

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A. No.5058/DEL/2017
Assessment Year 2014-15

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.	v.	M/s. Jay Ace Technologies Ltd., GI-48, GT Karnal Road Industrial Area, Delhi.
TAN/PAN: AACCCJ2030N		
(Appellant)		(Respondent)

I.T.A. No.5059/DEL/2017
Assessment Year 2014-15

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.	v.	M/s. Jay Fe Cylinders Ltd., GI-48, GT Karnal Road Industrial Area, Delhi.
TAN/PAN: AACCCJ0668A		
(Appellant)		(Respondent)

I.T.A. No.5060/DEL/2017
Assessment Year 2014-15

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.	v.	M/s. Jay Auto Components Ltd. GI-48, GT Karnal Road Industrial Area, Delhi.
TAN/PAN: AACCCJ0668A		
(Appellant)		(Respondent)

I.T.A. No.5061/DEL/2017
Assessment Year 2014-15

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.	v.	M/s. Jay Iron and Steel Ltd., GI-48, GT Karnal Road Industrial Area, Delhi.
TAN/PAN: AABCJ6067E		
(Appellant)		(Respondent)

I.T.A. No.6637/DEL/2017
Assessment Year 2014-15

Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.	v.	M/s. JNS Instruments Ltd., GI-48, GT Karnal Road Industrial Area, Delhi.
TAN/PAN: AABCJ6067E		
(Appellant)		(Respondent)

Appellant by:	Shri Salil Aggarwal, Sr.Adv. Shri Shailesh Gupta, Adv.		
Respondent by:	Shri J.S. Minhas, CIT-D.R.		
Date of hearing:	18	04	2022
Date of pronouncement:	15	07	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed by the Revenue against the orders of the Commissioner of Income Tax (Appeals)-XXVI, New Delhi [‘CIT(A)’ in short], dated 15.05.2017 and 25.08.2017 arising from order assessment order passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs 2014-15.

2. As informed on behalf of the assessee, all the appeals of

various assessees captioned above are interconnected and relates to solitary issue concerning addition on account of excess stock disclosed. Consequently, all the matters were heard together and are being disposed of by way of this common order.

3. To begin with, we shall take up ITA No.5058/Del/2017 concerning Assessment Year 2014-15 for adjudication purposes.

ITA No. 5058/Del/2017 (Assessment Year 2014-15)

4. The grounds of appeal raised by the Revenue read as under:

“I. The Ld. CIT(A) has erred on facts and in law in deleting the addition made on account of excess stock disclosed for Rs.4,82,09,440/- as the assessee failed to substantiate the claim with sufficient details and evidences that the said disclosure has been correctly incorporated in the return of income.

II. The Ld. CIT(A) has erred on facts and in law in observing that no physical inventory was taken during the course of search/survey in this case whereas evident from record that the physical inventory was taken and recorded during the course of survey in the factory premise of the assessee company situated in Haryana.

III. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”

5. Briefly stated, a search and seizure operation under Section 132(1) of the Act was carried out in JP Minda Group of cases on 20.09.2013. The case of the assessee was also covered in search action. In the course of assessment under Section 143(3), the Assessing Officer observed that a perusal of seized material would show that assessee was holding unaccounted excess stock of Rs.4,82,09,438/- during the Financial Year 2013-14 concerning

Assessment Year 2014-15 in question. A show cause notice was issued for making inquiry on this aspect and explanation along with corroborative documentary evidences were demanded in respect thereto. The assessee, in response, submitted that the assessee group, i.e., JP Minda Group of Companies vide disclosure letter dated 28.12.2013 has taken into account this excess stock of Rs.4,82,09,438/- as part of its disclosure as additional income in the hands of the assessee. In this backdrop, the assessee was further asked to exhibit the inclusion of the excess stock, claimed to be surrendered for the purposes of determination of total income of the assessee under assessment. The Assessing Officer alleged that the assessee failed to submit any explanation and could not identify the impugned excess stock unearthed in search operation to have been included in the total of the assessee in the current financial year. The Assessing Officer ultimately found that the impugned excess stock has not been included in the return filed in response to notice under Section 153A and the contention of the assessee that the excess stock form part of the total income remains unverifiable and is without any corroboration. The Assessing Officer accordingly added the aforesaid amount towards undisclosed excess stock duly admitted at the time of search as an undisclosed investment of the assessee. The assessed income was thus increased the assessed income by sum of Rs.4,82,09,438/- on account of undisclosed investment.

6. Aggrieved, the assessee preferred appeal before the CIT(A). It was canvassed before the Id. CIT(A) that the Assessing Officer misdirected himself in law and on facts in making additions towards unexplained investment on account of alleged failure of the assessee to demonstrate that excess stock declared in the course of search was duly incorporated while determining the total income of the

assessee. The CIT(A) took cognizance of the submissions made on behalf of the assessee and found merit in the plea of the assessee. The relevant operative paragraph of the order of the CIT(A) while reversing the action of the Assessing Officer, is reproduced hereunder for ready reference:

5. *The perusal of submissions of the appellant made during the course of appellate proceedings as reproduced above revealed that a categorical claim had been made to the effect that the excess stock had not been found during the course of search either on account of inventory made or on account of any documents found during the course of search operation. It had been claimed that the excess stock was on account of Internal stock taking carried out as a part of internal control processes in the appellant group of entities and the said exercise had been initiated on 31st August 2013 and the report in this regard by the internal auditor had been submitted on 12.10.2013. The report of the internal auditor has also been submitted during the course of appellate proceedings and it had been contended that the resultant excess stock of Rs.4,82,09,438/- had been made part of the disclosure statement dated 19.11.2013. It was also contended that the requisite entries in the books of accounts in consequence of the disclosure of excess stock had been made in the books of accounts and the said working had been submitted before the AO during the assessment proceedings and the AO did not object or pointed out any inconsistency with respect to the same. In view of these claims, the assessment record had been called for the year under consideration to examine and verify the contention of the appellant on the issue. The perusal of the assessment record revealed that assessee had replied comprehensively on the issue of excess stock and how the same had been made part of the books of account leading to increase in income/decrease in loss depending upon the facts of each case in which the excess stock had been found by the internal auditor. It is*

seen that the AO had recorded that the issue of excess stock had been confronted on 11th March 2016 through comprehensive questionnaire and assessee submitted a reply on 29th March 2016 whereas as per the perusal of the order sheet as contained in the assessment record revealed that the case had been closed on 23th March 2016 with the following entry recorded by the AO.

"Sh. Shashi Bhushan CA/AR attends. Books of account etc. as produced test checked with the supporting vouchers of expenses".

It is further seen that the reply on the issue of excess stock have been given by the assessee and was claimed to be submitted on 18th March 2016 and the order sheet entry on 18th March 2016 records as under:

"Sh. Shashi Bhushan CA/AR attends. Case partially heard and adjourned to 21.03.2016 on his request".

The reply of the assessee on this issue during assessment proceedings incorporates the following:

*"Ref: Pandey/ E/ My documents/ JPM Group/ LCL
Asstt. Commissioner of Income Tax
Central Circle-13, Room No-355,
ARA Centre, E-2 jhandewalan Extn.,
New Delhi*

Sub: In the matter of M/s Jay Ace Technologies Ltd. Assessment Year 2014-2015, Proceeding u/s 153A of the Income Tax Act, 1961.

Dear Sir,

Reference to the notice dated 11.12.2015 received from your office, in connection with the above mentioned proceedings, we are pleased to submit the following details:-

Point No.-11 & 24.

1. *Details in respect of Investment in moveable Property and Immoveable Property, or additions in fixed assets made by the assessee company during the year under assessment is enclosed and marked as Annexure-I.*

Point No.-12a & 21.

2. *Details in respect of Purchases made by the assessee company in the format required as per the questionnaire along with Copy of accounts of parties (Sundry Creditors) for the year under assessment is enclosed is enclosed and marked as Annexure-II.*

Point No.-12b & 20.

3. *Details in respect of Sales made by the assessee company in the format required as per the questionnaire along with Copy of accounts of parties (Sundry Debtors) for the year under assessment is enclosed and marked as Annexure-III.*

Point No. 13

4. *The assessee company has not provided any services during the year under assessment. Further details in respect of Services availed during the year under assessment is enclosed and marked as Annexure-IV.*

Point No.-14

5. *Copy of VAT Returns filed by the assessee company for the year under assessment along with the Challans is enclosed and marked as Annexure-V.*

Point No.-15

6. *Copy of Service Tax Returns filed by the assessee company for the year under assessment along with the Challans is enclosed and marked as Annexure-VI.*

Point NO.-16

7. *Copy of Excise Returns filed by the assessee company for the year under assessment along with the Challans is enclosed and marked as Annexure-VII.*

Point No.-17

8. *Since the assessee company has not taken or entered any agreement regarding Works Contract, therefore there is no payment of Works Contract Tax during the year under assessment as such this clause is not applicable.*

Point No.-18

9. *Detail in respect of EPF and ESI returns filed by the assessee company during the year under assessment along with the Challans is enclosed and marked as Annexure-VIII.*

Point No.-19

10. *The assessee company maintains MRN (Material Receipt Note) in respect of goods physically delivered at site. Further the details of stock is given at Point No. 32. The copy of MRN will be produced as per your directions.*

Point No.-22

11. *Details in respect of Secured Loans of the assessee company for the year under assessment along with the Ledger Account is enclosed and marked as Annexure- IX.*

Point No.-23

12. *Details in respect of Loans and Advances given by the assessee company for the year under assessment is enclosed and marked as Annexure-X.*

Point No.-25

13. Details in respect of Current Liabilities, Sundry Creditors & Provisions of the assessee company for the year under assessment is enclosed and marked as Annexure-XI.

Point No.-26

14. Details in respect of Unsecured Loan taken by the assessee company for the year under assessment is enclosed and marked as Annexure-XII.

Point No.-28

15. Details in respect of Interest paid by the assessee company during the year under assessment is enclosed and marked as Annexure-XIII.

Point No.-29

16. Details in respect of Interest Received by the assessee company during the year under assessment is enclosed and marked as Annexure-XIV.

Point No.-30

17. The assessee has not earned any Short Term Capital Gain/Loss during the year under assessment as such this clause is not applicable.

Point No.-31

18. Details in respect of Investments made by the assessee company, for the year under assessment is enclosed and marked as Annexure-XV.

Point No.-32

Quantitative details of Inventories is enclosed and marked as Annexure-XVI.

Point No.-33

20. Sample copy of Form 16 issued by the assessee company in which the required details in respect of employees is given is enclosed and marked as Annexure- XVII.

Point No.-34 & 35

1. Explanations in respect of cash and Jewellery in respect of JPM Group will be filed separately.

We hope, you will find the above details in order. We shall be pleased to submit any further information as may be required in this connection with the above matter”

It is also seen that draft order for approval had been sent on 29th March 2016 which also means that the said reply was available to the AO before this date and order sheet dated 23rd march 2016 in the regard corroborate the same. In view of the above detailed examination of the facts of the case as borne out from the assessment record, the observation of the AO in the assessment order that assessee had not given any reply on the issue of excess stock during assessment proceedings is factually incorrect. It is also seen that no documents had been found during the course of search operation evidencing discrepancy in stock as has been observed by the AO in the assessment order at para 3. In fact the excess stock has been discovered as a part of internal stock verification exercise carried out by the assessee through an independent auditor and the said report had been received after the conclusion of search on 22.09.2013. In this regard the Panchnama of the search conducted in the case of the appellant at the premises GI- 48, G T Karnal Road, Industrial Area Delhi had been called for and submitted by

the assessee. The perusal of the said Panchnama dated 20.09.2013 clearly shows that no inventorization had been carried out during the course of search operation and this also corroborate with the claim of the appellant that no physical inventory leading to excess stock had been carried out during the search operation and the disclosure made by the assessee in different entities on account of excess stock was in consequence of the internal stock verification carried out. It also becomes clear that the assessee had given detailed factual reply on the issue of excess stock which records the position of profit and loss account and resultant figure of profits before incorporating the figure of excess stock and after incorporating the figure of excess stock. I have also examined the figures of excess stock in the case of 5 entities of the J P Minda group and its impact on the returned figure of profit and loss to explore the possibility of assessee having manipulated its books of accounts to neutralize the discovery of excess stock and its consequent disclosure search operation. The following chart would show that amount of excess stock has been properly incorporated and the resultant figure has been made part of the income tax return leading to increase in the net profits/decrease in net loss as the case may be.

1	2	3	4	5		6	
				Loss/Profit before excess stock	Loss/Profit after excess stock	Loss/Profit before excess stock	Loss/Profit after excess stock
S.No.	Name of the Assessee	A.Y.	Amount of excess stock (Rs.)	For the period ending 31 st March 2014		For the period ending 19 th September, 2014	
1.	Jay Ace Technology Pvt. Ltd.	2014-15	Rs.48209437/-	Rs.9439410	Rs.38770027	Rs.27761098	Rs.20448339
2.	Jay Auto Component Pvt. Ltd.	2014-15	Rs.30162404	Rs.22540095	Rs.52702499	Rs.11005906	Rs.41168311
3.	Jay Fe Cylinders Pvt. Ltd.	2014-15	Rs.29932854	Rs.15977860	Rs.13954994	Rs.2091118	Rs.27841736
4.	Jay Iron Steel	2014-	Rs.42427585	Rs.56053577	Rs.13625992	Rs.24069208	Rs.18358377

	<i>Ltd.</i>	<i>15</i>					
5.	<i>JNS Instruments Pvt. Ltd.</i>	<i>2014- 15</i>	<i>Rs.74402960</i>	<i>Rs.226005137</i>	<i>Rs.151602176</i>	<i>Rs.126261475</i>	<i>Rs.51858514</i>

It is seen that in the case of Jay Auto Components Pvt. Ltd. profit before incorporating the excess stock was Rs. 2,25,40,095/- and after incorporating the excess stock of Rs. 3,01,62,404/- the profit figure comes to Rs. 5,27,02,499/- Similarly in the case of Jay Ace Technology Pvt. Ltd. the figure of net loss before incorporation of excess stock was Rs. 94,39,410/- and after incorporating the excess stock of Rs. 4,82,09,437/-, the figure of net profit comes to Rs. 3,87,70,027/-. It means that there has not been any dilution of actual figure of profit and loss on account of discovery of excess stock and its consequent disclosure by the assessee. In view of the above detailed analysis of facts of the case, I am not in agreement with the conclusion of the AO that assessee had not submitted any explanation on the issue of the excess stock. The record of the assessment clearly shows that the replies had been submitted in time and should have been analysed by the AO before rejecting the same. The independent analysis of the submissions of the assessee made during the course of assessment proceedings and highlighted during the appellate proceedings also show that the figures of excess stock have been incorporated in the books of account leading to either increase in the figure of net profits or decrease in the figure of net loss as the case may be. In view of these facts there is no case for making an addition as done by the AO. The same is therefore directed to be deleted.

In the result the appeal is allowed.

The CIT(A) accordingly reversed the action of the Assessing Officer and deleted the addition towards unexplained investment.

7. Aggrieved, the Revenue has preferred appeal before the

Tribunal.

8. When the matter was called for hearing, the Id. CIT-DR for the Revenue submitted at the outset that the assessee has totally failed to corroborate a simple point that the excess stock identified in the course of search and declared in pursuance thereof vide disclosure letter dated 28.12.2013, was actually incorporated and included while determining the total income of the assessee. It was submitted that the Assessing Officer had pointedly inquired on method of inclusion of the undisclosed investment in stock found in the course of search for the purposes of determination of taxable income under S. 153A of the Act. Adverting to paragraph no.3 of the assessment order, it was submitted that the assessee could not corroborate the factum of inclusion of unaccounted excess stock which the assessee being privy, should not pose any difficulty. Adverting to para 5 of the first appellate order, it was submitted that the observation of the CIT(A) that disclosure of excess stock has been made in the books of account is incorrect and without any substantive basis. No remand report has been obtained from the Assessing Officer on this crucial fact either. It was submitted that while a reply of the assessee before the Assessing Officer has been reproduced, the exact quantitative details of inventories and value thereof prior to search and after search, is not known. The effect of increase to excess stock detected has not shown to have resulted in corresponding identical increase in profits either. It was asserted that the CIT(A) has proceeded in the realm of contemplation, while granting relief to the assessee. It was pointed out that CIT(A) has observed in paragraph 6 of its appellate order that no document have been found during the course of search operation evidencing discrepancy in stock. It was submitted that it was factually incorrect statement as internal jottings/observation of the internal audit team vouches the excess stock. Significantly, the

assessee itself has surrendered the excess stock and also claims to have included the same in the returned income under Section 153A, therefore, this aspect questioning the existence of excess stock was wholly irrelevant and had faded into insignificance.

9. Ld. CIT-DR further referred to analysis of stock at page no.13 of the appellate order and submitted that it is nowhere stated that amount of excess stock has been actually included for the purposes of computation of total income. It was contended that the Ld. CIT(A) has hypothetically drawn the inference of inclusion of excess stock on the premise that profits have statedly grown up at the end of financial year 31.03.2014 as against loss/profits based on provisional accounts as on 19th September, 2013, i.e., immediately prior to search on 20.09.2013. The Ld. CIT-DR thus submitted that the First Appellate Authority has unilaterally admitted the case built by the assessee based on unverified facts and unsubstantiated submissions of the assessee. No opportunity has been given to the Assessing Officer to rebut the story narrated on behalf of the assessee. The Ld. CIT-DR accordingly urged for cancellation of the relief granted by the CIT(A) and restoration of additions made by the Assessing Officer.

10. The Ld. counsel for the assessee, on the other hand, strongly relied upon the order of the CIT(A) and submitted that the action of the CIT(A) is backed by legal and factual sound basis. It was pointed out that the assessment records of the Assessing Officer were called for and the CIT(A) himself perused the assessment records to re-appreciate the facts and circumstances of the case. Adverting to the annexure showing inclusion of excess stock as reproduced by the ld. CIT(A) in page 13 of the appellate order, the ld. counsel for the assessee submitted that the tabulated statement

would squarely give rise to the inference of inclusion of excess stock in the profit and loss account. It was contended that when the profit/loss prior to search on 20.09.2013 is compared with the profit/loss after search and at the end of the year where there is a substantial increase in the profits naturally on account of inclusion of excess stock, the conclusion on inclusion of excess stock is inescapable. It was thus submitted that remand report from Assessing Officer was not necessary where the facts are emerging from the assessment records itself. The Ld. Senior counsel thus submitted that the Id. CIT(A) has appreciated the facts in its natural perspective and has come to a rightful conclusion which ought not to be disturbed.

11. We have carefully considered the rival submissions and perused the assessment order as well as the appellate order of the CIT(A). The material referred to and relied upon at the time of hearing in terms of Rule 18(6) of the IT Rules was also perused.

11.1 As noted in the preceding paragraphs, a search in the case of the assessee company and other entities of J.P. Minda Group was conducted on 29.02.2019. The premises of the assessee was also covered under search operations and panchnama as evidence of proceedings conducted was stated to be prepared. Consequent upon search and based on physical inventory report by internal auditor, the assessee conceded the existence of excess inventory outside books to the extent of Rs.4,82,09,438/- and surrendered the same before revenue authorities, vide its letter dated 19.11.2013. In this backdrop, the Assessing Officer, in the course of assessment, observed that an excess stock of Rs.4,24,27,585/- so detected has not been included and offered for taxation. The Assessing Officer noted that the assessee itself, vide its brief reply, admitted to have

incorporated the excess inventory in the books of account but in the same vein the Assessing Officer alleged that the assessee has failed to demonstrate the aforesaid inclusion in the books of account and its effect in the taxable income. The Assessing Officer confronted the assessee about the treatment of the excess stock in the books of account and its ultimate effect on resultant taxable income. The Assessing Officer eventually, not being satisfied with the response of the assessee, concluded that the excess stock/inventory of Rs.4,24,27,585/- earlier shown as part of its disclosure statement, was not included as additional income in its books of account and was not offered for taxation. The Assessing Officer thus made an addition of the aforesaid amount towards excess stock surrendered in the course of search as undisclosed investment of the assessee.

11.2 In the first appeal, however, the CIT(A) reversed the aforesaid action of the Assessing Officer. The CIT(A) observed that the contention of the assessee that the excess stock forming part of the disclosure statement was included in the books of account is correct and discernible from comparative analysis of profit and loss arising to assessee prior to search and after search as per figures tabulated below. The CIT(A) *inter alia* observed that no documents have been found during the course of search operation evidencing discrepancies in stock as incorrectly observed by the Assessing Officer. The CIT(A) also observed that no inventorisation was carried out during the course of search operation and no physical inventory leading to excess stock has been carried out during the search operations leading to search operations.

11.3 The CIT(A) appears to have placed emphatic reliance on a tabulated statement (reproduced below) showing comparative analysis of net profits before and after search and as the end of year

and thus inferred that the excess stock has been taken into account while determining the taxable income post search.

1	2	3	4	5		6	
				Loss/Profit before excess stock	Loss/Profit after excess stock	Loss/Profit before excess stock	Loss/Profit after excess stock
<i>S.No.</i>	<i>Name of the Assessee</i>	<i>A.Y.</i>	<i>Amount of excess stock (Rs.)</i>	<i>For the period ending 31st March 2014</i>		<i>For the period ending 19th September, 2014</i>	
1.	Jay Ace Technology Pvt. Ltd.	2014-15	Rs.48209437/-	Rs.9439410	Rs.38770027	Rs.27761098	Rs.20448339
2.	Jay Auto Component Pvt. Ltd.	2014-15	Rs.30162404	Rs.22540095	Rs.52702499	Rs.11005906	Rs.41168311
3.	Jay Fe Cylinders Pvt. Ltd.	2014-15	Rs.29932854	Rs.15977860	Rs.13954994	Rs.2091118	Rs.27841736
4.	Jay Iron Steel Ltd.	2014-15	Rs.42427585	Rs.56053577	Rs.13625992	Rs.24069208	Rs.18358377
5.	JNS Instruments Pvt. Ltd.	2014-15	Rs.74402960	Rs.226005137	Rs.151602176	Rs.126261475	Rs.51858514

12. On objective perusal of the order of the CIT(A), we find it difficult to appreciate the process of reasoning adopted by CIT(A) and the rationale to reverse the action of AO. To begin with, it is an undisputed fact that existence of excess stock outside books has been unequivocally admitted by the assessee and duly surrendered as per the disclosure statement. It is thus nobody's case that excess stock did not exist. In fact, the assessee claims to have included the same for the purposes of determination of taxable income. The Assessing Officer in this background has categorically stated that the assessee has failed to demonstrate as to how the excess stock has been included in the return of income. As a corollary to such fact situation, the assessee was obliged to explain this simple & linear point of factual inclusion of excess stock for the purposes of determination of taxable income. The assessee nowhere has demonstrated the said inclusion. The comparison of profits as per

tabular statement appears to be the primary basis to infer the inclusion of the excess stock by implication. As noted, the assessee has attempted to establish the inclusion of excess stock by comparison of net profit drawn without excess stock on the date before search, i.e., 19th September, 2013 and with net profit on purported inclusion of excess stock on 20.09.2013. Such approach to establish inclusion of excess stock indirectly appears to be incomprehensible. The dispute is about the inclusion of various items of unaccounted stock to the existing stock in the books prior to search. The comparison of inventory prior to search and its effect on inclusion for determination of profits would clinch the issue to our understanding. The assessee, instead of showing the excess inventory identified as unaccounted in the books, seeks to impress that the increase in profits would satisfy the inclusion of excess stock. This to our mind is nothing but indulging in a sort of guess work. Needless to say, the variance in profits may be dependent on host of factors and not necessarily attributable to unaccounted stock. A circumstantial inference has been sought to be drawn from the comparison of unvouched profit figures tabulated which is not convincing at all. The excess stock, if so included as claimed, being identifiable item, can be easily demonstrated by actual entries made in this regard and assessee being privy to it. The assessee has rather chosen to go round about and tried to demonstrate the fact circumstantially. The CIT(A) also has readily accepted such flawed and a rather evasive approach of the assessee and that too without giving any opportunity to the Assessing Officer.

13. We thus hardly need to say that the foundational facts in justification of inclusion of excess stock are sorely missing in the entire exercise. In an uncomplicated scenario, the assessee is expected to identify the entries of undisclosed excess stock and its

impact on resultant profits to give realistic support to its contentions. The factum of inclusion of unaccounted stock carries with it mathematical exactitude for which no evidence worth a salt was referred in the orders of lower authorities. The exact break up of computation of profits on various dates as tabulated are also absent either. The integrity of data extracted is in unknown sphere. There appears to be complete hide & seek on the rudimentary facts. From the text and tenor of the first appellate order, it appears that the CIT(A) has adopted over-simplified discourse and acceded to the unintelligible facts put forth by the assessee and negated the observations of the AO in a round about manner without giving any opportunity to the AO. The comparison of profits declared and drawing inference of inclusion of stock only seeks to scuttle the objective verification of facts and uncalled for. On the face of categorical admission by assessee towards undisclosed stock, the observations of CIT(A) doubting the existence of excess stock does not inculcate on us. In the absence of retraction of the disclosure, the existence of excess stock ought not to have been questioned by the CIT(A) on its own. We do not see any conceivable case made out by the CIT(A) to reverse the action of AO. We thus cannot provide legitimacy to the action of CIT(A).

14. In the light of delineations, We set aside the action of the CIT(A). However, to ensure fair determination of issue and to prevent miscarriage of justice, we consider it just and proper to provide one more opportunity to the Assessee to objectively demonstrate the inclusion of unaccounted excess inventory for the purposes of determination of taxable income to the satisfaction of Assessing officer. The matter is thus restored to the file of Assessing officer for determination afresh in accordance with law after taking into account such evidence as may be adduced by the

Assessee and having regard to the explanations offered in this regard. It shall be open to the AO to examine all aspects of the matter without any fetters. Needless to say, the assessee shall extend full co-operation without any *demur*.

16. In the result, the appeal of the Revenue is allowed for statistical purposes.

16. The fact and issue involved in other captioned appeals are identical. Hence, the process of reasoning discussed in ITA No.5058/Del/2017 applies *mutatis mutandis* in the other four captioned appeals. Consequently, for the similarity of reasons, the respective orders of the CIT are set aside and the issue involved is restored to the file of AO for determination afresh in accordance with law.

17. In the result, the appeals of the revenue in ITAs No.5059/Del/2020, 5060/Del/2017, 5061/Del/2017 and 6637/Del/2017 are allowed for statistical purposes.

18. In the combined result, all the five appeals of the Revenue are allowed for statistical purposes.

Order was pronounced in the open Court on 15/07/2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

DATED: /07/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER