

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 176/Del/2018
(Assessment Year: 2013-14)

ACIT, Circle-34(1), New Delhi	Vs.	Madhur Jain, C-2/4, Community Centre- I, Ashok Vihar, Phase-II, New Delhi PAN: AGRPJ0254C
(Appellant)		(Respondent)

Revenue by :	Shri S. S. Negi, Sr. DR
Assessee by:	Shri Gautam Jain, Adv
Date of Hearing	07/04/2021
Date of pronouncement	27/05/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

01. This appeal is filed by Asst Commissioner of Income Tax, Circle – 34 (1), New Delhi for assessment year 2013 – 14 against order passed by learned Commissioner of Income Tax (Appeals) – 12, New Delhi dated 29/9/2017 raising a solitary ground of appeal that whether learned CIT (A) has not erred in deleting addition of ₹ 51,051,656/- made by assessing officer by treating opening stock of assessee to be assessee is an unexplained income. This is solitary issue in this appeal.
02. Briefly stated facts shows that assessee is an individual engaged in business of trading in fabric as a proprietor in name of M/s Exel fabrics and has income from profession as an advocate. During year,

assessee has declared a gross profit of ₹ 2,734,495/- of ₹ 54,141,660/- leading gross profit rate of 5.05%.

03. Assessee filed his return of income declaring an income of ₹ 4,656,960/- on 21/9/2013. Assessee's case was picked up for scrutiny and learned assessing officer issued a requisite notices u/s 143 (2) on 2/9/2014 and notices u/s 142 (1). LD assessing officer noted that assessee has shown proprietors capital of ₹ 24,732,346/- and opening stock of ₹ 51,051,565/- in return for assessment year 2013 - 14. Assessee has also shown sales of ₹ 52,851,660. It resulted into a gross profit of Rs 180,095/-. Against this assessee has shown net profit of ₹ 875,491/-. Learned assessing officer asked assessee to file income tax return, computation of income for assessment year 2012 - 13, capital account for assessment year 2012 - 13, bank statements and also to explain why not disclosed in closing stock and proprietors capital account was filed for income tax return for assessment year 2000 - 11, 2011 - 12 and 2012 - 13. Assessee was also asked to explain from where capital and opening stock in assessment year 2013 - 14 has come. assessee submitted a detailed reply and submitted that both opening capital as well as opening stock are brought forward balances which were closing balances as on 31/3/2012 and also in earlier years ended on 31/3/2007 relevant to assessment year 2007 - 08. It was also stated that it was a scrutiny assessment u/s 143 (3) of act. He also submitted copies of assessment orders for assessment year 2007 - 08 wherein both capital of assessee as well as stocks held by him are admitted in respective assessment. Learned assessing officer further questioned assessee to inform when business of proprietary concern commenced and its place of business since inception. Assessee submitted a detailed reply for it. assessee was further asked to furnish purchase bills of stock in proprietary concern to which assessee submitted that there are no purchases made by assessee during year under consideration and it is part of opening stock for year which has been carried forward from

earlier years. Learned assessing officer further deputed inspectors to conduct certain inquiries and inspection report was obtained. Report of inspector clearly stated that no godown, which can be used for storing of fabrics was not found. Therefore learned assessing officer issued show cause notice to assessee stating that inspector report submitted have shown that no business of exist honourable existed in said premises and go down mentioned by assessee have not been operational for storing or selling of clothes. Assessee was also confronted that vehicle number is submitted by him was also owned by a different person. Assessee submitted his detailed reply on 3 March 2016 sum and was issued to assessee on 22nd of March 2016 however, assessee was out of town, but AR of assessee submitted a detailed reply on 28th of March 2016. After considering the reply of the assessee, Ld AO thereafter made addition as under :-

“17. It is well known fact that cloth is a VAT free product. It is many times misused to convert black money into white by showing sales and purchases of large amounts in cloth. This whole charade concocted by assessee is nothing but this. It goes against human prudence and probability that stock worth Rs. 5 crores is kept for more than 6 years when there is a very good chance of cloth being destroyed by water, pests, insects etc. Moreover maintaining quality of such huge stock requires a lot of expenditure (in form of waterproofing of stock /pest control etc), time, and effort. Assessee has neither showing any expenses towards this nor can it be gathered that he has dedicated substantial time and efforts to do so, as he was pursuing fulltime professional courses during this period. He has in fact shifted all his stock from one place to another thereby exposing it to further degradation. He has not given any evidentiary proof of source of investment and purchase of stock neither has he give any satisfactory reply as to why

correct figures of capital and stock were not filed in income tax returns for 6 consecutive years. Reasons for issuing summons to assessee were to confront him with all above facts and record his statement on oath, so that based on his replies further queries could have been asked to demystify the charade and ply presented by the assessee, however his absence from station for 10-12 days prevented this office from doing so. 18 The reason for selection of this case was introduction of capital in a year and difference in opening stock in current year with closing stock of previous year. Having regard to the discussion made in the foregoing paragraphs an amount of Rs. 5,10,51,565/- which is the opening stock of the assessee in AY 2013-14 is being treated as his unexplained income and added back as income from other sources.”

04. Consequently an assessment order was passed u/s 143 (3) of the income tax act by the learned assessing officer determining the total income of the assessee at ₹ 55,708,520/- against the returned income of the assessee at ₹ 4,656,960/- wherein the addition on account of the non-existent opening stock was made as per paragraph number 18 of the order of the ₹ 51,051,565/-.
05. Aggrieved with the order of the learned assessing officer, assessee preferred appeal before learned Commissioner of income tax (appeals) who deleted the above addition holding as Under:-

“10.13 I have gone through the ratio laid down in the above judgments. In the case of V.K.J. Builders and contractors Pvt. Ltd. 318 ITR 204 the Court has held that the closing stock of the earlier year has to form the opening stock of the next accounting year. In the case of Punjab State Warehousing Corporation, 324 ITR 406 it is held that once the revenue has accepted the closing stock it would automatically become the opening stock for the

subsequent Assessment year. In the case of Indian National Tannery Pvt. Ltd., 278 ITR 213 the Court has held that the value of the closing stock must be the value of the opening stock in the succeeding year. The decision in the case of Ram Luxman Sugar Mills, 63 ITR 51 addresses the method of valuation. Similar ratio has been laid down in the case of Melmould Corporation 202 ITR 789 cited supra. The sum of these decisions which are applicable to the facts of this case are that if the closing stock of the previous year has been accepted by the revenue, the opening stock in the succeeding year cannot be denied. But the catch in this case is: whether the revenue has accepted the existence of closing stock in the previous financial years? I find that the Assessing Officer has vehemently denied through investigation the existence of closing stock in the previous financial years. The other issues linked to this aspect will be discussed in the following paragraphs:

10.14 The appellant has argued that the Assessing officer has not disputed the gross profit of Rs. 18,00,095/- shown in the profit and loss account. She has only disputed the opening stock. This action of the Assessing Officer is illogical, illegal and perverse. Profit can only be derived if the figure of opening stock is correct. Once the profit is accepted. The opening stock ought to have been accepted. The appellant has relied on the decision of the Hon'ble Supreme Court in the case of Union of India v. British India Corporation reported in 268 ITR 481. The portion of the judgment quoted is as under:

10.15 Besides the above, the appellant has relied on three more decisions quoted on page 11 of the submission. These decisions are not being repeated here for the sake of brevity.

10.16 In the written submission, the appellant has submitted that he furnished the copy of the bank statements 4 both for saving account and current account. In the reply dated 16.10.2015 before the Assessing officer the details regarding party-wise sales were given. The assessee furnished the confirmation for the outstanding balances as on 31.3.2013 from Ms. Sushma Jain, Shri Krishan Jian, M/s BSR Industries Pvt. Ltd., Sh. Mayank Jain and Sh. Santosh Jain. During the year under consideration, the assessee was occupying C-2/4, Pragati Market, Ashok Vihar, Phase-2 as office and Plot No. 325 Phase—IV, HSIDC, Kundli, Haryana as godwon. The assessee has quoted the submission made before the Assessing Officer on different dates. From page 25 to 29 of the submission before me, the Ld. AR for the appellant has prepared a chart to support the contention that the claim of the opening stock is genuine. Among other evidences it is stated that the affidavit of Sh. Mayank Jain was submitted before the Assessing Officer to the effect that he permitted the Assessee to use his office premises for carrying out the business of fabrics. The affidavits from some persons in respect of which reference has been made in the forgoing paras, copy of agreement between M/s Kumar Properties Pvt. Ltd. and M/s Continental Metalics Pvt. Ltd. for storage space at the godown in Wazirpur Industrial Area were used as evidence for the business activities. Besides, copy of affidavits from Sh. Santosh Jha

and Sh. Pramod Kumar Gupta that he was contacted in August 2012 for the sale of the fabric and he visited the godown at Kundli has also been relied on. Other evidence are copy of the minutes of the board meeting of M.s BSR Industries Pvt. Ltd. on 24.01.2011 permitting the Assessee for using godown Kundli, Haryana for keeping the stock. With respect to the sales made during the year under consideration the Assessee submitted the list of sundry debtors alongwith their address and PAN, partywise and month-wise sale details, copy of ledger of M/s Rudraksh Fab Pvt. Ltd. (debtor) alongwith reconciliation in the books of M/s Exel Fabrics and ledger of M/s Exel Fabrics in the books of M/s Rudraksh Fab Pvt. Ltd. for FY 2012-13, copy of the confirmation from the above party. Similar documents were submitted in respect of the sales to M/s Balaji Hosiery Udyog. Besides the above, an affidavit of Sh. Sonu Saini was submitted affirming the transportation of fabric and receipt of payment amounting to Rs. 32,650/-. The Copy of the details of freight charges paid to Sh. Raju Khurana was also submitted. It is claimed that these documents proved the sales made by the Assessee.

10.17 The Appellant has argued that the Assessing Officer has not given any finding that accounts are incorrect or incomplete or she could not deduce the income from the accounts maintained by the Assessee. In the absence of such conclusion the claim of the opening stock could not be rejected. The Appellant has placed the reliance on 5 decision mentioned on page 29 of the submission. It is pleaded that the Assessing Officer was not justified to reject the claim of the Appellant in the absence of any

defect being pointed out in the books of accounts maintained by the Appellant. Some of the decisions claimed to be supporting in his favour are referred to on page 30 and 31 of the submission. Another argument is that on addition can be made on the basis of surmises, suspicion and conjectures. It is submitted by the Appellant that he furnished sale bills to support the transactions of sales and in supports of ownership and holding of the stocks in the instant year. All the realization of the sales was substantially by account payee cheques, duly recorded in the books of account. The Appellant has submitted that the whole foundation for this case has been laid down by the Assessing Officer on the basis of the alleged inspection report which was brief and vague without mentioning even the basic details as to the date of inquiry, individuals who were inquired etc. Even otherwise the premises inspected were not the business place used by the Assessee. No notice was given before carrying out any investigation and verification for the aforesaid premises. When the Assessee's business was closed, there was no necessity and justification to carry out physical verification of the premises. The physical verification carried out after the close of the business cannot have any relevance. The Appellant has relied on the decision of the Hon'ble ITAT Delhi in the case of M/s Shri Veer Aeromatic herbs Products for AY 2009-10. The Appellant has alternatively argued that in view of no denial of sales the purchase have to be accepted if not in the form claimed by the Assessee. The reliance is placed on the decision of Hon'ble Gujarat High Court in this case of CIT vs. Bholanath Polyfab Pvt. Ltd., 355 ITR 290. In this case, the

Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax.

10.18 In Annexure A to the written submission dated 28.09.2017 filed before me, the Appellant has rebutted the observation of the Assessing Officer. These observations are more or less on the same lines as submitted before the 6 Assessing Officer. Since, this Annexure has also been made part of Appellant's submission in this order, the same is not discussed here at length. On the issue of declaration of stock in the Financial Year relevant for AY 2007-08, the Appellant has referred to the Assessment Order passed u/s 143(3) /147 in which the Assessing Officer noted that the Assessee produced the relevant documents alongwith source of investment in stock and other assets which were examined. On the observation of the Assessing Officer that the Assessee has not shown basic assets like weighing scale /weighing meter, scissors / cutters in the Balance Sheet, it has been replied that the petite items are part of the stationary expenditure and not fixed assets. Such small items were not capitalized by the Assessee owing to their miniscule value. With regard to the inquiries conducted by the Assessing Officer it is submitted that Assessee furnished confirmation from the parties to whom the sales were made. The Assessing Officer conducted no inquiry from such purchasing parties. The assessing officer had doubted the business activities carried out by the Assessee on the ground that he was busy in pursuing education mostly outside Delhi. In this regard, it is submitted that the business of such a

nature does not involve regular presence as affirmed by Sh. Mayank Jain on oath. Such business does not require any regular presence. The business can take place over the phone of the Assessee may be presence as and when required. The elder brother Sh. Mayank Jain had stated that Sh. Madhur Jain used to come home whenever required during his study. On the adverse comments of the Assessing Officer relating to change of godown it is submitted that the businessmen is entitled to take the decision in his interest and the department cannot set pinot the shoes of a taxpayer. The Appellant further argued that it is ironical that on one hand the Assessing Officer seeks to place reliance on the statement of sh. Alok Jain that there was no pressure on the Assessee to vacated the premises, on the other hand she sought to dispute the fact that there was no stock at the basement of the property owned by SH. Alok Jain. The stock was shfted way back in 2011 whereas the inquires were conducted by the Assessing Officer in 2016. The owner of the godown could not keep the space vacant all these years.

10.19 I have given due consideration to the inquire conduced by the Assessing Officer, submission of the Appellant and relevant case laws. The Assessing Officer has doubted the genuineness of business activity by the 7 Assessee and for this purpose she conducted the inquiry having regard to the office and godown of the business, carriage of the goods from Wazirpur Industrial Area to Kundli, Haryana etc. She recorded the statement of the persons who had furnished their Affidavit in support of the

Assessee. The Assessing Officer has also taken note of the fact that two persons did not appear in response to a summons issued. With regard to anomalies in the facts mentioned in the Affidavits and the statements of the relevant persons, the Appellant has vehemently argued that the same may be due to passage of time. It is also a fact that the Assessee has not been able to prove the opening stock either with the purchase bills or with the Income Tax Returns. The Income Tax Returns prior to the year under consideration were filed in Saral Forms. The appellant had not disclosed any opening and closing stock in these returns. But it is also a fact that the Assessing Officer has not doubted the sales made by the Assessee. The Appellant, during the Assessment proceedings, filed the confirmation from the sundry debtors namely Ms. Sushma Jain, Sh. Krishan Jain, M/s BSR Industries Pvt. Ltd., Sh. Mayank Jain and Sh. Santosh Jain. The Assessee also produced the sale bills to support the transaction. The sale proceeds were substantially realized through account payee cheques. It is also claimed by the Appellant that the Assessing Officer carried out verification in respect of the sales and she did not find any adverse facts. In view of these facts, where sales have not been denied or disbelieved, to negate the stock out rightly would be a self contradictory proposition. On the given facts and in the circumstances, the theory of the opening stock shown by the Assessee may be rejected on various counts but the existence of stock cannot be denied in view of the sales. It is also possible that the Assessee made the purchases during the year under consideration and sold the stock in the market. In any case, where the credit side

of the Profit & Loss account has not been dismissed by the Assessing Officer through the inquiry, corresponding debit side in respect of the stock, be it is the form of opening stock or purchases cannot be disbelieved. There are other possibilities, like the value of the purchases was far less than shown as value of the opening stock. That way the gross profit of the Assessee could be more than declared in the return. But this hypothesis will go against the logic of the Assessing Officer, which has been mentioned in para 17 of the Assessment Order that cloth being a VAT free product, is 8 many times misused to convert black money into white by showing sales and purchases of large amounts. As a matter of fact, if the hypothesis of inflation of the purchase or stock is admitted for the sake of the argument, that would go against the logic of the Assessing Officer whereby an Assessee could try to maximize the profit in the books of account instead of generating unaccounted profit. In the case of Pushpal Kumar Das vs. ITO, Ward-48(1), Kolkata in ITA No. 1442/Kol/2012 dated 10.12.2015, ITAT, Kolkata Bench 'C', has held as under:

10.20 From the above decision a logical proposition can be deduced here that after believing the sales or not rejecting the same through the inquiry, rejection of the corresponding debit side could result in absurdity. I find support from the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Bholanath Poly Fab Pvt. Ltd. reported in 355 ITR 290, wherein the Assessing Officer held that purchase worth Rs. 40,69,546/- were unexplained and disallowed the expenditure claimed by the Assessee and computed the total income of Rs.

41,10,187/-. On the question of bogus purchases, the Tribunal concurred with the Revenue's views that such purchases were made from bogus parties. The Tribunal noted that the Assessing Officer had issued notice to all the parties from whom such purchases were allegedly made. Such notices were returned unserved by the postal authorities with the remark that the addresses were incomplete. The inspector deputed by the Income-Tax Department also could not find any of the parties available at the given addressee. The Assessee was unable to produce any confirmation from any of the parties. Through the Assessee had claimed to have made payment by account payee cheques, upon verification, it was found that the cheques were encashed by some other parties and not by the supposed sellers. However, the Tribunal was of the opinion that though the purchases might have been made from bogus parties, the purchases themselves were not bogus. The Tribunal adverted to the facts and data on record and came to the conclusion that the entire quantity of opening stock, purchases and the quantity manufactured during the year 2005-06 were sold by the Assessee. Therefore, the purchase of the entire 1,02,514 meters of cloth were sold during the year 2005-06. The Tribunal, therefore, accepted the Assessee's contention that the finished goods were purchased by the Assessee through not from the parties shown in the accounts, but from other 9 sources. The Tribunal was of the opinion that not the entire amount, but the profit margin embedded in such amount would be subjected to tax. Hon'ble Gujarat High court held as below:

10.21. Reliance is also placed on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Sathyanarayan P. Rathi, 351 ITR 150(Guj) Wherein it was held that:

10.22 In yet Another decision CIT vs. Simit P. Sheth, 356 ITR 451 (Guj) the Hon'ble Gujarat High Court held as under on almost similar facts:

10.23 Further in the case of ACIT vs. M/s Jaipur Jewels in ITA No. 1699/Mum/2017 dated September 13, 2017 for AY 2007-08, it is held by the Hon'ble Tribunal, Mumbai as under:

10.24 I find support from one more decision on the similar facts in the case of ITO vs. Manish Kanji Patel in ITA No. 7299/Mum/2014, 7154/Mum/2012& 7300/Mum/2014 dated 18.05.2017, ITAT 'H' Bench, Mumbai, wherein it has been held as under :

10.25 From the above decisions, it can be held that where there are sales, there must be corresponding purchase or stock on the debit side of the Profit & Loss account. If the Assessing Officer has not brought out any facts to disbelieve the genuineness of the sales, it can be inferred that the same is possible only with available stock in any possible form. One can doubt the modus operandi or modus Vivendi of the business but if the sales have been accepted, the availability of stock cannot be doubted.

10.26 If for the sake of logic, observation of the Assessing Officer to the effect that claimed business of the cloth by the Assessee is not genuine and he only tried to introduce his black money into white by showing fictitious business activities, is accepted, the question would arise what benefit ultimately is gained by doing all this exercise. The Assessee has shown gross profit of Rs. 18,00,095/- and net profit of Rs. 8,75,491.50 meaning thereby maximum income which could be shown as capital is Rs. 8,75,491.50 and the Assessee has to pay tax thereon. A wiser taxpayer may declare this income under the head Income from Other Sources or Income from Profession as the Assessee 10 is an Advocate. Therefore, the observation of the Assessing Officer does not appeal to the common understanding of the management of taxation matters. Accordingly, the addition made by the Assessing Officer is deleted.”

06. Therefore, learned AO aggrieved with that order has preferred this appeal.
07. The learned senior departmental representative took asked through the assessment order and submitted that that opening stock shown by the assessee as on 1 April 2012 of ₹ 51,051,565/- was not existing and therefore the learned assessing officer has made this addition. He also referred to the detailed reasons given by the learned assessing officer at paragraph number 13 of his order starting from page number 15-page number 33 of his order. Therefore he submitted that the learned CIT – A deleted the whole addition without considering the actual factual gamut of the controversy where inquiries made by AO based on the return of income, on the basis of statement recorded, on the basis of the inquiries of the inspectors, the returns filed by the assessee in earlier years clearly proved that assessee has manipulated these activities of

trading of fabric. He therefore submitted that the order of the learned assessing officer should be upheld in the order of the learned CIT – A deleting the above addition should be set aside.

08. The learned authorised representative placed on record and extensive written submission running into 33 pages supported by a paper book and thereafter submitting that the issue is squarely covered by the decision of the honourable Delhi High Court on identical facts and circumstances wherein the coordinate bench in the case of that assessee deleted the addition which has been confirmed by the honourable Delhi High Court. He extensively read the decision of the honourable Delhi High Court and submitted that there is not of difference of even an inch except the amount of the addition in the issue dealt with by coordinate bench, which has been upheld by the honourable Delhi High Court. He referred to the decision of the coordinate bench extensively in ITA No. 6527/D/2017 in order dated 27.4.2018 and decision of the honourable Delhi High Court which confirmed the order of the coordinate bench wherein the addition on similar facts was deleted. He also referred to the decision of the learned CIT – A wherein in paragraph number 9.2 certain annexure filed by the assessee were considered by the learned CIT – A for deleting the above addition. He also referred paragraph number 10 of the order of the learned CIT – A wherein each issue raised by the learned assessing officer have been dealt with. Therefore, he submitted that there is no infirmity in the order of the learned CIT – A in deleting the above addition and now the issue is squarely covered in favour of the assessee.
09. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the written submission made by the learned authorised representative along with the paper book and various decisions cited therein. Coming straight made to the decision of the honourable Delhi High Court wherein the issue has been dealt with as Under:-

“7. Briefly stated, the Respondent-Assessee, Shri Akshit Kumar filed his ITR on 31.03.2015 for AY 2014-15 declaring his income of Rs.41,60,010/-. The declared sources of income of the Respondent-Assessee were salary, income from business and profession and other sources. The declared income included an amount of Rs. 3,19,580/- under the head income from business and trading of textiles. The case was selected for scrutiny and notices under Sections 143(2) and 142(1) were issued by the Assessing Officer ('AO') from time to time. The AO noticed certain peculiarities, which have been summarized by the Appellant-Revenue in the present appeal as under:

"a. In the return of income, the assessee had shown his residential as A-32 Preet Vihar Delhi and was also filing its ITR with AO at New Delhi.

b. It was also noticed that the assessee was having its business at 75A/2 Kon Village Mumbai, Panvel, Raigad.

c. It was further noticed that the assessee was actually residing at Navi Mumbai.

d. It was further observed that the filing address had remained constant for the past several years, when all along the business and residence of the assessee has been based on Navi Mumbai.

e. Not only the assessee, his father Shri Anil Kumar and his mother Smt. Manjusha were also found trading same cloth/fabric under the similar circumstances in different names. Shri Manjusha Anil was working under the name and style of M/s Hitech Trading takes place from 42 & 77, Mumbai - Pune Highway, Khopoli Industrial Estate, Raigaol, Mumbai, On physical enquires at all the business premises it was discovered that there was no fabric/cloth trading business in existence for any of the members.

f. It was quite intriguing that when the assessee was actually residing in Mumbai, earning salary income in Mumbai and had his business also at Mumbai, and there was no business at Delhi, why had it been consistently been filing its ITRs in Delhi with Delhi address."

xxxxxxxxxxxxxxxxxxxxx "a. All the sales undertaken by its proprietary concern M/s Loraiya Trading were in cash only.

b. During FY 2013-14, no purchases were made, all the sales were made out of the opening stock available at the beginning of the year.

c. On perusal of the sample voucher of cash sales, they appeared to be fresh, computer printouts, recently signed and back-dated to FY 2013-14.

d. The business of the assessee was trading in fabrics, however as per the balance sheet of M/s Loraiya Trading there is no weighing machine in the fixed asset schedule. It was pertinent to note that as per the stock register, the unit of opening stock of cloth fabric is in Kilogram and not pre- packaged units like boxes or crates which may or may not require being weighed.

e. The assessee had neither shown any building in its fixed asset schedule nor any rent expense in his P/L Account. The assessee had shown huge opening stock of 19,85,109.530 kg.valued at over Rs.30 crores which would require considerable storage space. It is pertinent to answer if the assessee was indeed selling goods from the opening stock available with it, then where was this stock stored."

8. The AO conducted on the spot physical verification, under [Section 133B](#) of the Act, of the business premises of the Respondent- Assessee, to ascertain if the claimed business was actually in existence or not. As a result of the said survey, the AO concluded that the premises from where the Respondent-Assessee purportedly conducted his business had been abandoned for several years and there was no built-up area in its vicinity. The AO also gave a categorical finding that there was no weighing machine installed. Thus, on the basis of afore noted facts, the AO held that it was a case of money laundering and a false impression had been created that the entire cash deposits in the bank account of the Respondent- Assessee were purported sale proceeds. The AO also held that the entire cash deposits found in the bank account of the Respondent-Assessee were, in fact unexplained income and not sale proceeds and accordingly made an addition of Rs.4,20,62,550/- on account of unexplained credits while completing the assessment under [Section 143\(3\)](#) of the Act at a total income of Rs.4,62,22,560/-. Thereafter, a rectification order was passed to delete an addition of Rs.3,19,580/- under the head 'income from business or profession' from the assessed additions of Rs.4,20,62,550/-. On appeal, the CIT(A) noted that as per the verification report under [Section 133B](#) dated 05.11.2016, there was

no weighing machine found at the premises of the Respondent-Assessee. This aspect was further juxtaposed with the fact that the Respondent-Assessee in its return (depreciation schedule) did not show the existence of any weighing machine. The Respondent-Assessee, contested the scrutiny proceedings by relying upon the rule of consistency by referring to the assessment of the earlier years. However, his contention was rejected on the ground that no finding had been given by the AO in AY 2007-08 and the present findings in AY 2014-15 would not be affected by the findings of earlier assessment years as the facts of the present year are entirely different. Accordingly, the order of the AO was upheld. On further appeal, the learned ITAT held that the AO was not justified in law to treat the sales as income from unexplained sources and consequently, addition made by the AO, sustained by the CIT(A) of Rs.4,20,62,550/- was deleted. As a result, the appeal of the Respondent-Assessee was allowed.

9. Mr. Ajit Sharma, learned Senior Standing Counsel for the Appellant- Revenue urged that the learned ITAT was not justified in ignoring the specific findings given by the AO in the assessment order dated 31.12.2016. He submitted that the AO after conducting a detailed enquiry had rightly concluded that Respondent-Assessee's intention was to get assessed at a remote place in Delhi, rather than before the appropriate authorities in Mumbai. He submitted that the very absence of the business place and even a weighing machine in the balance-sheet, coupled with the fact that there was no expenditure on account of rent, depreciation etc. in the profit and loss account of the Respondent-Assessee, the inferences drawn by the AO were correct. He submitted that maintaining a huge inventory of stock in the range of Rs. 20 to 30 Crores year after year and making comparatively small amount of sales, itself raised serious doubts about the genuineness of the business. He further submitted that the finding of the AO to the effect that the Respondent-Assessee had created a false business with the objective of laundering its unaccounted income is based on the enquiries conducted by the AO under [Section 133B](#) and also because the Respondent-Assessee had failed to appear in person even after being summoned under [Section 131\(1\)](#) of the Act to clarify the position. He submitted that learned ITAT had erred by not taking into consideration the findings of the AO raising serious concerns about the genuineness of Respondent-Assessee's claim of doing business which had been fully endorsed by the CIT(A).

10. We have carefully considered the contentions advanced by Mr. Ajit Sharma and have also perused the findings of the Income-Tax authorities and that of the learned ITAT. The learned ITAT after

analysing the contentions urged by the parties and also on the basis of the material placed on record observed as under:

"13. We have heard the rival submissions, perused the relevant finding given in the impugned orders as well as the material placed on record. Here in this case we have to analyse various factors and background highlighted by both the parties as to whether the sales of fabric/cloth bales is to added as unexplained income or sale of existing stocks or not. From the Revenue's perspective, it is palpable that AO had made very genuine efforts to carry out a physical inquiry to find out whether such trading of fabric was done by the assessee from the premises mentioned in the audit report or not. But at the same time it is also an admitted fact that on the date of inquiry, i.e., made on 5.11.2016 at 75A/2, Kon Village, Panvel Taluka Raigad, the assessee has stated to have closed its business long back in July 2015 ending 31st March, 2016 the stock has been shown 'NIL', which factum has been shown in audit report and return of income for A.Y. 2016-17. This inter-alia means that entire stock alleged to have been kept by the assessee were sold during the financial year 2015-16 and all the business was shut down. In her inquiry report AO had stated that the areas specified in the address, heavy constructions was being done for residential housing society and this was not the area was not well addressed and she also stated the details of certain construction sites. On the plot which has been stated to be near the address was in a complete abandoned state which had dilapidated building and even on enquiry, nobody could confirm running of such business. It has been alleged by the AO that similar inquiry was done in the case of assessee's father and mother where again business premises was found to be untraceable at the given addresses. She had also repudiated many evidences as well as explanation given by the assessee which we have already discussed above. Even the Ld.CIT(A) has reiterated and confirmed the said observations of the AO in a very detailed manner. From such finding and observations it

does appear that at the time of inspection on 5.11.2016, no trace of assessee's business or business premise could be found. The counter of the assessee on this issue had been that it was carried out from the space provided by M/s S.K. Wheels Pvt. Ltd., however, for that also AO observed that no credible evidence has been brought on record. For other evidences also like electricity bill to prove the location of M/s S.K. Wheels Pvt.Ltd. alongwith rental receipts from where M/s S.K. Wheels was functioning has not been accepted by the AO due to lack of any corroborative and independent evidence. On the issue where such a huge stock of fabrics have been alleged to be kept by the assessee, his main contention has been that same was kept in the premise provided by M/s S.K. Wheels which has given huge godown to the assessee without charging any rent as the said Company belonged to his family members. M/s S.K. Wheels was authorised dealer in Maruti Suzuki cars and in support confirmation from the said company has been given that rent free place has been given to the assessee during the financial year 2013-14. Electricity bill has also been produced to show that premises did existed at 75A/2, Kon Village Mumbai, Panvel, Raigad, the copy of electricity bill as well as the letter by M/s. S.K. Wheels have been placed at the paper book at pages 152 and 154 of the paper book. Apart from that, certain rental receipts issued by one RA enterprise has been given to show that M/s. S.K. Wheels Pvt. Ltd. was having premises on rent. However, all these evidences adduced by ht assessee is how far credible and acceptable in wake of inquiry made by the AO and whether it can be conclusively held that the assessee was carrying out any business from the premises made available by M/s. S.K. Wheels or not. The finding recorded by the AO in light of her inquiry prima facie negates most of the assessee's claim regarding the premises available to the assessee at a given place for carrying out such a large scale of trading of fabric/cloth bales. Such a detailed finding of the AO and Ld. CIT (A) for the existence of any trading business especially at

the time of inspection has not been properly countered by the assessee except for adducing certain evidences which again does not have much credentials in wake of actual inquiry conducted by the AO. But such an inquiry in F.Y.2016-17, i.e. post closure of business how far will affect the past history and the year under consideration, i.e., F.Y. 2013-14 is the moot point for our consideration juxtaposed with entire facts and material on record.

14. The finding of the AO in her inquiry conducted in November, 2016 and past assessment records have to be weighed in light of all probable factors and preponderance of probability of such factors has to be seen qua material on record which we shall discussed herein after. One of the most glaring fact which unfolds from the material placed on record is that, prior to the assessment year 2007-08 assessee had made huge purchases of stock the source of such purchases have been reflected in the books of account and audited accounts; and in the assessment year 2007-08, the opening stock of fabric/cloth was valued at Rs. 31,65,48,236/- and in that year itself there was sales of around Rs. 5.89 crores leaving behind the stock of Rs. 25.83 crores thereof. Again huge purchases have been shown in the A.Y. 2008-09 and sales have also been made. The details of opening stock, purchases, sales and closing stock for various years has already been incorporated above. As on 31st March, 2014 there was a closing stock of R.19,53,79,660/- which was also the opening balance in this year and out of the said opening stock, sales of Rs. 4,20,62,550/- have been made and closing stock of Rs. 15,48,57,470/- has been shown on which gross profit of Rs. 15,40,360/- has been disclosed. The controversy to resolve here is, whether the stock in the books have been sold or not; or the entire deposits claimed out of sales in unaccounted money of the assessee. Going by the history of trading account in the earlier years, viz., opening stock, purchases, sales, closing stock, gross profit and the assessments made by

the department, we find that way back in the assessment year 2007-08, assessment was passed u/s 143(3)/147, whereby the entire books of accounts have been scrutinised and assessee's income from business have been accepted. This inter-alia means that entire opening stock, sales and closing stock made during that year stands accepted. Again for assessment years 2008-09 to 2011-12, though returns have been accepted u/s 143(1), however the positions of stock were never disturbed and were duly reflected in the audited accounts. In the assessment year 2012-13 again the assessee's trading activity and books of accounts were subjected to detailed scrutiny in proceedings u/s 143(3), wherein the AO had noted the trading account figures like, turnover, profit rate, profit ratios vis-à-vis turnover and stock positions and based on his detailed reasoning, AO had rejected the trading result and has even enhanced the GP rate and thereby making an addition at Rs. 42, 51,463/- in the trading account. Thus, in this manner the entire trading activity of the assessee stood accepted and only addition made was on account of higher profit rate, but the sales made during that year; trading/business carried out by the assessee was duly accepted, including opening and closing stock. Again in the assessment year 2012-13 the opening and closing stock and trading account including sales has not been disturbed, now in the impugned assessment year 2014-15, the audited balance sheet reflected an opening stock of Rs.19,53,29,660/- which opening stock stood accepted by the department either under the scrutiny proceedings or by not selecting the return for scrutiny proceedings or by taking any action to disturb such returned income. Hence the quantity and valuation of stock stood accepted which had attained finality. Thus, the quantum and figure of the opening stock which stood accepted in the earlier years has to be taken as an actual stock available with the assessee. Out of the said stock purported sales of Rs. 4,20,62,550/- has been made leaving a closing stock of Rs. 15,48,57,470/-. The trading

account was thus reflected in the following manner:-

Item	Unit	Opening Qty.	Qty.	Qty Out	Closing Qty.
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In Details

Cotton	Kg.	19,85,109.530	0.000	4,11,716.260	15,73,393.270
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Fabric	Grand Total	19,85,109.530	0.000	4,11,716.260	15,73,393.270
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15. Ld. AO or Ld. CIT (A) in the impugned orders have neither said anything about the opening stock or the closing stock coming from the earlier years nor they rejected the trading result or gross profit but instead have treated the entire sales on the credit side as income from unexplained sources. Even if the contention of the AO is accepted that assessee has not made any sales, then in that case the opening stock which has been accepted by the department in earlier years continues to be with the assessee and the same should be reckoned to be reflected as closing stock on the credit side of the trading account. Not only that, if the gross profit is also not disturbed then the GP which is the balancing figure of opening stock and purchases on debit side and sales and closing stock on the credit side has not been disturbed then how the entire stock could have been disposed of by the assessee has not been dealt by the AO. If the AO's view is accepted that at no point of time there was any business carried out by the assessee, then how can the entire trading activity, stock purchased and sold and income derived there from which stood accepted in earlier years and assessments which have attained finality can be disregarded. If way back in the A.Y. 2006-07 assessee had made huge purchases of stock, the source of which has been disclosed in the books of account and audited financial statement and in the return of income for the assessment year 2006-07; and thereafter year by year assessee has been making purchases and sales or has been selling his stock carried forward from the preceding year which

stands accepted, then in the impugned assessment year can it be held that there was no stock in existence at all and only activity done by the assessee was to deposit certain unaccounted cash in the garb of the sale and rotate his unaccounted money year after year. A stock existing in the books of accounts cannot be said to have been vanished in this year, when it has been stated that in subsequent year, that is, in July, 2015 the entire stock was sold and business was closed down which was prior to the initiation of the impugned assessment proceedings and much before the inspection carried out by the AO in November, 2016

16. Though there may be a lot of strength in the AO's inquiry, however the same simply whittles down from the fact that; firstly, it has been done after one and a half year from the closure of the business; secondly, the assessee's purchases and the stock acquired in assessment year 2006-07 and 2007- 08 have neither been repudiated nor has been disturbed, which only goes to show that such stock did existed with the assessee and were also subjected to scrutiny from time to time; thirdly, once a huge investment shown in the books of account for the purchases of stock which has subjected to examination in scrutiny proceedings, then it cannot be held that on the first day of April of 2013, the entire stock did not exist; and lastly, the AO has neither rejected the books of accounts nor disturbed the opening and closing stock nor the gross profit; and once that is so, then to treat the entire sales as income of the assessee will not hold ground, because either there has been sales or the same stock must be appearing in the closing stock at the year ending 31st March, 2014. This finding of stock available in books has not been dealt at all by the authorities below. Not only that, in the subsequent years also once the assessee's stock which has been sold and said sale and income derived there from has not been disturbed then it quite difficult proposition to hold that the sales made by ht assessee out of its opening stock

should be treated as income from unexplained sources.

17. Thus, in our opinion the sale made by the assessee out of his opening stock cannot be treated as unexplained income to be taxed as income from other sources'; firstly, the stock was available with the assessee in his books of account and trading in such stock including purchase, sale, opening and closing stock (quantity wise and value wise) has been accepted by the department year after year and in some years under scrutiny proceedings, therefore, non existence of stock or business cannot be upheld; secondly, the sale of stock in the earlier years and the sale of balance left out stock in subsequent years has been accepted or has not been disturbed, then to hold that no stock was sold in this year and remained with the assessee will be difficult proposition; thirdly, inquiry and inspection by the AO done much after the closure of business may not be persuasive for the past events especially in wake of facts as discussed above; and lastly, once neither any item in the trading account, nor gross profit has been rejected, then one part of credit side of the trading account, that is, sales cannot be discarded completely so as to hold that it is unexplained money.

18. Our finding given above is peculiar to this case, because here in this case in the earlier years, scrutiny assessment have been done whereby the assessee's opening stock, closing stock and trading activities have been duly accepted and it is not a simple case where mere return income has been accepted u/s 143(1). Thus, we hold that AO is not justified under law to treat the sales as income from unexplained sources and accordingly addition made by the AO and sustained by the CIT (A) of Rs. 4,20,62,550/- is directed to be deleted.

19. In the result appeal of the assessee is allowed."

(Emphasis supplied)

11. From the aforesaid extracted portion of the impugned order, it is easily discernible that the enquiry under [Section 133B](#) of the Act which has been strongly relied upon by the Appellant-Revenue, was conducted in Financial Year 2016-17 i.e. post closure of the business. The learned ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the learned ITAT to decide the case in favour of the Respondent-Assessee was the history of the case. The learned ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under [Section 143\(3\)/147](#) of the Act. The learned ITAT observed that since the entire books of account had been scrutinised and the Respondent-Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Respondent-Assessee's trading activities were subjected to detailed scrutiny under [Section 143\(3\)](#) of the Act. In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. The learned ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the learned ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Respondent-Assessee. In view of these facts, the sales made by the Respondent-Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the learned ITAT has taken into consideration the entire material placed on record including the report of the AO. The learned ITAT has applied the rule of consistency and rejected the enquiry made by the AO in the relevant assessment year. No doubt principles of res judicata are not applicable to the Income-Tax proceedings however, it is equally well settled law that rule of consistency is a well- established and recognised principle applicable to the Income-Tax proceedings. Pertinently, the Respondent-

Assessee had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the learned ITAT. In absence of any perversity in the impugned order, we are not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore, in our view no question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed.”

10. On careful consideration of the above decision, it is found that the case decided by the honourable Delhi High Court has factual metrics, which are similar to the case before us. On enquiry by the bench to the learned departmental representative, no such distinction was drawn before us. Even otherwise the decision of the learned CIT – A has also covered all the aspects of the issue. The clinching issue which goes in favour of the assessee is that the sales made by assessee out of the alleged undisclosed opening stock on by the assessee has been accepted by the learned AO. The resultant trading profit has also been accepted. Further on the opening stock allegedly not existing according to the AO amounting to ₹ 51,051,565/-, assessee has shown sales of ₹ 52,851,660/- and has disclosed a gross profit of ₹ 1,800,095 only. From the above gross profit assessee has incurred expenditure of almost ₹ 10 lakh and has shown meager net profit of ₹ 875,491/-. Therefore, it is apparent that assessee has only got capitalization of ₹ 875,491 where the AO has alleged that the opening stock of ₹ 51,051,565/- is non-existent and bogus. On the factual metrics itself, the allegation of the learned assessing officer seems to be unsustainable because why a person would show and on accounted opening stock of the magnitude of ₹ 51,000,000 just to on a meager net profit of ₹ 875,000/-. Even otherwise, the issue is squarely covered in favour of the assessee by the decision of the honourable Delhi High Court cited supra. In view of this,

we do not find any infirmity in the order of the learned CIT – A in deleting the addition of ₹ 51,051,656/- made by the learned assessing officer holding that the opening stock of the assessee was an unexplained income of the assessee as such stock in trade was not in existence. In the result, the solitary ground of appeal of the learned AO is dismissed.

11. In the result, appeal filed by the learned assessing officer in ITA number 176/del/2018 for assessment year 2013 – 14 is dismissed.

Order pronounced in the open court on 27/05/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 27/05/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi