

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 528/Jodh/2018
(ASSESSMENT YEAR- 2014-15)**

Sh. Kanhaiya Lal Main Bazar, Ghanerao, Desuri, Pali-306704.	Vs	Income Tax Officer, Sumerpur.
(Appellant)		(Respondent)
PAN NO. AFSPL 4913 L		

(Virtual hearing)

Assessee By	Shri Mukul Moondra –C.A
Revenue By	Shri Lovish Kumar, CIT-DR
Date of hearing	14/07/2023
Date of Pronouncement	11/09/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax-1, Jodhpur [herein after “Ld.CIT(A)”] dated 31.08.2018 for the assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:-

“1. Ld. CIT (Appeals) - 1 erred in law in confirming an unlawful assessment as it is totally based upon an unlawful, forged and fabricated survey proceedings carried out by unauthorized authorities in which false surrenders were obtained by fabrication, pressure tactics, threatening and

maliciousness and therefore, entire assessment and survey proceedings should be quashed holding it unlawful and invalid.

2. Ld. CIT (Appeals) - 1 erred in law in confirming the addition of Rs. 90,58,811/-on account of so called excess stock found during the survey proceeding U/s 133A merely on the basis of a false, fabricated and unlawful valuation report and without considering actual stock inventory prepared during the survey proceedings.

3. Ld. CIT (Appeals) - 1 erred in law in confirming the addition on the basis of alleged false, fabricated and unlawful valuation report managed to be prepared from an unauthorized / un-empowered person.

4. Ld. CIT (Appeals) - 1 erred in law in confirming the addition of Rs. 9,45,000/- on account of so called excess cash found during the survey proceedings U/s 133A by treating zero cash balance in the hands of assessee and without considering the genuine source of income.

5. Ld. CIT(Appeals)- I erred in law in confirming the levy of the excessive interest U/s 234A, B and C and therefore, those should be deleted/reduced.

6. Appellant also reserves his rights to add/ alter any grounds of appeal till the disposal of appeal.”

3. Brief facts of the case are that the assessee is dealing in the business of trading (sale and purchase) of gold and silver ornaments/jewellery as well as manufacturing of jewellery. A survey u/s 133A was conducted at the business premises of the assessee on 18.02.2017 and 19.02.2014 situated at village, Desuri, Distt. Pali. During the course of survey, certain discrepancies regarding valuation

of stock and cash were found and the assessee made voluntary disclosure of income of Rs. 90,58,811/- and Rs. 9,45,000/- on account of undeclared stock and cash found, respectively. In this regard, the assessee's statement was recorded during the course of survey, wherein he made total disclosure / surrender of Rs. 1,00,03,811/- and assured to pay due taxes. The assessee also submitted a letter dated 18-02-2014 addressing the ITO, Sumerpur whereby he reiterated his surrender of Rs. 1,00,03,811/- and submitted two cheques of Rs. 5,30,000/- each. Subsequently, the assessee started filing letters with the AO, letters of retractions and withdrawing the letters already filed, detailed discussion in this regard is made in the assessment order. Meanwhile, the assessee filed return of income for AY 2014-15 on 26-09-2015, declaring the total income of Rs. 4,79,280/-. The AO noted that the assessee failed to offer income in this ITR as per his admission made during the course of survey. The AO issued notice u/s 142(1) requiring the assessee to explain as to why amount of Rs. 1,00,03,811/- i.e. income surrendered during the course of survey may not be treated as undisclosed income apart from income of Rs. 4,79,280/- declared by him. In response, the ARS of the assessee appeared before the AO and filed a letter on 27-05-2016, requesting

for certified copies of documents related to survey. The AO provided all the documents related to survey and all correspondence to and from assessee. The AO made addition of Rs. 90,58,811/- on account of so called excess stock found during the survey proceedings u/s 133A merely on the basis of a false, fabricated and unlawful valuation report and without considering actual stock inventory prepared during the survey proceedings and also addition of Rs. 9,45,000/- on account of so called excess cash found during the survey proceedings u/s 133A by treating zero cash balance in the hands of assessee and without considering the genuine source of income.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“5.5.1 The Hon’ble Apex Court held very clearly that science has not yet invented any instrument to test the reliability of the evidences placed before a Court or Tribunal, therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. The evidence adduced by the assessee and collected by the AO has to be examined not superficially but in depth and having regard to the test of human probabilities and normal course of human conduct.

In the instance case, applying the test of human probabilities, it is not difficult to establish beyond doubt that the excess stock of gold and silver (jewellery/ornaments) and excess cash found at the business premises of

appellant represent his undisclosed business income only, which were not offered to tax in the return of income filed by him for the AY 2014-15.

5.6. From the facts discussed above and legal precedents cited above, it is held that the appellant was legally required to include the additional income of Rs 9,45,000/- and Rs. 90,58,811/- on account of excess cash and excess stock. respectively in the return. Accordingly Rs. 9,45,000/- and Rs. 90,58,811/- on account of excess cash and excess stock respectively made by the AO are sustained. The grounds raised regarding these issues are dismissed.

6. The ground No.5 raised by the appellant is regarding charging of interest u/s. 234A, 234B and 234C of the Act. This being consequential in nature, the AO is directed to allow relief as per this order and charge interest u/s 234A, 234B and 234C of the Act as per law. This ground is treated as dismissed.

7. Last ground of appeal is general in nature and does not require any adjudication.

8. In the result, the appeal is dismissed.”

”

5. As the assessee not received any favour from the appeal filed before Id. CIT(A). The present appeal filed against the said order of the Id. CIT(A) dated 27.01.2017 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“May it please your honours,

The above said appeal has been fixed for hearing for 14.07.2023 and therefore, appellant submits ground-wise as under in support of grounds of appeal :-

A. UNLAWFUL AND FABRICATED SURVEY PROCEEDINGS

On the basis of following facts and circumstances, appellant submits that entire survey proceeding u/s 133A was fabricated, forged, unlawful, illegal and invalid :-

1. Survey was not conducted by the empowered A.O. :Alleged survey was not conducted by the empowered Assessing Officer of the assessee after obtaining lawful approval of Joint CIT u/s 133A. It is clear from all certified copies availed to the assessee that there was no such approval under the proviso to sec. 133A. It is also not clear when and how the A.O. sought the approval and when & how the approval was granted to the

A.O. If any such approval was sought and granted, please instruct Ld. A.O. to provide certified copies of all such documents / correspondence.

2. Survey Without Approval : So far as copy of authorization u/s 133A (P.B.No.01) is concerned, it is neither the approval of Joint CIT u/s 133A nor any proceeding was carried out by the Assessing Officer (i.e. Income-tax Officer, Sumerpur) of the assessee in pursuance to any such authorisation. Assessee would like to mention here before your honor that alleged authorisation to a Survey Team in this case, is not the Approval u/s 133A to the Ld. A.O. and thus, Authorisation and approval are not the same.

As per provisions of sec. 133A(1) read with Explanation (a), only ITO Sumerpur, the Assessing Officer (as defined u/s 2(7A)) is only authorized to carry out survey u/s 133A after obtaining the approval and ITOs other than ITO Sumerpur (the Assessing Officer) are not authorized and empowered to carry out a survey u/s 133A. Not only this, The A.O. and the Joint CIT has no authority to delegate their powers and rights given under section 133A.

3. Statement Prepared unfairly : Entire statement of the assessee-appellant was prepared as per sweet will and suitability of the officials of the Income-tax Department on which assessee's signatures were obtained by pressure and threatening of Police arrest & Jail and therefore, alleged statement is also false, fabricated and unlawful.

4. Books were Impounded after Survey Completion : As shown by the un-empowered I.T. Authorities, alleged survey was completed on 18.02.2014 (P.B. No. 02 - 02) but books so found were impounded on 19.02.2014 after completion of survey and therefore, enclosed Impounding Order is also unlawful and this fact proves that the alleged survey proceeding was not genuine and lawful.

5. Assessee's signature was taken by force on Surrender Letter : After the completion of survey, a letter was also prepared in the date of 18.02.2014 (P.B. No. 02-02) on which also assessee's signature was taken by force.

6. Cheques were forcefully taken from the assessee : As per letter of surrender dated 18.02.2014, total 6 cheques were given by the assessee on 18.02.2014 whereas assessee never had any cheque book before 18.02.2014. In fact, assessee was taken forcefully to the Bank for obtaining / issuance of cheque book and there after, his signatures on six (6) cheques were obtained forcefully and those 6 blank cheques were forcefully taken from the assessee. Copy of Cheque Book Issuance Slip dated 18.02.2014 (P.B. No.03-03) has been placed in the Paper Book. Your honor, it is unimaginable that a person who is not even having a cheque book may be burdened with such a huge demand by an unlawful and fabricated survey proceedings by unauthorized Income Tax Officer

7. Shop was totally under the control and mercy of I.T. Authorities : This fact also proves that when the assessee was taken to the Bank for cheque book and to his house, his shop was totally under the control and mercy of un-empowered I.T. Authorities.

8. Deliberately Removal of Certified true copy of Stock Inventory from Record : Appellant requested many times to the Ld. A.O. to provide the certified true copy of Stock Inventory but no copy of such stock inventory was given / issued to assessee. Assessee requested to provide certified copy of stock inventory many times vide letters dated 10.03.2014, 27.05.2014 and 27.05.2016 (Copies enclosed).

9. Still request for Certified Copy of Stock Inventory : But in one letter dated 08.06.2016 (copy enclosed), Ld. A.O. has tried to show that he has supplied the “Stock of inventory prepared during the proceedings u/s 133A” and “Valuation Report of Registered Valuer prepared during the proceedings u/s 133A on 18.02.2014”. But the fact is that appellant has never received such stock inventory. Appellant requests your honours to direct the Ld. A.O. to provide the stock inventory prepared during the proceedings u/s 133A on 18.02.2014”.

10. Stock Inventory was admittedly prepared : Apart from this, Ld. CIT(A) in the appellate order has clearly mentioned at Para 5.2 page No. 13 “I find that during the course of survey, the inventory was prepared in presence of the assessee and his staff/employee” and similarly in Para 5.2.1 at page No. 13. Ld. CIT(A) also mentioned “The inventories were prepared by survey party with the help of valuer’s report and assessee’s employees, which were certified and signed by the authorized official and the assessee”. But no such inventory was even shown to the A/R of assessee during the assessment and appeal hearings nor it was ever provided to the appellant.

B. UNLAWFUL, ILLEGAL & FABRICATED VALUATION REPORT

On the basis of following facts and circumstances, appellant submits that alleged Valuation / Valuation Report and assessment on that basis is totally fabricated, unlawful, illegal and invalid :-

1. Valuation by unauthorized / un-empowered person.: Alleged valuation / Valuation Report was made by an unauthorized / un-empowered person. Mr. Indermal H. Bagarecha (So called Registered Valuer) is neither an Income-tax Authority as per provisions of sec. 133A nor otherwise, he was authorized to make valuation u/s 133A.

2. Mr. Bagarecha (R.V) was not authorized for valuation u/s 133A : Mr. Indermal H. Bagarecha was also not authorized for valuation by any Income-tax Authority prescribed u/s 133A. So far as claim of oral instructions of Shri J.S.Charan (as per reply during cross examination – Answer to Q No. 5) is concerned (P.B. No. 25), such telephonic instruction has no lawful value. More ever, Mr. Charan was not an Income-tax Authority for this particular survey as he never participated in the survey proceedings u/s 133A and rather he was conducting survey proceedings in other cases/s on the very same day / timing. This fact may be verified from the departmental records.

3. No commission to the valuer u/s 131(1) : In such circumstances, any commission should have been issued to any such valuer as per provisions of sec. 131(1) but Ld. A.O. or all the income-tax authorities failed in issuing commission to the alleged valuer and therefore, Mr. Indermal H. Bagarecha had no lawful authority for making valuation.

4. Valuer can't be an Income-tax Authority :Even an Income-tax Inspector is not an Income-tax Authority for preparing a Stock Inventory u/s 133A, how a Valuer can be an Income-tax Authority for making valuation and inventory u/s 133A.In addition to clear provisions of sec. 133A, following decisions support appellant's contention -

- (1) ITO, Sirohi Vs. Mahendra Kumar Rawal – ITA NO. 335/JODH/2017 order dated 20.02.2018 by ITAT Jodhpur(P.B.No 05-20)
- (2) Vastimal Vs. ITO, Sumerpur(2001) 26 Tax World 106
- (3) Kamal & Co. Vs. ACIT (21TW 427)
- (4) ITO Vs. Jewells Emporium 48ITD 164

5. Alleged Valuer is not appointed for valuation for Bullion :As per registration certificate (P.B.No.21) of Mr. Indermal H. Bagarecha u/s 34AB of the WT Act, 1957, he was appointed for valuation of 'Jewellery' only and he is not appointed for valuation of Bullion (Gold and Silver). Despite this fact, he falsely made valuation of Silver.

6. Valuation report was not furnished in Form O-8 : As per provisions of Rule 111AB of I.T. Rules, 1962 read with Rule 8D of Wealth Tax Rules, 1957, valuation report shall be furnished in appropriate form i.e. Form O-8 but alleged valuation report was not prepared in mandatory prescribed Form O-8 (P.B.No. 22).

7. Valuation Report Without Prescribed Details : Also as per clause / item No.5,6,7,8,9 and 10 of Form O-8 (P.B.No. 22), Gross weight and Net weight of each item should be mentioned in Valuation Report but Gross weight and Net weight of even any single item was not mentioned in this unlawful Valuation Report.

8. V.R. was prepared by fabrication at Income Tax Office, Sumerpur :Alleged Valuation Report was prepared by fabrication at Income Tax Office, Sumerpur which is evident from alleged Valuation Reportdated 18.02.2014 (P.B. No. 23-23).

9. False and Incorrect Valuation / Valuation Report

(i) Place of Jewellery found was shown as Resident of assessee (P.B. No. 23-23) whereas unlawful surveys were carried out at both places i.e. Residence and business place of assessee, and residence of his brother and father [Reply to Q. 9 of statement (enclosed)].

(ii) Name of Proprietorship firm (Owner of Jewellery) was also written in a very unbelievable manner as “ Shri/M/s SoniKanakraj श्री Kanyalal s/o panalalji ”.

(iii) No weight of individual items :In this false valuation report(P.B. No. 23-23), no weight of individual items / jewellery were mentioned and it is impossible to have 101116 Kg Silver Ornaments and 2269 Kg Gold Jewellery of same touch (purity). It is further surprising that in calculation 101.116 Kg Silver Ornaments and 2.269 Kg Gold Jewellery was considered by the alleged valuer.

Appellant in his statement (copy enclosed) has also replied to Q No. 4, "मेरी दुकान में आज लगभग 5 किलो चांदी के आभूषण तथा करीब 300 ग्राम सोने के आभूषण होने का अनुमान है" and similarly, while replying to Q. No. 9, appellant stated that "घाणेराव के जिस मकान में आप लोगो के साथ मै गया था वह मेरे पिताजी का मकान है। जिसमे मेरा छोटा भाई व उसका परिवार रहता है। मेरा भाई (ईश्वरलाल, उम्र-32 वर्ष) अपने स्वयं का घडाई का काम करता है। आप वहा से जो मेरे साथ चलकर एक बैग में रखा जेवरात जिसमें 350 ग्राम सोने के आभूषण तथा लगभग 3.6 KG चांदी के आभूषण रखे थे वह मेरी दुकान पर लेकर मूल्यांकन कराया वह पूरा माल मेरे भाई व पिताजी से संबंधित है। इससे मेरा कोई लेना देना नहीं है वह माल मुझे उन्हें वापस लौटाना पड़ेगा। दुकान के पास स्थित लक्ष्मीनाथ गली में जो स्टॉक (आभूषण) प्राप्त हुआ व मेरी दुकान का तथा कुछ मेरी पत्नी के व्यक्तित्व आभूषण सम्मलित है।" (Copy enclosed) but nothing such is reflecting in this unlawful valuation report.

(iv) No Tunch of individual items : In the alleged valuation report which was prepared by Mr. Indermal H. Baharecha, a term has used i.e. "TUNCH". So basically, TUNCH is a hindi word which means purity of gold/silver. In English we know "TUNCH" as "CARAT". It defines only what level of purity of gold/silver has been used in jewellery. So, according to alleged valuation report, he mentioned that there is 70% tunch in 101116 Kg of silver ornaments. It is not possible that all the alleged silver jewellery weighing 101116 kgs are having same tunch or purity. It means that silver has been used with 70% purity and he simply calculated 70% of gross weight and multiplied with the current rate of silver. He even did not show the weight of other metals, gems, stones and other items.

Similarly, he also calculated 80% tunch in 2269 kgs of Gold Ornaments. He even did not mentioned the type and making and name of gold jewellery in the alleged valuation report. It is not possible that all the alleged gold jewellery weighing 2269 kgs are having same tunch or purity. He simply calculated 80% of gross weight and multiplied with the current rate of gold. He even did not show the weight of other metals, gems, stones and other items.

(v) Statements of Mr. Indermal H. Bagarecha are totally false and unbelievable and therefore, a comparison (with contradiction) of both the statements is being produced here under to establish the falseness of Mr. Bagarecha and on the basis of following comparison, valuation report and valuer's statements should be rejected / ignored –

S. No	Statement Dated	Statement (Cross Examination) Dated	Comments / pleadings of Appellant
01	12.07.2016(P.B. No. 24-29)	06.12.2016(P.B. No. 30-47)	
	Ans to Q No. 5 : मै श्री जवानसिंह चरण, आ.अ. (तात्कालीन ITO, सुमेरपुर) द्वारा मोबाइल पर दी गयी सूचना व	Ans to Q No. 8 : जी नहीं. कोई नोटिस नहीं दिया गया सिर्फ मोबाइल पर सूचना के	इससे स्पष्ट है कि वैल्यूएशन रिपोर्ट किसी कर्तव्य के निर्वाह करने के लिए नहीं बनाई बल्कि बिना किसी

	<p>निर्देश की पालना में एक पंजीकृत वैल्यूएशर की हेसियत से गया था तथा मैंने उपरोक्त वैल्यूएशन रिपोर्ट अपने कर्तव्य का निर्वाह करते हुए बनाई थी.</p>	<p>आधार पर ही मै गया था.</p> <p>Ans to Q No. 9 :जी नहीं. मुझे कोई लिखित Authority नहीं दी गई थी.</p> <p>Ans to Q No. 10 :श्री जवान सिंह चारण के द्वारा कहे अनुसार मेने Valuation किया, इसी मौखिक Authority के आधार पर मेने Valuation किया.</p>	<p>अथॉरिटी के आयकर अधिकारी को निजी तोर पर संतुष्ट करने, उनके कहे अनुसार व अपने निजी स्वार्थ/ अपनी फीस कमाने के लिए Income Tax Office, Sumerpur में बनाई थी.</p>
02	<p>Ans to Q No. 6: दिनांक 18.02.2014 को आयकर विभाग की सर्वे की कार्यवाही के दौरान करदाता श्री कन्हैयालाल सोनी स्वयं, एवं श्री सोनी का एक बंगाली कारीगर उपस्थित था, इसके अलावा आयकर अधिकारी श्री शेलेन्द्र भंडारी एवं आयकर निरीक्षक श्री राजेश भाटी उपस्थित थे.</p>	<p>Ans to Q No. 10 : उस दिन जब मैं देसुरी स्थित कन्हैयालाल सोनी की दूकान पर पहुंचा तो श्री जवान सिंह चारण, श्री शेलेन्द्र भंडारी एवं श्री राजेश जी भाटी निरीक्षक आदि उस वक्त मौजूद थे.</p> <p>Q No. 36 : आपकी Valuation के दौरान दूकान पर कौन-कौन लोग उपस्थित थे ?</p> <p>Ans to Q No.36 :आ.अ.श्री जवान सिंह चारण, श्री शेलेन्द्र भंडारी आ.अ., श्री राजेश भाटी निरीक्षक, मै स्वयं, दूकान के कारीगर उनका रिश्तेदार और एक कारीगर के अलावा स्वयं कन्हैयालाल उपस्थित थे.</p>	<p>पहले बयान के अनुसार श्री जवान सिंह चारण व उनका रिश्तेदार उपस्थित नहीं थे जबकि दूसरे बयान के अनुसार ये दोनों भी उपस्थित थे.</p> <p>कन्हैयालाल व प्रवीण के बयान के अनुसार श्री जवान सिंह चारण उपस्थित नहीं थे लेकिन प्रवीण उपस्थित था जिसने वजन किया था.</p> <p>स्पष्ट है श्री बागरेचा का बयान विश्वशनीय नहीं है.</p>

03	<p>Ans to Q No. 7: Valuation की पूर्ण प्रक्रिया करदाता की दूकान पर ही की गयी एवं पूरी प्रक्रिया के दौरान करदाता स्वयं एवं उसका कारीगर, आ.अ. श्री भंडारी जी, निरीक्षक श्री भाटीजी दूकान के भीतर मेरे पास ही उपस्थित थे एवं पूरी प्रक्रिया इन सबके सामने की गई.</p>	<p>Ans to Q No. 10 : उस दिन जब मैं देसुरी स्थित कन्हैयालाल सोनी की दूकान पर पहुँचा तो श्री जवान सिंह चारण, श्री शेलेन्द्र भंडारी एवं श्री राजेश जी भाटी निरीक्षक आदि उस वक्त मौजूद थे.</p> <p>Q No. 36 : आपकी Valuation के दौरान दूकान पर कौन-कौन लोग उपस्थित थे ?</p> <p>Ans to Q No.36 : आ.अ. श्री जवान सिंह चारण, श्री शेलेन्द्र भंडारी आ.अ., श्री राजेश भाटी निरीक्षक, मैं स्वयं, दूकान के कारीगर उनका रिश्तेदार और एक कारीगर के अलावा स्वयं कन्हैयालाल उपस्थित थे.</p>	<p>पहले बयान के अनुसार श्री जवान सिंह चारण व उनका रिश्तेदार उपस्थित नहीं थे जबकि दूसरे बयान के अनुसार ये दोनों भी उपस्थित थे.</p> <p>कन्हैयालाल व प्रवीण के बयान के अनुसार श्री जवान सिंह चारण उपस्थित नहीं थे लेकिन प्रवीण उपस्थित था जिसने वजन किया था.</p> <p>स्पष्ट है श्री बागरेचा का बयान विश्वशनीय नहीं है.</p>
04	<p>Ans to Q No. 8 : इस रिपोर्ट की दो प्रतिया मेने श्री भंडारी को उसी वक्त उसी स्थान यानी दिनांक 18.02.2014 को करदाता की देसुरी स्थित दूकान पर दे दी थी.</p> <p>Ans to Q No. 9: मुझे भली भाँति स्पष्टतया याद है कि मैं एवं आयकर विभाग के अधिकारी /कर्मचारी करदाता श्री</p>	<p>Ans to Q No. 18 : दोपहर 04 बजे . श्री जवान सिंह चारण, जी का मोबाइल पर कॉल आया था और 05.30 लगभग पर मैं देसुरी पहुँचा दूकान पर. पहुँचने के लगभग 15 मिनट बाद Valuation start किया और पूरा होने का मुझे याद नहीं है. दूकान उसी रात को छोड़ दी थी लेकिन समय याद नहीं है.</p> <p>Q No.23 : वैल्यूएशन खत्म</p>	<p>As per AO's own explanation / version, survey was completed on 19.02.2014 at 01.55 AM .(P.B. No. 57-58)</p> <p>These contradictions prove that the valuer is a liar person and therefore, his statement as well as Valuation report can not be relied upon against the</p>

	<p>कन्हैयालाल सोनी की दूकान से साथ-साथ ही रवाना हुए थे.</p>	<p>होने के बाद आप श्री कन्हैयालाल की दूकान पर और कितने समय तक रुके रहे थे ?</p> <p>Ans to Q No.23 :मै लगभग 10 मिनट बाद वहा से निकल गया था.</p> <p>Q No.41 :Valuation पूरा होने के बाद क्या आप व आयकर टीम वहा से साथ-साथ रवाना हुए थे या आप अपना Valuation करके निकल गए थे ?</p> <p>Ans to Q No.41 :हम सब साथ-साथ ही निकले थे.</p>	<p>assessee.</p>
05.	<p>Q No. 12: क्या सर्वे की कार्यवाही के दौरान या वैल्यूएशन प्रक्रिया के दौरान आयकर विभाग के अधिकारी अथवा कर्मचारी द्वारा करदाता श्री कन्हैयालाल सोनी को डराया या धमकाया गया, कृपया स्पष्ट करे ?</p> <p>Ans to Q No. 12 : जी नहीं, सर्वे की कार्यवाही सोहार्दपूर्ण माहोल में हुई आयकर विभाग के कर्मचारी / अधिकारी का व्यवहार एवं भाषा सम्मानपूर्वक थी. करदाता ने भी यानि श्री कन्हैयालाल सोनी ने भी सर्वे की कार्यवाही में विभाग की सहायता की (coperate) तथा सम्पूर्ण प्रक्रिया के दौरान कन्हैयालाल सोनी ने भी ऐसी कोई</p>	<p>Ans to Q No. 18 : दोपहर 04 बजे . श्री जवान सिंह चारण, जी का मोबाइल पर कॉल आया था और 05.30 लगभग पर मै देसुरी पहुचा दूकान पर. पहुचने के लगभग 15 मिनट बाद Valuation start किया और पूरा होने का मुझे याद नहींनहीं है. दूकान उसी रात को छोड़ दी थी लेकिन समय याद नहीं है.</p>	<p>Mr. Valuer is giving false certificate of fairness and evidence because he was not</p> <p>(i) at the residence of assessee on 18.02.2014 and (ii) at the shop before the 5.30 PM. on 18.02.2014 and (iii) after completion of survey till 1.55 AM. Of 19.02.2014.</p> <p>These contradictions prove that the valuer is a liar person and therefore,</p>

	शिकायत नहीं की.		his statement as well as Valuation report can not be relied upon against the assessee.
06	<p>Ans to Q No. 13 :मेरे लम्बे अनुभव व विषय के ज्ञान से मेने सोने-चांदी के वैल्यूएशन में जो निपुणता प्राप्त की है उसका मैं पूर्ण इमानदारी व निष्ठा के साथ विभाग को व सरकार को सेवा देने में प्रयोग करता हूँ.</p>	<p>Ans to Q No. 10:<u>श्री जवान सिंह चारण के द्वारा कहे अनुसार मेने Valuation किया,</u></p> <p>Q No.13 :आयकर नियम या CBDT द्वारा Valuationका कोई prescribed format है क्या ?</p> <p>Ans to Q No.13 :सरकार ने ऐसा कोई फॉर्मेट नहीं बना रखा है.</p> <p>Q No.44 :लेकिन रिपोर्ट में आपने निवास स्थान बताया है. इस सम्बन्ध में आपको क्या कहना है ?</p> <p>Ans to Q No.44 :मेरा तात्पर्य दूकान से है. निवास से नहीं.</p> <p>Q No.45 : लेकिन आपने तो रिपोर्ट में residing at शब्दों का उपयोग किया है जिसका अर्थ निवास स्थान से हैअतः स्पष्टकरे कि सही स्थिति क्या है?</p> <p>Ans to Q No.45 :मुझे अंग्रेजी का ज्ञान कम है.</p> <p>Ans to Q No.46 : जेसा मेने पहले ही बताया मुझे अंग्रेजी का</p>	<p>स्पष्ट है कि वैल्यूएशन रिपोर्ट पूर्ण इमानदारी व निष्ठा से तैयार नहीं की गयी है बल्कि श्री जवान सिंह चारण के द्वारा कहे अनुसार Valuation किया गया.</p> <p>वैल्यूएशन में निपुणता की बात बहुत बड़ा झूठ है जो कि कॉलम तीन में दर्शाए जवाबो से साबित हो रहा है. जिस वैल्यूएर को अपने प्रोफेशन से सम्बंधित कानून व फॉर्म तक की जानकारी नहीं है, वो बिलकुल ही झूठा ही दावा कर रहा है कि उसने निपुणता से काम किया है.</p> <p>These contradictions prove that the valuer is a liar person and therefore, his statements as well as Valuation report can not be relied upon against the assessee.</p>

		<p>ज्ञान कम है.</p> <p>Ans to Q No.65 : आयकर अधिकारी जी के कहने पर मेने 133A लिखा था हालाकि मुझे इस अधिनियम की पूरी जानकारी नहीं है.</p> <p>Ans to Q No.68 :मेने उक्त फॉर्मेट में रिपोर्ट नहीं दी है यह रिपोर्ट मेने परम्परागत फॉर्मेट में दी है.</p> <p>Q No.31 : आपने अपनी VR में दर्शाए माल की तुलाई कहा की ?</p> <p>Ans to Q No.31 : इसके दूकान पर ही की थी.</p> <p>Q No.32 : दूकान पर केसा काँटा उपलब्ध था, क्षमता क्या थी बताये ?</p> <p>Ans to Q No.32 :मुझे याद नहीं है.</p> <p>Q No.33 : आपने पूरे माल की तुलाई कुल कितने राउंड में की थी?</p> <p>Ans to Q No.33 :मुझे याद नहीं है.</p> <p>Q No.34 : लेकिन एक राउंड में ही ही तो सारी तुलाई नहीं हुई थी ?</p> <p>Ans to Q No.34 :मुझे याद नहीं है.</p> <p>Q No.35 : इस VR तैयार करने से पहले आपने कोई लिस्ट या किसी पेपर पर वजन लिखा था</p>	
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		<p>क्या या सीधी ही रिपोर्ट तैयार की थी?</p> <p>Ans to Q No.35 :मुझे याद नहीं है.</p> <p>Q No.37 : वहा पुलिस कर्मी भी उपस्थित थे क्या?</p> <p>Ans to Q No.37 :यह मुझे याद नहीं है.</p> <p>Q No.39 : श्री कन्हैयालाल की दूकान की साइज़ क्या थी ?</p> <p>Ans to Q No.39 :मुझे याद नहीं है.</p>	
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(vi) Removal of list of stock inventory from the record :It is also very clear from the statement (P.B. No.48-53) of Mr. Praveen (Relative of Appellant) and the appellant as recorded by Ld. A.O., detailed Stock Inventory was prepared in four pages (P.B. No. 50) by IT survey Team and weighing was done by Mr. Praveen and Mr. Bagarecha on cross examination stated, “ मैंने सिर्फ माल का वैल्यूएशन किया है” but now, that list of Inventory has been perhaps removed from the record. Therefore, complete Survey and assessment proceeding has become illegal.

(vii) Even Voluminous Weighing was not possible:As per statement of Mr. Bagarecha on cross examination, entire weighing was done in the shop of assessee but he does not remember capacity of weighing scales and claims “ वैल्यूएशन में जो निपुणता प्राप्त की है उसका मैं पूर्ण इमानदारी व निष्ठाके साथ विभाग को व सरकार को सेवा देने में प्रयोग करता हूँ.”but fact is this that the assessee had / has two certified Weighing Scales. One Weighing scale is for Gold with capacity of maximum 300 Gms since 2007 and another Weighing scale is for Silver with capacity of maximum 6 Kgs since 2010. Copies of Verification Certificates of both the Scales by निरीक्षक, विधिक माप विज्ञान, पाली (राज) are being filed in paper book (P.B. No.54-55) for your kind satisfaction. Latest Certificate of Gold Weighing Scale is missing but the fact is verifiable from निरीक्षक, विधिक माप विज्ञान, पाली (राज). More ever, please also find copies of Updated Certificate Plates of both the Weighing Scale dated 28.02.2016 in paper book (P.B. No.56). Whereas, As per the answer to Q. No. 53 (P.B. No. 40-40) of statement of Mr. Bagarecha on cross examination, he stated that “सभी आइटम की टंच एक समान होने से सबका वजन में एक साथ ही क्या था।” which is not possible as the maximum capacity of both the weighing machines were much lower and it was not possible to weight all the alleged jewellery items at once.

(viii) With these weighing scales, it was not possible to weigh the jewellery items in single round as shown in the alleged unlawful Valuation Report and there is no Item-wise list and round-wise weighing list with the ITD and Valuer as well which also proves that the alleged Valuation Report is false, fabricated and illegal.

(ix) Alleged valuation Report seems to be prepared in very casual and summary manner even without any detail of alleged jewellery.

(x) If any little reliance is put to this unlawful valuation Report, it was prepared at Income-tax Office, Sumerpur, 90 Km away from the location of Survey. It also implies that alleged jewellery(as per alleged valuation report) was unlawfully seized from survey location without issuing any seizure / impound memo and alleged jewellery as per alleged valuation report was carried to Sumerpur and it was never returned to the Assessee.

C. ADDITION ON ACCOUNT OF EXCESS STOCK OF Rs. 90,58,811/-

Ld. CIT(A) erred in law in confirming the addition of Rs. 90,58,811/- on account of excess stock. Appellant clearly mentioned and submitted in above paragraphs that entire survey proceeding and surrender therein are fabricated, unlawful and illegal. Alleged valuation report is also false, fabricated and illegal and therefore, appellant clearly denies for the so called jewellery of Rs. 90,58,811/- which is totally false and fabricated. Alleged jewellery mentioned in alleged Valuation Report was never found from the shop and residence of the assessee.

In addition to submission in preceding paras, appellant would like to draw your honor's kind attention towards following few questions / answers in assessee's statement dated 07.11.2016 during the assessment proceedings –

प्रश्न 3 –दिनांक 18/02/2014 को आपकी देसुरी स्थित दूकान पर सर्वे की कार्यवाही तथा तत्पश्चात कर निर्धारण की कार्यवाही के सन्दर्भ में आपकी कोई आपत्ति हो तो बताये? (Copy Enclosed)

उत्तर – वर्तमान में चल रही कर निर्धारण प्रक्रिया से मुझे कोई आपत्ति नहीं है लेकिन आयकर सर्वे की कार्यवाही के दौरान कोई वेल्युशन रिपोर्ट नहीं बनाई गयी थी, सिर्फ खाली छपे हुए प्रोफोर्मा पर मेरे हस्ताक्षर आयकर अधिकारी भंडारी साहब ने करवाये थे. सर्वे की कार्यवाही के दिन मेरे स्वयं का सोने की ज्वेलरी का कोई स्टॉक नहीं था. लगभग 250GM सोने की ज्वेलरी मेरी पत्नी की मेरे घर से लाई गयी थी तथा लगभग 100 ग्राम सोने की ज्वेलरी प्रवीण की थी, जो मेरी दूकान पर ही खुद का व्यवसाय भी करता है, जो कि मेरे साले का लड़का है. दूकान पर सोने व चांदी के आभूषणोंकी दो अलग-अलग लिस्टेबनाई गयी थी, जो कि कुल चार पेज में थी, माल का सारा वजन प्रवीण ने किया था, उन चारो पेजों पर मेने और प्रवीण ने हस्ताक्षर किये थे.

प्रश्न 4 –मै आपको आयकर विभाग में पंजीकृत वेल्युअर श्री इन्द्रमल एच. बागरेचा द्वारा 18/02/2014 को आपके केस में बनाई हुई वेल्युशन रिपोर्ट जिस पर आपके हस्ताक्षर है, दिखा रहा हूँ. कृपया बताये कि इस रिपोर्ट को सही व सत्य क्यों ना माना जाए?

उत्तर –जैसा कि मैंने पूर्व में ही बताया कि आयकर अधिकारी श्री शेलेन्द्र भंडारी ने मुझ से खाली प्रोफोर्मों पर हस्ताक्षर करवाए थे. मुझे अच्छी तरह याद है कि इन्ही दो प्रोफोर्मों पर हस्ताक्षर करवाए गए थे हालांकि हस्ताक्षर करते समय इस पर हाथ से लिखा हुआ कोई वजन या वेल्युशन आदि का ब्योरा नहीं था, साथ ही मै यह भी स्पष्ट करना चाहता हूँ कि आयकर सर्वे की पूरी कार्यवाही के दौरान अथवा इस कार्यवाही से पहले या बाद में आज तक श्री इन्द्रमल बाघरेचा मेरी दूकान पर कभी नहीं आया. श्री बागरेचा भी सोने-चांदी के व्यापारी है तथा शिवगंज में उनकी दूकान है, मै उनको सिर्फ शकल से जानता हूँ. मैंने श्री बाघरेचा से कोई व्यापारिक सम्बन्ध नहीं रखा है.

D. ADDITION ON ACCOUNT OF EXCESS CASH OF Rs. 9,45,000/-

Ld. CIT(A) erred in law in confirming the addition of Rs. 9,45,000/- on account of excess cash as this cash in hand of Rs. 9,45,000/- was appellant's valid balance as on 18.02.2016 and therefore, there is no question of surrender or undisclosed income of the assessee.

More ever, Ld. AO also ignored that fact that appellant also deposited advance-tax of Rs. 10,60,000/- under pressure out of his business accruals / savings / bank withdrawals in March 2014 and above mentioned amount of Rs. 9,45,000/- (balance as on 18.02.2014) was also utilized in depositing advance-tax of Rs. 10,60,000/-. Appellant also submitted his Balance Sheet , Profit & Loss and Trading Account for the F.Y. 2010-11, 2011-12, 2012-13, and 2013-14. Your Honor, the balance sheet as on 31.03.2013 clearly shows that the cash and bank balance was Rs. 958596/- and all these financial statements were submitted before Ld. A.O. vide letter dated 22.12.2016. Please find enclosed herewith the Financial Statements for the F.Y. 2012-13.

E. Excessive interest U/s 234A, 234B, and 234C

Ld A.O. erred in law for levying the excessive interest U/s 234A , B and C and therefore, those should be deleted /reduced accordingly.

Therefore, on the basis of above facts and circumstances , appellant requests your honour to allow the complete appeal.”

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. The ld. AR for the assessee has submitted written submission and evidences pertaining to stock in trade inventory which was not produced before the ld. AO and ld. CIT(A). Further, the ld. AR for the assessee has submitted that the additions of Rs. 90,58,811/- on account of excess stock during the survey proceeding u/s 133A of the Act is merely on the basis of falls fabricated, unlawful , illegal and alleged valuation report. We observed that the ld. AO or ld. CIT(A) has not considered the actual stock inventory during the survey proceedings. The ld. AO has to verify the stock inventory which will be produced by the assessee in the assessment proceeding. The assessee himself prays that the matter may be remanded back to the file of the

ld. AO for proper adjudication on merit after giving due opportunity of hearing to the assessee.

8. Looking to the peculiar facts of the case and as agreed by both the parties and having regard to them we feels that in the interest of justice and fair play, we deem it fit an appropriate to remand back the issue to the file of the ld. AO for proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly, the assessee also direct to ensure the participation in the hearing fixed by the ld. AO and do not seek unnecessary adjournment. Thus, the appeal of the assessee is allowed for statistical purposes.

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

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

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 11/09/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent

3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench