

IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH (Virtual) JODHPUR

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT AND  
DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER

ITA No. 831/Jodh/2024  
Assessment Year 2018-19

1. Ramrakh Shyamlal New Anaj Mandi, Nokha – 334001. PAN No. AAIFR5612F		DCIT, Central Circle, Bikaner.
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ITA No. 829/Jodh/2024  
Assessment Year 2018-19

2. Mula Ram Adu Ram SN 39, New Anaj Mandi, Nokha – 334001. PAN No. AADFM0166G		DCIT, Central Circle, Bikaner.
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ITA No. 830/Jodh/2024  
Assessment Year 2018-19

3. Birju Devi Saran, C/o. M/s. Dharma Ram Ram Karn, New Anaj Mandi, Nokha – 334001. PAN No. BJSPS3837d		DCIT, Central Circle, Bikaner.
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ITA No. 832/Jodh/2024  
Assessment Year 2018-19

4. Ramrakh Ashok Kumar Saran, SN 250, Krishi Upaj Mandi, Nokha – 334001. PAN No. AAQFR1322Q		DCIT, Central Circle, Bikaner
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Assessee by	Shri S.L. Harsh, Advocate and Shri Ganesh Kumar Sharma, Advocate
Revenue by	Shri Karni Dan, Addl. CIT-DR.
Date of Hearing	01.05.2025.
Date of Pronouncement	01.07.2025.



**ORDER**

**PER DR. MITHA LAL MEENA, A.M.:**

These four appeals by the assessee are filed against the separate orders of the Commissioner of Income Tax, Appeals-5, Jaipur [hereinafter referred to "the CIT appeal"] even dated 05/09/2024 in respect to the Assessment Year 2018-19.

2. Since the issue raised in the grounds of all appeal are similar and inter-linked to each other except variation in quantum addition and therefore these appeals were heard together and disposed of by this consolidated order for brevity. We are enumerating the grounds of appeal form ITA No. 831/Jodh/2024 in respect with assessment year 2018-19 for discussion as a lead case as follows.

1. That the order passed by learned Commissioner of income tax (Appeals) Jaipur 5 in short (CIT (A) is against law -equity Justice and facts of the case.
2. That learned CIT (A) erred in upholding the part of assessment order passed by DCIT, CENTRAL, BIKANER and additions of Rs. 28,89,032/-. The order has been passed without proper appreciating facts and evidence on record. Order deserves to be set aside.
3. That under the facts and circumstances learned CIT (A) erred in not considering the consolidated stock inventory showing very minor variation after reconciling the total stock. However, AO wrongly mentioned excess stock on one hand and short stock on other for making additions for alleged excess stock and deemed sale of alleged



short stock for making additions in income after applying gp rate. The addition confirmed by CIT (A) on this ground is bad in law.

4. That under the facts and circumstances learned CIT (A) erred in not considering the reconciliation of stock available at the time of survey with sister concern and allied business units. After explanation and verification of stock inventory there was no such issue remains to make further additions in income apart from income offered for tax vide surrender note dated 5-3-3018. The order is highly arbitrary and bad in law.
5. The under the facts and circumstances learned CIT(A) seriously erred in allowing AO to review the survey proceedings which were concluded by higher authorities after accepting surrender note and income offered at Rs. 50,00,000.00 by assessee to cover all the deficiencies if any found in verification of stock etc. The order is bad in law hence deserves to be set aside.
6. That learned CIT (A) seriously erred in not considering the fact of jurisdiction when survey proceedings were concluded and whatever proceedings remained should have been concluded by Rs. 0 regular circle of income tax department and not otherwise. The order is without jurisdiction.
7. That learned CIT (A) grossly erred in not considering the ground No. 4 of grounds of appeal in proper light of facts and circumstances when survey was jointly conducted at the main firm and sister concern. The total proceedings were concluded on the basis of statement of one person and utilized the same in all other firms. The order is bad in law.

3. Having heard both the sides and perusal of record, we find that admittedly, survey action u/s 133A of the Act carried out by the Department on 05.03.2018 at business premises of partnership concern of the assessee firm namely M/S Ram Rakh Shyam Lal, located at New Anaj Mandi, Nokha, Bikaner



and that based on physical verification of stock by survey team of the Department, a detailed item wise inventory of stock found physically vis-a-vis inventory of stock entered in books of account of the assessee as on survey date was prepared by the survey team. However, the AO has ignored the inventory of stock reconciliation of shortage and excess stock of sister concerns among these four assesses firms in the combined physical inventory of stock being made for taking the surrender of Rs. 50,00,000/- as per statement recorded and accepted by the department at the time of survey.

4. The AO had had rejected the contention accepted by the survey team to give set off of the value of excess stock of items with the value of short of items being consider by the survey team of Department in the combined stock of the four firms lying at one business premises of the main assessee M/s Ramrakh Shyamlal. Rather the AO mentioned that to compensate the leakage of revenue on this count, the excess value of stock found to the tune of Rs.28,66,661/- (total excess worked out of Rs.78,66,661/- minus surrendered amount on account of stock discrepancy of Rs. 50,00,000/- and gross profit earned on said short stock found (sold out of books) which works out to the tune of Rs. 22,371/- after applying gross profit rate of 1.76% on said shortage of stock found should be added to the total income of the assessee firm for the year under consideration. As such, the amount of Rs. 28,89,032/- (Rs. 28,66,661/- on account of excess



stock found + Rs.22,371/- on account of profit earned on short stock) was added to the total income of the assessee firm for the year under consideration based on the working of stock as per following table.

S. No.	Firm Name	Value of Excess stock (Per AO)	Value of Short Stock (Per AO)	Total Difference
1.	Ramrakh Shyamlal	7866661	1271082	
2.	Ramrakh Ashok Kumar	489979	1153169	
3.	Mula Ram Adu Ram	2222051	2144788	
4.	Birju Devi Saran	835713	416179	
	Total	11414404	4985218	64,29,186/-
Total Surrender				50,00,000/-

5. The Ld. CIT appeal has observed that *"in the interest of natural justice, I am of the opinion that if any item found during the survey period in respect of any Firm was in excess and the same item was short in other Firm's stock, then the resultant figure can be taken for justification of the stock of that particular item."* However, he has not addressed the issue of surrender of Rs. 50,00,000/- taken from the assesses by the department based on the discrepancy of stock on physical verification of the stock inventory of combined stock belonging to all the four assessee as above being accepted on computation with reference to

books of account of the assessee's by the survey team. Thus, the Ld. CIT Appeal was not justified in partly confirming the addition by restricting the addition of Rs.28,66,661/- to 12,37,084/- on account of excess stock and Rs. 22,371/- by upholding GP rate of 1.76% on shortage of stock of Rs. 7,14,273/-, a self-contradictory finding by way of ignoring the computation of excess stock based on physical inventory made by the survey team for the surrender.

6. We find that in the present case, the four-sister concern are owned and managed by family members having Office of all these sister concern at the same premises of Ramrakh Shyamlal and during the survey, statement of a single person, was taken in the cases of all the concerned firms, whereas, he was partner in two firms only, however, managing all the firms, and he accepted the fact that stocks of all these four firms were kept at one premises. Admittedly, the Department had accepted the surrendered income of Rs. 50,00,000/- for the discrepancies found in stock of these firms collectively based on the same consolidated stock reconciliation-based statement. In our view, if the department itself accepted that the stock of these firms was not kept separately and accepted the surrendered income of Rs. 50,00,000/- in one hand from these firms during the course of survey proceedings, then it is axiomatic that the stocks of these firms were kept at premises of sister concerns or third-party place.



Meaning thereby that the additions made by the Ld. AO in all these firms in relevant assessment orders are based on assumption and presumption and the same would be liable to be deleted.

7. We are of the considered view that once the department has taken surrender of income based on physical stock inventory which is honoured by the assessee by showing the surrendered income in its return of income with timely payment of due taxes, the department has no right to make any further addition in the return income of the assessee without pointing out any discrepancy in the books of account based on incriminating document if any impounded in the course of survey. In the present case, assessee has audited books of account and department did not point out any discrepancy in the books of the assessee. Therefore, the additions made by the AO in these captioned four appeals are unwarranted.

8. Accordingly, we hold that the impugned order passed by the Ld. CIT appeal is infirm and perverse to the facts on record. Therefore, the addition partly confirmed by the CIT appeal amounting to Rs. 12,37,084/- on account of excess stock and Rs. 22,371/- by upholding GP rate of 1.76% on shortage of stock of Rs. 7,14,273/- are as such deleted.



9. The facts and issues in ITA Nos. 829, 830 and /832/Jodh/2024 are similar to that ITA No. 831/Jodh/2024 and therefore, our observation and finding given in ITA No. 831/Jodh/2024 shall be applicable to ITA Nos. 829, 830 and /832/Jodh/2024 in *mutatis mutandis*, ordered accordingly.

10. In the result, all the four captioned appeals are allowed.

Order pronounced on...01/...07/2025 in the open court.

- Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT

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- Sd/-  
(DR. MITHA LAL MEENA)  
ACCOUNTANT MEMBER

Dated :01/.../07/2025

Copies to :

- (1) The appellant.
- (2) The respondent.
- (3) CIT
- (4) CIT(A)
- (5) Departmental Representative
- (6) Guard File

By Oder  
Assistant Registrar,  
Income Tax Appellate Tribunal,  
Jodhpur Bench,  
Jodhpur.