

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई <b>IN THE INCOME TAX APPELLATE TRIBUNAL</b> <b>'B' BENCH: CHENNAI</b>		
श्री मंजूनाथा .जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष <b>BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER</b> <b>AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER</b>		
आयकर अपील सं./ITA No.568/Chny/2022 निर्धारण वर्ष /Assessment Year: 2019-20		
The Asst. Commissioner- of Income Tax, Central Circle-1, No.44, Williams Road, Cantonment, Trichy-620 001. <b>(अपीलार्थी/Appellant)</b>	<b>V.</b>	M/s.Saratha's, 45, N.S.B.Road, Teppakulam, Trichy-620 002. [PAN: AAAPS 8843 D] <b>(प्रत्यर्थी/Respondent)</b>
Department by	:	Shri S. Senthil Kumaran, CIT
Assessee by	:	Shri S. Sridhar, Adv.
सुनवाई की तारीख/Date of Hearing	:	03.08.2023
घोषणा की तारीख /Date of Pronouncement	:	01.11.2023

### आदेश / ORDER

#### **PER MANJUNATHA. G, AM:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 21.04.2022 and pertains to assessment year 2019-20.

#### **2. The Revenue has raised the following grounds of appeal:**

1. *The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*

2. *The Ld.CIT(A) erred in deleting the addition made by the assessing officer to the extent of Rs.3,48,71,193/- by accepting the assessee's claim of 2% of 'physical stock' as 'obsolete stock' on estimate basis without insisting on valid evidence.*

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2.1. *The Ld.CIT(A) failed to appreciate that the assessee has claimed the value of 'obsolete stock' @2% on estimated basis and the assessee has not proved the existence of 'obsolete stock' during the course of survey. The survey team has also not identified the existence of 'obsolete stock' in the assessee's premises while inventorising 'physical stock'.*

2.2. *The Ld.CIT(A) erred in allowing the assessee's claim of 'obsolete stock' based on the ITAT's decision in the assessee's own case for the assessment year 2005-06, without appreciating that the assessing officer has Clearly distinguished the facts in the present assessment year while rebutting objection No.2 of the assessee in the assessment order.*

3. *The Ld.CIT(A) erred in allowing the assessee's treatment of Rs.21,49,83,808/- offered as additional GP and difference in stock valuation of Rs.28,11,13,718/- under the head business income and reversing the addition made u/s.69B of the IT Act by the assessing officer in respect of 'excess stock' value of Rs.53,09,68,719/-.*

3.1 *The CIT(A) failed to appreciate that the assessee being a retail trader in textiles with huge stock is not maintaining stock register and there is no periodical stock taking, the fact of which is accepted by the partner of the assessee firm in his sworn statement.*

3.2 *The Ld.CIT(A) failed to appreciate that if the assessee has accounted for all the purchases duly in the books of account, the difference in stock valuation would be minimal. Where as in this case, the excess value of stock is 55.83% of 'opening stock'. But the assessee fails to discharge its onus that that all the purchases are accounted along with supporting evidence. But the assessee itself accepted that it was not maintaining stock register and hence the department adopted reverse GP method to arrive at the 'excess stock'. But, afterwards, the assessee disputed the rate of GP adopted by the department, without substantiating its claim.*

3.3 *The Ld.CIT(A) failed to note that the assessee has not proved during the survey that all the purchases have been duly accounted in the books of account. Without rebutting the excess value of stock by producing purchase bills and sale bills to establish that the sale price is marked including higher GP during the current year, the partner of the firm accepted the difference in stock value but disputed the method of valuation in the sworn statement. But he has not produced evidence before the survey team or assessing officer to substantiate his claim.*

3.4 *The Ld.CIT(A) failed to appreciate that the department has adopted most scientific method to arrive the value of 'book stock' by taking the cost of goods sold as Sales less GP@20.8%(average GP of 2016-17 to 2018-19). But the assessee has claimed that the sale price is increased by additional GP of 5 to 6% current year without any supporting evidence.*

3.5 *The CIT(A) failed to note that the books of accounts of the assessee were relied on only arriving at 'book stock' value. But the actual problem was related to the presence of 'physical stock' and its value. The assessee has not proved that all 'physical stock' was accounted for in the books of accounts. Instead, it was accepted that there was difference in stock value and the same was offered in the return of income (excluding the value of 'obsolete stock'). This proves that there was suppression of stock and the AO has rightly assessed the excess value of stock as per the provisions of Sec.69B of the Act.*

3.6 *The CIT(A) failed to appreciate that 'physical stock' was taken with the assistance of staff of the assessee and the 'book stock' was arrived as per the assessee's own entries in the books of accounts. Further at the time of survey while inventorizing the 'physical stock', the assessee did not correlate each and every item of stock with connected individual purchase bills nor established that all the purchase bills are accounted for in purchase books.*

3.7 *The CIT(A) failed to note that the assessee has not demonstrated with the list of items with cost price/original selling price fixed in earlier years and increased selling price with additional GP for the current year with necessary evidences to prove its claim. Then only the department adopted the average GP of 20.8% of last three years to arrive at the value of goods sold in determining the value of 'book stock'.*

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3.8 *The Ld.CIT(A) failed to appreciate that the assessee has not maintained any stock register and in the absence of stock register the AO cannot establish/segregate the goods as accounted and unaccounted, hence the 'excess stock' value found during the course of survey is treated as unexplained investment u/s.69B by the assessing officer.*

3.9 *The Ld CIT(A) erred in relying on the case of SVS Oil Mills Vs ACIT 113 taxmann.com 388(Mad). In this case the appellant had maintained proper stock register and hence this case would not be applicable to the instant case as the first question of law put forth before the Hon'ble High Court in the above case is -*

*" Whether the provisions of section 69B/69C of the Act would justify the separate addition for the value of 'excess stock' despite inclusion of such 'excess stock' by posting necessary entries in the stock register and further despite the undisputed reporting of the sales effected in relation thereto in its entirety by the Appellant?*

*In the present case, the assessee was not maintaining stock register and it has also not proved that all purchases are duly accounted in the books of accounts.*

4. *For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.*

**3.** The brief facts of the case are that the assessee is a partnership firm engaged in the business of retail trading in textiles. The assessee has filed its return of income for AY 2019-20 on 29.10.2019 declaring total income of Rs.1,14,50,59,430/-. A survey action u/s.133A of the Income Tax Act, 1961 (in short "the Act") was conducted in the business premise of the assessee on 10.01.2019. During the course of survey u/s.133A of the Act, 'excess stock' of Rs.53,09,68,719/- was found. A statement on oath was recorded from Shri Sharath Manavalan, partner of M/s.Saratha's and in response to Q.No.3 of Sworn Statement dated 16.01.2019, he had accepted 'excess stock' found during the course of survey. However, he has reiterated that said 'excess stock' has been worked out on the basis of average Gross Profit (in short "GP") of last three years, and further, firm has increased selling price of all goods by 5 to 6% to cover up GST impact and increase in overheads. The working of 'excess stock' found during the

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course of survey, has been reproduced in Page No.3 of the Assessment Order. The assessee has quantified expected gross profit from increase in price of products at Rs.21,49,83,808/- and balance 'excess stock' worked out by the Department, has been explained on account of method of valuation followed for ascertaining 'closing stock' as on the date of survey. The assessee's firm had also accepted that 'excess stock' found during the course of survey, is earned out of current year business income and also agreed to disclose additional income of Rs.49,60,97,526/-.

**4.** Consequent to survey, the case has been taken up for scrutiny and during the course of assessment proceedings, the AO called upon the assessee to explain 'as to why' additional income offered on account of difference in stock as on the date of survey, should not be assessed as unexplained investment taxable u/s.69B of the Act. In response, the assessee submitted that although, there is a difference in value of 'closing stock' as on the date of survey when compared to 'book stock', but, such difference is mainly on account of different method of valuation of 'closing stock'. The assessee's firm has increased selling price of all goods by 5 to 6% to cover up GST impact and increase in overheads, and because of increase in selling price by 5 to 6%, the GP worked by the Survey Team by taking average GP of last three years, is incorrect. If you consider correct rate of GP for the impugned assessment year, which is about 27%, the correct amount of GP works out to Rs.107,49,19,040/- as against Rs.85,99,35,232/- worked out by the Survey Team. This has resulted in

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additional GP of Rs.21,49,83,808/- over and above the GP arrived at by the Department and the same has been declared as additional income in the return of income for AY 2019-20. The assessee's firm further explained that while arriving at 'closing stock' as on the date of survey, the Department has not considered 'obsolete stock' available in the business premise, which is always at 2% of total stock value and works out to Rs.3,48,71,193/-. If you exclude value of 'obsolete stock' and higher GP on account of increase in selling price, difference in stock works out to Rs.28,11,13,718/- which is mainly on account of valuation of stock on the basis of 'opening stock' **plus** purchases **minus** sales as against regular method employed by the assessee. The Survey Team did not find any discrepancy in physical quantity of stock available in the business premise and all stock is supported by necessary purchase bills. Since, there is no difference in quantity stock found as on the date of survey, the difference in value on account of valuation of stock in trade, has been rightly offered to tax as additional income for AY 2019-20 under the head 'income from business'.

**5.** The AO, however, was not convinced with the explanation of the assessee and according to the AO, partner of the assessee's firm has accepted valuation method followed by the Department to arrive at 'closing stock' as on the date of survey. Further, the assessee is not maintaining any stock registers to record movement of stock and the firm was always recording stock in the books of accounts as per physical verification at the

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end of relevant Financial Year. Further, partner of the assessee's firm itself suggested to adopt GP method for arriving at 'book stock'. Since, the assessee has not maintained any record for stock in trade, the only option for the Department to work out stock as on the date of survey is, GP method and the same has been followed to arrive at 'closing stock' as on the date of survey. The working out arrived at by the Department has been accepted by the firm. Therefore, there is no merit in the arguments of the assessee that difference in value of stock is mainly on account of valuation difference but not on account of physical quantity of stock difference, and is not acceptable. Since, the assessee has failed to reconcile the stock found during the course of survey with proper working, the Department has rightly arrived at 'closing stock' by following GP method, and thus, rejected arguments of the assessee.

**6.** The AO had also rejected arguments of the assessee for adjustment towards value of 'obsolete stock' at Rs.3,48,71,193/- at the rate of 2% of total stock in trade available in the business of the assessee. The assessee has sought deduction for 'obsolete stock' @2% of total stock in trade on the basis of decision of ITAT Chennai Bench in the assessee's own case for earlier assessment years. However, said judgment has been rendered on the ground that there was 'obsolete stock' and the AO has not considered valuation of 'obsolete stock', even though, the presence of 'obsolete stock' was accepted. However, in the present case, the assessee could not make out a case of existence of 'obsolete stock', but seeks to deduct **ad hoc**

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deduction of 2% on total value of stock. Since, the assessee could not establish existence of 'obsolete stock', the AO rejected deduction claimed by the assessee towards 'obsolete stock'. To sum up, the AO observed that the assessee's firm has accepted difference in stock in trade as on the date of survey when compared to 'physical stock' and 'book stock'. Although, the assessee's firm chooses to call it as valuation difference, but the existence of difference in stock in trade was not denied. Further, the assessee's firm has admitted additional income of Rs.49,60,97,526/- under two heads (i) on account of difference in gross profit of Rs.21,49,83,808/- and ii) difference in valuation of Rs.28,11,13,718/-. Since, there is a difference in value of stock in trade as on the date of survey and the assessee did not record stock in trade in the books of accounts of the assessee maintained for relevant assessment year, said difference should be taxed under the head 'income from other sources', but not under the head 'income from business' as claimed by the assessee. Therefore, rejected explanation of the assessee and assessed unaccounted stock difference of Rs.53,09,68,719/- as unexplained investment u/s.69B of the Act, and taxed u/s.115BBE of the Act. The relevant findings of the AO are as under:

*21. From the discussions in the previous paras, the following observations are made.*

*(i) According to the Department there is a difference between the value of a 'book stock' and value of actual stock. This is accepted by the assessee firm.*

*(ii) While the assessee firm chooses to call it valuation difference, the department deems it as 'excess stock'.*

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(iii)- There is a difference of opinion with respect to the quantum of such difference. While the department fixes it at Rs.53,09,68,719/-, the assessee firm claims that it is only Rs.49,60,97,526/- (G.P. difference- Rs.21,49,83,808/- and Valuation difference- Rs.28,11,13,718/-). This is on account of the claim of the assessee with respect to 'obsolete stock' at Rs.3,48,71,193/- which is not accepted by the department.

(iv)- The assessee firm had admitted the above additional income in the return of income as under:

Difference in GP	Rs.21,49,83,808/-
Difference in valuation	Rs.28,11,13,718/-

22. The above discussion leads us to the question as to

(i) What is the quantum of additional income to be assessed?

and

(ii) Under which section of the IT Act is this income to be assessed?

23. These question are discussed as under:

**(i) Quantum of additional income to be assessed:**

24. From the discussion in Para 21 (iii) above, it can be seen that there is a difference of opinion between the Department and the assessee firm with respect to the quantum of additional income to be brought to tax on account of the "Stock difference" found during survey. According to the Department, the quantum of addition should be Rs.53,09,68,719/-. However, the assessee firm claims that an ad-hoc deduction of Rs.3,48,71,193/- should be given towards the value of 'obsolete stock'. The claim has been analyzed in detail, while dealing with objection-2 of the A.R. in pre paras.

25. It can be seen that this claim of the assessee is not backed by any details or evidence. In the absence of such data, the existence of 'obsolete stock' is a mere possibility.

26. Had the assessee firm or its representatives made a claim at the time of stock taking itself that the particular stock being inventoried was obsolete, then the claim of the assessee firm could be entertained. Despite the time given, no such attempt has been made by the assessee firm till now. In the absence of any such identification by the staff of the assessee firm and a further ratification by the partner of the assessee firm, the only conclusion that can be drawn is that there was no 'obsolete stock'.

27. In view of the above discussion, the assessee firm's claim of deduction towards 'obsolete stock' cannot be entertained. Hence it is determined that the additional income to be assessed on account of stock difference would be Rs.53,09,68,719/-

(ii) Under which section of the IT Act is this income to be assessed:

28. The assessee firm has offered a portion of the value of "stock difference", in his return of income, under the head income from Business as under:

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<i>Difference in GP</i>	<i>Rs.21,49,83,808/-</i>
<i>Difference in valuation</i>	<i>Rs.28,11,13,718/-</i>

29. The stand of the assessee that the above stock difference should be taxed under the head "Income from business" is not acceptable for the following reasons.

(i). It is a fact that stock found during the; course of survey, taken at market price was valued at Rs.1,74,35,59,663/- The same has been accepted by the assessee firm.

(ii). Since the assessee firm could not assist the Department in providing the cost value of stock during the process of inventoring or later, there was no other option than to adopt market value.

(iii). In view of the above and also the fact that the assessee firm could not provide a valuation at cost price subsequent to Inventorization either, the G.P method was followed in determining the value of stock found. The department followed the most scientific method of average G.P of 3 Previous years.

(iv). Since the assessee firm did not maintain the stock register, the book stocks on the date of survey was also determined by the same method.

(v). The value of excess stock or as the assessee prefers to call it, the excess value of stock was thus determined at Rs.53,09,68,718/-.

(vi). This was also accepted by the assessee with an exclusion of Rs.3,48,71,193/- towards obsolete stock.

(vii). From the above points, the existence of excess stock or excess value of stock is proved and accepted.

(viii). The argument of the assessee firm is that the difference is partially due to increased G.P. and partially due to difference in value of stock.

(ix). The theory of increased G.P during the current year while plausible, needs more examination.

(a). The gross profit percentage of the assessee firm keeps increasing over the years. The GP Percentage for A.Ys. 2016-17 was 19.28%, 2017-18- 21.42% & 2018-19-21.69%.

(b). The gross profit for the current year is returned at Rs.1,30,25,25,236/-. This works out to 26%. There are certain interesting observations from this.

(c). Since this gross profit included an amount of Rs.21,49,83,808/- attributable to difference in stock, when the same is reduced from the gross profit, the G.P. is reduced to 1,08,75,41,4287-.

(d). The interesting part is that the "above GP of Rs.1,08,75,41,428/- is 21.7% of sales. This is exactly the same percentage of G.P as the previous year. (A.Y.-2018-19).

(e). It appears that the G.P % stood still according to the wish of the assessee firm so as to enable it to determine the G.P. exactly at previous year's percentage, add the additional G.P. accepted during survey and then arrive at the G.P for the current year.

(f). It is easy to see that this cannot be a natural phenomenon since the G.P is affected by turn over and closing stock which in turn are affected by various external factors such as market demand, competition, discount etc.

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*(g). The only conclusion that can be drawn on the face of the above observations is that the G.P difference offered during the current year cannot be born out of books of accounts maintained for business or the book results thereof.*

*(h). From the above discussion it can be seen that the argument of the assessee firm that there is increased G.P% during the current year cannot qualify the difference in value of stock as business income.*

*(x). As far as the excess valuation of stock being offered for taxation at Rs.28,11,13,718/-, it is clear that this being an adjustment made to the closing stock is not a part of books of accounts or the book results thereof.*

*30. The assessee itself accepts the difference in stock. The only issue is whether it is excess stock or undervaluation in books of Accounts. In either case, this difference cannot be treated as profits of business.*

*31. In the light of the above discussions, the only conclusion that can be drawn is that the above income cannot be treated as business income.*

*32. This leads us to the question as to which section of the Act will cover the above situation.*

*33. Section 69B of Income Tax Act "Amount of investments, etc., not fully disclosed in books of account" reads as under:*

*"Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year."*

*34. In this section, valuable article or thing is not defined in the Act. According to Cambridge dictionary, an article is "a particular thing, especially one that is one of several things of similar type or in one place." As an example the dictionary gives "An article of clothing".*

*35. The meaning given for "valuable" is worth a lot of money.*

*36. Thus the stock (unaccounted stock or undervalued stock) in question will squarely fall under the description valuable article or thing.*

*37. It is concluded that the difference in value of stock found during the course of survey, determined at Rs.53,09,68,719/- is to be assessed "valuable article or thing" within the meaning of Section 69B of the Income Tax Act 1961. The same is brought to tax as such.*

*38. After considering all the relevant facts, material on records including the impounded material, sworn statement recorded from partner of assessee firm, and assessee's reply as discussed above the assessment is completed u/s.143(3) of the Income Tax Act 1961 as under.*

**7.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has challenged the issue and filed detailed written submissions, which has been

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extracted in Para No.6 on Page Nos.4 to 9 of the order of the Ld.CIT(A). The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that the difference in stock in trade quantified during the course of survey is not on account of difference in quantity of 'physical stock', but purely on account of valuation difference, and thus, same cannot be considered as unexplained investment, which can be taxed u/s.69B of the Act. The assessee further contended that the Department has conducted physical verification of stock and during the course of physical verification, stock in trade found in the business premise is supported by valid bills. There is no iota of observation with regard to discrepancy in stock in trade with respect to bills. The AO himself has admitted that stock in trade difference on account of valuation method but not on account of quantity difference. Further, the AO has not considered increase in selling price of all goods, even though, the assessee demonstrated with evidence that the selling price of goods has been increased by 5 to 6%, which has resulted in additional GP of Rs.21,49,83,808/-. The AO failed to consider deduction towards 'obsolete stock', even though, it is quite common in this line of business that there was always 'obsolete stock', which has 'zero' sales value. Further, the assessee has filed reconciliation explaining stock in trade found during the course of survey when compared to stock in trade as per books of accounts and proved that if you consider correct amount of GP earned by the assessee for the impugned assessment year, then, there is no 'excess stock' as quantified by the AO. The assessee had also

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admitted additional income of Rs.49,60,97,526/- and also offered to tax in the return of income under the head 'business income'. Therefore, it is incorrect on the part of the AO to assess difference in value of stock as unexplained investment u/s.69B of the Act.

**8.** The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts brought on record by the AO, observed that no evidence was found during the course of survey that the assessee made any unaccounted purchases. No finding of fact was rendered that any of the items at stock found during the course of survey are not supported by purchase bills or recorded in the books of accounts. The difference in stock in trade arrived at by the Department is on account of valuation difference. The AO has followed GP method for arriving at 'closing stock' as on the date of survey and has considered last three years' average GP, even though, the assessee argued that the firm has increased selling price by 5 to 6% to cover up GST impact and increase in overhead costs. The AO ignored submissions towards 'obsolete stock' which is having 'zero' sales value and backed by the decision of the ITAT in the assessee's own case for earlier assessment years. If you exclude correct GP and value of 'obsolete stock', then, there is no difference in stock in trade as quantified by the Department. Therefore, opined that when there is no difference in quantity of stock maintained by the assessee, mere difference in valuation of stock, cannot be considered as unexplained investment, which can be taxed u/s.69B of the Act. The instances of excess value of 'physical stock'

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over 'book stock' does not leads to the inference of unaccounted stock within the meaning of Sec.69B of the Act, unless such 'excess stock' can be linked to unaccounted purchase based on documentary evidence. In absence of unearthing of any evidence of unaccounted purchase, the additional amount disclosed by the assessee towards difference in value of stock as income from business, cannot be brought under the ambit of Sec.69B of the Act. The Ld.CIT(A) has discussed the issue at length in light of decision of the Hon'ble Madras High Court in the case of SVS Oil Mills v. ACIT reported 113 taxmann.com 388 (Mad.) and held that since, survey team failed to point out any difference in physical inventory of stock maintained by the assessee, and further, the valuation difference has been arrived at by ignoring certain factors, the additional income offered by the assessee towards difference in stock under the head 'income from business' needs to be accepted. Thus, directed the AO to accept income declared by the assessee towards difference in stock in trade under the head 'income from business' and compute tax at normal rates instead of 60% as per provisions of Sec.115BBE of the Act. The relevant findings of the Ld.CIT(A) are as under:

*7. I have carefully considered the assessment order, the written submission of the assessee and the material available on record. The issues arising for consideration in these grounds of appeal are:*

*(i) Whether the existence of 'obsolete stock' needs to be recognized and the value of such 'obsolete stock' computed on an estimate basis needs to be excluded while working out the 'excess stock' found during the survey and consequently the addition of Rs.3,48,71,193/- made in this regard in the assessment order needs to be deleted?*

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*(ii) Whether the income of Rs.49,60,97,526/- offered to tax by the assessee in the return of income under the head 'business income' towards difference in GP (Rs.21,49,83,808/-) and difference in stock valuation (Rs.28,11,13,718/-) to cover the declaration of Rs.53,09,68,719/- made during the course of survey after excluding the 'obsolete stock' of Rs.3,48,71,193/-, is not liable to be taxed at the higher rate of 60% u/s 69B r.w.s 115BBE?*

*8. There had been a survey on the premises of the appellant and physical inventory of the stock had been taken. The appellant had been given an opportunity to explain the difference and a statement had been recorded. The appellant in all its statements had explained the stock difference as attributable to the increased gross profit obtained during the year, rate of GST included in the tag price and obsolescence.*

*9. The genesis of the problem is in the quantification of the difference. The appellant had not maintained inventory records or stock books. This is an undisputed fact. The appellant had admitted that it is not maintaining any stock book and the year-end stock is physically inventoried from the floor and recorded in a stock book and the value assigned to them based on purchase bills relevant to the acquisition of stock. This practice had been consistently followed and the method followed by the appellant and explained by it was not disbelieved.*

*10. The survey team had inventoried the stock the same way the appellant does at the end of the year and adopted the market price for the goods or the selling price as per the tags attached to each piece. Thus, the value of the stock is determined at market price and this value is brought to the cost by reducing the gross profit embedded in the price and the GST included in the price. The 'opening stock' and purchases were added up to the day of purchase as per books and the gross profit on the sales up to the date of survey had applied and the difference in the sum of 'opening stock', purchases and gross profit reduced by the amount of sales had been arrived at as the 'BOOK STOCK'. The physical inventory of stock taken on the day of survey had been valued as stated above and this value is compared with the 'BOOK STOCK' explained supra and the difference is classified as difference in valuation of stocks by the appellant and 'excess stock' by the Assessing Officer.*

*11. From the decision of the Madras High Court in S V S SOil Mills Vs ACIT the 'excess stock' is one which is found not entered in the financial records of the appellant while such stocks are physically available. In this case, the stock valuation method adopted for year-end valuation explained by the appellant in its submissions clearly brings out the fact that the goods on display have a tag and each tag is indexed to the purchase invoice and all purchases are recorded in the books of account. The survey team had also adopted the value of goods based on the tags attached to them. Each tag is indexed to purchase bills. Thus, the stock found are all covered by valid bills and entries in the books of account.*

*12. The appellant had been consistently stating that the difference in value of stock is only due to difference in gross profit rate obtained during the period and the rate adopted by the survey team. The appellant had claimed that it had increased the price of the goods across board by 6% as against the previous year to absorb the impact of GST and increase in cost. If this rate is applied the gross profit will be 27.72% and had claimed that this should be the rate for elimination of the profit component. The survey team had chosen to adopt an average of three previous years gross profit rate 20.8%. The survey team had not spelt out the reason for such a rate to be adopted/ The Assessing Officer states that the claim of the appellant is plausible but requires investigation.*

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13. The survey team or the Assessing Officer had not made out a case saying that the goods were not accounted in the books of account. The appellant however, points out the stock in the godown and the stock that were unpacked on the day of survey had been valued on the basis of the purchase bills by the survey team in its computation of the value of stock on the date of survey. The appellant submits that the price tags are indexed to the purchase bills. On the day of survey there was no allegation of any stocks being held without entries in the books of account. The repeated submissions of the appellant during the survey that difference is only due to valuation and not due to unaccounted stock was never rebutted by the survey team as not true and they were no allegation of any unaccounted stock.

14. Further, the allegation of stock difference is the result of adopting historical rates of gross profit as against that obtained during the period. It is a matter of simple arithmetic if higher rate of gross profit is adopted the resultant 'closing stock' will be higher and will be lower if lower rate of gross profit is adopted. The survey team and the Assessing Officer had not given any justification for adoption of the three-year average. However, the appropriate rate to adopt will be the current year's gross profit as against the historical rate. The profits of the business being dynamic and subject to variations depending on various factors prevailing in an accounting period, the current rate must be adopted.

15. Apart from this and more importantly, the quantification of the value of the 'book stock' is, thus based on the rates of gross profit and rates of GST. This quantification is not based on any reference to bills, records and books of account. In such a situation the conclusion that the difference in stock value is unexplained investment cannot be countenanced. The conclusion in an assessment must be based on tangible evidence and records. If the conclusion is not based on tangible evidence and record such finding deserves to be set aside.

16. The survey team or the Assessing Officer had not established that any of the goods found in the premises on the date of survey was without bills or without entry in the financial records. No attempt had been made to segregate the goods as accounted and unaccounted. There is no demonstration that the appellant had stocks that were not entered in the financial records maintained by it. It is noteworthy the department had solely relied on the books of account of the appellant for arriving at the value of 'book stock'.

17. As regards the issue of 'obsolete stock', it is noticed that the said issue was raised by the assessee during the course of survey itself, as evident from the extract of the statement of the son of one of the partners furnished at page Nos.3 and 4 of the assessment order. The issue was raised in the context of working out the value of 'physical stock' found during the survey and the quantification of excess 'physical stock' vis-a-vis the 'book stock'. During the course of survey, the 'physical stock' was initially valued at sale price based on tag prices and the 'physical stock' at cost price was then worked out by excluding GST component of 5% of sale price and GP embedded in sale price (worked out at the average GP of 20.80% for the immediately preceding three assessment years) from the value of 'physical stock' at sale price. The 'physical stock' at cost was accordingly worked out at Rs.131,53,30,272/-. The 'book stock' as on the date of survey was worked out at Rs.78,43,61,553/- by aggregating the 'opening stock' at the beginning of the year, the purchases during the year till the date of survey and the direct expenses incurred on purchases and by subtracting the cost of sales made till the date of survey (sales less GP on sales at the average GP of 20.80%) from the said aggregate. The excess of 'physical stock' found during the survey over the 'book stock' was accordingly quantified at Rs.53,09,68,719/-.

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18. At the time of survey itself, the assessee requested for deducting the value of 'obsolete stock' from the value of stock at sale price found during the survey, in arriving at the value of 'physical stock'. The assessee made declaration in respect of the 'excess stock' during the survey subject inter-alia to the said claim of 'obsolete stock'. The assessee worked out the value of 'obsolete stock' at Rs.3,48,71,193/- by estimating the same at 2% of the 'physical stock' at sale price. The assessee excluded the same from the value of 'excess stock' quantified during survey and the balance amount of Rs.49,60,97,526/- was admitted as income in the return of income under the head 'business income' towards difference in GP (Rs.21,49,83,808/-) and difference in stock valuation (Rs.28,11,13,718/-).

19. The AO did not accept the claim of the assessee of existence of 'obsolete stock' in the 'physical stock' found during the survey and for reducing the same in determining the value of 'excess stock'. The AO observed that the assessee did not furnish any details or evidence to prove the existence of 'obsolete stock' and the quantum of such stock. The AO stated that the decision of Hon'ble ITAT in the assessee's own case for an earlier year regarding allowing deduction of 2% for 'obsolete stock' cannot be applied for the instant assessment year as the fact of existence of such stock has not been established by the assessee. Hence, the AO quantified the 'excess stock' found during the survey at Rs.53,09,68,719/- in the assessment order without accepting the claim for reduction of the same by the value of 'obsolete stock' of Rs.3,48,71,193/-. The said action of the AO resulted in making addition of Rs.3,48,71,193/- towards rejection of claim of 'obsolete stock'.

20. However, it is considered that the said view of the AO is not sustainable. The assessee is in the business of retail trading in textiles and garments. It is a well-known fact that part of the stock held in such a business does become obsolete due to various reasons such as changing fashion trends, soiling of cloth/damage due to frequent handling of the same for displaying to customers etc. It is not correct to reject the claim for existence of 'obsolete stock' on the ground that the same has not been established with supporting evidence/details ignoring this commercial reality. Moreover, the Hon'ble Tribunal allowed deduction of 2% for 'obsolete stock' in the assessee's own case for an earlier year and the same is required to be followed. In view of these reasons, it is held that existence of 'obsolete stock' needs to be recognized and the same is required to be quantified on estimate basis at 2% of the 'physical stock' (valued at sale price) found during the survey. Consequently, the 'excess stock' quantified during the survey will get reduced to the extent of 'obsolete stock'. As a result, it is held that the addition of Rs.3,48,71,193/- made by the AO on account of rejection of claim of 'obsolete stock' is not sustainable and the same is directed to be deleted.

21. With regard to addition u/s 69B of the Act, after excluding the 'obsolete stock' of Rs.3,48,71,193/- from the value of 'excess stock' quantified during survey at Rs.53,09,68,719/-, the balance amount of Rs.49,60,97,526/- has been admitted by the assessee in the return of income under the head 'business income'. Out of the said amount, the assessee has admitted Rs.21,49,83,808/- towards difference in GP and Rs.28,11,13,718/- towards difference in stock valuation found during survey. The assessee explained during the assessment proceedings that the 'excess stock' found during the survey will be less by a sum of Rs.21,49,83,808/- on account of increase in 'book stock' by the said amount, if the correct GP of 26% actually prevalent for the year is adopted for computing the cost of sales made up to the date of survey for the purpose of computation of 'book stock', instead of average GP of 20.8% for the immediately preceding three years adopted by the AO for the said purpose. The assessee explained that the increase in GP to 26% during the previous year relevant to the instant assessment year is on account of increase

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*in the sale prices effected during the year. Hence, the assessee admitted additional income to the extent of Rs.21,49,83,808/- towards difference in GP (higher GP) instead of 'excess stock' as quantified during the survey to the said extent. The balance amount of 'excess stock' quantified during survey of Rs.28,11,13,718/- has been admitted by the assessee as difference in stock valuation under the head business income.*

*22. However, the AO treated the entire amount of Rs.49,60,97,526/- (Rs.21,49,83,808 + Rs.28,11,13,718) admitted by the assessee as 'business income' in the return of income as unaccounted stock u/s 69B of the Act and consequently, charged the said sum to tax at 60% as per the provisions of section 115BBE of the Act. The AO observed that the said amount actually represents the 'excess stock' found during the survey (Rs.53,09,68,719/- less 'obsolete stock' of Rs.3,48,71,193/-), which is not recorded in the books of account and the same is therefore chargeable to tax u/s 69B of the Act and not as 'business income' as admitted by the assessee.*

*23. On careful examination of the facts, it is seen that the view of the AO is not tenable. As regards the sum of Rs.21,49,83,808/- which was admitted by the assessee towards difference in GP, the AO did not appreciate the rationale for admission of the said income as business income instead of admission by way of 'excess stock'. The 'excess stock' of Rs.53,09,68,719/- was worked out during the survey as the amount of difference between the 'physical stock' at cost of Rs.131,53,30,272/- and the 'book stock' of Rs.78,43,61,553/-. The 'book stock' of Rs.78,43,61,553/- was worked out by aggregating the 'opening stock' at the beginning of the year, the purchases during the year till the date of survey and the direct expenses incurred on purchases and by subtracting the cost of sales made till the date of survey (sales less GP on sales at the average GP of 20.80%) from the said aggregate. During the course of survey itself, the assessee had pointed out that the selling price of all the goods was increased by 5 to 6% during the year and the GP for the year is considerably higher than the earlier years. This is evident from the extract of the statement of the son of one of the partners of the assessee firm reproduced at page Nos.3 and 4 of the assessment order. In spite of the same, the average GP of 20.8% for the immediately preceding 3 years was adopted by the Revenue for working out the 'book stock' at the time of survey.*

*4. If the GP is adopted at 26% as against 20.8% on the sales of Rs.413,43,04,003/- made up to the date of survey, the 'book stock' works out to Rs.107,49,19,040/- as against Rs.78,43,61,553/- worked out by the revenue. The increase in 'book stock' amounts to Rs.21,49,83,808/-. As a consequence, the 'excess stock' gets reduced by a sum of Rs.21,49,83,808/-. The 'excess stock' worked out by the revenue at the time of survey was accepted by the assessee conditionally subject inter-alia to treating a part of the same to the above extent of Rs.21,49,83,808/- as additional GP instead of 'excess stock'. The assessee has accordingly disclosed additional GP of Rs.21,49,83,808/- under the head 'business income' in the return of income. The AO has erroneously observed that the assessee had accepted the 'excess stock' worked out at the time of survey, disregarding the contents of the statement extracted in the assessment order itself (In the statement recorded from assessee which is reproduced in page no.3 & 4 of assessment order). The action of the AO in treating the said amount of additional GP of Rs.21,49,83,808/- disclosed by the assessee as excess/unaccounted stock u/s 69B is therefore considered to be untenable on facts.*

*25. As regards the balance amount of Rs.28,11,13,718/- disclosed by the assessee in the return of income towards difference in stock valuation, the AO observed that*

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*though the assessee admitted the same as business income, the same is required to be taxed as unaccounted stock u/s 69B of the Act. The AO observed that the stock can be treated as 'valuable article' and 'excess stock' squarely falls under the scope of 'amount of investments etc not fully disclosed in books of account' under section 69B. However, the said inference drawn by the AO is considered to be unacceptable. The stock found during the survey was treated as valuable article by the AO and there is no dispute with regard to the same. The provisions of section 69B are attracted in respect of a valuable article only when the condition prescribed therein is satisfied i.e where the assessee is found to be the owner of a valuable article in a financial year and the AO finds that the amount expended in acquiring such valuable article exceeds the amount recorded in this behalf in the books of account. e the stock is acquired by making purchases, the condition prescribed in section 69B can be considered to have been satisfied only when there is evidence available to show that the assessee made some purchases which are not recorded in the books of account.*

*26. In the case of the assessee, no evidence was found during the survey that the assessee made any unaccounted purchases. No finding of fact was rendered that any of the items of stock found during the survey are not supported by purchase bills recorded in the books of account. In the absence of the same, it cannot be considered that 'the amount expended in acquiring the stock exceeds the amount recorded in the books of account' as required under section 69B. The incidence of excess of value of 'physical stock' over value of 'book stock' does not automatically lead to the inference of unaccounted stock within the meaning of section 69B, unless such excess can be attributed to unaccounted purchases based on documentary evidence. In the absence of unearthing of any evidence of unaccounted purchases during the survey, the amount of Rs.28,11,13,718/- disclosed by the assessee in the return of income towards difference in stock valuation at the time of survey cannot be brought under the ambit of section 69B. The admission of such income under the head business income cannot be disturbed so as to bring it under the scope of section 69B in the facts of the case as discussed above.*

*27. The Hon'ble Madras High Court in S V S Oil Mills Vs. ACIT had categorically held that the value of stocks that had not been entered in the financial records alone shall constitute unexplained investments. I find the contention of the appellant that all the stocks are properly entered in the books of account raised before the Assessing Officer in response to the show cause notice had not been rebutted.*

*a. The survey had not identified any stock that had not been entered in the financial records.*

*b. The appellant had been consistently stating before the survey authorities and the Assessing Officer that the difference is only due to valuation and the same had not been disproved but held to be plausible.*

*28. In view of the foregoing discussion, relying on the decisions of the Hon'ble Madras High Court and the decision of the Ahmedabad Tribunal in 30CCH 0046 and the decision of the Tribunal in Lovish Singahl & others Vs. IT O 53 CCH 0250(Jodhpur), I have no hesitation to hold that the income of Rs.49,60,97,526/- offered to tax by the assessee in the return of income under the head 'business income' towards difference in GP (Rs.21,49,83,808/-) and difference in stock valuation (Rs.28,11,13,718/- is not liable to be taxed at the higher rate of 60% under the provisions of section 69B r.w.s115BBE of the Act. The AO is directed accordingly.*

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**9.** The Id.CIT-DR, Shri S. Senthil Kumaran, CIT, submitted that the Ld.CIT(A) erred in deleting the additions made by the AO to the extent of Rs.3,48,71,193/- by accepting the assessee's claim of 2% of 'physical stock' as obsolete on estimate basis without any valid evidence. The Ld.CIT(A) further submitted that during the course of survey when 'physical stock' was taken, the assessee has made a claim for **ad hoc** deduction towards 'obsolete stock', but could not file any evidences. Since, the assessee could not file any evidences, the AO rejected the claim and made additions as per difference in stock in trade found during the course of survey. Although, the ITAT has considered an identical issue for the earlier assessment year, but fact remains that in earlier assessment year existence of 'obsolete stock' was proved. Therefore, the ITAT had rightly allowed relief. However, in the present case, without proving availability of 'obsolete stock', the assessee has made **ad hoc** claim of 2% of 'physical stock' as obsolete. The Ld.CIT(A) without appreciating relevant facts simply deleted the additions made by the AO.

**10.** The Ld.CIT(A) further submitted that in so far as balance addition of Rs.49,60,97,526/- which is consisting of additional income offered as GP difference of Rs.21,49,83,808/- and difference in stock valuation of Rs.28,11,13,718/-, the AO has brought out clear facts to the effect that the assessee is not maintaining stock books and 'closing stock' has been arrived at by taking into 'physical stock' for year end. Even during the course of

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survey, the assessee clearly admitted to have not maintained stock registers and has arrived at 'closing stock' as on the date of survey, by taking physical inventory available in the business premise. The Survey Team has worked out stock difference on the basis of 'physical stock' taken as on the date of survey on the basis of tag price which includes GST component and mark up of the assessee. The same has been reduced to arrive at cost price of 'physical stock' and then, compared with stock in trade as per books of accounts of the assessee to arrive at 'excess stock' value of Rs.53,09,68,719/-. Although, the assessee claims that 'excess stock' value is on account of valuation difference and also increase in GP for the impugned assessment year on account of increase in selling price across the board by 5 to 6%, but the claim was unsubstantiated. Since, the assessee could not file any evidences to justify 'excess stock' found during the course of survey, the AO has made additions towards 'excess stock' as unexplained investment u/s.69B of the Act, and taxed u/s.115BBE of the Act. In this regard, he relied upon the decision of the Hon'ble jurisdictional High Court in the case of SVS Oil Mills. v. ACIT reported in [2019] 418 ITR 442 (Mad.). The Ld.DR had also relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of M/s.Kim Pharma (P) Ltd. v. CIT in ITA No.106/2011 dated 27.04.2011.

**11.** The Ld.Counsel for the assessee, Shri S. Sridhar, Advocate, supporting the order of the Ld.CIT(A) submitted that, the AO has failed to

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appreciate the fact that there is a significant and material difference between 'excess stock' and 'excess value of stock'. The assessee has contended right from the date of survey that difference in value of stock is on account of incorrect method adopted for arriving at 'closing stock' but not on account of difference in physical quantity of stock when compared to books of accounts. Even, the Survey Team could not find any 'physical stock' which is not recorded in the books of accounts of the assessee and is not supported by proper purchase bills. In fact, stock difference has been arrived at on the basis of stock in trade maintained by the assessee in its books of accounts maintained for relevant assessment year. The AO has computed difference in value of stock by adopting GP method and arrived at 'closing stock' at cost as on 10.01.2019 at Rs.131,53,30,272/- and then, compared with 'book stock' at Rs.78,43,61,553/- and arrived at difference in value of 'closing stock' at Rs.53,09,68,719/-. The AO while arriving at stock difference has given deduction for uniform GST rate of 5%, even though, the assessee was having goods which are liable for GST rates from 5 to 28%. The AO further allowed deduction towards GP @ 20.80 % which is average GP for last three assessment years, even though, the assessee contended that it has increased the selling price of goods across board by 5 to 6% which resulted in enhanced GP of 26.96% for the impugned assessment year. If you exclude correct amount of GST & GP embedded in tag price, then, there is no difference as computed by the AO. The assessee has also filed detailed reconciliation explaining stock difference

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computed by the Survey Team and arrived at a minimum of difference of Rs.98,83,528/- after allowing deduction for 2% 'obsolete stock' average GST rate of 8.5% and GP of 27.71% embedded in the value of goods. Although, the assessee is able to reconcile difference quantified by the Survey Team, but has admitted additional income of Rs.49,60,97,526/- under the head 'income from business' and also paid taxes. However, the AO has assessed entire amount of stock difference as 'income from other sources' u/s.69B of the Act, and levied tax u/s.115BBE of the Act @ 60% without appreciating the fact that there is a fundamental difference between 'excess stock' and 'excess value of stock'. Since, the assessee has made out a case at no 'excess stock' in terms of quantity of goods purchased, the question of assessing 'excess stock value' u/s.69B of the Act, does not arise. The Ld.CIT(A) after considering relevant facts and also by following the decision of the Hon'ble jurisdictional High Court in the case of SVS Oil Mills v. ACIT (supra) has rightly deleted the additions made by the AO and their orders should be upheld.

**12.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts with regard to impugned dispute are that during the course of survey u/s.133A of the Act on 10.01.2019, the Department has taken physical inventory of stock in trade employed in the business of the assessee and as per 'physical stock', the stock in trade employed in the business of the assessee at

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marked price (tag price) was at Rs.174,35,96,663/-. The assessee is not maintaining stock register for movement of stock in trade. However, all purchases and sales are recorded in the books of accounts of the assessee. The stock in trade at the end of the Financial Year was adopted by taking physical inventory at cost or market price. The Survey Team had also inventoried the stock in trade in the same way, the assessee does at the end of the year and adopted the market price or selling price as per the tag attached to each product. The inventory taken at marked price has been converted into cost price by deducting GST component and GP rate embedded in the tag price. The AO while arriving at cost price has allowed deduction of 5% towards GST component and 20.8% towards GP, which is average GP declared by the assessee for immediate three Financial Years. A statement on oath was recorded from the partner of the assessee's firm and called upon the assessee to explain the difference in value of stock in trade. In response to a specific question, the partner of the assessee's firm Shri Sharath Manavalan in the sworn statement dated 16.01.2019 accepted that there is a difference in value of 'closing stock', but reiterated his stand that the firm has increased selling price of all goods across the board by 5 to 6%, and it has resulted in increase in GP at about 27% for the impugned assessment year. He further stated in the statement recorded during the course of survey that it is incorrect to deduct 5% towards GST, because, the assessee is having different goods carrying different rates of GST ranging from 5 to 28%. The assessee had also sought for deduction

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towards 2% of stock in trade as 'obsolete stock' on the ground that in this line of business it is quite common that stock becomes obsolete by effluxion of time and change in trends and fashion, etc. The assessee's firm has admitted additional income of Rs.49,60,97,526/- under the head 'income from business' and also paid taxes and such additional income has been declared under two heads i) difference in GP rate of Rs.21,49,83,808/- and ii) balance amount of Rs.28,11,13,718/- towards difference in value of stock.

**13.** The AO did not accept the explanation furnished by the assessee, including reconciliation statement explaining stock difference. The assessee has filed reconciliation statement explaining stock difference quantified by the Survey Team and argued that in fact, there is no stock difference if you deduct correct amount of GST and GP embedded in selling price of goods. According to the AO, the assessee could not explain stock difference quantified during the course of survey. The AO further observed that when the assessee is not maintaining stock register for movement of stock, the only accepted method for valuation of stock is GP method and the Department has followed same method to arrive at stock in trade as on the date of survey. Therefore, the arguments of the assessee that it has reconciled stock difference quantified during the course of survey, cannot be accepted. The AO had also rejected deduction claimed towards 2% stock in trade for 'obsolete stock' on the ground that the assessee could not able

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to establish existence of 'obsolete stock' for the impugned assessment year. According to the AO, although ITAT has accepted the arguments of the assessee for deduction towards 2% value of stock as 'obsolete stock', but the findings of the ITAT is based on assessee's existence of 'obsolete stock'. Since, the assessee could not establish existence of 'obsolete stock', the question of deduction towards 'obsolete stock' does not arise. The AO had also discussed excess stock in trade quantified during the course of survey in light of provisions of Sec.69B of the Act, and held that when the explanation offered by the assessee for any source of income and the assessee offers no explanation about such excess stock in trade held in the business to the satisfaction of the AO, then, excess amount may be deemed to be income of the assessee for such Financial Years. Since, the assessee was unable to explain source for excess stock in trade found during the course of survey, the same needs to be assessed as unexplained investment u/s.69B of the Act, and further, it should be taxed u/s.115BBE of the Act. To arrive at above conclusion, the AO took support from the decision of the Hon'ble jurisdictional High Court in the case of SVS Oil Mills v. ACIT (supra).

**14.** We have given our thoughtful consideration to the reasons given by the AO to assess difference in value of stock in trade found during the course of survey u/s.69B of the Act, and taxing u/s.115BBE of the Act, in light of various arguments of the Ld.Counsel for the assessee and we

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ourselves do not subscribe to the reasons given by the AO for the simple reason that, the AO could not establish existence of unaccounted stock in trade which is not recorded in the books of accounts of the assessee maintained for that assessment year, to be assessed as unexplained investment u/s.69B of the Act. The AO failed to appreciate that there is a significant and material difference between 'excess stock' and 'excess value of stock'. In the first instance, it has signified that the stock is physically available, but it is not entered in the financial records of the assessee. The second classification signifies that the goods purchased, have been entered in the books of accounts, but are not correctly valued for the purpose of quantifying the stock in trade. This very same issue had been considered by the Hon'ble jurisdictional High Court of Madras in the case of SVS Oil Mills v. ACIT (supra), where the Court observed that when assessee is not able to prove that 'excess stock' is out of purchase or shown as paid out of explained source, then, same is assessable u/s.69B of the Act. In the present case, the stock valuation method adopted by the assessee for year-end valuation clearly brings out the fact that the goods on display have a tag which is indexed to the purchase invoice and all purchases are recorded in the books of accounts of the assessee. The Survey Team had also adopted the value of goods based on the tags attached to them and each tag is indexed to purchase bills. From the above, it is clear that all stock in trade found during survey was linked to purchase bills. Thus, in our considered view the stock found during the course of survey is covered by

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valid bills and entries in the books of accounts of the assessee. Further, the assessee is right from the beginning stated that the difference in valuation of stock is only on account of different GP rate considered by the AO to arrive at cost price. The AO has considered last three years' average GP declared by the assessee, whereas, the assessee claims that due to increase in selling price by 5 to 6%, the GP rate has increased to 27.72%. From the above, it is clear that difference in value of 'closing stock' mainly on account of incorrect method adopted for reducing GP or tag price and also incorrect amount of GST rate embedded in the goods. If you exclude correct amount of GST rate and GP rate from the selling price, then, there is absolutely no difference in stock in trade as quantified by the Survey Team. Even, during the course of survey, the Department could not establish existence of any unaccounted stock. The Department has taken physical inventory of all stock in trade employed in the business, and verified with stock in trade as per financial books of accounts of the assessee. This means, stock in trade in terms of quantity is matched with 'physical stock' as well as 'book stock'. The difference in value is only on account of valuation difference. Further, the AO and Survey Team had not given any justification for adoption of three years' average GP when the evidences available with the AO clearly shows that the GP embedded in selling price is much higher than the average GP of last three years. It is a simple matter of arithmetic that if higher rate of GP is adopted, the resulted 'closing stock' will be higher and lower GP is adopted the resulting

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'closing stock' will be lower. In the present case, the Survey Team has arrived at the difference in value of 'closing stock' by adopting incorrect GP and GST rate, ignoring evidences filed by the assessee to prove that correct amount of GP for the impugned assessment year, is higher than the GP considered by the AO. Therefore, in our considered view, the income declared by the assessee amounting to Rs.21,49,83,808/- towards enhanced GP for the impugned assessment year on account of increase in selling price of goods across the board by 5 to 6%, is acceptable. The Ld.CIT(A) after considering relevant facts has rightly directed the AO to delete additions made towards difference in value of stock u/s.69B of the Act, to the extent income offered towards additional GP.

**15.** Coming back to difference in value of stock amounting to Rs.28,11,13,718/-. Admittedly, the Survey Team and the AO could not establish existence of unaccounted stock in terms of quantity of stock. In fact, the AO and the Survey Team both agreed that 'physical stock' found at the time of survey in terms of quantity is matching with stock in trade maintained with books of accounts of the assessee. In fact, all stock in trade found during the course of survey, is having tag price which is covered by valid purchase bills. The assessee has explained difference in value of stock by filing reconciliation statement. According to the assessee, the AO allowed deduction towards 5% GST, even though, the average GST component embedded in selling price works out to 8.5%. The assessee

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further claimed that the GP declared by the assessee for the impugned assessment year works out to 27.71%. The assessee has claimed deduction towards 'obsolete stock' @2% stock in trade. If you exclude correct amount of GST & GP and also towards 'obsolete stock' the difference in stock in trade value quantified by the Survey Team comes down to Rs.98,83,528/-. Although, the assessee could not explain difference in stock in trade value quantified by the Survey Team before the AO but had admitted additional income on account of difference in value of Rs.28,11,13,718/- under the head 'income from business' and also paid taxes. The AO assessed said difference u/s.69B of the Act, only on the ground that the assessee could not explain source for 'excess stock' found during the course of survey. As we have already stated in earlier part of this order, there is a fundamental difference between 'excess stock' and 'excess value of stock'. If there is an 'excess stock' in terms of quantity and the same has not been recorded in the books of accounts maintained for that year, then, the same needs to be treated as deemed income in terms of s.69B of the Act. If there is no 'excess stock' in terms of quantity but there is a difference in value of stock on account of different method of valuation of stock, then, such difference cannot be assessed u/s.69B of the Act, as unexplained investment. The assessee has right from the beginning explained that stock difference quantified by the Survey Team is incorrect due to various factors including incorrect application of GST and incorrect application of GP. Since, there is no difference in stock in trade in terms of

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quantity, in our considered view, the assessee has rightly offered additional income towards difference in value of stock under the head 'income from business' and this principle is squarely covered by the decision of the Hon'ble jurisdictional High Court in the case of SVS Oil Mills v. ACIT (supra) and also decision of the Tribunal in the case of Lovish Singhal & Others v. ITO 53 CCH 0250 (Jodhpur). Therefore, we are of the considered view that the AO is erred in assessing additional income offered by the assessee towards difference in value of stock u/s.69B of the Act r.w.s.115BBE of the Act.

**16.** Having said so, let us come back to deduction sought for 'obsolete stock'. The assessee had claimed deduction for 'obsolete stock' held in the business @2% of 'physical stock' and said claim is based on the decision of ITAT in the assessee's own case for earlier assessment years. The assessee is in the business of retail trading in textile. It is a well-known fact in this line of business, part of stock in trade does become obsolete due to various reasons such as change in fashion, soiling of cloth/damage due to frequent handling and display, etc. Therefore, it is not correct on the part of the AO to reject claim towards 'obsolete stock' only on the ground that the assessee could not establish existence of 'obsolete stock'. We further noted that in many cases, 'obsolete stock' has been sold at very very concessional rate or some time destroy without any value. The assessee has right from the beginning claimed deduction towards 'obsolete stock'. In fact, the AO

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has rejected the claim of the assessee for deduction towards 'obsolete stock' in earlier assessment year also. The assessee has challenged the findings of the AO before the ITAT. The ITAT Chennai benches in the assessee's own case in ITA No.263/Chny/2012 has held that existence of 'obsolete stock' in this line of business, cannot be ruled out and also directed the AO to allow deduction of 2% towards 'obsolete stock'. Even for this AY, during the course of survey itself, the assessee claims that 2% of stock in trade, is obsolete, which cannot be valued. The assessee has also filed necessary details to prove that 2% stock becomes obsolete every year. Further, in fact, going by nature of business of the assessee, existence of 'obsolete stock', cannot be ruled out. Therefore, we are of the considered view that there is a merit in the claim of the assessee towards deduction for 'obsolete stock' @2% and said claim is supported by the decision of ITAT Chennai Bench in the assessee's own case. The Ld.CIT(A) after considering relevant facts has rightly allowed deduction @2% for 'obsolete stock', and thus, we concur with the findings of the Ld.CIT(A).

**17.** In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that the assessee has rightly offered to tax additional income offered during the course of survey due to difference in value of stock under the head 'income from business'. It is the AO, on incorrect appraisal of facts, has considered difference in value of stock as unexplained investment taxable u/s.69B of

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the Act r.w.s u/s.115BBE of the Act. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the AO, and thus, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss the appeal filed by the Revenue.

**18.** In the result, appeal filed by the Revenue is dismissed.

Order pronounced on the 01<sup>st</sup> day of November, 2023, in Chennai.

**Sd/-**

(मनोमोहन दास)

**(MANOMOHAN DAS)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 01<sup>st</sup> November, 2023.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

**Sd/-**

(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF