

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 351/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Neetu Sharma  
Prop. of Venkatesh Accessories Shoppe,  
Jawaharlal Nehru Ward No. 37,  
Sindhi Bazar, Near M.G Road,  
Raipur (C.G.)  
PAN : BBHPS6525D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax-1(1),  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 352/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Asha Sharma  
Prop. of Venkatesh Enterprises,  
Sindhi Bazar, Near M.G Road,  
Raipur (C.G.)  
PAN : AJJPS9096A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax-1(1),  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal &  
Smt. Laxmi Sharma, CAs  
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.01.2023

घोषणा की तारीख / Date of Pronouncement : 30.03.2023

### **आदेश / ORDER**

#### **PER RAVISH SOOD, JM:**

The captioned appeals filed by the respective assessees are directed against the consolidated order passed by the CIT (Appeals)-1, Raipur, dated 02.08.2016, which in turn arises from the respective orders passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 18.03.2014 & 21.03.2014 for assessment year 2011-12. As the issues involved in the captioned appeals are inextricably interlinked or in fact interwoven, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. We shall first take up the appeal filed by the assessee in ITA No.351/RPR/2016 for the assessment year 2011-12. The assessee has

assailed the impugned order on the following revised grounds of appeal before us:

**"Revised Gr. No. 1:**

"1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in sustaining addition of Rs.16,09,385 on count of excess stock found on survey u/s.133A 'only on the basis of survey statement recorded on oath, when the assessee has (/ explained/ reconciled it before the Ld. AO/ Ld. CIT(A), more so, correct valuation of physical stock found as on 3-3-11 comes to Rs.19,62,148, instead of Rs.35,64,385 as incorrectly valued by survey team on tag price printed on stock items; hence, addition of Rs.16,09,385 is liable to be deleted."

**Revised Gr No. 2:**

"2. On the facts and circumstances of the case and in law, ld. CIT(A) has erred in sustaining addition of Rs.3,40,009 on count of excess cash found on survey u/s.133A only on the basis of survey statement recorded on oath, when the assessee has duly explained/ reconciled it before the ld. AO/ ld. CIT(A), hence; addition of Rs.3,40,009 is liable to be deleted."

Also the assessee has raised an additional ground of appeal which reads as under:

**Additional Gr.No.1**

"1. On the facts and circumstances of the case and in law, assessment order u/s.143(3) dt.18-3-14 passed by the DCIT-1(1), Raipur, who was not having pecuniary jurisdiction to make assessment for AY11-12 as per CBDT Instruction No.1/2011 dt.31-1-11, since 'returned income' shown at Rs.13,37,110; assessment made u/s.143(3) dt.18-3-14 by 'non-jurisdictional AO' is invalid, bad in law, non-est and is liable to be quashed."

3. At the very outset of the hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') for the assessee that as per instructions he seeks to withdraw the additional ground of appeal No.1.

Considering the aforesaid concession of the Ld. AR the **Additional Ground No.1** raised by the assessee is dismissed as withdrawn.

4. Succinctly stated, the assessee who is engaged in the business of trading of car accessories was on 03.03.2011 subjected to survey u/s.133A of the Act. The assessee thereafter filed her return of income for the year under consideration i.e. A.Y.2011-12 on 02.02.2012, declaring an income of Rs.13,37,110/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

5. During the course of the assessment proceedings, it was observed by the A.O that the assessee in the course of survey proceedings had come forth with a disclosure of an amount of Rs.29,49,394/-, as under:

Sr. No.	Particular	Amount
1.	Disclosure of excess cash	Rs.3,40,009/-
2.	Disclosure of excess stock	Rs.16,09,385/-
3.	Disclosure of unexplained investment	Rs.10,00,000/-
	<b>Total</b>	Rs.29,49,394/-

On a perusal of the records, it was observed by the A.O that the assessee had retracted the statement that was recorded on oath during the course of survey proceedings u/s.133A of the Act. It was further observed by him that

the assessee had not offered for tax the excess stock and cash that was disclosed in the course of the aforesaid proceedings. On being queried, it was the claim of the assessee that as the figures gathered by survey officials with respect to impugned excess stock and cash on the basis of unaudited accounts and incomplete information available at the time of survey proceedings on 03.03.2011 suffered from manifold infirmities, therefore, they lacked credence and could not be acted upon. Elaborating on the infirmities which had emerged from the details gathered by the survey officials on the basis of unaudited accounts and incomplete information it was submitted by the assessee, viz. (i) that purchases of certain goods had remained unrecorded as the corresponding purchase bills were received after the culmination of the survey proceedings ; (ii) that certain direct expenses were not recorded at the time of survey proceedings; (iii) that the sale figure adopted by the survey officials in the tentative trading account was inclusive of VAT while for those recorded in the books of accounts was exclusive of VAT; (iv). the value of closing stock was wrongly arrived at by the survey officials on the basis of a novel method, i.e, applying the GP rate of 9% of the preceding year to the value of sales (upto the date of survey) and taking the balancing figure in the trading stock as the value of “closing stock” (as on the date of survey); and (v) the discrepancy as regards the excess cash was for the reason that the books of account were incomplete

as on the date of survey. It was the claim of the assessee that as the discrepancies as regards the excess stock and cash were reconciled by the assessee after the culmination of survey proceedings and the books of accounts were got audited on 31.03.2011, therefore, the impugned disclosure of excess stock and cash which was based on incorrect facts was not offered for tax in the return of income. However, the A.O did not find favour with the aforesaid explanation of the assessee. It was observed by the A.O that though the assessee had claimed that the figures of sales in the trading account prepared in the course of survey proceedings were taken by the survey officials at a higher amount as against the actual sales reflected in her duly audited trading account, but at the same time she had failed to substantiate her said claim by placing on record supporting sale bills. The A.O held a conviction that the assessee had with a deliberate intent retracted her statement and adjusted the surrendered income by increasing the amount of closing stock. Accordingly, the A.O after rejecting the explanation of the assessee made an addition of the excess stock of Rs.16,09,385/- that was disclosed in the course of survey proceedings.

6. Apropos the retraction made by the assessee with respect to excess cash that was surrendered during the course of survey proceedings, it was observed by the A.O that though she had carried out adjustments in her cash book but was unable to place on record any genuine proof in support

of the said adjustments. The A.O being of the view that the assessee in the garb of the adjustments to the stock and cash had tried to support her retraction, thus, rejected her aforesaid claim and made an addition of the excess cash of Rs.3,40,009/- that was found in the course of survey proceedings and was surrendered as her additional income.

7. Accordingly, the A.O vide his order passed u/s.143(3) dated 18.03.2014 determined the income of the assessee at Rs.32,81,100/-.

8. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As is discernible from the records, the CIT(Appeals) did not refute the claim of the assessee that her books of account were incomplete at the time of survey proceedings and part of the purchases had remained unrecorded. However, the CIT(Appeals) was of the view that the failure of the assessee to maintain upto date books of account would not come to her rescue to justify the excess stock and cash that had surfaced in the course of survey proceedings. Also, it was observed by the CIT(Appeals) that the assessee had failed to come forth with any evidence to support her claim that though some goods were actually received and formed part of her stock at the time of the survey proceedings but the corresponding bills were recorded after culmination of the said proceedings.

8.1 Apropos the claim of the assessee that there was no discrepancy with respect to cash found in the course of survey proceedings, the CIT(Appeals) was of the view that as her said claim was not based on any supporting evidence, therefore, the same did not merit acceptance. Referring to the purchase bills which were filed by the assessee as additional evidence before him, it was observed by the CIT(Appeals) that the assessee had not only failed to produce the said bills before the A.O, but also the same having been received by her after conclusion of survey proceedings could not be entertained. Also negating the claim of the assessee that the survey officials had highly pitched the value of stock, it was observed by the CIT(Appeals) that though the assessee had filed before him a comparative stock statement which revealed the value against each item that was taken by the survey team as against that taken by the assessee but the very basis for adopting the value by the assessee was not found to be substantiated. Also, it was observed by the CIT(Appeals) that the value of the items were taken by the survey officials on the basis of the details that were provided by the assessee or his employees on the basis of documents or rate list or other papers in possession of the assessee. It was further observed by the CIT(Appeals) that if the assessee did not find the rates adopted by the survey officials as correct, then she ought to have objected to the same in her statement recorded u/s.133A of the Act. On the basis of his aforesaid deliberations the

CIT(Appeals) rejected the explanation/reconciliation that was filed by the assessee in her attempt to reconcile the excess stock and cash that was found in the course of survey proceedings. As regards the retraction of the assessee's statement recorded u/s.133A of the Act, the CIT(Appeals) was of the view that as the excess stock and cash was surrendered by the assessee on the basis of evidence gathered in the course of survey proceedings, therefore, there was no justification in the retraction so made by her after a lapse of a period of 3.5 months from the date of survey. Accordingly, the CIT(Appeals) not finding favour with the claim of the assessee upheld the additions made by the A.O and dismissed the appeal.

9. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

10. At the very outset of the hearing of appeal, it was submitted by the Ld. AR that the statement of the assessee that was recorded in the course of survey proceedings wherein the impugned excess stock and cash was offered as undisclosed income had thereafter been retracted. It was submitted by the Ld. AR that the assessee after duly reconciling the impugned discrepancies which had allegedly resulted to excess stock and cash had got her accounts audited and filed her return of income on the basis of the same. It was averred by the Ld. AR that there was no justification for the A.O to

have drawn adverse inferences on the basis of the impugned statement of the assessee recorded during the course of survey proceedings as the same pursuant to the retraction did no more survive. Apart from that, it was submitted by the Ld. AR that as per the judgment of the Hon'ble Supreme Court in the case of CIT v. S. Khader Khan & Son (2013) 352 ITR 480 (SC) as an Income Tax Officer under section 133A is not empowered to examine any person on oath, therefore, any admission made in a statement recorded during the course of survey proceedings could not form a basis for making any addition. Also reliance was placed by the Ld. AR on the judgment of the Hon'ble High Court of Kerala in the case of Paul Mathews & Sons vs Commissioner of Income Tax (2003) 263 ITR 101 (Ker.), wherein it was observed by the Hon'ble High Court that though Section 133A of the Act enables an Income Tax authority to record statement of any person which may be useful in the course of the said proceedings but the same does not authorize him for taking any sworn statement. It was submitted by the Ld. A.R that the Hon'ble High Court had observed that a statement recorded u/s 133A of the Act is not to be given any evidentiary value because the officer recording such statement is not authorized to administer oath and take any sworn statement which alone has evidentiary value in the eyes of law. Also, the Ld. AR had drawn support from the order of the ITAT, Raipur Bench in the case of Tikam Das Jivnani Vs. Assistant Commissioner of Income Tax,

ITA No.28/RPR/2014 dated 11.10.2021, wherein the Tribunal after relying on a host of judicial pronouncements, had held, that a statement recorded during the course of survey proceedings is not a conclusive piece of evidence by itself and it is open to the person who had made the admission to show that it is incorrect. The Ld. AR had further pressed into service the judgment of the Hon'ble High Court of Chhattisgarh in the case of CIT Vs. Satyanarayan Agrawal (2009) 319 ITR 396 (C.G.), wherein the claim of the assessee that certain purchases were not recorded at the time of survey proceedings was accepted by the lower appellate authorities and their said view on appeal was impliedly approved by the Hon'ble High Court. Also, it was averred by the Ld. AR that as the A.O had not rejected the assessee's books of accounts u/s.145(3) of the Act and had accepted her returned income, which in turn was based on her duly audited reconciled accounts, thus, by so doing he had accepted her explanation as regards the discrepancies that had resulted to excess stock and cash in the course of survey proceedings. In sum and substance, it was the claim of the Ld. AR that not only the A.O had not rejected the books of accounts of the assessee u/s.145(3) of the Act, but had while framing the assessment accepted and taken her returned income (as the base figure for making the impugned additions). It was submitted by the Ld. AR that as the assessee's returned income, which in turn was based on her duly audited reconciled books of

account was taken by the A.O as the base figure for making the impugned additions, thus, by so doing he had accepted her reconciliation and the explanation as regards the discrepancies that had led to the excess stock and cash in the course of survey proceedings. It was, thus, averred by the Ld. AR that as the very basis for making the impugned additions towards excess stock and cash pursuant to the acceptance of the assessee's reconciled audited accounts by the A.O did no more hold the ground, therefore, the additions so made by him could not be sustained and were liable to be vacated.

11. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was averred by the Ld. DR that as the assessee had failed to offer for tax her undisclosed income pertaining to the excess stock and cash that were found in the course of survey proceedings, which in the statement recorded u/s.133A of the Act was agreed to be disclosed as her additional income for the year under consideration, therefore, the A.O had rightly made the addition of the said respective amounts. Rebutting the claim of the Ld. AR that the statement u/s.133A of the Act was retracted by the assessee for the reason that the same was recorded under a confused state of mind, the Ld. DR submitted that the very fact that the additional income of Rs.10 lac towards unexplained investment that was disclosed as additional income in the same

statement was offered by the assessee for tax in the return of income in itself falsified her said claim.

12. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

13. We have given a thoughtful consideration to the issue in hand, and are principally in agreement with the claim of the Ld. A.R that as Section 133A does not empower any Income-tax Officer to examine any person on oath, therefore, any admission made in a statement recorded during the course of survey proceedings cannot form a standalone basis for making any addition. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in the case of **CIT v. S. Khader Khan & Son (2013) 352 ITR 480 (SC)** and that of **Hon'ble High Court of Kerala** in the case of **Paul Mathews & Sons vs Commissioner of Income Tax (2003) 263 ITR 101 (Ker)**. We are further of a strong conviction that in a case where the assessee had retracted his statement recorded in the course of survey proceedings u/s.133A of the Act, then, a very heavy onus is cast upon the department to support the additions/disallowances on the basis of independent documentary evidence gathered in the course of such proceedings. Although

the retraction of the statement recorded u/s.133A of the Act on 03.03.2011 in the present case in absence of any supporting reasons does not inspire much of confidence, but we cannot also remain oblivious of the fact that the A.O while making the said additions was obligated to have supported the same on the basis of independent documentary evidence which would have irrefutably belied the claim of the assessee. Rebutting the aforesaid additions that were made by the A.O towards excess stock and cash, it is the claim of the assessee that the same had emerged in the course of survey proceedings on account of multiple discrepancies, viz. (i) that purchases of certain goods had remained unrecorded as the corresponding purchase bills were received after the culmination of the survey proceedings; (ii) that certain direct expenses were not recorded at the time of survey proceedings; (iii) that the sale figure adopted by the survey officials in the tentative trading account was inclusive of VAT while for those recorded in the books of accounts was exclusive of VAT; (iv) the value of closing stock was wrongly arrived at by the survey officials on the basis of a novel method, i.e, applying the GP rate of 9% of the preceding year to the value of sales (upto the date of survey) and taking the balancing figure in the trading stock as the value of "closing stock" (as on the date of survey); and (v) the discrepancy as regards the excess cash was for the reason that the books of account were incomplete as on the date of survey.

14. Ostensibly the genesis of the impugned excess stock was, inter alia, for the reason that the sale figure adopted by survey officials in the tentative trading account (inclusive of VAT) was Rs.1,15,03,582/-, while for that recorded in the audited books of accounts of the assessee (exclusive of VAT) was Rs.1,00,90,862/-, which, thus, had resulted to the impugned discrepancy of Rs.14,12,720/-. Although at the first blush the aforesaid explanation of the assessee as regards the difference in the sales on 03.03.2011, i.e., as recorded in its audited trading accounts as against those taken in the tentative trading account that was prepared in the course of proceedings u/s.133A of the Act appeared to be very convincing but the factual position remained otherwise. We, say so, for the reason that a perusal of the audit report issued by the Chartered Accountant u/s.44AB of the Act reveals that the auditor had at Sr. No.21 of his report stated as under:

*State whether sales tax, customs duty, excise duty or any other indirect tax, levy, cess, impost, etc. is passed through the profit and loss account	VAT collected on sales, directly credited to payable account
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On a perusal of the aforesaid fact, it transpires beyond doubt that sales were being accounted by the assessee in her books of accounts exclusive of VAT. In the backdrop of the aforesaid fact the claim of the Ld. AR that the sales figure of Rs.1,15,03,582/- (supra) adopted by the survey officials while

preparing the tentative trading account on the basis of her incomplete books in the course of survey proceedings u/s.133A of the Act was inclusive of VAT is beyond comprehension. Also nothing has been placed on record which would even otherwise support the aforesaid claim of the assessee. On a further perusal of the records, we find that a monthly summary of the sales of the assessee, i.e., "Sale taxable 14%", Page 191 of APB revealed that the sales for the period 01.04.2010 to 28.02.2011 had touched the amount of Rs.1,08,60,183/-. On referring the "Sale Taxable 14% A/c" Page 192-210 of APB, we find that the sales of the assessee upto 03.03.2011 amounted to Rs.1,09,11,883/-. As against the sales of Rs.1,09,11,883/- (supra) as is clearly discernible from the audited books of account of the assessee (for the period 01.04.2010 to 03.03.2011), the sales as projected by the assessee in the audited trading account for the said period i.e. (for the period 01.04.2010 to 03.03.2011) as was furnished in the course of the assessment proceedings with the A.O were shown at Rs.1,00,90,862/-. On the basis of the aforesaid fact that the sales of the assessee for the aforesaid period i.e. (for the period 01.04.2010 to 03.03.2011), as per its audited books of accounts in itself does not tally with the figure of sales for the aforementioned period as was provided by the assessee to the A.O in the course of the assessment proceedings nothing more is required to be said about the incorrect or fabricated claim of the assessee.

15. We are of a strong conviction that the assessee had merely in order to neutralize the disclosure of Rs.16,09,385/- that was offered as regards the excess stock in the course of survey proceedings conducted u/s.133A of the Act on 03.03.2011, had come up with a false claim based on incorrect facts and figures in the course of the assessment proceedings before the A.O. It is for the said reason that the assessee had even in the course of the assessment proceedings despite specific directions of the A.O withheld the production of the sale bills for necessary verifications by him. On the basis of the aforesaid facts, we are of a considered view that as observed by the lower authorities, and, rightly so, the assessee had in the garb of reconciliation of the excess stock sought to nullify the disclosure of additional income towards discrepancies in stock that had emerged in the course of survey proceedings. Also we find substance in the claim of the Ld. DR that retraction of the statement of the assessee in the course of the survey proceedings was merely based on an afterthought. We, say so, for the reason that though it is the claim of the assessee on one hand that as the impugned statement in the course of the survey proceedings was recorded under confused state of mind, while for at the same time she had in her return of income admitted the additional income of Rs.10 lac towards unexplained investment that was disclosed in the same statement.

16. In so far the claim of the Ld. AR that the impugned variance in the value of the closing stock as had been arrived at by survey officials on the basis of tentative trading account prepared on 03.03.2011 as against that found available on the basis of physical stock taking was, inter alia, attributable to the reasons that purchase of Rs.3,29,702/- had remained unrecorded in the books of account on the date of survey i.e. on 03.03.2011, we are unable to persuade ourselves to subscribe to the said unsubstantiated claim. We, say so, for the reason that the assessee had neither before the lower authorities nor before us placed on record any such material which would substantiate the authenticity of his aforesaid claim. Also, on the same footing the unsubstantiated claim of the assessee that certain direct expenses were not recorded in the tentative trading account that was compiled in the course of the survey proceedings can also not be accepted in absence of any material in support thereof.

17. We, thus, in the totality of the facts involved in the present case are unable to persuade ourselves to subscribe to the contentions advanced by the Ld. AR, wherein, he had tried to explain the reasons leading to the impugned variance in the stock that was found lying with the assessee on the basis of physical stock taking as against that disclosed in her books of accounts at the time of survey proceedings. Thus, the **Ground of appeal**

**No.1** raised by the assessee is dismissed in terms of our aforesaid observations.

18. Apropos the disclosure of Rs.3,40,009/- that was made by the assessee towards excess cash found in the course of the survey conducted on 03.03.2011 u/s.133A of the Act, we are of the considered view that as the assessee had failed to come forth with any plausible explanation as regards the said variance, therefore, no infirmity could be related to the orders of the lower authorities who had rightly made/upheld the addition to the said extent in the hands of the assessee. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of my aforesaid observations.

19. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

20. In the result, appeal of the assessee in ITA No.351/RPR/2016 for A.Y.2011-12 is dismissed in terms of our aforesaid observations.

**ITA No.352/RPR/2016 (Assessee- Smt. Asha Sharma)**  
**A.Y.2011-12**

21. Now we shall take up the appeal filed by the assessee in ITA No.352/RPR/2016 for A.Y.2011-12, wherein the impugned order has been assailed by the assessee on the following revised grounds of appeal:

"1. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.25,32,398 on count of excess stock found on survey u/s.133A only on the basis of survey statement recorded on oath, when the assessee has explained/ reconciled it before the Id AO/ Id CIT(A), more so, correct valuation of physical stock found as on 3-3-11 comes to Rs.90,40,256, instead of Rs.1,20,57,398 as incorrectly valued by survey team on tag price printed on stock items; hence, addition of Rs.25,32,398 is liable to be deleted."

"2. On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.6,03,109 on count of excess cash found on survey u/s133A only on the basis of survey statement recorded on oath, when the assessee has duly explained/ reconciled it before the Id AO/ Id CIT(A), hence, addition of Rs.6,03,109 is liable to be deleted."

22. Succinctly stated, the assessee who is engaged in the business of trading of car accessories was on 03.03.2011 subjected to survey proceedings u/s.133A of the Act. The assessee filed her return of income for the year under consideration i.e. A.Y.2011-12 on 30.01.2012, declaring an income of Rs.15,43,870/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

23. During the course of the assessment proceedings, it was observed by the A.O that the assessee during the course of survey proceedings had come forth with disclosure of an amount of Rs.31,35,507/-, as under:

Sr. No.	Particular	Amount
1.	Disclosure of excess cash	Rs.6,03,109/-
2.	Disclosure of excess stock	Rs.25,32,398/-

	<b>Total</b>	Rs.31,35,507/-
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On a perusal of the records, it was observed by the A.O that the assessee had retracted her statement recorded on oath during the course of survey proceedings u/s.133A of the Act and had, inter alia, not offered for tax the excess stock and cash that was disclosed by her in the course of the aforesaid proceedings.

24. On being queried, it was the claim of the assessee that as the figures gathered by the survey officials with respect to impugned excess stock/cash on the basis of unaudited accounts and incomplete information available in the course of survey proceedings i.e. on 03.03.2011 suffered from manifold infirmities, viz. (i) that survey officials while arriving at the value of the closing stock on 03.03.2011 had wrongly taken an amount of closing stock as on 01.04.2010 at Rs.75,16,539/- instead of the correct amount of Rs.1,09,82,356/-; (ii) that the purchase amount of Rs.73,78,970/- had remained unrecorded in the books of account of the assessee at the time of survey proceedings, i.e on 03.03.2011; and (iii). that certain indirect income was wrongly credited in the tentative trading account compiled in the course of the survey proceedings i.e on 03.03.2011. For the sake of clarity, the reason for the impugned variance as had been stated by the assessee are culled out as under:

“Tentative Trading account prepared on the basis of in-completed books up to 3-3-11:

Opening stock (1-4-10)	75,16,539	Sales	4,99,96,051
Purchases	4,03,42,026	Direct Income	11,33,994
Entry tax	2,03,139	Closing stock (3-3-11) on estimated basis	95,25,000
Motor Profit	2,48,687		
GP (24.14%)	1,23,44,654		
Total	6,06,55,045	Total	6,06,55,045

Audited trading account as submitted by the assessee up to 3-3-11 ( i.e. from 1-4-10 to 3-3-11)

Opening stock (1-4-10)	1,09,82,356	Sales	4,99,96,051
Purchases	4,03,42,026 (+) 73,78,970 Left unrecorded in the books	Direct Income	Nil (Rs.11,33,994 transferred to P & L account)
Entry tax	2,03,139	Closing stock (3-3-11)	1,20,57,398
Motor Profit	2,48,687		
GP (5.8%)	28,98,271		
Total	6,20,53,449	Total	6,20,53,449

Audited trading account for the year ended 31-3-11 ( i.e., from 1-4-10 to 31-3-11)

Opening stock (1-4-10)	1,09,82,356	Sales	5,30,08,122
Purchases	4,83,04,244	Direct Income	Nil (Rs.11,33,994 transferred to P & L account)
Entry tax	3,52,279	Closing stock(31-3-11)	1,00,22,310
Motor Profit	3,18,669		
GP (5.8%)	30,72,884		
Total	6,30,30,432	Total	6,30,30,432

On the basis of the aforesaid facts, it was the claim of the assessee that as the impugned disclosure of excess stock/cash was based on incorrect facts, thus, the same was not offered for tax in the return of income. However, the A.O did not find favour with the aforesaid explanation of the assessee. Referring to the re-casted audited trading account of the assessee (up to 03.03.2011) as against that prepared on the basis of incomplete books in the course of survey proceedings i.e. on 03.03.2011, it was observed by the A.O that the assessee had failed to come forth with any concrete explanation to establish her aforesaid claim. The A.O was further of the view that the assessee had only manipulated her activities in order to justify retraction of the statement that was recorded in the course of survey proceedings. It was observed by the A.O that as the amount surrendered by the assessee in the course of the survey proceedings was based on the difference of physical status of stock and cash as was found against that reflected in her regular books of account, therefore, the same being based on facts was duly offered by her as additional income in the course of the survey proceedings. The A.O was of the view that as the assessee had failed to discharge the onus that was cast upon her to substantiate her aforesaid explanation on the basis of clinching documentary evidence i.e. with respect to change of stock figure that were found in the course of survey proceeding and were offered by her as additional income, therefore, he made an addition of the entire amount

of additional income of Rs.25,32,398/- (supra) that was offered by the assessee in the statement recorded in the course of survey proceeding as her additional income.

25. Apropos the disclosure of additional income of Rs.6,03,109/- towards excess cash that was found in the course of the survey proceedings, it was observed by the A.O that the assessee had failed to come forth with any explanation as regards the excess amount of cash that was found from her premises as against that recorded in her cash book. Accordingly, the A.O made an addition of the excess cash of Rs.6,03,109/- (supra) that was disclosed by the assessee as her additional income in the course of the survey proceedings to her returned income. On the basis of his aforesaid observations the A.O was of the view that as the assessee had on the basis of an afterthought made adjustments to the stock and the cash book without any supporting material/evidence therefore, the same did not merit acceptance.

26. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success.

27. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

28. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his respective contentions.

29. Apropos the claim of the assessee as regards the impugned variance in the value of closing stock that was found on the basis of physical stock taking in the course of survey proceeding conducted on her on 03.03.2011 as against that reflected in her books of account, we find that she had, inter alia, claimed that the same was for the reason that the value of the “opening stock” i.e. on 01.04.2010 was wrongly taken by survey officials in the tentative trading account that was compiled on the basis of incomplete books of account on 03.03.2011 at Rs.75,16,539/- as against the actual amount of Rs.1,09,82,356/-. It was submitted by the Ld. AR that the aforesaid incorrect figure of “opening stock” i.e. 01.04.2010 of Rs.75,16,539/- was adopted by the survey officials on the basis of rough financial statements of the assessee for the period 01.04.2010 to 28.02.2011 that were found in the course of survey proceedings, Page 62 of APB. It was submitted by the Ld. AR that the “closing stock” as on 31.03.2010 was Rs.1,09,82,356/-(supra). The Ld. A.R in order to buttress his aforesaid claim had taken us through the audited trading account of the assessee on 31.03.2010 wherein his aforesaid claim was fortified, Page 231 of APB. It

was the claim of the Ld. AR that not only the amount of “opening stock” in financial statement i.e. Profit & loss account for the period 01.04.2010 to 28.02.2011 (supra), Page 62 of APB was incorrectly stated but also the figure of sales and purchases therein mentioned were incorrect. The ld. A.R in his attempt to substantiate his aforesaid claim had referred to the figures of purchases and sales as were reflected in the tentative trading account of the assessee which was compiled on 03.03.2011. Apart from that, it was stated by the Ld. AR that the survey officials had wrongly worked out the value of the “closing stock” i.e. as the balancing figure by adopting GP rate of 24.14% as against the assessee’s GP rate of 5.8% for the year under consideration. It was, thus, submitted by the Ld. AR that in the backdrop of the aforesaid infirmities that had crept in while working out the valuation of the closing stock in the tentative trading account of the assessee on 03.03.2011 that the impugned variance had therein emerged.

30. Per contra, the Ld. Departmental Representative (for short ‘DR’) relied on the orders of the lower authorities. It was submitted by the Ld. DR that the assessee in the course of survey proceedings i.e. on 03.03.2011 considering the excess stock and cash of Rs.25,32,398/- and Rs.6,03,109/-, respectively, had as per her volition offered the said amount as her additional income for the year under consideration. It was submitted by the Ld. DR that as the assessee had failed to offer the aforesaid amount for tax

in her return of income, therefore, the A.O had rightly made an addition of the same to her returned income.

31. As the Ld. AR had come forth with multi-facet reasons in his attempt to justify his variance with respect to excess stock found in the course of survey proceedings, therefore, we shall deal with the same, as under:

**(A) Re: Incorrect figure of opening stock on 01.04.2010 :-**

32. It is the claim of the Ld. AR that as the A.O had wrongly taken the figure of “opening stock” on 01.04.2010 at Rs.75,16,539/- (supra) as against the actual amount of Rs.1,09,82,356/- (supra), therefore, the same had primarily contributed towards the impugned variance in the closing stock as was physically found in the course of survey proceedings as against that recorded in her books of accounts.

33. On a perusal of the records, we find that the “opening stock” on 01.04.2010 had admittedly been adopted by the survey officials while preparing the tentative trading account on the basis of the “Profit & loss account” for the period 01.04.2010 to 28.02.2011 that was found in the course of survey proceedings, Page 62 of APB. It is the claim of the Ld. AR that the aforesaid rough “Profit & loss account” could not have been acted upon for drawing adverse inferences in the hands of the assessee. As observed by us hereinabove, the Ld. AR in order to substantiate his claim

that the aforesaid "Profit & loss account" (supra) referred to a set of incorrect figures had carried out a conjoint reading of the same a/w. tentative trading account as was prepared by survey officials on 03.03.2011, and had drawn support from the variance in the figures of purchases and sales therein mentioned. Also, the Ld. AR had taken us through the audited trading account of the assessee for the immediately preceding year i.e. F.Y.2009-10, wherein the "closing stock" as on 31.03.2010 was reflected at Rs.1,09,82,356/-. Although we cannot remain oblivious to the fact that the aforesaid audited trading account for the year ended on 31.03.2010 is dated 15.03.2011, i.e., subsequent to the date of survey proceedings which were conducted on 03.03.2011, but the figure of "opening stock" as on 01.04.2010 can by no means be allowed to be different as against the value of the "closing stock" as on 31.03.2010. On the basis of the aforesaid facts, I find substance in the claim of the Ld. AR that the lower authorities were not justified in taking the figure of the "opening stock" i.e. on 01.04.2010 at Rs.75,16,539/- as against the value of closing stock of Rs.1,09,82,356/- (supra) reflected in the audited account of the assessee on 31.03.2010. Nothing has been brought to our notice which would reveal that the "closing stock" of Rs.1,09,82,356/- (supra) on 31.03.2010 as disclosed in the audited financial statements of the assessee for the immediately preceding year i.e. F.Y 2009-10 was incorrect, and thus, was not to be acted upon. We, thus,

in terms of our aforesaid observations direct the A.O to recast the aforesaid tentative trading account that was compiled in the course of the survey proceeding on 03.03.2011 and accordingly rework out the value of the closing stock on 03.03.2011.

**(B) Re : Incorrect amount of purchase :-**

34. It is the claim of the Ld. AR that the impugned variance in the value of the “closing stock” on 03.03.2011 was, inter alia, attributable for the reason that purchases of Rs.73,78,970/- were left unrecorded in the books of account as on the date of survey i.e. on 03.03.2011. As the Ld. AR had failed to substantiate his said claim on the basis of documentary evidence, therefore, we finding no infirmity in the view taken by the lower authorities uphold the same to the extent they had rejected the same on the said count.

**(C) Re : Applying of GP rate 24.14% as against actual/correct GP rate of 5.8% :-**

35. It is the claim of the Ld. AR that the survey officials while computing the value of the closing stock on the date of survey i.e. on 03.03.2011 had wrongly applied GP rate of 24.14% on the value of the sales up to the said date, which, thus, had contributed towards wrong valuation of the “closing stock” on the said date at Rs.95,25,000/-.

36. We have given a thoughtful consideration to the aforesaid claim of the Ld. AR. At the very outset, we may herein observe that we are principally not in agreement with the aforesaid methodology adopted for compiling of the tentative trading account on the date of survey i.e 03.03.2011, i.e, by applying of an ad-hoc GP rate to the sales (recorded) of the assessee upto the date of survey and taking the “closing stock” as the balancing figure. The aforesaid methodology in our considered view militates against the basic principles of accountancy. Our aforesaid view is fortified by the judgment of the **Hon’ble High Court of Punjab & Haryana** in the case of **CIT, Patiala Vs. Bhalla Brothers, Gali Mahian, Ludhiana (1981) 10 Tax Law Review 45 (P&H)**. The Hon’ble High Court in its aforesaid order had approved the order of the Tribunal, which had, inter alia, held as under:

“The addition of Rs. 6,470/- (on the basis of figures before us addition would be only Rs. 5,952/-) is based on the ground that stock to this extent was not available in the months of August and September, and yet the assessee disclosed sales. The allegation is that this stock was purchased from some money outside the books of account. The basis for making the calculation of the aforesaid amount is fallacious. The calculation for each month have been made on an assumption that the gross profit rate was constant at 34.14% in each month. Though the average rate of gross profit for the entire period of 12 months of the previous year is 34.14% but it does not necessarily imply that the rate of gross profit in each and every month in respect of the sales in these months was 34.14%.The calculations of the stock that was available in each month are thus arbitrary and on the basis of these calculation, it cannot be accepted that the discrepancies in the stock worked out to the aforesaid figures.”

Apart from that, as the GP rate of the assessee for the immediately preceding year i.e. relevant to A.Y.2010-11 was 5.83%, Page 228 of APB and that for

the year under consideration was 5.80%, Page 56 of APB, therefore, on the said count itself we find substance in the claim of the Ld. AR that there could be no justification for adoption of GP rate at 24.14% while preparing the tentative trading account on the date of survey i.e. on 03.03.2011. We, thus, in terms of our aforesaid observations direct the A.O to adopt GP rate of 5.8% i.e for the year under consideration while recasting the trading account on the date of survey i.e on 03.03.2011.

**(D) Re : Indirect income wrongly credited in the trading account :-**

37. It is though the claim of the Ld. AR that the indirect income of Rs.11,33,994/- was wrongly credited in the tentative trading account that was prepared by the survey officials on the basis of incomplete books of account of the assessee on 03.03.2011, however, as the assessee had not only failed to substantiate her aforesaid claim but also had herself held the said income as “direct income”, therefore, we are unable to accept the said claim.

38. We, thus, in terms of our aforesaid observations direct the A.O to give effect to our aforesaid findings. Thus, the **Ground of appeal No.1** raised by the assessee is partly allowed in terms of our aforesaid observations.

39. Apropos the disclosure of Rs.6,03,109/- that was made by the assessee towards excess cash found in the course of the survey conducted

on 03.03.2011 u/s.133A of the Act, we are of the considered view that as the assessee had failed to come forth with any plausible explanation as regards the said variance, therefore, no infirmity could be related to the orders of the lower authorities who had rightly made/upheld the addition to the said extent in the hands of the assessee. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of my aforesaid observations.

40. In the result, appeal of the assessee in ITA No.352/RPR/2016 for A.Y.2011-12 is partly allowed in terms of our aforesaid observations.

41. In the combined result, appeal of the assessee in ITA No.351/RPR/2016 is dismissed and appeal of the assessee in ITA No.352/RPR/2016 is partly allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-  
**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 30<sup>th</sup> March, 2023  
\*\*SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.

3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.