

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 5257/DEL/2017 (A.Y 2012-13)**

**(THROUGH VIDEO CONFERENCING)**

Ivory Mart 22-F, Connaught Place, New Delhi <b>(APPELLANT)</b>	Vs	ACIT Circle-52(1) New Delhi <b>(RESPONDENT)</b>
---	----	--

<b>Appellant by</b>	<b>Sh. K. V. S. R. Krishna, CA</b>
<b>Respondent by</b>	<b>Sh. Vivek Vardhan, Sr. DR</b>

<b>Date of Hearing</b>	<b>06.10.2021</b>
<b>Date of Pronouncement</b>	<b>17.11.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 02/06/2017 passed by CIT (A)-18 New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

1. *"The Ld. CIT(A) as well as AO has erred in law and on facts in rejecting the audited books of accounts by wrongly invoking the provisions of section 145(3) of the Income Tax Act, 1961 resulting in addition of Rs. 1,24,15,610/- The rejection of books of accounts is without any reasoning, on surmises and conjectures, wrong and bad in law and hence resultant addition deserves to be cancelled.*

2. *The CIT(A) is factually incorrect in alleging that no item wise physical*

*stock register is maintained and the entries made in the reconciliation are not corroborated. The appellant contends that item-wise stock register is maintained and produced before AO and CIT(A) and each and every entry is properly substantiated and explained. Hence the entire addition of Rs.1,24,15,610 as alleged excess stock should be deleted.*

*3. The Ld.CIT(A) has failed to appreciate the legal position that the admission at the time of survey cannot be considered as conclusive evidence especially when it is proved by the appellant that the discrepancy is due to the over valuation of stock already forming part of the stock records of the appellant.*

*4. The Ld. CIT(A), though accepting that there is valuation difference, has wrongly arrived at the average valuation rate of Rs. 1848.21/- per gm instead of Rs.1605.44 per gm calculated based on valuation method consistently and regularly followed in earlier years. Therefore the addition sustained is without appreciating the facts of appellant's case and hence deserves to be deleted.*

*5. The appellant contends that during the course of survey, the valuation of all the stock, including the opening stock accounted by the appellant, has been done at the market rate prevailing on the date of survey resulting in over valuation of stock by Rs.1,24,15,610 instead of average cost/actual cost consistently applied for valuation of stock by the appellant.*

*6. The assessee contends that except for the statement of assessee during survey there is no evidence brought on record to allege purchases outside books. Hence, the positive evidence and explanation filed by assessee should have been accepted and addition cancelled.*

3. The assessee firm is engaged in the business of retail and export business of jewellery in handicraft items. The assessee also has commercial property at Gurgaon from which the firm derives income from house property. During the year under consideration the assessee company has income from business, house property and capital gains. The survey u/s133A of the Income Tax Act was carried out at business premises of the assessee on 31/10/2011,

wherein access talk amounting to Rs.3,70,00,000/- was found at the time of survey. In the statement recorded during the course of survey Sh. Satya Prakash M/s Ivory Mark surrendered the value of excess stock to the tune of Rs. 3,70,00,000/- as additional income of assessee firm for the year under consideration for taxation purpose. Return declaring income of Rs. 2,45,60,366/- was filed on 29/9/2012. The Assessing Officer made addition of Rs. 1,24,15,610/- on account of unexplained excess stock found during the course of survey u/s 133A of the Act.

4. Being aggrieved by the penalty order, the assessee filed before the CIT(A). The assessee CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) is factually incorrect in alleging that no item wise physical stock register was maintained and entries made in the reconciliation are not corroborated. The Ld. AR submitted that item wise stock register was maintained and produced before the Assessing Officer and CIT(A) and each and every entry is properly substantiated and explain. Hence, the entire addition of Rs. 1,24,15,610/- as alleged excess top should be deleted. The Ld. AR submitted that the admission item of survey cannot be considered as conclusive evidence specially when it is proved by the assessee that the discrepancy is due to the over valuation of stock already forming part of the stock records of the assessee. The CIT(A) though accepted that there is value difference has wrongly arrived at the average valuation rate of Rs. 1848.21 per gram instead of Rs. 1605.44 per gram calculation which is based on valuation method and the same is consistently, regularly followed in earlier years. Thus, the addition does not sustain. The Ld. AR further submitted that during the course of survey the valuation of all the stock including the opening stock by the assessee has been down at the market rate prevailing on the date of survey resulting in over valuation of stock by s. 1,24,15,610/- instead of average cost/actual cost consistently applied for valuation of stock by the assessee. The Ld. AR further submitted that except for the statement of

apparent during the survey there is no evidence brought on record to allege purchases outside books. Hence, the positive evidence and explanation filed by the assessee should have been accepted and addition should have been deleted. As regards Ground No. 1 is concerned. Relating to rejection of books of accounts, the same is not pressed by the assessee.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused the material available on record. Ground No. 1 is dismissed as not pressed by the Ld. AR. As regards to other grounds, it is pertinent to note that the assessee is a wholesaler of gems and jewellery dealer. The assessee while preparing final accounts, has not given item-wise valuation of stock. The contention of the Ld. AR that the method of valuation should have been adopted to the extent that cost of market value whichever is lower and the same was not considered by the Assessing Officer and made addition. The submission of the Ld. AR that the surrender is that of excess stock and the same cannot be taken in entirety for making the valuation of the stock, is relevant and correct. Therefore, we direct the Assessing Officer to adopt the method of valuation by taking into consideration the cost of market value whichever is lower and thereafter quantify the same. Thus, this issue needs to be verified. Therefore, we are remanding back this issue to the file of the Assessing Officer for proper adjudication as per the observations made by us. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the Assessee is partly allowed for statistical purpose.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court in presence of both parties on this Day of 17<sup>th</sup> November, 2021**

**sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 17/11/2021

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI