

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.679/PUN/2003
Block Period :1991-92 to 2001-02

Smt. Jamila Gulmohamed Shaik &
Shri Nasir Gulmohamed Shaik,
L/H of Late Shri Gulmohamed Hasan Shaikh,
"Dream House", 12 Molacha Odha,
Satara.
PAN: ACQPS4536G

.... अपीलार्थी/Appellant

Vs.

The Asst. Commissioner of Income Tax,
Central Circle 1(1), Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni

Revenue by : Shri Rajeev Kumar

सुनवाई की तारीख / Date of Hearing : 06.08.2018	घोषणा की तारीख / Date of Pronouncement: 31.10.2018
--	--

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-1, Pune, dated 31.03.2003 relating to Block Period assessment years 1991-92 to 2001-02 against order passed under section 158BC(c) of the Income-tax Act, 1961 (in short 'the Act').

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

- 1) *Whether on the facts and circumstances of the case and in law the Ld CIT(A) was correct in confirming order of the A.O. who had assessed as undisclosed income as large as Rs.1,35,54,158/- extrapolating the quantity of Metal Scrap by multiplying the undisclosed sales by 320 days and applying the net profit rate of 5% without any foundational basis nor based on any comparable cases simply arbitrary and at the whims of the A.O. when in all earlier regular assessments completed prior to search u/s 143(3) of the Act were based on net profit rate of not exceeding 1% or so and the Ld. CIT(A) was obliged to follow the principles of consistency in Tax Laws?*
- 2) *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was ever justified in not accepting the fact that the audit report for Block assessment year 2001-02 was furnished before the specified date as per amendment effective from 01-07-1995 along with copies of final accounts and therefore, there was complete disclosure of income prior to the date of search in which case Ss. 158BA(3) and 158BB(d) became applicable?*
- 3) *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was ever justified in enhancing the undisclosed sales for relevant assessment years "by estimate" without an enhancement notice holding that no such separate enhancement notice be given which action of the CIT(A) stems from conjectures, surmises, in Block assessment that too breaching the fundamental principles of natural justice?*
- 4) *Whether on the facts and circumstances of the case and in law and in view of Ground No.3 above the appeal order of the CTT(A) is bad in law and without jurisdiction and therefore, required to be set aside?*
- 5) *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was correct in his decision in confirming the assessment order of the A.O. who had assessed undisclosed income of Rs.1,35,54,158/- represented by unaccounted assets when in fact and in law the appellant was successful in establishing the sources of such assets and could not be held as undisclosed income within the meaning of Ss. 158BB(d) and 132 of the Act and therefore the decision of the Hon'ble Allahabad High Court squarely applied. Whether the appeal order of the Ld. CIT(A) is perverse and without jurisdiction and therefore, must be set aside?*
- 6) *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) was justified in confirming the decision of the A.O that the cash found at the time of search action of Rs.9,93,707/- was undisclosed income of the appellant liable to be taxed as such?*
- 7) *Whether on the facts and circumstances of the case and in law the levy of interest u/s 158BFA(1) and surcharge under S. 113 is justified in law?*

3. The assessee has also filed additional grounds of appeal, which read as under:-

- 1) *On the facts and circumstances of the case and in law and in view of Proviso to S. 132 (1)(i) (B) to the effect that when prohibitory order served as "he shall not remove, part with or otherwise deal with" shall be deemed to*

be seizure of such valuable article or thing" is required to be, in the circumstances, taken as 'seizure' only because though 'deemed' they are to be treated as 'real seizure'.

- 2) *On the facts and circumstances of the case and in law the proviso to S. 132 (1)(i)(B) creates a 'legal fiction' saying deemed seizure" and it is settled law that incidents flowing from a legal fiction should also be deemed to be 'real'. In view of such legal fiction it was a 'real seizure' and then consequences as per S. 158-BE of the Act would follow. As against this the prohibitory orders under S.132 (3) are held to be 'not seizures' as far as S.158 BE is concerned. Since S.158BE would be applicable to 'real seizures' the Block assessment in the present case is vitiated in law.*
- 3) *On the facts and circumstances of the case and in law and in view of pronouncement of Judgment of Hon'ble Co-ordinate Special Bench Amritsar Bench in A.C.I.T. v. Sonu Verma (2008) 115 ITD 37 (Asr) (SB) when documents and records belonging to assessee taken into custody by any authority under any other law of the land the jurisdiction under S. 158-BC is conferred on the Assessing Officer only on physical handing over of such documents/ records requisitioned under S. 132-A of the Act. Since the Central Excise Department had seized the original records/ sale bills and still it remains with that Department and had not been handed over to the Assessing Officer. In view of this and following Special Bench judgment (supra) the Assessing Officer has completed the Block assessment without any jurisdiction vested in him and is a nullity in the eye of law. The Block assessment be quashed.*

4. Briefly, in the facts of the case, search and seizure operation under section 132 of the Act was carried out at the premises of assessee on 19.10.2000. During the course of search, certain incriminating documents were found, which indicated unrecorded transactions of sale and purchase and also documents indicating investments made by assessee in movable and immovable properties. Books of account were also found and inventorized and seized. Cash of ₹ 1,22,240/- was found at the residence and ₹ 8,71,467/- was found at the business premises. Further, jewellery worth ₹ 85,000/- was found but not seized. In the course of search, inventory of stock was also made and the stock worked out to ₹ 30,83,891/- out of which, stock value of ₹ 20,99,000/- was put under deemed seizure under the proviso to section 132(1) of the Act. Copies of seized documents were also given to assessee. The assessee in his statement recorded on 21.10.2000 voluntarily offered undisclosed income of ₹ 70 lakhs for the block period. However, the assessee neither furnished any details nor furnished return for the block period till

the date of passing of assessment order. The Assessing Officer issued notice under section 158BC of the Act asking the assessee to file return of income but no return of income was filed by assessee for the block period. Notices were issued to the assessee on various dates and also explanation was sought regarding contents of seized books of account and documents. The assessee sought adjournment. However, time and again he did not furnish any return for the block period nor any explanation on seized documents was filed. Later, an explanation was filed by assessee but no return was filed for the block period. The Assessing Officer noted that the assessee was an individual engaged in the business of trading in iron and metal scrap. He was importing heavy duty iron and metal scrap and was selling the same in India. The observation of Assessing Officer was that the assessee was not maintaining proper books of account. Incriminating documents seized during the course of search evidenced suppression of income by way of unaccounted sales outside the books of account and undisclosed investments in movable and immovable properties by the assessee. Further, the Assessing Officer noted that nature of assessee's business involved voluminous cash transactions and there was scope for doing sales outside the books of account as was proved from the seized material. The Assessing Officer thus, held the assessee to be indulging in cash sales outside the books of account and earning huge profits which were not disclosed in regular books of account. The assessee though had maintained purchase and sale registers but no stock register was maintained, therefore, the quantity of unaccounted sales detected in the seized documents were neither verifiable nor were found recorded in regular books of account. The Assessing Officer thus, held that books of account seized were not complete. Then, he went through bundle Nos.2 to 8 out of bundle Nos.1 to 62 seized at office premises and worked out unrecorded sales, which are enlisted at page 4 of assessment order. The assessee was asked to quantify the amounts, expenditure and reconcile

undisclosed profits or unaccounted sales detected from the seized documents. The assessee in the reply dated 25.10.2002 submitted that the sales as per seized material pertaining to assessment year 2001-02 were fully accounted for in regular books of account seized as well as computerized set was produced as on the date of search. He however, admitted unrecorded sales for assessment years 1995-96 to 1997-98 and 2000-01 but objected to extrapolation of these actual figures of unrecorded sales to the whole year of the block, for which such evidences were found but for the part period or days and not for the whole year. The Assessing Officer held that the books of account seized by the Department at the time of search were not complete as no stock register was maintained by assessee. Further, sales detected in the seized documents tabulated in para 8 of assessment order did not find place in the regular books of account seized. The set of computerized books of account including those for assessment year 2001-02 (part period) were neither found during the course of search nor it was produced before DDIT(Inv) but were submitted by assessee during the course of assessment proceedings. The Assessing Officer in this regard further observed that new set of books of account which were produced during block assessment proceedings seems to be prepared after search and such documents were not authentic and hence, could not be relied upon. Further, since the assessee had not furnished any return for the relevant previous year (part period), this contention was also rejected. In reply, the assessee stressed that even though no return was filed for assessment year 2001-02, but the assessee had got books of account audited and the audit report was filed within due date. The Assessing Officer rejected this plea of assessee also as no books of account were found or produced on the date of search. He further held that sales for assessment years 2000-01 and 2001-02 (part period) had not been accounted for as on the date of search, hence the profits arising out of such unrecorded sales formed part of undisclosed income of block

period. The Assessing Officer also noted that though seized papers related to part period but it could not be accepted that the assessee had faithfully recorded sales for the remaining part of assessment year of block period. The Assessing Officer was of the view that in such circumstances though evidences were found not for the whole year, there was sufficient evidence to estimate suppressed sales for the remaining period of the year, for which direct evidence was not found. He placed reliance on several decisions in this regard and held that while computing extrapolation, the period as per seized material was worked out and for computing yearly sales, working for the year was considered as 320 days for the year. The Assessing Officer at page 8 had summarized bundle-wise extrapolated position of unaccounted sales from the seized material as against documents found year-wise, in which sales depicted are to the extent of ₹ 6,05,99,060/-. The Assessing Officer extrapolated the sales for 320 days at ₹ 27,10,83,182/- and thereafter, applied net profit rate of 5% and worked out the addition of ₹ 1,35,54,158/-, which was held to be undisclosed income of assessee for the block period. Year-wise summary of unaccounted sales is provided under para 18 at page 9 of assessment order. It may be pointed out herein itself that unaccounted sales were computed for the block period. However, the first year for which evidence was found was assessment year 1995-96 i.e. for 84 days and after extrapolation unaccounted sales for 320 days was worked out to ₹ 1.47 crores. For assessment year 1996-97, evidence was found for only 98 days and extrapolation was made at ₹ 2.23 crores for the whole year. For assessment year 1997-98, evidence was found for 90 days and after extrapolation, sales for the whole year were worked out at ₹ 5.27 crores. For assessment years 1998-99 and 1999-2000, since no evidence was found, hence no extrapolation was made in the hands of assessee. For assessment year 2000-01, evidence was found for 4 days and it was extrapolated for the whole year at sales of ₹ 6.04 crores as against evidence found for ₹ 8,05,415/-.

5. Now, coming to the year of search i.e. assessment year 2001-02 i.e. evidence was found for 90 days of sales totaling ₹ 3.40 crores (approx.). The date of search was 19.10.2000. The Assessing Officer has extrapolated the sales for whole year at ₹ 12.08 crores, so out of ₹ 27.10 crores i.e. total sales extrapolated for the block period, sum of ₹ 12.08 crores relate to assessment year 2001-02, where though search was on 19.10.2000 and even the block period is starting from assessment year 1991-92 to 2001-02 but till date of search i.e. 19.10.2000 extrapolation was made for the whole year. We shall deal with this issue later. Thereafter, the Assessing Officer has considered various documents found which reflect investments made by the assessee in different properties and also deposits made in bank accounts and dealt with each of the items and then summarized year-wise investments of assessee. Further, for assessment year 2001-02 (part period), regarding deposit of ₹ 37 lakhs in Standard Chartered Bank account, the Assessing Officer noted that the bank account was in the name of 'Riddhi Siddhi Enterprises', in which cash was deposited of ₹ 10 lakhs on 04.09.2000 and the same was withdrawn on 04.09.2000. Similarly, on other dates also, cash was deposited and withdrawn on the same date. Total cash deposited was ₹ 37,15,000/-. The Assessing Officer held the same to be unaccounted on the ground that the account was operated by a person of no means and during the course of search, page No.21 of bundle 4 to Annexure A was seized from the residence of assessee, which indicated the deposit of cash of ₹ 10 lakhs in the bank account on 04.09.2000, hence ₹ 37,15,000/- was added in the hands of assessee. The assessee explained that the amounts were deposited in that account in order to carry out business of purchase of old ship but the transaction did not materialize and the amounts deposited were directly withdrawn by the said person and the said transactions were recorded in the books of account, which were maintained on the date of search. The Assessing Officer did not accept the

plea of assessee because of lack of creditworthiness of family. Further, the assessee had not produced any evidence in support of proposed business transaction. The Assessing Officer further held that even if the amount was accounted for in the books of account but since he had not filed return of income for assessment year 2001-02, hence this claim of assessee could not be accepted. He also noted that the assessee had not furnished any return of income for assessment year 2001-02 though audit report for the period ending 31.03.2001 has been filed by assessee on 31.10.2001. Further, cash found during the course of search of ₹ 9,93,707/- was held to be unexplained and hence added. Another addition was made on account of investment in property of ₹ 3,68,300/-, on the basis of valuation report found during the course of search. The explanation of assessee that valuation is not correct and the assessee had constructed property on part of land owned by it, which totaled to ₹ 3,13,252/-, was not accepted by Assessing Officer. Another addition made was on account of unaccounted stock. The assessee had failed to maintain any quantity-wise details and at the time of search, he had expressed inability to give stock position as per books of account. Consequently, all these additions were made in the hands of assessee in assessment year 2001-02. In the final analysis, the Assessing Officer determined undisclosed income of assessee for the block period at ₹ 1,35,54,158/- after giving set off of undisclosed income on account of unrecorded sales with application of such income in undisclosed investments in various years.

6. The CIT(A) notes the nature of business carried on by the assessee. The premises of assessee had been searched. However, the assessee failed to furnish any return of income for the block period. The CIT(A) vide para 2.3.1 notes that the books of account were found incomplete at the time of search including cash book for assessment year 2000-01, in which balances were not drawn. Cash of ₹ 10

lakhs was also found; in addition, various documents, diaries and books of account were found from the residential and business premises of assessee, which indicated purchase of property, purchase of scrap and deposit in bank accounts. The CIT(A) notes that the Assessing Officer had made two proposals; one based on undisclosed income related to unaccounted transactions of sales and other on the basis of undisclosed investment of assessee in the stock, cash and in properties. The CIT(A) also notes that due to non-cooperative attitude of assessee, the Assessing Officer had assessed the income on the basis of seized material and after extrapolating the same for different periods, as per law. The CIT(A) first dealt with the issue raised by assessee of retraction of disclosure made by him during the course of search and held it to be not correct, especially in view of the fact that voluntary disclosure was supported by seized material and there was non-maintenance of books of account. The CIT(A) also held that in view of seized material found from the assessee, extrapolation of sales for the whole year merits to be made.

7. Coming to the issue of income of broken period, in assessment year 2001-02, which were treated as undisclosed income, where assessee pleads that it had produced books of account and it could not be said that the income / transactions, which were already recorded were not disclosed or would not have been disclosed. The CIT(A) observed that assessee had admitted the position that books of account maintained were not complete and since they were maintained on computer, it was not clear as whether the transactions relating to income were recorded on or before the date of search. Then, he elaborately dealt with the issue of extrapolation of purchase / sales reflected in the seized material and appreciated seized documents and bundle-wise extrapolation position of unaccounted sales drawn by Assessing Officer. The CIT(A) went through the documents seized and noted that the details

mentioned clearly reflected the unaccounted sales made by assessee. The assessee furnished re-conciliation statement before the CIT(A), under which the assessee had admitted that 11,62,058 Kgs. were not recorded in the books of account. The CIT(A) further reiterates that cash book found at the premises of assessee at the time of search was not complete and no ledger was found for financial year 2000-01. The claim of assessee that the same were available on computer was held to be not correct. Reference was made to statement recorded during the course of search and it was noted that books of account were incomplete for the preceding year and part of the year till date of search, the assessee had offered ₹ 70 lakhs as undisclosed income for the block period. The CIT(A) held that cash sales made by assessee were to be treated as unaccounted sales i.e. on assessee's own reconciliation 11,62,058 Kgs. + 7,14,717 Kgs. = 18,76,775 Kgs. of sale of scrap found in the seized material for 90 days were taken as undisclosed sales for assessment year 2001-02 (broken period). The CIT(A) further held that estimation of undisclosed sales was to be made for the broken period i.e. upto 19.10.2000 – 212 days. The CIT(A) worked out the estimated undisclosed sales for the broken period of 212 days at 45,00,000 Kgs. and as the Assessing Officer had taken the average rate of ₹ 6.50 per kg but since the sales were at various sale prices going upto ₹ 9 per kg., the rate was taken at ₹ 7.50 per kg and total undisclosed sales for the broken period worked out at ₹ 3,37,50,000/-. The plea of assessee that though it had not furnished return of income but had furnished the audit report within time was also not accepted as the assessee could not show the stamp of department evidencing filing of audit report. The assessee had produced invoice register for the period 23.09.2000 to 02.11.2000. With regard to said sales, the CIT(A) test checked the same with the help of invoices and it was found that some of these were not recorded in sales register separately produced by assessee. The explanation of assessee in this regard is reproduced at page 33 of

appellate order. The CIT(A) thus, directed that sales to the extent of ₹ 3 lakh were unexplained and extrapolating the same for broken period upto 20.10.2000, the total undisclosed sales for assessment year 2001-02 (broken period) would be taken at ₹ 3,77,50,000/-.

8. The assessee also referred to the seized material and pointed out that the Assessing Officer has worked out undisclosed sales on the basis of seized documents and there were certain errors and for which even rectification application was filed before the Assessing Officer. The CIT(A) went through the documents and held that there was some merit in the plea of assessee and hence, reasonable estimate was directed to be made for assessment years 1997-98, 1998-99 and 1999-2000, though the Assessing Officer had left out estimation of undisclosed sales for assessment years 1998-99 and 1999-2000. The CIT(A) acknowledged that seized material revealed patches of papers and documents reflecting organized suppression of sales during the block period and consequently, estimation of undisclosed sales was to be made for all the years. The CIT(A) vide para 11.15 at page 37 observed that for assessment years 1998-99 and 1999-2000 enhancement had been made by him but no separate notice needed to be given to the assessee (though the issue was discussed with him), as there was no overall enhancement of total undisclosed income after giving effect to the appellate order. The undisclosed sales for assessment years 1997-98 to 1999-2000 were taken at 1,50,000 kgs and for assessment year 2001-02 (broken period) at 45,00,000 kgs and hence by applying rate of ₹ 7 per kg., total undisclosed sales were worked out at ₹ 11.20 crores for assessment years 1997-1998 to 1999-2000.

9. Coming to assessment years 1995-96, 1996-97 and 2000-01, the CIT(A) analyzed the seized documents at pages 38 to 40 of appellate order and after

analyzation, extrapolated undisclosed sales to ₹ 5.85 crores for assessment year 1995-96, ₹ 3.32 crores for assessment year 1996-97 and ₹ 1.57 crores for assessment year 2000-01, totaling to ₹ 10.74 crores. Then, vide para 12 onwards at page 41, he works out the gross profit and notes the gross profit rates for some of assessment years under para 12.1, he applied the rate of 5% of gross profit to the undisclosed sales and works out the income to ₹ 1,28,55,000/-. The assessee as such was given relief of ₹ 6,99,158/-.

10. Then he took up the addition on account of undisclosed investment in various years and upheld the following additions:-

a)	Valuation of property at Molacha Dodha Satara	₹ 4,54,900/-
b)	Investment in property at Satara (reduced)	₹ 36,48,000/-
c)	Deposit in United Western Bank Ltd. (deleted)	₹ 1,75,175/-
d)	Deposit in bank account in Riddhi Siddhi Enterprises	₹ 37,15,000/-
e)	Unexplained cash	₹ 9,93,707/-
f)	Property at Aman Weigh Bridge, Satara	₹ 3,68,300/-
g)	Unaccounted stock	₹ 30,83,891/-

		₹ 1,03,46,633/-
		(-) 1,75,175/-
		(-) 2,42,152/-

	Total	₹ 99,29,306/-

11. The CIT(A) thus, concluded by holding that investment in undisclosed assets as worked out by Assessing Officer gets established for sum of ₹ 99,29,306/- and since the total undisclosed income worked out from the seized material was higher, no further addition on this unexplained assets was called for.

12. We have heard the rival contentions and perused the record. Before referring to the facts and issues involved in the present appeal, we find a need to refer to the peculiar facts of the present case.

13. The appeal filed by the assessee is against search carried out on the premises of assessee on 19.10.2000, wherein the Assessing Officer passed the order under section 158BC of the Act for the block period assessment years 1991-92 to 2001-02 (till 19.10.2000 date of search). The CIT(A) upheld the additions and assessee is in appeal. During the pendency of appeal, the assessee demised. The son of assessee has also demised; even the Chartered Accountant, who was looking after the matter had demised. The appeal is represented by wife of assessee. However, the learned Authorized Representative for the assessee representing the case shows his inability to contact her. He further states that because of professional ethics, since he had taken up this matter, he continues to represent the assessee before the Tribunal. In view of above said peculiar facts and circumstances, we feel a pragmatic view needs to be taken to decide the issues raised in the present appeal.

14. Briefly, in the facts of the case, the assessee was dealer in scrap. During search under section 132 of the Act on the premises of assessee on 19.10.2000, various incriminating documents were found. Search team noted that the assessee had indulged in sale of scrap outside the books of account, documentary evidence in this regard was found for part of the period. The assessee was confronted with the said evidences and his statement was recorded under section 132(4) of the Act. The assessee admitted to the said non-reporting of sales and also admitted to the additional income on such sales being outside the books of account. The assessee in the statement recorded under section 132(4) of the Act offered additional income

of ₹ 70 lakhs for the block period. However, the said offer of additional income was not honoured by the assessee. The assessee never furnished return of income for the block period. The assessee denied his liability to pay tax on additional income on the ground that no business was transacted outside the books of account. However, the Assessing Officer did not accept the explanation of assessee, since incriminating documents were found from the possession of assessee during the course of search. The Assessing Officer on the basis of incriminating documents found, which were for part of the year, extrapolated the sales for 320 days being outside books of account, allegedly carried out by the assessee and computed the turnover for the block period. The Assessing Officer rejected the book results shown by the assessee and held that on extrapolated turnover, net profit of 5% was to be applied in order to determine additional income in the hands of assessee. Further, during the course of search, incriminating documents were found which revealed various investments made by the assessee in different assets. The Assessing Officer has elaborately discussed the investments in each of the movable / immovable assets in the order passed under section 158BC r.w.s. 143(3) of the Act and come to a finding that unexplained investments were totaling ₹ 1,03,46,633/-. The Assessing Officer calculated the sales depicted on seized documents for various years at ₹ 6.05 crores and extrapolated the turnover of block period at ₹ 27.10 crores and applied net profit rate of 5% to work out the additional income in the hands of assessee to the tune of ₹ 1,35,54,158/-. The Assessing Officer further held that since the assessee had available funds in the form of profits on undisclosed turnover, then telescoping effect needs to be allowed to the assessee against the list of assets prepared, which as per the Assessing Officer were not reflected in the books of account and hence, were unexplained investments. The Assessing Officer giving telescoping effect did not make any other additions in the hands of assessee except undisclosed income on unrecorded

sales for the block period. The CIT(A) reworked the turnover on two grounds i.e. (a) that Assessing Officer had not extrapolated sales for assessment years 1998-99 and 1999-2000, on the ground that no incriminating material was found and (b) that the Assessing Officer had extrapolated the sales for assessment year 2001-02 for the period of 320 days though as against extrapolation upto the date of search i.e. about 212 days. The CIT(A) thus, estimated undisclosed sales for three years i.e. assessment years 1997-98 to 1999-2000 at 150 lakh kgs and for the broken period of assessment year 2001-02 at 45 lakh kgs of undisclosed sales of scrap. The CIT(A) vide para 11.15 acknowledges that for assessment years 1998-99 and 1999-2000 enhancement had been made but no separate notice needed to be given to the assessee (though the issue was discussed with assessee), as there was no overall enhancement of total undisclosed income after giving effect to the appellate order. The CIT(A) further held that rate of ₹ 7 per kg is to be applied and the total undisclosed sales for assessment years 1997-98 to 1999-2000 works out to ₹ 11.20 crores. The CIT(A) further analyzed seized material and reworked the extrapolation of undisclosed sales and applied different rates for each of the years and held that undisclosed income relating to seized material for different assessment years in the block period were as under:-

<i>A. Y.</i>	<i>Total</i>
<i>1995-96</i>	<i>5.85 Crores</i>
<i>1996-97</i>	<i>3.32 Crores</i>
<i>2000-01</i>	<i>1.57 Crores</i>
<i>Total</i>	<i>10.74 Crores</i>

15. The CIT(A) further held that margin of net profit was not less than 5% on the sales in the said line of business and he further goes on to say that it is not the net profit rate but gross profit rate which was required to be applied on undisclosed sales as sales was an item of trading account and there was no evidence of any

undisclosed expenses having been incurred by assessee during block period, relating to the said undisclosed sales for otherwise. Hence, he directed gross profit rate of 5% is to be applied to undisclosed sales and the undisclosed income was worked out at 1,28,55,000/- giving assessee relief of ₹ 6,99,158/-. In the paras hereinabove, we have already referred to observations of CIT(A) in respect of addition relating to undisclosed investments. It may be pointed out that the CIT(A) has also upheld the order of Assessing Officer in holding that once addition is made on account of undisclosed income on undisclosed sales, then no addition is to be made on account of undisclosed investments.

16. The assessee is aggrieved by the gross profit rate applied by the CIT(A) @ 5% and also by extrapolation of sales / turnover for the block period. The assessee has first challenged extrapolation of sales / turnover and also the rate applied by the CIT(A). In this regard, the learned Authorized Representative for the assessee has strongly condemned the order of Assessing Officer and CIT(A) and pointed out that in line of business of assessee, the rate of 5% cannot be applied as net profit rate, to determine the additional income in the hands of assessee. Further, the learned Authorized Representative for the assessee has strongly emphasized that the alleged investments made by the assessee in various assets stand explained by withdrawals from different accounts and the same were already disclosed in the books of account, hence no further addition is warranted. He stressed that Assessing Officer in exercise of determining undisclosed income in the hands of assessee, which would cover the alleged investment in assets is thus, not warranted.

17. Another aspect of the issue is the figures adopted for alleged undisclosed investments in assets. The learned Authorized Representative for the assessee

has challenged the same stating that in one case the agreed price was 'x' but since the transaction did not go through, the assessee only paid 'x-', which investment was sold by the assessee on a later date and gain arising therefrom was shown in the books of account. The learned Authorized Representative for the assessee here stressed that in the absence of any funds found from the possession of assessee and in the absence of any investments being made, outside the books of account, estimation of turnover and the NP rate applied thereon needs to be struck down. He also invited our attention to the fact that the Assessing Officer had made addition on account of extrapolation of sales by applying net profit rate, but the CIT(A) has applied GP rate @ 5%. He thus, pointed out that the order of CIT(A) suffers from infirmity as for determining the income in the hands of assessee, the NP rate is to be applied.

18. The learned Departmental Representative for the Revenue here strongly opposed the submissions of learned Authorized Representative for the assessee and pointed out that since the assessee had indulged in sale of scrap outside the books of account, the said books of account maintained by the assessee need to be rejected and gross profit rate be applied; which the authorities below have so applied. He also pointed out that in view of evidence found for part of the year, extrapolation of sales for the whole year was advocated, in view of the ratio laid down by the Hon'ble Bombay High Court in Harish Textile Engineering Ltd. Vs. DCIT (2015) 379 ITR 160 (Bom) and also the decision of the Hon'ble High Court of Punjab & Haryana in Surinder Kumar Vs. CIT (2012) 340 ITR 173 (P&H). The learned Departmental Representative for the Revenue strongly placed reliance on the orders of authorities below and stressed that the application of GP rate @ 5% was warranted in the case of assessee.

19. The case of learned Authorized Representative for the assessee before us was that even if extrapolation of sales was held to be correct but the GP rate / NP rate adopted at 5% was very high especially in the nature of business carried on by the assessee i.e. sale of scrap, wherein NP rate was on the lower side. He referred to the NP rate declared from year to year. He further pointed out that the assessee was filing the return of income for years prior to search, which was clearly mentioned in the Annexure to the order of CIT(A). The perusal of the same reflects the status of income declared by the assessee from year to year.

20. The second aspect of the said issue is the investment shown by the assessee. The learned Authorized Representative for the assessee has furnished written submissions in this regard explaining the source of investments which have been held to be unexplained in the hands of assessee by the Assessing Officer and confirmed by the CIT(A).

21. First, we shall take up the aspect of estimation of income in the hands of assessee and second is the addition, if any, is warranted on account of alleged unexplained investments in the hands of assessee.

22. Both the authorities below have elaborately gone through the seized material. It is undisputed that incriminating documents found during the course of search evidenced sales outside the books of account for part of the year – maximum upto 90 days. The block period was from assessment year 1991-92 to 2001-02 (i.e. upto date of search 19.10.2010). No evidence was found for assessment years 1991-92 to 1994-95 and no undisclosed turnover or income has been added for the aforesaid periods. For assessment year 1995-96, evidence was found for 84 (66+18) days and sales have been extrapolated for 320 days.

Similarly, in assessment year 1996-97 it was for 98 days and in assessment year 1997-98, it was 90 days but the extrapolation was made for the whole year. For assessment years 1998-99 and 1999-2000, no evidence was found at all. So, the Assessing Officer did not work out the undisclosed sales. However, the CIT(A) has held that even in those years extrapolation of sales for 320 days is to be worked out and consequently, he has done the exercise and computed undisclosed sales at ₹ 110 lakhs for the two years. First of all, the CIT(A) has not given any enhancement notice to the assessee in this regard. Even otherwise, in case there is no incriminating evidence found during search, which suggests any sales have been made outside books of account, then merely on the basis that such document were found for other years, could not be taken as sacrosanct and additional income be worked out for assessment years 1998-99 and 1999-2000. Accordingly, we hold that estimation of undisclosed sales and undisclosed income on the said sales for assessment years 1998-99 and 1999-2000, in the absence of any incriminating material being found relating to the said years, cannot be upheld and the same is cancelled.

23. Now, let us take estimation of sales for all the years i.e. assessment years 1995-96 to 1997-98 and 2000-01. The Assessing Officer had extrapolated the sales for the said years at figures which have been reworked by the CIT(A) after perusing seized material. The learned Authorized Representative for the assessee has not pointed out any defects in the same except to first state that there was no merit in the extrapolation of sales for these years and secondly to state that application of gross profit rate of 5% was very high and net profit rate needs to be applied. The Assessing Officer had applied net profit rate of 5%. The CIT(A) has applied rate of 5% but calls it to be a gross profit rate and has observed that in the absence of any evidence found that the assessee had incurred any expenses

outside the books of account in relation to such undisclosed sales, then gross profit rate needs to be applied. The CIT(A) has also acknowledged the net profit rate in the line of business of assessee on a lower scale. Even if we do not disturb extrapolation sales worked out in the hands of assessee for assessment years 1995-96, 1996-97, 1997-98 and 2000-2001, we hold that there is no merit in the stand of CIT(A) in applying gross profit rate of 5% on the sales. The assessee was engaged in the business of sale of scrap and may be the assessee has earned average gross profit of 5% over period of years, but that does not mean it is the income of assessee in all the years; it is net profit rate which needs to be applied in order to compute undisclosed income in the hands of assessee from the business of sale of scrap. The learned Authorized Representative for the assessee in written submissions has pointed out that net profit percentage never exceeded 1.50% where lower percentage preceded 0.31%; the average percentage for assessment years 1991-92 to 2001-02 was 0.60%, hence he has challenged the application of net profit rate of 5% by Assessing Officer and which has been modified to gross profit rate of 5% by CIT(A). He further challenged that for working out undisclosed income in the hands of assessee, net profit rate had to be applied, but suitable rate may be applied. In the totality of the above said facts and circumstances and keeping in mind that proceedings relate to block period ending in assessment year 2001-02 and keeping the rates of inflation, we deem it fit to apply net profit at 2%. Accordingly, we reverse the findings of CIT(A) in this regard and modify the finding of Assessing Officer and direct the Assessing Officer to apply net profit rate of 2% on extrapolated sales worked out by CIT(A) for assessment years 1995-96, 1996-97, 1997-98 and 2000-2001.

24. Now, coming to the year of search i.e. assessment year 2001-02, if we compare the figures which are available of alleged unaccounted sales outside

books of account, then for assessment year 1996-97, it was ₹ 68,49,698/- i.e. for a period of 98 days; for assessment year 1997-98, sales worked out to ₹ 1,48,38,707/- for 90 days and for assessment year 2000-01, the same were ₹ 8,05,415/- for 64 days. The CIT(A) has re-verified the seized material and worked out undisclosed sales relating to seized material, for different assessment years in the block period as under:-

<i>A.Y.</i>	<i>Total</i>
<i>1995-96</i>	<i>5.85 Crores</i>
<i>1996-97</i>	<i>3.32 Crores</i>
<i>2000-01</i>	<i>1.57 Crores</i>
<i>Total</i>	<i>10.74 Crores</i>

25. Now, let us come to the figures of assessment year 2001-02, the Assessing Officer alleges that for a period of 90 days, unaccounted sales are to the tune of ₹ 3,39,71,997/-. The Assessing Officer had extrapolated the sales for a period of 320 days which have been restricted to 212 days by CIT(A). The case of assessee before us is that assessment year 2001-02 is the year of search but books of account were maintained on computer and the said books of account were produced before search team and also during assessment proceedings. The Assessing Officer had time and again has stated that the assessee had produced books of account but had not produced stock register and hence, books of account were incomplete and in such scenario, had rejected the plea of assessee that it had disclosed the said sales for search year in its books of account. We find no merit in the stand of authorities below in this regard. Once the premises were searched, books of account were found, may be some entries were not made, but the total sales i.e. to the tune of ₹ 3.39 crores for period of 90 days cannot be said to be totally unaccounted. So there is no merit in the stand of authorities below in treating sales of assessment year 2001-02 as unrecorded and we direct the Assessing Officer to exclude the same while computing extrapolated sales for the

block period. The Assessing Officer is thus, directed to pick up figures of extrapolated sales from the order of CIT(A) for assessment years 1995-96 to 1997-98 and 2000-01 and apply net profit of 2% in order to work out the undisclosed income in the hands of assessee. Thus, the first issue raised by assessee is partly allowed.

26. Now, coming to next issue raised i.e. with regard to alleged undisclosed investments in the hands of assessee. The assessee has filed written submissions before us. First of all, list of undisclosed investments in movable and immovable properties as worked out by Assessing Officer was as under:-

a)	Office Building, 17 Molacha Odha, Satara	1996-97	4,54,900/-
b)	Mane Wada, 168 Bhavani Peth, Satara	1997-98	36,48,000/-
c)	Deposit Int. United Western Bank, Satara	1998-99	1,75,175/-
d)	Deposit of Rs.37,00,000/- in the Bank account. The transaction is recorded in the books before the date search action and appeared in the balance sheet.	2001-02	37,15,000/-
e)	Unexplained cash	2001-02	9,93,707/-
f)	Valuation of property at 67/A Aman Weigh Bill, Saidapur, Satara.		3,68,300/-

DVO valued the property at Rs. 3,68,300/-. The following entries were available in the books of account as under:

1)	The Weigh Bill purchased	181000/
	from Eagle Sales	-
	Corporation	192252/
2)	Weigh Bridge	
	Construction	-
		<hr/>
		313252/
		-
		=====

The journal entry was passed in =
the Book of account on 31-03-
2000 as 'HIBA' by two
daughters of the assessee. The
entries in the books of account
are available before the date of
search action.

- g) Unaccounted stock. During the 2001-02 30,83,891/-
search action and as per
Panchanama. The stock of Rs.
30,83,891/- was valued. The
quantitative details were not
maintained by assessee.

1,03,46,633/-
=====

27. The CIT(A) has partially allowed relief in respect of item No.(c) i.e. Deposit in United Western Bank. The assessee has explained the aforesaid investments to have been disclosed in the books of account of assessee, which read as under:-

- | | | |
|----|---|--|
| a) | Investment in office building : Rs.3,68,300/- | The transaction was disclosed in A.Y. 2000-01 and in the Return of Income filed. |
| b) | Mane Wada, 168 Bhavani Peth, Satara | The sales proceeds of Rs.24,70,000 have been recorded in regular books of account. The assessee's share is Rs.12,35,000/- and Capital gain of Rs.1,70,000/- has been paid. |
| c) | deleted by CIT(A) | |

d)	Deposits in Standard Chartered Bank – Riddhi-Siddhi Rs.37,00,000/-	Disclosed in audited Balance-sheet for A.Y. 2001-02 and for A.Y. 2002-03
e)	Cash in hand on 19-10-2000 Rs.9,48,929/-	The cash balance is reflected as under:- A.Y. 2000-01 31-03-2000 5,71,276/- A.Y. 2001-02 31-03-2001 4,53,333/- A.Y. 2002-03 31-03-2002 27,45,566/-
f)	Valuation of property at Aman Weigh Bridge, Satara	Rs.3,13,252
g)	Unaccounted stock	Rs.30,83,891/-

28. First asset at 'a' is disclosed in the books of account of assessee, hence the investment in the same cannot be treated as unexplained.

29. Now, coming to second asset, the assessee has already declared capital gains arising on the said asset in its return of income and the same cannot be treated to be unexplained. The third deposit in bank has been deleted by CIT(A).

30. Now, coming to deposits in Standard Chartered Bank, wherein the assessee claims that the same was disclosed in audited balance sheet for assessment years 2001-02 and 2002-03. It may be pointed out that search had taken place on 19.10.2000 i.e. on which date, year for the balance sheet was not even completed. Further, deposits were in the bank account of Riddhi Siddhi Enterprises in cash totaling ₹ 37 lakhs on various dates. Both the Assessing Officer and CIT(A) have acknowledged that cash was deposited on one day and withdrawn on the same day. First cash was deposited on 04.09.2000 of ₹ 10 lakhs was withdrawn and thereafter, ₹ 10 lakhs was deposited on 11.09.2000 and was withdrawn. Further, on 20.09.2000 cash of ₹ 10 lakhs was deposited and withdrawn. Similarly, further on 12.10.2000, ₹ 15 lakhs was deposited and withdrawn and finally on 17.10.2000,

₹ 7 lakhs was deposited and withdrawn. The total of cash deposits were taken at ₹ 37,15,000/-. The Assessing Officer has tabulated the details at page 14 of assessment order. Once the authorities below were looking at unexplained entries in bank account of Standard Chartered Bank, then there was no merit in only acknowledging the deposit amounts. The Assessing Officer clearly refers that the account was operated and the deposits and withdrawals were on the same day. Once there was deposit and the amount had been withdrawn, then that withdrawal made from the said account is available for re-deposit, so at best the first deposit on 04.09.2000 remains unexplained. Accordingly, we restrict the addition to ₹ 10 lakhs. There is no merit in the plea of assessee that the said entries are entered in its books of account, which were completed after the date of search. Accordingly, we restrict the addition to ₹ 10 lakhs on this count.

31. Now, coming to the next addition in item 'f', which was made on account of valuation of property. The CIT(A) has already allowed relief of ₹ 6,99,158/-. It may be pointed out that the basis for addition is the valuation of DVO. However, no evidence was found that the assessee has paid any consideration over and above the consideration shown in the books of account. Merely on the basis of valuation report, no addition is warranted during the block period and the same is deleted. Unaccounted stock was after quantity-wise details being not maintained, was added in the hands of assessee and the same merits to be upheld. Thus, balance unexplained investments are as under:-

- a) Deposit in Standard Chartered Bank at ₹ 10 lakhs
- b) Cash in hand at ₹ 9,48,929/-
- c) Unaccounted stock of ₹ 30,83,819/-

32. We have already upheld the addition on account of undisclosed income worked out on the basis of extrapolated unaccounted sales in the hands of assessee and the Assessing Officer shall compute the said addition by applying GP rate of 2% and in case the same is found to be more than unexplained investments, then no further addition is warranted in the hands of assessee; in case reverse, then balance addition on account of unexplained investments needs to be made in the hands of assessee. The grounds of appeal raised by assessee are thus, partly allowed.

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

Order pronounced on this 31st day of October, 2018.

Sd/- (ANIL CHATURVEDI)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 31st October, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The CIT(Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए"
/ DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune