

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 704/JP/2023
निर्धारण वर्ष / Assessment Year : 2019-20

Turab Ali Bohra 1,1, FCI Road Opp. Dalda Mill, Bhilwara	बनाम Vs.	ACIT Central Circle, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEPB 2329 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (V.C)
राजस्व की ओर से / Revenue by : Sh. Anoop Singh, Add. CIT

सुनवाई की तारीख / Date of Hearing : 31/07/2024
उदघोषणा की तारीख / Date of Pronouncement: /09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the Commissioner of Income Tax (Appeals-5), Jaipur dated 26/09/2023 [for short CIT(A)] for assessment year 2019-20 which in turn arise from the order dated 22.09.2021 passed under section 143(3) of the Income Tax Act, [for short Act] by ACIT, Central Circle, Ajmer.

2. In this appeal, the assessee has raised following grounds: -

“1. The impugned order u/s 143(3) dated 22.09.2021 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed..

2.1 Rs. 22,49,500/-: The Id. CIT(A) has erred in law as well as in facts in confirming the additions made on account of the cash found from the possession of employee Shri Shyam Sundar Rathore as unexplained money u/s 69A of the Act. The addition so made and confirmed being completely contrary to the provisions of law and facts deserves to be deleted in full.

2.2 The Id. CIT(A) seriously erred in law as well as in facts of the case in confirming the invoking of S.69A of the Act which is contrary to the provision of law and facts in the present case and hence the same deserves to be quashed. Consequently, the impugned addition of Rs. 22,49,500/- deserves to be deleted in full.

3. Rs. 1,34,212/-: The Id. CIT(A) further erred in law as well as in the facts of the case confirming the addition being made on account of alleged excess stock found during the course of survey. The addition so made and confirmed being completely contrary to the provision of laws and facts deserves to be deleted in full.

4. The Id. CIT(A) further erred in law as well as on the facts of the case in imposing tax, surcharge, cess etc. as per provision of S. 115BBE of the Act. The invoking of S. 115BBE is contrary to the provisions of law, on facts and without jurisdiction. The appellant totally denies its liability. The tax liability so created, kindly be deleted in full.

5. The Id. AO/ NFAC seriously erred in law as well as on the facts of the case in not adhering to the mandatory procedure statutorily prescribed u/s 144B of the Act hence the Impugned Order so passed deserves to be quashed being in violation thereof

6. Rs.7,13,045/-: The Id. CIT(A) erred in law as well as in facts of the case in charging the levy of interest u/s 234A, 234B, 234C. The levy interest being charged, is contrary to the provisions of law and facts, kindly be deleted in full.

7. The appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. Succinctly, the fact as culled out from the records is that in this case, return of income was filed by the assessee on 29.10.2019, declaring total income of Rs.32,44,560/-. The assessee is doing business of MS Iron Bars,

Angles, Channels, Sheets Plates etc. on wholesale and retail basis in the name and style of M/s Babji Steels Traders, Prop. Shri Turab Ali Bohra. The said business premises of the assessee were surveyed as per provision of section 133A of the Act on 31.10.2018.

A Notice u/s 143(2) of the Act was issued on 29.09.2020. A detailed questionnaire along with notice u/s 142(1) were issued on 10.08.2021 and 16.09.2021. The assessee made his submissions which have been duly considered, perused and the same were placed on the record by the Id. AO.

On 29.10.2018 SHO, Shambhupura, Chittorgarh during verification & interception found cash of Rs.22,49,500/- in the possession of Shri Shyam Singh Rathore while intercepting a Hundai i10 Car bearing No.RJ-06-CC-6553. Upon receiving the above information, the DDIT(Inv.)-II, Udaipur recorded statement of Shri Shyam Singh Rathore u/s 131 on 29.10.2018 wherein he has stated that he works as an employee of M/s Babji Steel Traders, (Prop. Shri Turab Ali Bohra) and the above amount was received on behalf of M/s Babji Steels Traders, Bhilwara.

However, Shri Shyam Singh Rathore failed to substantiate the source of cash found from his possession, a Warrant of Authorization u/s 132A of the Act was issued by the Pr. DIT(Inv.), Rajasthan, Jaipur on 30.10.2018

for requisition of cash of Rs. 22,49,500/- from SHO, Shambhupura, Police Station, Chittorgarh. While recording statement u/s 131 of the IT Act 1961, Shi Shyam Singh Rathore has stated that he works as an employee of M/s Babji Steel Traders, Dist. Bhilwara which is engaged in trading of TMT bars, Angle plates etc and the above firm has sold TMT bars, angle plates etc, to some of the parties and the cash found from his possession was sourced from the outstanding debtors of the above firm M/s Babji Steel Traders.

In the meanwhile, survey u/s 133A of the Act was also carried out in the case of M/s Babji Steel Traders by the DDIT(Inv.), Ajmer on 31.10.2018 to verify the sources of above cash of Rs. 22,49,500/-. Statement of Shri Turab Ali Bohra was also recorded u/s 131 of the I.T. Act, 1961 on oath, wherein he had confirmed the statement given by Shri Shyam Singh Rathore by stating that the cash amount found from the custody of Shri Shyam Singh Rathore belongs to his Prop. Concern M/s Babji Steels Traders and Shri Shyam Singh had collected cash from the debtors of the firm. Shri Turab Ali Bohra had also confirmed that he had sold iron goods to above parties and Shri Shyam Singh, an employee of M/s Babji Steel Traders, Bhilwara had collected cash amounts from parties wherein amount was receivable from the various parties.

During post survey proceedings, the assessee was asked to furnish documentary evidence in support of statement given by him in respect of parties and to get verification from books of accounts. In compliance, the assessee had produced copy of ledger in respect of only 7 parties out of 9 parties along with complete books of accounts. After examination, the DDIT(Inv.), Ajmer, gathered that parties namely M/s M.S. Traders, M/s Shiva Kripa Enterprises, M/s Patel Steel Traders have substantial debit balance. M/s Janta Steel now known as M/s Ajmer Industrial Corporation and M/s Malviya Agro Industries has debit balance Rs.70,040/- and Rs. 1,930/- respectively only. Accordingly, on the basis of the above submission of the assessee, an amount of Rs. 12,43,240/- was considered as verifiable by the DDIT(Inv.), Ajmer being cash receipt against the realization of above referred debtors and the balance amount of Rs. 10,04,580/- was considered as unexplained.

Subsequently, the case of Shri Shyam Singh Rathore was taken up for scrutiny being a search case and accordingly, notice u/s 153A for the A.Y.2013-14 to 2018-19 and u/s 143(2) for the A.Y.2019-20 were issued to him. On the basis of the submissions made by Shri Turab Ali Bohra before the DDIT(Inv.), Ajmer and also considering his statements given during the course of survey proceedings u/s 131 of the I.T. Act, 1961 on oath, an

addition of Rs. 10,04,580/- was made on protective basis vide assessment order dated 24.05.2021 in the hands of Shri Shyam Singh Rathore, as he was not responding to the notices issued in his case.

The case of Shri Turab Ali Bohra was also taken up under scrutiny for the A.Y.2019-20, wherein statutory notices u/s 143(2) and 142(1) of the I.T. Act, 1961 were issued from time to time. In response to the notice u/s 142(1) dated 16.09.2021, (the assessee made his submission wherein he has retracted from his statements given u/s 131 of the Act made during the course of survey proceedings and submitted that the cash of Rs.12,43,240/- which was found verified by the DDIT(Inv.), Ajmer on the basis of submissions made by the assessee before him is actually not pertains to the parties/debtors listed above, instead they were the persons who were his regular buyers and they have clear their payments by A/c Payee Bank Cheques only, which is also evident from his books of accounts. He further claimed that the confiscated amount was picked up from his cash collection point.

Therefore, considering the facts and circumstances of the case and also the retraction made by the assessee from his earlier statement recorded u/s 131 of the I.T. Act, 1961, the version of the assessee was not found acceptable and therefore, it is considered that the amount of

Rs.22,49,500/- found from the possession of Shri Shyam Singh Rathore and belongs to Shri Turab Ali Bohra was considered as unexplained money of Shri Turab Ali Bohra for which he has not been able to satisfactorily prove the sources thereof.

Accordingly, an addition of Rs.22,49,500/- was made to the total income of the assessee on substantive basis by considering the same as his unexplained money u/s 69A r.w.s. 115BBE of the I.T. Act, 1961 and brought to tax accordingly.

During the course of survey proceedings, physical verification of stock was made and it was found that the physical availability of stock on the date of survey was at Rs.4,28,09,129/-, where as per the books of account the stock as on date of survey was at Rs.4,26,74,917/-. Therefore, the stock was found excess by an amount of Rs. 1,34,212/-. The assessee has accepted the above difference of stock of Rs.1,34,212/- and offered the same during the course of survey proceedings for taxation. Accordingly, he was also given a show cause during assessment proceedings that why an addition of Rs. 1,34,212/- should not be made. In response the assessee has made his submission. That submission was not found acceptable due to the reason that no supporting evidence / reconciliation statement has been furnished by the assessee during the course of assessment

proceedings. Accordingly, an addition of Rs.1,34,212/- was made to the total income of the assessee as his undisclosed income for the year under consideration.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“On perusal of the above ledgers, it is very clear that all are made to justify the story of cash seized on 29.10.2018 and survey conducted on 31.10.2018. In the above ledgers of various parties, one thing is common that the period of transactions were upto 31.03.2019 but the business activity with these parties concluded on 01.11.2018. How it can be possible, that after the incident of cash seize the business activity with these parties were closed and as per the story created by the appellant these were the cash collection points and appointed some of the trusted buyers by him. All above post survey ledger entries clearly gives idea that contentions put forth by appellant are mere afterthought to cover up discrepancy of cash seized by the Police. Further by submitting such ledger account cannot establish that the cash seized was actually related to such cash sale. Is such things were true then the same should come out during the course of cash secrete by the police or during the course of survey. But no such evidences were produced at that time. The appellant had completely changed their version as what suited to them. The contention put forth by the appellant is misleading and not justifiable.

4.2.8 On the basis of above discussion and the facts of the case, I confirm the addition made by the AO as the appellant has failed to substantiate his claim with docuinerntary evidences as the evidences produced during the course of appellate proceeding has no relevance with the facts of the case and fabricated documents. Hence the same cannot be relied upon. The addition of Rs 22,49,500/- is hereby confirmed. Thus, grounds of appeal 1 is hereby rejected.

5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The stock was physically taken in the presence of the assessee during the course of survey proceedings u/s 133A of the I.T.Act. 1961 and difference of Rs. 1,34,212/- was found and during the course of assessment proceedings, the appellant was unable to substantiate his claim with supporting evidences and reconciliation statement. Further during the time of survey proceeding, the appellant had surrendered this as his income. I do not find any merit in the submission of the appellant and confirm the addition made by the AO of Rs. 1,34,212/- as undisclosed income of the assessee on account of excess stock found during the survey proceedings. Thus, grounds of appeal 2 is hereby rejected.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A), the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the assessee, Id. AR of the assessee filed the written submissions in respect of the various grounds raised by the assessee. The written submission reads as follows ;

“Brief General Facts: The appellant Shri Turab Ali Bohra is an individual engaged in the business of trading in Iron sheets, bars, rods, TMT bars, angles, plates, channels etc. on wholesale and retail basis in his Proprietary concern under name and style of “M/s Babji Steel Traders”. The assessee e-filed its Return of Income u/s 139 of Income Tax Act, 1961 (*for short “the Act”*) declaring total income of Rs. 32,44,560/- on 29.10.2019 (PB 01-05) along with Audited accounts.

In the instant case a cash of Rs 22,49,500/- was seized by SHO, Shambhupura, Chittorgarh on 29.10.2018 while intercepting a Hyundai i10 Car bearing No.RJ-06-CC-6553 from the possession of Shri Shyam Singh Rathore (employee of appellant). On receiving the above information, the DDIT(Inv.)-II, Udaipur

recorded statement of Shri Shyam Singh Rathore u/s 131 on 29.10.2018. Thereafter, Warrant of Authorization u/s 132A of the I.T. Act, 1961 was issued by the Pr. DIT (Inv.), Rajasthan, Jaipur on 30.10.2018 for requisition of cash of Rs.22,49,500/- from SHO, Shambhupura, Police Station, Chittorgarh.

Further, survey u/s 133A of the I.T. Act, 1961 was carried out in the case of M/s Babji Steel Traders by the DDIT (Inv.), Ajmer (assessee's proprietorship concern) on 31.10.2018 to verify the sources of above cash of Rs.22,49,500/-. Statement of Shri Turab Ali Bohra (assessee) were recorded u/s 131 of the I.T. Act, 1961 allegedly discrepancies in the stock were found on physical verification.

Consequently, the Id. AO issued notice u/s 143(2) dt.29.09.2020 and passed the impugned Assessment order u/s 143(3) dated 22.09.2021 by assessing Total Income to Rs.56,28,272/- making additions on followings:

- Rs.22,49,500/- addition u/s 69A on account of unexplained money found.
- Rs. 1,34,212/- addition on account of alleged excess stock.

The Assessee filed appeal before Id. CIT(A) on 20.10.2021 against above order but unfortunately Id. CIT(A) upheld the additions made by Id. AO vide it's order dt 26.09.2023.

Thus, feeling aggrieved from the above order the assessee filed this appeal.

GOA 1: Is a general ground and may kindly be considered while deciding the other grounds of appeals.

GOA 2: Addition of Rs.22,49,500/- on account of unexplained money u/s 69A: (AO Pg. 7/CIT(A) Pg. 10, Pr. 4.2.6)

Facts: The finding of the AO at pg.7 of order is as under:

"The above submission of the assessee has been carefully gone through and the same has not been found acceptable due to the reasons that the assessee has already got the amount of Rs. 12,43,240/- verified during the course of Survey Fest Survey proceedings to the DDIT (Inv.), Ajmer and has also accepted the same in his statement recorded u/s 131 of the I.T. Act, 1961 on the basis of which, it was accepted that the amount of Rs. 12,43,240/- was receipts from his outstanding debtors which he could not entered in his books of accounts on the date of survey and therefore, protective addition of Rs. 10,04,580/- was only made in the hands of Shri Shyam Singh Rathore. Now, during the assessment proceedings, the assessee has changed the entire story, being the reason that the above debtors from whom the cash was stated to be received by Shri Shyam Singh Rathore, had subsequently made the payments through DD/Account Payee Cheques/NEFT/RTGS etc. to the assessee. So now this has become an unmanageable task for the assessee to get them verified during the course of assessment proceedings that the so called cash receipts were actually pertaining to those debtors as tabulated in the above para. Now in the assessment proceedings, the assessee has changed his version and has come up with new story that the entire amount of Rs. 22,49,500/- has received from different parties whose bills have been furnished and placed on records. These all are the cash sales of the assessee on different dates of the year and not

pertains to a particular date or period. For instance, an amount of Rs 52,338/- has been claimed to be received from Shri Mubarik Khan, sales to whom were made of 20.06.2018. Likewise amounts of Rs. 17,102/-, Rs. 16,666, Rs. 17,488/- were claimed to be received from Shri Firoz Khan, sales to whom were made on 07.07.2018, 23.06.2018 and 20.06.2018 respectively. There are also other examples in which sales were made during June or July, 2018 or on other previous dates to different parties and their cash receipts have been stated to be collected by Shri Shyam Singh Rathore on the date on which he was intercepted by the Police Authorities. The reason adduced by the assessee that he has made some cash collection points and appointed some of his trusted buyers is not acceptable owing to the reason that the same is an afterthought cooked up story presented by the assessee for just to substantiate the sources of unexplained cash found in possession of Shri Shyam Singh Rathore which actually belongs to him. No justifiable reason has been given by the assessee as to why the cash sales made in the month of June and July, 2018, were not pursued for collection of receipts till 30.10.2018 (the date on which Shri Shyam Singh Rathore was intercepted by the Police Authorities with cash of Rs.22,49,500/-) which is approximately beyond the period of 3-4 months. In view of the above the statements given by the assessee during the course of survey proceedings which were recorded on oath u/s 131 of the I.T. Act, 1961 has itself proven to be false resulted in misleading to reach the correct facts of the case.

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Therefore, considering the facts and circumstances of the case and also the retraction made by the assessee from his earlier statement recorded u/s 131 of the I.T. Act, 1961, the version of the assessee is not found acceptable and therefore, it is considered that the amount of Rs.22,49,500/- found from the possession of Shri Shyam Singh Rathore and belongs to Shri Turab Ali Bohra is the unexplained money of Shri Turab Ali Bohra for which he has not been able to satisfactorily prove the sources thereof. Accordingly, an addition of Rs.22,49,500/- is being made to the total income of the assessee on substantive basis by considering the same as his unexplained money u/s 69A r.w.s. 115BBE of the I.T. Act, 1961 and brought to tax accordingly. Penalty proceedings u/s 271AAC of the I. T. Act, 1961, are also being initiated separately on the above discussed issue”.

In the first appeal, the Id. CIT(A) firstly repeated all the facts of the case and commenced his discussion from Para 4.2, page 8 onward. However, upto pr. 4.4 again he repeated all those facts which he had already narrated in Para 2, Para 3 to 3.7 at pages 3 to 6 of his order. Further after reproducing all the ledger accounts, starting from page 11-20, his findings starts.

From, a careful reading of the orders of the authorities below, the crux of the observations and the conclusions are that during the course of investigation while statements of Shri Shyam Singh Rathore were being recorded u/s 131 on 29.10.2018 by the DDIT(Inv.)-II, Udaipur followed by Survey proceedings u/s 133A carried out on M/s Babji Steel Traders by the DDIT(Inv.), Ajmer on 31.10.2018 (where statements of Assessee Shri Turab Ali Bohra were recorded u/s 131), the stand taken during the course of the assessment proceeding, is alleged to be an afterthought and in contradiction; further, a fake story was allegedly created to justify the availability of cash of Rs. 22,47,820/- on the day of Survey and the appellant allegedly failed to bring any supporting evidence to

show that the cash seized actually related to cash sales made to various parties. The authorities also suspected why recoveries were made late from those small buyers.

Finally, the Id. CIT(A) concluded at pg.10 pr. 4.2.6 onwards in following words:

“4.2.6 On the basis of above facts, it is very clear that the appellant is continuously misleading the true facts of the case. He had accepted during the survey proceedings that the cash of Rs.22,49,500/- seized from the possession of Shri Shyam Singh Rathore pertains to him as he had sold iron goods to above parties and Shri Shyam Singh Rathore, an employee of M/s Babji Steel Traders, Bhilwara had collected cash amounts from these parties out of their outstanding amount, but during the assessment proceedings, he had made a fake story to substantiate the source of the cash seized.

“4.2.7 During the course of appellate proceedings before me, the appellant has submitted the ledgers and copies of bills issued to the various parties and identity of the purchaser. The copies of ledgers in respect of above parties for the period from 01-Apr-2018/01-Jun-2018 to 31-Mar-2019 are as under:

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On perusal of the above ledgers, it is very clear that all are made to justify the story of cash seized on 29.10.2018 and survey conducted on 31.10.2018. In the above ledgers of various parties, one thing is common that the period of transactions were upto 31.03.2019 but the business activity with these parties concluded on 01.11.2018. How it can be possible, that after the incident of cash seize the business activity with these parties were closed and as per the story created by the appellant these were the cash collection points and appointed some of the trusted buyers by him. All above post survey ledger entries clearly gives idea that contentions put forth by appellant are mere afterthought to cover up discrepancy of cash seized by the Police. Further by submitting such ledger account cannot establish that the cash seized was actually related to such cash sale. Is such things were true then the same should come out during the course of cash seizure by the police or during the course of survey. But no such evidences were produced at that time. The appellant had completely changed their version as what suited to them. The contention put forth by the appellant is misleading and not justifiable.

4.2.8 On the basis of above discussion and the facts of the case, I confirm the addition made by the AO as the appellant has failed to substantiate his claim with documentary evidences as the evidences produced during the course of appellate proceeding has no relevance with the facts of the case and fabricated documents. Hence the same cannot be relied upon. The addition of Rs 22,49,500/- is hereby confirmed. Thus, grounds of appeal 1 is hereby rejected.”

The only moot question involved was whether the source of Rs. 22,47,820/- found in the possession of Shri Shyam Singh Rathore, the employee on 29.10.2018 by SHO, Shambhupura, Chittorgarh duly explained by the appellant or not.

Hence, this ground.

Submission:

1.1 Modus operandi of appellant's business - misunderstood by authorities: At the outset, it is submitted that the immediate source of the cash found in possession, was explained to be out of the cash realization made from the sales affected to the small traders, which was (undisputedly) duly accounted for, duly declared and taxes were paid thereon. However, the authorities below and in particular the Id. CIT(A) failed to understand and appreciate the detailed submissions made, supported by corroborative evidences, the peculiar facts and circumstances which prevailed at that time, and such contentions were rejected without any corroborative evidence to the contrary.

1.2 In the instant case it was submitted that cash was received from following parties (which had dual capacity being cash collection points of assessee and also as regular buyer) namely:

1. M/s M.S. Traders, Fatehnagar (PB- 25)
2. M/s Ajmer Industrial Corporation (earlier also known as Janta Steels), Fatehnagar (PB-36)
3. M/s Sanwariya Iron, Akola (PB- 71)
4. M/s Malviya Agro, Bari Sadri (PB- 74)
5. M/s Goodluck Engn., Nikumb (PB-81)
6. M/s Shiv Kripa Enterprises, Nimbahera (PB-84)
7. M/s Patel Steel Traders, Nimbahera (PB-149)
8. M/s Vyas Steels, Chhoti Sadri (PB-153)
9. M/s Priya Eng., Chhoti Sadri (PB-180)

The submissions made are elaborated hereinbelow:

2.1 The factual background of the matter was that the appellant Shri Turab Ali Bohra was doing business of trading in Iron sheets, bars, rods, TMT bars, angles, plates, channels etc. mostly on wholesale basis and also on retail basis. The appellant had been making sales to nine parties (Listed at pg.9 of CIT(A) order) in the regular course of business and getting the payment normally through banking channel. This is in addition to cash sale effected to small traders, fabricators, welders, vendors etc.

2.2 During the subjected year an attempt was made by assessee to increase the sale, which was even largely achieved also with a phenomenal growth in sale by approx. 213% as compared to AY 2018-19. Importantly, the fact of manifold increase from Rs. 21 Cr to Rs.47 Cr is not denied. Needless to say that to achieve such targets, one has to make various efforts and it was under this background, sales were made to small traders by attracting them by providing incentives, supply at competitive price, etc. Further to provide them easy facility to make payment also, collection points were established. For this purpose, the existing nine parties, who were the regular buyers, were requested, who, in view of the long-standing trade relations, accepted the cash received by them from these small traders and after sometime was handed over to the employee like

Shyam Sunder Rathore. Thus, there was nothing abnormal, which is a usual trade practice.

2.3 Accordingly, in the books of accounts, the appellant maintained ledger accounts of those nine parties towards regular sales made to them. In addition, separate ledger accounts (PB 25-182) were also made of these nine parties (but their title started with "CP- Name of the Party") wherein the cash collected by them on behalf of the appellant was debited, showing balance outstanding of Rs.10,522/- also. Kindly refer enclosed chart.

Since, such amount was seized and requisitioned by the Department, before it could reach to the hands of the appellant, hence the same was considered as payment of Advance Tax and hence was shown as part of Advance Tax (as prepaid taxes) being Rs. 26,97,820/- (which included Rs.22,49,500/- cash seized) and balance Rs.10,522/- outstanding in the debtors in its Audited Balance Sheet as on 31.03.2019 (PB192).

2.4 Incomplete Accounts: Undisputedly, the appellant submitted the copies of such ledger accounts (which are reproduced by the CIT(A) from pages 11-20 of order in verbatim). It may be clarified that the cash found, was realization made from the sales already made to small traders. However, in the accounts, no entries could be made on the day of survey, i.e. 29.10.2018, in as much as the same was seized before it could reach to the hands of the appellant / its accounting staff. Therefore, after the survey was concluded, the accounts were complete, by making necessary entries relating to such cash realization. Since the survey was carried out during the relevant previous year itself and accounts were yet to be completed and to be closed, the appellant was all entitled to make the necessary entries of the events happened during the year (whether before/after the survey). The authorities below were concerned with the final accounts submitted to them along with the return of income. Hence, no addition was legally possible on account of the entries remaining pending, for one reason or the other. After all, it was not a case where the transactions related to earlier years and the accounts had already been closed.

3. The clarification submitted was wrongly understood and named as retraction and afterthought.

3.1 It is submitted that right at the first occasion, Shri Shyam Singh Rathore stated that these were the cash realizations against the sales made to various buyers. A perusal of answers to Q&A 3, 4 and 6 (PB, 7 and 8) shall reveal that Shri Rathore simply submitted that he made cash collection from the parties on the instruction of his employer (i.e. assessee). He did not have much detail as he merely acted as a Cash Collecting Agent. Neither he was asked, nor he explained that against which particular transaction, the cash recovery was made. But Rathore did not know that same very parties apart from being buyers also acted as cash collecting points. Hence, it can't be asserted that Rathore affirmed making collection from these very parties on account of sales made to them. In

fact, he did not know the complete details, which is evident from repeated questions raised vide Q. 8 and 9 to reply after re collection. Further, the assessee also stated that such cash was out of sales made (AO pg.2 & 3). Similarly, the assessee simply confirmed the statement of Shri Shyam Sundar Rathod, vide answer to Q. 19 and 20 (PB 18-19 also at AO pg. 11-12), that this was the recovery of cash relating to his proprietary. He also asserted that all transactions are duly entered in the accounts, and are supported by bills and vouchers.

Even copies of ledger a/c, GST invoices and ID Proof of all the 9 buyers i.r.t regular sale were submitted. On the other hand, Shri Asif Ansari, his accountant, was on leave to attend a wedding at that point of time, which is also stated in the statements of assessee. Thus, till the stage of inquiry by the DDIT (Inv.), both, employee and the assessee, merely stated that it was recovery made towards the sales made related to the proprietary. There was no occasion for a bifurcation of recoveries towards sales made to those parties and amount collected from those Cash Collection Centers. Later on, during the course of the assessment proceedings, the assessee, after discussion with the accountant, realized to make the issue more clear and a clarification of fact must be tendered to the authorities below and in particular before the AO(DCIT, Central Circle), to clarify that the realization from the sales made to the buyers (as stated before the DDIT (Inv.) during the course of investigation/survey), was the cash realization from the small traders, fabricators, vendors etc. through the various collecting points as stated above, by the employee Shri Shyam Singh Rathore and it was not the cash realization towards sales made to those parties in regular course of business. Thus, the true and real facts are that, the realization of cash from those nine parties in their capacity as buyer, was different from the cash realization of sales to small buyers.

3.2 Moreover, the accountant Shri Ashif Ansari was not available therefore, the employee Shri Shyam Singh Rathore and the appellant both, stated the basic facts that it was the cash collection made on account of sales made to the small traders and this was the very fact coming out of the record also. It was duly and fully established by the appellant before the authorities below however, neither the Survey Team asked/went in a greater detail nor the appellant and Shri Shyam Singh Rathore (in absence of Accountant) had any occasion to distinguish such sales realization from regular sales made to 9 parties. Therefore, feeling the necessity to make this clarification and to avoid any possible confusion in view of the fact on record (that regular payment from all those parties was received through banking channels), hence it had become all the more necessary to refer to the correct facts though were already available on record (as sated above).

3.3 It is under this background only, the assessee during the course of assessment proceeding itself vide letter dt.19.09.2021 (PB185-190), made these submissions (reproduced in AO Pg5-6) and tried to clarify and justify what was stated earlier and what was the correct factual position. However, instead of

appreciating the honest intention of the assessee, such clarification was wrongly named as retraction and afterthought.

3.4 Here it is interesting and rather pertinent to note that despite the admission of reconciliation up to Rs. 12.43 lakhs by the Department, the appellant acted very fairly and stated that it was based on wrong facts and then he came out with all the correct facts after discussion with the accountant starting from afresh. One has to appreciate as to why the assessee should have reversed the stand taken by the Department in its favour. This speaks of bona fides of assessee's explanation.

3.5 The retraction means when a factual statement (normally against the assessee) is made initially and thereafter, the assessee takes a U-turn by denying that what was stated earlier was not correct. Here the case was altogether different in as much as the substantive fact of there being cash realization towards the sale made, was the same and it was only a clarification given to avoid any possible confusion.

3.6 Even assuming the employee and assessee could state something wrong, yet we cannot lose sight, and even the Hon'ble Courts have also time to time recognized this unavoidable fact of the existence of tension and surcharged atmosphere. Kindly refer Jagdish Narayan Ratan Kumar 22 TW 209 (JP), since approved by Hon'ble Rajasthan High Court. The authorities below did not appreciate that the Survey & Search creates tension in the mind of the person being searched and a layman normally used to lose confidence. It can't be denied that such action creates an anxiety and medical problem to the person being searched. Pertinently, the Kelkar Committee has also taken note of this prevailing attitude of the search parties and consequently remarked very adversely.

On the aspect of statement recorded during survey kindly refer submission GOA 3

3.7 Needless to say that the retraction means when a factual statement (normally against the assessee) is made initially and thereafter, the assessee takes a U- turn by denying that what was stated earlier was not correct. Here the case was altogether different in as much as the substantive fact of there being cash realization towards the sale made, was the same and it was only a clarification given to avoid any possible confusion.

4. Source established being sales made - No scope for suspicion:

4.1 Right from the very beginning, the assessee explained that the subjected amount of cash of Rs.22.47 lakh was out of realisation of the sales made during the subjected period. The appellant admittedly declared sales of Rs.46.85 crore (as per audited trading account) (PB-II 198) as against Rs.21.92 crore declared last year. Copies of the ledger account of various collecting points (PB 25-182) reproduced at pages 11-20 of order by CIT(A), clearly show that the appellant

made sales to different small trade parties which was duly supported by GST invoices. Each and every sale transaction was supported by GST invoice. Copies of invoices providing identity of the buyers were also submitted (PB25-182). Identity of the buyer was fully established/ in as much as the GST invoice issued shows the complete name and address of the buyer with his mobile number and all other relevant details being the description of the goods sold, the mode of transportation and other details. The periodical GST return for the month of June 2018 (PB-II 215-219)(submitted as an example) shows that invoices were raised in normal course of business much prior to the date of the survey i.e. 29.10.2018. The same was duly recorded in the sales ledger account as well. Thus, one fails to understand how explanation furnished by the assessee could be an afterthought or misleading or a case of fake story, as unfortunately the Id. CIT(A) repeatedly alleged but absolutely without any basis/ supporting evidences. Such a practice of abusing the citizen, has to be deprecated.

4.2. Sales declared before GST Department: Admittedly sales so made suffered GST and it is not the case of the Department that GST authorities have disbelieved the claimed sales. Interestingly, the AO itself happily taxed the profit arising from such sale offered through the net profit in the ROI. Once the sales has been declared, stands duly and fully established, assessed by the GST department and even accepted and taxed by the Income Tax Department, the cash realization therefrom, could not have been denied in any manner whatsoever. There is absolutely no convincing reason provided by the authorities below as why not to accept the sales so made. Very pertinently, there is absolutely not a single word whispered doubting the claim of the sales made. What to talk of establishing otherwise.

4.3 Kindly refer Smt. Harshila Chordiya vs. ITO (2008) 208 CTR 208 / 298 ITR 349 (Raj) (DC 1-8) wherein it was held that the Tribunal has found as a fact that the assessee was receiving money from the customers against which delivery of vehicles was made – such cash deposits are self – explanatory and would not attract S. 68/69A – Therefore, no addition could be made. The relevant extract of the said judgement is reproduced hereunder:

“23. So far as question No. 2 is concerned, apparently when the Tribunal has found as a fact that the assessee was receiving money from the customers in hands against the payment on delivery of the vehicles on receipt from the dealer the question of such amount standing in the books of account of the assessee would not attract Section 68 because the cash deposits becomes self-explanatory and such amounts were received by the assessee from the customers against which the delivery of the vehicle was made to the customers. The question of sustaining the addition of Rs. 6,98,000 would not arise.

24. We, therefore, hold that no addition was required to be made in respect of Rs. 6,98,000, which was found to be the cash receipts from the customers and against which delivery of vehicle was made to them.”

6. No addition permissible merely on suspicion: It is well settled that suspicion howsoever strong, cannot take place of reality. Thus, the impugned additions

have been made merely on suspicion, impugned addition deserves to be deleted here itself. Kindly refer Dhakeshwari Cotton Mills v/s CIT (1954) 26 ITR 775 (SC), wherein it is held as under:

“Assessment—Validity—ITO is not barred by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but in making the assessment under sub-s. (3) of s. 23 the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all—There must be something more than bare suspicion to support the assessment under s. 23(3)—ITO and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion—In arriving at its estimate of gross profits and sales Tribunal should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the ITO if it is intended to make the estimate on the foot of those enquiries”

7.1 Complete Accounts Maintained: While examining the source of the cash deposits, the best and valid evidence normally, is the regularly maintained books of accounts. It is submitted that undisputedly & admittedly the assessee has maintained all the books of account consisting of cash book, ledgers and stock register etc. The entire sales, purchases and expenses are fully vouched. The accounts are audited u/s 44AB of the Act (PB 199-214). The cash book was maintained on day-to-day basis showing all the receipts/incoming and expenses/outgoings. Further all the required details from books of account were duly submitted before the AO during the subjected assessment proceedings. Hence, there was no reason as to why the AO should have doubted.

7.2 It is now well settled that where assessee has regularly maintained books of accounts is an admissible evidence u/s 34 of the Indian Evidence Act, 1872. This holds good more particularly, when the Id. AO did not disbelieve or did not doubt or even did not reject the same u/s 145 of the Act.

8. Regular sale treated as unexplained cash credit- Double Taxation:

8.1 Once the sale is declared as income by the assessee, the question of treating the same amount as unexplained money u/s 69A of the Act results in double addition which is not permissible in the eyes of law.

8.2 Reliance is placed on:

8.2.1 Very recently Hon'ble Jurisdictional ITAT-Jaipur Bench in the matter of Rukmani Jewellers Private Limited Vs. DCIT, Circle-04, Jaipur (ITA. No. 539/JP/2023, Dated: 20/12/2023) (DC 9-21) held as under:

“13. Thus, considering all the facets of the case the bench noted that the revenue did not pinpoint any defects in the books of accounts, quantitative records available with the assessee, cash book and invoice presented in the assessment proceedings. Merely the assessee unable to record the mobile number it does not make the sale as non-genuine

and we find support of this contention from the decision of the jurisdictional high court in the case of Smt. Harshil Chordia Vs. ITO reported at 298 ITR 349 (Rajasthan-HC)(supra) we do not find any merits on the finding of the Id. AO and that of the Id. CIT(A) in disbelieving the sales recorded by the assessee as the sales is in course of business is duly supported by the invoice and delivery of the goods recorded in the books of the assessee. The cash is generated out of the stock already on record and thus the sales made by the assessee company is genuine sales recorded in the books of account. All the details required to prove the sales made by the assessee were provided in the assessment proceedings. Now on the part of the receipt of the cash from the customer the jurisdiction high court judgement in the case of Smt. Harshil Chordia Vs. ITO reported at 298 ITR 349 (Rajasthan-HC) held that....”

8.2.2 In the case of Rachit Aggarwal (Prop.), Ashok Kumar Gupta & Co. vs ITO (2024) 162 taxmann.com 49 (Chandigarh - Trib.), the Hon'ble ITAT held as under:

“Section 68 of the Income-tax Act, 1961 - Cash credit (Others) - Assessment year 2017-18 - Assessee was engaged in wholesale trading of karyana goods, specifically sugar, khandsari, jiggery, cereals, etc. - Business of assessee was very old and as a trend of trade, assessee in routine and every year received cash against cash sales - Same was deposited in current account with bank and amount in bank was used for paying off creditors - Assessing Officer found that cash deposits made in bank account of assessee remained unexplained and, accordingly, he made addition of such cash deposits to income of assessee under section 68 - It was noted that cash deposit in bank on account of cash sales and cash realizations from debtors was a normal feature of assessee's business and that cash deposit figures of October and November were a little higher due to cyclic variations, mainly on account of festivals and marriage season in Northern India during that time - It was also noted that cash deposits in November mainly came from opening cash in hand which was duly supported by fact that assessee throughout year maintained corresponding cash in hand balances on every first day of preceding months of financial year - Whether, on facts, impugned addition made under section 68 would not be sustainable - Held, yes [Paras 8.2, 8.3, 14.4 and 14.5] [In favour of assessee].”

8.2.3 The Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax v. Agson Global (P.) Ltd.* [2022] 134 taxmann.com 256 (Delhi) has held that:

“Section 68 of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2017-18 - Assessee-company was engaged in business of selling dry fruits - Post-demonetization, assessee deposited cash amounting to Rs. 180.53 crore in its bank accounts - Assessing Officer held that cash deposits made by assessee represented unaccounted income and accordingly, made additions - Tribunal analysed data pertaining to cash sales and cash deposits made in relevant assessment year as against two earlier assessment years and noted that in year of demonetization percentage increase in sales was less than earlier year - He, thus, held that growth in sales compared to earlier two years showed similar trend, and it could not be said that assessee had booked non-existing sales in its books post-demonetization - Furthermore, revenue made no allegation that assessee had backdated its entries - Whether since assessee placed material on record that cash deposits made with banks more or less corresponded with cash sales, it could only be concluded that there was growth in assessee's business and impugned addition was to be deleted - Held, yes [Paras 16.9 and 17.6] [In favour of assessee]”

Thus, the assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again.

9. No evidence found-AO failed to discharge its onus:

9.1 Very pertinently, despite there being Survey, the Department failed to find an iota of evidence showing suppression of the sale resulting into generation of the unaccounted cash. Undisputedly no inquiry was made even from a single small trader, despite having a complete name and address on record. Hence, for the inaction of the Department, the assessee cannot be made responsible.

9.2 In any case, even if it is assumed that the assessee stated during the course of its statement does not find favor, yet however, the very fact of sales made to small traders, supported by voluminous evidences, and cash collection against such sale, can't be denied and the Id. AO, except rejecting the assessee's contention, failed to disprove and bring any contrary evidence on record, failing to discharge the onus shifted to him.

9.3 Further the allegation by the Id. CIT(A) (at page 20) that after seizure of cash, the assessee did not make any sale to these small traders, is nothing but a mere suspicion and without appreciating the concern of the assessee, who had naturally to stop making sale to these parties the moment, his huge amount of cash was seized by the Department. It decided to stop making cash sale to small traders and to better deal with the existing regular buyers only. Reliance is placed on Dhakeshwari Cotton Mills v/s CIT (supra).

10. Availability of funds-not denied: The Hon'ble High Courts and the Tribunals in different factual situations have considered the availability of the cash when the Dept. failed to establish that such cash (which was available on account of withdrawal from the banks or sale proceeds of the goods traded, the jewellery and so on) stood utilized elsewhere and have held that no addition can be made.

10.1 In the instant case, in view of the undisputed fact of sufficient cash availability from the sales, immediately prior to the subjected bank deposits, the AO was not supposed to doubt the explanation of the assessee, more particularly, in view of the following cases, which is a settled law now:

10.2.1 Kindly refer CIT v/s P.V. Bhoopathy (2006) 205 CTR 495 (Mad) held:
"Appeal (High Court)—Substantial question of law—Income from undisclosed sources—AO did not accept various sources of income explained by the assessee and made additions under ss. 68 and 69 in respect of difference between the investments and the sources accepted by him—Tribunal accepted the explanation of the assessee vis-a-vis availability of funds with the assessee from the sale proceeds of jewellery belonging to his mother-in-law, receipt from a party and also the amount of opening balance and savings from earlier years and deleted all the additions—Findings recorded by the Tribunal are purely findings of fact—There is no reason to interfere with the same—No substantial question of law arises—CIT vs. Pradeep Shantaram Padgaonkar (1983) 143 ITR 785 (MP) relied on"

10.2.2 Also refer CIT vs Kulwant Rai (2007) 210 CTR 380 (Delhi) para 16-17
Held "Search and seizure—Block assessment—Computation of undisclosed income—Cash found during search—Assessee had withdrawn Rs. 2 lakh from bank some time back and there is no material with the Department to show that this money had been spent and was not available with the assessee—Tribunal has found that the withdrawals shown by the assessee are far in excess of cash found during the course of search— In the absence of any material to support the view that the entire cash withdrawals must have been spent by the assessee, Tribunal was justified in holding that the addition was not sustainable—Order of the Tribunal does not give rise to a substantial question of law"

In this case, cash was found on search carried out on 04.02.2001 and was explained to be out of the cash withdrawal in Dec-2000.

10.2.3 Also refer Anand Prakash Soni v/s DCIT (2006) 101 TTJ 97 (Jd) para 5-6:
"Search and seizure—Block assessment—Computation of undisclosed income—Cash found during search—Assessee is entitled to furnish cash flow statement to explain the transactions when no books of account are maintained—In such circumstances it becomes the duty of the AO to verify the balance sheet and cash flow statement with the necessary material including the details already filed along with the returns in the past— Assessee explained that the cash found at the time of search was withdrawn from the bank some time back which was partly used for purchasing gold and part of the amount was given by the assessee to his wife—There is nothing to suggest the utilization of the withdrawal amount elsewhere—Said withdrawal is duly reflected in the cash flow statement and closing cash balance is more than the amount found at the time of search—Thus, addition cannot be sustained"

11. Section 69A not applicable:

11.1 The provisions of S.69 are reproduced as under:

"69A.Unexplained money, etc. : Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

11.2 From the analysis of the above S.69A reveal that addition of amount can be called for when the said sum is found not recorded in the books of accounts maintained by the assessee and the assessee offers no explanation about the nature and source of such amount. But undisputedly in the case of appellant there are numerous evidences produced before lower authorities and proper explanation has been accorded, as discussed in great details in this submission earlier, hence, there appears no reason to invoke S. 69A of the Act.

Hence the entire impugned addition based on misconception of Law, misreading of facts and merely based on suspicion, deserves to be deleted in full.

GOA 3: Rs. 1,34,212/- being the alleged excess stock:

Facts: This ground is related to addition of excess physical stock of Rs. 1,34,212/- alleged to found during the course of survey proceedings u/s 133A of the I.T. Act, 1961. On this aspect the Id. AO noted as under:

"During the course of survey proceedings, physical verification of stock was made and it was found that the physical availability of stock on the date of survey was at Rs.4,28,09,129/-, where as per the books of account the stock as on date of survey was at Rs.4,26,74917/-. Therefore, the stock was found excess by an amount of Rs. 1,34,212/-. The assessee has accepted the above difference of stock of Rs.1,34,212/- and offered the same during the course of survey proceedings for taxation. Accordingly, he was also show caused during the course of assessment proceedings that as to why an addition of Rs.1,34,212/- should not be made. In response the assessee has made his submission which have been gone through but not found acceptable due to the reason that no supporting evidence/reconciliation statement has been furnished by the assessee during the course of assessment proceedings. Accordingly, an addition of Rs. 1,34,212/- is made to the total income of the assessee as his undisclosed income for the year under consideration. Penalty proceedings u/s 270A of the I.T. Act, 1961 are also being initiated separately".

The appellant during the appellate proceeding made submission as under:-

"b) Grounds for appeal against addition of excess physical stock of Rs. 1,34,212 Also at the time of search almost 2000 tons of material was verified in just 2 days and based on that A.O. has added Rs. 1,34,212/- as value of excess stock in total income. In this regard I want to say that due to huge volume of stock there might be any calculation mistake due to which such difference appeared otherwise there was no difference between physical stock and stock as per books of accounts."

Unfortunately, in the first appeal Id. CIT(A) also confirmed the additions at pg 21 in following words:

"5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The stock was physically taken in the presence of the assessee during the course of survey proceedings u/s 133A of the I.T.Act,1961 and difference of Rs.1,34,212/- was found and during the course of assessment proceedings, the appellant was unable to substantiate his claim with supporting evidences and reconciliation statement. Further during the time of survey proceeding, the appellant had surrendered this as his income.

I do not find any merit in the submission of the appellant and confirm the addition made by the AO of Rs. 1,34,212/- as undisclosed income of the assessee on account of excess stock found during the survey proceedings. Thus, grounds of appeal 2 is hereby rejected."

Hence, this ground.

Submission

1. At the outset, there is no hesitation to say that the Id. AO has proceeded on mere suspicion, surmise and conjecture. His approach was based on misconception of law and fact and his own way of reading the facts which is not at all in accordance with the settled accounting practices and provisions of law. Even the facts have been twisted and misread to suite his own purpose. This is evident from the further submissions made herein after.

2. Submission before AO-ignored: The assessee vide its letter dt. 20.09.2021 (PB185-190) submitted as under:

"During the survey proceedings stock was found excess to the tune of Rs. 1,34,212/-, as during that day survey was conducted on my firm as well as my sister concern M/s Fakhri Steel Traders whose stock was also lying along side of my stock, as you are aware I deal in heavy articles made of iron and steel, due to this almost 900 metric tons of my stock was lying there with equally big 1200 tons of stock of Fakhri steel traders, therefore there ought to be some clerical error in taking stock, or noting down the spoken words. Even if we take this stock into monetary terms it amounts to almost 0.24% of total stock kept by me. There is no denying the fact that I have agreed to the stock being calculated by the team conducting the survey and I have affixed my signature on that stock sheet, but it was a very tiring day for me as I was 64 years old and being alongside the survey team had completely exhausted my energy therefore, I might have signed that stock sheet that to during late night hours."

The Id. AO however alleged that assessee failed to furnish supporting evidence/reconciliation statement during the course of assessment proceedings but surprisingly the Id. AO ignored the contentions made by assessee and did not made any adverse remark thereon. The assessee contend that on 29.10.2018, the survey team made physical verification of stock of assessee's stock and also sister concern, M/s Fakhri Steel Traders. Both concern deal in heavy iron and steel articles, resulting in a large combined stock of approximately 2,100 metric tons. It's possible that during the inventory process, there might have been an error in physically verification. Furthermore, assessee being 64 years old man and was present throughout the lengthy survey could have understandably caused fatigue and confused state of mind which fact cannot be ignored. Also, he had mentioned in his submission before Id. AO that possibility of signing the stock sheet during the late hours and potential exhaustion might have led to an oversight.

3. Valuation of stock wrongly done : Without prejudice to above, it is further submitted that, the very calculation done by Survey Team (also recorded in statements of assessee u/s 131 dt. 31.10.2018 in Q.21 Pg. 10-11) (PB 19-20) for arriving at the figures of Rs. 1,34,212/- is completely wrong on facts and in law both. The conclusion of the AO based thereon that there was excess stock of Rs. 1.32 lakhs is completely erroneous for the reason that rate adopted by Survey team is without any justification. Kindly refer the table here under:

1	2	3	4	5
Sr. No.	Particulars	As per Physical verification	As per Books of accounts of assessee	Variations (4-3)
a	Weight (in kg)	9,93,029	9,92,115	914
b	Amount (in Rs)	4,28,09,129	4,26,74,917	1,34,212
c	Rate per Kg (b/a)	43.11	43.01	0.10

From the above table it can be seen that the rate of Rs. 43.11/Kg for valuation is totally without any justification nor does AO has discussed or justified in the order. Alternatively However, if the rate of Rs.43.01/Kg of assessee is made basis for computation the difference would be of meager amount of Rs. 39,311/- only which comes out to be 0.09% considering the total value of stock being Rs.4.26 crores. In any case, the difference is only because of valuation, and very immaterial difference in the quantity being only 0.09% of total value of stock. The valuation does not bring any income, which is the law settled.

4. The AO has not rejected the books of accounts under S. 145 of the Act. He even did not point any adversity in the Tax Audit report. Therefore, he could not make any variation in the declared results or addition to the declared income. Given the above facts, there was no justification of assuming the sale of extra stock of 914 Kgs without the availability thereof which is nothing more than a suspicion. The AO has not even quoted the particular provision of law which has conferred the jurisdiction upon him to make the impugned addition of Rs. 1,34,212/-. Kindly refer judicial citations in support in this submission.

5.1. AO cannot blindly rely upon a statement alone:

The authorities below even violated the binding CBDT Circular No. 286/2/2003 dt. 10.03.2003 and the Budget Speech, 2003 by the Finance Minister please be referred, which is reproduced herein below :

“Instances have come to the notice of the Board where assessee have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assessee while filing returns of income. In these circumstance, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments, Similarly, while recording statement during the course of search & seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment.”

5.2 The said instruction was relied upon in the cases of R. K. synthetics 30 TW 228 (Jd) , ITO vs. Suresh Chandra Koolwal (2004) 32 TW 23 (Jp) and also CIT v/s Shri Ramdas Motor Transport 238 ITR 177(AP).

5.3 Reliance on statements of assessee wrongly placed- No evidentiary value of Survey Statement: It is well settled law that as per section 133A, there is nothing which suggests that a statement can be recorded on oath before the commencement of Survey or during Survey. However, if recourse is taken to section 131(1), during the survey, a statement can be recorded on oath, as the powers to record a statement on oath are vested in the authority u/s. 131(1) read with section 133(6) and in the circumstances specified u/s. 133(6) only. Section 133A does not empower any ITO to examine any person on oath, so statement recorded during Survey u/s 133A has no evidentiary value and any admission made during such statement cannot be made basis of addition. Reliance placed CIT v. Khader Khan Son (2008) 300 ITR 157 (Mad.) (HC). Affirmed by Apex Court in, CIT v. S. Khader Khan Son (2012) 210 Taxman 248(2013) 352 ITR 480 (SC) / (2012) 25 taxmann.com 413 (SC).

Hence the impugned addition of Rs. 1,34,212/- being the alleged excess stock deserves to be deleted in full.

GOA-4 S.115BBE wrongly invoked:

Facts: The Id. AO at pg. 13 of the order noted as under:

“Therefore, considering the facts and circumstances of the case and also the retraction made by the assessee from his earlier statement recorded u/s 131 of the I.T. Act, 1961, the version of the assessee is not found acceptable and therefore, it is considered that the amount of Rs.22,49,500/- found from the possession of Shri Shyam Singh Rathore and belongs to Shri Turab Ali Bohra is the unexplained money of Shri Turab Ali Bohra for which he has not been able to satisfactorily prove the sources thereof. Accordingly, an addition of Rs.22,49,500/- is being made to the total income of the assessee on substantive basis by considering the same as his unexplained money u/s 69A r.w.s. 115BBE of the I.T. Act, 1961 and brought to tax accordingly. Penalty proceedings u/s 271AAC of the I.T. Act, 1961 are also being initiated separately on the above discussed issue.”

Thus, the Id. AO invoked S.115BBE probably for the reason that the addition of Rs.22,49,500/- on account of cash seized from employee treating the same unexplained money u/s 69A of the Act.

Hence this ground.

Submission:

1. Invoking S. 115BBE of the Act is without jurisdiction: There is absolutely no case made out by AO to invoke sec.115BBE. Admittedly the additions so made which are under challenge, are not the income from other sources but by AO's own admission, these are the cases of business income only. Once it is so, S.115BBE cannot be invoked.

2. The entire impugned addition of Rs. 22.49 lakhs though not at all admitted but once made, could not have been assessed as income under the head Income from Other Sources. Even the AO did not very specifically assessed such income as Income From Other Sources. Once the AO himself did not dispute that it was a case of business income, he could not have invoked S. 115BBE. Further it is an admitted fact that the entire cash found in possession was out of sales made by appellants. The income thus, if any, arising could be assessed only as a business income but not as Income From Other Sources (these submissions are without prejudice to our basic contention that the entire addition itself was bad in law and without jurisdiction and for various reasons).

3. AO can't change head of income:

3.1 It is submitted that S.115BBE specifically refers to the income which are of the nature as referred in S. 68,69,69A of the Act being the income from other sources. Therefore, subjected income has essentially to be classified u/s 14 of the Act as Income From Other Sources and that is possible only when the income is not capable of being classified under any other head being income from salary, house property, capital gain, business or profession.

3.2 A combined reading of S. 14 with S. 56 of the Act makes it evidently clear that for the assessment of an income it must have to be classified under four heads of income as enumerated u/s 14 and if it doesn't fall under any specific head of income as per item A to E of S. 14, such income has to be assessed under the residuary head of income i.e. item F of S. 14. Therefore, income added u/s 68 or 69 etc. has to be given a specific head in terms of S. 14, 4.3 The Hon'ble Supreme Court in case of Karanpura Development Co Ltd vs. CIT [1962] 44 ITR 362 (SC) held that these heads are in a sense exclusive to one another and income which falls within one head cannot be brought to tax under another head. Further, the Hon'ble Supreme Court in case of Nalinikant Ambalal Mody v CIT [1966] 61 ITR 428, has held that whether an income falls under one head or another is to be decided according to the common notions of practical man because the Act does not provide any guidance in the matter. Of course, lot of judicial precedents are available to a taxpayer to arrive at a conclusion about determination of appropriate head of income.

4.ON MERITS: It is further submitted that whatever, was assessed by AO was nothing but business income only and it cannot be termed as excess/undisclosed/unaccounted Income for the simple reason that cash of Rs.22,49,500/- Seized by SHO, Shambhupura, Chittorgarh on 29.10.2018 during verification & interception found in the possession of Shri Shyam Singh Rathore, was the cash realization collection of the sales made Moreover, the assessee admittedly accounted for such sales in regularly maintained books of account and direct documentary evidences were furnished before lower authorities. Consequently, it cannot be said that there was some excess shortage/undisclosed/unaccounted income, etc. found by Survey team.

5. Binding judicial guideline - covered issue: The Hon'ble Rajasthan High Court as also Tribunals whose decision are binding upon the assessing officer as a juridical precedence have also been consistently holding so. Kindly refer:

5.1 The Hon'ble Rajasthan High Court in case of CIT vs Bajargan Traders (2017)86 taxman.com 295(Raj.) (DC 22-25) has held that when the assessee is dealing in sale of food grains, rice and oil seeds and the excess stock which is found during survey is stock of rice then, it can be said that investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. Therefore, the investment in the excess stock is to be brought to tax under head "business income" and not under the head income from other sources. It was held as under:

"2.10. We have heard the rival contentions and perused the material available on record. During the course of survey, the assessee has surrendered an amount of Rs. 70,04,814/- towards investment in stock of rice which had not been recorded in the books of accounts. Subsequently, in the books of accounts, the assessee has incorporated this transaction by debiting the purchase account and crediting the income from undisclosed sources. In the annual accounts, the purchases of Rs. 70,04,814/- were finally reflected as part of total purchases amounting to Rs. 33,47,19,658/- in the profit and loss account and the same also found included as part of the closing stock amount to Rs. 1,94,42,569/- in the profit/loss account since the said stock of rice was not sold out. In addition to the purchase and the closing stock, the amount of Rs. 70,04,814/- also found credited in the profit and loss account as income from undisclosed sources. The net effect of this double entry accounting treatment is that firstly the unrecorded stock of rice has been brought on the books and now forms part of the recorded stock which can be subsequently sold out and the profit/loss therefrom would be subject to tax as any other normal business transaction. Secondly, the unrecorded investment which has gone in purchase of such unrecorded stock of rice has been recorded in the books of accounts and offered to tax by crediting the said amount in the profit and loss account. Had this investment been made out of known source, there was no necessity for assessee to credit the profit/loss account and offer the same to tax. Accordingly, we do not see any infirmity in assessee's bringing such transaction in its books of accounts and the accounting treatment thereof so as to regularize its books of accounts. In fact, the same provides a credible base for Revenue to bring to tax subsequent profit/loss on sale of such stock of rice in future.

2.11. Having said that, the next issue that arises for consideration is whether the amount surrendered by way of investment in the unrecorded stock of rice has to be brought to tax under the head "business income" or "income from other sources". In the present case, the assessee is dealing in sale of foodgrains, rice and oil seeds, and the excess stock which has been found during the course of survey is stock of rice. Therefore, the investment in procurement of such stock of rice is clearly identifiable and related to the regular business stock of the assessee. The decision of the Co-ordinate Bench in case of Shri Ramnarayan Birla (supra) supports the case of the assessee in this regard. Therefore, the investment in the excess stock has to be brought to tax under the head "business income" and not under the head income from other sources.

In the result, ground No. 1 of the assessee is allowed."

5.2 The Hon'ble ITAT Jaipur, Jaipur in its decision in the case of Shri Ram Narayan Birla in ITA No. 482/JP/2015 dated 30.09.2016 has held that unrecorded/excess investment or expenditure surrendered during the course of the survey has to be assessed as business income only and not under the head income from other sources. The Hon'ble ITAT Jaipur followed the case of Choksi Hiralal Mangal vs. DCIT 131 TTJ 1 (Ahmedabad).

There apart, there are many decisions available taking such a view in favor of the assessee on dated 22.09.2021 when the subjected assessment was framed by the AO. The above very relevant and crucial facts and the legal position was well available before the AO and there is nothing on record to show that he did not consider the same.

5.3 In the case of Shri Lovish Singhal vs ITO (ITA No 142 to 146/Jodh/2018 for AY 2014-15 dated 25.05.2018), the Jodhpur Tribunal applying the proposition of law laid down by the Hon'ble Rajasthan High Court in the Bajargan Traders (supra), held that the lower authorities were not justified in taxing the surrender made on account of excess stock and excess cash found U/s 69 of the Act and accordingly held that there is no justification for taxing such income u/s 115BBE of the Act.

5.4 All the above cited decisions were recently followed by this hon'ble bench in the case Rekha Shekhawat vs. PCIT (2022) 219 TTJ 761(JP) (DC 26-30).

In view of the facts & circumstances, judicial guidelines and the statutory provisions, the addition of Rs. 22.49 lakhs could not be subjected to S. 115BBE of the Act.

GOA-6 Charging of Interest u/s 234A & 234B and also 244A: is consequential and kindly be decided accordingly.

The above submissions have been made based on the instructions and the information provided of/by the client."

6. In addition to the above written submission, the Id. AR appearing on behalf of the assessee submitted that ;

"GOA 2: Addition of Rs.22,49,500/- on account of unexplained money u/s 69A: (AO Pg. 7/CIT(A) Pg. 10, Pr. 4.2.6)

12. During the course of hearing, the Hon'ble Bench directed to submit copies of GST returns, etc. of which papers were submitted, and also tabulated, by way of 3rd paper book at Pg. 235 to 260. When asked, it was submitted that GST returns for the month of June, 2018 was filed on 07.08.2018 as evident from 3rd PB-249, further GST-R 3rd for the month of June, 2018 also shows the date of

filling of 03.08.2018. This was based on the various invoices issued for the month of June, 2018 for the total sale proceeds of Rs. 40,27,510.70/- and taxable value of Rs. 34,13,143.94/-. Duly reconciles with the summary of the complete invoices issued for this month 3rd PB - 235 to 241. For the month of July also, similar type of detailed ledger account of the various GST invoices was submitted. By these facts, it is established that the GST invoices were raised genuinely in the month of June & July, 2018, etc. and even the GST was paid/adjusted and the related GST-R 3B periodical returns were also filed in time, which was much before the survey/ requisition in October, 2019. The Ld. DR took support from the statement of the employee Shri Rathore and the assessee, reproduced in the assessment order and that both agreed that the sales consideration related to the sales made to these parties. For such contention, in fact, fully support the case of the assessee that the appellant made sales to these parties and also made collection from these very parties on account of the total sales of Rs. 22.47 lakh made to small fabricators, etc. Since these parties were common, hence there was a confusion to Department. Moreover, the statement were recorded in the absence of accountant (Q&A 11, PB-13), all these things were clarified on 19.09.2021 and we have elaborated in our WS. Answers given during requisition and survey statements cannot be expected to be correct with a mathematical precision as the presence of surcharged atmosphere cannot be ruled out. The appellant was 64 years at that time, yet the basic and substantive fact that it was the recovery made from these parties was duly explained.

Further as directed, we are also submitting here with a chart, by taking some exemplary invoices raised in case of all the 9 parties and matching the same with the GST-R returns etc. at 3rd PB- 234A (enclosed herewith)

13. Onus on the AO- not discharged:

13.1. What is apparent is Real – Onus not discharged: It is a settled law that what is apparent is real unless controverted. The onus lay upon the person, who alleges that what is apparent is not real. Kindly refer CIT (Central) v/s Daulat Ram Rawatmull (1973) 87 ITR 349 (SC), followed in CIT v/s Bedi & Co. Pvt. Ltd. (1998) 230 ITR 580 (SC).

13.2 The Id. DR could not speak a single word in denial that the sale of Rs. 22.47 lakh was duly and fully established as stated in our written submissions. If so, the Id. DR did not explain as to where cash generated has gone or stood utilized elsewhere so as to doubt the availability of the same on dt. 29.10.2018, when found in possession of Shri Rathore. The appellant entered all the sale proceeds in the regularly maintained books of account which included cash book also and there was sufficient cash in hand available on 28.10.2018, just prior to the day of seizure. Thus, this apparent state of affair was to be established as unreal, which the revenue has completely failed.

14. Further S. 69/ 69A requires an explanation from the assessee and once given, it has to be objectively tested. A good proof cannot be converted into no

proof. Moreover, discretion conferred upon the AO has to be exercised judiciously as held in CIT vs Smt. P.K. Noorjahan (1999) 237 ITR 0570 (SC):

“As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in Parliament, the word "shall" had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word "may". This clearly indicates that the intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under s. 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. There is no error in the said finding recorded by the Tribunal. There is thus no merit in these appeals and the same are accordingly dismissed. — CIT vs. Smt. P.K. Noorjahan (1980) 15 CTR (Ker) 138: (1980) 123 ITR 3 (Ker) :42R.1622, affirmed.”

GOA 3: Rs. 1,34,212/- being the alleged excess stock:

6. During the course of hearing, the Hon'ble bench directed to file copy of inventory, if any. However, to the best of our knowledge, no such inventory was drawn by the survey team on 31.10.2018 & 01.11.2018. This makes it clear that the survey team and the AO has proceeded on mere suspicion, surmise and conjecture. Also, from the statements recorded, it appears that the stock taking was done in the night of 31.10.2018 – refer Q/A.11 (PB14). Moreover, on 01.11.2018, it is mentioned that at 09.30 again statement was recorded after inventory verification by the Survey Team.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1	Copy of return of income filed u/s 139(1) of the Act for the A.Y 2019-20 dt. 29.10.2019 alongwith computation	1-5
2	Copy of statement of Shri Shyam Singh Rathore recorded u/s 131 on dt. 29.10.2018	6-9

3	Copy of statement of the assessee Shri Turab Ali Bohra recorded u/s 131 on dated 31.10.2018.	10-24
4	Copy of ledger account of cash collection point of assessee along with sale invoices issued to small traders, fabricators and their ID proof.	25-182
5	Copy of written submission filed before CIT(A) dt. 27.07.2023 in response to notice u/s 250 dt. 12.07.2023	183-184
6	Copy of acknowledgement of Reply dt. 20.09.2021 in response to notice u/s 142 dt. 16.09.2021	185-190
6	Copy of Audited Balance Sheet, Trading A/c and Profit & Loss statement for the F.Y 2018-19 (AY 2019-20) along with the accounts (Relevant extract only)	191-198
7	Copy of Tax Audit Report in Form 3CD for the F.Y 2018-19 (AY 2019-20) (Relevant extract only)	199-214
8	Copy of GST Return being details of outward supplies made (Form GSTR-1) for period June 2018	215-219
9	Copy of GST Return Summary of outward and inward supplies made (Form GSTR-3B) for period June 2018	220-222
10	Copy of GST Reconciliation statement (Form GSTR-9C) for FY 2018-19	223-234

Another volume

S. No.	Particulars	Page No.
1	Copy of Invoices/Vouchers list B2C (Small) for the period of June-July 2018	235-248
2	Copy of GST Return being details of outward supplies made (Form GSTR-1) for period June 2018	249-258
3	Copy of GST Return Summary of outward and inward supplies made (Form GSTR-3B) for period June-July 2018	259A-260

Case laws relied upon:

S. No.	Particulars	Pg. No.
1	Smt. Harshila Chordiya vs. ITO (2008) 208 CTR 208/298 ITR 349 (Raj.)	1-8
2	Rukmani Jewellers Pvt. Ltd. vs. DCIT, Circle-04, Jaipur (ITA No. 539/JP/2023)	9-21
3	PCIT vs. Bajargan Traders (2017) 86 taxmann.com 295 (Raj.)	22-25
4	Smt. Rekha Shekhawat vs. PCIT (2022) 219 TTJ 761 (JP)	26-30

8. The Id. AR of the assessee in addition to the written submissions so filed argued that SHO found the cash of Rs. 22,49,500/- with the employee of the assessee his statement was recorded and in that statement the employee of the assessee categorically admitted and submitted that the amount found in his possession is the realization of trade debtors of the assessee. This contention itself proves that the cash found in possession of the assessee is of the realization of trade debtors even the employee has given the names of the parties from whom the cash is collected the details of party-wise cash collected is placed on record at page 7.

During the statement recorded on 29.10.2018 before the Income Tax Officer investigation the source of cash has already been explained by the employee Sh. Shyam Singh Rathore. The Id. AR of the assessee placed on record all the details related to the sales made and the corresponding cash received on account of that cash sales. Lower authorities have disbelieved this fact merely on the ground that the cash were collected from different 9 parties. The assessee considered that cash collection center being his regular parties of the assessee, delegated by the assessee to collect the cash on his behalf. As is obvious Shri Shyam Sunder has given the statement based on the facts and he did not support his contention of cash collection center under the pressure of department did not categorically

and specifically that facts. Further details of sales bills for which the realization is recorded in the books of the assessee and that cash both cannot be added in the hands of the assessee. The Id. AR of the assessee filed a copy of sale of goods ledger and indirect tax return wherein invoices for which the realization is received is duly recorded. Thus, all these records categorically proved that the assessee is in receipt of proceeds of the sales reflected in the books of accounts and making separate addition of Rs. 22,49,500/- u/s 69A of the Act is duplicated addition of the sales recorded in GST return for the month of June, July, August and September filed.

During the course of hearing it was also contended that the proceeds of sales found in possession at the verification made by SHO is nothing but realization of that sales made by the assessee from those small parties and they have made the deposit to the collection center designated by the assessee. There is no dispute as to realization has been received but only dispute is that parties have acted on behalf of the assessee as cash collection centre.

As regards the excess stock found, the Id. AR of the assessee submitted that it is the difference of 0.24% in terms of value of holding of the stock and it is practically impossible to weigh stock 2000 metric tone

and that too with accuracy and the difference has alleged difference of Rs. 1,34,212/- is required to be ignored.

As regards ground No.4, regarding chargeability of cash as per provisions of section 115BBE of the Act, the Id. AR of the assessee relied upon the decision of Rajasthan High Courts as referred to in the written submissions.

9. Per contra, the Id. DR relied upon the finding of recorded in the respective orders of lower authorities. He vehemently argued that the assessee came up with two stories both narrate to the difference on facts and consequence of each is different. The Id. DR submitted that when statement of employee of the assessee recorded, he has given the names of the parties who have given the money to the assessee. Thereafter the assessee in the assessment proceedings after considerable time has changed whole basis of the statement and submitted that those parties whose names written in the statement on 29.10.2018 are the cash collection center. There is no retraction to the disclosure made by the assessee at the time of search and therefore, the contentions of the assessee raised at the first time when investigation done was different and at the time of assessment proceedings was also different. Since that

contentions are on different facts and the subsequent verification to substantiate the cash found also differs. As is evident from the assessment order that based on the contention raised at the time of recording of statement before the DDIT(Investigation). He was considered for the relief of Rs. 12,43,240/- and for balance 10,04,580/- was considered as unexplained only but since the assessee has changed the whole basis which was advanced before DDIT at the time of assessment, the Id. AO has disbelieved the theory of cash collection center and added the whole amount as unexplained money u/s 69A of the Act. The theory of recording sales in the GST return filed at the stage, were not contended before DDCIT(Investigation) and therefore, these are after thought just to avoid legitimate tax on the unexplained cash found in the hands of the employee of the assessee as he failed to substantiate the same to the tune of Rs. 10,04,580/-.

As regards the excess stock found, the Id. DR relied upon the finding recorded by the Id. CIT(A) who has confirmed the addition contending that the stock has been physically verified in the presence of the assessee and found excess is duly confirmed by the assessee. Therefore, the addition on that account is required to be sustained.

10. In the rejoinder of the Id. AR of the assessee submitted that when the assessee has provided for the details receipt of cash with corresponding sales bill reflected in the books of accounts supported by GST return and that aspect of the matter has been accepted, there cannot be duplicate addition, one at the time of recording sales and other at the time of when the sales proceeds is realized to cash. The Id. AR of the assessee also submitted that in this case, the Id. AO made addition u/s 69A of the Act when the assessee proved that the cash which was found was out of the sales proceed recorded in the regular books of accounts and therefore, applicability in the present case of section 69A of the Act cannot be made and consequential the provisions of section 115BBE of the Act cannot be made apply in the case.

As regards the excess stock found, the Id. AR of the assessee repeatedly argued that considering the 2000 metric tone and odd quantity of stock. It is practically impossible for the assessee to measure it accurately the stock taking process and difference being 0.25% be ignored. In terms of value be ignored the on account of error and omissions recorded while taking the physical stock. Therefore, he prayed that addition is required to be deleted.

11. We have heard the rival contentions and perused the material placed on record. Ground no. 2.1 & 2.2. raised by the assessee is in relation to the addition of Rs. 22,49,500/- made by Id. AO and sustained by the Id. CIT(A). The brief facts of the disputed is that on 29.10.2018 SHO, Shambhupura, Chittorgarh during verification & interception found cash of Rs.22,49,500/- in the possession of Shri Shyam Singh Rathore while intercepting a Hyundai i10 Car bearing No.RJ-06-CC-6553. Upon receiving the above information, the DDIT(Inv.)-II, Udaipur recorded statement of Shri Shyam Singh Rathore u/s 131 on 29.10.2018 wherein he has stated that he works as an employee of M/s Babji Steel Traders, (Prop. Shri Turab Ali Bohra) and the above amount was received on behalf of M/s Babji Steels Traders, Bhilwara. However, Shri Shyam Singh Rathore failed to substantiate the source of cash found from his possession, a Warrant of Authorization u/s 132A of the Act was issued by the Pr. DIT(Inv.), Rajasthan, Jaipur on 30.10.2018 for requisition of cash of Rs. 22,49,500/- from SHO, Shambhupura, Police Station, Chittorgarh. While recording statement u/s 131 of the IT Act 1961, Shi Shyam Singh Rathore has stated that he works as an employee of M/s Babji Steel Traders, Dist. Bhilwara which is engaged in trading of TMT bars, Angle plates etc and the above firm has sold TMT bars, angle plates etc, to some of the parties and the cash found from his possession was sourced

from the outstanding debtors of the above firm M/s Babji Stell Traders. Thereafter, based on these a survey u/s 133A of the Act was also carried out in the case of M/s Babji Steel Traders by the DDIT(Inv.), Ajmer on 31.10.2018 to verify the sources of above cash of Rs. 22,49,500/-. Statement of Shri Turab Ali Bohra was also recorded u/s 131 of the I.T. Act, 1961 on oath, wherein he had confirmed the statement given by Shri Shyam Singh Rathore by stating that the cash amount found from the custody of Shri Shyarn Singh Rathore belongs to his Prop. Concern M/s Babji Steels Traders and Shri Shyam Singh had collected cash from the debtors of the firm. Shri Turab Ali Bohra had also confirmed that he had sold iron goods to above parties and Shri Shyam Singh, an employee of M/s Babji Steel Traders, Bhilwara had collected cash amounts from parties wherein amount was receivable from the various parties.

During post survey proceedings, the assessee was asked to furnish documentary evidence in support of statement given by him in respect of parties and to get verification from books of accounts. In compliance, the assessee had produced copy of ledger in respect of only 7 parties out of 9 parties along with complete books of accounts. After examination, the DDIT(Inv.), Ajmer, gathered that parties namely M/s M.S. Traders, M/s Shiva Kripa Enterprises, M/s Patel Steel Traders have substantial debit

balance. M/s Janta Steel now known as M/s Ajmer Industrial Corporation and M/s Malviya Agro Industries has debit balance Rs.70,040/- and Rs. 1,930/- respectively only. Accordingly, on the basis of the above submission of the assessee, an amount of Rs. 12,43,240/- was considered as verifiable by the DDIT(Inv.), Ajmer being cash receipt against the realization of above referred debtors and the balance amount of Rs. 10,04,580/- was considered as unexplained.

During assessment proceeding in the case of Shri Shaym Singh Rathore based on the submissions made by Shri Turab Ali Bohra before the DDIT(Inv.), Ajmer and also considering his statements given during the course of survey proceedings u/s 131 of the I.T. Act, 1961 on oath, an addition of Rs. 10,04,580/- was made on a protective basis vide assessment order dated 24.05.2021 in the hands of Shri Shyam Singh Rathore, as he was not responding to the notices issued in his case.

Whereas in the case of Shri Turab Ali Bohra in the assessment proceeding submission made was on different facts which were already placed on record and the assessee retracted from his statements given u/s 131 of the Act made during the course of survey proceedings and submitted that the cash of Rs.12,43,240/- which was found verified by the DDIT(Inv.), Ajmer on the basis of submissions made by the assessee

before him is actually not pertains to the parties/debtors listed in the statement record, instead they were the persons who were his regular buyers and they have clear their payments by A/c Payee Bank Cheques only, which is also evident from his books of accounts. He further claimed that the confiscated amount was picked up from his cash collection point maintained by those parties. Therefore, considering the facts and circumstances of the case and also the retraction made by the assessee from his earlier statement recorded u/s 131 of the I.T. Act, 1961, the version of the assessee was not found acceptable and therefore, it is considered that the amount of Rs.22,49,500/- found from the possession of Shri Shyam Singh Rathore and belongs to Shri Turab Ali Bohra was considered as unexplained money of Shri Turab Ali Bohra for which he has not been able to satisfactorily prove the sources thereof. Accordingly, an addition of Rs.22,49,500/- was made to the total income of the assessee on substantive basis by considering the same as his unexplained money u/s 69A r.w.s. 115BBE of the I.T. Act, 1961 and brought to tax accordingly.

On this aspect of the matter relating to ground Nos. 2.1 and 2.2 raised by the assessee, the bench noted that the assessee though retracted from the statement, and he has filed the details relating to the

claim and substantiated his case to support the cash found in possession of the employee of the assessee. The assessee also supported that recovery on account of sales is already reflected in the GST return filed by the assessee. This sale is also supported by the invoices along with the relevant proof of retailer who purchased the goods in cash were also placed on record. The bench noted that while passing the assessment order the Id. AO neither discussed this evidence placed on record nor found any defect in the record so produced by the assessee. We also note that Id. CIT(A) while dealing with this issue has given the finding that the assessee is trying to justify the story of cash seized on 29.10.2018. Thus, as contended by the Id. AR of the assessee, Id. CIT(A) also did not discuss and deals with the merits of the records already placed on record.

Whereas the Id. DR objected that since these records are not discussed or verified the relief cannot be granted to the assessee without being confronted to the assessee on the material placed on the record. In light of this set of facts before us, we deem it fit to restore the matter to verify the contention that has been made by the assessee with that of the statement recorded at the time of survey. Thus, Id. AO will verify the contentions of the cash sales made by the assessee and consequential collection of cash from that collection centre is requires in depth

verification. Therefore, we deem it fit in the interest of justice to restore the matter to the file of Id. AO who will verify the contentions raised at the time of assessment which though contrary to the statement recorded at the time of survey. Based on these discussions, ground Nos. 2.1 & 2.2 raised by the assessee is allowed for statistical purposes.

12. Ground no. 3 relates to the addition of Rs. 1,34,212/- being the amount of excess stock found at the premises of the assessee, during survey proceedings. At the time of survey physical verification of stock was made and it was found that the physical availability of stock on the date of survey was at Rs.4,28,09,129/-, whereas per the books of account the stock as on date of survey was at Rs.4,26,74,917/-. Therefore, the stock was found excess by an amount of Rs. 1,34,212/-. The assessee has accepted the above difference of stock of Rs.1,34,212/- and offered the same during the course of survey proceedings for taxation. Accordingly, he was also given a show cause during assessment proceedings that why an addition of Rs. 1,34,212/- should not be made. In response the assessee has made his submission. That submission was not found acceptable due to the reason that no supporting evidence / reconciliation statement has been furnished by the assessee during assessment proceedings.

Accordingly, an addition of Rs.1,34,212/- was made to the total income of the assessee as his undisclosed income for the year under consideration. Before the Id. CIT(A) the bench noted that while dealing with the grounds of appeal raised by the assessee, Id. CIT(A) merely confirmed the finding of Id. AO stating that the assessee was unable to substantiate his claim with the evidence and reconciliation. Therefore, he confirmed the addition in the hands of the assessee. During hearing of the present appeal when the details of difference of stock and the inventory prepared at the time of survey was requested to be placed on record. But both the parties did not consider it fit to place on record that as to how the difference is arrived whether it is on account of quantity difference or on account of valuation difference. Considering that peculiar facts being not available before us we deem it fit to restore the matter before Id. AO who will justify the addition after discussing the reasons of difference and after affording due to opportunity to the assessee to explain the difference. Based on these observations, ground No. 3 raised by the assessee is allowed for statistical purposes.

13. Ground No. 4 raised by the assessee is charging a special rate of tax on account of provisions of section 115BBE of the Act. Since we restore

the matter of dispute to the file of Id. Assessing Officer on merits, so obviously the levy of tax being consequential in nature will depend upon the finding of the Id. AO. Therefore, this ground is to be decided based on the remand proceedings and therefore, this ground is premature.

14. So far as ground No. 1 & 5 raised by the assessee there is no arguments made by the assessee in the written submissions as well as during the course of hearing, therefore, the same is considered as not pressed or educative in nature.

15. Ground No. 6 is in relation to the charge of interest u/s 234A/B/C of the Act which is consequential in nature and does not require our adjudication. Ground No. 7 being in general in nature does not require our adjudication.

16. Before parting, we may make it clear that our decision to restore the matter back to the file of the Id. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the Id. AO independently in accordance with law.

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

Order pronounced in the open court on 09/09/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/09/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Turab Ali Bohra, Bhilwara
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle, Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 704/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar