

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 62/Jab/2016**

**निर्धारण वर्ष/ Assessment Year : 2010-11**

Vijay Kumar Jain, Prop. M/s. Kiran Saree Centre, Gorakhpur, Jabalpur PAN : ADDPJ 1025 E	Vs	Income Tax Officer, Ward 1(2), Jabalpur
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Sumit Nema, Adv.
Revenue by :	Shri V.B. Sargar, DR

सुनवाई की तारीख/Date of Hearing : 15/03/2018

घोषणा की तारीख /Date of Pronouncement: 16/03/2018

**आदेश/O R D E R**

**PER KUL BHARAT, JUDICIAL MEMBER:-**

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals)-I, Jabalpur dated 2<sup>nd</sup> December 2015 pertaining to Assessment Year 2010-11.

2. Briefly stated facts, as culled out from the record, are that a survey under Section 133A of the Act was carried out at the business premises of the assessee on 05.11.2009. Certain discrepancies were noticed. Assessee offered excess cash of Rs.3,24,753/- and excess stock of Rs.16,77,602/- as undisclosed income. In total assessee made a disclosure of Rs.20 lakhs towards excess cash and excess stock. Thereafter, notice under Section 148 of the Act was issued as the assessee had not filed the return of income. In compliance thereto, return was filed on 09.11.2011. During the course of assessment proceedings, learned Assessing Officer examined the trading accounts prepared by the assessee for pre-survey and post-survey period, purchase and sales made thereafter and also observed that assessee sold the entire stock and furniture of the shop at Rs.16 lakhs. Financial statements

prepared by the assessee were not sufficient to convince the Assessing Officer. So he recomputed the income after rejecting the books of accounts and assessed the income at Rs.50,31,980/-, after making various additions.

3. Aggrieved, the assessee preferred appeal before the Id. CIT(A) and partly succeeded. During the course of appellate proceedings, assessee conceded to not to challenge the addition of Rs.20 lakhs made by the Assessing Officer towards excess stock and excess cash found during the course of survey. Now, the assessee is in appeal before us by raising following grounds:-

*"1. That the Id. CIT(A) has erred both in law and on facts in confirming and sustained the additions of Rs.7,69,072/- as income from sale of stock and furniture.*

*2. That the Id. CIT(A) has erred in not considering the loss of Rs.7,61,922/- incurred by the assessee on sale of stock and furniture.*

*3. That Id. CIT(A) has erred in confirming the addition of Rs.20,00,000/- as undisclosed income being surrendered stock and cash. As per the working given by the appellant the total assessed income could only be Rs.14,89,731/-. There is no justification given by the Id. CIT(A) in not accepting this income which would have taken care of all the issues."*

4. From perusal of the above grounds, we find that the assessee is aggrieved with the addition on account of sale of stock and furniture as well as Id. CIT(A)'s not considering the loss of Rs.7,61,922/- incurred by the assessee. Assessee has also challenged the addition of Rs.20 lakhs in the place of the working given by the assessee calculating income of Rs.14,89,731/-. Learned Counsel for the assessee reiterated the submission made before the lower authorities and also added that the assessee accepted to offer Rs.20 lakhs for tax, but this amount includes the excess stock as well as excess cash. However, the assessee in due course of business sold the total stock and furniture of the shop and incurred a loss of Rs.7,61,922/- which both

the lower authorities failed to consider. On the other hand, Id. Departmental Representative vehemently argued supporting the orders of the authorities below.

5. We have heard the rival contentions and perused the record available before us. We find that during the course of survey operation under Section 133A of the Act assessee surrendered Rs.20 lakhs which, inter alia, included unexplained cash of Rs.3,24,753/- and remaining amount Rs.16,77,602/- for excess stock. We observe that assessee did not file the return of income in the due course as required under Section 139 of the Act. It was only after the issuance of notice u/s 148 of the Act that the assessee filed the return and paid self assessment tax of Rs.52,340/-. In the records placed before us, not a single document shows the computation of income and financial statements prepared by the assessee. However, other related details of the transactions of sale of stock and furniture as well as details of trading account of pre-survey and post-survey period are available – on the basis of which we are adjudicating the issues raised in this appeal.

6. It is not disputed at the end of the assessee, which is duly accepted by the Id. Counsel, that a sum of Rs.20 lakhs is to be offered for tax and the assessee is ready to pay the taxes thereon. The point of dispute is in relation to the estimated profits computed by the Assessing Officer on the sale of stock and furniture by taking the basis that a prudent businessman cannot sell the goods at a loss of Rs.7,61,922/- . Learned Assessing Officer rejected the books of accounts and applied the net profit rate disclosed by the assessee in the pre-survey period on the alleged sales. We find that the assessee while preparing the return, on one hand surrendered the income of Rs.20 lakhs by adding it to the closing stock and on the other hand claimed the gross loss on the sale of total stock in hand. It is pertinent to note that assessee has himself accepted in the submissions made before both the

lower authorities that it earned a gross profit of Rs.17,08,525/- during the pre-survey period of 01.04.2009 to 05.11.2009 and surprisingly it incurred a gross loss of Rs.25,49,679/- during the post-survey period of 06.11.2009 - 31.03.2010. Even though assessee has filed various documents in the paper-book to somehow explain the huge loss incurred in the post survey period, but they are not sufficient enough to convince the total claim made by the assessee. However, looking to the multiple additions made by the Assessing Officer and then some of the additions partly deleted by the Id. CIT(A) and also the acceptance of the assessee to pay tax on the surrendered income of Rs.20 lakhs, we, in order to bring an end the various issues raised in this appeal, direct the Assessing Officer to recomputed the income of the assessee by adding Rs.20 lakhs to the income disclosed by the assessee in its return of income filed in reply to the notice u/s 148 of the Act and all other additions stand deleted. In the result, ground nos. 1, 2 and 3 of assessee's appeal are partly allowed.

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

**Order pronounced in the Court on 16<sup>th</sup> March, 2018 at Jabalpur.**

Sd/-

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Jabalpur; Dated 16/03/ 2018

*Et*  
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,/ DR, ITAT, Jabalpur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)  
अध्यापक अपीलीय अधिकरण, अहमदाबाद/ ITAT, Jabalpur