

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AMRITSAR

VIRTUAL HEARING

BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND
SHRI UDAYAN DASGUPTA, JM

1. आयकर अपील सं. / ITA No.777/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s Varun Traders Karmon Deori C/o Shri AshwaniKalia (CA) 237 Basant Avenue, Maqbool Road, Amritsar (Punjab)	बनाम/ Vs.	DCIT Circle-1 Amritsar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAJFV-3556-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकर अपील सं. / ITA No.786/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT Circle-1 Amritsar (Punjab)	बनाम/ Vs.	M/s Varun Traders Karmon Deori C/o Shri Ashwani Kalia (CA) 237 Basant Avenue, Maqbool Road Amritsar (Punjab)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAJFV-3556-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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3. आयकर अपील सं. / ITA No.778/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Shri Pawan Kumar (Prop. Pawan Kumar Mukesh Kumar)Karmon Deori C/o Sh. Ashwani Kalia (CA) 237 Basant Avenue, Maqbool Road, Amritsar (Punjab)	बनाम/ Vs.	DCIT Circle-1 Amritsar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AFYPK-1978-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**4. आयकर अपील सं. / ITA No.785/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)**

DCIT Circle-1 Amritsar (Punjab)	बनाम/ Vs.	Shri Pawan Kumar (Prop. Pawan Kumar Mukesh Kumar)Karmon Deori C/o Sh. Ashwani Kalia (CA) 237 Basant Avenue, Maqbool Road, Amritsar (Punjab)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AFYPK-1978-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**5. आयकर अपील सं. / ITA No.776/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)**

Shri Mukesh Shingari (Prop. Paras Handlooms) Karmon Deori C/o Sh. Ashwani Kalia (CA) 237 Basant Avenue, Maqbool Road, Amritsar (Punjab)	बनाम/ Vs.	DCIT Circle-1 Amritsar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. APCPS-3778-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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**6. आयकर अपील सं. / ITA No.781/ASR/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)**

DCIT Circle-1 Amritsar	बनाम/ Vs.	Shri Mukesh Shingari (Prop. Paras Handlooms) Karmon Deori C/o Sh. Ashwani Kalia (CA) 237 Basant Avenue, Maqbool Road Amritsar (Punjab)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. APCPS-3778-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Adjournment Application)
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Charan Dass (Addl. CIT) - Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	02-02-2026
घोषणाकीतारीख / Date of Pronouncement	:	11-02-2026

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross-appeals for Assessment Year (AY) 2013-14 with respect to three different assessees have substantially identical facts and issues. First, we take up cross-appeals of M/s Varun Traders which arises out of an order passed by Ld. Commissioner of Income Tax (Appeals)-1, Amritsar [CIT(A)] on 21-09-2017 in the matter of an assessment framed by Ld. AO u/s 143(3) on 30-03-2016. The sole subject matter of appeal is quantum addition of Rs.266 Lacs.
2. At the time of hearing, Ld. counsel for Assessee (AR) sought adjournment which was rejected considering the fact that these appeals are old appeals and coming up for hearing after numerous listings. Left with no option, we proceed with adjudication of appeals on merits after hearing revenue. The Ld. Sr. DR pleaded for confirmation of assessment order. Having considered the submissions as well as case records, our adjudication would be as under.
3. The assessee being resident firm is stated to be engaged in trading of blanket and other material. The return of income was filed on 01-10-2013 declaring income of Rs.2,01,890/- which was processed u/s 143(1). The assessee was subjected to survey u/s 133A on 06-02-2013 wherein discrepancies as noted by the survey team were confronted to the assessee. Detailed stock inventory and

cash inventory was prepared. During survey, a diary marked as Annexure-1 was impounded and confronted to the assessee. This diary had 'Building Account' totaling Rs.266 Lacs. The assessee, in statement, could not furnish explanation thereof and accordingly, made voluntary surrender of Rs.266 Lacs over and above normal income. A surrender letter dated 07-02-2013 to that effect was also furnished which is extracted in the assessment order. However, the said surrender was retracted on 15-02-2013 on the ground that the same was under pressure and coercion. Accordingly, the surrender was not honored in return of income. During assessment proceedings, the assessee was confronted with the documents on which the surrender was made. The assessee stated that the department had no basis for the said surrender and reiterated the retraction. The directions of appropriate authority were sought u/s 144A wherein it was directed that legal presumption would be that the documents in diary Annexure-1 belongs to the person in whose possession / control, the same was found during the course of survey. The assessee continued with the retraction which was rejected by Ld. AO since the surrender was based on evidence in the shape of a diary marked as Annexure-1 wherein certain amount along with dates under the head "Building Account" totaling to Rs.266 Lacs was mentioned. The diary was impounded and confronted and the assessee admitted that these plots were investments made by the assessee out of undisclosed income. However, later on, the assessee alleged that the diary was a fabricated one which was rejected by Ld. AO. After making many

further adverse observations on the retraction, Ld. AO finally rejected the retraction and made addition of Rs.266 Lacs as undisclosed income of the assessee.

4. During first appeal, the assessee, inter-alia, contended that the addition was without any corroborative evidence and merely based on the surrender statement which was forcibly extracted. The entries in the diary were in the nature of dumb document unless backed up by evidences. No addition could be made on the basis of suspicion alone. The Ld. CIT(A), considering the decision of Hon'ble Apex Court in the case of **CBI vs. V.C. Shukla (3 SCC 410)**, concurred the mere entries in the diary could not form the basis of addition. However, the assessee had filed valuation report of registered value as per which the value of building was Rs.49.28 Lacs. The addition was thus reduced to Rs.49.28 Lacs and the addition was partly deleted. The same has given rise to cross-appeals before us.

5. From the facts, it clearly emerges that the assessee's surrender of Rs.266 Lacs represent amount mentioned in 'Building Account' in a diary which was impounded and confronted to the assessee. It was initially stated that the amount represents investments in plots out of undisclosed sources. However, the said statement stood retracted within a short time on the ground that the statement was made under pressure and coercion. It could be seen that when the survey statement has been retracted without short period of time, the same would lose evidentiary value. In fact, the Hon'ble Apex Court in the case of **CIT vs. S. Khader Khan Sons (25 Taxmann.com 413)**

affirming the decision of Hon'ble Madras High Court (reported as 300 ITR 157) held that Sec.133 do not empower examination on oath. Therefore, statement recorded u/s 133A would have no evidentiary value and any admission made during such statement cannot be made basis of addition. This decision clearly supports the case of the assessee. It could further be seen that no corroborative evidences have been brought on record by Ld. AO to prove the allegations of undisclosed investment against the assessee. No independent enquiry is shown to have been made on impounded material.

6. The action of Ld. AO also run contrary to CBDT Instructions F.No.286/98/2013-IT(Inv.II) dated 18-12-2014 which prohibit addition on the basis of statement alone because the admissions are retracted in subsequent proceedings since the same are not based on credible evidences. Such actions would defeat the very purposes of search / survey operations. The focus has to be on gathering evidence during search / survey and avoid obtaining admission of undisclosed income under coercion / undue influence. The said instructions are clearly applicable to the facts of the present case before us.

7. The Ld. CIT(A) has upheld addition based on valuation report as furnished by the assessee. However, the dispute, in the present appeal, is qua undisclosed investment and not of valuation. When the allegation of undisclosed investments is not supported by credible evidences or independent examination, no such addition could be sustained in the hands of the assessee. The addition sustained by Ld.

CIT(A) merely on the basis of valuation report is, therefore, unsustainable.

8. In view of the above, the impugned addition of Rs.266 Lacs as made by Ld. AO in the assessment order and partly confirmed by Ld. CIT(A) stand deleted in *toto*. The assessee succeeds in its appeal. The revenue's appeal stands dismissed.

9. ITA No.777/Asr/2017 stand allowed. ITA No.786/Asr/2017 stands dismissed.

Cross-Appeals of Shri Pawan Kumar

10. The facts in this case are *pari-materia* the same. During survey operations on 06-02-2013, the assessee made surrender of Rs.283 Lacs vide letter dated 07-02-2013 for discrepancies in stock (Rs.173.50 Lacs), cash (9.50 Lacs) and alleged investment in plots (Rs.100 Lacs). However, the statement stood retracted on 15-02-2013. Rejecting various arguments of the assessee, Ld. AO made addition of Rs.283 Lacs.

11. The Ld. CIT(A) noted that the book stock was Rs.108.02 Lacs whereas physical stock was Rs.97.84 Lacs. On the differential amount of Rs.10.18 Lacs, Ld. CIT(A) estimated Profit rate @10% and confirmed addition of Rs.1,01,807/-. The addition of cash difference for Rs.9.80 Lacs was confirmed whereas the addition of alleged undisclosed investment was deleted on similar lines. The same has given rise to cross-appeals before us.

12. Facts being *pari-materia* the same, our adjudication as above, shall *mutatis-mutandis* apply to the issue of undisclosed investment in

plots. This addition has rightly been deleted by Ld. CIT(A). The estimation of 10% on deficit stock is quite reasonable and logical one. The discrepancy in cash was for Rs.9.50 Lacs and not Rs.9.80 Lacs. The addition to the extent of Rs.9.50 Lacs stand confirmed.

13. In the result, the revenue's appeal ITA No.785/Asr/2017 stand dismissed. The assessee's appeal ITA No.778/Asr/2017 stand partly allowed.

Cross-Appeals of Shri Mukesh Shingari

14. In this case, the assessee made surrender of Rs.226 Lacs for discrepancies in stock (Rs.216.20 Lacs) and variation in cash balance for Rs.9.80 Lacs. The Ld. CIT(A) estimated profit rate of 10% on deficit stock and confirmed addition of cash difference. Facts being *pari-materia* the same, we confirm the adjudication of Ld. CIT(A).

15. The revenue's appeal ITA No.781/Asr/2017 as well as assessee's appeal ITA No.776/Asr/2017 stand dismissed.

Conclusion

16. In nutshell, ITA No.777/Asr/2017 stand allowed. ITA Nos.786,785,781,776/Asr/2017 stands dismissed. ITA No.778/Asr/2017 stand partly allowed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

-Sd-
(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated:11.02.2026

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AMRITSAR