

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR
श्री आर.पी.तोलानी, न्यायिक सदस्य एवं श्री टी.आर.मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI R.P. TOLANI, JM & SHRI T.R. MEENA, AM

आयकर अपील सं./ITA No. 401/JP/2012
निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Mundra Woolen Mills (P) Ltd. Industrial Area, Jaipur Road, Kekri	बनाम Vs.	The ACIT Circle- 2 Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACM 9931 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : 4-3-15 Shri K C Moondra FCA
: 29-4-15 Shri Mukul Moondra -
-Adjournment rejected.

राजस्व की ओर से / Revenue by: Shri Rajesh Ojha, JCIT

सुनवाई की तारीख / Date of Hearing : 29/04/2015
घोषणा की तारीख / Date of Pronouncement : 27/05/2015

आदेश / ORDER

PER T.R. MEENA, AM

This is an appeal filed by the assessee against the order of the Id.
CIT(A), Ajmer dated 13-03-2012 for the assessment year 2008-09.

2. Brief facts of the case are that this appeal of the assessee earlier
dismissed by the ITAT vide order Dtd. 16-09-2014. Thereafter the
assessee vide application dated 27-10-2014(received in this office on

30-10-2014) in Miscellaneous Application No. 32/JP/2014 prayed for showing leniency and recalling the original order. The present bench after hearing Shri K C Moondra FCA, in the interest of justice, vide order dated 26-02-2015 recalled the order of dismissal of appeal and restored the original appeal for hearing. This clearly indicates that this ITAT Bench was rather benevolent to Mr. Moondra and had no prejudice or bias whatsoever against the assessee or his counsel, his MA was properly heard and expeditiously disposed of by an oral order fixing 4-3-15 as next date of final hearing .

2.1 As scheduled the appeal came up for hearing on 4-03-2015. During the course of hearing, ld. Counsel for the assessee Shri K.C. Moondra advanced a seemingly improbable proposition that an anonymous letter was received by him from benami employee of the Income Tax Department mentioning that some conspiracy was hatched by some income tax officers against the assessee. During the course of hearing of appeal bench found that these facts were not emerging from the record, consequently his contentions based thereon were not permissible u/r 10 of ITAT rules . Unaware of this rule Ld. Counsel's attention was drawn to Rule 10 of Income Tax Rules which reads as under:-

Filing of affidavit

“1-. Where a fact which cannot be borne out by, or his contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.”

2.3 It was pointed out to him that his contentions and allegations against income tax department are not emerging from record in a verifiable manner. They being in his personal knowledge can to be appreciated only when they are by an affidavit in terms of rule 10, deposing the correct facts in comprehensive manner. Ld. Counsel realized that he has been lacking in compliance of rule 10, therefore he undertook to file requisite comprehensive affidavit conforming to rule 10 of the ITAT Rules and requested for time which bench readily acceded by adjourning it to his chosen date 29-4-15, following order was passed by the bench:

“4-03-2015 - Assessee counsel Shri K. C. Mundra, C.A. undertook to file a detailed and comprehensive affidavit duly sworn by him in respect of alleged anonymous letter which is being relied on by him. Adjourned to 29-04-2015. **Final chance.**

Sd/-
(T.R, Meena) AM

Sd/-
(R.P. Tolani) JM

2.4 It will not be out of place to mention that it was the burden of the counsel to vouch safe his arguments and come prepared where affidavit is required. This bench may very well have proceeded with hearing ignoring the unsupported facts and contentions, without affidavit which may have proved to be detrimental to assessee. However bench found that this senior FCA was ignorant about the applicability of rule 10, lest his omission cost dearly to assessee, who may be ultimate sufferer of his counsel's misjudgment about how to conduct an appeal. Extending a gesture of equity, good conscience and fair play bench brought to his notice this grave omission, which he realized and voluntarily undertook to file a comprehensive affidavit. This again shows that bench was helpful to assessee and its counsel and not hostile to them in any manner.

2.5 On 29-04-2015, i.e. final date of hearing, his son Shri Mukul Moondra claiming to be an ACA (Chartered Accountant) who as not even in prescribed dress code as provided under Rule 17A of Income Tax Rules, appeared with an adjournment application mentioning as under:-

'Above said appeal is fixed for hearing for 29-04-2015 but on 28-04-2015 and 29-04-2015, under signed A/R has to attend the marriage in close relation and therefore, undersigned 'A/R will be unable to attend the hearing on 29-04-2015.'

2.6 This adjournment application was found to be very inappropriate as it was bench was bound by its earlier order i.e. 4-3-2015 directing the hearing of 29-4-15 as final chance, with overriding direction, giving adjournment on such a flimsy excuse will amount to mockery of our own judicial order which was not in conformity with canons of judicial discipline. Shri Mukul Moondra was intimated that earlier hearing was ordered as final chance, therefore, his request for adjournment cannot be acceded. Consequently the adjournment application was rejected by following judicial order:

“Assessee had taken this date voluntarily. Now a pre-fixed marriage is pleaded to avoid final chance. Rejected.

Sd/-
(T.R, Meena) AM

Sd/-
(R.P. Tolani) JM

2.7 Since adjournment application was rejected, bench proceeded with the hearing, Shri Mukul Moondra neither filed the requisite affidavit nor advanced any arguments, consequently Id. DR Shri Rajesh Ojha was heard and record was perused, accordingly the appeal was taken as heard and reserved for orders.

2.8 When the Bench rose after finishing the board, Shri Mukul Mundra endeavored to raise an altercation with bench about giving

adjournments to others and rejecting his application. He was politely told this being final chance in his appeal, adjournment request could not be acceded which was dismissed, the appeal was heard and will be decided on merits, they should wait for the bench order. Shri Mukul Mudra then wanted to know that what will happen to client, bench expressed its help less ness as the adjournment application was rejected, appeal is heard on merits in open court. After the ITAT order is pronounced they can pursue appropriate remedy which may lie with the Hon'ble High Court.

2.9 Thereafter on 30-04-2015, the Registry put up a letter with a laconic affidavit sent by Shri Shiv Ratan Moondra, Director of M/s Moondra Woolen Mills (P) Ltd. with following note :-

“The matter was heard ex-parte on 29-04-2015. The affidavit as directed by the Hon'ble Bench on 4-03-2015 was received in the Registry on 30-04-2015 at 3.30 PM i.e. after hearing of the case.”

On this letter the Bench noted as under:-

“As the matter is already heard, it cannot be entertained. File.”

Sd/-
(T.R, Meena) AM

Sd/-
(R.P. Tolani) JM 30/04/15

2.10 Without even waiting for the order Shri K C Moondra sent intimidating letters on 30-4-15 received on 1-5-15 & 2-5-15 received on

5-5-15, hurling all sorts of wild accusations about the presiding officer Id. JM and bench functioning. Such nasty and frivolous accusation can only be product of fit of furry. The barrage of indiscriminate allegations include misuse of official position, corruption, insulting him and son: colluding with retired income tax officers to harm his client so on and so forth. The severity of accusations and fury emerging from their language is highly derogatory, defamatory and contemptuous, sent with a scheme and clear intention to intimidate judicial officers to desist from passing an unfavorable order. The bench was taken aback at their venomous contents and decided to take suitable action on such baseless delinquent acts.

3. Without waiting for the order Id. Counsels prejudged the issues, though that bench may pass an adverse order; in order to salvage his professional interest to willy nilly win the case, by a hideous scheme he sent letter Dtd. 2-5-15 to Hon'ble President ITAT and Hon'ble Law Secretary Govt. of India and Asst. Registrar Jaipur making wild accusations of all sorts like corruption, collusion, insulting, bias, prejudice and what not. These contemptuous letters speak by themselves, frivolity of language, distorted contents and apparent self contradictory contents of his letter demonstrate that it is a crude attempt to influence independent judgment process for petty professional ends.

3.1 It shall be noteworthy that till 28-4-15 these professionals had no objection with the bench as no grievance whatsoever was raised. The casual way of adjournment against final chance shows their casual attitude of taking the judicial process for granted. The emphatic demand that - if other matters were adjourned, our appeal should also have been adjourned; amounts to dictating the terms to the court. It reflects their inaptitude in failing to appreciate the vital fact that thus adjournment was granted as a final chance which was agreed by them. "They keep 'holier than thou attitude'; if I commit wrong or disobey there is nothing wrong in it but if the bench doesn't conduct itself in my desired way then bench is by default wrong and I raise scandalous tirade against bench." To show their might they shoot frivolous complaints, file litany of motivated RTIs proclaiming to be RTI activist. These brazenly scandalous acts have been unleashed by them with swagger of impunity and recklessness without realizing that when the appeal is pending orders such threats construe contempt of court.

3.2 The bench has no objection on sending any complaint to higher authorities; it's the right of every person in free and democratic India. The most important question is propriety of sending intimidating complaints

when their appeal i.e. a judicial matter is heard on merits and is pending for orders.

3.3 A litigant or his representative cannot directly or indirectly; by overt or covert means attempt to influence the process of judicial decision making by shooting intimidating and derogatory letters or to pressurize the judicial officers while deciding a heard appeal.

3.4 The bench has rather extended the best possible benevolence and grace to the assessee and his counsel by recalling its already dismissed appeal; giving date of choice for fresh hearing i.e. 4-3-15; hearing the appeal on scheduled date; intimating counsel about his statutory lapse and lack of preparation, mistake in his pleadings about rule 10; his undertaking to file a proper and detailed affidavit which was solely in his own interest and acceding his request for final adjournment to 29-4-15. Where is prejudice, bias or insult on the part of bench or the presiding officer. Everything is on record, proceedings are in open court witnessed by counsels from both sides. The facts and record are sufficient to demonstrate that bench was impartial and fair to the Id. Counsels and assessee. There is nothing to even remotely suggest any reason on the part of bench to show partiality, prejudice, bias or intention to insult Mr. K C Mundra or his son who are unknown to us as they come from a far away

place ‘ Sumerpur’ and are rarely seen in the ITAT proceedings. They were treated with deserving dignity by offering help and guidance in open court proceedings.

3.5 Perhaps they are enraged on their own professional inaptitude which became visible in open court proceedings, it requires self-introspection and hard preparation of appeal; instead they have misdirected their self fury on the bench indiscriminately. Their own professional infirmities can be improved from their side by mending their unprofessional attitude. They cannot score brownie points by telling the world that they can get desired orders by threatening to harm judicial officers and their delinquent conduct is justified.

3.6 Mr. K C Moondra’s misadventure doesn’t stop here, camouflaging under the self proclaimed virtue of an RTI activist, motivated to bully the judicial officers, he deliberately filed various RTI applications asking for about **81** queries in respect of number of personal details about the judicial officers including their leave, HQ leaving permission, use of car, attendance in office, timings of holding courts, in whose case adjournments were granted or not granted, when officers go to Delhi, whom do they meet etc. etc. The above facts prove that RTI attack is not for any public purposes but to intimidate judicial officers, seized with his

judicial matter. A trick to masquerade his blackmailing tactics for mean professional interest, to extract desired result in a sub-judice appeal. The RTI fiat unfolded by Mr. Moondra is an apparent colorable device, an attempt to influence/obstruct independent judicial process. The attempt amounts to a total misuse of professional position for dubious gains.

3.7 These acts amount to interfering and obstructing judicial process which apart from awarding of cost u/r 32A of ITAT rules is liable for appropriate contempt of court proceedings as well. Such attempts need to be seriously deplored, firmly tackled and suitably dealt with to send a message in professionals fraternity to behave properly and conduct themselves as ordained by ITAT rules and standing orders; court rules, ICAI instructions, professional ethics and etiquettes; Bar council of India guidelines in this behalf.

3.8 In propriety they should have waited for the order to be pronounced instead of unfolding foul tactics to influence the pending judicial order. They started intimidating judicial officers to cover their professional inaptitude, misconduct and lapses. This type of intimidation amounts to interference in judicial proceedings which is emphatically forbidden to be exerted in direct or indirect manner.

3.9 It may be pertinent to mention that Id. Counsel Shri K C Moondra FCA and Mukul Moondra ACA, seem to be ignorant about filing a proper power of attorney, which is to be given on a NON JUDICIAL stamp paper. Whereas they have filed a plain printed paper with Rs. 10/- court fee stamp which is not a valid and prescribed power of attorney. Thus their appearance could have been lawfully denied by the bench. This again shows the lenient approach of the bench bellying his wild allegations.

3.10 Furthermore the ICAI guidelines provide that every chartered accountant shall mention his registration no. on the power. Sadly both of them i.e. S/shri K C Moondra and Mukul Moondra have not mentioned their ICAI registration no. Making their power of attorney again defective, inadmissible and in violation of ICAI guidelines.

4. Under these facts and circumstances, we find that the Id. Counsel for the assessee Shri K.C. Moondra and his son Shri Mukul Moondra are liable for suitable proceedings for their professional misconduct, misbehavior, wasting the time of court and unlawfully attempting to interfere in the process of judicial dispensation.

4.1 Considering all the facts, circumstances and material on record by invoking rule 32A of the ITAT Rules we hold that Shri K.C, Moondra

and Shri Mukul Moondra are liable for levy of costs as prescribed by said rule 32A. Consequently, we impose cost of Rs. 25,000/- on Shri K.C. Moondra and Rs. 10,000/- on Shri Mukul Moondra for their delinquencies as mentioned above. Separate proposal under Contempt of Court Act will be duly forwarded to Hon'ble Rajasthan High Court.

4.2 The cost is recoverable u/r 32A(2) of the ITAT Rules and shall be deposited in the 'Prime Minister Relief Fund. Copy of this order to be sent by registry to Institute of Chartered Accountants of India to take appropriate disciplinary action against them in terms of ICAI rules and guidelines. The progress may be communicated to bench through registry.

Now we proceed to decide the main appeal No 401/JP/12

5. Assessee has raised following grounds of appeal:

“1. Entire alleged survey proceedings against the appellant was totally unlawful, arbitrary, hypothetical, fabricated, unfair, unreliable and with full of pressure & harassment tactics and therefore, entire survey proceedings, assessment and additions based on alleged survey proceedings are unlawful, arbitrary, hypothetical, fabricated, unfair and unreliable and therefore, liable to be quashed.

2. Ld. Commissioner of Income Tax (Appeals) erred in law in confirming following incorrect facts as mentioned by ITO in order U/s 143(3):-

A. Para (a) at page No. 5- 'total amount of the stock found on the date of survey was 226167 kgs amounting to Rs. 1,41,16,603/- (value calculated by the assessee)'

B. Para (b) at page No. 5- 'calculated at the rate of Rs. 50.66 (average) declared by the assessee during submission'.

C. Page No. 10- 'Stock as per computer books generated have been changed without no change in value of purchase and sales which is not possible'.

D. Page No. 10- 'The figure of stock found on 17.09.2007 amounting to Rs. 2,43,03,171.34 has been changed without no change in value of purchased and sales which is not possible'.

E. Page No. 11- 'Figures of stock as per computer books generated has been changed without no change in value of purchase and sales which is not possible'.

3. A. Ld. Commissioner of Income Tax (Appeals) erred in law in confirming the addition of Rs. 18,46,187/- @ 16.22% G.P. by estimating/deeming concealed sales for Rs. 1,13,83,169/- , on the basis of imaginary, artificial and wrong calculation of short stock and that too on the basis of unlawful and self created documents and incomplete, false, unlawful, unreliable and fabricated stock inventory.

B. Ld. CIT(Appeals) also erred in not considering complete stock of appellant (including stock on consignment, in transit and with third parties and stock in WIP) and the complete written submission of the appellant.

4. Ld. Commissioner of Income Tax (Appeals) erred in law in confirming the rejection of the books of appellant U/s 145(3) merely on the basis of a self created stock inventory as on 18/09/2007. Alleged computerized stock inventory as on 18/09/2007 is a creation of I.T. Officials and same is totally self-crated, unlawful, arbitrary and fabricated just for harassment of appellant.

5. *Ld. Commissioner of Income Tax (Appeals) erred in law in confirming the trading addition of Rs. 16,53,869/- by creating an artificial fault of appellant and in absence of any defect in the computerized stock records of appellant. In fact, Ld. CIT(A) also erred in law in confirming by making comparison with an unnecessary and incomplete manual stock register for some items (which was required by any lawful provision) with the complete computerized stock register and in absence of any discrepancy between both the stock records except incompleteness of manual stock register of few items which was manually maintained by production section of the appellant's factory.*

6. *Ld. Commissioner of Income Tax (Appeals) erred in law in confirming the trading addition on account just for creating high-pitched demand ignoring the fact that the manual stock register is maintained by the production section of appellant for few items and that too was incomplete and stock of goods (work in progress) and stock on consignment are not at all recorded in that register. In fact, that register was not for accounting purpose but it was just for sake of convenience of production section of appellant' factory. Each and every transaction recorded in this register in this register was verified with the computerized stock records by the inspector as well as by A.O. himself.*

7. *Ld. Commissioner of Income Tax (Appeals) erred in law in confirming the validity of the order passed u/s 143(3) of the Income tax Act, 1961 even without confirming the service of any notice u/s 143(2) for initiating the proceeding for assessment and therefore, order so passed u/s 143(3) is unlawful and invalid.*

8. *The appellant requests to add, alter, amend, delete, substitute, withdraw or modify any of the grounds of appeal on or before hearing of the appeal.”*

5.1 All the grounds raised by the assessee are against the survey proceedings conducted U/s 133A by the Assessing Officer and making addition on the basis of survey material, confirming rejection of books of account U/s 145(3) and confirming the trading addition of Rs. 16,53,869/- . The Id Assessing Officer observed that the assessee company had filed return through e-filing on 30/09/2008 declaring total income of Rs. 7,16,770/-. The case was processed U/s 143(1) of the Income Tax Act, 1961 (in short the Act) on 27/2/2010. The case was transferred from ITO, Ward-2, Beawar to ACIT, Circle-2, Ajmer. A survey U/s 133 of the Act was conducted on 18/09/2007 at the business premises of the company at plot No. G1/32 and 36 to 44 RIICO Industrial Area, Jaipur Road, Kekri. Being a survey case, it was selected for scrutiny U/s 143(2) of the Act and issued notice on 13/8/2009 fixing the case for hearing on 28/8/2009. On that date, no body attended the proceeding. Thereafter a detailed questionnaire U/s 142(1) of the Act was issued on 09/08/2010 fixing the case for hearing on 17/08/2010. The assessee raised objection vide its letter dated 14/08/2010 which was replied by the Id Assessing Officer

vide office letter dated 26/08/2010 and had disposed of the objection made by the assessee. Further notice U/s 142(1) of the Act was issued on 17/09/2010 and case was fixed for hearing on 28/9/2010. The assessee had sought adjournment vide letter dated 25/09/2010 accordingly, the case was adjourned for 05/10/2010. In response to above, Shri K.C. Mundra alongwith Shri Rajendra Mundra brother of director of the assessee attended the proceeding and filed submission vide letter dated 05/10/2010 alongwith details. The Assessing Officer as per letter dated 19/10/2010 asked to file further information from the assessee and case was fixed for 26/10/2010. As the Assessing Officer observed that in response to above letter, Shri K.C. Mundra, AR of the assessee attended the proceeding time to time and filed details. Produced books of accounts, which were examined on text checked basis and the case was discussed with him. During the course of survey operation, following books/Papers were found and impounded, the details are as under:-

S. No.	Particulars	F. Y.	Remarks
1	Stock Register	2006-07	Not pertain to relevant F.Y.
2.	Stock Register	2007-08	Checked and verified
3.	Log Register	2006-07	Not pertain to relevant F.Y.
4.	Purchase & Sales Register	2007-08	Checked and verified

5.	Tax Audit Reports	2004-05	Not pertain to relevant F.Y.
6.	Annual Accounts	2004-05	Not pertain to relevant F.Y.
7.	Stock Register	2005-06	Not pertain to relevant F.Y.
8.	Lot Register	2005-06	Not pertain to relevant F.Y.
9.	Case file M/s Jyoti International, Varanasi	-----	Pertains to year 1998 bills
10.	Rokar Bahi	2006-07	Not pertain to relevant F.Y.
11.	Consignment register	2006-07	Not pertain to relevant F.Y.
12.	L.C. Payment Register	2007-08	Checked and Verified
13.	Consignment Register	2007-08	Checked and Verified
14.	Nakal Bahi	2006-07	Not pertain to relevant F.Y.
15.	File to M/s Live House	2007-08	Checked and verified
16.	File of M/s Khifaf trading Co. Damman	2007-08	Checked and verified
17.	File to M/s Maher Daliwati, Syria	2006-07	Not pertain to relevant F.Y.
18.	File of M/s Al Hezam Intl trading & Contracting, Shuwaikh	2007-08	Checked and verified
19.	File of M/s Al-Tayyor Establishment for trading & contracting, Saudi Arabia	2007-08	Checked and verified
20.	File of M/s New Zealand Wool Service International Ltd., New Zealand	2007-08	Checked and verified

21.	File of M/s Friendrich Sturm GMBH & Co. Kg Germany	2007-08	Checked and verified
22.	File of M/s Altayyar Est. for trading and contracting, Saudi Arabia	2007-08	Checked and verified
23.	File of M/s Altayyor Est. for trading & contracting, Saudi Arabia	2007-08	Checked and verified
24.	File of M/s New Zealand Wool service Int. Ltd. New Zealand.	2007-08	Checked and verified
25.	File of M/s Al Habbal Trading Syria	2007-08	Checked and verified
26.	File of M/s J.P. Hermes Wol Handel, Holland	2007-08	Checked and verified
27.	File of M/s Altayyor Est. for trading & contracting, Saudi Arabia	2007-08	Checked and verified
28.	File of M/s Khifaf trading Ext. Damman, Saudi Arabia	2007-08	Checked and verified
29.	M/s Al Hezam Intl. trading & Contracting, Est.	2007-08	Checked and verified
30.	Consignment bill book S.No. 287 to 320	2005-06 & 2006-07	Not pertain to relevant F.Y.
31.	Bonus File 97-98 to 06-07	2006-07	Not pertain to relevant F.Y.
32.	File Containing PF yearly returns (96-97 to 2006-07)	-----	Workers registers having entered 56 workers
33.	Export file F.Y. 2007-08	-----	Record of yarn export verified

34.	M/s Khifaf Trading Est. Damman, Saudi Arabia	2007-08	Checked and Verified
35.	C-form D-form issue register F.Y. 2003-04, 04-05 and 2005-06	2003-04 to 2005-06	Not pertain to relevant F.Y.
36	Muster Roll Register w.e.f. 01/4/2007	2007-08	Checked and Verified
37	Loose papers file Suraj	-----	Bills of expenses pertain to A.Y. 2008-09 verified
38.	Statement of stock in godown and compound held under lien to SBBJ Kekri (A/c No. 51051325124)	2006-07 & 200708	Not pertain to relevant F.Y.
39	M/s Al Tayyar Ext. for trading & contracting, Saudi Arabia	2007-08	Checked and Verified
40	Scouring shild F.Y. 2007-08	2007-08	Checked and verified
41	Leave with wages register 2007	2007	Not pertain to relevant F.Y.
42	Stock register of raw material for manufacturers	01/4/2006 to 01/11/2006	Not pertain to relevant F.Y.
43	Stock register of finished goods for manufacturer 01/4/2006 to 29/06/2006 (Vat register no. 34)	2006-07	Not pertain to relevant F.Y.
44	File of woolen yarn dispatch challan for scouring	2005-06	Not pertain to relevant F.Y.
45	Job invoice book (bills No. 701 to 800)	2006-07 and 2007-08	Not pertain to relevant F.Y.
46	Krishi Upaj Mandi file	--	High Court related file pertains to year 2005-06 and 2006-07

47	Register of Adult workers	2007	Not pertain to relevant F.Y.
48	Statement of stock in Godowns and compounds in possession of and held lien to SBBJ Kekri	1998 to 2006	Not pertain to relevant F.Y.
49	File named Bhadoi file	2005-06	Not pertain to relevant F.Y.
50	File named Deluxe shipping Agency correspondence	2002-04	Not pertain to relevant F.Y.
51	Loose papers file named letter received file	----	Pertain to F.Y. 2005-06 & 2006-07

5.2 The Assessing Officer further observed that the above register/loose papers and files had been verified from books of accounts of the assessee, no discrepancy has been found except stock register mentioned at S.No. 2 pertaining to F.Y. 2007-08. The Assessing Officer further observed as under:-

(a) *During the survey operation stock was also physically taken having inventory of S.No. 1 to 97 out of which inventory of S.No. 10,12,13,17,19,22 and 23 of items pertain to M/s Mundra & Co. as reported by survey team (on record). The photocopy of above inventory had already been taken by the assessee and during the course of assessment proceedings after applying the rate and calculating the value of the items the value of total inventory produced before the undersigned having the total amount of the stock found on the date of survey was*

2,26,167 kg. amounting to Rs. 1,41,16,603/- (Value calculated by the assessee).

(b) The stock found in stock register impounded at the time of survey having the stock of total weight 2,23,274 kg. calculated at the rate of 50.66 (Average) declared by the assessee during submission calculated and value of stock comes to Rs. 1,13,11,060/-. The details of quantity of stock mentioned in the stock register impounded are as under:-

Stock position as per stock register found in the premises of Mundra Woolen Mills, Kekri during the survey.

S.No.	Date	Stock	Page No. of the stock register	Particulars
1.	17.09.2007	95287.04	6	Indian Wool
2.	17.09.2007	49300.2	20	Unscrewed
3.	18.07.2007	2041.00	32	Screwed
4.	21.08.2007	2531	35	Saudi Arabia Wool
5.	15.09.2007	7548	37	Saudi Arabia Wool
6.	18.07.2007	8763	70	Surya Wool
7.	07.9.2007	4529	77	Italy Wool
8.	23.8.2007	6527	82	Kuwati Wool
9.	23.08.2007	6150	82	Kuwati Wool
10.	05.08.2007	5860	87	Holland
11.	24.6.2007	13139	91	Newzealand Wool
12.	05.08.2007	9360	92	Newzealand Wool
13.	07.8.2007	5326	95	German Wool

14.	15.09.2007	6893	169	Screawed Woolen Yarn
		2,23,274 @ 50.66 Per Kg. = 11311060/-		

(c) *The details of the stock taken from the Balance Sheet generated from the computed of the assessee as on 17.09.2007 which was duly signed by the assessee and was found to the Rs. 2,43,03,171.34 (detail taken from page No. 40 of the survey report folder).*

(d) *Another detail of trading account generated from the computer of the assessee on 18/09/2007 (vide page No. 98 of the survey folder) having closing stock Rs. 2,38,80,266/-.*

5.3 The Assessing Officer asked to explain the difference of stock generated by computer from office and record of the assessee during the survey operation to be differ as on 17/09/2007 and 18/09/2007 and from the stock register impounded from the business premises of the assessee. The assessee reply dated 06/12/2010 has been reproduced by the Assessing Officer on page 6-7 and 8 of the assessment order. The Assessing Officer considered the assessee's submission and held that inventory was prepared by the personnel of Income Tax Department and was assisted by the employee of the assessee, which was later on duly signed by the assessee. The inventory was signed by the Director was

prepared with the assistance of employee of the company. In the statement, a question was asked regarding stock to the Director Shri Shivratan Mundra and before completing the statement the statement Shri Shivratan Mundra left the business premises that is why the question regarding conclusion of inventory of stock was not asked. The Id Assessing Officer had reproduced the statement U/s 133A of the Act as under:-

प्रश्न:- आज सर्वे u/s 133A की दिनांक 18.09.2007 को आपके व्यवसय में कितना माल का स्टॉक है एवं उनका मूल्यांकन कितना है साथ ही यह भी बतावे कि आज की तारीख में नकद शेष कितना है एवं वह कहाँ रखा हुआ है ?

उत्तर:- वास्तविक स्थिति मैं खाते बही देख कर बता दूंगा। वैसी मैं खाते बही द्वारा सही स्थिति बनवा रहा हूँ जो आपको कुछ देरी में प्रस्तुत कर दूंगा।

The Assessing Officer held that during the course of survey, statement of Shri Shivratan Mundra was recorded and signed by him. Copy of statement was provided vide ordersheet entry dated 22/10/2007 and 25/10/2007. The ordersheet entry was as under:-

22/10/2007 Sh. Shivratan Mundra Director of the company alongwith Sh. K.C. Mundra FCA/AR present inspection of the documents allowed and copy of documents/statements given as desire.

Sd/-
(Ramesh Singhal)
Signature of ITO

Inspection done and
Copies as stated above
Received
Sd/-
Signature of assessee Sh.
Shivratan Mundra

25/10/2007 Photocopy of all impounded registers/files/books as in order of impounding dated 20/10/2007 has been provided/supplied.

Sd/-
(Ramesh Singhal)
Signature of ITO

इम्पाउटिंग आर्डर के उनिक्जर B-1 में वर्णित डाक्यूमेंट फाइल, लेखाबही इत्यादि क्रम संख्या 1 से 51 तक की फोटो कापी प्राप्त की।

Sd/-
Aashutosh
25-10-2007

5.4 The assessee through his AR vide letter dated 06/12/2010 had explained the discrepancy in stock at the time of survey that all books of accounts are being produced for verification with impounded material and so far as reconciliation of stock as on 17/09/2007, 18/09/2007 as per department and as per the assessee the reconciliation as under:-

Actual Stock as per latest books		Rs. 2,54,98,772.93
(A) Italy Container	12,06,549.34	
(B) Sody	1320.00	<u>Rs. 12,07,869.34</u>
		Rs. 2,42,90,903.59
Add: Difference in WIP		<u>Rs. 12,267.75</u>
		<u>Rs. 2,43,03,171.34</u>

5.5 The Assessing Officer held that no details/evidence produced before him to substantiate the differences found in the stock as per books and stock physically found and also no reasons to explain regarding three figures summary of stock generated from assessee book found on computer i.e. on 17/09/2007 of Rs. 2,43,03,171.34 and on 18/09/2007 of Rs. 2,38,80,266/- at the business premises and stock summary submitted during the assessment proceedings Rs. 2,54,98,772.93/-. The assessee had changed the stock position generated through computer book without no change in value of purchase and sale. As per stock register impounded during the course of survey, the stock position had been shown 2,23,274 KG of Rs. 1,13,11,060/- . There was a difference in the stock as per stock register i.e. Rs. 1,13,11,060/- and value of stock submitted by the assessee during the course of assessment proceedings at Rs. 2,54,98,772.93. The stock position as per computer generated book as on 17/09/2007 was Rs. 2,43,03,171.34 and on 18/09/2007 at Rs. 2,38,80,266/-. The assessee has not explained the changed valuation of stock on the basis of evidence, therefore, the Assessing Officer rejected the book result U/s 145(3) of the Act. The ld Assessing Officer calculated the difference in stock on date of survey at Rs. 1,13,82,169/- on the basis of stock submitted by the assessee during the assessment proceedings and physical inventory

prepared during the survey proceedings. Accordingly, the Assessing Officer treated the stock difference of Rs. 1,13,82,169/- unaccounted sale of different varieties of wool. The gross profit earned of Rs. 1,13,82,169/- being unaccounted sale of different varieties of wool is applied @ 16.22%, which is the G.P. rate declared by the assessee in A.Y. 2007-08. Thus, the value calculated at Rs. 18,46,187/- and same was added in the total income of the assessee and penalty proceeding U/s 271(1)(c) of the Act had been initiated for furnishing inaccurate particulars of income. The Assessing Officer further observed that the assessee was running business of purchase and sale of woolen Yarn raw wool, woolen yarn and manufacturing of carpet woolen yarn. The assessee has disclosed the comparison of GP ratio of 3 years are as under:-

Particulars/A.Y.	2006-07	2007-08	2008-09
Sales	70468340	85479801	76823116
Gross profit	11388197	13871684	10806840
% of G.P.	16.16%	16.22%	14.08%

There was decline in G.P. rate, the assessee's explanation was not found tenable to the Assessing Officer, accordingly, he rejected the books U/s 145(3) of the Act. The Assessing Officer applied the G.P. rate of preceding year i.e. 16.22% on declared sale at Rs. 7,68,23,116/-, which gives G.P. at Rs. 1,24,60,709/- after reducing the gross profit declared by

the assessee in return at Rs. 1,08,06,840/-. The net difference of Rs. 16,53,869/- had been added to the total income declared by the assessee for which Section 271(1)(c) penalty were also initiated for non disclosing of correct particulars of income

6. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id CIT(A), who had confirmed the addition by observing as under:-

“5.4 I have carefully examined the stock inventory prepared by survey team and found that:

a. Perusal of inventory of stock found at the time of survey reveals that the same has been prepared in an elaborate manner. The inventory runs into 5 pages and alongwith description of each item, it also mentions quantity in bales and weight thereof. The physical location of various items is also specified in the inventory e.g. items at S.No. 35 to 42 were in workshop, while S.No. 43 to 48 were in the godown opposite office. Items at S.No. 51 to 59 were inside shade and S.No. 49-50 were lying outside shade.

S.No. 60 to 64 were in godown having DG set, while 81,82 were in garage. This clearly proves that inventory was duly prepared by survey team.

b. Exact description of each item is mentioned such as German Wool, Indian Wool, Newzealand Wool, Dutch Wool, Saudi bale, Kuwait bale etc. This proves that inventory was prepared with the help of either the appellant or his workers. Without their help survey team could not

have identified and mentioned description of various items in detail. Similarly number of bales and weight is written in each case.

c. From report of survey team it is found that on 19.09.2007, Shri Shiv Ratan Mundra came to the factory in the afternoon with four workers and preparation of stock inventory was started on that day. The stock taking continued on next day als. Therefore, allegation of appellat that the entire stock inventory was prepared in two to three hours is factually incorrect. The affidavit of Shri Shiv Ratan Mundra to the effect that no inventory was prepared till 4 P.M. on 20/09/2007 is also factually incorrect.

d. On last page of the inventory pagewise total of stock summary is given as follows:

<i>i.</i>	<i>Page 1</i>	<i>24665.750 Kg</i>
<i>ii.</i>	<i>Page 2</i>	<i>69063.000 Kg</i>
<i>iii.</i>	<i>Page 3</i>	<i>96739.000 Kg</i>
<i>iv.</i>	<i>Page 4</i>	<i>35700.000 Kg</i>
<i>v.</i>	<i>Page 5</i>	<i><u>5980.000 Kg</u></i>
		<i>232147.750 Kg</i>

On this page it is further mentioned that items mentioned at Serial No. 10, 12, 13, 17, 19, 22 and 23 pertain to M/s Mundra & Company. It was not possible to mention this fact by the survey team, unless the same was intimated by Shri Shiv Ratan Mundra or one of his employees. This also proves that the inventory was prepared by survey team only with the help of appellat and his people.

e. No evidence has been produced before the undersigned by appellat that signature of Shri S.R. Mundra on the stock inventory is forged. This allegation of appellat is absurd and deserves rejection on

the face of it. Similarly the allegation that his signature was obtained in hospital in semi conscious state is also absurd. Shri Shiv Ratan Mundra refused to sign the statement and the statement was concluded without his signature. If survey team had to obtain his signature on stock inventory in semi conscious state, there is no reason as to why his signature on statement was also not obtained. Moreover medically it is not possible for a person to put his signature in semi conscious state.

f. I, therefore, hold that stock inventory was prepared by the survey team in a systematic and elaborate manner and the same was duly signed by Shri Shiv Ratan Mundra. The wild allegations leveled by appellant against the survey team are absurd. Similarly, his allegation that the A.O. prepared stock inventory on his own deserves rejection on the face of it.

5.5 As mentioned earlier, appellant has disputed the entire addition. However, the fact remains that:

a. Books of accounts of appellant were found incomplete at the time of survey.

b. Appellant did not cooperate with survey team in the preparation of stock inventory. Under the circumstances the stock inventory was prepared on basis of physical verification.

c. Valuation of stock was determined at Rs. 1,41,16,603/- on the basis of figures given by appellant only.

d. Despite being given repeated opportunities by A.O., no reconciliation of stock was furnished by appellant during assessment

proceedings. No detailed working was provided by the appellant for valuation of stock found at the time of survey.

5.6 As per Sec. 101 of the Indian Evidence Act, 1872 whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts that which he asserts, must prove that those facts exist. Thus burden of proving a fact lies on person who asserts its existence. In this case the burden has not been discharged by appellant. In such a situation the claim of appellant that there was no discrepancy in stock is not acceptable.

5.7 I, therefore, hold that A.O. is justified in treating the difference of stock of Rs. 1,13,82,169/- as unexplained. A.O. is also justified in estimating unaccounted income in respect of this stock by applying GP rate of 16.22%, which is the GP declared by appellant itself for last year (A.Y. 2007-08). Addition of Rs. 18,46,187/- is justified and the same is confirmed. Ground No. 2 and 3 of the appeal are thus dismissed.”

For trading addition, the Id CIT(A) has observed as under:-

“6.2 In view of various discrepancies found during the course of survey as mentioned above, A.O. has rightly concluded that books of accounts of appellant are not correct and complete. Rejection of books of account is justified in such a situation. This view also derives support from following judicial decisions:

- a. CIT v Sri Visweswardas Gokuldas (1946) 14 ITR 110 (Mad)*
- b. Delta Engineering Co. (P) Ltd. Vs. CIT, (1990) 186 ITR 383, 385 (All).*

- c. *Laxmi Saw Mill Vs. CST (1997) 104 STC 307, 308 (MP)*
- d. *Raza Textiles Ltd. Vs. CIT (1972) 86 ITR 673 (All)*
- e. *Titaghur Paper Mills Co. Ltd. Vs. State of Orissa (1981) 47 STC 240 (Orissa).*
- f. *Kishanchand Chellaram Vs. CIT (1978) 114 ITR 671 (Bom)*
- g. *Ratanlal Omprakash Vs. CIT (1981) 132 ITR 640 (Ori)*
- h. *Bharat Milk Products Vs. CIT (1981) 128 ITR 682 (All)*
- i. *CIT Vs Pareek Bros 167 ITR 344 (Pat).*

6.3 *The estimation of income by applying GP rate of 16.22% on total sales by A.O. is also justified on the basis of GP declared by appellant itself in the earlier year. No satisfactory reasons were given either before the A.O. or the undersigned for fall in GP during the year. Therefore, estimation of income by applying GP rate of 16.22% by A.O. is found to be in order. His action is confirmed. Trading addition of Rs. 16,53,869/- is confirmed. Ground No. 4 and 5 of the appeal are thus dismissed.”*

For service of notice U/s 143(2) of the Act, the ld CIT(A) has held as under:-

“8.2 *From the perusal of records it is found that notice U/s 143(2) was duly issued in this case by the A.O. on 13.08.2009 and the same was dispatched by speed post on 18.08.2009. Therefore, allegation of appellant that notice U/s 143(2) was fabricated by A.O. is baseless and not acceptable.*

8.3 *When two versions of an instance are given, one of them is by a responsible Government officer and other is by an anonymous person who refuses to identify himself and in his own words admits that:*

“मैं अपनी औकात को जानते हुए आपको अपना नाम नहीं बता सकता हूँ लेकिन मुझे यह विश्वास है कि आप सत्य का साथ देते हैं, अतः यह पत्र बेनामी भिजवा रहा हूँ।”

In such a situation obviously no cognizance can be taken of the claim of anonymous person, who does not have even the guts to disclose his identity. Such wild allegations can be made against anybody and in the absence of any evidence brought on record by appellant in this regard, the same cannot be accepted.

8.4 *I, therefore, hold that notice U/s 143(2) was duly served in this case and the assessment order passed U/s 143(3) is valid and lawful. Ground No. 7 of the appeal is thus dismissed.”*

7. Now the assessee is in appeal before us. As discussed in the preceding paras, the assessee's attitude with ITAT was not cooperative, which has been discussed in detail in preceding paras. Therefore, we decide the case on the basis of material available on record.

8. The Id DR has vehemently supported the order of the lower authorities.

9. We have heard the Id DR, assessee, written submission and perused the material available on the record. The first ground of assessee's appeal

is against unlawful survey proceedings and claimed that the authorized officer has pressurized and harassed the assessee, therefore, entire survey proceedings was unlawful, arbitrary, hypothetical, fabricated, unfair and unreliable and therefore, liable to be quashed. As per assessment order this issue has been challenged before the Assessing Officer, who has considered the assessee's objection and gave the finding on page No. 8 of the assessment order that stock inventory prepared by the survey team on 18/09/2007, which has been assisted by the employee of the assessee and later on duly signed by the assessee. The Id CIT(A) also considered this issue and gave the detailed findings on page 2 to 3 and stated that there was a survey U/s 133A was started on 18/09/2007 at the business premises of appellant. The survey was carried out after issuing authorization U/s 133A(b) of the Act. Authorization was presented before commencing the survey and it was duly signed by one of the Director of the appellant company Shri Shiv Ratan Mundra. The survey party asked the appellant to provide help in stock taking for preparation of inventory of physical stock found at the premises. Shri Shiv Ratan Mundra stated that he himself will get this job done. He sent one of his employees to bring labour but nobody came back till the evening of 18.09.2007. The authorized officer started recording statement of Shri Shiv Ratan

Mundra, but he left the premises in night without completing the statement. On next day i.e. 19.09.2007 Shri Shiv Ratan Mundra came at around 11.30 A.M. and again left on the pretext that he will arrange labour for stock taking. He came back in the afternoon with four labour and thereafter stock taking was started. Again he left in the night without completing his statement. On the third day i.e. 20.09.2007 he came back and stock taking was resumed which continued till the evening. During all this period Shri Shiv Ratan Mundra kept misbehaving with survey team. He used abusive and threatening language and also called his German Shepherd dog for harassment of survey team. At the time of survey books of accounts were incomplete and therefore stock as per books could not ascertained. However, physical inventory of stock was prepared and the same was signed by Shri Shiv Ratan Mundra. The statement of Shri Shiv Ratan Mundra could not be completed. The authorized officer asked question No. 19 regarding stock inventory of appellant company as on 31/3/2007. Thereafter it is mentioned by authorized officer that:

“शिव रतन मूंदड़ा ने इस प्रश्न का कोई जबाब नहीं दिया एवं टालमटोल करता रहा। सर्वे शुरू होने के साथ ही उसने अपना असहयोग पूर्ण रवैया दिखा दिया। किसी भी प्रश्न का ठीक प्रकार समे जवाब नहीं दिया एवं बात बात पर चिल्लाना

शुरू कर दिया। सर्वे के पहले दिन रात 1 1/2 बजे अपने सभी कर्मचारियों को लेकर सर्वे टीम व हमारे साथ पुलिस पार्टी भी उनको अकेला छोड़कर चला गया। हमारी बहुत समझाने के बावजूद उसने हमारी एक नहीं सुनी। जब जब उसकी गडबड़िया नजर आती व उस संबंध में जब उससे प्रश्न करते तो वह हमसे बहुत ही बदतमीजी समे बात करता एवं डराने धमकाने की कोशिश करता। सही प्रकार समे स्टाक टेकिंग भी नहीं करने दे रहा था। एवं बार-2 सरकारी कार्य में बाधा उत्पन्न कर रहा था। सर्वे के आखिरी दिन उसने हमें धमकाने के लिये अपना German Shepherd कुत्ता हमारी टीम के पास बुला लिया। बाद में तबीयत बिगड़ने का बहाना बना कर अस्पताल में भर्ती हो गया। इस वजह से आगे के स्टेटमेन्ट हम पूरा नहीं कर सके।”

9.1 The Id CIT(A) further observed that this is the statement of a responsible Government officer and there is no reason to disbelieve the same. No question was put to Shri Shiv Ratan Mundra by any officer of the survey team regarding surrender of additional income. Neither any surrender of additional income was made by him nor the survey team insisted for obtaining any surrender. However, appellant has alleged that Director of company was pressurized to surrender high amount of concealed income. Right from the time of survey and thereafter appellant and his CA Shri K.C. Mundra did not cooperate with the department in

finalizing the assessment proceedings. Only wild allegations were made against all the officers of the department without any basis thereof. From these facts it is clear that survey action was conducted in a normal manner by the survey team. However, Shri Shiv Ratan Mundra tried every possible trick to obstruct Government officers in discharge of their official duty. Search and survey operations are carried out by the income tax department as per the powers conferred by the statute. Members of survey team go to the business premises of a tax payer as representatives of the Government of India. The appellant used the terms as “so called survey” and “alleged survey” showed that he has no respect for law enforcement agency. It has been held by the Id CIT(A) that there is absolutely no material on record on the basis of which survey proceeding can be called unlawful or arbitrary. Accordingly, he dismissed the ground No. 1 of the appeal.

9.2 We have gone through the order of the lower authorities and ground of appeal. As per Section 133A of the Act the concerned Assessing Officer authorized income tax authority to conduct a survey. The income tax authority go to the business premises to verify the stock as well as cash position on the date of survey. The survey team showed the authorization to the Director of the company in the case of company

and asked to sign on it. Thereafter the authorized officer starts to verify the cash on the date of survey and make inventories of stock and books of account found during the course of survey. As per stock register/ledger, they prepared stock position as on date of survey. The part of the survey team is deputed to verify the stock physically and prepared stock inventory with the help of staff or assessee himself. It is found that assessee was non cooperative with the survey team as he has not given statement U/s 133A and also not signed on it. From the record, it is fact that a survey took three days to complete the survey proceeding which shows that there was non-cooperation from the Director of the company. As per assessment order also, there was non-cooperation and the survey team had impounded 51 books of account, which were relevant to various assessment years, which has been reproduced by the Assessing Officer on page 2 to 4 of the assessment order but no adverse inference has been drawn by the Assessing Officer. Only discrepancy was found in the stock position on the date of survey which has been calculated by both the authorities judiciously. Therefore, we do not find any reason to intervene in the order of the Id CIT(A). According we uphold the order of the Id CIT(A). This ground of assessee's appeal is dismissed.

10. Grounds No. 2,3,4, and 6 of the appeal are against discrepancies in stock valuation and making trading addition of Rs. 18,46,187/-. The Id CIT(A) held that this non-cooperative attitude of the appellant and his CA Shri K.C. Mundra continued during the assessment proceedings before the Assessing Officer. Even in the paper book filed before him showed his attitude and he filed following documents before him:

- a. Newspaper cuttings
- b. Objection against summons issued by ITO, Ward-2, Beawar
- c. Protest letter dated 24/09/2007 of appellant
- d. Letter of objections addressed to AC
- e. RTI applications filed by appellant
- f. Benami letter regarding issue of notice U/s 143(2)
- g. Complaint of CBDT
- h. Complaint of DG (Vigilance)

10.1 The Id CIT(A) held that appellant spared no efforts to obstruct inquiry in his case by the department. Assessee expected from the department to accept his books result as gospel truth and any efforts made by any officer of the department to make inquiry in his case or make verification amounts to harassment according to assessee. He further reproduced the Assessing Officer's finding on trading addition of Rs. 18,86,187/-, which is reproduced in earlier para of this order. There was variation in stock generated by the computer from the office and record of the assessee during the survey operation and from the stock register

impounded from the business premises of the assessee. The assessee made submission before the Id CIT(A) vide letter dated 06/12/2010 which has been reproduced by him on page 5 to 7. The Id CIT(A) held that stock inventory was prepared by the personnel of the income tax department and was assisted by the employees of the assessee, which was later on duly signed by the assessee. The Id AR further objected the ground No. 2 that stock value was calculated @ 55.66 (average) per KG, stock as per computer book generated have been changed without no change in value of the purchase and sale, which is not possible, this figure of stock was found on 17/09/2007 amounting to Rs. 2,43,03,171.34 has been changed without no change in the value of purchase and sales, which is not possible and figures of stock as per computer books generated has been changed without any change in value of purchase and sale, which is not possible. The Id CIT(A) has held that the stock inventory was signed by the Director of the assessee and was prepared with the assistance of employees of the company. Shri Shiv Ratan Mundra had left the business premises i.e. why the question regarding conclusion of inventory of stock was not asked by the survey team. However, as per answer to question No. 5 of the statement Shri Shiv Ratan Mundra was taken during the

course of survey operation. The statement regarding stock is reproduced as under:-

प्रश्न:- आज सर्वे 133। की दिनांक 18.09.2007 को आपके व्यवसाय में कितना माल का स्टॉक है एवं उनका मूल्यांकन कितना है साथ ही यह भी बतावे कि आज की तारीख में नकद शेष कितना है एवं वह कहाँ रखा हुआ है।

उत्तर:- वास्तविक स्थिति मैं खाते बही देख कर बता दूंगा। वैसी मैं खाते बही द्वारा सही स्थिति बनवा रहा हूँ जो आपको कुछ देरी में प्रस्तुत कर दूंगा।

10.2 This statement was duly signed by the Director of the company Shri Shiv Ratan Mundra. Ld. AR claimed that no copy of inventory was supplied by the survey team to the assessee but the Id CIT(A) held that as per ordersheet of Assessing Officer dated 22/10/2007 and 25/10/2007 revealed that Shri Shiv Ratan Mundra Director of the company alongwith Shri KC Mundra, CA/AR present, inspection of documents allowed and copy of documents/statement given as desired, which was signed by Shri Ramesh Singhal, who received the copy of documents, which was also signed by Shri Shiv Ratan Mundra, director of the company. On 25/10/2007, photo copy of all impounded register/file/books as in order of impounding dated 20/10/2007 had been provided/supplied by the Assessing Officer, which has been signed by Shri Ramesh Singhal and

Shri Aashutosh. The assessee vide reply dated 06/12/2010 submitted that regarding discrepancy found in the stock, the stock summary as on 17/09/2007 of Rs. 2,54,98,772.93 duly signed by the AR of the assessee during the assessment proceedings has duly been discussed in earlier paras of this order. The Id CIT(A) heard the issue in detail but no efforts were made by the assessee to reconcile the differences with no details/evidences. Three figures summary of stock generated from assessee book found on computer i.e. on 17/09/2007 of Rs. 2,43,03,171.34 and on 18/09/2007 of Rs. 2,38,40,266/- at the business premises. It is mentioned by the CIT(A) that figures of stock as per computer books generated had been changed without no change in value of purchase and sale, which is not possible. No reason was explained regarding these differences. Also the stock calculated from the stock registers impounded during the survey operation, the stock as on the date of survey comes to i.e. 2,23,274 kg of Rs. 1,13,11,060/-. Since the stock register maintained by the assessee impounded during the course of survey and its stock itself is not tallied with the stock figures by the books as on 17/09/2007. Since the value of stock as per stock register calculated at Rs. 1,13,11,060/- and value of stock submitted during the assessment proceedings at Rs. 2,54,98,772.93. It is also mentioned that figures of

stock as per computer book generated on 17/09/2007 amounting to Rs. 2,43,03,171.34 and as on 18/09/2007 amounting to Rs. 2,38,80,266/-. The figures of stock found on 17/09/2007 amounting to Rs. 2,43,31,171.34 had been changed with no change in the value of purchase and sale, which is not possible and no reasons was explained regarding these differences. Therefore, books of account of the assessee could not be relied upon and books were rejected U/s 145(3) of the Act. The Id CIT(A), therefore, found difference in stock (shortage) at Rs. 1,13,82,169/- was found correct, which is treated by the Assessing Officer deemed unaccounted sale of different varieties of wool. The gross profit earned on Rs. 1,13,82,169/- being unaccounted sale of different varieties of wool was applied at 16.22%, which was the G.P. rate declared by the assessee in A.Y. 2007-08. Thus, the value calculated comes to Rs. 18,46,187/- and added in the total income of the assessee. The assessee filed. Written submission before the Id CIT(A), which has been reproduced by him at page 9 to 15 of the order.

10.3. The Id CIT(A) has given his detailed finding on survey proceedings regarding the preparation of inventory of stock obtaining signature of director, therefore, this list was prepared by the IT official manually with the help of staff of assessee. The assessee submitted a list of closing stock

during the assessment proceedings at Rs. 2,54,98,772.93 and physical stock during the course of survey was found at Rs. 1,41,16,603/-. There was a shortage in stock at Rs. 1,13,82,169/-. The assessee has shown G.P. rate in immediate preceding year @ 16.22% on the basis of this GP rate, the total GP addition was made by the Assessing Officer and confirmed by the Id CIT(A) had Rs. 18,46,187/- is justified. There was a discrepancy during the course of survey on the basis of stock inventory prepared physically as well as stock position on the basis of books of account. Therefore, the Assessing Officer rightly rejected the book result U/s 145(3) of the Act. We do not find any reason to interfere with the order of the Id CIT(A). Accordingly, grounds No. 2,3,4 and 6 of the appeal are dismissed.

11. Ground No. 5 of the assessee's appeal is against confirming the trading addition of Rs. 16,53,869/-. The Assessing Officer observed that during the year, the assessee's G.P. had gone down compared to immediate two preceding years. He gave reasonable opportunity of being heard to the assessee. The assessee had not explained the reasons for decline in G.P. during the year as there was a discrepancy in the stock position as on date of survey. Therefore, he rejected the book result U/s 145(3) of the Act and applied GP rate @ 16.22% on declared sale of Rs.

7,68,23,116/-. The Id CIT(A) also confirmed the addition made by the Assessing Officer on the basis of no satisfactory reasons were given either before the Assessing Officer or the CIT(A) for fall in GP during the year. Accordingly, he confirmed the addition.

12. We have perused the material on record. The Assessing Officer had afforded opportunity to the assessee to explain the reason for decline in G.P. rate compared to preceding years. He had not given any cogent reply to explain the reasons for decline in G.P. before both the authorities. Before us also no reply was submitted. The Id Assessing Officer applied the preceding years G.P. rate in absence of any reply from side of assessee. Therefore, we uphold the order of the Id CIT(A). Accordingly, this ground of appeal of the assessee is dismissed.

13. Ground No. 7 of the appeal is against no serving any notice U/s 143 or initiating proceeding for assessment, therefore, order so passed U/s 143 of the Act is unlawful and invalid. As per assessment order, notice U/s 143(2) was issued on 13/08/2009 and case was fixed for hearing on 28/8/2009, which was duly served upon the assessee through registered post. As discussed in earlier paras, the assessee's attitude was non-cooperative with the department. Various other questionnaire were issued to the assessee. The assessee also filed objection vide letter dated

14/8/2010, which was replied by the Assessing Officer vide letter dated 26/8/2010 thereafter assessee has sought adjournments against the various notices. Shri KC Mundra alongwith Shri Rajendra Munra brother of the director of assessee attended the proceeding and also filed submissions before the Assessing Officer vide letter dated 05/10/2010 alongwith details. Shri KC Mundra Id AR of the assessee again appeared before the Assessing Officer and filed detail and produced the books of account. This issue challenged before the Id CIT(A), who had dismissed the appeal by observing that the assessee claimed that an anonymous letter was received by him who refused to identify himself and his own words admitted that

“मैं अपनी औकात को जानते हुए आपको अपना नाम नहीं बता सकता हूँ लेकिन मुझे यह विश्वास है कि आप सत्य का साथ देते हैं, अतः यह पत्र बेनामी भिजवा रहा हूँ।”

13.1 The Id CIT(A) found that 143(2) notice was dispatched through speed post on 18/8/2009. Therefore, he found that allegation of the appellant that notice U/s 143(2) of the Act was fabricated by the Assessing Officer is baseless and not acceptable. The appellant also had not brought any evidence regarding fabrication of notice as well as

allegation made in anonymous letter. Therefore he dismissed the assessee's ground of appeal.

13.2 We have gone through the order of lower authorities. The assessee had not brought on record any evidence against the notices issued by the Assessing Officer even his objection has been considered by the Assessing Officer. The alleged anonymous complaint had no relevance with reference to service of notice U/s 143(2) of the Act in absence of evidence. The assessee alongwith his authorized representative appeared before the Assessing Officer and had cooperated in assessment proceedings, therefore, as per Section 292BB of the Act where as assessee has appeared in any proceeding or cooperated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provisions of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and assessee shall be precluded or taking any objection in any proceeding or inquiry under this Act that the notice was not served upon him, no served upon him in time and served upon him in improper manner. The assessee can raise objection before completion of the assessment. Therefore, the Hon'ble Punjab & Haryana High Court in the case of VRA Cotton Mill Pvt. Ltd. Vs. Union of India (2013) 359

ITR 495 (P&H) has held that the moment, the notice is signed and put in the course of transmission by the department, the notice is deemed to be served, unless the contrary is proved. The assessee had not proved contrary, therefore, notice U/s 143(2) of the Act has been served on the assessee properly by the Assessing Officer. Therefore, the assessment passed by the Id Assessing Officer is valid. This ground of appeal is dismissed.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 27/05/2015.

Sd/- (आर.पी.तोलानी) (R.P.Tolani) न्यायिक सदस्य / Judicial Member	Sd/- (टी.आर.मीना) (T.R. Meena) लेखा सदस्य / Accountant Member
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जयपुर/Jaipur
दिनांक/Dated 27th May, 2015

*Ranjan

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

1. अपीलार्थी/The Appellant- M/s. Mundra Woolen Mills (P) Ltd.
Industrial Area, Jaipur Road, Kekri
2. प्रत्यर्थी/ The Respondent- The ACIT, Circle- 2, Ajmer
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ आयकर आयुक्त(अपील)/The CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT,
Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 401/JP/2012).

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar