

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ ITA. No. 421/JP/2022  
निर्धारणवर्ष/ AssessmentYears :2018-19

The ACIT Central Circle Alwar	बनाम Vs.	Shri Satya Dev Arya Prop. M/s. Arya Showroom Ganga Mandir, Bharatpur
स्थायीलेखा सं./ जीआईआर सं./ PAN/GIR No.: AALHS 3826 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

C.O. No. 01/JP/2023

(Arising out of आयकरअपील सं./ ITA. No. 421/JP/2022)  
निर्धारणवर्ष/ AssessmentYears :2018-19

Shri Satya Dev Arya Prop. M/s. Arya Showroom Ganga Mandir, Bharatpur	बनाम Vs.	The ACIT Central Circle Alwar
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अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : ShriAjey Malik, CIT-DR  
निर्धारिती की ओर से / Assessee by : Shri P.C. Agarwal, CA

सुनवाई की तारीख / Date of Hearing : 10/01/2023  
उदघोषणा की तारीख / Date of Pronouncement : 29 /03/2023

आदेश / ORDER

PER DR. S. SEETHALAKSHMI, JM

The Revenue has filed an appeal against the order of the Id. CIT(A)-4, Jaipur dated 30-09-2022 for the assessment year 2018-19 while the assessee has filed the

Cross Objection. The grounds raised by the Revenue in its appeal and the grounds raise by the assessee in the Cross Objection are as under:-

ITA No. 421/JP/2022 - Revenue

“1. The Ld. CIT(A) has erred in law and on facts in granting relief to the taxpayer.

2. Whether in the facts and circumstances of the case, the Id. CIT(A) is justified in reducing the addition made of Rs.75,80,793/- us 69A an account of unexplained stack of jewellery ornaments to Rs.48,180 ignoring the facts/evidences gathered during survey and assessment proceedings.

3(i) The Ld. CIT(A) has erred in law and in appreciation of facts by accepting that three purchases totaling to Rs.26,01,746/- were not entered in the stock register as on date of survey which is 07.03.2018. The three purchases are admittedly of the first week of January 2018 whereas the survey took place on 07.03.2018, more than 2 months after these supposed purchases. Further the payment for these purchases was made after the date of survey, indicating to the whole scheme being an afterthought.

3 (ii) In accepting the version of the assessee, the Ld. CITA) has ignored the principal of preponderance of human probability as laid down by Hon'ble Supreme Court in case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC) & CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC).

4. Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in accepting the assessee's submission that he was maintaining stock register and not considering the fact that the major difference of stock was found on the date of survey.

5. Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in reducing the addition made of Rs.59,80,793/- u/s 69A on account of unexplained stock of cloth to Rs.27,33,020 by allowing the bargain discount of 10% of the MRP tag price and 10% deduction for obsolescence on estimated basis without any material on record.

6. Whether on the facts and circumstances of the case for the assessment year under consideration, the Ld. CIT(A) is justified in law in deleting the addition made u/s 69 r.w.s 115BBE of IT Act, 1961.

C.O.1/JP/2023 (Assessee)

1. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.48,180/- on account of alleged unexplained stock of jewellery ornaments.
2. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.27,33,020/- on account of alleged unexplained stock of garments.

2.1 For the sake of convenience and brevity of the appeal of the revenue and cross objection of the assessee, following grounds of the revenue as well as grounds of the C.O. of the assessee are adjudicated upon together through a consolidated order.

Ground No.1 of the Department

“The Ld. CIT(A) has erred in law and on facts in granting relief to the taxpayer.

Ground No.2 of the Department

“Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in reducing the addition made of Rs.75,80,793/- us 69A an account of unexplained stack of jewellery ornaments to Rs.48,180 ignoring the facts/evidences gathered during survey and assessment proceedings.

Ground No. 3(i) of the Department

“The Ld. CIT(A) has erred in law and in appreciation of facts by accepting that three purchases totaling to Rs.26,01,746/- were not entered in the stock register as on date of survey which is 07.03.2018. The three purchases are admittedly of the first week of January 2018 whereas the survey took place on 07.03.2018, more than 2 months after these supposed purchases. Further the payment for these purchases was made after the date of survey, indicating to the whole scheme being an afterthought.

Ground No.3(ii) of the Department

“In accepting the version of the assessee, the Ld. CITA) has ignored the principal of preponderance of human probability as laid down by Hon'ble Supreme Court in case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC) & CIT Vs. Durga Prasad More (1971) 82 ITR 540 (SC).

Ground No.4 of the Department

“Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in accepting the assessee's submission that he was maintaining stock register and not considering the fact that the major difference of stock was found on the date of survey.

CO No.1 of the assessee

“The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.48,180/- on account of alleged unexplained stock of jewellery ornaments.”

3.1 Brief facts of the case are that the assessee is engaged in the business of trading of gold/silver/diamond ornaments and readymade garments/clothes. The assessee filed its return of income on 02.10.2018 (PB 20-22) declaring total income of Rs.2.39,960/-. A survey u/s 133A of the Act was conducted on 07.03.2018 at the business premises of the assessee. In survey stock of gold ornaments and silver items were physically verified and valued at Rs.1,43,86,936/- (1,36,21,633+7,65,303) by the registered valuer by applying market rate of gold ornaments on 07.03.2018 at Rs 30,800/- per 10 gms and of silver items at Rs.38,500/- per kg (PB 40-43) as under:-

Particulars	Net wt. of precious metal of contents in gram	Value of precious metal contents (In Rs.)	Value of Stones (In Rs.)	Total Value (In Rs.)
Gold Jewellery (24 Kt.	4329.24	1,33,34,133	2,87,500	1,36,21,633
Silver Items	19878	7,65,303	-	7,65,303
Total				1,43,86,936

As against this, as per the AO, the stock as per books of accounts on the date of survey is Rs.50,48,240/- (Rs.45,49,865/- gold and Rs.4,98,375/ silver). Thus, excess stock of gold and silver jewellery of Rs.93,38,696- (1,43,86,936 minus 50,48,240) was determined. In survey statement of Satya Dev Arya was recorded (PB 44-59) wherein in reply to Q No.11 (PB 48-49) he stated that stock register for gold, silver and diamond is maintained wherein entry up to 05.03.2018 are recorded. Thereafter in reply to Q. No.23 (PB 53) he explained the position of opening stock, purchase and sales of gold ornaments as per exercise book A-4 (PB 69 & 77-79) as under:-

Particulars	Stock in gms
Opening Stock	3298.695
Add: Purchases	449,030
Less: Sales	313.53
Closing Stock	3394.195

The survey team thereafter in Q. No.24 (PB 53-54) determined the excess stock at 995.045 gms (4329.24-3334.195), valued it at Rs.90,71,768/- and required the assessee to provide an explanation for such excess stock. In response to same, the assessee explained that he would provide the reasons for difference only after consulting his Chartered Accountant. In the course of assessment proceedings, the assessee provided the reasons for difference in the value of gold/silver ornaments/ items of Rs.93,38,696/- in its reply dt. 23.02.2021 (PB 62-68) reproduced at page 3

to 6 of the assessment order. The AO in order to verify that assessee made purchases on 05.03.2018 & 06.03.2018 from M/s ShrimJewellers (Rs 11,39,018-), M/s Shrim Ornaments (Rs.8,44,843/-) and M/s GRS Jewellers (Rs.6,18,885/-) (PB 92-94) issued notice u/s 133(6) to these parties and observed that purchase of Rs.11,39,018/- and Rs.8,44,843/- was made from the same concern but the party confirmed only the purchase of Rs.11,39,018/- and therefore the genuineness of purchase of Rs.8,44,843/- remained unproved. Considering these facts, the AO made addition of Rs.75,80,793/- (9338696- 1139018-618885) u/s 69A of the Act by holding as under-

(i) Register impounded during the survey is not the stock register of the assessee.

(ii) Assessee has not verified the purchase/ sale though photocopy of the impounded bills provided to the assessee by simply stating that all the books of accounts and bills are seized by the department.

(iii) The Audit report of the assessee for AY 2017-18 and 2016-17 does not contain the quantitative details of opening stock, purchase, sales and closing stock. It contains only the amount of opening and closing stock. Therefore the claim of assessee that there is no difference in quantity of opening and closing stock is just an afterthought and without evidence and thus found not acceptable.

(iv) Purchase of Rs.11,39,018/- and Rs.8,44,843/- was made from the same concern but the party confirmed only the purchase of Rs.11,39,018. Therefore the genuineness of purchase of Rs.8,44,843 remained unproved.

3.2 In first appeal, the Ld. CIT(A) at Para 42 Pg-4-8 of the order after narrating the facts and submission of assessee at Para 4.2(i) to Para 4.2(vii) gave his finding at Para 4.2(ix) to (xiv) as under-

(ix) On perusal of the overall facts, I find that the appellant is regularly maintaining the stock register from year to year harsis and the same is seized during the course of survey and marked as Annexure A-4 On perusal of Annexure A-4 it is seen that this contains opening stock, purchase, sales and the closing shock details of each year. The closing stock details as on 31.03.2017 mentioned in Annexure 1-4 exactly tally's with the closing stock shown in the balance sheet filed for AY 2017-18 before the date of survey Therefore, the action of the AO in rejecting the claim of maintenance of the stock register is incorrect. Accordingly, the stock found during the course of survey has to be compared in terms of quantity difference and not in terms of value.

(x) It is further observed that the AO did not consider the purchase of R8,44,843- find that this purchase is made from Shrum Ornaments. Mathura whereas the AO has presumed that the same is also made from ShrimJewellers in find that no enquiry was made by AQ us 13316) from this concern whereas us against this, the appellant has proved the purchase from this concern by filing a copy of the purchase bill payment by account payee cheque and reflection of this purchase in GSTR 2A Therefore, the 40 & directed to allow the credit of this purchase while calculating the excess stock found in survey.

(xi) So far as claim of customer jewellery of 15.643 gms is concerned, I find that the ld. AR neither has given any details of such repair nor anything relating to such repair is found in survey and therefore this claim of the appellant is not acceptable and is accordingly rejected.

(xii) In view of the aforesaid discussion and after taking into account the stock register and the above purchases, the correct position of the excess stock found in survey in terms of quantity of gold works out to 15.643 gms only, which is computed as under:-

Particulars	Qty.(Gms.)
Opening Stock as on 01-04-2017	3298.680
Add: Purchases upto 04-01-2018	449.030
Add: Purchase during 05-03-2018 to 06-03-2018 accepted by the AO	639.775
Add: Purchase on 6-03-2018 accepted in this appeal order	339.642
Total	4727.127
Less: Sold during 01-04-2017 to 07-03-2018	413.530
Closing stock as per books on 07-03-2018	4313.597
Stock found in survey	4329.240
Excess stock of gold	15.643

The value of the above excess stock of gold works out to Rs 48,180/-(15.643 3080) which is confirmed in view of the aforesaid discussion.

(xiii) So far as the addition of silver jewellery is concerned. I find that as per the stock register, the silver jewellery as on the date of survey is 20.205 kg as against 19.878 kg found in survey and therefore there is an excess stock in quantitative terms. Accordingly the addition made in silver jewellery is deleted.

(xiv) Considering the above, the addition of Rs 75,80,973/- made by the AO in respect of gold and silver jewellery is restricted to Rs.48,180/-. The appellant gets relief of Rs. 75,32,813/-. The Ground of Appeal No 1 is treated as partly allowed”

3.3 During the course of hearing the ld. DR objected to the findings of the ld.

CIT(A) and prayed through written submission as under:-

“In this case a survey action u/s 133A of the I.T. Act, 1961 was carried out on 7-03-2018 at the business premises of the assessee firm M/s. Arya Showroom situated at Ganga Mandir, Bharatpur.

2. The assessee firm e-filed its return of income u/s 139 on 2-10-2018 vide acknowledgement no. 31936911021018 declaring total income of Rs.2,39,960/-. The case was selected for compulsory scrutiny<sup>8</sup> being a survey case, as prevalent CBDT guidelines for selection of cases under compulsory scrutiny.

3. Consequently, the AO completed the assessment u/s 143(3) on 6-09-2021 at total income of Rs.1,37,72,947/- by making an addition of Rs.75,80,793/- on account of unexplained stock of jewellery ornaments u/s 69A of the IT Act and a further addition of Rs.59,52,194/- was made on account of unexplained stock of readymade garments and others u/s 69 of the IT Act.

4. Thereafter, the assessee filed appeal against the assessment order before the CIT(A)-IV, Jaipur. The Id. CIT(A) decided the appeal on 30-08-2022 vide appeal No. 10661/2017-18 in the case of the assessee.

#### 5 Ground of appeal:-

The issuewise adjudication of Id. CIT(A) and recommendations are mentioned below:-

#### 5.1 Unexplained stock of jewellery ornaments of Rs.,75,32,813/-

During the course of survey proceedings difference in jewellery stock was found and further during the course of assessment proceedings the assessee conspicuously failed to give satisfactory justification for the difference amount, therefore, the addition of Rs.75,80,793/- as unexplained money within the terms of provisions of Section 69A has been made by the then AO.

The assessee, being aggrieved filed appeal against the CIT(A) - IV, Jaipur on this issue.

The Id. CIT(A) vide impugned order has deleted the addition made on this account after holding that the assessee is maintaining stock register.

#### Recommendations/ comments on this decision:-

The decision of Id. CIT(A) is not acceptable. The addition has been deleted on the mere ground that the assessee is maintaining stock

register. Also, the Id. CIT(A) satisfied without any basis that the purchases and sales made by the assessee. During the course of survey proceedings, the opening stock of gold and silver ornaments as per books was Rs.45,49,865/- and Rs.4,98,375/- respectively. Thus the total stock was Rs.50,48,240/- available on the date of survey as per books of accounts. However, on physical verification the stock to the value of Rs.1,43,86,936/- was found. The valuation was done by approved valuer. Thus, the difference of Rs.93,38,696/- was found in stock of gold/silver/diamond ornaments. The assessee was asked vide question No. 24 of this statements to give justification in this regard. The assessee in response to the question stated that the opening stock as on 01-03-2017 was 3298.695 gms and this figure was also mentioned in the Gold Stock register (Exercise book A-4). Further during the F.Y. upto the date of survey i.e. 7-03-2018 purchase and sale is 449.030 gms and 413.53 gms respectively. This fact is also mentioned in the purchase and sale register (Exercise book A-4) and therefore, after considering all the purchase and sales made upto the date of survey was the closing balance as on 07-03-2018 came at 995.045 gms of gold and silver jewellery.

Further, it is most importantly to mention here that during the course of assessment proceedings, the assessee was specifically asked to furnish all the purchase/ sale bills with regard to explain the difference of closing stock found during survey, but the assessee replied that all the bills and vouchers were in possession of the Department which may be verified at this end. It is pertinent to mention that copy of all the impounded materials have been provided to the assessee and the onus is upon the assessee to explain which bills are he claiming as his purchase/sale made during the year. The assessee has to give details each page of impounded material alongwith the amount of purchase/ sale so as to justify his claim. Further, it is pertinent to mention here that the assessee furnished purchase bills of total of Rs.26,07,746/- only which are said to be not entered into the books at the time of survey.

Further, it is worthwhile to mention here that during course of assessment proceedings assessee failed to adduce any cogent and supporting evidence to substantiate its claim.

Moreover, the Audited Report of the assessee for A.Y. 2017-18 and 2016-17 was perused and found that the quantitative details of opening stock, purchase, sales and closing stock is not found entered in it. It contains only the amount of opening and closing stock. Therefore, the claim of the assessee with regard to the quantity of the stock as opening stock and closing stock is itself not found mentioned in the audit reports of preceding years of the assessee.

Therefore, the decision is not acceptable on merits and further appeal is recommended on this issue.”

3.4 During the course of hearing, the Id. AR of the assessee filed his following written submission concerning the issue in question.

1. At the outset it is submitted that the major reason for difference in value is because the AO valued the stock on the date of survey at market rate and not at cost and that the major reason for difference in the quantity of stock is for the reason that three purchases made on 05.03.2018 & 06.03.2018 was not entered in the stock register found in survey.

2. In course of assessment proceedings assessee furnished bills of all the three parties. The AO issued notice u/s 133(6) in order to verify the purchases made from these three parties as specified in Para 5.4. Page 8 of the assessment order. However, it appears that AO issued notice u/s 133(6) only to M/s ShrimJewellers and M/s GRS Jewellers who confirmed the purchase of Rs.11,39,018/- and Rs.6,18,885/- respectively made from them. The purchase of Rs.8,44,843/- was made from M/s Shrim Ornaments but the AO wrongly observed that this purchase is also made from M/s ShrimJewellers and they have not confirmed this purchase ignoring that this purchase is made from M/s Shrim Ornaments. The Ld. CIT(A) therefore, at Para 4.2(x) has correctly held that AO has not made any enquiry u/s 133(6) from M/s Shrim Ornaments but purchase from this concern is proved from copy of purchase bills, payment by account payee cheque and reflection of this purchase in GSTR-2A (PB 84-88). Therefore, Ground No.3(i) taken by the department challenging the total purchase of Rs.26,01,746/- made from these three parties by incorrectly observing that these purchases were made in first week of January, 2018 ignoring that these purchases were made on 05.03.2018 & 06.03.2018 and AO himself has accepted the genuineness of purchases of Rs.17,57,903/- (11,39,018 6,18,885) do not survive.

3. In Ground No.4 department has challenged the finding of CIT(A) in accepting the stock register and not considering the fact that major difference of stock was found on the date of survey. This ground is also misconceived as the stock register both for FY 2016-17 & 2017-18 was found in survey (PB 69-79). As per the stock register, the quantity of stock of gold ornaments as on 31.03.2017 was 3298,695 gms (PB 74) and the purchases & sales made in FY 2017-18 till 27.12.2017 was 449.030 gms and 413.530 gms (PB 79). After considering the purchases of 639.775 gms made from three parties as referred in Para 2 above, the Ld. CIT(A) has correctly worked out the closing stock as per books at 4313.597 gms as against 4329.240 gms found in survey. Thus, the excess stock found is only 15 643 gms (refer Para 4.2(x) of order of CHHA)). Hence, Ground No. 4 raised by the department is misconceived.

4. So far as stock of silver item is concerned, the weight of silver item found in survey was 19.878 kg whereas stock as per books was 20 205 kg. Thus, stock as per books was more by 0.327 kg. Hence, the addition made in respect of stock of silver is rightly deleted by Ld CIT(A).

In view of the detailed finding of CIT(A), ground of the department be dismissed.

5. The assessee in its cross objection has challenged the addition of Rs. 48,180 confirmed by the Ld. CIT(A) for excess stock of 15.643 gms. In confirming this addition, it is ignored that some jewellery found in survey was received from the customer for repairs. Otherwise also, this difference is only 0.28% of the total jewellery of 4329.24 gms found in survey which is very minor and on account of weight difference more particularly considering the fact that stock of silver as per books is more than that found in survey which is also on account of weight difference Hence, the addition of Rs 48,180/-confirmed by CIT(A) be deleted.’’

3.5 We have heard both the parties and perused the materials available on record including the submissions filed by the parties. Brief facts of the case are that in this case a survey action u/s 133A of the Act was carried out on 7-03-2018 at the business premises of the assessee firm M/s. Arya Showroom situated at Ganga Mandir, Bharatpur. The AO noted that the assessee e-filed its return of

income u/s 139 of the Act on 02-10-2018 vide acknowledgement no. 319363911021018 declaring total income of Rs.2,39,960/-. The case of the assessee was selected for compulsory scrutiny, being a survey case, as per prevalent CBDT guidelines for selection of case under compulsory scrutiny. It is not imperative to repeat the facts of the case again as it has been explicitly narrated. It is noted from the assessment order that the AO made the addition of Rs.75,80,793/- elaborating the details during the course of assessment by observing as under:-

“With regard to the difference of amount of Rs.93,38,696/- found in the stock of gold/silver/diamond jewellery, the assessee could produce purchase bills total of Rs.17,57,903/- (11,39,018+6,18,885) only. Thus the difference to the amount of Rs.75,80,793/- (93,38,696 – 17,57,903) remained unexplained. The assessee conspicuously failed to give satisfactory justification for the difference amount even after giving show cause vide notices u/s 142(1) supra. In view of the above findings and considering the reply of the assessee it is held that the jewellery/ornaments to the tune of Rs.75,80,793/- is unexplained money within the total income of the assessee. Tax on this income shall be charged as per provisions of Section 115BBE of the Act.”

In first appeal, the ld. CIT(A), the ld.CIT(A) restricted the addition to the extent of Rs.48,180/- giving the relief of Rs.75,32,813/- out of the addition of Rs.75,80,793/- made by the AO i.e. to say that the ld. CIT(A) partly allowed of appeal of the assessee. From the available records, it is noted that the assessee produced bills of

three parties for which the AO issued notice u/s 133(6) with a view to verifying the purchases made by the assessee from these three parties vide para 5.4 at page 8 of the assessment order. However, it reveals that the AO issued notice u/s 133(6) only to M/s ShrimJewellers and M/s GRS Jewellers who confirmed the purchase of Rs.11,39,018/- and Rs.6,18,885/- respectively made from them. The purchase of Rs.8,44,843/- was made from M/s Shrim Ornaments but the AO wrongly observed that this purchase is also made from M/s ShrimJewellers and they have not confirmed this purchase ignoring that this purchase is made from M/s Shrim Ornaments. The Ld. CIT(A) therefore, at Para 4.2(x) has correctly held that AO has not made any enquiry u/s 133(6) from M/s Shrim Ornaments but purchase from this concern is proved from copy of purchase bills, payment by account payee cheque and reflection of this purchase in GSTR-2A (PB 84-88). Therefore, Ground No.3(i) taken by the department challenging the total purchase of Rs.26,01,746/- made from these three parties by incorrectly observing that these purchases were made in first week of January, 2018 ignoring that these purchases were made on 05.03.2018 & 06.03.2018 and AO himself has accepted the genuineness of purchases of Rs.17,57,903/- (11,39,018 6,18,885) do not survive. As regards Ground No.4, department has challenged the finding of CIT(A) in accepting the stock register and not considering the fact that major difference of stock was found on the date of survey. It is noted from the available records that this ground is also

misconceived as the stock register both for FY 2016-17 & 2017-18 was found in survey (PB 69-79). As per the stock register, the quantity of stock of gold ornaments as on 31.03.2017 was 3298.695 gms (PB 74) and the purchases & sales made in FY 2017-18 till 27.12.2017 was 449.030 gms and 413.530 gms (PB 79). After considering the purchases of 639.775 gms made from three parties, the Ld. CIT(A) has worked out the closing stock as per books at 4313.597 gms as against 4329.240 gms found in survey. Thus, the excess stock found is only 15 643 gms (refer Para 4.2(x) of order of CIT(A)). Hence, Ground No. 4 raised by the department is misconceived. As regards the stock of silver item, the weight of silver item found in survey was 19.878 kg whereas stock as per books was 20.205 kg. Thus, stock as per books was more by 0.327 kg. Hence, the addition made in respect of stock of silver is rightly deleted by Ld CIT(A).

3.6 As regards the Ground No. 1 of the assessee in its cross objection, the assessee has challenged the addition of Rs. 48,180 confirmed by the Ld. CIT(A) for excess stock of 15.643 gms . In confirming this addition, it is ignored that some jewellery found in survey was received from the customer for repairs. The ld. AR of the assessee contended that this difference is only 0.28% of the total jewellery of 4329.24 gms found in survey which is very minor and on account of weight difference more particularly considering the fact that stock of silver as per

books is more than that found in survey which is also on account of weight difference.

3.7 The Bench has taken into consideration the arguments of both the parties and found that the contentions of the assessee is general in nature and not supported with the evidence and therefore, we do not find any merits in the arguments of the Id. AR placed before us and we dismiss the Ground No. 1 of the CO of the assessee.

3.8 Thus the Grounds raised by the Department (supra) is partly allowed and the Ground No. 1 of the C.O. of the assessee is dismissed.

4.1 Now we take up Ground No. 5 of the Department and Ground No. 2 of the C.O. of the assessee for adjudication as under:-

#### Ground No.5 of the Department

“Whether in the facts and circumstances of the case, the Ld. CIT(A) is justified in reducing the addition made of Rs.59,80,793/- u/s 69A on account of unexplained stock of cloth to Rs27,33,020 by allowing the bargain discount of 10% of the MRP tag price and 10% deduction for obsolescence on estimated basis without any material on record.”

#### Ground No. 2 Assessee's CO

The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.27,33,020/- on account of alleged unexplained stock of garments.”

4.2 Brief facts of the case are that during survey stock of cloth (readymade and others) was physically verified and valued at Rs.1,24,23,487/- (Rs.44,38,930- of readymade garment and Rs.79,81,557/- of others) on the basis of the MRP tagged/noted on the cloth articles. As against this, as per the survey party, stock as per books as on 03.03.2018 is Rs.44,34,000/- (Rs.17,93,000/- readymade cloth and Rs.26.41,000/- of others). Thus, excess stock of Rs.79,89,4871- (124,23.487-44,34,000) was determined in survey. Sh. Satya Dev Arya in his statement recorded in survey, in reply to Q. No. 14 (PB 49-50) stated that as per the books of account, stock of saree is approximately Rs.40,45,400/- and of readymade garments is approximately Rs.20,30,573/-. Thereafter in reply to Q. No.15 (PB 50) he explained that value of stock is arrived after reducing the gross profit margin. Further in reply to Q. No.20 & 21 (PB 52) he stated that the GP margin is determined on the basis of market condition like in case of Raymond shirt, branded shawl, etc. the GP rate is 5%, in case of ladies suit, lancha for kids the GP rate is 10% and in case of heavy sarees, lehenga the GP rate is between 15% to 18%. The tag on each item is done after taking margin of 5% to 18%. Thereafter in reply to Q. No.28 & 30 (PB 55-56) he explained that the value mentioned on the cloth article is MRP and he would explain the reason for difference after reconciling it with the purchase bill. In course of assessment proceedings the assessee vide letter dt. 23.02.2021 & 26.03.2021 reproduced at Pg 10-15 of the assessment order

explained the reasons for difference along with supporting documentary evidences. The AO accepted that against physical stock of Rs.1,24,23,487/-, the stock as per statement is Rs.61,54,562/- (as against Rs.62,92,833/- claimed by the assessee) and thus, excess stock is Rs.62,68,925/-. From this he allowed deduction of purchases of Rs.3,16,731/- not entered in the books at the time of survey and thus made addition of Rs.59,52,194/- on account of unexplained investment in stock u/s 69 of the Act. For the sake of convenience, the relevant findings of the AO at para 6.3 and Page 15 is reproduced as under:-

“6.3 The reply of the assessee has been considered carefully. During the course of survey proceedings, the difference found in stock of readymade garments and other total of Rs.72,69,925/- [Rs.24,08,359 (readymade) + Rs.38,60,566 (other than readymade)]. Now, during the course of assessment proceedings the assessee furnished purchase bills of total of Rs.3,16,731/- which are said to be not entered in the books at the time of survey. To that extent the reply of the assessee along with supporting documents was considered and found satisfactory. But, still the difference of Rs.59,52,194/- (62,68,925 - 3,16,731) is available in stock which entails the excess stock of Rs.59,52,194/- is found during the course of survey proceedings. With regard to the contention of the assessee that the valuation during survey proceedings was done on the MRP of the product which also consist of profit, it is evident that in his statement recorded during the course of survey proceedings the assessee has taken the margin portion on MRP and the difference in stock were remained after considering the same. Thus the assessee conspicuously failed to give any satisfactory justification for the difference amount even after giving show cause vide notices u/s 142(1) supra. In view of the above findings and considering the reply of the assessee, it is held that the stock of garments to the tune of Rs.59,52,194/- is held as unexplained investment made out of undisclosed sources in terms of

provision of Section 69 of the Act and the amount is being added to the total income of the assessee. Tax shall be charged as per provisions of Section 115BBE of the Act.”

4.3 In first appeal, the ld. CIT(A) at Para 5.2, Pg 10-12 of the order, after considering the submission of assessee at Para 5.2(vi) & (vii) allowed reduction of 10% from MRP/ tag price to work out the value of stock found in survey. From the value so arrived he allowed deduction for obsolescence for 20% of stock @ 10%. From the value so arrived, deduction of 16% was given for GP margin to arrive at the cost price of stock found in survey at Rs.92,04,313/- against the book stock of Rs.61,71,293/- and thus, confirmed addition of Rs.27,33,020/-. For the sake of convenience, the relevant findings of the ld. CIT(A) at para 5.2 (vi) and (vii) are reproduced as under:-

“(vi) On perusal of the overall facts, I find that there is no dispute as to the fact that the appellant is not maintaining stock register for garments business and the stock found in survey has been valued at Tag Price. It is observed that the appellant has claimed bargain discount of 30%, GP of 16% and deduction for obsolescence at 15%. So far as deduction of Bargain discount is concerned, I find that the appellant has filed comparison chart of tag price and actual sale price. However, in the absence of complete details in the sale bills/purchase bills, it cannot be said that the chart prepared is correct. But the fact remains that the appellant’s shop is not a fixed price shop and therefore some bargain discount is possible to have been given to the customers. Considering this fact, I

find that it would be reasonable, if the bargain discount is restricted to 10% of the MRP/ Tag price.

(vii) So far as deduction for G.P. Rate of 16% is concerned, the appellant's contention appears to be correct. To arrive at the cost price, deduction of G.P. Rate needs to be given and therefore the same is allowed. In respect of deduction for obsolescence, the appellant has claimed reduction of 15% of the value of the overall stock which appears to be unreasonable. However, the fact remains that in garments, the business of loss due to obsolescence is present. Considering this fact, I find that it would be reasonable if a deduction of 10% is allowed in respect of 20% of the stock for obsolescence. If all these facts are considered, the position of the excess stock works out as under:-

Particulars	Amount
Stock found in survey and valued at MRP/tagged price	1,24,23,487/-
Less: Bargain discount @ 10%	12,42,349/-
Discount value	1,11,81,138/-
Deduction for obsolescence for 20% of stock @ 10%	2,23,622/-
	1,09,57,516/-
Less: G.P. Margin @ 16%	17,53,202/-
Cost price of the stock found in survey	92,04,313/-
Book value of the stock as on the date of survey	64,71,293/-
Excess stock	27,33,020/-

(viii) In the result, the addition for excess stock determined above at Rs.27,33,020/- is confirmed. The appellant gets relief of Rs.32,`19,174/-. Accordingly, the Ground of Appeal No. is treated as partly allowed.

4.4 During the course of hearing, the Id. DR objected to the relief allowed by the Id. CIT (A) for which following submission has been advanced.

“5.2 Unexplained stock of Cloth/Readymade of Rs.32,19,174/-

During the course of survey proceedings difference in stock of cloth was found and during the course of assessment proceedings the assessee failed to give any satisfactory justification for the difference amount therefore, the addition of Rs.59,52,194/- as unexplained investment made out of undisclosed sources.

The assessee, being aggrieved, filed appeal against the CIT(A)-IV, Jaipur on this issue.

The ld. CIT(A) has deleted the addition to the extent of Rs.32,19,174/- after considering the submission / reply of the assessee.

Recommendations/ comments on the decision:-

The decision of ld. CIT(A) is not acceptable. As, during the course of survey proceedings, the physical verification on stock of garments items were done as per which total closing stock of Rs.1,24,23,487/- was found. However, as per assessee's books of accounts the closing stock of such item as on 30-03-2018 was Rs.44,34,000/-. In this way the stock of the garments item to the tune of Rs.79,89,487/- was found in excess.

Further, it is important to mention here that during the course of assessment proceedings the assessee furnished purchase bills of total of Rs.3,16,731/- which are said to be not entered in the books at the time of survey. Assessee has not furnished any satisfactory reply in respect of amount of Rs.59,52,194/-. With regard to the contention of the assessee that the valuation during survey proceedings was done on the MRP of the product which also consists of profit, it is evident that in his statements recorded during the course of survey proceedings the assessee has taken the margin portion on MRP and the difference in stock were remained after considering the same. Further with regard to the profit of 16% on the MRP, assessee failed to verify the purchase cost of the stock from the purchase bills.

Therefore, the decision is not acceptable on merit and further appeal is recommended on this issue.

In the case, tax effect is of Rs.97,13,880/- on the issues in which appeal is recommended. The amount involved exceeds the monetary limit specified in Circular No. 17/2019 dated 08/08/2019. Therefore, further appeal is recommended on the merit of the case.’’

4.5 On the other hand, the Id.AR of the filed the written submission praying that the appeal of the Department should be dismissed and the Ground of the C.O. No. 2 should be allowed based on arguments advanced through following written submission.

’’1. From the facts stated above, it can be noted that the excess stock determined by the AO. that by CIT(A) and that as per assessee for ready reference is tabulated as under:-

Particulars	As per AO (In Rs.)	As per CIT(A) (In Rs)	As per assessee (In Rs.)	Remarks
Value of stock of MRP physically found in survey	1,24,23,487/-	1,24,23,847/-	1,24,23,487/-	This is MRP/Tag price mentioned in each garment item
Less:-Bargain discount	-	12,42,349/-	37,27,046/-	Assessee claimed 30% but CIT(A) allowed only 10%
	1,24,23,487/-	1,11,81,138/-	86,96,440/-	
Less: Deduction for obsolesce	-	2,23,622/-	13,04,466/-	CIT(A) allowed reduction for 20% of stock at 10% whereas assessee claimed 15%
	1,24,23,487/-	1,09,57,516/-	73,91,974/-	
Less: GP margin @ 16%	-	17,53,202/-	11,82,716/-	
Cost of Stock	1,24,23,487/-	92,04,313/-	62,09,258/-	
Book Stock as on the date of survey	64,71,293/-	64,71,293/-	64,71,293/-	
Excess stock as per the AO	59,52,194	27,33,020	Nil	

2. In support of the difference between MRP rate and sales rate of different items, assessee has furnished evidences that MRP price of goods of Rs.26,70,545/- was sold at Rs 15,52,784/-, i.e. at a discount of 41.86% (PB 98-136). The MRP price is inclusive of GST. Considering these facts assessee has rightly claimed on a conservative basis deduction of 30% for bargain. However, the Ld CIT(A) without considering these documentary evidences has allowed only reduction of 10% whereas AO has not considered this fact at all. Hence, the AO be directed to allow reduction of 30% from the MRP rate to arrive at the sale price of the stock found in survey.

3. The items in which the assessee deals are such items, which if could not be sold within a limited period get obsolete because of change in trend, fashion and design. For sale of such item, every year clearance sale is made which is duly advertised in the newspaper. Such clearance sale is by giving discount of 10% to 90% from MRP. Therefore, the assessee has claimed deduction of 15% on account of obsolescence but Ld.CIT(A) has only considered 10% obsolescence on 20% of the stock. However, the AO has not considered this aspect at all. Hence, AO be directed to allow the discount of 15% for arriving at the value of stock found in survey

4. After considering the above, there is no difference in the value of stock found in survey and that as per books of accounts. It may be noted that even in survey no evidence of unrecorded purchase sale was found. In fact the assessee with reference to alleged discrepancies in stock in Q. No.33 has specifically stated that he is a regular income tax assessee and after verification of books, if any tax is payable he would pay it as per law. Thus, when no evidence of unrecorded business activity was found in survey and the assessee has explained the reason for the difference in the valuation of stock, no addition for excess stock can be made.

In view of above, ground of the department be dismissed and CO of assessee be allowed.”

4.6 We have heard both the parties and perused the materials available on record. It is noted from the assessment order that the AO made an addition of Rs.59,52,194/- holding that that the stock of garments to the tune of Rs.59,52,194/-

is held as unexplained investment made out of undisclosed sources in terms of provision of Section 69 of the Act and the amount is being added to the total income of the assessee. In first appeal, the ld. CIT(A) has confirmed the addition of Rs.27,33,020/- by giving the relief of Rs.32,19,174/- i.e. to say partly allowed the appeal of the assessee. With a view to deeply examining the case of the assessee, it will be worthwhile to consider the table advanced by the assessee in his written submission (supra).

Particulars	As per AO (In Rs.)	As per CIT(A) (In Rs)	As per assessee (In Rs.)	Remarks
Value of stock of MRP physically found in survey	1,24,23,487/-	1,24,23,847/-	1,24,23,487/-	This is MRP/Tag price mentioned in each garment item
Less:-Bargain discount	-	12,42,349/-	37,27,046/-	Assessee claimed 30% but CIT(A) allowed only 10%
	1,24,23,487/-	1,11,81,138/-	86,96,440/-	
Less: Deduction for obsolesce	-	2,23,622/-	13,04,466/-	CIT(A) allowed reduction for 20% of stock at 10% whereas assessee claimed 15%
	1,24,23,487/-	1,09,57,516/-	73,91,974/-	
Less: GP margin @ 16%	-	17,53,202/-	11,82,716/-	
Cost of Stock	1,24,23,487/-	92,04,313/-	62,09,258/-	
Book Stock as on the date of survey	64,71,293/-	64,71,293/-	64,71,293/-	
Excess stock as per the AO	59,52,194	27,33,020	Nil	

During the course of hearing, the ld. AR of the assessee filed the paper book pages 98 to 136 by which he has submitted the evidences that MRP price of goods of Rs.26,70,545/- was sold at Rs.15,52,784/- i.e. at a discount of 41.86% and thus the statement of price difference between MRP and Sale price is adduced as under:-

S.No.	Particulars	MRP	Sale Price	Average Discount
1.	Cloth	2,97,881	2,19,065	
2.	Lehnga	7,43,660	4,23,738	
3.	Lancha	1,54,735	1,10,302	
4.	Readymade	4,88,249	2,59,973	
5.	Saree	9,86,020	5,39,706	
	Total	26,70,545	15,52,784	41.86(MRP/Sale price=58.14 realised and thus the discount)

It is also noted that the MRP price is inclusive of GST. The ld. CIT(A) without considering these documentary evidences has allowed only reduction of 10% whereas the AO has not considered this fact in his assessment order. It is also noted that the items which assessee deals in are not sold within the stipulated period then they become obsolete because of change of trend, fashion and design and the assessee has to make efforts for clearance sale through advertisement in the newspaper. In clearance sale the assessee has to sell the items by giving 10% to 90% discount from MRP. It is also noted that there is no difference in the quantity of the stock found in survey and that as per books of accounts and even during

survey no evidence of unrecorded purchase/sale was found. However, the only dispute before us is the valuation of the stock that the assessee has claimed. We found from the working given by the assessee justifying the claim for bargain discount. However, the assessee failed to explained as to why the same should be considered at 15 % and we do not find any reason in the detailed finding given by the Id. CIT(A) on the issue. Even the assessee during statement before the authority at question No. 33 replied that ‘he is a regular income tax assessee and after verification of books, if any tax is payable, he would pay it as per law (PB 58). Considering the overall facts, situation on hand and overall interest of justice the Bench feels that the assessee is entitled to claim 30 % from the MRP of stock on account of bargain discount and 10 % on account of obsolescence from the MRP price so as to arrive at the correct value of stock as on the date of survey. Thus Ground No. 5 of the Department is partly allowed and Ground No. 2 of the C.O. of the assessee is also partly allowed.

5.1 Apropos Ground No. 6 of the Revenue, the facts as emerges from the order of the Id. CIT(A) are as under:-

“6.2 I have considered the facts of the case and written submission of the appellant as against the observations/finding of the AO in the assessment order for the year under consideration. The contention / submission of the appellant are being discussed and decided as under:-

(i) The ld. AO made addition of Rs.75,80,793/- in respect of excess stock of gold/silver ornaments and addition of Rs.59,52,194/- in respect of excess stock of cloth/ readymade garments u/s 69A of the Act. On this addition, he applied the provision of Section 115BBE of the Act.

(ii) Before me, the ld AR of the appellant argued that the AO taxed the alleged excess stock u/s 115BBE whereas the same is on account of regular business income of the appellant. The excess stock of jewellery/garments found in survey is part and parcel of the regular business stock. The same is not separately identifiable. Such excess stock has arisen out of the business activity of the appellant. It is not a case that the source of excess stock is not the business activity of the appellant. The AO has not brought any evidence to establish that the appellant has any other source of income. Therefore, the same can be assessed only under the head profit & gain of business and the provisions of Section 115BBE does not apply on the same. For this proposition, he placed reliance on the following decisions:-

PCIT vs Bajrang Traders in DBIT No. 258/2017 (Raj. H.C.)

DCIT vs Ramnarayan Birla 482/JP/2015 dated 30-09-2016 (ITAT-JP)

Chokshi Hiralal Maganlal vs DCIT 141 TTJ (Ahd.)1 dated 21-01-2011

Shri Ram Swaroop Singhal vs ACIT ITA No.145/Jodh/2018 dated 25-05-2015.

(iii) Therefore ld. AR pleaded that if there remains any addition for alleged excess stock, the same be assessed as part of the regular business income of the appellant and the provision of Section 115BBE of the Act does not apply on the same.

(iv) On perusal of the overall facts, I find that the stock of jewellery and garments found in excess are part and parcel of the regular business carried out by the appellant and the same is

not separately identifiable. Therefore, the same should be treated as business income. The various cases including the decision of Rajasthan High Court relied by the AR also support this view. Therefore, following the same, the AO is directed to assessee the excess stock confirmed in Grounds of Appeal No. 1 & 2 under the head income from business and the provisions of Section 115BBE does not apply on the same. Accordingly, the Ground of Appeal No. 3 is treated as allowed.”

5.2 During the course of hearing, the Id.DR supported the order of the AO.

5.3 On the other hand, the Id. AR submitted that the alleged excess stock of jewellery and garments found in survey is part and parcel of regular business stock. The same is not separately identifiable. The alleged excess stock has arisen from the regular business activity of the assessee. No evidence is brought on record that the alleged excess stock is from any unidentifiable source of income. Hence, the alleged excess stock can only be assessed under the head profits & gains of business which is not any income in the nature of section 69 or 69A of the Act so as to attract section 115BBE of the Act. To this effect, the Id. AR relied upon following decisions:-

1. CIT VS. Mangaldeep (2022) 211 DTR 7 (Surat) (Trib.) In view of the fact that assessee is engaged only in the business of trading of cloth, the unaccounted stock found during the survey is related to its business and therefore, the undisclosed income declared during the survey is assessable under the head 'Business income and not u/s 69A..

2. ACIT Vs. Vijay Kumar Surana and Rajendra Kumar Surana ITA No.644 &645/Ind/2019 (Indore) (Trib.) :-The facts of the case are that assessee is carrying on the business of Dal &Besan Mill. Survey action u/s 133A of the Act was carried out at the business premises of both the assessees. During the course

of survey proceedings, excess stock and excess cash was found. The assessee submitted that the alleged excess stock and excess cash are part of the business income and have been shown in the PAI A/c. It was also submitted that the excess stock in hand has also been shown in the trading account on the debit side so as to bring the stock offered to tax in the regular hooks for subsequent sales. The AO, however, held that it is not a business income and should be directly added to the total income of assessee as 'Income from other sources. The Id. CIT(A) concluded that the AO has not rejected the books of accounts and the assessee has rightly disclosed the excess stock and excess cash in hand in the books as is generally done by other assessee's subsequent to survey operations. Accordingly, he accepted the book results of the assessee and deleted the addition made by AO. On further appeal, Hon'ble ITAT confirmed the order of CIT(A) by giving the following findings at Para 11 & 14 of the order:

*11. On perusal of the above finding of Lal CIT(A) and the decisions referred therein we observe that the revenue authorities have not disputed the fact that the assessee's only source of income is from Dal & Basen Mill. No other incriminating material or document was found during the course of survey which could indicate that the assessee has any other source of income. It can thus be concluded that the alleged excess stock is part of the business income of the assessee. It is also discernable from the records that when the statement was taken during the course of survey, son of the assessee namely Mayur Kumar Surana gave reply to various questions asked by the survey team.*

.....

*The crux of the statement given during the course of survey on the facts that the alleged stock was not accepted to be undisclosed income from other sources but was a part of the business income which required some reconciliation as books of account were not completed at the time of survey proceedings. We are of the view that since the income alleged excess stock and excess cash found during the course of survey is part of the business income, the provisions of section 115BBE of the Act would not be applicable as rightly held by the Id. CIT(A) and also in view of the facts that there was an amendment in the provisions of section 115BBE w.e.f. 1st April 2017 and the assessee's case is pertaining to A.Y 2015-16, thus, it is not be applicable on the case of assessee.*

*14. We, therefore, in the given facts and circumstances of the case, find no reason to interfere in the finding of Ld CITA) deleting the impugned addition made by the*

*ld. AO and also holding that the provisions of section 115BBE of the Act are not applicable on the assessee since the income declared during the course of survey is a business income.’’*

3. PCIT VS. Bajargan Traders DBITA No.258/2017 order dt. 12.09.2017 (Raj.) (HC) In this case the assessee is a partnership firm dealing in sale of food grain, rice and oil seeds. A survey u/s 133A was conducted on the business premises. During the survey, assessee surrendered excess stock of rice. The assessee submitted that the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee, AO taxed the amount surrendered by way of investment in unrecorded stock of rice under the head Income from other sources In appeal, the Hon'ble ITAT allowed the claim of assessee by holding as under

*"2.10 We have heard the rival contentions and perused the material available at record During the course of survey, the assessee has surrendered an amount of Rs 70,04814 towards investment in stock of rice which had not been recorded in the books of accounts Subsequently in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs 70.04814 were finally reflected as part of total purchases amounting to Rs.33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amounting to Rx 1,94,42,569/- in the profit loss account since the said stock of rice was not sold out in addition to the purchase and the closing stock, the amount of Rs 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularise its books of accounts. In*

*fact, the same provides a credible base for Revere to bring to tax subsequent profit/loss on sale of such stock of rice in future*

*2.11. Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources". In the present case. the assessee is dealing in sale of food grains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources". In the result, ground No. 1 of the assessee is allowed"*

On further appeal by department, the Hon'ble Rajasthan High Court upheld the above findings of ITAT dismissed the appeal filed by department."

4. DCIT Vs. Sh. Ram Narayan Birla ITA No.482/JP/2015 order dt. 30.09.2016 (Jaipur) (Trib.)

In this case it was held that the excess stock is to be assessed as part of the normal stock and to be taxed under the head income from business. The relevant finding of IIAT at Para 43 reads as under-

*'4.3 We have heard rival contentions and perused the material available on record Undisputed facts emerged from the record that at the time of survey excess stock was found. It is also not disputed that the assessee is engaged in the business of jewellery During the course of survey excess stock valuing Rs. 77,66,887/- was found in respect of gold and silver jewellery The Coordinate Bench in the case of Chokshi Hiralal Maganlal DCTE 131 TT (Ahd) has held that in a cases where source of investment expenditure is clearly identifiable and alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment/expenditure then first what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure it should be considered to be taxed under section 69 on the premises that such excess investment is not recorded in the books of account and its nature and source is not identifiable. Once such excess investment is taxed as undeclared business*

*receipt then taxing it further as deemed income under section 69 would not be necessary. Therefore, the first attempt of the assessing authority should be to find out link of undeclared investment/expenditure with the known head, give opportunity to the assessee to establish nexus and if it is satisfactorily established then first such investment should be considered as undeclared receipt under that particular head. It is observed that there is no conflict with the decision of Hon'ble Gujarat High Court in the case of Fakir Mohd. Ilajillasan (supra) where investment in an asset or expenditure is not identifiable and no nexus was established then with any head of income and thus was not available for set off against any loss under any other head. Therefore, the Hon'ble Coordinate Bench held that where asset in which undeclared investment is sought to be taxed is not clearly identifiable or does not have independent identity but is integral and inseparable (mixed) part of declared asset, falling under a particular head, then the difference should be treated as undeclared business income explaining the investment, In the present case the excess stock was part of the stock The revenue has not pointed out that the excess stock has any nexus with any other receipts. Therefore, we do not find any fault with the decision of the Id CTT (A) directing the 10 to treat the surrendered amount as excess stock qua the excess stock found.*

5. Harish Sharma Vs. ITO (2021) 207 DTR 475 (Chd.) (Trib.)

Notebook containing entry pertaining to the proprietary business of the assessee was recovered from the possession of the assessee. Authorities below have not rejected the contention of the assessee that the entries in the notebook pertained to his business concern. Assessee has explained the nature and source of the amount in question and to substantiate his contention submitted cash flow statement. Therefore, in the absence of any adverse findings by the AO on the source of earning of the assessee, the authorities below have wrongly treated the amount in question as undisclosed income u/s 68 and computed the tax liability under the provisions of sec. 115BBE. Accordingly, AO is directed to compute the tax on the said amount treating the same as business income of the assessee.’’

Hence, the Id. AR prayed for dismissing the ground No. 6 of the Revenue.

5.4 We have heard both the parties and perused the materials available on record. Taking into consideration the above facts and circumstances of the case, the Bench noted the difference in ornaments is very negligible and difference in garment is only on account of valuation difference. Thus, in fact there is no excess

or shortage of stock for which the provision of Section 69 or 69A of the Act so as to attract Section 115BBE of the Act. Hence, we concur with the findings of the Id.CIT(A) that provisions of Section 115BBE of the Act does not apply considering the peculiar fact of the case that there is no difference in quantity or if any it is very negligible. Thus Ground No. 6 of the Revenue is dismissed.

6.0 In the result, the appeal of the Revenue is partly allowed and the C.O. of the assessee is partly allowed.

Order pronounced in the open Court on 29 /03/2023.

Sd/-

( राठोडकमलेशजयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

( डॉ.एस.सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29 /03/2023.

**\*Mishra**

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ACIT, Central Circle, Alwar
2. प्रत्यर्थी / The Respondent- Shri Satya Dev Arya, Bharatpur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 421/JP/2022}

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar