

आयकरअपीलीयअधिकरण , 'ए' न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI**

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A. Nos. 1593, 1828 & 1829/Mds/2016  
निर्धारण वर्ष/Assessment Years : 2008-09, 2008-09 & 2009-10**

Smt. D. Santha,  
16-A, Salem Mail Road,  
Kallakurichi,  
Villupuram District – 606 202.

Income Tax Officer,  
Vs. Ward -1(2),  
Villupuram.

**[PAN: ACGPS 4584H]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./I.T.A. No. 1803/Mds/2016  
निर्धारण वर्ष/Assessment Year : 2008-09**

Income Tax Officer,  
Ward -1(2),  
Villupuram.

Vs. Smt. D. Santha,  
16-A, Salem Mail Road,  
Kallakurichi,  
Villupuram District – 606 202.

**[PAN: ACGPS 4584H]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. T. Vasudevan, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. Nataraja, JCIT

सुनवाईकीतारीख/Date of Hearing

: 03.07.2017

घोषणाकीतारीख/Date of Pronouncement

: 27.09.2017

**आदेश/ ORDER****PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed an appeal in ITA No. 1593/Mds/2016 against the order of the Commissioner of Income Tax (Appeals), Puducherry in ITA no. 25/CIT(A)-PDY/2014-15 dated 28.03.2016 on the order passed u/s. 143(3) r.w.s. 263 dated 25.03.2014 for assessment year 2008-09. The Revenue filed the cross appeal in ITA No. 1803/Mds/2016 against the same order. ITA Nos. 1828/Mds/2016 & 1829/Mds/2016 are the appeals filed by the assessee against the orders of the CIT(A)-Puducherry in ITA Nos. 251&547/CIT(A)-PGY/2013-14 dated 18.05.2016 on the orders of the penalty levied u/s. 271(1)(c) for assessment years 2008-09 and 2009-10, respectively.

2. Smt. D. Santha, the assessee, an individual has been carrying on business in jewellery apart from pawn broking. For assessment year 2008-09, she did not file her return within the due date i.e., 31.07.2008. On 16.03.2009, a survey was carried out in the business premises of the assessee. On 30.03.2009, i.e., after the survey, she filed her return for assessment year 2008-09 admitting a total income of Rs. 1,92,450/- and an agricultural income of Rs. 1,24,000/-. Further, she filed a revised return on 05.03.2010 admitting a total income of Rs. 7,25,460/- and an agricultural income of Rs. 1,24,000/-. The AO completed the assessment u/s. 143(3) on 13.12.2010 determining the

total income at Rs. 19,52,590/-. The assessee did not file any appeal against this assessment order.

3. Based on the appellate order for the AY 2009-10, the Administrative Commissioner of Income Tax (CIT) found that the assessee had adopted different standard in respect of quantity of stock and its value. The assessee declared the value of closing stock of gold and silver at Rs. 78,76,210/- as on 31.03.2008 on the quantum of gold at 13102 gms and silver at 57585.020 gms as on 31.03.2008. She has also accepted that the average rate of gold & silver was Rs. 1012/- per gram & Rs. 21.75 per gm, respectively, as on 31.03.2008 in the original assessment proceedings for the AY 2008-09. If the above value is adopted for the quantity declared, the closing stock value as on 31.03.2008 would be Rs. 1,45,11,698/- while the assessee had adopted the value at Rs. 78,76,210/- only and thereby there is an under valuation of closing stock of Rs. 66,35,488/-. As the AO has not correctly arrived at the closing stock and brought to tax the amount of under valuation of closing stock, the order passed by the AO for the AY 2008-09 was considered as erroneous and prejudicial to the interests of revenue. Further, during the year, the CIT found that there are new loan creditors to the extent of Rs. 51,95,100/-, the genuineness of which was not gone through by the AO at the time of completion of the assessment for the ay 2008-09. The CIT has also found that the assessee had deposited Rs. 17,68,000/- as share application

money with M/s. Madura Mercerisers India P. Ltd in the FY 2007-08 and AO has not gone into the genuineness and sources of the investment while passing the original assessment order for the AY 2008-09. As the order passed by the AO for the AY 2008-09 was found to be erroneous and prejudicial to the interests of revenue, the CIT invoked the provisions of section 263 and after considering the submissions and objections of the assessee, passed an order u/s. 263 on 20.03.2013, directing the AO to re-do the assessment on the following three issues after affording reasonable opportunity to the assessee. Subsequently, the AO passed an order u/s. 143(3) r.w.s. 263 on 25.03.2012 determining the total income at Rs. 1,51,20,320/- after making the following additions

i)	Under valuation of closing stock	Rs. 59,72,628
ii)	Unexplained credits treated as income	Rs.51,95,100
iii)	Unexplained investment in M/s Madhura Mercerisers Private Ltd	Rs.20,00,000

Aggrieved by the above additions, the assessee filed an appeal before the CIT(A).

4. On the addition made towards under valuation of closing stock at Rs. 59,72,628/-, the CIT(A) dismissed the assessee's appeal. Aggrieved against the dismissal, the assessee filed an appeal. In respect of the unexplained credits treated as income at Rs. 51,95,100/-, the CIT(A) but for confirming Rs.

4,50,000/- deleted all other additions. With regard to the issue of unexplained investment in M/s. MadhuraMercerisers Private Ltd., the CIT(A) held that the assessee had proved the sources for investment made and hence deleted this addition. Aggrieved against these deletions, the Revenue filed the cross appeal

5. Let us examine the assessee's appeal first. Her grounds of appeal are as under :

*"2. The CIT(A) erred in confirming the addition of Rs.59,72,628 made on account of under valuation of closing stock in respect of gold jewellery.*

*3. The CIT(A) failed to appreciate that there was no discrepancy in the assessee's valuation of closing stock in as much as the assessee had rightly reduced the gross profit from the sale value and arrived at the closing stock value and hence ought to have deleted the addition.*

*4. The CIT(A) further failed to appreciate that the sale value of Rs.1012 per gram cannot be the cost of goods for valuation of closing stock and ought to have taken into account the gross profit for arriving at the closing stock figure.*

*5. The CIT(A) further failed to appreciate that the officer had applied a non-existent method of average cost, which led to an illusory figure of closing stock and hence the addition is liable to be deleted.*

*6. The CIT(A) further failed to appreciate that the recognised method of weighted average cost of valuing the closing stock results in value of Rs.647.67 per gm and tallies well with the computation done by the officer during survey u/s.133A resulting in value of Rs.659.67 per gm and hence there was no warrant to substitute and make an addition to the closing stock value.*

*7. The CIT(A) further failed to appreciate that the sale value of Rs.1012 per gm. being undisputed, the reduction of 30% gross profit would result in the cost of the gold jewellery being Rs.708 per gm which tallies with the returned*

*closing stock value and hence the addition is unwarranted and unjustified on the facts of the case.*

*8. The CIT(A) erred in confirming the estimate of closing stock at 12447 gms of gold jewellery after adjusting 5% [i.e., 665 gms] towards weight of stones as against the assessee's working of 11012 gms after reducing 2089 gms towards stone weight embedded in the gold jewellery.*

*9. The CIT(A) failed to appreciate that the assessee had worked out the actual weight of stones in arriving at the quantum of closing stock and in any event, the estimate by officer was unreasonable and was not justified in confirming the same.*

*10. The CIT(A) erred in confirming the closing stock value of silver articles at Rs.21.75 per gm estimated by officer as against Rs.8.1 0 per gm adopted by the assessee.*

*11. The CIT(A), in any view of the matter, ought to have seen that the assessee had correctly valued the closing stock and the addition made on an erroneous basis cannot be sustained and needs to be deleted.*

*12. The CIT(A) erred in confirming an addition of Rs.4,50,000 as unexplained credit under sec.68 of the Act.*

*13. The CIT(A) failed to appreciate that the assessee had filed the confirmation letter from the creditor, D. Shankar(HUF) and thus discharged the onus cast on her and the addition of the credit entry as unproved without causing any further enquiry is unjustified and untenable in law.*

*14. The CIT(A) further failed to appreciate that proving the source of the source is not within the means of assessee and having proved the genuineness of the credit, the addition as unexplained is not tenable in law."*

6. The quantum of goldjewellery found at the time of survey was at 13,102 grams (as reconciled at the time of original assessment and as declared by the assessee in the return). Before the AO, the assessee justified her valuation at Rs. 78,76,210/- as on 31.03.2008, by reducing 2089.215 gms

towards stones from the quantum of gold jewellery found at the time of survey & as declared by the assessee at 13,102 grams as under:

Particulars	Weight	Cost per gm.	Total cost
Value of net weight of gold jewellery (13,102 grams (-) 2089.215 gms)	11012.185	665.00	73,23,103.03
Value of stone element included above	2089.815	41.40	86,668.50
Value for net weight for silver items	57585.000	8.10	4,66,438.47
Total			78,76,210.00

6.1 The AO after considering her submissions, rejected her method of valuation of closing stock and arrived the value of closing stock at Rs. 1,38,48,838/- as under:

Quantity of gold in closing stock	13102 gms
Less: allowance for stones @ 5%	665 gms
Balance gold	12447 gms.

While valuing the closing stock, the AO rejected the assessee's claim that the stones constituted 15.95 % of the gross weight of gold, however, allowed 5% towards stones imbedded in the gold jewellery for the reason that the stones weigh in mgs only and 5% would be reasonable. Since, there is no difference in the silver weight of 57585 gms, the AO arrived at the value of the closing stock as under:

12447 gms. Of gold jewellery at Rs. 1012	Rs. 1,25,96,364
57585 gms. Of silver articles at Rs. 21.75	<u>Rs. 12,52,474</u>
	Rs. 1,38,48,838
Less: value admitted by the assessee	<u>Rs. 78,76,210</u>
Difference to be added towards under valuation	Rs. 59,72,628

Thus, the AO brought to tax Rs. 59,72,628/- towards under valuation of closing stock.

6.2 Before the CIT(A), the assessee submitted, inter alia, that she had arrived at the weighted average value of jewellery at Rs. 647.67 per gm for ay 2009-10 and by adopting the weighted average method, she had worked out the value of jewellery of 10,407 gms at Rs. 62,12,920.56 which works out at the average value of Rs. 596.99. In respect of silver articles, she had adopted the rate of Rs. 7/- per gm while the rate adopted by the AO was at Rs. 21.75 per gm. The AR submitted that by any means of valuation, the value disclosed by the assessee is correct and may be accepted.

6.3 The CIT(A), inter alia, held that the AO has taken the total quantum of gold jewellery at 13102 gms, as declared by the assessee herself as on 31.03.2008. After allowing 5% towards stones, the AO arrived at the weight of gold jewellery lying in the closing stock at 12,447 gms. The AO valued it at Rs.1012/- per gm, by taking the average rate of gold as on 1/4/2007 & 31/3/2008 which was Rs.885 & Rs.1140

per gm , respectively, and has not added any value for stones . The CIT (A) also held that allowance made by the AO @ 5% towards stones is quite reasonable especially when the AO has not added any value towards stones. The AR argued that Rs.1012/- per gm, adopted by the AO is the selling rate for the assessee and not cost to the assessee. The assessee in her return adopted the cost at Rs.665 per gm. The AR argued that in the original assessment order , the AO adopted Rs. 1012 per gm as the selling rate to arrive the addition of GP. So, by applying GP of 30%, as determined by the department itself for making GP addition, to the selling rate of Rs.1012 per gm, the cost comes to Rs.708.40 per gm only and hence, at the worst, this rate of Rs.708.40 per gm can be adopted for valuing the closing stock instead of Rs.665 per gm as adopted by the assessee, supra. The CIT(A) did not accept this argument for the reason that no one could get gold at the rate of Rs.665 or 708 per gm during that period; the rate of gold is common for everyone and the profit for the assessee is embedded in the wastage and making charges charged from the customers etc . Hence, the CIT (A) held that what has been adopted by the AO in the original assessment order (i.e. Rs. 1012 per gm) is cost rate only and not the ultimate selling price of the jewellery. Further, the CIT (A) held that the AR has not furnished any evidence to show that the cost for the assessee is Rs.665 per gm or Rs.708 per gm for gold; he was unable to give even one purchase invoice to prove such rate for this cost. Hence, the CIT(A) held that the method of valuation adopted by the AO is scientific and it cannot be disturbed without any valid reasons. Though the addition proposed in the order u/s 263 by the CIT was Rs. 66,35,488/-, whereas the AO has made an addition of Rs.59,72,628/- only. Therefore, the CIT(A)

confirmed the addition made towards under-valuation of closing stock in respect of gold jewellery .

6.4 Regarding silver articles, the quantity as per books as on 31.03.2008 is 57585 gms. The rate adopted by the assessee for the closing stock valuation is Rs.8.10 per gm. Going by the same average rate method, the rate of Silver as on 01.04.2007 is Rs.19.88 per gm and as on 31.03.2008 is Rs.23.6 per gm. and the average rate worked out to Rs.21.75 per gm. This was the rate adopted by the AO in the original assessment order for assessing the excess silver stock of 20,974.6868 gms on account of survey and that was accepted by the assessee also. Hence, now the assessee cannot dispute the rate to be adopted on the account stock of 57585 gms. The AO correctly adopted the average rate of Rs.21.75 per gm on the accounted closing stock of 57585 gms. Hence, the CIT (A) held that the valuation made for silver the AO also cannot be disturbed without any valid reasons. Accordingly, the CIT (A) upheld the valuation made by the AO for silver .

6.5 The AR submitted that the assessee adopted weighted cost method, furnished the following table and formula and requested that the same may be adopted .

Extracts of Konark Spiral book no-2 (Sl.No. 80 of Annexure-i) Based on which assessment order was drafted

	Quantity as per spiral	Adjustments in AO order	Quantity (in Grams)		Basis
Opening stock			10407.000	6212920.560	Statements filed as on 31.03.2007 is for value. Quantity is given in Page 11 of order u/s. 143(3) passed by AO on 13.12.2010
Total purchases	16937.771	(5098.577)	11839.194	11012613.000	Value as per extracts of spiral book. Quantity is given in page 11 of order u/s. 143(3) passed by AO on 13.12.2010
Then Total			22246.194	17225533.560	
Then weighted average rate is				774.314	

The formula for computing weighted Average cost is :

$$\frac{\text{Total purchase value} + \text{Opening stock value}}{\text{Total Purchase quantity} + \text{opening stock quantity}} = \text{Weighted Average Cost}$$

Total Purchase quantity + opening stock quantity

i.e., in assessee's case:

$$\frac{\text{Rs. } 11012613 + \text{Rs. } 6212920.56}{11839.193 \text{ gms} + 10407 \text{ gms}} = \text{Rs. } 774.314/\text{gm}$$

$$11839.193 \text{ gms} + 10407 \text{ gms} = \text{Rs. } 774.314/\text{gm}$$

Per contra, the DR supported the order of the CIT(A) and the order of the AO .

7. We heard the rival submissions. Though, the assessee could not substantiate that she adopted similar valuation method for the closing stock as on 31.3.2007, it is seen from the above table that the assessee has incurred Rs.1,10,12,623 for purchasing 11839.193 gms of gold during the current year. On the other hand, she has shown the value for 10,407 gms at Rs62,12,920/- as on 31.3.2007, showing a marked jump in the rates in the latter period. There is no dispute on the gross quantum of gold jewellery. We are of the view that in the absence of evidence, the AO is justified in adopting 5% reduction towards stones. We also find that the formula given by the assessee for computing weighted average cost is one of the well recognized methods for valuation and in the facts and circumstances of this case, ie where the assessee did not maintain proper books and all along returned her income on estimate basis and when she makes an attempt to adopt a rational system, a little bit of leverage is required to be shown to her and hence in spite of the fact that she could not prove that she adopted the similar valuation method for the closing stock as on 31.3.2007, considering the fact that the rate of cost of gold increased remarkably in the later period, as discussed above, this valuation method (ie weighted average cost method) is approved for adopting the value for closing stock . Hence, the AO is directed to adopt the value of gold rate at the weighted average cost at Rs.774.314 per gram on the gold jewellery lying in the closing stock at 12447 gms and assess the difference between this value and value admitted by the assessee at Rs. 78,76,210/- under the head under

valuation of stock . With regard to valuation on silver articles, since the assessee has accepted the average rate adopted by the AO at Rs 21.75per gm for assessing the excess silver stock of 20,974.6868 gmsin the original assessment order for ay 2008-09, we are of the view that the assessee cannot dispute adoption of such rate on theclosing stock of 57585 gms. Hence, the valuation made by the AO on silver articles cannot be disturbed and the valuation made by the AO on silver is upheld. In the result, the assessee's appeal is partly allowed.

8. Now, let us examine the Revenue's cross appeal. Its grounds of appeal are as under :

*2. The Commissioner of Income Tax (Appeals) erred by failing to consider that the assessee could not establish the genuineness of the loan creditors and source for investment of share application money with proper supporting evidences before the Assessing Officer during the course of assessment proceedings.*

*3. The Commissioner of Income Tax (Appeals) erred by failing to give opportunity to the Assessing Officer under Rule 46A to examine the additional evidences produced before the CIT(A) in support of loan creditors and in support of investment of share application money with M/s. MadhuraMercerisers P. Limited."*

8.1 The AO found that the assessee had obtained Rs. 51,95,100/-loan from the following persons:-

Sri K.A.V Dhandapani	Rs. 1,10,000
Sri Amanarth	Rs.65,000
Sri D. Rajesh (Son)	Rs. 2,75,000
Sri D. Rajesh (HUF)	Rs. 1,18,600

Sri D. Ravichandran (Son)	Rs.2,75,000
Sri R. Kavitha (D-in-law)	Rs. 2,00,000
Sri K.A.V. Dhandapani (Indi)	<u>Rs. 41,51,500</u>
	Rs. 51,95,100

The AO also found that all these loan creditors are residing at the same address at No. 16A, Salem Main Road, Kallakurichi and they have not been produced before him for examination. He observed that the confirmation of accounts obtained by the assessee is on a white paper without date. Hence, he took it that the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors were not proved. Therefore, he held that these creditors are bogus and assessed the credits as the income of the assessee. Subsequently, the AO passed a rectification order u/s 154 on 10.07.2014, in which he reduced Rs.22,59,999/-, representing the opening balance in the loan creditors' accounts which cannot be considered as the income of the current year, and sustained the addition under this head at Rs. 29,35,101/- only comprising the following credits:-

Sri Lakshmi Agencies	Rs. 16,00,000
Sri D. Rajesn (Son)	Rs. 4,00,000
Sri K.A.V. Dhandapani (HUF)	Rs. 4,75,000
Sri. D. Shankar (HUF)	Rs. 4,50,000
Rental advance	Rs. 10,000
God's account	<u>Rs. 101</u>
	<u>Rs. 29,35,101</u>

8.2 On the issue of unaccounted funds invested in share application money, the AO found that on 30/10/2007, the assessee made an investment of Rs.20,00,000/- with M/s Madura Mercers India Private Ltd, received back Rs.4,00,000/- on 18/2/2008 and the balance sum lying is Rs. 17,68,000/- with the opening balance of Rs.1,68,000 as on 1/4/2007. The AO found that the company had not allotted the shares within the stipulated time, one of the sons of the assessee is having substantial interest in the company and it is just a family company only. The AO opined there is a clear diversion of assessee's unaccounted funds invested as shares in the company. Observing so, he has brought to tax Rs.20,00,000 as the undisclosed income of the assessee.

8.3 In this regard, the relevant observation of the CIT (A) is extracted as under :

*"7.2.1 As regards the loan creditors, the assessee has filed confirmation letters, bank statements evidencing the loans taken from Sri Lakshmi Agencies, Sri D. Rajesh, KAV. Dhandapani (HUF). They are all income-tax assesseees and they were also old loan creditors whose loans were accepted in the past. Loans from them have been received through a/c payee cheques/RTGS. Since the assessee had discharged her burden of proof, the addition of Rs. 24,75,000/- standing to the credit of the above three persons are deleted. The AO has not examined the creditors by summoning them but only blamed the assessee for not producing the creditors for examination by him.*

*7.2.2 In respect of Smt. D. Shankar (HUF), the assessee has not provided any bank statement evidencing the transfer. The loan was by cash which is violative of provisions of section 269SS. The AR was not able to show the availability of cash in the hands of the creditor on the date of loan to the assessee. Except mere confirmation letter, no evidence was produced. Further this is a fresh loan*

*taken during the year. As the genuineness of this loan is not proved and as the assessee has not discharged her burden cast u/s 68, the addition to the extent of Rs.4,50,000 is confirmed.*

*7.2.3 The rental advance of Rs. 10,000 is accepted as the same was received by cheque from the tenant and proved with document. Thus, against the addition of Rs.29,35,101/-, addition to the extent of Rs. 4,50,000 is confirmed and the balance addition of Rs. 24,85,101/- is deleted.*

*7.3 Share application money:*

*With regard to investment of share application money with M/s. MadhuraMercerisers P Ltd., the AR explained that the same was made out of the loan taken from M/s. Sri Lakshmi Agencies. Confirmation letter supported by bank statements were furnished. Since the assessee had proved the source for the investment made, the addition of Rs. 20,00,000 made is deleted. "*

9. The A R submitted that the assessee filed duly notarized affidavit, copy of PAN card, confirmation letter, copy of income-tax acknowledge, copy of full set of financial statements of each and every creditor and bank statements of the assessee explaining each and every transaction before the AO and thereafter the assessee voluntarily produced the creditors before the AO at the time of assessment and the AO ignored them. He has also invited our attention to various grounds taken before the CIT (A) on which the CIT(A) has given his due consideration but for the issue of Rs. 4,50,000/- and further submitted that in order to prove that the assessee's contentions, by seeking our attention to the copy of her letter filed before the AO on 25.4.2014, the assessee sought copies of order sheets and the AO failed to produce them. In the facts and circumstances, the AR pleaded that the

additions sustained by the CIT(A) may be deleted. Per contra, the DR relied on the order of the A O.

10. We heard the rival contentions , gone through relevant orders and material .The CIT in the review proceedings u/s 263has observed that the assessee has just filed the confirmation from loan creditors. The AO is to make necessary further enquiry in this regard before coming to the conclusion. Similarly, the CIT has required the AO to look into the genuineness of this investment while re-doing the assessment. As contended by the assessee, supra, she has discharged the Onus cast on her, by placing relevant materials and by producing the creditors in person before the AO , which has been rightly upheld by the CIT (A).The CIT (A) has held that the creditors are all income-tax assesseees and they were also old loan creditors whose loans were accepted in the past. Loans from them have been received through a/c payee cheques/RTGS. Since the assessee had discharged her burden of proof, the addition of Rs. 24,75,000/- standing to the credit of the above three persons are deleted. On such facts, we uphold the decision of the CIT(A) and dismiss the corresponding grounds of Revenue's appeal. In respect of Smt. D. Shankar (HUF), the CIT (A) found that this fresh loan was by cash , which is violative of provisions of section 269SS and the assessee could not show the availability of cash in the hands of the creditor on the date of loan to the assessee. Since the assessee has merely filed a confirmation letter and produced no other evidence , she has not discharged her burden cast u/s 68. When the genuineness

of this loan is not proved, the addition made at Rs.4,50,000 , which was sustained by the CIT(A) is confirmed. With regard to the investment with M/s. Madhura Mercers P Ltd., since the confirmation letter supported by bank statements were furnished before the CIT (A) and the A O was not given an opportunity, this issue is restored to the A O for fresh examination. The A O , after affording due opportunity to the assessee , shall decide this issue by a speaking order.

11. In the result, the assessee's appeal as well as the Revenue's cross appeal are partly allowed .

**In ITA No. 1828/2016 & 1829/2016**

12. Smt. D. Santha, the assessee, an individual has been carrying on business in jewellery apart from pawn broking. For assessment year 2008-09, she did not file her return within the due date ie., 31.07.2008. On 16.03.2009, a survey was carried out in the business premises of the assessee. On 30.03.2009, i.e., after the survey , she filed her return for assessment year 2008-09 admitting a total income of Rs. 1,92,450/- and an agricultural income of Rs. 1,24,000/-. Further, she filed a revised return on 05.03.2010

admitting a total income of Rs. 7,25,460/- and an agricultural income of Rs. 1,24,000/-. The A O completed the assessment u/s. 143(3) on 13.12.2010 determining the total income at Rs. 19,52,590/-. While doing so, hemade the following additions to the returned income:

(a) GP addition on the deficit stock of gold	Rs.2,73,630
(b) Unaccounted stock of silver	Rs.4,56,199
(c) Difference in the net profit	Rs.4,97,303

Along with the assessment order, the AO initiated penalty proceedings u/s. 271(1)(c). The assessee did not file any appeal against the assessment order for ay 2008-09.

12.1 For ay 2009-10, the assessee filed her return on 05.3.2010 admitting a total income of Rs. 18,92,960/- and an agricultural income of Rs. 1,53,000/-. The A O completed the assessment u/s. 143(3) on 30.12.2010 determining the total income at Rs. 94,37,919/-. While doing so, he made the following additions to the returned income:

(a) Unaccounted excess stock of gold	Rs.70,93,081
(b) GP on deficit stock of silver	Rs. 5,178
(c) Outstanding balance of pawn broking business	Rs.4,46,700

Along with the assessment order, the AO initiated penalty proceedings u/s. 271(1)(c). Aggrieved against the assessment order for ay 2009-10, the assessee filed an appeal before the CIT(A) and the CIT(A) in the order in ITA No 535/2001-12 dt 20.11.2012 deleted the additions towards unaccounted excess stock of gold of Rs.70,93,081and confirmed the remaining two additions. Thus, these orders of ays 2008-09 & 2009-10 have become final.

Thereafter, considering the above additions on account of furnishing of inaccurate particulars, the AO levied penalty u /s. 271(1)(c) at Rs.4,35,038 &Rs 1,53,593/-, respectively, forays 2008-09 & 2009-10 . Aggrieved by such levy of penalty, the assessee filed appeals before the CIT(A) . The CIT(A) dismissed the appeals. Aggrieved against those orders, the assessee filed these appeals with grounds , inter alia, that the AO has not recorded the requisite satisfaction for the purpose of initiating the penalty proceedings, the CIT(A) failed to appreciate that the additions made were on estimate basis which could not be construed as concealment and hence the levy of penalty is unjustified , the CIT(A) failed to appreciate that the statement recorded during the survey does not have any legal sanctity and can not be a basis for levy of penalty and the CIT (A) failed to appreciate that the levy of penalty is not automatic nor compulsory and the onus is on the Revenue to establish concealment of income etc.

13. We heard the rival submissions . Some of these grounds were taken before the CIT (A) also. Let us examine the relevant observation of the CIT(A) as under :

*"7.2 Before dwelling into the contentions of the assessee, the facts and circumstances leading to the levy of penalty are to be analysed. Every assessee is required to file his/her return of income voluntarily u/s. 139(1) on or before the due dates of 31st July or 30th September. The July deadline is for the assessee's whose accounts are riot required to be audited u/s. 44AB and*

September deadline is for the assessee's whose accounts are required to be audited u/s. 44AB. U/s.44AB the accounts are required to be audited if the gross receipts exceed a stipulated amount. Section 44AA stipulates maintenance of accounts. For the assessment year under appeal, the assessee did not file any return of income within the due date u/s.139(1). There was a survey u/s.133A of the Act on 16/03/2009. On 30/03/2009, the assessee filed her return of income admitting an income of RS. 1,17,000 under business, on estimated basis, u/s.44AF. Because of the survey, the assessment was taken up for compulsory scrutiny and a notice U/s.143(2) was issued on 08/07/2009. Thereafter the assessee filed a revised return, revising her business income to Rs.5,88,000 from Rs.1,17,000 offered originally u/s.44AF. The calculation given by the assessee for quantification of the revised income at Rs.5,88,000 is as scanned below:

Calculation of income from lakshmiJewellery

Total of Credit side as per Spiral Note		15942772
Percentage of above assumed as related to business		65%
Income estimated		5%
Then Income from Business	[A]	544047
Net Income estimated on monthly basis		49000
Number of Months		12
Then Income from business for the year	[B]	588000
Then Income estimated from business-Being Higher of the above [A] & [B]		588000

The above would show that the assessee had taken 65% of the total credits in spiral note which was found and impounded during the course of survey, of Rs.1,59,42,772 as relating to business. This comes to Rs. 1,03,62,802. This is taken as gross receipts and adopting the rate at 5%, without any basis revised the income at Rs. 5,88,000. At this juncture, the statement recorded at the time of survey assumes significance.

(Thereafter, the CIT(A) has extracted the questions and answers ,nos 3 to 8 , given in the sworn statement recorded in Tamil at the time of survey )

*In the sworn statement which was never repudiated or retracted subsequently, the assessee admitted the running of jewellery business without disclosing to the department; assessee maintained two sets of documents; assessee herself agreed for the unaccounted purchases in the statement based on the documents found during survey. Therefore, it was never the intention of the assessee to pay any Income tax. It is therefore clear that but for the survey, the assessee never filed any return and paid any tax. Survey and search are two different ways of unearthing! black money and they are mutually exclusive. The assessee herself admitted that she had not maintained proper books of accounts but the survey shows that the necessary details for computing the income are available. It is seen that the gross receipts taken by the assessee for estimating the income is more than Rs.1 crore. Therefore, the assessee to avoid paying Income tax, deliberately not maintained proper accounts even though under the Act she is liable for maintenance of books of accounts and required to get the accounts audited as the gross receipts exceeded RS.1 crore which is more. than the limit stipulated u/s.44AB of the Act. It is not the assessee's contention that she did not have any details about her business and hence the income cannot be determined. Therefore, I hold that the assessee had deliberately not maintained proper books of accounts only to escape Income tax provisions and hence, after the survey the income for the purpose of Income tax has to be estimated both by the assessee and by the Income tax Department and therefore, simply because the income has been estimated, it does not take away the assessee's intention of concealing the business of jewellery and the income earned therefrom, from Income tax, in the peculiar facts of the case and hence the assessee's argument that penalty' is not exigible as the income or addition to income was on estimated basis is not acceptable. This is discussed in further detail when dealing with the objection that no penalty is leviable on estimated additions.*

*7.3 The first contention of the assessee is that the addition was made on estimate basis and so penalty is not leviable. This contention of the, assessee is countered as follows:*

*The assessee's callous response to the provisions of the Income tax Act 1961 has already been discussed in detail. The assessee's contention has no force, as explained with reference to various case laws, as follows, on the*

*subject. Only sample cases are given. There is catena of decisions in this regard. "*

13.1 Thereafter, the CIT (A) analysed the decisions of the Madras High Court in A.K Bashu. Sahib v. CIT [1977] 108 ITR 736 (Mad), Delhi High Court decisions in Qammar-ud-din & Sons v. CIT [1981] 129 ITR 703/[1980] 4 Taxman 154 (Delhi), CIT v. Kalindi Rail Nirman, Engg. Ltd [2014] 51 taxmann.com 523 (Delhi) and ShyamBehari v. Assistant Commissioner of income tax (Investigation Circle), Hissar (Haryana) [2011] 43 SOT 129 (Delhi) and held that even if the additions are on estimated basis, penalty is still leviable in the facts and circumstances like that of the assessee. On the contention that the penalty notice is defective as the AO was unsure of whether the assessee's case falls under 'concealment of income' or furnishing of inaccurate accurate particulars'. From the facts the case narrated in his order in detail, the CIT (A) held that this case comes under 'concealment of income' by furnishing of inaccurate particulars as held by the Allahabad High Court in Standard Hind Co. v. CIT, Bareilly [2012] 22 taxmann.com 62 (All.) and the ITAT CHANDIGARH BENCH 'B' (SMC) in Hotel Shivalik v. Income-tax Officer, Ward I, Shimla [2006] 10 SOT 671 (CHD.) (SMC) and held that therefore there is no defect in the notice issued as the concealment was detected by finding out the inaccuracy in the particulars of income furnished and held that the initiation of penalty proceedings are proper.

13.2 On the contention that comparison of search cases vis a vis survey cases for non levy of penalty" the CIT(A) held that for the sake of argument if the AR's

contention is accepted then the provisions of sec.271(1)(c) could have easily been 'scrapped making it to applicable legally only in selected search cases. It is not the intention of the statute to give green signal to tax evaders. May be in some of the cases, the courts would have given some benefit of doubt in estimation cases in deleting the penalty. But that does not makethumb rule to delete penalty in all the cases of estimation of income. On the contention that the additions made in the assessment were not contested only to bring to closure of the case and the entire tax paid and so penalty need not be levied in this case. Simply because the assessee 'has accepted the additions made would not absolve her from the levy of penalty. The fact that she has accepted and not contested the addition would only be a mitigating circumstance for determining the quantum of levy of penalty but would not absolve her completely from the levy of penalty. The case would squarely fall within the provisions of section 271(1)(c) read with Explanation 1 to the said section. The Supreme Court in the case of MAK Data Pvt.Ltd. v. CIT [2013U 368 ITR 593 (SC) has held that merely because the assessee claims the admission to be voluntary by using such phrases like "buying peace", "avoid' litigation" or "amicablesettlement", the assessee's conduct in not offering the income in the return cannot be explained away and penalty is exigible. Since the AO has levied only minimum penalty at 100% instead of maximum penalty of 300%, the acceptance of additions by the assessee has been duly considered by the AO in determining the quantum of penalty at minimum level. On the contention that the levy of penaltyis based on incorrect additions made in assessment is consequently wrong. In this regard, the CIT(A) held that since the assessee has not filed any quantum appeal, the assessment order has become final. As held in the cases of

Bharat Rice Mill Vs CIT (All) 278 ITR 599, S.S. RatanchandBholanathVs CIT (MP) 210 ITR 682, and CIT Vs Ram NiwasAgarwal (All) 125 ITR 432, if the assessment order became final, it was binding on both parties and neither party could seek to reopen it in a penalty proceedings. Hence, this contention of the AR was also held as not tenable.

14. We have considered the above observation of the CIT(A) . The facts remain that for assessment year 2008-09, the assessee did not file her return within the due date ie., 31.07.2008. On 16.03.2009, a survey was carried out in the business premises of the assessee. On 30.03.2009, i.e., after the survey , she filed her return for assessment year 2008-09 admitting a total income of Rs. 1,92,450/- and an agricultural income of Rs. 1,24,000/-. Further, she filed a revised return on 05.03.2010 admitting a total income of Rs. 7,25,460/- and an agricultural income of Rs. 1,24,000/-. The A O completed the assessment u/s. 143(3) on 13.12.2010 determining the total income at Rs. 19,52,590/-. For ay 2009-10, the assessee filed her return on 05.3.2010 only admitting a total income of Rs. 18,92,960/- and an agricultural income of Rs. 1,53,000/-. The A O completed the assessment u/s. 143(3) on 30.12.2010 determining the total income at Rs. 94,37,919/-. Out of which, the following additions to the returned income is sustained by the CIT (A):

(a) GP on deficit stock of silver	Rs. 5,178
(b) Outstanding balance of pawn broking business	Rs.4,46,700

These orders attained finality. We have gone through the relevant assessment orders, copy of the notices issued by the AO u/s. 274 r.w.s. 271 dated 13.12.2010

and 30.12.2011 and the copies of the assessee's reply filed before the AO on 05.05.2011 and 28.02.2013. From them, it is clear that the AO has initiated the penalty proceedings properly and hence, the decision of the CIT (A) on this aspect does not require any interference.

14.1 During survey, two small (Konark) spiral wire note books (Item No. 80 with Sl. No 12 & 14) and loose sheets (item No. 81 with Sl. No. 67 to 93) were found and impounded which reflected unaccounted purchase and sales of Gold Jewellery and Silver articles relating to the assessment years 2008-09 and 2009-10. In the sworn statement recorded, the assessee's husband Sri LAV DhandapaniChettiar and the assessee's son Sri. D. Rajesh have clearly conceded that the above two spiral wire note books (Konark) were real ones reflecting the assessee's unaccounted purchase and sale transactions. Further, they have also admitted that the books of accounts found (i.e., day book and ledger) in the business premises and maintained by the assessee were bogus one. Thus, the assessee admitted that she is running the jewellery business without disclosing such result to the department; she maintained two set of documents; one is a bogus one and the other is a concealed one; she herself agreed for the unaccounted purchases in the sworn statement based on the documents found during survey. Therefore, it was never the intention of the assessee to pay taxes on the transactions unearthed by the survey operations. It is clear that but for survey, the assessee would never have filed returns disclosing these results and paid taxes. The assessment is done based upon the impounded materials unearthed from the survey operations. The gross receipts found in the

survey materials are above one crore. The assessee has also estimated her gross receipt above one crore, which is giving a clear impression that to avoid paying the taxes she deliberately not maintained proper accounts, even though she is liable to maintain proper books and required them to get audited u/s. 44AB. The assessee's contention that she did not have details about her business is a false one is evidenced from the contention that she has taken almost vital details from them during the assessment, revision and reassessment proceedings and the assessing officer also assessed the income for these assessment years based upon such materials. The Kerala High Court in the case of CIT vs T.J. Mathai 269 ITR 492 held that an assessment by estimate is as much legal as any other assessment. Once an assessment has been done, whether it is a best judgement assessment or otherwise, the figure assessed must be held to be the income of the assessee. Such an assessment would not affect the levy of penalty. Thus, the additions made in the impugned assessment orders are based on impounded materials which are relevant and such additions have been confirmed in appellate proceedings or accepted by the assessee, as the case may be. Thus, the additions have attained finality. On such facts and circumstances, it is clear that the assessee has concealed the income and its particulars which was unearthed by survey operations only and the assessee has also furnished inaccurate particulars of her income even after the survey which was made good by the A O by using those materials along with other relevant materials. In view of that the penalty levied u/s. 271(1)(c) for both the assessment years are upheld and all other grounds of the assessee are treated as dismissed.

15. In the result, the assessee's appeal in ITA No. 1593/Mds/2016 is partly allowed. Her appeals in ITA No. 1828/2016 and 1829/2016 related to assessment years 2008-09 and 2009-10 are dismissed and the revenue's appeal in ITA No. 1803/Mds/2016 is partly allowed.

Order pronounced on Wednesday, the 27<sup>th</sup> day of September, 2017 at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(एसजयरामन)

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 27<sup>th</sup> September, 2017

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF