

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1919/DEL/2018
Assessment Year 2015-16

M/s. Gudwala & Sons 1165, 3 rd Floor Kucha Mahajani Delhi-110006	Vs.	Assistant Commissioner of Income Tax, Central Circle-04, New Delhi.
TAN/PAN: AAIFG7585N		
(Appellant)		(Respondent)

Appellant by:	Shri Vishal Kalra, Adv.		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	12	08	2023
Date of pronouncement:	06	10	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-XXIII, New Delhi ('CIT(A)' in short) dated 22.01.2018 arising from the assessment order dated 30.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. The revised grounds of appeal raised by the assessee seeking to challenge the first appellate order read as under:

“1. Grounds of Appeal No.1

Addition on account of purchases treated as bogus for Rs.11,21,920/-

The Hon'ble CIT(A) has erred in law and on facts in confirming the above addition. The order passed by the Hon'ble CIT(A) is arbitrary, unlawful, unjustified and not founded on facts of the case and is prayed to be deleted.

2. *Grounds of Appeal No.2*

Addition on account of unexplained cash amounting to Rs.3,00,00,000/-

The Hon'ble CIT(A) has simply concurred with the findings of the Ld. DCIT in confirming the above addition without analyzing full facts and circumstances of the case. The confirmation of the above addition by the Hon'ble CIT(A) is arbitrary, unlawful, unjustified and is prayed to be deleted.

3. *Grounds of Appeal No.3*

Enhancement of income by Rs.3,13,44,002/- on account of unrecorded stock

The Hon'ble CIT(A) has erred in law and on facts in enhancing the assessed income of assessee by Rs.3,13,44,002/- u/s 69A on account of stock (Gold & Silver bullion) which was duly accepted by the Ld. DCIT as genuine stock duly reflected in Books of the assessee duly audited by the Chartered Accountant.”

3. Briefly stated, the assessee, a partnership firm, is engaged in the trading of bullion and jewellery. The partnership firm comprises of key partners namely, Shri Kailash Chandra Varshney and Shri Kaushal Gupta. A survey action in the case of the assessee firm was carried out at its branch office located at 1167, First Floor, New Building, Kucha Mahajani, Chandni Chowk, Delhi-110006 [hereafter referred as ‘branch office’] on 20.09.2014. During the course of survey, a cash of Rs.3 crore and certain gold bullion bars and silver bars were *inter alia* found. The survey was converted into search proceedings under Section 132 of the Act which commenced on 20.09.2014 and concluded on 21.09.2014. Subsequent to search, the assessee filed its return of income on 30.09.2015 under Section 139(1) of

the Act declaring total income at Rs.33,24,770/- for the Assessment Year 2015-16 in question. The return filed was subjected to scrutiny and the assessment was framed under Section 143(3) of the Act.

3.1 In the course of the assessment proceedings, the Assessing Officer *inter alia* made inquiries towards purchase transactions reported by the assessee. Notices under section 133(6) and also summons under Section 131 of the Act were issued to several parties as listed in the assessment order. The Assessing Officer eventually observed that that one of the parties namely, Shri Arun Yadav has not responded to notice under Section 133(6) of the Act which was returned unserved. Likewise, another party namely, Ms. Nisha Sharma also did not respond to the notice under Section 133(6) of the Act. Dissatisfied with the documentary evidences filed to support the purchases made from these two parties, the Assessing Officer held that purchases made from these parties are not genuine. The Assessing Officer thus held that the purchases made aggregating to Rs.11,21,920/- (Rs.4,26,620/-+Rs.6,95,300/-) are bogus and consequently disallowed the expenditure incurred by way of purchases from these two parties.

3.2 The Assessing Officer further observed that during the course of search and seizure at the branch office of business premises of the assessee-firm under Section 132 of the Act, unaccounted cash amounting to Rs.3 crore were found and seized. On being inquired about the source of cash found in the course of search, the assessee pointed out that the aforesaid cash

of Rs.3 crore was accumulated out of cash sales affected during the immediately preceding period between 05.09.2014 to 21.09.2014 prior to search. The cash sale bills and cash books were produced. It was also submitted that all purchases were made through banking channel. The sales were made both in cheque as well as in cash. The VAT returns, bank statement reflecting the sale and purchase were produced before the AO to support the assertions. The Assessing Officer however did not find the explanation offered by the assessee to be convincing. The Assessing Officer analyzed month-wise cash sales and observed that the cash sales shown to have been made are not congruent with cash sales reported for other months and also does not resonate with the cash in hand held in previous quarters. It was observed by the Assessing Officer that the books of account were not produced in the course of search but however in the post search inquiry, the assessee filed books of account before the ADIT (Inv.) on 27.10.2014. The AO mainly relied on the statement of the partner deposed under S. 132(4) of the Act in the course of search on 20-21/09/2014 that the partner of the Assessee has averred that the books are not kept; bills evidencing purchases of material are not readily available; bullion are purchased in kaccha account i.e. cash; material found in the course of search worth Rs. 3,13,44,002/- was purchased in cash etc. In the light of deposition made, the Assessing Officer thus invoked provisions of Section 69A r.w. Section 115BBE of the Act and held that cash found and seized amounting to Rs.3 crore is unexplained money of the assessee and therefore, liable to be taxed accordingly. The returned

income was thus increased on account of alleged bogus purchases and unaccounted cash. The income was thus assessed at Rs. 3,44,46,700/- as against the returned income of Rs. 33,24,770/-

4. Aggrieved by the additions and disallowances, the assessee preferred appeal before the CIT(A). The CIT(A), in the first appeal, perused the statement of partner *Shri Kailash Chandra Varshney* recorded under Section 131 dated 20/09/2014 & another statement under s.132(4) of the Act dt. 21/09/2014 at 12.30 in the midnight. A reference to statement of another partner *Shri Kaushal Gupta* obtained in the course of search under s. 132(4) on 21.09.2014 at 4.30 am morning which endorsed the contents of statement of Sh. Kailash.

4.1 It was pointed out before the CIT(A) that the assessee firm has branch office of business premises at 1167 Kucha Mahajani, Chandi Chowk, Delhi where the survey and search took place. However, the assessee has another business premises at 1165 Kucha Mahajani, Chandni Chowk, Delhi which is the main establishment of the partnership firm as per partnership deed dated 9/4/2009 as well as PAN records. The ROI also has been filed as per main office address. The main office or establishment was however not covered under survey and search operations by the revenue authorities. It was also brought to the notice of the CIT(A) that the PAN address of the assessee is also that of 1165 Kucha Mahajani, Chandni Chowk, Delhi and the returns of income are also filed from the aforesaid address and the premises at 1167 Kucha Mahajani, Chandni Chowk,

Delhi is only a branch office where delivery of sales and purchases are mainly executed.

4.2 The assessee asserted before the CIT(A) that the search was unauthorized and without search warrant and unauthorizedly converted/commenced at mid night at about 11.45 pm and panchnama was drawn at 5.30 am in the morning of 21/09/2014. The books of account of the assessee were claimed to be duly maintained since inception of the firm in FY 2009-10 and such books are kept at 1165 Kucha Mahajani, Chandni Chowk, Delhi [main office] and such books were duly produced before the ADIT soon after the search on 27/10/2014. Another communication letter dated 9/3/2015 was furnished to concerned ADIT(Inv.) to assert that cash and bullion found in the course of search were duly recorded in the books of account maintained by the assessee.

4.3 The assessee also pointed out that the statement of partners in the course of search under Section 132(4) were recorded at odd hours in the mid-night and the partners of the firm deposed under fear and stress of the search team. The copy of statement so recorded was also not provided despite specific request vide letter dated 22/09/2014 immediately after the search and multiple times thereafter.

4.5 As per the first appellate order, it was also pointed out to CIT(A) vide letter dated 5/11/20214, the Investigating team was appraised that the statement of partners were given under fear and exhaustion and were not voluntary.

4.6 The legality of the search was also questioned before the CIT(A).

4.7 Wide ranging submissions made on behalf of the assessee on law and facts as recorded by the CIT(A) in paragraphs no.3.3 to 3.6 of the first appellate order.

4.8 The CIT(A) however did not see any potency in the arguments advanced on behalf of the assessee.

4.9 As regards the addition of Rs.11,21,920/- towards bogus purchases contested on merits, the CIT(A) noted the observation of AO that the notice to alleged supplier Shri Arun Yadav could not be served whereas notice to other supplier Ms. Nisha Sharma was served but no confirmation was received from the party. The CIT(A) referred to the defects pointed out by Assessing Officer such as no ID proof of the supplier parties along with confirmation filed, confirmation undated, mode of payment not specified, parties not found at the address etc. and concluded that the assessee has failed to discharge the onus cast upon it by law to affirm the genuineness of the purchases.

4.10 The CIT(A) accordingly endorsed the action of the Assessing Officer and declined any relief on the point.

4.11 As regards additions of Rs.3 crore towards cash found in the course of search proceedings, the CIT(A) also declined to believe the explanation of the assessee towards the source of cash deposits emanates out of cash sales of bullion. The CIT(A) placed heavy reliance on the statement of the partners in the course of search and opined that such statement recorded

adverse to the assessee are testimony to lack of explanation toward source of cash and such statement are entitled to a great weight. It was essentially noted that neither the books were found nor cash sale bills were found in the course of search. The Partners had also admitted to the non-existence of books and explanation towards cash sales is merely an afterthought to justify the unaccounted cash. The CIT(A) thus invoked doctrine of preponderance of probabilities of normal human behavior and disregarded the contentions raised on behalf of the assessee. The CIT(A) thus endorsed the action of the Assessing Officer and refused to grant any relief to the assessee.

4.12 The CIT(A) also issued show cause notice in terms of Section 251(2) of the Act to enhance the assessed income on account of bullion found and inventorised at the time of search amounting to Rs.3,13,44,002/- in aggregate. For this purposes, the CIT(A) yet again relied upon the statement of the partner recorded at the time of search. The CIT(A) observed that; the stock found in the course of search were unaccounted and were offshoot of unaccounted cash purchases as deposed by the partner of the assessee; that the reliance placed by the assessee on the books of account and the stock register does not have much credence and an afterthought. The CIT(A) negated the plea of the assessee that the Assessing Officer has examined the source of stock as well in the course of the assessment proceedings. The CIT(A) *inter alia* observed that no bills evidencing the purchase of material/stock was produced before the search party and concluded that the assessee has failed to discharge the onus to support the genuineness of source of

purchase of stock found. The CIT(A) thus invoked the provisions of Section 69A and enhanced the income towards the value of bullion stock by Rs.3,13,44,002/-.

5. In summation, the CIT(A) endorsed the additions made on account of alleged bogus purchases as well as alleged unaccounted cash and also enhanced the assessed income towards alleged unaccounted stock found in the course of search.

6. Aggrieved by the denial of relief and further enhancement of assessed income, the assessee preferred appeal before the Tribunal.

7. When the matter was called for hearing, the Id. counsel assailed the action of the CIT(A) both towards sustaining the addition as well as towards enhancement on multiple points, namely placing undue reliance on the cryptic statement of the partners obtained under duress and misinterpretation of such statement; allegations not corroborated; serious factual errors committed while drawing adverse conclusion; assessment and the first appellate order based on pure guess work without reference to any credible material; crucial material overlooked etc. The Ld. Counsel contended that the action of the Revenue Authorities is squarely opposed to the provisions of the Act as understood by the judicial forum; the inference drawn are mere *ipsi dixit* and not objectively justifiable. The Id. counsel further alleged that both the Authorities have overlooked the vital evidences such as cash book, stock register, purchase and sale bills, transactions recorded in the bank statement, audit report

and so on. The Id. Counsel contended that making additions and disallowances solely on the basis of retracted statement of partners recorded at very odd hours in the drastic proceedings of search and treating such statements as gospel truth disregarding the tell-tale evidences is intrinsically opposed to the position of law enunciated in long line of judicial precedents as placed in the paper book. It was pointed out that all evidences, both direct and circumstantial, have been purposely brushed aside and the additions and disallowances have been carried out on the basis of unworthy oral statement of partners which were resiled and retracted immediately after search citing coercion and fear. No examination of the partners were carried out by the Investigation wing or by the AO after such retraction of statement deposed in the course of search.

7.1 The Id. counsel next submitted that the bogus purchases alleged on account of suppliers namely, Shri Arun Yadav towards purchase worth Rs.4,26,620/- and from supplier Ms. Nisha Sharma at Rs.6,95,300/- have been leveled as bogus and non genuine merely on the ground that notice under Section 133(6) could not be served on one party and not responded by the other party. The Id. counsel submitted in this regard that the Assessing Officer has totally overlooked the fact that confirmations of both the parties were placed on record in the course of hearing before the Assessing Officer. The Id. counsel also submitted that the AO has further overlooked the direct evidences of purchases such as purchase bills as well as the payment through banking channel against such purchases months before the search was conducted. The surrounding

evidences of conduct of assessee such as, notices issued to about 122 parties seeking confirmations and all other parties appeared and confirmed the transaction. Such near total compliance speaks loud on the bonafides of purchases. In such backdrop, non appearance by just 2 parties thus cannot lead to adverse conclusion where the assessee has no control over the whereabouts of the suppliers. When seen in the context, the payments through cheque and reporting the purchases in the stock register overwhelms such considerations. The ld. counsel pointed out that both the concurrent authorities have proceeded in other perfunctory manner ignoring tell-tell evidences and the payments. It was contended that the plea of the assessee that no excess stock was found was declared irrelevant without meeting the plea on merits. The ld. counsel thus urged that the disallowance towards bogus purchases so made is wholly unsustainable in the facts of the case and thus requires to be reversed.

6.2 Adverting to the additions of Rs.3 crore on account of alleged unexplained cash found in the course of search, the ld. counsel pointed out that the additions have been made solely on the basis of the statement of the partner taken on odd hours which cannot be considered as voluntary statement. The assessee made all efforts to seek the copy of statement and audited immediately after the conclusion of the search and repeated this request by several letters however the request was not acceded. The statement was also retracted however realizing constantly facing the infringement of natural justice. The partner of the assessee is educated only upto 4th class and had

very limited idea about accounting and income tax. The statement was given unknowingly as per his limited acumen. The purchases made were duly recorded in the books of account while sales made to banking channel as well as in cash were also duly recorded in the books of accounts maintained and kept at the impugned office at 1165 Kucha Mahajani which was the address for the income tax purposes. The Revenue cannot fasten the onus on the assessee for not covering the main office premises and for search purposes and restricting its action only to branch office. The Id. counsel submitted that the cash book clearly disclosed the source of cash and the sales so made are inconformity with the stock register the purchases found through banking channel and the stock was required to have been sold out in part in cash. The stock thus stands tallied only when the cash sales are excluded from the stock. Paradoxically, while the CIT(A) has declined to appreciate the vital evidences, has also enhanced the assessed income by unaccounted stock if the cash sales are rejected then the stock position would go up to the same extent. The CIT(A) on the one hand rejected the cash and on the other hand also seeks to include stock found in the course of search as unaccounted stock. The stand taken by the CIT(A) is thus apparently contrary and reflects total non application of mind. The Id. counsel insisted that the statement recorded under Section 132(4) is not an incriminating material *per se* and cannot be used as evidence without confronting the same to the assessee. It was insisted that bullion stock found at the time of search was out of purchases duly recorded in the books of account. The date-wise stock register placed in the paper book,

bank account statement, complete details of purchases and purchase invoice, copy of cash book, copy of VAT returns, cash sale bills and vouchers as submitted before the Revenue Authorities as well as before the Tribunal duly justifies and corroborates the stand of the assessee. It was pointed out that the books of account including bank book, cash book and stock register were duly audited by an independent auditor and the stock tally was found matched. The bullion stock as found and inventoried on the date of search were required prior to purchase and the payments were also made through banking channel prior to search. The original purchase bills for the relevant period were also produced before the Revenue Authorities. The book of account duly audited by the independent auditor has not been rejected by the lower authorities. The stock found at the time of search and cash sales thus cannot be disregarded on the face of such external evidences such as VAT returns payment through banking channel, stock tally, etc. The case found was thus out of cash in hand available on the date of search as recorded in the cash book. The ld. counsel contended that the Revenue Authorities have sought to tax both the cash sales as well as cash generated from sales as unexplained cash which is nothing but double taxation. It was also pointed out that cash sales made in the preceding assessment years have not been questioned even the cash sales made between 01.04.2014 to 04.09.2014 aggregating to Rs.88,39,415/- and for the period subsequent to search, i.e., from 20.02.2014 to 31.03.2015 amounting to Rs.3,09,46,197/- has been duly accepted. The ld. counsel vehemently asserted

that where the purchases are through banking channel and duly accepted then the stock found at the time of search cannot by any means be regarded as unaccounted as no excessive stock was found at the time of search. The ld. counsel thus submitted in conclusion that the action of the Assessing Officer and CIT(A) are marred by gross non application of mind and misconstruction of factual matrix. The CIT(A) while making the enhancement has taken self contradictory position and rejected the factum of cash sales and further treated the stock found as unaccounted which is apparently a self contradictory position. The ld. counsel thus submitted that the assessee has discharged onus which lay upon it to explain the availability of cash found at the time of search as well as the bullion stock so found. The purchases are also supported by invoices, VAT return and the payment through banking channel. The ld. counsel thus urged that the additions/enhancement on various counts may be reversed and quashed.

7. Per contra, the ld. Sr.DR for the Revenue supported the action of the Assessing Officer and CIT(A). The ld. Sr.DR pointed out that both the authorities have returned the findings in detail towards the circumstances existing in the present case which make the claim of the assessee wholly improbable and unbelievable.

7.1 As regards bogus purchases, the ld. DR pointed out that the onus was upon the assessee to produce the supplier to support the *bona fides* which has not been done.

7.2 As regards unaccounted cash found in the course of search,

the Id. DR pointed out that no sale bills were found at the premises of the assessee. Likewise, no books of account were found at the premises covered under search. The Revenue Authorities have demonstrated that cash book is unreliable and the cash sales declared does not evoke any confidence on the genuineness of the transaction and is an afterthought. The Id. DR also supported the enhancement action having regard to the failure of the assessee to discharge onus to support the *bona fides* of the stock found. The Id. DR thus submitted that no inference with the order of the CIT(A) is called for in the circumstances narrated in the first appellate order.

8. We have carefully considered the rival submissions and perused the first appellate order as well as the assessment order. The materials placed by way of voluminous paper book referred to and relied upon have been perused.

9. Three issues are identified for adjudication in the present case. All the issues are essentially factual in nature. We shall delve into merits of each issue hereunder.

9.1 The first issue concerns additions of Rs.11,21,920/- on account of alleged bogus purchases identifiable to two parties namely, Arun Yadav at Rs.4,26,620/- and Ms. Nisha Sharma at Rs.6,95,300/-. As noted above, the assessee contends that the allegation towards bogus purchases is wholly misconceived in law. To prop up its case, the assessee contends that the Assessing Officer has ignored the overwhelming factual evidences. The confirmations of both the parties are placed on record. The purchases made from these parties have entered in

the stock register and the corresponding sales have not been disputed by the Revenue Authorities. The payments for such purchases have been carried out through banking channel. A reference was made to the judgment of Hon'ble Patna High Court in the case of *ACIT vs. Hanuman Agarwal*, (1985) 151 ITR 150 (Pat) and *Mather & Platt (India) Ltd. vs. CIT* (1987) 168 ITR 493 (Pat) to submit that purchases could not be disbelieved in such circumstances. It is also the contention of the assessee that both the parties from whom the assessee has made purchases are existing parties and such parties have independently filed their confirmation with regard to the supplies made by such parties to the assessee and mere non attendance *per se* after a lapse of time could not be viewed adversely.

9.1.1 Having regard to the nature of business, i.e. trade in bullion, where stocks are identifiable and the price is also governed by market forces with little scope for manipulations; the purchases duly accounted for; the transaction of only 2 parties doubted despite extensive enquiry on 122 parties etc. we find potency in the plea of bonafides. There can be variety of reasons for non-attendance by unrelated third parties and it is not always within the domain of assessee to enforce attendance of third parties. Nothing adverse need to be imputed in such circumstances, more so, where the payments have been made through banking channel.

9.1.2 In the light of the factual context and balance of probabilities, we see a greater degree of plausibility in the

version of the assessee. The issue is thus adjudicated in favour of the assessee. Hence, the action of the CIT(A) is set aside and the additions / disallowances made on this count are cancelled.

9.2 The second issue concerns additions of Rs.3 crore as unexplained money under Section 69A of the Act.

9.2.1 The propriety of source of cash found at the branch office (1167 Kucha Mahajani, Chandani Chowk, Delhi-6) in the course of survey (and later converted to search) is in question. It is the case of revenue that the assessee could not cogently explain the source of cash so found in the course of search. No books of account, cash sale bills etc. were found in the course of search to support the source. The integrity of purchase and sale quantity data as extracted in the stock register is unknown. The partner of the assessee on the other hand, has rather confessed that the source is unaccounted. Per contra, the assessee submits that the AO made pointed enquiries quantity wise and value wise cash sales for two years and obtained details of cash in hand for every quarter. Quantity wise and value wise details of closing stock were also obtained by the AO. The balance sheet and profit and loss account for pre-search and post search period were also fled before the AO in the course of assessment proceedings. It is the case of the assessee that both the revenue authorities have proceeded squarely on suspicion, conjecture and surmises on the basis of comparative results of different quarters coupled with a self incriminating statement of assessee extracted in the course of search which was promptly retracted on the grounds of duress and coercion before the investigation

team itself. The assessee thus contends that when the statement of partners loses its credibility in the eyes of law, what remains is a bald and bare inference in the realm of conjectures without any definitive material in possession to disprove the stance of the assessee.

9.2.2 On appraisal of material placed on record and long drawn defense propagated on behalf of the assessee, key points that emerges are broadly summarized as; **(a)** the assessee operates through the main business premises situated at 1165, 3rd floor, Kuchha Mahajani, Chandni Chowk Delhi and also having a subservient branch office no. 1167 situated in the same building **(b)** the survey which was eventually converted into search was carried out at the branch office of the assessee at 1167, 1st floor, Kucha Mahajani, Delhi-6 on 21/09/2014. The main office no. 1165 was not neither covered under survey nor under search **(c)** books of account, bills, vouchers etc. are claimed to be maintained by the assessee at the main business premises no. 1165 and thus not found in the branch office covered by the search action **(d)** the address of the main office no. 1165 was well within the knowledge of the Revenue obtaining from the fact that the PAN address is that of main office and the ROI filed is also tagged to main office address **(e)** the statement of the partners have no rational probative value in as much as such statements were demonstrably recorded in the odd hours in mid night and wee hours where the assessee was kept under serious pressure, fear and exhaustion; reference made to the judgment in the case of *Kailashben Manharlal Chokshi vs. CIT 328 ITR 411(Guj)* **(f)** the statement was thus ostensibly involuntary is not

capable of determining the culpability (**g**) the statement given on 21-09-2014 was retracted soon vide letter dated 5/11/2014 before ADIT(Inv.) in the post investigation proceedings thus unworthy of any evidenciary value(**h**) the little gap in retraction is owing non availability of copy of statement despite repeated requests to deptt. beginning with 22/09/2014 (**i**) no cross of the partners were recorded either by the investigation team or by the AO post retraction and thus such beleaguered statement is of no consequence (**j**) when seen *de horse* such fallible statements, the revenue is not left with any concrete adverse material except resorting to surmises and conjectures (**k**) the information not yielded on the existence of main office by partners, may, at worst be regarded as somewhat immoral but law is different from morality and outweighs such considerations; the assessee is not expected to advert the facts which were otherwise conspicuously present on the record of the deptt. (**l**) the assessee can not be faulted for the remissness and abject failure of the deptt. to cover the main office to gain access to the bank records, books & records and to ascertain the gamut of transactions therefrom (**m**) as per the books of accounts regularly maintained by the assessee, there was a total cash balance of Rs.3,74,51,297/- as on 20.09.2014 i.e., on the date of search, in respect of cash sales affected by the assessee and this cash in hand explains the source of the cash found in the course of search (**n**) the statement of partners was never seen to be clinching evidence by the AO as the AO himself requisitioned the quantitative tally and details of purchases and sales etc. together with books of accounts vide notices under s. 142(1) and

based its adverse findings.

9.2.3 We observe that the main plank of assessee is that the cash found at the branch office under search was sourced out of cash sales. The cash sales has the effect on the reduction of stock in hand and thus the explanation offered cannot be regarded as lacking in bonafides in any remotest manner. The Assessee claims that the cash book and the stock register maintained by the assessee affirm its contentions. Significantly, as per books, while a part of total sales have been made in cash giving rise to cash balance of Rs.3.74 crore, the corresponding purchases have been shown to be made through account payee cheques. Thus, the source of cash in hand at the time of search stands bolstered by the reduction of the corresponding stock from such purchases made through account payee cheques. In the event, where the stock so purchased and corresponding sales were duly recorded in the stock book and stock stand tallied without any perceptible discrepancy in stock qua cash sales made, the source of cash found is to be regarded as sufficiently explained and hence cannot treated as unexplained money under S. 69A of the Act.

9.2.4 At this juncture, we simultaneously observe that the assessee has completely disassociated itself with the conceding statement recorded at the time search, claiming it as vulnerable and unreliable on the strength of grounds of duress, coercion, fragility and exhaustion. Significantly, the Assessee has not been called in cross examination by the investigation team or by the AO to discredit such retraction. When the statement, as

extracted in the assessment order, is perused in a standalone basis, we are constrained to observe that the statement have been ostensibly recorded in a lackadaisical manner. Some rhetoric queries appear to have been put with an unstated object to obtain a declaration. Furthermore, it was not difficult for the investigating team to check the record of all addresses available and make enquiries in this regard. It does not stand to reason that the investigation team in a search action of colossal nature would readily agree to a complete non existence of books without exerting himself on the factum of turnover reported over years, auditing of books in the preceding years. A bare glance at the statement gives an impression that the search team has closed the statement after extracting confession of declaration in gross breach of CBDT Instruction F.No.286/2/2003-IT (In) dated 10.03.2003 which bars addition on the basis of confession. It manifest that some generic and half baked questions were put to the deponent which renders such statement highly fragile notwithstanding the allegation of duress etc. The statement of other partner Mr. Kaushal Gupta, obtained in similar circumstances, is merely in the nature of endorsement of the earlier statement of key partner Kailash Chand Varshney without traces of independent inquiries. The underlying purpose implicitly was to obtain the declaration in the garb of statement.

9.2.5 Coupled with this, it is also the case of the assessee that merely because the deptt. failed to lay its hands on books which were kept in the main office, the initial onus could not be wrongly shifted on the assessee. To escape the wrath of the deptt., the partner of the assessee-firm deposed in the course of

search under fear and duress that he does not maintain books of account contrary to factual position. The income offered in the earlier years based on tax audit report etc. is testament to such facts of existence of books of partnership firm. Pertinently, the a partnership firm is essentially based on principles of mutual agency and accounting records are intrinsic to the edifice of such formal mutual arrangement. The total absence of books and records at the branch office ought to have triggered elementary questions of its whereabouts in the mind of investigation team. The revenue alone is possibly responsible for insurmountable lapse on the part of team. It is the primary contention of the assessee firm that it duly maintains its books of account since inception, to account for banking and cash transactions as well as to ascertain its assets and liabilities and deduce the profits of the partnership. This apart, assessment have also been framed after examination of books of account etc. Besides, in the post search proceedings, the books of account were duly produced even before the Investigation Wing for their enquiries and examinations. The books of account were stated to be kept in the main office in its ordinary course which premise was omitted to be covered in search without any discernible reasons. The audited books of account were thus presented and no discernible inadequacy or defect has been pointed out in such books of account either by the tax auditor or by the Assessing Officer while framing the assessment. The Assessing Officer has also adopted the income returned by the assessee based on such books of account while making separate additions under challenge. The assessee also contends that the statement of the

partner namely, Shri Kailash Chandra Varshney is the overriding basis of the Revenue to claim that the assessee is not maintaining books of account failing to appreciate that aforesaid statement of the partner was given under fear and duress and repeated retraction were made soon after, on 05.11.2014, 09.03.2015 and 17.10.2016 wherein it was disowned on the grounds of factual inaccuracies and wrong assertions. The books of account so produced in the course of the assessment reflects generation of cash from sale of stock acquired from purchases carried out through banking channel. To augment its case, the assessee also contends that total sales made by the assessee in the instant assessment year was Rs. 792.10 crore out of which total cash sales stands only at Rs.7.61 crore. The Id. counsel contends that adverse inference drawn by the Assessing Officer that cash sales prior to September, 2014 was merely Rs.88,39,145/- whereas in the month of September, 2014 total cash sales recorded was Rs.3,64,39,043/- and thus such cash sales appears to be non genuine is wholly misconceived and contrary to the facts. The total sale made by the assessee from 1st April, 2014 to 4th September, 2014 is Rs.362.16 crore which includes Rs.88.39 lakh cash sales. The assumption of the Assessing Officer that prior to 4th September, 2014 there was total sale of Rs.88.39 lakh is thus contrary to the record. The VAT return filed by the assessee towards reflecting sales made also supports the case of the assessee. The VAT Authorities have duly admitted the figures of purchases and sales carried out.

9.2.6 When the facts delineated above are seen in perspective,

the adverse inference drawn towards unaccounted cash at the time of search resulting from cash sales appears unsustainable on facts and law in the absence of any cogent basis. On careful appraisal of the factual matrix presented in the matter, we notice few overwhelming facts to appreciate the matter in perspective; (i) the purchases have been stated to be carried out through banking channel only whereas a part of sales have been carried out in cash and majority of sales have been carried out in cheque. The sales made have the corresponding effect of reducing the closing stock. The stock register has been prepared after giving effect to all purchases and sales. The remaining stock on account of sales including cash sales was not found at the premises of the assessee covered under survey and search. The reduction in stock would mean existence of sales as claimed. Thus, once the existence of cash sales are reckoned, the source of cash found at the time of premises of the assessee stands recognized. The mismatch appears to have resulted owing to partial coverage of all premises under s. 132 of the Act. The assessee cannot be blamed for towering failure of the search team to keep the main office out of purview of search action. It is rather inexplicable that only a branch office was covered under search and a statement of partner was regarded as gospel truth despite visible lack of business activities, attendant work force, books, records etc. The claim of assessee that the statement of partners are neither voluntary nor reliable and is thus bereft of any probative value, is not without any substance as noted in the preceding paragraphs. The benefit of doubt, in the peculiar circumstances, thus need to go in favour of the

subject assessee. The assessee cannot be held accountable for the lapses or remissness on the part of the Revenue Authorities. The explanation offered by the assessee in the course of the post search investigation and thereafter in the assessment proceedings that books of accounts were kept at the main office of the assessee appears reasonable and consistent having regard to the multiple facts such as the assessment in the past on the basis of books, the accounts being subject to tax audit under Section 44AB of the Act, VAT returns etc. The reduction in the stock on account of such sales also vouches the claim of the assessee.

9.2.7 We are thus of the view that the action of the revenue authorities to make additions towards unexplained cash sales under s. 69A is without any sound basis and hence cannot be countenanced in law.

9.3 Ground No.3 concerns the allegation of the CIT(A) towards bullion stock found at the branch premises of the assessee in the course of search to be acquired out of unexplained source and consequent enhancement of Rs.3,13,44,002/- to this effect carried out by the CIT(A).

9.3.1 In the first appeal by the assessee against the order of the Assessing Officer, the CIT(A), in exercise of its power under s. 251(1)(a) issued show cause notice to the assessee seeking to enhance the assessed income by Rs.3,13,44,002/- under Section 69A of the Act towards stock (gold and silver bullion) found at the premises of the assessee at the time of search on its branch office at 1167 Kucha Mahajani, Chandni Chowk, Delhi-6

alleging that such stock remained unrecorded in the stock register and is in the nature of unexplained stock.

9.5 On perusal of the first appellate order in this regard, we notice that aforesaid action of the CIT(A) is heavily dependent upon the discredited statement of the partners recorded at the time of search. As noted in the preceding paragraphs, the books of account explaining the source of cash and stock, were claimed to be kept in the main office and thus could not be found in the branch office at the time of search. The assessee claims that the aforesaid stock found in the course of search is duly accounted for in the books of account and has entered the stock register while determining the closing stock.

9.5.1 On perusal, we note that the AO did make enquiry with reference to stock of Gold bullion and silver bars weighing 8998.39 gms. and 178501 gms respectively valuing Rs. 31344002 in aggregate sized on 21-09-2014 as per point no. 28 of notice dated 23.08.2016 issued under s. 142(1) of the Act. The Assessee in its response dated 05/10/2016 has explained the source to be out of past purchases as reflected in stock records which was also produced before him.

9.5.2 The issue raked up by the CIT(A) is towards unexplained nature of stock found in search. The case of the assessee is built on the similar footing as explained in the issue concerning source of cash found. The observations thus made in that issue would apply *mutatis mutandis*. The books of accounts and stock records have nowhere been rejected per se. For the reasons mentioned in earlier paragraphs, in the matter where the

stock found in search emanates from the stock register detailing the pattern of inward & outward stock and resultant stock in hand at a given point of time, there is no justifiable reason to treat such stock found to be unexplained. As noted earlier, he statement of the partners stood discredited and rendered unreliable by the chain of events such as recorded in odd hours and without any books and without taking cognizance of bank entries; retraction of such statement without much delay, production of books before investigation team, no cross examination of retraction, gap of about 45 days in retraction attributable to statement recorded not made available despite request on the very next of search etc. The stock found being out of stock in hand as reflected in stock records, we thus hardly see any justification in the enhancement action of the CIT(A).

9.5.3 We may also simultaneously notice a paradoxical situation that while, on one hand, the revenue seeks to question the propriety of cash sales and negation of its existence, which if taken at face value, such exclusion of cash sales would bear reciprocal effect on the stock in hand and such positioning would rather enhance the stock in hand in tandem. The allegation of stock being unexplained thus somewhat militates against logic and appears to be based on misplaced exposition of facts. Without delving further, in totality, the case made out by the CIT(A) towards enhancement is bereft of merit and thus cannot be countenanced.

9.5.4 As further noticed, the enhancement action of the CIT(A) is quite cryptic and mere reiteration of the observations

such as no details of purchases, absence of books, etc which aspects have already been dealt with in the preceding paragraphs.

9.5.5 We thus set aside the action of the CIT(A) and delete the enhancement carried out.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 06/10/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**