreements shows that the said agreements are an afterthought action of the assessee. The assessee even had not debited the payment of interest to the books of accounts at the rate of 6% as has been alleged by it. No loan had been reflected in the balance sheet. Hence, we do not find any infirmity in the orders of the lower authorities in disbelieving the explanation of the assessee regarding the gold loan agreement.

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh

28. With regard to the explanation given by assessee regarding the remaining 2300 gms of gold alleged to be received from Karigars as security deposit, we found that assessee has filed letters by its Karigars in the month of November, 2008 to the effect that these Karigars have deposited gold ranging between 100 to 200 gms with the assessee M/s Mutha parasram Dhanaji & Co. as on 1-4-2003. As per these letters, gold was given as a security deposit to remain with the firm till the karigar continues to work with assessee firm and same was returnable on his discontinuing of work with assessee. All these 10 letters are given by the karigars were typed on the letter pad of the assessee and all are dated Nov. 2008, wherein gold was alleged to be given by Karigars to the assessee between 1st to 8th April, 2003. Language used in all the letters were exactly same. The AO examined the Karigars and observed that these karigars were of small means and did not have creditworthiness to deposit such quantity of gold with the assessee. The AO has also asked further details like proof of purchases from various parties but the assessee failed to produce any evidence. The AO recorded a categorical finding that none of the Karigars could prove the source of their purchases of gold ranging from 100 to 200 gms and the investment by these persons ranging from Rs.1,20,000/- to Rs.1,40,000/-. Vide letter dated 24-10-2008, the assessee was again asked to produce the purchase of gold by these persons, however, nothing was filed by assessee. As per the letters of Karigars so filed by assessee before AO in Nov., 2008 which mentions that gold was given in April, 2003, however, nothing was brought on record by assessee to substantiate that these Karigars were working with the assessee since April, 2003. As per the letter, the gold was to remain with the assessee till he works with him and was returnable thereafter. However, nothing was brought on record by assessee to the effect that these Karigars continued to work with assessee firm since 2003 till 2014, insofar as ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh no gold was returned by assessee firm to these Karigars. All the gold alleged to be given by these Karigars were used by assessee firm for making jewellery which was also found during physical taking of inventory at the time of search/survey. It is also not the case of the assessee that the alleged gold was returned to the karigars even after more than 10 years. Since April, 2003, more than 11 years had expired, but nothing was shown either before the lower authorities or before us to contend that gold was again returned to the karigars or continued to be used by assessee firm on the plea of same Karigar continued to work with the assessee firm. In a jewellery business, the jeweler gives gold to the karigar for making jewellery, in the contrast, the assessee has claimed that karigars had given gold to the assessee which was used by it for making jewellery and selling the same in his Showroom. Thus, the story of assessee was not genuine. Accordingly we uphold the decision of lower authorities that assessee had brought unaccounted gold jewellery into business during the previous year relevant to A.Y.2004-05 and the same was added to the income as undisclosed income of the assessee firm. Nothing was brought on record by Id. AR to persuade us to deviate from the findings recorded by the lower authorities to the effect that no gold was given by Karigar to the assessee in the year 2003. Since the finding of fact recorded by lower authorities which are as per material on record, could not be controverted by Id. AR by bringing any positive material, we do not find any reason to interfere in the findings recorded by lower authorities to justify the alleged deposit of 2300 gms of gold by karigars. Accordingly, we confirm the action of CIT(A) with regard to the addition sustained on account of excess gold not disclosed in the audited accounts and return of income filed with the department.



29. Now, we shall deal with the addition made in the A.Y.2007-08 in respect of excess stock found during the search/survey on physical verification. On the ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh date of search/survey dated 7-12-2006, physical inventory of gold ornaments were taken and when it was compared with the actual inventory as per book of accounts it was found that assessee was carrying excess jewellery of Rs.53,16,322/-, out of which assessee could not explain the excess jewellery valued at Rs.23,70,079/-, which was added to the total income as unaccounted stock. The CIT(A) confirmed the action of the AO by observing that gold alleged to have been received as gold loan from parties and from kargiars as security deposit could not be substantiated with any kind of proof. The CIT(A) further confirmed the findings of AO that all these persons are of small means and creditworthiness is lacking. Ld. AR could not place on record any positive material so as to persuade us to deviate from the findings recorded by the AO as well as CIT(A). Accordingly, following the reasoning discussed hereinabove, we do not find any reason to interfere in the findings recorded by the lower authorities resulting into addition of Rs.23,70,079/- as unexplained investment in the A.Y.2007-08.

In view of the above discussion, grounds taken by the assessee with regard to the addition sustained by CIT(A) on account of unaccounted stock is hereby dismissed in all the years under consideration.

30. These grounds of appeal relate to enhancement of income on the basis of torn papers, purported to be found from one of the partners' residence. During the search in the premises of one of the partners, Shri Ramesh H. Shanklesha, a loose sheet in torn condition with incriminating entries was found from the dustbin and the same was seized. Certain entries against the name of Shri Ramesh H. Shanklesha and Shri Amritlal H. Shanklesha were found mentioned in the said seized slip. The AO treated the entries on the right hand side as payments made to undisclosed sources and the entries on the left ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh hand side as receipts from undisclosed sources. In the statement recorded of Shri Ramesh H. Shanklesha, he stated that he was unable to give any explanation for the entries in the slip. However, in a letter dated 08/12/08 addressed to the AO, the said Shri Ramesh H. Shanklesha agreed to be assessed @ 20 % on net sales after treating the entries in the slip as unrecorded sales in the hands of the partnership firm. However, the AO observed that the amount involved in the seized material was part of the unaccounted income generated from the firm in which the above mentioned persons were partners, which they had used as advance to various parties. He therefore, in the case of Shri Ramesh H. Shanklesha, treated the differential amount of Rs.42,39,692/- as unexplained advance and added the same into his returned income i.e. in the hands of the partner of the assessee firm. Similarly in the case of Amritlal H. Shanklesha, another partner, an addition of Rs.81,17,017/- was made in his hand by the AO on account of the entries found in the said seized documents.

31. The Ld. CIT(A), however deleted the additions in the hands of the partners observing that the only income of the partners was profit, interest and remuneration from the partnership firm. The entries recorded in the above mentioned seized loose slip represented income of the firm and not of the partners. He, therefore, added the difference of figures in the name of both partners into the income of the firm instead of the partners and accordingly enhanced the income of the firm. He also

rejected the alternate contention of the assessee that to treat the transactions recorded in the slip as sale transaction and to add income at the rate of 20% of the gross profit. He held that a sum of Rs.17,52,092/- was assessable for the year under consideration. He however gave telescopic benefit for some of Rs.7,46,544/- quantified to be assessed under this head in assessment year 2003-04 and thereby added the net amount of Rs.10,05,568/- to the income of the assessee.

ITA Nos. 1495, 4564, 4565 &1496/M/2010, ITA Nos.1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh

32. We have heard the Ld. Representatives of both the parties and have also gone through the records. The Ld. A.R. of the assessee has contended that the alleged loose slip was in fact not part of the seized material during the search action. It was added subsequently in the panchnama relating to the case of Shri Ramesh H. Sanklesha. It was a dumb document and cannot be said to be representing any receipt of additional income. At the time of preparation of panchnama, the annexure had only 19 items of seized materials. The loose slip in question was not found to be reflected in the annexure to the panchnama at that point of time which was later on added in the list at serial no. 20. There was no identification mark placed on the said loose slips. Hence, proposed addition based on the seized material was unjustified and against the principle of law. It has been further contended that Shri Ramesh H. Shanklesha was not interrogated on this document while detailed statement was recorded of him on other issues. The seized document was in torn condition and was found in dustbin. Without prejudice, the figures found recorded in documents were similar to the figures of sales recorded in the regular books of account and the figures on the document were likely to be revenue generated by sales for this period. The Ld. AR has further stated that the assessee to buy peace and settle the matter had agreed before the lower authorities to treat Rs.13,37,007/- and Rs.14,76,709/- as unrecorded sales for the year 2003 and 2005 respectively to be assessed at 20 % thereon in the hands of the firm.

On the other hand, the Ld. D.R. has relied upon the findings of the Ld. CIT(A).

33. We find that in the case of the partners of Shri Ramesh H. Sanklesha and Shri Amritlal H. Sanklesha, the said partners have taken a plea before the AO that the undisclosed income on the basis of the said loose papers was liable to ITA Nos. 1495, 4564, 4565 &1496/M/2010, ITA Nos.1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh be assessed at the hands of the firm. In contrast to their stand taken in their own case, while representing the firm, the said partners have taken the plea that the income, if liable to be assessed, then the same is liable to be assessed in the hands of the partners. As observed above by us, the firm is represented and controlled by the partners. Without partners the firm cannot exist. The acts of the firm are done by the partners of the firm. The partners of the firm are not different persons or third parties. The partners in this case are trying to blow hot and cold in the same breath. They are taking one plea in their own case and contradictory plea in the case of the firm which is being represented through them only. So far so, the contention that the document was a dumb document, we do not find any merit in the said plea. The entries have been found mentioned against the name of partners, some of the entries are on the left side and some of the entries are on the right side, which according to lower authorities are receipts and payments. The Ld. CIT(A) has

observed that the document seized from the premises of Shri Ramesh H. Sanklesha, one of the partners of the assessee firm represents the receipt and payment arising out of the business of firm which was the unaccounted payment to the partners by the firm. The argument that the said document has been added subsequently, in our view, does not have any force. No malafide act or intention or enmity can be attributed on the part of search party in this respect.

Now coming to the incriminating material in the form of loose sheets was found at the premises of partner Ramesh H. Shankhlecha. The AO has added income on the basis of this document in the hands of Ramesh H. Shankhlecha. The CIT(A) after observing that amount involved in the seized material is part of the unaccounted income generated from the firm in which assessee as a partner and it has been used as advance to various parties, added the same in the hands of the assessee firm. After discussing the issue at great length at para ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh 12 of his appellate order, he held that the difference in the debit credit amounting to Rs.17,52,092/- as income of the assessee firm. After giving benefit of telescoping for a sum of Rs.7,46,544/- quantified to be assessed in the assessment year 2003-04, an amount of Rs.10,05,568/- was added in the income of the assessee firm. Nothing was brought on record by the ld. AR to substantiate its contention that entries found recorded in the loose paper was unaccounted sales of the firm. Once it is held that entries so recorded was actually income of the firm, we do not find any infirmity in the order of CIT(A) for enhancing the income of the assessee firm after giving benefit of telescoping in respect of similar income assessed in the assessment year 2003-04 amounting to Rs.7,46,544/-. The detailed finding recorded by the CIT(A) are as per material on record, therefore, do not require any interference on our part. Accordingly, we confirm the action of CIT(A) in enhancing the income of assessee firm by Rs.10,05,568/- in the assessment year 2003-2004.

34. The Revenue in this appeal has agitated the telescopic benefit given by the Ld. CIT(A) for assessment year 2003-04 while making enhancement of the income of the assessee firm on the basis of loose torn slip. We have already discussed the issue relating to enhancement of income on the basis of said loose torn slip while adjudicating ground No.5 & 6 of the assessee's appeal as above. As discussed hereinabove, we found that the CIT(A) has correctly given benefit of telescoping in respect of income already assessed in A.Y.2003-04 amounting to Rs.7,46,544/-. As we have already upheld the findings of the CIT(A), we do not find any infirmity in the order of CIT(A) for allowing telescoping benefit of Rs.7,46,544/-. Accordingly, appeal of the Revenue is dismissed.

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh

35. The grounds of appeal taken by the assessee for the year under consideration are identical to that of assessment year 2004-05 except the difference in the figures of the amounts/additions. In view of our findings given above, while adjudicating assessee's appeal for assessment year 2004-05, the identical issues taken in this appeal are accordingly treated to be decided on the same lines. This appeal of the assessee is accordingly partly allowed.

36. The assessee in this appeal has taken four substantive grounds of appeal which are identical to ground No.1 to 4 taken by the assessee for earlier assessment year 2004-05 and 2005-06. In view of our findings given above on identical issues, the grounds of the assessee taken in this appeal are accordingly treated to be decided on the same lines. This appeal of the assessee is accordingly partly allowed.

37. The assessee in this appeal has taken four substantive grounds of appeal. Ground No.1, 3 & 4 are identical to ground No. 3, 5 & 6 of the assessee's appeal for assessment year 2004-05. In view of our findings given above on identical issues, the grounds No.1, 3 & 4 taken in this appeal are accordingly treated to be decided on the same lines.

38. The ground No.2 is relating to the addition for unaccounted stock on account of difference found on the day of survey between the book stock and stock physically verified by the approved valuer. The assessee before the AO had taken the plea that the excess stock had arisen due to presence of 1400 gms ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos.1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh of gold jewellery received as gold loan from the parties and 2300 gms received from karigars as security. However, before the Ld. CIT(A) the assessee has taken a different plea that the excess stock has cropped up due to higher valuation by approved valuer based on current market rate while the assessee has valued at FIFO method. The plea relating to gold loan and the gold received as security from karigars has already been discussed and decided by us while adjudicating ground No.4 of the assessee's appeal for assessment year 2004-05. However, the new ground taken by the assessee before the Ld. CIT(A) regarding the method of accounting, in our view, is an afterthought and the same is hereby rejected. So in view of our findings given while adjudicating the identical issue for assessment year 2004-05, this ground is decided accordingly.

In the result, appeal of assessee is allowed in part.

39. The Revenue has taken the following grounds of appeal:

"01. On the facts and in law, the Ld. CIT(A) though confirmed the addition of Rs.23,70,079/- on account of unaccounted stock, however, erred in giving credit for the sum of Rs.16,00,000/-.

02. On the facts and in law, the Ld. CIT(A) erred in allowing credit for the sum of Rs.16,00,000/- as the same has already been considered in the A.Y. 2002-2003. However, neither such sum is considered in the assessment order for that year, no CIT(A) has given any finding as to why the said sum of Rs.16,00,000/- pertain to that year.

03. On the facts and in law, the Ld. CIT(A) though enhanced income of the assessee firm by Rs.15,01,677/- for the A.Y. 2007-2008, however, erred in quantification of enhanced income by holding that since a sum of Rs 6286,077/- has been considered in the A.Y. 2005-2006, no separate addition is

warranted on account of enhancement for the A Y 2007-2008.

04. On the facts and in law, the Ld. CIT(A) though enhanced income of the assessee by Rs. 15,01,677/- however but erred in quantification of enhanced income by holding that an amount of ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh Rs. 15,01,677/- is included in income earned by the assessee firm in the A.Y. 2005-2006, without bringing any documentary evidence on record in support of his observation.

05. The Appellant craves, leave to add, to alter, amend and/or vary the grounds of appeal at any time before the decision of appeal."

40. A perusal of the above grounds of appeal reveals that the Revenue mainly has agitated the benefit given by the Ld. CIT(A) in relation to the income, corresponding additions to which have already been made in the earlier assessment years. In view of our findings given above, the corresponding assessed income for different assessment years has been restricted/sustained by us, in view of our findings given above. We therefore hold that wherever the income/additions have already been considered in the earlier assessment years, no separate addition regarding the same amount will be liable to be made in the subsequent years including the year under consideration. Subject to our above observations, the grounds of appeal of the Revenue are accordingly dismissed.

the case of Shri Ramesh H. Sanklesha, Partner)

41. The Revenue through its grounds of appeal has agitated the action of the Ld. CIT(A) in deleting the additions made on account of unexplained advances of Rs. 42,39,682/- added on the basis of loose torn slip found from the premises of above named assessee Shri Ramesh H. Sanklesha. While adjudicating ground No. 5 & 6 of the firm's appeal bearing for A.Y. 2004-05 bearing ITA No. 1495/M/10, we have upheld the action of the Ld. CIT(A) in making the additions in the hands of the firm. Hence, no addition is warranted in the hands of the partner Shri Ramesh H. Sanklesha, in view of our findings given above. This appeal of the Revenue is accordingly dismissed.

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos. 1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh the case of Shri Amritlal H. Sanklesha, Partner)

42. Grounds No. 1 to 3: Vide ground No. 1 to 3 of the appeal, the Revenue has agitated the action of the Ld. CIT(A) in deleting the additions made on account of unexplained advances of Rs. 81,17,017/- added on the basis of loose torn slip found from the premises of above named assessee Shri Ramesh H. Sanklesha. While adjudicating ground No. 5 & 6 of the firm's appeal bearing for A.Y. 2004-05 bearing ITA No. 1495/M/10, we have upheld the action of the Ld. CIT(A) in making the additions in the hands of the firm. Hence, no addition is warranted in the hands of the partner Shri Amritlal H. Sanklesha, in view of our findings given above. The grounds No. 1 to 3 of the Revenue's appeal are accordingly dismissed.

43. Ground No.4 & 5 : Vide ground No.4 & 5 the Revenue has agitated the action of the Ld. CIT(A) in deleting the addition on account of unexplained expenditure of Rs.4,18,084/-. During the assessment proceedings the AO made the additions of the above amount on the basis of seized material. The Ld. CIT(A) after considering the evidences produced by the assessee on the file, has given a categorical finding that the documents relating to this amount did not relate to the assessee, rather, the said documents belonged to M/s. Padmavati Apparels of which the assessee has been a partner. The Ld. CIT(A) has given the finding after proper appreciation of the evidence on the file and we do not find any reason to interfere with the order of the Ld. CIT(A) on this issue. The appeal of the Revenue is therefore dismissed.

44. In the result, the assessee's appeals are partly allowed while Revenue's appeals are dismissed.

ITA Nos. 1495, 4564, 4565 & 1496/M/2010, ITA Nos.1760 & 1759/M/2010 M/s. Mutha Parasram Dhanaji & Co., Shri Ramesh Harichand Sanklesh & Shri Amritlal Harichand Sanklesh Order pronounced in the open court on 31.12.2014.

Sd/-  
(R.C. Sharma)  
ACCOUNTANT MEMBER

Sd/-  
(Sanjay Gar  
JUDICIAL MEMBER

Mumbai, Dated: 31.12.2014.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai

The DR Concerned Bench  
//True Copy//

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.