

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.135/Nag./2018

(Assessment Year : 2015-16)

Asstt. Commissioner of Income Tax
Central Circle-1(3), Nagpur

..... Appellant

v/s

Shrigopal Rameshkumar Sales Pvt. Ltd.
1st Floor, Sarvodaya Cloth Market
Gandhibag, Nagpur 440 002
PAN – AABCS9226J

..... Respondent

Assessee by : Shri Kapil Hirani

Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 26/12/2024

Date of Order – 21/01/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the Revenue is against the impugned order dated 26/03/2018, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2015-16.

2. In its appeal, the Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,47,574/- made by the AO being unexplained expenditure u/s 69C of the I.T. Act by accepting the explanation that the same are reflected in the books without appreciating the fact that the assessee had not explained the source of the funds for each item of expenditure.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,47,574/- made by the AO without appreciating the fact that the expenditure had been incurred in cash and the provisions of sec 40A(3) is applicable to the facts of the case.

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.33,26,574/- made by the AO being recoveries from farmers without appreciating the fact that the assessee had not filed any documentary evidence to prove the utilization of the recoveries made from the farmers and how the same is reflected in the books of accounts.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.37,47,574/- being unexplained expenditure u/s 69C, recoveries from farmers of Rs.33,26,574/-, sale of cotton seed & bags of Rs.4,58,000/- and Rs. 20,800/- respectively as they were covered by the disclosure of Rs. 50,00,000/- without appreciating the fact that the assessee had not submitted the basis of the disclosure of Rs.50,00,000/- either during the search, post search or the assessment proceedings.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the reconciliation submitted by the assessee and restricted the addition to Rs.1,59,829/- being GP @ 8.7% on short stock of Rs.18,37,104/- without appreciating the fact that the assessee has adopted the value of the trading stock at Rs.7,95,04,521/- without any basis as against Rs. 4,45,80,545/- valued during the search action.*

6. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the reconciliation submitted by the assessee and restricted the addition to Rs.1,59,829/ being GP @ 8.7% on short stock of Rs.18,37,104/- without appreciating the fact that AO had already reduced/considered the value of the stock at Parbhani of Rs.1,82,77,000/-.*

7. *Any other question to be raised at the time of appeal."*

3. Facts of the Case:- The assessee is a company engaged in the business of running a Ginning Mill and dealing in cotton. The assessee filed its return of income for the year under consideration on 16/10/2015 declaring an income of ₹ 2,90,56,100. A search and seizure action under section 132(1) of the Income Tax Act, 1961 ("*the Act*") was conducted on 12/02/2015, by the Investigation Wing at the office, residential and factory premises of Rander Group. During the course of action under section 132, at the office premises of the assessee, certain documents were seized. These documents allegedly contained information about cash payments made to various persons. During

the assessment proceedings, the assessee was requested to explain these payments with reference to books of account apart from seeking the explanation to the various other issues covered in the search. The assessee, pursuant to the search, declared additional income on ad-hoc basis totalling to ₹ 1,25,00,000, and also paid the necessary tax on the same. The assessee, during the course of assessment proceedings, furnished its replies and other details in support of its submissions. The Assessing Officer, after considering assessee's reply and other details furnished in support of its submissions, completed the assessment making various additions which can be summarised as under:-

Chart-1

<i>Income returned u/s 139</i>		₹ 2,90,56,100
<i>Additions made :</i>		
<i>i. Unexplained Cash payments U/s 69C</i>	₹ 31,90,320	
<i>ii. Unexplained Cash Payment U/s 69C</i>	₹ 5,27,067	
<i>iii. Unexplained expenditure U/s 69C</i>	₹ 30,187	
<i>iv. Alleged Excess Stock</i>	₹ 5,13,63,972	
<i>v. Recovery from Farmers not recorded in books of accounts</i>	₹ 33,26,574	
<i>vi. Cash received not accounted in books of accounts</i>	₹ 2,50,00,000	
<i>vii. Cash received not recorded in Books</i>	₹ 4,58,000	
<i>viii. Kutchha Sale of Deoiled Cake</i>	₹ 20,800	
<i>Total of Additions made</i>		₹ 8,39,16,920
<i>Assessed Total Income</i>		₹ 11,29,73,020

4. The learned CIT(A) confirmed the addition of ₹ 2,50,00,000, while deleting / reducing the balance additions against which the Revenue has preferred the impugned appeal before Tribunal.

5. Before us, Shri Sandipkumar Salunke, the learned Departmental Representative ("*the learned D.R.*") appearing for the Revenue strongly supported the order of the Assessing Officer and assailing the impugned order passed by the learned CIT(A) submitted that the learned CIT(A) erred in deleting / reducing the additions made on account of unexplained payments under section 69C, erred in deleting the addition on account of excess stock and recalculating the same to the extent of gross profit on alleged deficit stock, and further erred in deleting other additions without appreciating the fact that the addition was made taking into consideration to seized material and the submission of the assessee during the assessment proceedings. He further submitted that the learned CIT(A) also failed to appreciate the fact that even if the cash expenditure was explained with reference to the books of account, the provisions of section 40A(3) and 40a(ia) of the Act were attracted.

6. The learned Departmental Representative, at the outset, vehemently argued that the additions made by the Assessing Officer under section 69C deserves to be upheld as there was sufficient evidence to prove that the assessee had in fact made the payments and the Assessing Officer was justified in making the addition in the hands of assessee.

7. The learned Departmental Representative further, with respect to the addition of ₹ 33,26,574, submitted that the said amounts represent amounts collected from the farmers by the assessee and the Assessing Officer, after

taking into consideration the facts and circumstance of the case, made the addition to the tune of ₹ 33,26,574, on account of recovery from farmers. The learned CIT(A) in his order has deleted this addition stating that there is nothing in the assessment order to indicate that the assertions made by the assessee were wrong assertions and that the assessee was not recovering any unloading charges on behalf of labours who were unloading the cotton bales from various trucks on behalf of the sellers of cotton. However, the learned CIT(A) has also not brought out the fact in his order that the money was actually collected from the farmers and paid to the labourer. The learned D.R. further submitted that during the course of search, physical stock of the material lying at the various premises was taken and it was found that there was excess stock of ₹ 5,13,63,972, as compared to the stock as per books of accounts. Therefore, the Assessing Officer added the amount of ₹ 5,13,63,972, as unexplained investment in stock as the assessee could not reconcile the same. The learned CIT(A) has accepted the reconciliation submitted by the assessee and restricted the addition to ₹ 1,59,829 being gross profit @ 8.75% on short stock of ₹ 18,37,104, as against excess stock of ₹ 5,13,63,972, added by the Assessing Officer. The learned CIT(A) has taken the value of the trading stock of ₹ 7,95,04,521, as against ₹ 4,45,80,545, valued by the Assessing Officer during the search without any basis as the assessee has not filed any documents for the said valuation, the learned CIT(A) has reduced the value of the stock at Parbhani of ₹ 1,82,77,000 twice. The learned D.R., while concluding his arguments prayed

that the order of the learned CIT(A) be set aside and the order of the Assessing Officer be restored.

8. Advocate, Shri Kapil Hirani, learned Counsel appearing for the assessee, at the very outset, vehemently submitted that pursuant to search, additional income of ₹ 1.25 crore was declared and out of which ₹ 75 crore were declared under the head "*Miscellaneous Income*" in audited financial statements and ₹ 50 crore was declared in the computation of income. He pointed out that, without prejudice to the arguments on the merits of the various additions made, which he sought to argue to merits as well, this additional surrender encapsulates the miscellaneous additions made by the Assessing Officer much less additions totalling to ₹ 37,47,574 (₹ 31,90,320 + ₹ 5,27,067 + ₹ 30,187) as well as other additions, as the surrender without propelled by any incriminating evidence can sufficiently cover these additions. The theory of telescoping is widely accepted on the premise that both source and application cannot be taxed simultaneously which is in clear violation of Article 265 of the Constitution of India. He accordingly prayed that the watertight order of the learned CIT(A) need not be tampered with.

9. The addition of ₹ 31,90,320 + ₹ 5,27,067 + ₹ 30,187 = Totalling to ₹ 37,47,574 – sustainability thereof.

10. The learned Counsel for the assessee, without prejudice to its arguments that the surrender made during the course of search proceedings covers the miscellaneous additions made by the Assessing Officer, further

argued the legality of the additions made totalling to ₹ 37,47,574, on merits as well.

11. The learned D.R. strongly supported the order of the Assessing Officer and submitted that the learned CIT(A) erred in not appreciating the facts properly and deleting the impugned addition.

12. The learned Counsel for the assessee on the other hand strongly supported the order of the learned CIT(A) and further submitted that apart from the addition made on account of excess stock and cash received of ₹ 2.50 crore the balance additions and its respective explanations provided by the assessee during the course of assessment as well as first appellate proceedings can be summarised as under:-

Chart-2

<i>Heads of Expenses</i>					
<i>Addition (₹)</i>	<i>Advance payment against Salary(₹)</i>	<i>Expenses Accounted in Respective Ledger (₹)</i>	<i>Farmers paid directly to unloading labour @16 per Qntl. (₹)</i>	<i>Personal Expenses of Directors (₹)</i>	<i>Total (₹)</i>
31,90,320	14,28,174	4,47,500	13,14,646	-	31,90,320
5,27,067	60,000	1,39,000	3,28,067	-	5,27,067
30,187	-	-	-	30,187	30,187
<i>Total</i>	14,88,174	5,86,500	16,42,713	30,187	37,47,574
			22,59,400		

13. Out of the above additions, it is firstly the case of the assessee that an amount of ₹ 14,88,174 pertains to advance payment against salary and ₹ 5,86,500 pertained to amounts already accounted for in respective ledgers

and the details of which were enclosed at relevant pages of the reply filed before learned CIT(A) and also submitted before us.

14. That with respect to the amount of ₹ 5,86,500, the assessee invited our attention to pages 30 to 68 of the submission made before the learned CIT(A) which contains the copies of ledgers of various expenses as well as statement on page 30 summarising the expenses added by the Assessing Officer and which can correlate to the expenses debited in the books of accounts which are reflecting in the ledgers enclosed therein.

15. A bare perusal of the chart as well as the ledgers it is seen that the ledgers do contain the transactions as mentioned in the chart and which have been considered by the Assessing Officer to be unexplained expenditure and as such we find force in the argument of the assessee that the said expenditures are duly reflected in the books of accounts of the assessee and as such cannot be considered to be unexplained expenditure so as to form the basis of any addition much less addition under section 69C as wrongly made by the Assessing Officer.

16. That with respect to the amount of ₹ 14,88,174, it is seen that the assessee has given a detailed working of amounts added by the Assessing Officer as unexplained expenditure, but which are already reflecting in the books of accounts of the assessee as is clear from the perusal of the workings at Page-70 to 73 and copies of ledgers at Page-74 to 86 of the submission before the learned CIT(A). A comparative analysis of the same makes it very

clear that the amounts added as unexplained expenditure by the Assessing Officer amounting to ₹ 20,74,674 (₹ 14,88,174 + ₹ 5,86,500) are reflecting in the books of accounts of the assessee and which has further been duly considered by the learned CIT(A). On a conspectus of the facts and the details as provided by the assessee, we are of the considered view that the learned CIT(A) was right in deleting the additions to the extent of ₹ 20,74,674, by holding that the assessee has duly reconciled the expenses and further that the expenses are duly reflected in the books of accounts of the assessee and as such cannot be considered to be unexplained expenditure as much less unexplained expenditure under section 69C of the Act as wrongly held by the Assessing Officer.

17. The learned Counsel for the assessee further submitted that there is absolutely no contradiction of TDS provisions and that the TDS returns filed are also available with the Department and that the audit report also contains the date of TDS returns having been filed and the Assessing Officer has not pointed out any instance of violation of any of the TDS provisions as well as applicability of section 40A(3) so as to warrant any disallowance under those heads as per law.

18. That with respect to the addition of ₹ 16,42,713, it is the submission of the assessee that the said amount pertains to payments made by farmers/agriculturist to the labourers directly for unloading charges without any recourse to the Assessee and as such the addition on this count deserves

to be deleted in the hands of the Assessee has wrongly made by the Assessing Officer.

19. It is the case of the assessee that this amount pertains to the amount which the farmer shall pay to the unloading labour @ ₹ 16 per quintal. The assessee has all along explained and held that the sum is paid directly by the farmers to the unloading labour without any recourse to the assessee. It is the case of the assessee that there is even a board displayed outside the payment window that the agricultural pay directly to the labourers for unloading their goods (cotton) @ ₹ 16 per quintal. As such, unloading charges paid by the farmers to the unloading labour has no relation with the books of accounts of the Assessee and as such the same cannot be added in the hands of the assessee as unexplained expenditure as wrongly done by the Assessing Officer.

20. In this regard, it is important to mention here that nowhere it is conclusively proved that the assessee has in fact made the payments to the labourers and the explanation so provided by the assessee seems very possible as it is common practice that the agriculturist/farmers who bring their produce to the assessee are required to pay the unloading charges to the labourers and without there being any conclusive evidence to prove that the amount was in fact paid by the Assessee we are of the considered view that the said addition has rightly been deleted by the learned CIT(A).

21. That with respect to the addition of ₹ 30,187, is the submission of the assessee that the said amount pertains to personal expenses of the directors and accordingly no addition can be made in the hands of the assessee and further that the contention of the assessee that this is an individual expenditure of the directors not being denied nor there is anything on record to prove that the contention of the assessee is incorrect, the addition made deserves to be deleted. On a conspectus of the facts and considering that there is no averment rejecting the contention of the assessee that the said amount pertains to personal expenses of the directors we are inclined to direct that this addition be deleted as well.

22. That with respect to the addition of ₹ 4,58,000, it is the case of the assessee that the same is added to the taxable income as cash received but not accounted. The addition of ₹ 4,58,000, is made on the basis of noting in seized records on Page-145 (copy enclosed at Page-125 to 127) seized in the course of search operation. It is against the assessee that these papers are relating to party wise souda booking and dispatch details. The copy the reply filed by the assessee was enclosed by the assessee at Page-125 & 126 of the submission made before learned CIT(A). It is the case of the assessee that this working was made by one Shri Ankit, for intimating to the Head Office and allegedly made on the rough paper which was lying on the table. In the month of May, when operations are slow down and general maintenance of machines is undertaken. Further, the immediate requirement of cash and cheque for purchase of stores and spares are estimated and sent to head

office. Therefore, this amount of ₹ 4,58,000 cash was the message sent to Head Office that an amount of ₹ 4,58,000 would be needed for stores and spares for the general maintenance of the machines. It is the case of the assessee that no independent evidence in spite of specific denial is brought on record by the Assessing Officer before making the addition despite the assessee elaborately explaining the same and in view of the same it was requested that the addition be deleted as per law and interest of justice.

23. That with respect to the addition of ₹ 20,800 allegedly made on account of sale of De-oiled cake, it is the case of the assessee that this amount is already reflected in the books of accounts and that no further addition is warranted.

24. On a conspectus of the facts and submissions made by the assessee it is very clear that there is no evidence nor rebuttal by the Assessing Officer to dismiss the submissions of the assessee and considering the plausibility of the explanation given by the assessee as well as the nature and quantum of the amounts, we are inclined to accept the submission of the assessee and accordingly direct that the additions amounting to ₹ 4,58,000 and ₹ 20,800 be deleted.

25. Addition of ₹ 33,26,574 on account of alleged recovery from farmers not recorded in the books of accounts (S.No.v. of Chart 1 above) – sustainability thereof.

26. The learned D.R. strongly supported the order of the Assessing Officer and submitted that the learned CIT(A) erred in not appreciating the facts properly and deleting the impugned addition.

27. The learned Counsel for the assessee, on the other hand, strongly supported the order of the learned CIT(A) and further submitted that firstly there is no basis for arriving at the calculation of ₹ 33,26,574.

28. Without prejudice, the learned Counsel for the assessee submitted that the impugned amount pertains primarily to unloading charges paid by the agriculturist to the labour towards unloading charges and it is not an amount which has been recovered by assessee so as to form the basis of any addition in the hands of the assessee as has illegally been done in the present case.

29. It is the submission of the learned Counsel for the assessee that these charges are directly paid by the agriculturist to the unloading labour without any recourse to the Assessee and as such it cannot be held that the said amounts were paid by the assessee so as to warrant any addition in the hands of the assessee.

30. The assessee further invited are attention to the fact that similar addition totalling to ₹ 16,42,713 has also been made separately forming part of the other additions and which is bifurcated and shown separately in the Chart-2 submitted hereinabove.

31. The assessee without prejudice submitted that if major payments out of the impugned addition of ₹ 33,26,574 allegedly pertains to payment from agriculturist to unloading labour then the extent of ₹ 16,42,713 this would be a double addition which is impermissible under law.

32. On perusal of the records, it is seen that in fact the Assessing Officer has not clearly brought out the basis for the addition of ₹ 33,26,574 and that this addition seems to be a repetitive addition primarily on the ground of payments made to unloading the labourers which has also been added separately as discussed herein above.

33. Further as elaborately mentioned hereinabove that nowhere it is conclusively proved that the Assessee has in fact received the payment from the farmers or has consequently made the payments to the labourers. We have already held hereinabove that the explanation so provided by the Assessee that the unloading charges paid directly by the farmers to the unloading labour without any recourse to the Assessee is a very possible scenario and considering the same we have deleted the addition pertaining to alleged payments made by the assessee to the farmers and going by the same analogy we hold that there is no evidence to prove that the said amount has actually been recovered from the farmers by the assessee and accordingly hold that the impugned addition is unwarranted and which has been rightly deleted by the learned CIT(A) and accordingly hold that the

addition is unwarranted in law and deserves to be deleted. We accordingly direct the same.

34. It is further very important to mention here that apart from the said additions being liable to be deleted on merits, the summary of the relief as granted by the learned CIT(A) can be summarised as under: -

Chart 3

<i>Additions made :</i>		
<i>i. Unexplained Cash payments U/s 69C</i>		<i>₹ 31,90,320</i>
<i>ii. Unexplained Cash Payment U/s 69C</i>		<i>₹ 5,27,067</i>
<i>iii. Unexplained expenditure U/s 69C</i>		<i>₹ 30,187</i>
<i>iv. Recovery from Farmers not recorded in books of accounts</i>		<i>₹ 33,26,574</i>
		<i>₹ 70,74,148</i>
<i>Less : Explained by Assessee</i>		<i>₹ -22,59,400</i>
<i>a. Accounted for in books - ₹ 586500</i>		
<i>b. Personal Expenses of Directors - ₹ 30187</i>		
<i>c. Payments directly by Farmers - ₹ 1642713</i>		
	<i>-----</i>	
	<i>₹ 2259400</i>	
<i>Balance</i>		<i>48,14,748</i>
<i>CIT(A) has held that this balance of ₹ 48,14,748 is covered by income declared of ₹ 50,00,000 in the computation of income and consequently the addition was deleted.</i>		

35. It is very important to mention here that the Assessee pursuant to the search declared additional income of ₹ 1,25,00,000 (₹ 50,00,000 + ₹ 75,00,000) which has also been duly reflected in the books of accounts and the computation of income of the assessee and the Assessee has duly paid the necessary income tax thereon.

36. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. Apart from our findings on merits as mentioned hereinabove we are also in agreement with the logical analysis of telescoping the additional surrender without any specific incriminating evidences against the additions made by the Assessing Officer including but not limited to unexplained expenditure under section 69C of the Act and other items recorded in ground no.4, raised by the Revenue.

37. Considering the above, apart from the fact that the said additions deserve to be deleted on merits as discussed herein above, the learned CIT(A) was absolutely right in considering that the said addition is a covered by the declaration made by the Assessee and consequently no separate additions are warranted and in our considered view correctly deleted the additions made.

38. We accordingly hold that the learned CIT(A) rightly deleted the additions amounting to ₹ 31,90,320, ₹ 5,27,067, ₹ 30,187, ₹ 33,26,574, ₹ 4,58,000 and ₹ 20,800 for the reasons enumerated above and further on the ground that the same are already covered in the declaration of income made by the assessee and in view of separate taxation of the above issues as well as ad-hoc surrender will be a travesty of justice which is not conscionable as per Article-265 of the Constitution of India, no separate addition is warranted

under law. Thus, grounds no.1 to 4, are dismissed in line of our above observations.

39. Addition on account of excess Stock of ₹ 5,13,63,972 – sustainability thereof.

40. The Assessing Officer made an addition of ₹ 5,13,63,972 on account of alleged excess stock.

41. The Assessee during the course of 1st appellate proceedings before the learned CIT(A) submitted detailed workings reconciling the stock and the learned CIT(A) after verification of the details as submitted by the assessee accepted the position that the actual difference in stock is not excess stock of ₹ 5,13,63,972 but deficit stock of ₹ 18,37,104 and considering the deficit stock to be sold, taking the gross profit rate of 8.7% restricted the addition to ₹ 1,59,829 on account of difference in stock against which the Revenue has preferred the present appeal agitating the same vide grounds no.5 & 6 which are adjudicated herein below.

42. The relevant observations of the learned CIT(A) while dealing with the issue are reproduced below for better appreciation of facts:–

"7.2 Ground Nos.4, 5, 6 and 7: These grounds pertain to addition made to the A.O. on account of excess stock of ₹ 5,13,63,972, to the appellant's income. The A.O. has made these additions vide Para-6 of the assessment order by making the following comments:–

"6. During the action u/s 132 in the factory premises of M/s. Shrigopal Rameshkumar Sales Pvt. Ltd., Mohali & Prabhani the action physical stock position found is as under:–

Sr. no.	Location	Commodity Name	Stock	Amount (₹)
1.	Factory Premises at Mohali		83C	18,98,74,349
2.	Factory Premises Parbhani	Cotton Bales		1,24,50,000
3.		Cotton Seeds		2,21,000
		Raw Cotton		56,06,000
		Total		20,81,51,349

During the course u/s 132(1) at M/s Shri Bhagirath Textile Ltd., Mohali, statement of Shri Rajeev Dubey CEO of M/s Shri Bhagirath Textile Ltd. was taken. In reply to question no.15, he has stated the stock of M/s Shrigopal Rameshkumar Sales Pvt. Ltd. at warehouse of M/s Shri Bhagirath Textile Ltd., Mohali.

Sr. no.	Location	Commodity Name	Stock	Amount (₹)
3.	Ware house of M/s. Shri Bhagirath Textile Ltd. Mohali (As stated by Shri Rajeev Dubey, CEO of M/s. Shri Bhagirath Textile Ltd. in reply to Question no.15)	Cotton Bales	1200	1,79,00,000
		Cotton Bales	4393	6,89,00,000
		Total		8,68,00,000

During the course of assessment proceedings, information u/s 133(6) was requisitioned through National Bulk Handloom Corporation Pvt. Ltd. (NBHC), Mumbai regarding go-down space used by the assessee to store cotton bales during F.Y. 2014-15. As per the statement given by National Bulk Handling Corporation Pvt. Ltd., following space has been used by the assessee as on date of search i.e. 12.02.2015.

Commodity Name	No. of packages	Weight in MT (₹)	Storage Period		Market rate (₹)	Valuation(₹)
Cotton Bales	2692	427.030	13.11.2014	28.03.2015	98865	4,22,18,320.95
Cotton Bales	300	48.410	04.12.2014	28.03.2015	95000	45,98,950.00
Cotton Bales	3300	527.015	25.12.2014	25.04.2015	96000	5,05,93,440.00
Cotton Bales	300	49.210	30.12.2014	03.03.2015	95509	46,99,997.89
Cotton Bales	600	100.295	03.01.2015	03.03.2015	95505	95,78,673.98
Cotton Bales	3000	167.245	07.02.2015	02.04.2015	89422	1,49,55,382.39
					Total:-	12,66,44,765.21

Thus as against the stock belonging to M/s Shrigopal Rameshkumar Sales Pvt. Ltd in the custody of store space of Sri Bhagirath Textile Ltd. as stated by CEO

of the assessee company the total stock in the custody of NBHC is found to be Rs. 12,66,44,765/-.

Thus the total physical stock found at the different premises and occupied at the occupied storage space of the assessee company is at Rs.33,47,96,114/- (Rs. 12,66,44,765/- + Rs. 20,81,51,349/-)

However, as per books, the stock is recorded However, as on 12.02.2015 is as under:-

1. Ginning Stock	20,69,89,060/-
2. Trading Stock	4,45,80,545/-
	25,15,69,605/-

In view of the above, notice u/s 142(1) was issued to the assessee on 30.11.2014 requesting to explain the excess stock. The case was fixed for hearing on 02.12.2016. The filed written communication on 27.12.2016. Assessee's submission that stock in the custody of NBHC have been released before the date of search except the stock at warehouse of SBTL and stock at Nanded (NBHC) is considered and found acceptable. However, Assessee's explanation that stock as per books in respect of HO should be Rs. 7,95,04,621/- is considered but found not acceptable. As per seized document Page No. 33 of item No. B-4 from the office premises, it is seen that as on 12.02.2015 closing stock of trading division of Shrigopal Rameshkumar Sales Pvt. Ltd. was recorded at Rs. 4,45,80,545/- as against the claim of Rs. 7,95,04,621/- the stock of Parbhani is part of trading Division and it is included in the closing stock of Rs. 44580545/- of Trading Division of M/s Shrigopal Rameshkumar Sales Pvt. Ltd. As per reply filed on 27.12.2016 statement of reconciliation is stated to be enclosed in pages 15 to 19. However, no such reconciliation has been submitted. The assessee has not submitted bills/Vouchers in support of trading books stock claimed at Rs. 7,95,04,621/-. In view of this stock position is computed as under:-

1.	Physical stock at Mohali		₹ 18,98,74,349
2.	Factory premises at Parbhani		₹ 1,82,77,000
3.	At ware house (SBTL)		₹ 8,68,00,000
	Stock at Nanded (NBHC) (95505 x 100.295 x 5/6)		₹ 79,82,228
4.	Less stock of SRSPL counted in SBTL		₹ (-)8,68,00,000
5.	Total Stock		₹ 30,29,33,577
	Less:		
	1. Stock as per books (Ginning stock)	₹ 20,69,89,060	₹ 25,15,69,605
	2. Trading stock	₹ 4,45,80,545	
	Total	₹ 25,15,69,605	
	Excess Stock		₹ 5,13,69,972

In view of this, excess stock over & above the recorded stock computed at ₹ 5,13,63,972/- is added to the taxable income of the assessee. Penalty

proceedings u/s 271AAB of the I.T. Act is initiated for concealing the particulars of income and furnishing inaccurate particulars of its income."

7.2.1 The appellant has made detailed submissions with respect to these grounds of appeal along with relevant supporting documents which are being reproduced as under. The appellant has also produced books of account to verify the contents of submission made by it.

"Ground No. 4 to 7 Excesses Stock: ₹ 5,13,63,972/-

The Assessing Officer has added ₹ 5,13,63,972/- on account of excess stock. There is total confusion to the Assessing Officer in considering the stock position. Stock with Assessee at the time of search is found at (i) Ginning Division. Mohali, (ii) Ginning Parbhani and Trading Division. At the time of Search following actual physical stock is found as per Search Records. (See Question No. 69 of the Statement recorded on 07.04.2015 regarding Stock found and Stock as per books) Pages 88 to 92.

Sr. no.	Bales	Particulars	Amount (₹)
1.	1,834	Bales, Raw cotton, seed Doc & Oil etc. at Ginning Factory Premises Mohali Valued at	18,98,74,349/-
2.	830	Bales, Raw Cotton and seed foundat Parbhani	1,82,77,000
3.	5,593	Bales were at SBTL Warehouse	
		1,300 Bales Stock of Ginning at SBTL Warehouse Valued at ₹ 1,79,00,000/-	
		4,293 Bales Stock were at SBTL (Trading Division) Valued at ₹ 6,89,00,000/-	
		5,593 Bales	8,68,00,000/-
	8,257		29,49,51,349/-

Following Stock remained to be taken into consideration at the time of Search i.e.

Sr. no.	Bales b/d		Amount b/d
4.	500	Bales lying with NBHC (National Bulk handling corporation-for which document is filed on record and accepted by AO	₹ 79,82,228/-
	8757	Bales	₹ 30,29,33,577/-
5.	37	Bales were rejected bales lying at different Godowns Documentary Proofs already submitted	₹ 5,50,000/-
	8794	Bales	₹ 30,34,83,577/-

Thus total stock found is 8794 bales which is valued at ₹ 30,34,83,577/-. First Assessee Appellant would explain the stock as listed above and thereafter reconciliation.

			Appellant Stand
Item no.1	1834 Bales Raw cotton, seed doc & oil etc at Ginning Factory Premises, Mohali valued at	₹ 18,98,74,349/-	No dispute Except that valuation was done by measuring the heap of cotton and not by weighment. Therefore there would be little variation in estimate
Item no.2	830 Bales, Raw cotton and seed at Parbhani Ginning valued (This is also shown as separate stock than trading - also so shown in Para Six of Asst Order)	₹ 1,82,77,000/-	No Dispute. But it is held to be covered in Head Office Stock. This is incorrect and without any basis and without opportunity. Whereas in the statement recorded in to question No. 69 (1) it is held to be separate stock. See Pages 90 to 92.
Item no.3	5593 Bales were found at SBTL Warehouse-valued	₹ 8,68,00,000/-	5593 Bales stock found at SBTL Warehouse is ok. Out of this stock, stock of Ginning Division Mohali is 1300 bales which Assessee valued at 1.71,14,711/-. This is accepted situation. Remaining bales i.e.
			(A) (5593-1300)4293 Bales (Stock at SBTL of Trading Division)
			(B) and Parbhani Ginning Stock with National Bulk Handling corp also accepted by AO 500 Bales
			(C) Rejected Stock of bales lying with different 37 Bales
			4830 Bales

Thus it is clear that as far as bales tally is conceded, there is no difference. Now coming to Valuations:

Item 1 & 2: These valuations no difference.

Item No. 3: 1300 bales of Appellant lying in SBTL Warehouse under N.B.H.C. is valued at ₹ 1,71,14,711/-.

Now the balance 4293 bales + 500 bales Parbhani Ginning Stock with NBHC + 37 bales rejected stock total 4830 bales is valued by Assessee at Rs. 7,95,04,621/-. The Appellant has filed the list of purchase invoices which constitutes stock of 4830 bales valued at Rs. 7,95,04,621/-. Pages 93 to 98, The payment for the purchase of these bales was made prior to the Search. All the purchases are recorded in the ERP/SAP Computer System which is available to the Department in seized records. All the purchase bills are in seized records. When Assessee filed Statement of Purchases Meeting stock of 4830 bales of Rs. 7,95,04,621/- it was stated to AO that the bills and payment

details are available in Seized records. It was also explained that in ERP computer system different persons are given different rights in the maintenance of accounts. Data entry operator can only make entries. These entries remain in accounts but if you take print of the account, ERP software would give results of only approved entries. Approval of entries are to be done by Senior Managers. Unless they approve it is not reflected in account. The Appellant had filed the list of unapproved entries for purchase and sales and stock reconciliation on 07.04.2015 itself. It was with Department only. Therefore Assessing Officer was wrong in stating that no such reconciliation was submitted. Copies of reply and submission on 07.04.2015 filed are closed. Pages 99 to 107.

Assessing Officer appeared convinced. AO did not ask Assessee anything more and thereafter without opportunity and without understanding the stock position added 5,13,63,972/- as excess stock found. Infact there is no excess stock whatsoever."

7.2.2 The AO has taken appellant's physical stock and reconcile the same to the appellant's stock as per books of account to arrive at the figure of Rs. 5,13,63,972/- in the following manner:

1.	Physical stock at Mohali	₹ 18,98,74,349	
2.	Factory premises at Parbhani	₹ 1,82,77,000	
3.	At ware house (SBTL)	₹ 8,68,00,000	
	Stock at Nanded (NBHC) (95505 x 100.295 x 5/6)	₹ 79,82,228	
4.	4 Less stock of SRSPL counted in SBTL	₹ (-) 8,68,00,000	
	Total Stock	₹ 30,29,33,577	
5.	Less:		
	1. Stock as per books (Ginning stock)	₹ 20,69,89,060	₹ 25,15,69,605
	2. Trading stock	₹ 4,45,80,545	
	Total	₹ 25,15,69,605	
	Excess Stock		₹ 5,13,63,972

7.2.3 I have gone through the assessment order, the grounds of appeal, submission made by the appellant, books of account and the reply of remand report submitted by the AO. I find substantial force in the submission made by the appellant as they are backed by relevant supporting evidence. The AO has arrived at figure of ₹ 5,13,63,972/- by not considering the following:

- i) Stock of Rs. 1,82,77,000/- found at factory premises of Parbhani are entered in the books of account have not been considered while reducing the stock of appellant as per books of account. Further the value of trading stock should not be taken as ₹ 4,45,80,545/- but should be taken as Rs. 7,95,04,621/-- The appellant submitted that there is no dispute as per the quantity of stock of appellant concerned which constitutes 4830 bales. The same was valued by AO at ₹ 4,45,80,545/- instead of actual value at ₹ 7,95,04,621/-. The appellant has also submitted details of reconciliation of stock as per physical stock found as per books of account on page no. 108 of the submission made by it.

- ii) From perusal of appellant's submission and books of account along with reconciliation statement, it is clear that the credit for stock of ₹ 1,82,77,000/- entered into the books belonging to physical stock at Jiny Mill at Parbhani has not been given to the appellant while computing the unaccounted stock.
- iii) Further, the appellant has submitted that the value of 4830 bales of trading stock has been taken by the Department at ₹ 4,45,80,545/- instead of ₹ 7,95,04,621/-. The appellant has submitted that all purchases are recorded in the ERP/SAP computer system which was available with the Department in seized record along with all purchase bills. The appellant further submitted that there was no difference in reconciliation of physical quantity of stock which stood as 4830 bales, the only point of difference in regarding the valuation of this stock. The appellant submitted that in the ERP computer system different persons are given different roles in the maintaining of account. Data entry operators can only make entries. These entries, remain in account but while taking the print out only the approved entries are printed. Such approval of entries is done by Sr. Manager. The appellant had submitted that on 07/04/2015 itself the appellant had filed a list of unapproved entries for purchase and sale along with stock reconciliation. The appellant has filed a copy of reply submitted before the Investigation Wing for reconciling the stock vide page nos. 99 to 107 of its submission. I find that this submission also contain the date of entry and date of approval of pending purchase bills. It is seen that the date of entry of these bills is appearing to be prior to the date of search (12/02/2015), whereas these entries were approved in the month of February after the date of search. This submission along with relevant annexures formed part of the appellant's submission filed during the course of appellate proceedings and sent to the AO seeking his comments. Further, the appellant has produced books of account to reconcile the stock, the details of which are filed on page nos. 97 and 98 of the submission made during the course of appellate proceedings.

7.2.4 The position of reconciled stock after taking into account AO's order, the remand report, appellant submission and the books of account are as under:

"SHRIGOPAL RAMESHKUMAR SALES PVT. LTD. Stock Position Comparison

AS PER Assessing Officer:

1.	Physical Stock at Mohali (As per inventory) Page-88 of Paper Book 1834 Bales as per Panchanama Valued	₹ 18,98,74,349	
2.	Factory Premises of Parbhani (As per inventory Page-89 (Panchanama) of the Paper Book - 830 Bales Valued at)	₹ 1,82,73,250	
3.	At SBTL Warehouse (Trading Stock & Ginning pledge with National Bulk handing Corporation lying in SBTL godown 5593 bales Valued)	₹ 8,68,00,000	
4.	Stock at Valued (National Bulk handing Corp - 500	₹ 79,82,228	₹ 30,29,33,577

	bales Valued at)		
--	------------------	--	--

AS PER ASSESSEE RECORD:

		Bales	Value
	LESS:		
	(A) 1. Stock at Ginning Factory Mohali		
	2. Stock of Ginning (Kept in SBTL Warehouse (Item no.3 above) 5593 Bales - Ginning Mill Stock - 1300 bales)		
			₹ 20,69,89,060
	(B) Stock at Factory Premises Parbhani	830	₹ 1,82,77,000

(C) Trading H.O. Stock:-

5593 Bales (Item no.3 above)				
(-) 1300 Bales of Ginning Factory (considered in A(2) above] 4293 Bales	4293			
Stock at Nanded NBHC 500 Bales	500			
Rejected Stock: 37 Bales	37			
	4830	4830	₹ 7,95,04,621/-	
			₹ 30,47,70,681/-	₹ 30,47,70,681/-
			Stock as per books is more	₹ 18,37,104/-

For SHRIGOPAL RAMESHKUMAR SALES PVT. LTD.

7.2.5 Therefore taking into account the reconciliation of stock as submitted by the appellant, there would be negligible shortage in the value of physical stock as found at appellant's premises on the date of search as compared to the stock as per the appellant books of account. After taking into account the reconciliation statement filed by the appellant, it is seen that the stock is short by ₹ 18,37,104/-. Even if we considered these shortages, at the most the presumption can be laid that this stock has been sold by the appellant outside the books of account and addition of gross profit rate earned by the appellant can be applied to this stock. It is seen that during the year the appellant earned gross profit @ 8.7%. Applying the same the addition on account of gross profit earned by the appellant for this stock outside the books of account will be ₹ 1,59,829/-. Accordingly the addition to the extent of ₹ 1,59,829/ is confirmed. The AO is directed to delete the addition of ₹ 5,12,04,143/ made to the income of the appellant. Ground Nos. 4, 5, 6 and 7 are partly allowed."

43. The learned Counsel for the assessee reiterated the above factual propositions duly recorded by the learned CIT(A) during the course of hearing and placed reliance on the order so passed by the learned CIT(A).

44. The learned Counsel for the assessee further furnished detailed workings before us at the time of hearing in support of the findings of the learned CIT(A) to buttress his submissions.

45. Per-*contra*, the learned Departmental Representative relied on the order passed by the Assessing Officer, but could not impregnate the well-articulated averments made by the learned Counsel for the assessee nor could he point out where the learned CIT(A) has gone astray.

46. To summarise the contentions of the learned Counsel for the assessee, the difference in stock primarily does not emanate quantitatively and that firstly it is on account that the stock found at factory premises at Parbhani amount of ₹ 1,82,77,000, are duly entered in the books of accounts but have not been considered by the Assessing Officer while reducing the stock of the assessee as per the books of accounts which is patently erroneous and a visible error.

47. This fact has satisfactorily and substantially been proven by the assessee and which has further categorically been recorded by the learned CIT(A) at Point-(i) of Para-7.2.3 of the learned CIT(A) order. This fact remains unrefuted. It is seen that the Assessing Officer while calculating the

alleged excess stock and summarising the additions made at Page-10 of the assessment order added an amount of ₹ 1,82,77,000, being the actual stock found at Parbhani but has not reduced the said amount by reducing the value of stock as per books of accounts which definitely appears to be a fallacy and the credit of which deserved to have been correctly given as rightly argued by the learned Counsel for the assessee.

48. The other point of contention as raised by the learned Counsel for the assessee pertaining to the issue of discrepancies in stock solely relates to the valuation of stock by the Assessing Officer at ₹ 4,45,80,545, instead of the actual value claimed by the assessee at ₹ 7,95,04,621, and considering the variations on account of the amount of ₹ 1,82,77,000, as explained hereinabove and the variation on account of the difference between ₹ 7,95,04,621 and ₹ 4,45,80,545, the resultant figure would be the deficit stock as arrived at by the learned CIT(A).

49. It is seen that primarily there is absolutely no quantitative difference in the stock and that the entire dispute is on account of credit of ₹ 1,82,77,000 with respect to stock found at Parbhani having not been given while calculating the actual stock which has been dealt with hereinabove holding it to be a proper adjustment and secondly with respect to the valuation of stock as per books of accounts considered by the Assessing Officer at ₹ 4,45,80,545, whereas the assessee claimed to be ₹ 7,95,04,621.

50. The learned Counsel for the assessee submitted that the value of 4,830 Bales of trading stock has been taken by the Department at ₹ 4,45,80,545, instead of ₹ 7,95,04,621. It is the contention of the assessee that all the purchases made are recorded in the ERP/SAP computer system which was available with the Department in seized records along with all the purchase bills. It is further the contention of the assessee that there was no difference in reconciliation of physical quantity of stock which stood at 4,830 bales and that the only point of difference is regarding the valuation of the stock. It is the case of the assessee that in the ERP computer system different persons are given different roles in the maintaining of accounts. Data entry operators can only make entries. These entries remain on account but while taking the printout only the approved entries are printed. Such approval of entries is done by Sr. Manager. It is the case of the assessee that it had submitted on 07/04/2015 itself list of unapproved details of purchase and sale along with stock reconciliation. The learned Counsel for the assessee, at the outset, invited our attention to Page-93 to 98 of the submission made before the learned CIT(A) wherein the assessee has filed the list of purchase invoices which constitute stock of 4,830 bales valued at ₹ 7,95,04,621. The learned Counsel for the assessee further averted that the payment for the purchase of these bales also made prior to the date of search and the fact was submitted before the learned CIT(A) as well. The learned Counsel for the assessee invited our attention to Page-99 to 107 of the submission made before the learned CIT(A) forming part of Paper Book on record wherein the

assessee has furnished detailed reply before the Investigation Wing explaining various issues including but not limited to the valuation of stock which has been explained at Page-100 of the Paper Book containing the submission made before the learned CIT(A). It is seen that even before the Investigation Wing the assessee has categorically submitted that the correct valuation of the stock is ₹ 7,95,04,621 and not ₹ 4,45,80,545. Attention is also invited to page 108 of the submission before learned CIT(A) wherein the assessee has given a comparative analysis of the variation in stock explaining in detail the reason for variation between the valuation of stock as per the Assessing Officer at ₹ 4,45,80,545 and ₹ 7,95,04,621. Attention was invited to Page-103 as well wherein quantitative reconciliation has been given which forms part of the submission made before the investigation wing on 07/04/2015, wherein categorically it is submitted that there are certain entries which were pending and unapproved. Attention is also invited to Page-106 & 107, wherein categorically the details of unapproved purchases are given which have also been filed before the lower authorities.

51. It is the say of the assessee that the quantitative tally at Page-103, clearly depicts that there was stock of unapproved purchases.

52. Attention is also invited to Page-105 wherein draft trading account as on the date of search is prepared which shows the valuation of closing stock considered by the Assessing Officer at ₹ 4,45,80,545, which is clearly mentioned is only for 2,630 bales whereas the fact of the matter is that the

actual stock found was 4,830 bales. This itself explains the anomaly in the valuation of stock by the Assessing Officer because he has considered lesser quantity. This trading account further depicts unapproved purchases of 100 bales totalling to ₹ 15,07,812. It is the submission of the assessee which as explained hereinabove has also been taken before the investigation Wing that apart from this 100 bales there were other unapproved purchases as well which after approval changed the value of closing stock.

53. Attention was then invited to Page-104 wherein revised trading account as on the date of search is given wherein the valuation of stock is for 4,930 bales and the valuation of stock given is ₹ 8,09,70,865, which as explained is after the approval of the purchases which earlier for unapproved in the ERP/SAP system. The value of 100 bales earlier considered in the trading account as unapproved purchases having valuation of ₹ 15,07,812 when reduced with the value of 4,930 bales at ₹ 8,09,70,865 results in valuation of 4,830 bales which is the quantity found at the time of search and the valuation of which then almost matches with the valuation of stock of 4,830 bales as claimed by the Appellant at ₹ 7,95,04,621, subject to minor differences of ₹ 41,658, which can be ignored considering the value and quantity of stock.

54. The learned D.R. had placed detailed written submissions on 30/12/2024, after the date of hearing. It is appropriate to cull out the relevant portion of the same.

"While computing the excess stock, the stock as per books has been taken on the basis of seized document "B-4 page 33 which is the trading account as on 12.02.2015 (date of search) as prepared by the assessee itself and found at the office premise of the assessee.

It is worthwhile to mention that the unapproved purchases have already been considered by assessee in this trading account and thus the claim of assessee that unapproved purchases were not included in the working of stock as per books of account is factually incorrect.

It is further worthwhile to mention that this issue of unapproved purchases was raised by assessee in his submission dated 07.04.2015 which was almost 2 months after the date of survey i.c. 12.02.2015 and hence it is nothing but an afterthought.

It is also worthwhile to mention that the assessee had not raised this theory during the survey when the facts could have been verified there itself.

Further the assessee has stated that the department could have verified the facts from the data backup. In this regard, it is worthwhile to mention that the theory of unapproved purchase has been propounded by the assessee and not the department and hence the onus was on assessee to support his proposition by producing the time-stamped evidences from the ERP which was always available with the assessee.

Producing the so-called list of unapproved bills without the supporting time stamped evidences from ERP has no evidential value.

It is therefore abundantly clear that the Ld. CIF(A) has formed an opinion without weighing the facts and without testing the hypothesis of assessee with necessary evidences."

55. A bare perusal of gist of submissions so submitted by the learned D.R. makes it clear that the crux of the submissions of the learned D.R. harps upon the copy of the tentative trading account as on the date of search which as elaborately dealt with hereinabove is also a part of the compilation submitted by the assessee. The same material has been succinctly analysed by the assessee in Page-104 & 105 of the Paper Book. The learned D.R. has emphasised on the unapproved purchase appearing in this trading account however losing sight of the fact that the valuation of closing stock as per this

very trading account and which has been considered by the Assessing Officer is only for 2,630 bales wherein it is a matter of undisputed fact that the total quantity of bales found was 4,830 bales and after considering the valuation of 4,830 bales and the revised trading account file at page 104 and referred to hereinabove, the valuation of stock comes to ₹ 7,95,04,621 as claimed by the assessee and duly reconciled by him vide revised trading account placed at Page-104 of the Paper Book and further coupled with the fact that the details of purchases unapproved as on the date of search having also been filed as well as the revised purchase details of 4,830 bales, valuation of which crystallises at ₹ 7,95,04,621, it is without any doubt that the assessee has duly explained the difference of closing stock which has duly been taken cognizance of by the learned CIT(A) and on a conspectus of the above facts it is manifest that objections raised by the learned D.R. were already considered by the learned CIT(A) while framing his order and the correct valuation of stock at ₹ 7,95,04,621 as conclusively demonstrated by the assessee which has duly been taken cognizance of by the CIT(A) in his meticulous analysis and incisive articulation. Moreover, it is beyond doubt that there is no difference in physical quantity. The books of account have never been rejected and no discrepancies have been pointed out under section 145(3) of the Act. The difference in valuation at the midst of financial year cannot give rise to any income particularly when the year end valuation has been accepted without any grain of salt. We accordingly hold that the addition made by the Assessing Officer towards the excess stock was not

justified and the same has correctly been deleted by the learned CIT(A). We further hold that the addition of ₹ 1,59,829, as confirmed by the learned CIT(A) considering the gross profit on alleged deficit stock also deserves to be telescoped against the ad-hoc surrender of ₹ 1.25 crore and hence directed to also be deleted. The grounds no.5 and 6, are also hereby accordingly dismissed.

56. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 21/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/01/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur