

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1320/JP/2019
निर्धारण वर्ष/Assessment Year :2011-12

Sh. Satish Kumar Garg RIICO Industrial Area, Ajmer Road, Beawar	बनाम Vs.	DCIT, Central Circle, Income Tax Department, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACOPG7005M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vinod Gupta (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/08/2020
उदघोषणा की तारीख / Date of Pronouncement: 11/09/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 23.07.2019 wherein the assessee has taken the following grounds of appeal:-

- "1. The impugned addition made in the order u/s 143(3) of the Act, dated 26.03.2013 is bad in law and on facts of the case, for what of jurisdiction and various other reasons and hence, kindly be deleted.*
- 2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the addition to the extent of Rs. 80,250/- on account of undisclosed interest income. The addition so made and confirmed by the Id. CIT(A), is contrary to the provisions of law and facts hence, kindly be deleted.*

3. *The Id. CIT(A) erred in law as well as on the facts of the case by confirming the addition to the extent of Rs. 3,15,275/- on account of excess stock found during survey at M/s Kutubminar AC Products. The addition so made and confirmed by the CIT(A), is contrary to the provisions of law and facts hence, kindly be deleted."*
2. At the outset, it is noted that there is a delay in filing the present appeal by 31 days. In this regard, the Id. AR submitted as under:-

"1. That in the aforesaid matter, the impugned order was passed by CIT(A)-2-Udaipur, on dated 23.07.2019, which was received on dated 02.09.2019. Accordingly, the appeal was to be filed on/before 01.11.2019 however, the same has been filed on dated 02.12.2019. Thus, delay of 31 days has occurred.

2. In this connection, it is submitted that, after receipt of the said order, the assessee handed over the same to his regular tax consultant Shri Ramesh Chand Goyal Sharma (Chartered Accountant) for further action if any. Unfortunately, however, at that point of time Sh. Ramesh Chand Goyal was busy in Audits so he placed the papers in/with some other files/papers, not related to this matter and even forgot to complete the task given to him.

3. That it is only sometime in the third week of November, after completion of audit the staff was arranging the audit files with relevant audit working papers, then only this order came in the notice of Shri Ramesh Chand Goyal. After receipt of this order, immediate efforts have been made to file the appeal.

4. *That under these circumstances firstly, there was no delay attributable on the part of the applicant assessee. In any case, these circumstances were beyond the control and anticipation of the humble applicant assessee. The delay occurred because of the misplacing of papers by the regular tax consultant, as stated above and the poor assessee was helpless.*

5. *That the delay was unintended and not deliberate. In the past, there was no such delay ever occurred. In any case, it was a minor delay of 31 days and the issue involved been directly covered, such delay deserves to be kindly condoned."*

3. In support, reliance was also placed on the Hon'ble Supreme Court decision in the case of Collector, Land & Acquisition v. Mst. Katiji⁸s Others (1987) 167 ITR 471 (SC), Vedabai⁹oiasVaijayanatabai Baburao Patil vs. Shantaram Baburao Patil (2002) 122 Taxman 114 and Delhi Tribunal in ACIT vs. Jay Dee Securities 85 Finance Ltd. (2017) 88 Taxmann.com 626.

4. After hearing both the parties and considering the affidavit of the assessee which is placed on record, we find that there was a reasonable cause for the delay in filing the present appeal and the delay is hereby condoned and the appeal is admitted for adjudication.

5. Ground No. 1 was not pressed during the course of hearing. Hence, the same is dismissed as not pressed.

6. In Ground No. 2, the assessee has challenged the confirmation of addition of Rs 80,250/-.

7. In this regard, the Id AR submitted that during the course of search, the assessee surrendered an amount of Rs.8 Lakhs in his hands on account of

advance given to different parties. The surrender was made on the basis of noting found on Annexure LP-2 seized from the residence of assessee. The Ld. AO made the addition on the ground that the assessee has surrendered the amount of advance given but the interest earned on these advances is not declared in the return of income and on this basis, addition of interest amount of Rs.96,000/- was made, adopting the rate of interest of 12% per annum on advance given of Rs.8,00,000/- for whole year. During the course of first appeal, the "hundis" seized were submitted before CIT(A)- Udaipur clearly mentioning the period for which the amounts have been advanced. The dates of money given was ranging from 02.09.2010 to 20.09.2010 therefore it was prayed that the addition of interest for the entire year is unjustified. During the course of appeal proceedings, Id.CIT(A) accepted the contention that the amount have been advanced in the month of September, 2010, however, the contention of assessee that the amounts have been given for two months only, supported by seized material, remained unadjudicated and the interest was calculated from September, 2010 to March, 2011. Further, the Ld. CIT(A) enhanced the rate of interest adopted by AO at 12% p.a to 18% p.a. on the basis of one hundi in the name of M/s Adiya Mineral.

8. In the above factual background, the Id AR submitted that the action of Id.CIT(A) in enhancing the rate of interest from 12% p.a. to 18% p.a. has resulted into the enhancement made by the CIT(A) and the enhancement has been made without following the mandatory requirement of law i.e. issuing notice u/s 251(2) . No such show-cause u/s 251(2) has been issued by the CIT(A), hence the complete enhancement has been made without providing a reasonable opportunity which is against the mandatory requirement of section 251(2) and principle of natural justice, hence the enhancement made by CIT(A) deserves to be deleted. In support of the contentions, reliance was placed on the case of M/s Shree Jee Jewellers vs ITO (*ITA No.393/JP/2017 dated 27.01.2020*). In view of

these facts, the enhancement made by CIT(A) from rate of interest of 12% p.a to 18% p.a. resulting into enhancement of Rs.26,250/- may kindly be deleted. Further, reliance was placed on the written submissions and the contents thereof read as under:

"2.1 It is important to note that in these types of transaction the amount of interest is received in advance. This fact is further supported by the "*hundies*" seized from the assessee wherein the amount of interest is quantified at the time of giving loan and received in advance. Kindly refer Hundi of Aaditya Mineral Product dated 20.09.2010 placed at PBP-3 wherein it is clearly mentioned that "*advance interest of Rs.5600/- paid*"

2.2 It is clear from the above that at the time of search the fact was before the concerned officer also and duly explained and therefore, surrender of principal was given and accepted. Considering the explanation supported by the documents seized, no separate question for interest arises during the search.

2.3 Under these circumstances, when it is an established practice of receiving the interest in advance, the assessee has utilized the said interest received while giving the loans and the same has been included in principal amount of loan. Notably, while making surrender the assessee surrender the entire amount of loans given which was out of own money and interest received in advance therefore making separate addition for the amount of interest already included in the amount of surrender resulted into double addition, hence kindly be deleted in full.

2.4 The assessee specifically submitted this fact before Id.CIT(A) but this remained un adjudicated.

2.5 In view of these facts and circumstances, it has been a practice of receiving entire amount of interest as advance which got clubbed with the loan

given for which surrender has been made, therefore no separate addition is warranted.

2.6 Without prejudice to the above, it is further submitted that the interest has been rightly calculated from the month of September but the same has been calculated till March, 2011 whereas the amount of loans has been given for two months only. In the case of Kiran Industries, Jai Jinendra Textiles, MP Enterprises, it was specifically mentioned in the seized papers that the interest of two months is paid means the amount has been given for two months only. Thus, calculating the interest till 31.03.2011 is contrary to the facts and unjustified.

2.7 During the course of appeal proceedings, Ld.CIT(A), on the basis of one hundi i.e. Aditya Mineral Products, wherein rate of interest of 1.5 per month was mentioned drawn an inference that all the loans have been given at the rate of 18%, whereas on the other hand various hundis specifically mentioned period of two months as pointed out in Para 2.3 above, this contention was ignored that all the loans were of two months duration only. At the one hand, hundi of Aditya Mineral Products has been completely relied upon but the fact mentioned on that hundi itself that interest of Rs.5600/- with respect to this has been received in advance and this proves that it has been the practice of the assessee to receive interests in advance was ignored. In the case of Aditya Mineral interest of Rs.5600 was paid and by working out the interest at 1.5% per month the duration of this hundi come out less than two months (around 1 months and 24 days), still ignoring this fact interest of 7 months was sustained by CIT(A). Thus, the approach adopted by the Ld.CIT(A) is highly contradictory and unjustified. Every content of the evidence is of equal importance and it is unjustified to pick and choose only unfavorable content for the sake of making additions only.

2.8 Without prejudice to this, even if it is assumed that the interest has been earned separately then also the interest should be calculated @12% p.a. for two

months only. If this contention is accepted, the amount of interest to be added would be as follows:

S.No.	Hundi in the name of	Amount of Hundi	Interest @12% for 2 Months
1.	Bharat Malani	1,50,000/-	3000/-
2.	Kiran Industries*	50,000/-	1000/-
3.	Aditya Mineral Products	2,00,000/-	4000/-
4.	Jai Jinendra Textile	2,00,000/-	4000/-
5.	BarjatyaRoadlines	1,00,000/-	2000/-
6.	MP Enterprises	1,00,000/-	2000/-
	Total		16,000/-

*the period of two months accepted by CIT(A) also.

2.9 Under the facts and circumstances Id.CIT(A) has erred in applying interest for seven months, whereas, sample adopted for the purpose of finding out interest is only for 2 Months, apart from other instances, thus, the period taken is unjustified and contrary to the facts.”

9. Per contra, the Id. DR relied on the findings of the Assessing Officer as well Id. CIT(A) and our reference was drawn to the findings of the Id. CIT(A) which are contained at para 5.3 which read as under:-

5.3 I have considered the submissions of the assessee and the facts on record.

5.3.1 The assessee has furnished copy of seized hundis in appeal. The details which emerge therefrom are as under-

S.No.	Hundi in the name of	Amount of Hundi	Dt. of Issue	Dt. of maturity	Interest Rate
1.	Bharat Malani	1,50,000/-	02.09.2010	Not noted	Not noted
2.	Kiran Industries	50,000/-	20.09.2010	18.11.2010	Not noted
3.	Aditya Mineral Products	2,00,000/-	20.09.2010/-	Not noted	1.5% per month
4.	Jai Jinendra Textile	2,00,000/-	20.09.2010	Not noted	Not noted
5.	Barjatya Roadlines	1,00,000/-	18.09.2010	Not noted	Not noted
6.	M.P Enterprises	1,00,000/-	18.09.2000	Not noted	Not noted

5.3.2 As evident from the above details, hundis were made in September 2010, therefore it is held that the A.O has erred in calculating interest for the entire F.Y 2010-11. Further, the A.O has also erred in taking interest rate at 12% whereas as per the seized documents the prevailing interest in September 2009 is 1.5% p.m, as evident from the Hundi in the name of Aditya Minerals. The interest income on Hundi of Rs.50,000/- in the name of Kiran

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Industries, made on 20.09.2010 and which carries date of maturity as 18.11.2010, for two months works out to Rs.1,500/- and on other hundis of Rs.7,50,000/- interest at 1.5% p.m for seven months (September 2010 to March 2011) works out to Rs.78,750/-. Accordingly, out of addition of Rs.96,000/- made by the A.O on account of interest on hundis, addition of Rs.80,250/- is sustained. The ground of appeal is thus partly allowed

10. We have heard the rival contentions and perused the material available on record. We find that these are six independent transactions where the different amounts have been advanced by the assessee to various persons and therefore, each of the transactions are to be seen in context of individual terms and conditions and based on what document has been found during the course of search. In respect of one of the transactions with M/s Aditya Mineral products,

where the rate of interest of 1.5% per month has been specified on the Hundi document, none of the other documents found during the search specify the rate of interest. The AO has applied rate of interest of 12% per annum and the Id CIT(A) has further enhanced the same to 18% per annum. Similarly, except in respect of M/s Kiran Industries, where the period of maturity has been specified as 18.11.2010, none of the other hundis specify the period for which the amount was advanced and the date of maturity. The AO has considered the whole of the year for which the amount was advanced and the Id CIT(A) has considered period of two months in case of Kiran Industries and in respect of other hundis, period starting from September till end of the financial year. However, the fact of the matter is that the amount has been advanced which is not disputed by the assessee and we deem it appropriate to sustain the rate of interest of 12% per annum as applied by the AO which seems reasonable in the facts and circumstances of the present case except in respect of Aditya Minerals, where it should be calculated at the rate of 18% per annum. Further, in respect of transactions with Kiran Industries, Jai Jinendra textiles and MP Enterprises, the interest should be calculated for period of two months as evidence by the documents found during the course of search and in respect of other transactions, it would be reasonable to calculate the rate of interest from month of September till end of the financial year in absence of anything contrary brought on record which shows the date of maturity before the close of financial year. The ground of appeal is disposed off accordingly.

11. In Ground No. 3, the assessee has challenged the action of the Id CIT(A) in confirming the addition of Rs 3,15,275/- on account of excess stock found during the course of survey.

12. In this regard, the Id AR submitted that a survey operation was carried out at the business premises of assessee i.e. M/s Kutubminar A.C. Products, Industrial Area, Ajmer Road, Beawar on 13.10.2010. In the survey proceedings physical verification of stock was carried out and the same was valued at Rs.5,23,698/- by the department. Since the survey was carried out in the middle of financial year and the accountant was on leave as he suffered a leg fracture and the assessee was also not keeping well. In this situation no entries in books of account could be made after 31.03.2010 but when the survey party asked the details of stock as per books of account the same was made in haste by the accountant, without any verification and on approximate basis. The same is evident from the statements of the accountant. A perusal of the statements reveals that the entire entries were passed by the accountant in just one hour and the stock of Rs.1,04,788/- was calculated as per books on the date of survey, whereas, as per survey party, the stock was of Rs.5,23,698/-. It is important to note that alleged stock as per books at the time of survey was too calculated by applying previous year GP Rate, thus, the stock as per books itself was tentative stock. Under these circumstances, alleged excess stock of Rs.4,18,910/- on the date of survey was worked out.

13. It was further submitted that during the course of assessment proceedings, it was reiterated before the AO that the alleged stock as per books of accounts was prepared by the accountant in haste and without verification and when the appellant completed the books of accounts there was no excess stock as alleged. Further, a complete reconciliation sheet was filed before the Ld.AO along with complete supporting documents, bills and vouchers, affidavits of suppliers, books

of accounts in support of each and every reason of variance between the physical stock valued by the department and alleged stock as per books of accounts and as per the reconciliation there was no such difference in stock as alleged by the department. The said reconciliation filed by the assessee was carefully considered by the AO but the addition was made on a purely legal ground by holding as under:

“these details were not bring in to the notice of department during survey nor during post survey proceedings, statement recorded etc. The inventory of stock was signed and confirmed by the assessee himself in the statements recorded during survey proceedings and also during post search proceedings. As this fact was never brought to the notice of survey/search party during search/survey proceedings nor during post search proceedings, the plea of the assessee is not found to be acceptable and addition of Rs.4,18,910/- is made on account of excess stock found during survey operation”.

14. The assessee preferred an appeal before the CIT(A) against the action of the AO and it was pleaded before the CIT(A) that the action of the AO is unjustified in not accepting the contention of the assessee purely on the premises that the details, although admitted without finding any fault but not granted the relief, as the same were not filed during the course of survey proceedings. Thus, the issue for adjudication before the CIT(A) was limited to the issue whether addition can be made presupposing that once surrender is made u/s 131 then addition is automatic despite being glaring mistakes/factual errors existing and not doubted by the AO. As the plea of the assessee was limited to this extent the submissions, case laws and other details were filed revolving around this plea only. The Ld.CIT(A) on its own, examined the merit and the part addition was sustained on the ground that no evidences has been submitted, without

appreciating the evidence in totality and against the said findings, the assessee is in appeal before the Tribunal.

15. It was submitted by the Id AR that this was the case of survey in the middle of year when the books of accounts were not ready because the accountant of the assessee was on a prolonged leave due to medical reasons and assessee was also not well so books were prepared on the day of survey only, that too without verification of various facts i.e balance sheet of earlier year, stock received but invoice not received etc. During the course of assessment the corrected books of accounts were submitted before the AO in which no fault has been pointed out by the AO. The books of account of the assessee were accepted by the lower authorities. It was submitted that the return of income was filed by the assessee on the basis of these corrected books of accounts and the trading results were accepted by lower authorities. The addition by AO towards surrender made on account of alleged excess stock has been made only on the premises that the reason of variance in stock were not submitted during the course of survey, therefore the same cannot be accepted, however, the closing stock as per books of accounts of the assessee was not disputed which again goes to support that the factual position of the stock as per books of accounts was admitted by the lower authorities and addition was made only on the ground of non submission of these details during the course of survey proceedings. It was submitted that before the CIT(A) the plea of the assessee was limited to the legal issue whether surrender made during survey results into automatic addition when the same has been proved to be wrong based upon correct books of accounts and facts which has been admitted by AO without finding any fault. We would like to draw the attention to page 5 the assessment order wherein the reconciliation statement has been reproduced and a perusal thereof would reveal that the same was supported by extensive evidences and at the end of the reconciliation statement, Ld. AO made the opening remark that the "*the submissions of the assessee has been carefully considered*". The Ld.AO has not

found any fault in the reconciliation statement. Moreover, when CIT(A) herself accepted the plea of the assessee that admission is subject to factual verification by observing that "the action of the AO in rejecting the reconciliation (of stock found during survey with the stock as per books) filed by the assessee during the assessment proceedings, without examining the same on merits, is not found justified". Under the facts and circumstances, Ld.CIT(A) failed to appreciate the basis of addition, plea and grounds before her and facts of the case. Ld.CIT(A) further erred while dealing the reconciliation statement on merit, while confirming the addition observed that relevant supporting is not placed before her. It is a case where all supporting evidences were filed before AO as evident from assessment order and submissions made before CIT(A). The filing of evidences was not in dispute, it is also clear that Ld.AO considered all the documents filed before him as evident from the order itself and pointed out herein before. The observation of the CIT(A) that AO has not examined the evidence on merit is contrary to the facts and merely her own presumption or conjecture. It was submitted that the Ld.CIT(A) at her own presumption presumed that the reconciliation filed by the assessee has not been examined by the AO on merits. This finding and observation is contrary to the facts as discussed herein before and therefore resultant action deserves to be deleted. In support, reliance was placed on the decision of Hon'ble Supreme Court of India in the case of ACIT Vs Marico Ltd in SLP (Civil) Diary No. 7367/2020 vide order dated 01.06.2020 wherein it has been propounded by the Hon'ble Court that non rejection of explanation of the assessee in the assessment order would amount to Assessing Officer accepting the view of the assessee. The only reason for making addition was these were not given during survey and post survey proceedings. Therefore, the issue was limited before her. Ld.CIT(A) without appreciating the facts and circumstances and without calling assessment records drawn an inference by citing the sole reason that supporting documents of reconciliation statement was not filed with her. In view of these facts and circumstances, the addition

sustained by CIT(A) in unjustified. In support of the contentions, reliance was placed on the decision of the Tribunal in the case of Shri Babulal Vani vs ACIT (*in ITA No. 491/Ind/2018 dated 27.09.2019*) wherein it was held as under:

"5. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Undisputedly, the books of accounts of the assessee at the time of survey on 3.3.2005 were found to be returned till 15.1.2005. It is the contention of the assessee that no opportunity to recast its trading account was given. It is further contended that the difference was due to non recording of the purchases. In fact sales of the udad has been taken into account but purchases are not considered which was recorded subsequently. It is further contended that the sales have been determined on the basis of the vouchers. We have given our thoughtful consideration to these submissions of the assessee. During the course of survey statement recorded u/s 133A of the Act would not be a strong piece of evidence. In case the assessee is in a position to reconcile the discrepancy with positive material, in that event, the A.O. should give relief to the assessee. In the present case, the Ld. Counsel for the assessee has taken us through the various pages of paper book to support his contention that the stock is duly reconciled. We find that the A.O. has taken into account sales but the purchases of udad which was not recorded in the books and subsequently recorded after drawing a fresh trading account, no specific defect in such reconciliation is pointed out by the A.O. Under these facts, we are of the view that the A.O. is not justified in making the addition. Therefore, the A.O. is directed to delete this addition. "

16. It was further submitted that without prejudice to the above, the lower authorities have accepted the books of accounts of the assessee and profit declared therein but at the same time addition towards alleged excess stock has

been made. At the one hand he accepted the amount of closing stock declared in books of accounts and on the other hand addition on account of unexplained investment u/s 69 has been made without rejecting the books of accounts. In view of these facts and circumstances addition towards unexplained investment without rejecting books of accounts is unjustified. In support, reliance was placed on the following decision in case of Umbrella Projects Pvt Ltd Vs ITO in ITA No.5955/Del/2014 (Delhi Trib) vide order dated 23.02.2018.

17. It was further submitted that the books of accounts were accepted by lower authorities and during the course of survey the alleged difference was arising due to difference in value. It is important to note that closing stock has already accepted by lower authorities, the alleged difference worked out was of intermediate period. As we know, whatever difference, if any, however, we are not accepting the same, has been automatically effected the working of closing stock, which has been accepted, therefore, no separate addition for alleged difference in valuation at intermediate date can be made and would result into double addition, since, it has already been incorporated, if any, in the closing stock. In support, reliance was placed on the decision in case of M/s AGL Moulds & Tools, Kannur Vs ITO (*ITA No.101/Coch/2019 dated 15.05.2019*) and M/s Reliable Space Pvt Ltd Vs DCIT (*ITA No.3085/MUM/2015 dated 25.09.2018*).

18. It was further submitted that any difference in valuation of closing stock shall also have effect in the profit of the subsequent year, therefore, it would be always be a revenue neutral. therefore, addition merely on the basis of undervaluation is unjustified and deserves to be deleted.

19. It was further submitted that without prejudice to the above, the assessee's explanation in respect of each findings recorded by CIT(A) for partly sustaining the addition is given by way of the table given below:

Entry in Reco. Statement filed before lower authorities	Reconciliation submitted before lower authorities	Findings of CIT(A)	Submissions
D	<p><i>The rate applied for valuation at the time physical stock taking is taken from sales book i.e. selling price has been taken for valuation instead of cost price, clearly the value of physical stock taken during the course of survey includes the gross profit margin of assessee. Therefore the stock is overvalued to the extent of Rs. 51730/-</i></p> <p><i>In support of our contention we are enclosing herewith various sales invoices of the assessee which shows that value per item of closing stock has been taken at selling price instead of cost price as corroborative evidence as these invoices were seized during the course of survey/search.</i></p>	<p>Copy of trading account prepared during course of survey is not furnished. No basis given for 10% profit rate to substantiate this contention.</p>	<p>After verification of sales bills placed. It was an admitted fact that the stock has been valued at sales price and only objection raised by the CIT(A) was with respect to GP rate, therefore, at the outset CIT(A) is unjust by not allowing credit for GP Rate at all (Nil Rate) and confirming the value of stock at the time of survey at selling price.</p> <p>For an instance in the inventory of stock prepared at the time of survey, for items placed at entry No.12,13,23 value has been taken at Rs. 42, whereas the sale price of these items is Rs.30 only which is evident from the sale bills placed.</p> <p>The assessee adopted GP rate of 10% and this was not accepted for want of trading account prepared during the course of survey to verify this GP rate.</p> <p>At the outset it is submitted that the trading account prepared during the course of survey proceedings was already submitted before the AO. Further, the trading account was part of assessment record and documents seized and already available with lower authority.</p>

			Moreover, a perusal of the trading account prepared during course of survey proceedings reveal the GP Rate of 15.97%, (PBP-16) whereas the assessee adopted the GP rate of 10% to workout the cost price of stock.
E	<p><i>During the course of physical stock taking value of powder bag (Mineral Powder) has taken to be Rs. 1,05,492/- (refer entry no. 30 of the Annexure S2-1 dated 13.10.2010 whereas in fact the mineral powder is sold @ Rs. 400/- to 500/- per ton (1 ton = 1000 kilograms), which is packaged in bags consisting of 30 Kilograms of mineral powder. Thus 1 Kg. of mineral powder will cost Rs. 0.50 only (Rs. 500 divided by 1,000 kilograms) and a bag of mineral (30 Kgs.) will cost Rs. 15/- (Rs. 0.50 per Kg. multiplied by 30 Kilograms). Therefore multiplying the correct rate with no. of bags the valuation of this items will come to Rs. 6705/- (Rs. 15 * 447 bags), thus the physical stock is overvalued by Rs. 98787/-.</i></p> <p><i>In support of our contention we are enclosing herewith the copies on various bills which are also seized during the course of survey/search as corroborative evidence.</i></p>	<p>1. PBP 46-60 does not contain even a single bill for FY 2010-11 therefore, no evidence in support of prices for FY 2010-11 (under consideration) is furnished.</p> <p>2. Further, there are only two bills for purchase of mineral powder by bag rest all are for loose powder.</p> <p>3. As per bill of Minu Mineral dated 09.02.2010 , 200 bags have been sold for Rs.4200/- i.e. Rs.21/- per pag. Considering the above in February 2010, average price in FY 2010-11 is taken at Rs.30 Per bag and</p>	Addition sustained on this ground is Rs.6705 is not pressed.

		value of stock of Rs.447/- bags of mineral powder is taken as against 1,05,492/- taken during survey. Relief to assessee Rs.92,082/-	
F	<p><i>Further goods against following invoices have been delivered to the assessee prior to search whereas the invoices were received by the assessee after search operation therefore the closing stock did not contained inventory to that extent. The details of invoices are as under:-</i></p> <p><i>Bill amounting to Rs. 46,700/-, 43,160/- & 52,400/- against purchase from M/s.Shri Ram Pipe Udyog vide Bill no. 19, 14 & 13 dated 03.10.2010, 19.09.2010 &14.09.2010 respectively and bill amounting to Rs. 24,000/- purchased from M/s.GayatriUdyog vide Bill no. 93 dated 12.10.2010, was not entered in the books of accounts, which was later on entered in the books of accounts, copy of the same bill is enclosed herewith. Resultantly stock as per books will increase by Rs. 1,66,260/-</i></p> <p><i>Further, an affidavit in support of the fact duly sworn by the vendor</i></p>	<p>No evidence such as delivery challan/transportation documents to show that goods mentioned in the said bills only were received prior to search has been furnished substantiate this contention.</p>	<p>The assessee had submitted the relevant bills of said purchases and affidavits of suppliers who duly sworn that the said goods were sent to the assessee before sending the invoices and no faults were found in these bills and affidavits.</p> <p>Ld.CIT(A) did not appreciate the fact that :</p> <p>(i) The assessee is carrying out the business at a small town of Beawar and purchases are made from local market only as evident from the bills submitted and which are from nearby shops. In most of cases supplies have been made in the vehicle of supplier and vehicle number is mentioned in the invoices, therefore no such separate transportation documents or challans are prepared nor expected to produce.</p> <p>(ii) The duly sworn affidavits were filed before lower authorities wherein the suppliers have verified on oath that said goods were delivered before survey and invoices were issued later. The affidavits are containing Bill Number, dated and</p>

	<p><i>is enclosed herewith stating that goods were sent to assessee before sending the invoice.</i></p>		<p>amounts and no fault were find out in the said affidavits by lower authorities. The affidavits are</p> <p>Under these facts and circumstances once the contents of the affidavits are admitted and this fact is also admitted that on the date of survey these bills were not recorded in books and the contents of bills are also accepted without finding any fault, in these circumstances, making the addition on ground that transportation details are not available is unjustified.</p>
G	<p><i>Further at the time of stock taking opening stock of inventory was short to the extent of Rs. 61,190.40 as a bill amounting to Rs. 61,190.40 dated 05.11.2009 of M/s Vinayak Enterprises Bill No. 641, was erroneously not recorded in the books, which was later on while filing of return of income for AY 2010-11 rectified. Resultantly the stock as per books will increase by Rs. 61,190/-.</i></p> <p><i>Further the same is verifiable from the return of income filed for AY 2010-11, wherein the closing stock was shown at Rs. 4,22,056/- in comparison to the time of survey where the opening stock was shown as Rs. 3,60,866/- (Rs. 4,22,056 less Rs. 61,190) instead</i></p>	<p>Trading account prepared during survey has not been furnished to substantiate this contention.</p>	<p>In respect of non submission of trading account prepared during course of survey, our submissions are same as at Column-D of this table.</p> <p>A perusal of the trading account reveals that opening stock has been taken at Rs. 3,60,866/- whereas closing stock as per income tax return form of immediate preceding year is Rs.4,22,056/-, in Application of Funds, Column-4 of PART-A-P&L)therefore there was an error of recording opening stock short by Rs.61,190.40/-</p>

	<i>of correct.</i>		
J	<i>During the course of physical stock taking valuation of pipe piece of size 7"*6" at entry no. 8,9,32,33 of the Annexure of inventory dated 13/10/2010 has been at Rs. 60 (entry no. 8,9) and Rs. 70 (entry no.32,33) but actually the rate is Rs. 60/- accordingly stock is overvalued by Rs. 7750/- [775 pipes multiplied by Rs.10 (differential rate i.e. Rs.70-Rs.60)]</i>	No specific bill referred to substantiate this contention.	Contention before CIT(A) was that there are several entries of the same items according to their placement, however, different rate has been taken and more particularly item listed at entry number 32 & 33 has been valued at Rs.70 per pipe, which is the sales price of 8*6 as evident from copy of invoice field before her whereas the item under consideration is having size of 7*6 , therefore, contention of the assessee of overvalued to the extent of Rs.7750/- is substantiated with the facts.
K	<i>During the course of physical stock taking valuation of pipe piece of size 6"*6" at entry no. 12,13,23 of the annexure of inventory dated 13/10/2010 has been made at Rs. 42/- but actually the prevailing rate is Rs.30/- which is verifiable from various sale bills enclosed herewith for your kind verification. Accordingly stock is overvalued by Rs. 12,240/- [1020 pipes multiplied by Rs.12 (differential rate i.e.Rs.42-Rs.30)].</i>	No specific bill referred to substantiate this contention.	The pipe having size of 6*6 was valued at Rs.42 per pipe whereas the item under consideration is having sale price of Rs.30 per pipe as evident from the copy of sale invoices submitted before CIT(A).Therefore, the item was overvalued to the extent of Rs.12,240/-.

In view of these facts and circumstances the difference in the stock as sustained by CIT(A) was well explained and supported by evidences. Therefore, the addition made on account of alleged excess stock is factually incorrect, ad-hoc and the addition so sustained by the CIT(A) may kindly be deleted in full.

20. Per contra, the Id. DR drawn our reference to the order of the AO and submitted that there is no infirmity in the order of the Id CIT(A) wherein she has

stated that reconciliation statement submitted by the assessee was not examined by the AO and the AO has dismissed the assessee's submissions stating that such facts were not brought to his notice during the course of survey. It was further submitted that the Id CIT(A) has thereafter examined the reconciliation statement so submitted by the assessee and has given her findings at Para 7.3 of her order where she has allowed part relief to the assessee. The Id DR accordingly supported the findings of the Id CIT(A) and submitted that no further relief may be granted to the assessee.

21. We have heard the rival contentions and perused the material available on record. The survey was conducted at the assessee's premises on 13.10.2010 during the middle of the financial year 2010-11 where the stock as per books was determined at Rs 104,788 and the physical stock has been determined at Rs 523,698, therefore, there was excess stock found during the course of survey amounting to Rs 418,910/-. During the course of assessment proceedings, the assessee submitted a reconciliation explaining the reasons for such difference in terms of stock being valued at market price, not valued at per the specification of particular products, stock received but invoices received after the date of survey etc. The AO has rejected the said reconciliation and explanation so offered along with documentary supporting documentation for the reason that the same was not offered during the course of survey. To our mind, given that the survey was conducted during the middle of the financial year, it is quite likely that there could be some timing mis-match in terms of receipt of physical stock and entries made in the books of accounts and thereafter, once the entries are made in the books of accounts, and necessary reconciliation prepared and submitted, the same should have been examined by the AO and cannot be dismissed summarily. The Id CIT(A) is also of the same view that the said action of the AO is not justified and where the assessee is able to show with evidence that admission made during survey was mistaken, the same should be examined on merits. The Id CIT(A) has thereafter

examined the reconciliation statement and has held that the assessee has only partly been able to substantiate the differences and reconciliation so submitted. We have also gone through the reconciliation statement and find that the assessee has reasonable explained the differences in the stock with its explanation and supporting documentation. In respect of point no. D, we find that valuation of stock has to be at cost price and not selling price and rate of gross profit of 10% has rightly been reduced to arrive at the correct stock valuation and the addition so made is hereby deleted. In respect of point no. E, the Id CIT(A) has granted relief of Rs 92,082/- and sustained the addition of Rs.6,705/- which is not pressed by the assessee. In respect of point no. F, the assessee has submitted the relevant purchase bills and affidavit of suppliers stating that the goods were dispatched and delivered to assessee prior to survey and invoices were delivered subsequently and the quantity and other particulars matches and therefore, there is no basis for such addition of Rs 166,260/- which is hereby deleted. In respect of point no. G, the assessee has explained the reason for recording short opening stock and we find the said explanation satisfactory. In respect of point no. J and K, the assessee has reasonable explained the difference on account of product differentiation and the addition so made is hereby deleted. In light of aforesaid discussion, the ground of appeal is allowed.

In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the open Court on 11/09/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Satish Kumar Garg, Beawar
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle, Income Tax Department, Ajmer
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1320/JP/2019}

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar

