

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 169/Ind/2023
Assessment Year: 2020-21

Dy. CIT, Central-3, Indore.	बनाम/ Vs.	M/s.Hanuman Processors, Alamganj, Burhanpur
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AAAFH7777 F		

C.O.No.7/Ind/2023
(Arising out of ITA No. 169/Ind/2023)
Assessment Year: 2020-21

M/s.Hanuman Processors, Alamganj, Burhanpur	बनाम/ Vs.	Dy. CIT, Central-3, Indore.
(CrossObjector/ Appellant)		(Revenue / Respondent)

Revenue by	Shri Ashish Porwal, Sr. DR
Assessee by	Shri P.D. Nagar, AR
Date of Hearing	25.10.2023
Date of Pronouncement	30.11.2023

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 15.02.2023 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 25.05.2022 passed by learned DCIT/ACIT, Central Circle 3, Indore["Ld. AO"] u/s 143(3) of Income-tax Act,

1961 ["the Act"] for Assessment-Year ["AY"] 2020-21, the revenue has filed the captioned appeal and the assessee has filed the captioned cross-objection.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Brief facts leading to these matters are such that the assessee-firm, consisting of three partners, is engaged in the business of processing of cotton yarn. A survey u/s 133A was conducted upon assessee on 04.03.2020 and the return filed by assessee was subjected to compulsory scrutiny through notice u/s 143(2). During survey proceeding, one diary was found containing unrecorded business receipts and expenses. Survey-team also made inventory of physical cash and physical stock found with assessee. Statements of Shri Jagdish Prasad Lath, one partner of assessee-firm, were also recorded wherein he surrendered additional income of (i) Rs. 73,89,954/- on account of unrecorded business receipts/expenses as per diary, (ii) Rs. 8,85,000/- on account of excess cash, and (iii) Rs. 1,27,25,000/- on account of excess stock. During scrutiny assessment, the AO observed that the assessee disclosed only two incomes, namely (i) Income of Rs. 73,89,954/- on account of unrecorded business receipts/expenses as per diary and (ii) Income of Rs. 8,85,000/- on account of excess cash. However, the assessee did not disclose the income of Rs. 1,27,25,000/- relating to excess stock. The AO further noted that the assessee declared the income of excess cash of Rs. 8,85,000/- @ normal rate of tax. When the AO confronted assessee about excess-stock, the assessee filed retraction-affidavit and submitted that excess-stock was surrendered under great pressure although there was no excess-stock with assessee. The AO rejected assessee's submission and made addition u/s 69B read with section 115BBE while completing assessment. Further, the AO also applied higher rate of tax u/s 115BBE to the income relating to excess-cash declared by assessee in return. With these modifications, the AO completed

assessment. Aggrieved by AO's action, the assessee went in first-appeal to CIT(A).

4. During first-appeal, the assessee made detailed submission. After consideration, the CIT(A) deleted addition of Rs. 1,27,25,000/- on account of excess-stock. But upheld the AO's action of charging higher rate of tax u/s 115BBE to excess-cash. Now, both sides are aggrieved by the order of CIT(A) i.e. while the revenue is aggrieved by deletion of addition of Rs. 1,27,25,000/- and come in this appeal, the assessee has grievance against invocation of section 115BBE to excess-cash and accordingly filed cross-objection. We proceed to dispose of both matters by this order.

Revenue's appeal:

5. The revenue has raised following grounds:

- 1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,27,25,000/- made on account of excess stock found during the course of survey proceedings ignoring :*
 - a) that the excess stock was admitted by the partners of the assessee firm during the survey ?*
 - b) that the inventory was prepared by the Survey Team with the help of partners/employees of the assessee concern which was accepted as correct by the partners of the firm at that time and was not disputed during the course of survey ?*
 - c) specifically that in response to question 24 the partner has stated that he has understood the discrepancies (including the excess stock) very well and also discussed the same with his Chartered Accountant also and furthermore the other partner gave her consent at the last page of the statements ?*
- 2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in accepting the retraction of the assessee ignoring that :*
 - a) the retraction has been made by the assessee after a long duration of more than 2 years even though the electronic mode of communication (through ITBA) was available ?*
 - b) specifically that in response to question 24 the partner has stated that he has understood the discrepancies (including the excess stock) very well and also discussed the same with his Chartered Accountant also and furthermore the other partner gave her consent at the last page of the statements ?*
- 3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,27,25,000/- by holding that stock of Rice*

Churi, Maida and Firewood as per inventory prepared during survey was found disproportionate to normal yearly consumption of such items, on historical/yearly analysis as well as for the reason of reduction in consumption in fuel this year, ignoring that :

- a) *Stock so found during the course of survey was not found entered in regular books of accounts.*
 - b) *The analysis, rationale and ratios of proportion or disproportion can be applied only for the items entered in regular books of accounts and such rationale is irrelevant for investment in out-of-books excess stock.*
 - c) *Analysis and ratios cannot replace the result of excess stock found during the physical verification in survey ?*
4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the above addition by accepting the version of the assessee that stock was taken on estimate basis and that the items are perishable items ignoring that :*
- a) *The inventory was taken and prepared and valued with the help of employees/partners of the assessee firm and was accepted correct by the partners of the firm.*
 - b) *Weighing machine was available or not or the items were already kept in bags/lots of pre-weighted size is a matter of fact on the date of survey which was accepted as correct by the partners of the firm ?*
 - c) *Since the factual scene of the day cannot be recreated now, the assessee's stand is clearly an afterthought for retraction.*
5. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the addition by accepting the version of the assessee raising the argument/confusion that inventory difference in only 3 items out of total inventory prepared for 18 items, ignoring that :*
- a) *The inventory was taken and prepared and valued with the help of employees/partners of the assessee firm and was accepted correct by the partners of the firm ?*
 - b) *There was factually difference in quantity of stock of only three items and the assessee after going through the same and after duly consulting the Chartered Accountant accepted the same as excess stock found not recorded in the books of accounts and offered the same for taxation."*

6. Ld. DR for revenue carried us to above grounds one by one all of which relate to the addition of Rs. 1,27,25,000/- on account of excess-stock. Then, the Ld. DR carried us to Para 5 to 7 of assessment-order where the AO has made the impugned addition and Para 4.1 of first appeal-order where the CIT(A) has deleted the same. Ld. DR supported the order of AO and opposed the order of CIT(A) on various premises as under:

- (i) That the survey team made itemized inventory list of goods available with assessee showing quantity and valuation of each item. Thereafter, it was found that the stock as per books of account was only Rs. 11,70,975/- (working-sheet at Page No. 13 of Paper-Book of assessee) as against physical stock of Rs. 1,38,95,975/- (Inventory prepared by survey-team at Page No. 14-15 of same Paper-Book). Therefore, the difference of Rs. 1,27,25,000/- was unaccounted stock in possession of assessee and the same was admitted by assessee's partner also. The excess stock so found was only surrendered and the assessee's partners agreed to declare the same in return of income and pay tax.
- (ii) It is submitted that the inventory sheet is duly signed by assessee's partners as well as surveying officer. The verification of physical inventory was carried out with the support of Shri Santosh Mishra, supervisor of assessee which is very clear from Q.No. 23 and Q.No. 24 put forward by survey-team to assessee, as re-produced on Page No. 11 of assessment-order. Therefore, there is no doubt on physical stock held by assessee.
- (iii) That the retraction was done by assessee after a long duration of almost 2 years, hence the same has no value and not acceptable to department at all. It is submitted that there are numerous decisions where it has been held that retraction done within shortest span of time is only acceptable and retraction done after a prolonged delay has no value.
- (iv) Emphasizing the contentions raised by revenue in grounds, it is submitted that the CIT(A) has wrongly deleted addition by accepting statistical analysis of yearly consumption; the impossibility of weightment of huge quantity, etc. whereas the survey-team actually found excess-stock as per inventory sheet.

7. Replying to above, Ld. AR for assessee made following contentions:

- (i) That there were as many as 18 items of stock held by assessee as per books totaling to Rs. 11,70,975/-. The survey authorities also find those very 18 items but totaling to Rs. 1,38,95,975/-. On comparison of items one by one, it can be found that there is no difference of single unit or penny in 15 items; the difference has been noted only in 3 items as under:

Item	Quantity (Kg)	Value	Quantity (Kg)	Value
Firewood	3,000	14,463	9,80,000	39,20,000
Rice churi	995	20,055	2,01,643	42,34,518
Maida	2,035	50,875	1,86,235	46,55,875
Total		85,393		1,28,10,393

Accordingly, the authorities computed excess-stock of Rs. 1,27,25,000/- [Rs. 1,28,10,393 (-) 85,393] in 3 items out of 18 items. Ld. AR submitted that the aforesaid data, in the first blush, itself shows that the survey-authorities have noted unrealistic huge quantity of physical stock which cannot be available with assessee at all. This is very clear from following points:

- (a) That the assessee's business is only job work i.e. processing of cotton yarn of parties. There is no raw material or finished stock; the assessee needs and holds only consumable items for processing work. Out of impugned 3 items, the 'Firewood' is just a fuel item. The 'Rice Churi' and 'Maida' are used as chemical for processing. In Para 4.1.2(i) of order of first-appeal, the CIT(A) has compared the above quantities of physical stock, as alleged by authorities, in contrast to the yearly consumption in preceding years. The data shows that Rice Churi noted by survey-team is about 20 times of yearly consumption; Maida is about 2 times of yearly consumption; and Firewood is about 56% of yearly consumption. Ld. AR contended that the CIT(A) has

rightly observed that why shall the assessee keep such a huge quantity when they are being purchased on requirement basis?

(b) That the authorities have noted Fire-wood of about 980 Tons (9,80,000 Kgs.), RiceChuriof about 201 Tons (2,01,643) and Maida of about 186 Tons (1,86,235). Thus, total quantity of these 3 items added together come to 1367 Tons as per survey-team which is equivalent to 136 truck-loads (one truck capacity is just 10 tons)! How could anyone believe such a huge quantity noted by survey team? Ld. AR also submitted that it is impossible to have weightment of such a huge quantity during night hours, there being no facility of any weigh bridge in assessee's own factory or nearby areas. He submitted that the authorities have also not given stake-wise or lot-wise details in the inventory-sheet; they have just filled an arbitrary figure of quantity to arrive at desired figure for surrender.

(c) That the assessee does not have storage space to store quantity of 1,367 Tons. To show this to AO, the assessee submitted full map/sketch of factory and godown premises with photographs giving complete details of infrastructure including the details of space available for storage; the same were also filed to CIT(A) and in the Paper-Book filed to us. The assessee even made a specific request to AO to visit business premises so that true position can be culled out but the AO did not act upon assessee's request.

(d) Out of 18 items, there is no difference of a single unit or rupee in 15 items, the authorities have noted difference only in 3 items. It is noteworthy that the assessee is engaged in processing work and all 18 items are needed for processing purpose and any job work is not possible without other 15 items. Then, how it is possible that the assessee shall keep the whopping quantity of 3 items, as alleged by authorities, and not a single unit excess of other 15 items?

- (e) The quantity noted by authorities is so huge that it will suffice for several years [Rice churi for almost 8 years, Maida for 2 years and firewood for 9 months] as explained by assessee in Para 4 of retraction-affidavit, copy at Page 19 of Paper-Book. Further, the items, Rice Churi and Maida are perishable also. Why would assessee then keep huge quantity and let it perish?
- (ii) Regarding retraction, our attention is drawn to Page No. 38 of CIT(A)'s order to explain that the delay in retraction occurred due to Covid Pandemic only. Referring to the Table made by CIT(A) thereat giving chronological chain of events which took place from date of survey (04.03.2020) to the date of filing retraction-affidavit to AO, Ld. AR pointed out that immediately after survey, the assessee deposited fee to income-tax department on 07.03.2020 to obtain copy of statements; filed application to ITO, Buhranpur for providing copy of statements on 09.03.2020; purchased stamp paper for executing affidavit on 09.03.2020 at Indore; received copy of statements from department on 14.03.2020 and made a duly sworn and notarized affidavit by all partners at Burhanpur on 21.03.2020. Thus, everything was ready on 21.03.2020. But unfortunately, India announced Janta Curfew due to Covid Pandemic on 22.03.2020 followed by complete lock-down in the country on 24.03.2020. Then, there were several incidents of severe sickness, due to Covid, in the families of assessee-firm's partners one after other and close family-members had to be hospitalized, some died from time to time also, which are noted date-wise in the said Table. Thus, although the affidavit was ready on 21.03.2020 itself but it could not be submitted due to Covid Pandemic. Ld. AR also apprised that the assessee is from Burhanpur whereas the affidavit was to be submitted to PCIT-II, Indore which is very much evident from first page of affidavit itself. Thus, Ld. AR contended, the assessee took immediate steps to execute and submit retraction and for that reason did everything by 21.03.2020 included execution of affidavit but the

affidavit could not have been submitted due to the tragic situation of caused by Covid Pandemic of which each one of us was a part. Ld. ARsubmitted that the survey commenced at about 11.30 AM on 04.03.2020 and continued whole day and night and concluded by 9 A.M. of next day and during this period of about 20 hours, Shri Jagdish Prasad Lath, partner who was aged 84 years, was disturbed, exhausted and remained under great pressure; therefore he had to surrender excess-stock to close the harassment. Ld. AR briefly carried us to various paras of the retraction-affidavit to demonstrate that all facts are elaborately averred by partners of assessee-firm with strong supporting material and this aspect is truly appreciated by CIT(A) on Page No. 39 of his order. Ld. AR contended that the assessee is fully justified in submitting retraction-affidavit in the facts of case with all evidences and the delay part is also appropriately explained; therefore there is a valid retraction acceptable as per judicial decisions.

- (iii) It is submitted that no iota of evidence or piece of paper was found during survey which could show any unaccounted purchase of such a huge quantity.
- (iv) It is submitted that the authorities only made a table-exercise in 3 items to fill the amount of surrender/confession obtained from assessee but there was no excess stock with assessee at all.
- (v) That the AO has made addition simply on the basis of statement recorded during survey. The statement made during survey is not binding when it is retracted with all supporting evidences.
- (vi) That all grounds raised by revenue are already addressed by CIT(A) in his order. The order of CIT(A) is quite extensive, detailed, reasoned, well-considered and after due consideration of applicable judicial rulings; the same must be upheld.

8. We have considered rival contentions of both sides and perused the material held on record including the orders of lower-authorities and documents filed in Paper-Book. At first, we re-produce below the order passed by CIT(A) on the issue being contested by revenue:

"4.1. Ground Nos. 1(i) to (ix), 2 and 4 (a) to (c):- Through these grounds of appeal, the appellant has challenged the addition made by the Ld. AO amounting to Rs. 1,27,25,000/- on account investment not fully disclosed in books of account u/s 69B of the Act and charging of tax as per amended provisions of section 115BBE of the Act and not considering partial retraction made from the income admitted in the statement recorded during survey proceedings.

4.1.1. I have duly considered the submission made by the appellant and facts mentioned in the assessment order. The appellant firm is engaged in job work processing i.e. seizing of cotton yarn being sent by various parties against which sizing charges are recovered. In the instant case, survey u/s.133A was conducted on the factory premises of the appellant on 04.03.2020. During the survey proceedings, inventory of physical stock and cash were prepared. Position of both items as per books as on the date of survey was presented before the authorised officer by the appellant. Certain discrepancies were noted by the survey team in stock and cash both. Besides these discrepancies, one diary containing the details of cash receipt and cash expenditure of the appellant inventorized as BI-1 was also impounded. During the survey proceedings, the appellant made disclosure of unaccounted income on the following heads:-

(i) Unexplained Expenditure	Rs. 73,89,954/-
(ii) Unexplained Cash	Rs. 8,85,000/-
(iii) Unexplained Stock	Rs. 1,27,25,000/-

The appellant offered unexplained expenditure and cash for taxation in its return of income. However, the unexplained stock was not offered for taxation. Thus, the appellant retracted from its statement given u/s 131 of the Act in respect of excess stock during the course of survey proceedings.

4.1.2 Regarding, retraction from the admission made in respect of unaccounted stock of Rs. 1,27,25,000/-, the appellant has taken plea that Ld AO was unjustified in not considering partial retraction of the statement recorded during the survey which was bonafide retraction supported by an affidavit sworn on solemn affirmation and oath by all partners and duly notarized on 20.03.2020 and filed during the course of assessment proceedings. In this regard, I have found that inventory of stock was prepared on the date of survey i.e. on 04.03.2020. The said inventory includes 18 items which has been valued at Rs. 1,38,95,975/-. The value of stock as per the books of account as on 04.03.2020 was at Rs. 11,70,975/-. Thus, the difference amounting to Rs. 1,27,25,000/- (Rs. 1,38,95,975 - Rs. 11,70,975)

was determined as excess stock on the date of survey which the appellant accepted as unexplained stock in the statement. The appellant has submitted that the physical stock of consumables other than stock of Rice Churi, Maida and Firewood were correctly found and reconciled with stock register. The appellant submitted that the value of Rice Churi, Maida and Firewood was determined at Rs. 1,28,10,393/-. I have found from the inventory of stock prepared during the survey proceedings that the above three items have been valued in following manner:-

Sr. No. of stock inventory prepared during survey	Item description	Quantity (in Kg)	Rate (Rs. per Kg)	Value of stock (in Rs.)
04	Firewood	980000	4	39,20,000/-
06	Rice Churi	201643.7	21	42,34,518/-
07	Maida	186235	25	46,55,875/-
Total				1,28,10,393/-

It has been further found that closing stock of Firewood, Rice Churi and Maida as per the books of account as on the date of survey was as under:-

Item	Quantity (in Kg)	Value (in Rs.)
Firewood	3000	14,463/-
Rice Churi	995	20,055/-
Maida	2035	50,875/-
Total		85,393/-

Accordingly, excess stock in respect of above three items is worked out to Rs. 1,27,25,000/- (Rs. 1,28,10,393 – Rs. 85,393). It is evident that this amount was admitted as unexplained stock during the course of survey by Shri Jagdish Prasad Lath, partner in the appellant firm. This fact also makes clear that no discrepancy was found in respect of other 15 items which are part of physical inventory of stock prepared during the survey proceedings. The appellant has raised various grounds in support of retraction made vide affidavit dated 21.03.2020 during the assessment proceedings as well as appellate proceedings. I find that the contentions of the appellant in this regard are based upon certain convincing logic and reasoning, history of consumption of above three items and storage facility for stock/consumables available with the appellant. I find the following contentions of the appellant are acceptable:-

(i) Stock of Rice Churi, Maida and Firewood as per inventory prepared during survey has been found disproportionate to normal yearly consumption of such items which is evident from the following details:-

Commodity	Actual quantity & value as per books		As per inventory prepared During survey		Yearly consumption in preceding 2 years	
	Quantity (Kg)	Value	Quantity (Kg)	Amount	F.Y.2019-20	F.Y. 2018-19
i) Rice churry	995	Rs.20,055/-	201643	Rs. 42,34,518 /-	Rs.4.44 lacs	Rs. 2.88 lacs
ii) Maida	2035	Rs.50,875/-	186235	Rs. 46,55,875/-	Rs.26.44 lacs	Rs.24.31 lacs
iii) Firewood	3000	Rs.14,463/-	980000	Rs. 39,20,000/-	Rs.64.35 lacs	Rs.70.24 lacs
Total		Rs.85,383/-		Rs.1,28,10,393/-	-	-

As evident from the above table, value of physical stock of Rice Churi is around 20 times of the value consumed during entire A.Y. 2019-20 i.e. immediately preceding AY and around 10 times higher than the actual consumption of the year under consideration. In the case of Maida also physical stock is disproportionate to real consumption. Similarly, physical stock of Firewood is 56% of total consumption of immediately preceding year and 61% of total consumption of year under consideration. The moot question arises here is that why will the appellant keep such huge stock of perishable goods like Rice Churi & Maida and firewood when they are being purchased on requirement base only and why will the appellant block interest bearing funds of Rs.127 lakhs to keep such huge inventory valued at Rs.128 lakhs. These aspects become very vital while considering the issue involved here particularly when the existence of stock itself is questioned.

(ii) It was impossible to have weighing of these three commodities (1367 MT) during survey, that too in less than 24 hours particularly when there was no facility of any weigh bridge in factory premises. Weighing these items having huge quantity is generally done through weighing bridge by loading them on truck and unloading the same. Inventory prepared at the time of survey does not show in any manner that the above process was followed to weigh actual quantity of three items. Quantity of these goods appear to be estimated by the survey team to arrive at desired figure as evident from the inventory itself that there is no supporting stake wise or lot wise details of any of these three commodities. In the facts and circumstances, I find that the quantity and value of three items are not actual and just an estimate to arrive at a certain figure of disclosure of income.

(iii) During the year under consideration, Firewood consumption was reduced substantially and ultimately discontinued because heating process was substituted by coal. Stock of coal worth Rs.1,50,400/- was also found on 04.03.2020. There was no stock of firewood at the year end and that of coal was worth Rs.1,23,750/- on 31.03.2020. Considering these facts, I find no reason for keeping such huge stock of Firewood.

(iv) Historical analysis of Audited Balance Sheets of the appellant further support its contention that it had not maintained such huge stock at any point of time. Stock of Rice Churi, Maida and firewood held by the firm at the close of the year as per regular books of account and quantitative records in preceding three years as per audited accounts are as under :-

Particulars	As on 31.03.2017		As on 31.03.18		As on 31.03.19	
	Qty.	Amount	Qty.	Amount	Qty.	Amount
Rice Churi	1730	Rs. 29657/-	600	Rs. 10756/-	1510	Rs.27573/-
Maida	2050	Rs. 45650/-	6750	Rs.145138/-	6600	Rs.141666/-
Fire wood	31250	Rs. 90000/-	25510	Rs. 75000/-	34253	Rs.121600/-
Total		Rs.165307/-		Rs.231074/-		Rs.290839/-

Quantity of above three items at the year end is found very less in comparison to physical stock inventorized by the survey team. Again, I find no logic for keeping such huge stock of above three items. Therefore, inventory made by the survey team becomes doubtful.

(v) Quantity of above three commodities considered by survey team was over 1367 MT which cannot be stored in the business premises as evident from sketch chart of factory and godown premises submitted before Ld AO as well as me. On perusal of drawing following space is available in the factory premises to store above three items as well as remaining 15 items:-

1. Fuel shed- having area of 1800 sq.ft.
2. Godown for Kanji Material – having area of 350 sq.ft.
3. GI tin shed (open) for pipes – having area of 1328 sq.ft.
4. GI tin shed – having area of 1012 sq.ft.
5. GI tin shed for scrap – having area of 310 sq.ft.
6. GI tin shed godown -1 – having area of 1178 sq.ft.
7. GI tin shed (open) – having area of 448 sq.ft.
8. GI tin shed beam godown – having area of 2170 sq.ft.

Above space will not be sufficient to keep 1367 MT of material particularly, when all three items were required huge space to store. Therefore, correctness of quantity of stock as mentioned in the stock of inventory becomes doubtful.

(vi). More strangely, out of 18 items as appearing in the stock inventory list, no quantitative or value difference in 15 items was found by the survey team and the Ld. AO. On perusal of all 15 items, I find that these items are equally important for the job work being done by the appellant. If It is presumed that the excess stock of three items were kept for the purposes of unaccounted job work, any job work is not possible without other items. This aspect itself supports the contentions of the appellant that the appellant makes its purchases as per the need and does not store excessive material/stock.

Considering the size of various storage area, it was not possible to store 1367 MT stock of above three items. During assessment proceedings, the appellant also made request to the Ld AO to verify the above storage space and their capacity. But, no verification in this regard was made by the Ld AO. Thus, the facts brought in on record by the appellant remained unrebutted. The Ld AO only placed reliance upon the statement given by the one of the partners of the appellant firm and inventory prepared by the survey team and signed by the partner of the appellant. To counter the claim of the appellant, contrary facts should have been brought on the record by the Ld AO in which he failed. I find that when there is no adequate space for storage of such huge quantity of stock, the quantity as appearing in the inventory seems very unrealistic and unbelievable. Therefore, addition made, statement recorded and admission taken were not found based on real facts and sound footings. The above discussion makes clear that the inventory in respect of Firewood, Rice Churi and Maida is totally unrealistic and arbitrary. The appellant retracted

disclosure made on the above account vide affidavit dated 21.03.2020. The retraction is based on sound reasoning and logic which cannot be ignored. Excess stock was in fact did not exist at all on the date of survey. Not only storage capacity available in the factory premises which is duly supported by Factory Maps, but considering the normal requirement of the business being carried on by the appellant firm, it was neither desirable nor necessary to maintain such huge stock of Firewood, Rice Churi and Maida. Historical data of the appellant also do not support the existence of huge quantity of stock of three items mentioned in the stock inventory. It is also important to mention that the appellant has duly offered the other unaccounted income i.e. Rs.73,89,954/- on account of unexplained receipt/expenditure and Rs.8,85,000/- on account of unexplained cash in its return of income as the appellant could not explain the same. Admission as additional income of both the amounts was backed by proper evidences and hence, the same was found acceptable by the appellant, but at the same time, the stock inventory of three items was found prepared in arbitrary manner which has not been accepted by the appellant. This act of the appellant shows its bonafide intentions. Therefore, the additions made by the Ld. AO without considering real facts and evidences, is not found sustainable.

4.1.3. The Ld AO did not accepted the retraction made by the appellant as it was made after a long period. In this regard, the Ld AO has placed reliance upon various judicial pronouncements wherein, it has been held that retraction made after a long period cannot be accepted when, no reason for this has been given. Such decisions are as under:-

(i) Nayyar Patel Vs ACIT (2022) 137 taxmann.com 149 (Kerala).

(ii) Smt. Dayavanti Vs CIT (2016) 75 taxmann.com 308 (Delhi).

(iii) PCIT Vs Avinash Kumar Sethia (2017) 81 taxmann.com 476 (Delhi).

(iv) Bannalal Jat Construction Pvt. Ltd. Vs ACIT (2019) 106 taxmann.com 128 (SC).

I have considered the above decisions relied upon by the Ld AO. I find that in all decisions, retraction was not backed by cogent reasoning/evidences. Therefore, Hon'ble Courts have rejected the retraction filed after the lapse of substantial time period. In the instant case, as pointed out in earlier para, the retraction has been found on good reasoning and supported by the reliable data. Therefore, the facts of this case are different from the facts of decisions cited by the Ld AO. Further, the appellant has also satisfactorily explained the reasons for delay in filing retraction. The delay has been explained by the appellant by giving detailed submission and the appellant has also summarized the details discussion in tabular format which is self-speaking. Such summary is reproduced hereunder:-

Date	Description
04/05-03-2020	Survey at Business premises of the appellant.
07-03-2020	Fee deposited online to obtain copies of statement
09-03-2020	Application for copy of statement submitted at ITO Burhanpur
09-03-2020	Stamp paper purchased for affidavit from Indore
14-03-2020	Copy of statements received on Whsaapp from I.T. Deptt.
21-03-2020	Affidavit sworn & notarised at Burhanpur by all partners
22-03-2020	Hon'ble Prime Minister announced Janta curfew for one day
24-03-2020	Govt. announced complete Lockdown through-out the Country
	Full/partial lock down continued & entire business activities were stopped/disturbed for 4/5 months.
01-09-2020	Residence of Mamta Poddar (Partner) at Rambagh campus was quarantined which continued for 12 days
13-09-2020	Shankarlalji Poddar (Real uncle of partner) admitted in covid hospital
19-09-2020	Smt. Savita Umesh Lath (daughter-in-law of partner) admitted in covid hospital
23-09-2020	Shri Shankarlalji Poddar expired
03-10-2020	Smt. Savita Umesh Lath expired
21-05-2021	Shri Ankit Kamal Lath (S/o Partner) admitted in covid hospital
10-06-2021	Shri Ankit Kamal Lath discharged from hospital
20-07-2021	Smt. Sharda Devi Jagdish Lath (W/o of partner) admitted in hospital
06-08-2021	Smt. Sharda Devi W/o Jagdish Lath expired

Above events evidently speak about the reasons for delay filing of retraction in form of affidavit. Delay in filing retraction letter is attributable to COVID Pandemic situations arisen after the survey and consequently announcement of lock down and deaths/sickness due to COVID in the family of the partners of the appellant firm. For bonafide reasons, this delay occurred. Further, the contents of affidavit are based upon supporting material. Therefore, it becomes an important piece of evidence. In the case of **M/s Baban Singh Vs Jagdish Singh, AIR (1967) SC 68**, Hon'ble Supreme Court has held that the importance and relevance of the averments made in the affidavit cannot be brushed aside without really having any material to contradict the same. Further, Hon'ble Supreme Court in the case of **M/s Mehta Parikh and Company (1956) 30 ITR 181 (SC)** has held that in the case of an affidavit filed on behalf of an assessee, the burden is upon the revenue to prove if the contents of the affidavit can be accepted or not and an affidavit properly verified and filed is a piece of evidence which alongwith other material on record has to be taken into consideration

before any finding is arrived at. In the instant case, the Ld AO failed to brought any contrary material on record to prove the contents of the affidavit were wrong. In such a circumstances, the affidavit sworn by all partners deserves to be accepted as it is a valid piece of evidence. Ld AO was not justified in accepting the retraction filed in form of affidavit. The appellant in support of its contentions has also placed reliance upon various judicial pronouncements of its favour. It has been held by Hon'ble Supreme Court and other courts that it is open to an assessee show that the admission made in the statement was not correct. The decision of Hon'ble Supreme Court in the case of **Pullangode Rubber Produce Company Limited 91 ITR 18 (SC), Nagubai Amal vs B Sharma Rao AIR 1956 (SC) 593 and Awad Kishore Dass AIR 1979 (SC) 861** are squarely applicable to the case of the appellant. In the case of **Pullangode Rubber Produce Co Ltd (Supra)**, it has been held that "an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is incorrect." In the case of **Nagubai Ammal Vs. B. Sharma Rao (supra)**, it has been held "an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue". In the case of **Smt. S. Jayalakshmi Amman reported in 390 ITR 189 (Mad)**, it has been held that "we are of the view that mere statement without there being any corroborative evidence should not be treated as conclusive evidence against the maker of the statement." It has been further held that "we are of the considered view that, for deciding any issue, against the assessee, the authorities under the IT Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under s. 132(4) of the IT Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the IT Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore, under Judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred." The court further held that "if the assessee makes a statement under s. 132(4) of the Act, and if there are any incriminating documents found in his possession, then the case is different. On the contra, if mere statement made under s. 132(4) of the Act, without any corroborative material, has to be given credence, than it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterised as undisclosed and on the facts and circumstances of the case, we are of the view that mere statement without there being any corroborative evidence, should not be treated as conclusive evidence against the maker of the statement." In the case of **Krishanlal Shivchand Rai Vs. CIT 88 ITR 293 (P & H)**, it has been held that "it is true that authorized officer carrying on search u/s.132 is entitled as per the statutory provision, to record statement of the person searched u/s. 132(4) of the I.T. Act and use that statement for the purpose of assessment. All the same person carrying the search is a person possessing some authority and, therefore, the assessment wholly and exclusively based on confessional statement procured by the revenue authority then, there was no need to have elaborate provision in the statute. There was no need to use long arm of search to collect material for

making assessment. Therefore, it is insisted that confessional statement should be corroborated some material to show that assessment made is true and fair" In view of these decisions, the reliability, importance and sanctity of admission made during search could be refuted only by cogent and convincing evidence. The statement recorded on oath can be retracted later on by showing the cogent evidences/explanation. In the instant case, the statement u/s 131 of the Act, was retracted first time during assessment proceedings after the lapse of substantial time period which has been found beyond the control of the appellant and reasoning given for this delay is found satisfactory. More importantly, the retraction is backed by good logic and reasoning. Therefore, making addition ignoring the retracted statement of partner of the appellant firm and without considering material brought on record during assessment proceedings, the action of the Ld. AO cannot be held justifiable. Considering the above discussion, the contentions of the appellant are found acceptable.

4.1.4. *In view of the discussion made in foregoing paras, the Ld. AO is not justified in making addition on account of unexplained stock u/s.69B of the Act. There was no excess stock of Firewood, Rice Churi and Maida. Hence, addition of Rs.1,27,25,000/- is, hereby, **deleted**. The appeal on the above grounds is **allowed**."*

9. On perusal of same, we find that the CIT(A) has passed an extensive order and elaborately discussed all facts and facets of the issue which address the arguments made by both sides before us. We find that the assessee is engaged in mere processing and not doing any trading or manufacturing activity. The 3 items noted by authorities are basically consumable items and not raw material or finished goods. The CIT(A) has noted that the huge quantity of consumables as listed by survey-team which would suffice for several years, cannot be held by assessee. The quantity of 3 items noted by survey team comes around 1,367 tons which is almost 136 truck-loads, such a huge quantity cannot be held by assessee for the simplest reason that the assessee does not have even storage facility to accommodate the same as concluded by CIT(A) from area-wise analysis of different parts of assessee's premises on Page No. 35 of his order. We also find that immediately after survey on 04.03.2020, the partners of assessee-firm deposited fee to income-tax department for providing statements, purchased stamp for retraction, executed stamp duly notarized on 21.03.2020 and were ready to submit the same to higher authorities, being PCIT, Indore but due to Covid Pandemic, the same could not have been submitted. Then, there were serious incidents of sickness, hospitalization

and deaths in the families of assessee's partners caused by Covid. The CIT(A) has noted a complete chain of events in his order which is also reproduced on page 15 of this order and after due consideration found that the delay in submission of retraction-affidavit was because of Covid Pandemic. Relying on various judicial rulings, as noted in his order, the CIT(A) has finally held that the surrender made during survey stood retracted by a valid retraction. The AO has made addition on the basis of mere surrender made by assessee before survey team ignoring the retraction-affidavit filed before him, but the CIT(A) has, after due consideration, not only accepted the retraction but also given detailed reasons alongwith statistical and other analysis to show that the assessee could not have held the huge quantity noted by authorities. After due consideration, the CIT(A) has deleted addition. Ld.DR for revenue, though supported heavily the order of AO but could not show any infirmity, perversity or fallacy in the order of CIT(A) nor he could rebut the findings, observations and conclusions made by CIT(A) therein. In the circumstance, therefore, we are not in a position to disturb the order passed by CIT(A); the same is hereby upheld. With this, the revenue's appeal is dismissed being devoid of any merit.

Assessee's Cross-Objection:

10. The assessee has raised following grounds:

- "01. That the Ld. CIT(A) erred in law in holding that excess cash found during survey at Rs. 8,85,000/- remained unexplained and provisions of section 69A of the Act were applicable just because the appellant had admitted such excess cash during survey as earned from undisclosed sources. He erred in not appreciating that from a diary found during the course of survey, unaccounted cash receipts from sale of scrap, packing material etc. was offered for tax at Rs. 73,89,954/- duly accepted by the Department. There being no other source of income to the firm and the statements recorded during survey can be validly corrected by the appellant based on documents found during survey, such excess cash was part of similar unrecorded sale receipts of consumables etc. hence it was income from business only. Treatment of such excess cash found as income from undisclosed sources u/s 69 of the Act w.r.s.115BBE of the Act is wholly unjustified, improper, bad in law and deserves to be quashed.

02. *The appellant further craves leave to add, alter and/or to amend the aforesaid grounds of appeal as and when necessary."*

11. Thus, the assessee in Cross-Objection is against invocation of section 115BBE and thereby charging higher rate of tax to surrendered income in the shape of excess cash which was offered by assessee in its return as normal income taxable at normal rate. During hearing before us, Ld. AR for assessee emphasized contention of assessee mentioned in grounds of cross-objection that the assessee has already admitted unaccounted sale of scrap, packing material, etc. and it is such sale from which the impugned cash was available with assessee. Thus, Ld. AR contended, the source of unexplained cash is business of assessee and therefore it was rightly offered as business income taxable at normal rate but the AO has wrongly taxed u/s 115BBE which is applicable when the assessee is not able to explain source. Per contra, Ld. DR for revenue carried us to the statement of assessee's partner recorded in Q.No. 22, at Page No. 9-10 of Paper-Book, which reads as under:

प्रश्न.22 आपकी फर्म M/s Hanuman Processors की cash book के अनुसार आज दिनांक को रोकड़ शेष की राशि रुपये 52,174/- आ रही है जबकि सर्वेक्षण कार्यवाही के दौरान फर्म के कार्यालय से भौतिक सत्यापन में रुपये 8,93,626/- की रोकड़ पायी गयी है । कृपया अंतर की राशि को स्पष्ट करें?

उत्तर- मैं यहाँ स्पष्ट करना चाहूँगा कि मेरी cash book 1 फरवरी के बाद नहीं लिखी गयी थी । मेरे Accountant श्री राजेश शाह द्वारा माह फरवरी और मार्च में किये गये Cash Transaction को दर्ज करने के बाद आज दिनांक को रोकड़ शेष की राशि रु. 8,626/- आती है । इस प्रकार भौतिक सत्यापन से तुलना करने पर रोकड़ में अंतर की राशि रुपये 8,85,000/- होती है । इस अंतर की रोकड़ आधिक्य की राशि को मैं स्पष्ट करने में असमर्थ हूँ और इस अंतर की राशि रुपये 8,85,000/- की राशि को अपनी फर्म M/s Hanuman Processors की चालू वित्त वर्ष 2019-20 का आय मानते हुए इस करारोपण हेतु घोषित करता हूँ ।

Ld. DR submitted that in its reply, the assessee's partner has clearly admitted inability to explain the source of excess cash, therefore how can it be accepted that it was part of sale proceed of scrap, etc. and business income as being claimed. Ld. DR further submitted that the Indore Bench

has, in similar circumstances where the source of excess cash could not be explained by assessee, has upheld invocation of section 115BBE.

12. We have considered rival submissions of both sides and perused the material to which our attention has been drawn. We find that during survey when the authorities asked the assessee to explain excess-cash in Q.No. 22, the assessee himself expressed inability to explain the source thereof. Going further to Q.No. 24, we also find that the survey team specifically mentioned to assessee that tax was payable on excess cash u/s 115BBE @ 77.25%. In reply, the assessee accepted the same and agreed to pay tax u/s 115BBE also. Moreover, the assessee has not brought any proof on record to show that the impugned cash was received from sale of scrap, etc. Faced with this situation and having regard to the consistent view taken by ITAT, Indore in such situations, we are of the considered view that the AO was justified in taxing the impugned excess cash u/s 115BBE at a higher rate and the CIT(A) has rightly upheld AO's action. Consequently, we approve the action of lower-authorities and the cross-objection of assessee is hereby dismissed.

13. Resultantly, both of these matters are dismissed.

Order pronounced in the open court on 30.11.2023.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

दिनांक/Dated : 30.11.2023.

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore