

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH JABALPUR**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 24/JAB/2019)
(Assessment Year: 2013-14)

Shri Subhash Kumar Aahi, Prop. of M/s Mahan Jewellers, Chowk Bazar, Satna (MP)- 485001	Vs.	Assistant Commissioner of Income Tax, Circle, Satna (MP) 485001
PAN/GIR No. ACJPA 5355K		
(Applicant)	:	(Respondent)

Applicant by	:	Shri Sanjay Nema Advocate And Shri Ashish Goyal, Advocate
Respondent by	:	Shri N.M. Prasad, Sr. DR 1

Date of Hearing	:	15.09.2025
Date of Pronouncement	:	12.12.2025

ORDER

PER NIKHIL CHOUDHARY, AM:

This is an appeal filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-1, [in short the 'CIT(A)'] Jabalpur under Section (u/s.) 250 of the Income Tax Act, 1961 (in short the 'Act') on 07.03.2019, wherein, the learned CIT(A) has dismissed the appeal of the assessee against the order of the Assessing Officer (in short the 'AO') passed u/s. 143(3) of the Act on 29.03.2016.

The grounds of appeal are as under:-

- “1. *That the impugned order u/s 250 of the I.T. Act, 1961 dated 07.03.2019 passed by Commissioner of Income Tax (Appeals)-1, Jabalpur, is illegal and bad in law.*
2. *That the Assessment order under Section 143(3) of the Income Tax Act, 1961 dated 29.03.2016, passed by the Assistant Commissioner of Income Tax, Circle-Satna, was illegal and bad in law.*
3. *That the additions so made and confirmed by CIT(A)-1, Jabalpur being contrary to the provisions of law and facts may kindly be deleted in full.*
4. *That as on the fact and in position of law, the learned CIT(A)-1, Jabalpur was not justified in confirming the A.O. who made an addition of Rs. 54,58,702/-on account of excess stock of gold jewellery found at the time of survey. The addition was without basis, arbitrary, vague and not sustainable in law, hence liable to be deleted.*
5. *That as on the fact and in position of law, the learned CIT(A) had erred in not appreciating the fact that the gold jewellery to the extent of Rs. 54,58,702/-being claimed as excess stock was pertaining to customers who left for Ally remodeling or repairing. That the appellant had produced books of account, quantitative stock register, bills/vouchers/invoices along with diaries and receipt books of jewellery kept for remodeling or repairing but the addition was made on conjectures and surmises ignoring the fact that the diaries and receipt books pertaining to jewellery kept for remodeling or repairing have been found and acknowledged during the survey and no-where its genuineness was questioned nor any attempt was made to say it as bogus.*
6. *That as on the fact and in position of law, the learned CIT(A)-1, Jabalpur was not justified in confirming the A.O. who made an addition of Rs. 9,52,430/-on account of excess cash found at the time of survey. The addition was based on conjectures and surmises, arbitrary, vague and not sustainable in law hence liable to be deleted.*
7. *That as on the fact and in position of law, learned CIT(A) had erred in not appreciating the fact that the cash had been withdrawn from bank within 2 to 5 days before survey but cashbook was not updated with these withdrawals which were self evident from the bank statement and the cashbook found and seized during the survey.*
8. *That as on the fact and in position of law, the learned CIT(A)-1, Jabalpur was not justified in confirming the A.O. who made an*

addition of Rs. 5,19,185/-on account of excess stock of silver jewellery found at the time of survey. The addition is based on conjectures and surmises, arbitrary, vague and not sustainable in law hence liable to be deleted.

9. *That as on the fact and in position of law, the learned CIT(A) had erred in not appreciating the fact that certain bills pertaining to silver jewellery to the extent of Rs. 5,19,185/- being claimed as excess stock had been remained to be posted in books of account as the books were not updated till the survey but those bills were found and duly acknowledged by the department during the survey.*
10. *That as on the fact and in position of law, the learned CIT(A)-1, Jabalpur was not justified in confirming the A.O. who made an addition of Rs. 14,22,456/-on account of unexplained investment on renovation of shop on the basis of DVO's report. The addition is based on conjectures and surmises, vague and not sustainable in law hence liable to be deleted.*
11. *That as on the fact and in position of law, the learned CIT(A) had erred in not appreciating the fact that the valuation report prepared by the Government approved valuer included the cost of construction of shop, stairs and daasa along with modernization cost whereas the appellant had purchased the shop with inbuilt stairs and Daasa at Rs. 22,00,000/- and in addition to that Rs. 10,37,544/- incurred on renovation which was disclosed in the books of accounts.*
12. *That as on the fact and in position of law, the learned CIT(A) had erred in not appreciating the fact that the appellant had submitted complete bills and vouchers pertaining to investment on shop which were duly recorded in books of accounts. The Ld. A.O. had neither pointed out any specific defects with regard to these expenditures nor rejected books of accounts.*
13. *That as on the fact and in position of the law, the Ld. CIT(A)-1, Jabalpur was not justified in confirming the A.O. who made an addition of Rs.23,67,243/- by applying GP ratio on sale of surrender stock of Rs.59,77,887/-. The addition was based on pure guess work, concocts and contrived being excessive, unwarranted and unsustainable in law.*
14. *That the Appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal.”*

2. The facts of the case are that the assessee is the proprietor of M/s Mahan Jewellers and engaged in the trading of land, diamonds, gold and silver jewellery. He filed his return of income for the assessment year under consideration on 30.09.2013 at a total income of Rs.42,48,530/-. In the case of the assessee, a survey u/s. 133A of the Act had been conducted on 30.05.2012. In course of that survey, the assessee had surrendered an amount of Rs.89,29,817/- on account of various discrepancies which could not be reconciled at that moment. Subsequently, on 30.09.2013 i.e. on the same date, which he filed his return, the assessee also filed a retraction statement, where he explained the reason for retraction of surrender at income to be the fact that after survey when he reconciled his stocks, then there was no reason to make a surrender on account of excess stock of gold and silver jewellery. It was submitted, in respect of the surrender in cash of Rs.9,52,430/- that, in fact, cash had been withdrawn from the bank a couple of days before the survey, but since the cash book had not been updated, the assessee was not aware of the fact. Now, it was established that the cash was explained, there was no need to confine with the statement made during survey. With regard to the surrender of Rs.20,00,000/- on account of undisclosed investment in the shop, the assessee submitted that the purchase price of the shop of Rs.22,00,000/- had already been disclosed in his books of account and in that addition to that, Rs.9,60,000/- had been incurred on renovation. However, only the valuation done on the date of survey had been considered while making the disclosure, but on careful perusal of the materials subsequently, the mistake had been realized and therefore, the surrender was being withdrawn. On the issue of surrender of Rs.54,58,702/- on account of excess stock of

gold and diamond jewellery, the assessee subsequently noticed that the total stock included the jewellery that had been left by the customers for the purposes of remodeling and repairing. Separate records had been maintained of repairing/remodeling, which were found during the survey, but had not been merged with his books of account as per the method of accounting followed by the assessee. By mistake, the assessee could not reconcile the correct position of stock and had therefore made a surrender on this account but now once the facts were clear, the surrender was being withdrawn. Finally, on account of excess silver jewellery of Rs.15.031 kg. of Rs.5,19,185/- that had been surrendered, the assessee submitted that he had later found some bills pertaining to stock of silver jewellery that had remained to be posted in the books as his books were not updated up till the date of survey. Since, he was unaware about the fact, he had offered the same for surrender, but later upon realization of the correct position he was seeking to withdraw the same. The assessee submitted that the surrender that had been made on the date of survey had only been made as the assessee was not in a position to reconcile and compute the alleged undisclosed income and, therefore, he admitted to the findings of the Department. But subsequently when he found that nothing emerged from the records that could suggest that he had undisclosed income, the surrender which was a mistake, was being withdrawn.

3. However, learned AO did not accept this retraction by the assessee. He noted that cash books has been updated up to 29.05.2012 and extract of the cash book had been taken on the date of survey, (counter signed by the assessee) which showed the balance of only Rs.50,120/- therefore, it could not be accepted that cash which had been

withdrawn from the bank a couple of days earlier was available and could explain the excess cash that had been found at the premises. With regard to the retraction on account of undisclosed investment in shop, the learned AO pointed out that the shop was very old and the sum was invested for purchase of it. The construction being very old, the cost of existing construction was nominal. The valuation report was therefore, in respect of construction, renovation and furnishing of the shop and of the total investment of Rs.29,60,000/- only Rs.9,60,000/- was disclosed and it was for this reason the balance amount of Rs.20,00,000/- was surrendered. Therefore, the retraction was without any basis which deserved to be rejected. With regard to the surrender of Rs.54,58,702/-, the learned AO again refused to accept the retraction. He pointed out that within during the course of survey, the assessee had not referred to any old jewellery for repairing belonging to customers. Neither was any evidence produced regarding the claim nor had the valuer in his valuation report mentioned anything about old jewellery pertaining to customer. Furthermore, the assessee had remained silent for more than four months after the survey and the time gap along with the valuation report clearly established that the retraction was untrue and an afterthought to cover up the undisclosed stock. Similarly with regard to the retraction of surrender on account of excess stock of silver jewellery, the learned AO pointed out, that during the course of survey, the assessee had not mentioned anything about unposted bills and the delayed retraction demonstrated that this was only a fabricated story to cover up undisclosed stock. He, therefore, held that the retraction statement is misleading.

4. Opposing the said finding of the learned AO, the assessee filed another submission, in which, it was submitted that it was evident from a perusal of the bank statement that cash had been withdrawn from Allahabad Bank on 24.05.2012, 26.05.2012 and 29.05.2012 (amounting into total Rs.11,50,000/-), which was available to the assessee and the same had been found with the assessee as cash in hand. It was pointed out that many of these transactions had not been entered into the cash book and therefore, the cash book was incomplete. Subsequently, when the amounts were incorporated the actual cash bank balance on 29.05.2012 would be Rs.10,26,845/-. Therefore, there was no question of surrender of Rs.9,52,430/-. / With regard to undisclosed investment in shop, it was undisputed that the assessee had purchased shop for Rs.22.00 lakhs on 21.02.2011. The Department had referred the matter to the valuer to evaluate the cost of construction of the property as on 30.05.2012. The valuer had valued the same at Rs.29,60,000/-, but there was certain inconsistency in the valuation report. The assessee listed this inconsistency in reply to the AO as under:

1. Shops and stairs pertaining the ground floor had already been built up, as evident from registry and therefore, assessee had not made any investment on construction of shops and stairs at ground floor.
2. Construction of *DASSA* had been made prior to purchase of shop and was evident from the registry.
3. Costs of shop, locker and stair on first floor had already been built up as evident from the registry.
4. Cost of shop w/c and stairs of second floor had been built up as evident from registry.

5. Cost of shop of third floor had already been built up as evident from registry.
6. Cost of furniture and fixtures has been estimated Rs.14,00,000/- whereas assessee had only incurred of Rs.6,19,265/- and bills and vouchers were being produced.

Thus, it was submitted that aspects of the shop that were already existing on the date of registry had been considered in the valuation report and the assessee had only incurred a cost of Rs.10,37,544/- on the renovation and modernization of the shops, which had been disclosed in the books of account. During the course of survey, the assessee had accepted that the difference as arrived on the basis of DVO's report without considering the facts in the given report only to avoid litigation and dispute but after the survey since the assessee had realized the mistake, therefore, he had withdrawn the surrender. Regarding the surrender-on account of excess stock of gold jewellery, the assessee submitted that during the course of the survey, the order book for remodeling and repairing of gold jewellery had also been found and verified by the Department. The Department had never asked any question regarding the remodeling and repairing of jewellery. Evidences such as the register, bills and vouchers pertaining to repairing and remodeling had been verified and the valuation done by the valuer of all the jewellery (at the rates prevailing then) could not take away from the fact that some of that jewellery belong to the customers. The failure to reconcile the stock on that date was only due to the mental state of the assessee but during the course of audit, when the auditor has raised the certain questions, the mistake had been realized and

hence the erroneous surrender made earlier was retracted With regard to the excess stock of silver jewellery, it was submitted that the assessee was not aware of the fact of some bills not being posted into these books on the date of surrender, but once the assessee had been made aware, there was no question of owning the surrender on account of silver jewellery.

5. However, the AO once again found faults in the submissions made by the assessee. He held that customers' old jewellery for remodeling and new jewellery could never been mixed up because the old jewellery was always kept separately and tagged with the name of the owner and usually separately inventoried. He further noted, the extremely short date between the jewellery received from customer, remodeling and the date of which the jewellery were returned to the customer as remodeled jewellery and observed that since these take some time there must have been some amount of old jewellery available with the assessee on the date of survey. But none was found. He further noted that customers' old jewellery was given to *Karigars* for remodeling at their own houses and it was not done at the shop. Thus, there was no question of this old jewellery being included in the stock valued by the valuer even if the assessee's claim were to be accepted. The inventory prepared by the valuer consisted of finished jewellery only and this demonstrated that the entire jewellery as reported by the valuer was the assessee's own jewellery. He further noted that the assessee had failed to explain the difference in the stock of jewellery and had not said anything about customers' old jewellery. Therefore, rejecting this submission of the assessee, he made an addition of Rs.54,58,702/- on account of unaccounted gold jewellery.

6. With regard to excess cash found at the time of survey, the AO found that all the expenses made had been entered into the cash book but the withdrawals from the bank had not which was suggestive of the fact that the books were incomplete and incorrect. Therefore, he could not accept the explanation of the assessee and he accordingly made the addition of Rs.10,52,430/- on account of excess cash. He also rejected the claim of the assessee with regard to failure to enter bills of purchase of silver jewellery on the ground that the sales were recorded right up to the date of survey so there was no reason why the purchases should not be accounted for. Accordingly, the addition of Rs.5,19,185/- on this account was also made. Finally, he held that since the assessee had not maintained any construction account for the renovation of the shop, the cost of construction, renovation and other works of as valued by the DVO had to be accepted. Further, the building at the time of purchase was a very old building and therefore, it had to be assumed that the same had been completely renovated but on consideration thereof a deduction of Rs.5,00,000/- was admissible on this account. Therefore, he restricted the investment in the shop to a sum of Rs.24,60,000/- and added back the difference in the disclosed and undisclosed amount (being Rs.14,22,456/-). Finally, not only did the AO add back the investment in the excess stock of gold and silver jewellery but he also decided to add back the gross profit on the sale of this stock and accordingly made a further addition of Rs.23,67,243/- on this account. Thus, the total income of the assessee was determined that Rs.1,49,68,550/-.

7. Aggrieved with the said assessment order, the assessee went in appeal before the learned CIT(A). The learned CIT(A) considered the arguments of the assessee. In

respect of the excess stock of gold, silver and cash, he held that the only inference that could be drawn was that the assessee was trying to pull curtain over the declaration made during the survey and had accordingly come out with the explanation. He held that the vouchers had been prepared subsequently and vouchers and receipts prepared subsequently were an afterthought. The assessee has been confronted in this matter on the date of survey and he never mentioned anything about jewellery belonging to customers lying with him. Thus, there was the contradiction between the submissions of the assessee during the course of survey, and in subsequent proceeding. Had the ornaments that were lying with him been those of the customer, the assessee would have clearly pointed out during the course of survey. Furthermore, he observed, during the course of survey, the assessee had voluntarily admitted undisclosed income of Rs.89,29,817/- on account of excess stock of gold, silver, cash and investment in the shop. The assessee had been asked to explain and verify after going through the regular books of account, but he failed to do so. He observed that during the course of the assessment proceeding, the AO had given a further discount of Rs.5.00 lacs on account of cost of old building of the shop and therefore, it was evident that he had been granted every opportunity to explain his case. But since he had not been to do so, therefore, the additions were sustainable. The learned CIT(A) referred to Section 110 of the Evidence Act that when the assessee was found in possession of something, the same was assumed to belong to him unless proved otherwise. Furthermore, he pointed out that when the assessee has made a statement of facts, he could not have any grievance if he was taxed in accordance with that statement. If the assessee wishes to correct the

statement, then it was open to him to show the evidences to retract the statement. But in fact, no such evidence has been furnished, which showed that he had no evidence in his possession. Further, he noted that sworn statement made u/s. 133A of the Act could be used as evidence under the Act. In the present case, the assessee had not made any retraction within three months of the statement recorded and therefore, the onus lay completely upon him to show that the statement had been made out of misconception. He referred to the decision of the Ahmedabad Bench of the ITAT in the case of '*DCIT vs. Bhogilal Moolchand*' 96 ITD 344, wherein the Bench had held that the statement given u/s. 132(4) of the Act was not conclusive and could be retracted, but the gap between the statement and the retraction was one of the important points to be taken into account to decide whether the statement was given under mistaken belief of fact or law and in the case of retraction being given long after it was given, the AO was justified in not accepting the retraction. Learned CIT(A) placed reliance on the decision of the ITAT Bangalore of the '*Carpenter Classics (Exim) (P) Ltd. v. DCIT*', 108 ITD 142 and relying upon the same, he dismissed the assessee's appeal against the additions made by the AO by rejecting his retraction. He also chose to confirm the addition made on account of the gross profit and surrender stock on the ground that the assessee during the course of assessment proceeding as well as appellate proceedings had failed to establish that the sales has been recorded. Accordingly, the appeal of the assessee came to be dismissed.

8. The assessee being aggrieved with the said dismissal of his appeal and came before us. Shri Sanjay Nema (Advocate) and Shri Ashish Goyal (Advocate) (hereinafter

known as learned 'A.Rs.') representing the case of the assessee submitted that in the case of the assessee, survey u/s. 133A of the Act had been conducted on 30.05.2012 and in the course of that survey, the assessee had surrendered Rs.89,29,000/- on account of various alleged discrepancies, which could not be resolved at the instant moment. However, later on, the assessee ascertained the correct position and or therefore, since the surrender had been made in the absence of credible evidences to suggest suppression of income, the assessee had retracted the said surrender. It was submitted that the impugned order u/s. 250 of the Act passed by the learned CIT(A)-1, Jabalpur was illegal and bad in law. The learned CIT(A) had erred in law not appreciating the fact that gold jewellery to the extent of Rs.54,58,702/-being claimed as excess stock. pertains to the customer who had left the same for remodeling and repairing. The assessee had produced books of account, quantitative stock register bills, job register bills/vouchers/invoices along with diaries and receipt book kept for remodeling of repairing but the addition was still made, ignoring the fact that diaries and receipt books pertaining to jewellery kept for remodeling and repairing had been found and acknowledged during the survey and nowhere had its genuineness being questioned nor was there any allegation that the same was bogus. Furthermore, learned CIT(A) had omitted to consider these facts that there was no evidentiary value of statement recorded u/s. 133A of the Act because Section 133A does not empower any income tax authority to examine any person under oath. Reference was invited to decision of the Hon'ble High Court of Kerala in the case of and '*Paul Mathews & Sons vs. CIT*' (2003) 263 ITR 101 (Kerala) wherein the Hon'ble High Court had held that the statement recorded u/s.

133A of the Act was not given any evidentiary value for the reason that the Officer was not authorized to administer oath or to take any sworn statement as laid down under law.

9. The learned AR pointed out that in the case of '*CIT Rajkot-III vs. MP Scrap Traders*' (2015) 60 taxman.com 205, the Hon'ble High Court had affirmed the decision of the ITAT to delete an addition made by the AO solely on the basis of the statement of partner that was subsequently retracted. It was further pointed out that the Hon'ble High Court of Madras in the case of '*CIT Trichy Vs. P Balasubramanian*' (2013) 33 taxmann.com 130 (Madras) had held that any statement recorded u/s. 133A would have an evidentiary value only if it was supported by relevant material to substantiate the same and in the present case there was no material available with the AO to enforce the surrender made by the assessee. The learned AR also drew reference to CBDT Circular dated 10.03.2003 wherein the Board had pointed out the futility of taking surrenders and confessions and advised the Authorized AOs to rely upon evidences and materials gathered during the course of such survey while framing relevant assessment orders. However, in the present case, the AO had completely relied upon the statement of the assessee. He had not considered the conditions prevailing at the time and the reasons given for the alleged confession/surrender and the subsequent retraction/explanation for the same. Furthermore, it was pointed out, that it had been held by the Hon'ble Punjab and Haryana High Court in the case of '*Krishan Lal Shiv Chand Rai vs Commissioner Of Income-Tax*', 88 ITR 293 (P&H) that it was an established principle of law that a party was entitled to show and prove that the admission made by him previously was

in fact not correct and true. The learned CIT(A) had failed to appreciate this and neither was the statement u/s. 133A of the Act having any evidentiary value nor was it conclusive and an assessment of tax could not be done solely on that basis. Therefore, the orders passed by them were incapable of being sustained. Coming to the specific additions it was pointed out that during the survey proceedings, the survey authority had inventoried, stock of gold and gold jewellery. At the time total stock of gold and gold jewellery was found at 8341.390 gms. and excess stock was worked out on 2185.717 gms. The assessee could not furnish an instant reconciliation of the alleged excess stock to the survey team and therefore, on the basis of this alleged excess stock, the survey officials had extracted a surrender. However, subsequently the assessee with the help of his accountants and counsels made in-depth analysis of his records and he discovered that this alleged excess stock in fact belonged to his customers and had been received by him for remodeling and repairing. It was in this context that the retraction has been made. It was submitted that during the course of survey, the order book for remodeling and repair of gold jewellery was also found and verified by the Department. A copy of the said order book was filed by the assessee as part on pages 1 to 37 of the second paper book filed by the assessee on 15.03.2021. It was pointed out that the said register of repairing and remodeling has been signed by the assessee and the inspector of the Department on 30.05.2012 during the course of the survey, on the first and last pages. Thus, the genuineness of the claim that jewellery was being received for repairing and remodeling could not be doubted and in fact no question has been raised in this regard. The learned AR also drew our attention to receipt vouchers filed by them

bearing page nos. 201 to 260 in the paper book dated 15.03.2021, which also demonstrated, the receipt of jewellery for customer for repair and remodeling. Our particular attention was invited to receipt nos. 201, 250, 251 and 273, which was the first and last pages of the receipt books and which were signed by the assessee and the inspector on the date of survey. It was submitted that during the course of survey, the valuer had valued the entire jewellery and due to stressed mental condition at that time, the assessee was not able to reconcile the exact position of stock. The learned AR submitted, that since there was material on record to justify what the assessee was saying, learned AO and CIT(A) was not justified in overlooking the same and rejecting the explanation of the assessee. Therefore, they prayed that addition was made without considering the contents of the said register and therefore, it was liable to be dismissed.

10. Coming to the excess stock of silver weight 15.031 kgs., which the assessee was unable to explain during the course of survey, the assessee submitted that the purchase bills of silver and silver items were found during the course of survey, the first and last bill was duly acknowledged by the survey party. Our attention was invited to pages 110 and 130 of the paper book dated 12.03.2021, which contained purchase bills of silver that had been initialed by the assessee and the Inspector on the date of survey. It was further submitted that these bills have been produced before the AO on 15.03.2016 and the AO had acknowledged the submissions of these bills. There were also placed before the learned CIT(A) vide submission dated 07.03.2019. However, this direct contemporary evidence had been disregarded by these authorities and therefore, the addition confirmed by them was not sustainable. It was submitted that the purchases

were inadvertently not recorded into books of account but the bills were available before the survey party. In the circumstances, there was no reason to confirm the addition made by disregarding these facts only because the assessee could not explain the stock of silver on the date of survey. Furthermore, omission from entry into the books of the said bills could not be ground to assume unexplained purchases.

11. On the issue of addition of excess cash of Rs.9,52,430/-, learned AR drew our attention to page 58 of paper book filed on 12.03.2021 which demonstrated that a sum of Rs.11,50,000/- had been withdrawn in three instalments on 24.05.2012, 26.05.2012 and 29.05.2012. The learned AR submitted that the fact of cash availability with the assessee could not therefore be doubted in view of this bank statement. However, only because the Accountant had omitted to enter the cash withdrawn from the bank, an impression of excess cash had been created and since the assessee was unable to explain it at the time, he had surrendered the alleged excess cash balance. However, on going through the books that were redrawn, it was discovered that in fact there was no excess cash because the actual balance as per the cash book was not Rs.50,120/- but Rs.10,26,845/- and it was in this context that the surrender had been withdrawn. The learned AR pointed out that had the cash not been withdrawn from the bank, then it could have been alleged that it was unavailable, but the fact of entries in the bank clearly demonstrated that the assessee had the cash in hand and the learned AO had failed to controvert this by showing that the cash had already been entered into cash book or been expended elsewhere. Therefore, there was no basis to sustain the addition made on account of excess cash.

12. Referring to the undisclosed investment in shop and addition of Rs.14,22,456/- made on this account, the learned ARs took us to the registry of purchase contained on pages 138 to 205 of the paper book filed on 12.03.2021, so as to demonstrate that assessee had purchased a commercial property which was a three-storey building at a total consideration of Rs.22.00 lacs on 11.01.2011. Subsequently, the assessee had carried out renovation and repair work on the building which lasted till February, 2012. Thus, the said shop was inaugurated on 29.02.2012 and to demonstrate this the assessee filed a copy of the invitation card issued on the occasion to various customers and prayed that the same may be considered as additional evidence to demonstrate that the renovation work had been completed by then. It was, therefore, submitted by the assessee that on the date of survey, the Department had obtained a report from a registered valuer that had estimated the cost of construction of the same building at Rs.29,60,000/- as on the date of survey. From the same, the Department had assumed that the assessee had made a total investment of Rs.29,60,000/- into the house but in fact the house was already constructed and only required repair and renovation, which have been done for a sum of Rs.10,07,000/- only. The assessee's three storey building, with the many of the features referred in the valuation report was already in existence on 11.01.2011 as evident from the registered purchase deed and, therefore, there could not be any assumption that the assessee had reconstructed the entire property. Furthermore, the details of this expenditure estimated by the registered valuer on account of features that already existed in the said building had been pointed out to the learned AO and the learned CIT(A) in the proceedings before them. In response, the

AO had only allowed a concession of Rs.5,00,000/- but this was completely inadequate. It was submitted that the assessee was confronted with an on the spot valuation report on the date of survey and he had made a surrender because he could not explain it but subsequently, when he saw it along with counsels and accountants, he realized that there was no unexplained investment and, therefore, no requirement to surrender because the entire cost of purchase and renovation already stood recorded in his books. Furthermore, it was submitted by the ARs that purchase had taken place in the A.Y. 2011-12 and the renovation had taken place in the AY 2012-13. So even otherwise, there was no reason to bring any amount to tax in the present assessment year. Therefore, he prayed that the addition in this regard may kindly be deleted.

13. Finally coming to addition of Rs.23,67,243/-, it was submitted that there was no reason to assume that the assessee had sold any part of the gold and silver jewellery/items outside of the books of account and therefore, there could not be any basis for making an addition on account of suppressed sales or on account of suppressed gross profit on this alleged excess stock. The learned AR, therefore, prayed that the same may kindly be deleted.

14. On the other hand, Shri N.M. Prasad, learned Sr. DR-1, arguing on behalf of Department submitted that on the date of survey, the assessee had been confronted with all the facts and he had voluntarily made a surrender of the amounts on account of unexplained stock of gold jewellery, excess cash found on the date of survey, unexplained stock of silver jewellery, and unexplained investment in the construction of the shop. Thereafter, the assessee had retracted the statement after a very long gap

i.e. four months. The learned CIT(A) had referred to the judgment of the ITAT Allahabad Bench in the case of '*DCIT vs. Bhogilal Moolchand*' (Supra) to show that the time gap between the statement and the interaction of the statement was relevant to decide as to whether, the statement given under mistaken belief or retracted as a convenient part of tax planning. It was submitted that there was no evidence to support the retraction made by the assessee and in the case of '*Carpenter Classics (Exim) (P) Ltd. v. DCIT*', (Supra) the ITAT held that the onus was clearly on the assessee to show that the said declaration was made on misconception of fact and where the assessee had not taken any such action for a period of two and half months there was no valid reason to retract the same. The learned Senior D.R. pointed out that the AO had duly refuted the arguments placed by the assessee, when he pointed out that the old jewellery received from customers is not kept in the shop but handed over to *karigars* for repair and therefore, the excess stock could not be explained on this account. Furthermore, he had also demonstrated that the books of the assessee were not maintained in the regular course of business, which is why selective entries were made at the choice of the assessee. Since the sales and payments made by the assessee were right up till 29.05.2012, therefore, the excess stock of silver or cash found were clearly unexplained out of the books. Furthermore, the learned DR pointed out that the assessee had not brought any evidence to dispute the accuracy of the valuation report and considering that only Rs.9,60,000/- had been disclosed in the books, the AO had been more generous in allowing a rebate of Rs.5,00,000/- on account of old construction and restricting the addition to Rs.14,22,456/- for the amount which had not being explained

by the assessee. Finally, the learned DR pointed out that since the AO had determined that there was excess and unexplained stock of jewellery, therefore, it was natural to assume that the said jewellery have been sold and such would have fetched the assessee the same profit that the remaining stock of the assessee would have fetched. Therefore, the AO was justified in estimating the gross profit on such sales at Rs.23,67,243/-. It was, therefore, prayed that the AO order did not require any interference and may be confirmed.

15. We have duly considered the facts and circumstances of the case and the arguments rendered by both the parties. We observe that it is now established law that a statement given by assessee u/s. 133A does not have any evidentiary value in itself, as it is not statement under oath, and it is not a statement which the authorized office is empowered to take under oath. However, it may have some evidentiary value if it is backed up by credible material evidences. Therefore, it cannot be become the sole basis for making an addition in the hands of an assessee if there are material evidences to show that the statement made may not be correct. It is in this context that we must consider the case of the assessee. During the course of survey, a valuation was done of the jewellery in the premises of the assessee and an excess stock of Rs.54,58,202/- was found, which the assessee could not immediately explain. Therefore, the assessee surrendered the amount. However, it is also true that during the course of the survey, the old jewellery receipt and remodeling register was found, which demonstrated that the assessee was obtaining old jewellery from clients for the purposes of repair and remodeling and it is observed from the submissions made by the assessee that in the

AY 2012-13, the assessee had earned repairing income of Rs.1,32,660/- from such activity. Furthermore, receipt vouchers found at the time of survey do not leave any room for doubt that old jewellery was being received for repair and remodeling by the assessee as these receipt vouchers were found during the course of survey. This activity of the assessee has not been doubted and, therefore, there is no reason to discard the explanation of the assessee that the excess jewellery belonged to his customers, given to him for repair and remodeling, which was accounted for separately. It is observed that the Valuation Officer valued all jewellery found at the premises and the Department deduced the unexplained stock from such valuation. The Department has refused to consider that the difference in stock may be on account of this jewellery received from customers for repair and remodeling on account of their belief that such jewellery ought to be separately tagged and furthermore that jewellery given for repair and remodeling is usually kept with the *karigars* and not at the shop. However, we note that in the present case, the assessee has submitted that it had an employee specifically deployed for work of repair and remodeling, by the name of Shri Santosh Kumar and his statement was also recorded during the survey, wherein he accepted that repair and remodeling were done at the shop and that he did this work. In the circumstances, it is clear that the computation of excess stock without taking into account the contents of the repair and remodeling register, ignores the evidence already on record. In the circumstances, the addition made in this regard cannot be sustained. In view of the same, we delete the addition of Rs.54,58,202/- made on account of alleged undisclosed stock, holding the same is not proved in the absence of consideration of the repair and

remodeling register, the vouchers for the same and the statement of the concerned employee that was recorded during the survey. The addition is accordingly deleted and Ground Nos. 4 and 5 are accordingly allowed.

16. Coming to the addition of Rs.9,42,430/- on account of excess cash, we find that neither the AO nor the learned CIT(A) has been able to controvert the evidence submitted by the assessee that just prior to the survey conducted on the assessee's premises a sum of Rs.11,50,000/- in total was withdrawn by the assessee from the bank in three instalments and the same had not been entered into the cash book of the assessee. Neither have they come up with any finding to show that the said cash was spent elsewhere. In the circumstances, there are good reasons to believe the assessee that the alleged excess cash was only on account of the fact that the withdrawals from the bank have not been entered into the cash book while they remained at the premises and if the same are taken into account, there is in fact no excess cash. Therefore, after considering the same, we deem it fit to delete the addition of Rs.9,52,430/- made on this account and Ground Nos. 6 and 7 of the appeal are accordingly allowed.

17. With regard to the addition of Rs.5,19,185/- on account of excess stock of silver found at the time of survey, we note that the purchase vouchers relating to the silver were found during the course of survey and the AO has not verified whether the said stock represented by such purchase vouchers have been entered into the concerned stock register or not. In the absence of the same, it is not possible to accept the argument that there was excess stock of silver if the same stood duly explained by the said

purchase vouchers. The AO has not called in the question these purchases nor held that they were purchased out of undisclosed income. In the circumstances, the addition of Rs.5,19,185/- on account of alleged excess silver jewellery is deleted and ground nos. 8 & 9 are accordingly allowed.

18. Coming to the issue of addition of Rs.14,22,436/- on account of alleged unexplained investments on the renovation of the shop, we find that the registered sale deed shows that a three storey building was already in existence on the date of purchase and many of the features that have been highlighted by the valuer, as items of expenditure in his valuation report, were already existing in the said building on the date of purchase. We observed that the said valuation report does not make any reference to the fact of a fresh construction or fact that the old building was demolished and fresh building constructed. In fact, the valuation has been done for the entire premises and for estimating cost of construction of the entire building and not for estimating the cost of renovation. The cost of renovation is not separately indicated in the valuation report and therefore, the contention of the AO that the cost of renovation was anything more than what was recorded in the books of the assessee, cannot be accepted. We also observe that the assessee has, during the course of assessment, pointed out that certain features on which costing was done in the valuation report were already in existence in the original building but these have not been refuted by the AO, before dismissing the claims of the assessee. We further observe that the value of the furniture and fixtures have been arrived at on estimated basis, while the assessee has

purchase bills to demonstrate that, in fact, he purchased the furniture and fixtures at a lesser rate and therefore, the addition of Rs.14,22,456/- made on this account is deleted.

19. In the light of above facts, we held that no case is made out for calculating with the assessee had made unexplained investment in the repair and renovation of the house property. We further observed that the house property was purchased in the AY 2011-12 and renovated in the AY 2012-13. Therefore, in any case, there is no case made out for sustaining the addition of Rs.14,22,456/- on account of the alleged unexplained investment in this assessment year. Accordingly, the addition made in this regard is deleted and Ground Nos. 10,11 and 12 are accordingly allowed.

20. Ground No. 13 pertains to addition made on estimated gross profits of alleged sales of jewellery outside the books of account. We note that since the AO has not been able to prove any excess jewellery on account of his failure to consider the repair and remodeling register that apparently accounted for the alleged unexplained stock and on account of his failure to demonstrate that the bills and vouchers of silver purchases, which have been found during the course of survey, did not satisfactorily explain the silver not recorded in the books, the fact of unexplained stock in itself stands unproved. That being the case and specially because jewellery given for repairs and remodeling cannot be sold, there does not appear to be any basis for concluding that any jewellery was sold outside of the books. In the circumstances, the estimation of gross profit alleged on unproved excess stock is not sustainable. It is accordingly deleted. Ground No. 13 is therefore, allowed.

21. In view of the fact, we found that vital evidences that were discovered during the survey and subsequently brought to the knowledge of the learned AO and learned CIT(A), were not considered by them while deciding the case of the assessee, we are in agreement with Ground No.3, which pointed out that the additions sustained by the learned CIT(A) being contrary to the position of law may kindly be deleted. Accordingly, Ground No.3 is also allowed.

22. Ground No. 1 and 2 question of the legality of order. Nothing has been brought on record before us to show that the orders passed by the AO or learned CIT(A) was illegal or bad in law. Therefore, we dismiss these grounds has not maintainable. Ground No. 14 does not require any adjudication.

23. In the result, the appeal is partly allowed.

Order pronounced in the open court on 12.12.2025

Sd/-
(Kul Bharat)
Vice President

Sd/-
(Nikhil Choudhary)
Accountant Member

Dated : 12.12.2025

Aks/-

Copy of the Order forwarded to :

1. The Applicant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT,
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)