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IN THE INCOME TAX APPELLATE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

BEFORE SHRIVIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.100 /Alld./2017
Assessment Year: 2012-2013

Mr. Neeraj Agrawal, Prop. M/s. RajshreeJewellers, Basnahi Bazar, Mirzapur-231001 , U.P.	v.	Deputy Commissioner of Income-tax, Circle-3, Mahantha Shivala Mirzapur, U.P.
PAN:ABNPA7884N		
(Appellant)		(Respondent)

ITA No.138 /Alld./2017
Assessment Year: 2012-2013

Deputy Commissioner of Income-tax, Circle-3, Mahantha Shivala, Mirzapur, U.P.	v.	Mr. Neeraj Agrawal, Prop. M/s. RajshreeJewellers, Basnahi Bazar, Mirzapur- 231001 , U.P.
		PAN:ABNPA7884N
(Appellant)		(Respondent)

Appellant by:	Shri. Divyanshu Agrawal, Adv.,Shri Rajeev Ranjan Agrawal, Adv. & Shri Neeraj Agrawal (Assessee-in-Person)
Respondent by:	Shri. A.K. Singh Sr.D.R.
Date of hearing:	27.07.2022 ,28.10.2022 & 03.02.2023
Date of pronouncement:	14.03.2023

O R D E R

PER Bench :

These cross appeals, filed by assessee, being ITA Nos.100/Alld./2017 for assessment year(ay): 2012-13 , and appeal filed by Revenue , in ITA No.

138/Alld/2017 for ay: 2012-13 are directed against an appellate order dated 07.03.2017 in Appeal No.10/DCIT/R-III/MZP/15-16 , passed by learned Commissioner of Income Tax (Appeals), Allahabad (hereinafter called "the CIT(A)"),for assessment year(ay):2012-2013, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 20th March, 2015 passed by learned Assessing Officer (hereinafter called "the AO") under Section 143(3) of the Income-tax Act,1961(hereinafter called " the Act"). We have heard these cross appeals in Open Court proceedings through physical hearing mode.

2. The assessee has raised following grounds of appeal in memo of appeal filed with Income Tax Appellate Tribunal, Allahabad Bench, Allahabad, U.P. (hereinafter called " the tribunal"), in ITA No. 100/Alld./2017 for ay; 2012-2013, which reads as under:-

> *"The following grounds of appeal are independent of , and without prejudice to one another:*
>
> *1. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(Appeals) grossly erred both in fact and in law in confirming the addition of the Assessing Officer ("AO") on account of difference in stock (difference in physical stock on the date of survey and the stock shown in stock register without considering the books of accounts impounded) in Mirzapur premises of the appellant merely on the basis conjectures and surmises and also without appreciating the submissions filed and documents submitted and without analyzing the quantitative and value-wise details of opening stock, purchases / transfer, sales/ transfer and closing stock for the financial year under consideration.*
>
> *1.1 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the appellant has failed to give any reasons as to why the weight of the silver jewellery was incorrect at the time of survey apart from making general averments.*

1.2 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the purity percentage of the silver jewellery on an estimated basis should be 55% without appreciating the submissions made.

1.3 Hence, the addition on account of weight and purity of silver jewellery as confirmed by Ld. CIT(Appeals) on account of undisclosed investment is bad in law and is liable to be deleted.

1.4 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the affidavit of Smt. Poonam Tripathi in regard to the gold jewellery weighing 202 gm is an afterthought without considering the submissions filed, documents/affidavit filed on the issue and not considered the Hon'ble Supreme Court judgment in the case of CIT v. S.Khadar Khan & Sons (254 CTR 228) on the issue. Hence, the addition on gold jewellery as confirmed by Ld. CIT(Appeals) on account of undisclosed investment is bad in law and is liable to be deleted.

1.5 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in not giving benefit of the opening stock of the silver bullion weighing 5.751 kg in Mirzapur premises without considering the submissions filed and evidences adduced on the issue. Hence, the addition on silver bullion as confirmed by Ld. CIT (Appeals) in regard to the opening balance on account of undisclosed investment is bad in law and is liable to be deleted.

1.6 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the no stock register being maintained by the appellant for the silver bullion and the appellant has failed to give any reasons or basis of the weight without considering the submissions filed, the documents submitted and the case laws mentioned. Hence, the addition on silver bullion as confirmed by Ld. CIT (Appeals) in regard to the weight of silver bullion of undisclosed investment is bad in law and is liable to be deleted.

2. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (Appeals) erred both in fact and in law in confirming the addition on account of

difference in stock (difference in physical stock on the date of survey and the stock shown in stock register without considering the books of accounts impounded) in Varanasi Branch of the appellant merely on the basis conjectures and surmises and also without appreciating the quantitative and value-wise details of opening stock, purchases/ transfer, sales / transfer and closing stock for the financial year under consideration. Hence, the confirmation of addition on account of undisclosed investment is bad in law and is liable to be deleted.

2.1 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in giving direction to the Ld. AO to only exclude the weight of 177 kg of silver jewellery/gillatepayal. Though the weight taken by the Ld. AO is of 177.174 kg which is all from same bill. Hence, the addition on account of weight of silver jewellery as confirmed by Ld. CIT(Appeals) on account of undisclosed investment is bad in law and is liable to be deleted.

2.2 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the appellant has failed to explain the source of the stock of gold jewellery weighing 0.128 gm without considering the submissions filed, documents submitted and also not considered the Hon'ble Supreme Court judgment in the case of CIT v. S.Khadar Khan & Sons (254 CTR 228) on the issue. Hence, the addition of INR 2,68,800 on gold jewellery as confirmed by Ld. CIT(Appeals) on account of undisclosed investment is bad in law and is liable to be deleted.

2.3 That on the facts and the circumstances of the case and in law, the Ld. CIT (Appeals) grossly erred in holding that the pleading of the appellant with respect to the stock of 4.958 kg of silver bullion is hereby rejected as being an afterthought without considering the submissions filed, documents submitted and also not considered the Hon'ble Supreme Court judgment in the case of CIT v. S.Khadar Khan & Sons (254 CTR 228) on the issue. Hence, the addition of INR 78,059 on silver bullion as confirmed by Ld. CIT(Appeals) on account of undisclosed investment is bad in law and is liable to be deleted.

3. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (Appeals) erred both in fact and in law in making addition of INR 5,87,424/-on account of undisclosed cash in Varanasi branch only on the basis of conjectures and surmises without considering the submission regarding source of the said cash along with evidence filed by the appellant and also not considered the Hon'ble Supreme Court judgment in the case of CIT v. S. Khadar Khan & Sons (254 CTR 228) on the issue. Hence, the addition of INR 5,84,124 on excess cash found as confirmed by Ld. CIT(Appeals) on account of undisclosed cash credit u/s 68 in bad in law and is liable to be deleted.

4. That on the facts and in the circumstances of the appellant's case, the Ld. CIT (Appeals) erred both in fact and in law in confirming the rejection of the books of accounts of the appellant u/s 145(3) only on the basis of conjectures and surmises without considering the submission along with evidence filed by the appellant. Hence, rejection of the books of accounts without considering the evidences and the submissions is bad in law and is liable to be deleted.

5. That on the facts and in the circumstances of the appellant's case, the Ld. CIT(Appeals) erred both in fact and in law in confirming the addition of INR 5,75,000/- on account of unexplained Unsecured Loan of Gopinath Agrawal (now deceased) u/s 68 only on the basis of conjectures and surmises without considering the submission and evidence filed by the appellant and without giving opportunity to the appellant to substantiate the same. Hence, the confirmation of the addition of INR 5,75,000/- on account of unexplained unsecured loan u/s 68 is bad in law and is liable to be deleted.

6. That the Ld. CIT (Appeals) erred on the facts and circumstances of the case and in law in confirming the charging of interest u/s 234B and 234C of the Income Tax Act, 1961 whereas there is no specific order in the assessment order for charging such interest and as such charging of interest under sections 234B and 234C of the Income Tax Act by way of Demand Notice u/s 156 is wholly illegal and liable to be quashed.

7. That, in any view of the matter interest under section 234B and 234C is chargeable on the income, as declared in the return of income and not on the assessed income.

8. That the appellant craves leave to add, to alter or to amend grounds of appeal before the appeal is heard and disposed off."

2b. The Revenue has raised following grounds of appeal in memo of appeal filed in ITA No. 138/Alld./2017 for ay; 2012-2013with the tribunal,, which reads as under:-

"1. That the Ld. CIT(A), Allahabad has erred in law and on facts in reducing the addition of Rs. 1,24,732/- of unaccounted stock of Silver Jewellery without any basis and without appreciating the facts.

2. That the Ld. CIT(A), Allahabad has erred in law and on facts in reducing the addition of Rs. 42,00,560/- of unaccounted stock of Gold Jewellery by assumption of unaccounted jewellery of wife of Neeraj Agarwal and mere on the basis of affidavit filed and without appreciating the facts.

3. That the Ld. CIT(A), Allahabad has erred in law and on facts in deleting Rs. 56,32,361/- u/s 69B of unaccounted stock of Silver Jewellery found at Varanasi premises without the appreciating the facts stated by the Assessing Officer.

4. That the Ld. CIT(A), Allahabad has erred in law and on facts in deleting Rs. 56,32,361/- u/s 69B of unaccounted stock of Silver Jewellery found at Varanasi premises without providing opportunity to the Assessing Officer on the additional evidences filed during appellate proceedings.

5. That the Ld. CIT(A), Allahabad has erred in law and on facts in reducing Rs. 18,074/- out of Rs. 5,87,424/- on account of difference in the Cash Book without appreciating the finding of Assessing Officer.

6. That the Ld. CIT(A), Allahabad has erred on facts and in law in deleting Rs. 10,15,000/- which has been added by the Assessing Officer on account of undisclosed cash credit u/s 68 of the Income Tax Act, 1961 as the assessee had not produced any evidence during the course of survey or assessment proceedings.

7. That the Ld. CIT (A) has erred in law and on fact and in the circumstance of the case in deleting the addition made by the Assessing Officer, of Rs. 34,82,707/- u/s 68 ignoring the findings of Assessing Officer.

8. That the Ld. CIT (A) has erred in law and on fact and in the circumstance of the case in deleting the addition made by the Assessing Officer, of Rs. 34,82,707/- while not providing opportunity to the Assessing Officer on the additional evidences filed during appellate proceedings.

9. That the Ld. CIT(A) has erred in law and on facts in deleting Rs. 22,37,000/- out of addition of Rs. 28,12,000/- made on account of unexplained secured loan u/s 68 of the Income Tax Act, 1961 without appreciating the facts.

10.That the Ld. CIT(A) has erred in law and on facts in deleting Rs. 22,37,000/- out of addition of Rs. 28,12,000/- made on account of unexplained secured loan u/s 68 of the Income Tax Act, 1961 while not providing opportunity to the Assessing Officer on the additional evidences filed during appellate proceedings.

11. The appellant craves right to add, alter or amend any grounds of appeal that may be taken at the time of hearing."

3. The brief facts of the case are that the assessee is engaged in business of Trading & Manufacturing of Silver Jewellery and trading of gold jewellery under the name and style of Raj Shree Jewellers , and assessee also runs Cinema Hall in the name and style of Rajshree Palace, Mirzapur. The assessee e-filed return of income on 15th September, 2012 declaring total income of Rs. 30,31,050/- from aforesaid businesses, under the heads business income and income from other sources.

4a. In this case, the survey under section 133A was conducted by Investigation Wing of the Department, Allahabad on 24th February, 2012 at the business premises of the assessee at Sudiya, Varanasi and at Basnahi Bazar, Mirzapur, simultaneously. The case of the assessee was selected by Revenue for framing scrutiny assessment under Section 143(3) r.w.s. 143(2) of the Act for impugned assessment year ,and statuary notices were issued by AO to the assessee, both under Section 143(2) and 142(1) of the Act, from time to time as recorded in the assessment order, which were claimed by AO to have been duly served upon the assessee. The assessee participated in the assessment proceedings. During the course of assessment proceedings, the assessee submitted details before AO as also produced books of accounts as maintained by it which were subjected to test check by the AO. It was observed by the AO that during the course of survey proceedings conducted by Revenue u/s 133A on 24.02.2012, the assessee's books of accounts were not found to be complete as on date of survey i.e. 24.02.2012. The valuation of physical stock was done by registered valuers at prevailing rates as on the date of survey viz. 24.02.2012, both at Mirzapur Head Office and Varanasi Branch office of the assessee. The AO observed on perusal of records, that the assessee habitually does not file any quantitative details of closing stock of various items, which has to be mandatorily part of the audited books of account as well as audit report/Form No. 3CD. The AO observed that it was seen during the course of survey proceedings conducted by Revenue u/s 133A, that the stock register has been prepared only for silver jewellery. The AO observed that the assessee did not kept stock register for silver bullion and gold jewellery .On reconciliation of physical stock and stock as per books of account/records kept by the assessee, the AO observed that the following differences were worked out in the case of **Mirzapur premises(HO)** of the assessee , detailed as under:

Type of Stock	***Physical stock found as per inventory (in***	***Stock shown in the Stock register kept, if***	***Difference (in K.G.)***

	K.G.)	***any (in K.G.)***	
Silver Items/Jewellery	*250.06*	*246.74*	*3.32*
Gold Jewellery	*2.09*	*0*	*2.09*
Silver Bullions	*6.18*	*0*	*6.18*

The assessee was asked by AO to explain the aforesaid differences between physical stock and stock as per books of account/records kept by the assessee. The assessee filed following reply before the AO, stating as under:

(i)चॉदी के आभूषण में

सर्वे के दौरान प्राप्त (के.जी. में)	लेखा पुस्तक के अनुसार (के.जी. में)	अन्तर (के.जी. में)
250.06	246.741	3.32

यहकि 3.32 के.जी. चॉदी के आभूषण में जो अन्तर है वह तौलने वाले की भूल है मेरे द्वारा उसी समय आपत्ति किया गया था कि आप पुनः तौले परन्तु ऐसा नही किया गया जबकि मेरे द्वारा वैल्युवर रिपोर्ट पर हस्ताक्षर आपत्ति के साथ किया गया है। यह अन्तर प्लास्टिक डिब्बा में रखकर तौलने के कारण हुआ है। यदि मेरी बात मानते हुए पुनः वजन कराते तो तौल सही आता।

(ii)सोने के आभूषण

सर्वे के दौरान प्राप्त (के.जी. में)	लेखा पुस्तक के अनुसार (के.जी. में)	अन्तर (के.जी. में)
2.090	1.033.180	1.057

यहकि लेखा पुस्तक के अनुसार 1.033.180 सोने का आभूषण दिनांक 22.02.2012 तक का स्टॉक है उसके बाद दिनांक 23.02.2012 को मेरी पत्नी श्रीमती सुमन अग्रवाल का जेवर 850.800 ग्राम दुकान के लॉकर में सुरक्षार्थ रखने हेतु दिया गया था इस सम्बन्ध में सुमन अग्रवाल का शपथ पत्र संलग्न है। सोने का जेवर स्टॉक रजिस्टर न रखने के कारण लेखा पुस्तक में सोने का आभूषण की स्थिति स्पष्ट नही किया जा सका था। लेखा पुस्तक के अनुसार सोने के आभूषण का स्टॉक की स्थिति बनाकर संलग्न कर रहे है। 202 ग्राम सोने के आभूषण श्रीमती पूनम त्रिपाठी पत्नी श्री कुलपति त्रिपाठी निवासी मकरी खोह, मीरजापुर द्वारा आभूषण का मूल्यांकन कराने हेतु दिनांक 24.02.2012 को सुबह 10:30 बजे लेकर आई थी मेरे न रहने के कारण मेरे कर्मचारी शरद अग्रवाल के पास छोड़कर चली गयी थी। बाद में दिनांक 25.02.2012 को सुबह मुल्यांकन कराके अपना जेवर वापस ले गई। इस प्रकार लेखा पुस्तक में 1 के.जी. 33 ग्राम 180 मिली. ग्राम एवं पत्नी श्रीमती सुमन अग्रवाल का आभूषण 850 ग्राम एवं श्रीमती पूनम त्रिपाठी का 202 ग्राम कुल 2.085 के.जी. सर्वे के दौरान दुकान पर था। इस प्रकार मात्र 4 ग्राम तौल का अन्तर है जो प्लास्टिक पन्नी/नग का अन्तर है।

(iii) चॉदी के बुलियन

सर्वे के दौरान प्राप्त (किग्रा में)	लेखा पुस्तक के अनुसार (किग्रा में)	अन्तर
6.180	5.751	443 ग्राम

क्रमशः पेज 3

यहकि लेखा पुस्तक के अनुसार 5.751 के.जी. चॉदी बूलियन का स्टॉक था परन्तु सर्वे अधिकारी द्वारा लेखा पुस्तक के अनुसार स्टॉक चेक नही किया गया जिसके कारण लेखा पुस्तक के अनुसार स्टॉक स्वतः शुन्य लिख दिया गया जबकि लेखा पुस्तक अभिग्रहित है। प्रार्थी स्टॉक विवरण बनाकर संलग्न कर रहा है शेष 429 ग्राम तौल का अन्तर है। मेरे द्वारा पुनः तौलने के लिए कहा गया लेकिन सर्वे अधिकारी द्वारा नही तौला गया।

The AO considered the explanations of the assessee and observed that the assessee has not kept proper and adequate records to substantiate the quantity of the stock at any given date and time, and it was observed by the AO that the arguments extended by the assessee cannot be relied upon for the following reasons:

> *(i) In case of Silver Jewellery. The contention of the assessee is not admissible because of the fact that the valuation of the said jewellery has not been done by the Department. It has been done by an independent person having adequate expertise and experience who is authorized for the valuation of the jewellery and enjoys the status of a registered valuer for this purpose. Therefore, the objection of the assessee had no meaning, during the course of survey proceedings as well as during the course of assessment proceedings. Merely signing the valuation sheet 'under protest' does not exonerate the assessee from the onus to prove his contention. The objections to the correctness of valution are without any specification whatsoever regarding the type of mistake which has occurred during the course of valuation. The relevant portion of the statement given on this issue is reproduced hereunder for the sake of clarity:*

"दुकान पर 246.741 स्तोक्क है आपके द्वरा 250.06 किलोग्राम तौला गया है उसमे कुछ भूल हुयी है आप चाहें तो पुनः तौल सकते hai."

3.2(b) Actually, no specification regarding the kind of mistake has been given, therefore, it becomes clear that the assessee is apparently contending just to create a ground for unnecessary litigation in order to avoid payment of correct amount of taxes which he cannot be allowed to resort to. Merely saying that कुछ भूल हुई है*is not sufficient to admit the contention of the assessee.*

3.2(c) It is imperative to mention that during the course of the survey proceedings, the valuation of stock was done by the registered valuer in front of Sri Sharad Agrawal, the employee of the assessee firm who did not point out any kind of mistake whatsoever. This also means the assessee is contending the issue with clear intention to mislead the Department. [Page 4, Question No. (iii) and concerned reply at Page 5, Reply No. (iii) of the statement recorded during the course of survey]

3.2(d). In the light of these facts of the case, the claim of the assessee cannot be treated to be reliable and is accordingly rejected and the differential amount of stock is treated as undisclosed stock. The value of investment is taken at the prevailing rates as on date of survey as specified by the registered valuer.

Amount of undisclosed stock =3.32 K.G.

Gross value of investment @ 57,800/-per K.G. = 3.32x57,800 = 1,91,896/-.

Net Value of investment @65% (average of the purity), as specified by the valuer=1,24,732/-.

This addition is, being made u/s 69B of the Income Tax Act, 1961.Penalty proceedings u/s 271(1)(c)is being initiated separately for concealment of income.

Addition of Rs.1,24,732/-

(ii) Regarding Gold jewellery:

Apparently, on the basis of the past history of the assessee that he does not file the quantitative details of the stock kept by him either in the audit report or in the Form 3CD, the survey action was conducted by the Investigation Wing of the Department and when the assessee was caught on wrong footing, unsubstantiated explanation has been offered by the assessee during the course of survey as well as during the course of assessment proceedings. This fact can be easily understood even by a common man that keeping personal jewellery at home where the entire family of the assessee lives, is always better and safer, as compared to keeping the same at the shop where nobody stays during the nights. The affidavit of Smt. Suman Agrawal, dated 12.02.2015, is meaningless and vitiated because of the mere fact that the arguments and reasons contained therein are not substantiated with any material evidence whatsoever. Similar is the case of Smt. Poonam Tripathi. If, at all it was necessary and expedient to keep the said personal jewellery at the shop at Mirzapur, necessary documents indicating the said safe deposit should have been found/produced during the course of survey itself. In absence of any document whatsoever indicating safe deposit of jewellery of the wife of the assessee as well as Smt. Poonam Tripathi, the affidavits dated 12.02.2015 cannot be accepted. Further, the claim of the assessee that they have shown gold jewellery to the extent of 1033.180 gms in the books of account is grossly incorrect as per the findings transpired in the survey proceedings. No stock register or other documents were either found during the course of the survey, nor could the same be explained during the course of the assessment proceedings. In these circumstances, the contention of the assessee cannot be accepted. The value of investment as worked out by the registered valuer i.e. Rs. 42,00,560/-is being added to the total income of the assessee u/s 69B of the Income Tax Act, 1961.Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 42,00,560/-

(iii) Regarding Silver Bullions:

Likewise, the submissions regarding silver bullion is also grossly misleading because no such stock register or composite stock register has been either found during the

course of survey or during the course of assessment proceedings. Therefore, the entire differential amount as already tabulated above, is being treated as undisclosed stock and the purity of the silver bullion is taken as valued by the registered valuer (as mentioned on the inventory concerned), i.e. Rs. 2,38,702/-. Accordingly, the addition of Rs. 2,38,702/-is being made to the total income of the assessee u/s 69B of the Act. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 2,38,702/-

4b. On reconciliation of physical stock and stock as per books of account/records kept by the assessee, the AO observed that the following differences were worked out in the case of **Varanasi premises(Branch Office)** of the assessee , detailed as under:

Type of Stock	***Physical stock found as per inventory (in K.G.)***	***Stock shown in the Stock register kept, if any (in K.G.)***	***Difference (in K.G.)***
Silver Items/Jewellery	*665.93*	*453.90*	*212.03*
Gold Jewellery	*0.128*	*0*	*0.128*
Silver Bullions	*4.958*	*0*	*4.958*

The assessee was asked by the AO to explain the differences between physical stock and stock as per books of account/records kept by the assessee. The assessee filed following reply before the AO, stating as under:

चॉदी के आभूषण

सर्वे के दौरान प्राप्त (किग्रा में)	लेखा पुस्तक के अनुसार	अन्तर
665.930	453.900	212.030

यहकि सर्वे के दौरान प्राप्त चॉदी आभूषण के स्टॉक रजिस्टर में स्टॉक दिनांक 21.02.2012 को 453.900 ग्राम था। दिनांक 21.02.2012 को 34 किलो 826 ग्राम चॉदी के आभूषण की खरीद की गयी थी तथा 177.500 ग्राम आर्टिफिशियल पायल मथुरा से बिल नं0 16 दिनांक 23.02.2012 को खरीदा गया था जो दिनांक 24.02.2012 को सुबह 10 बजे माल आ गया था। बिल की छाया प्रति संलग्न है। इस प्रकार स्टॉक रजिस्टर में अंकित स्टॉक 453.900 + 34.826 + 177.500 टोटल 666.226 ग्राम चॉदी आभूषण एवं आर्टिफिशियल आभूषण का स्टॉक लेखा पुस्तक के अनुसार है। अन्तर 296 ग्राम तौल का अन्तर है

सोने का आभूषण

सर्वे के दौरान प्राप्त (ग्राम में)	लेखा पुस्तक के अनुसार (ग्राम में)	अन्तर (ग्राम में)
0.128	0.128 ग्राम	शून्य

यहकि दिनांक 21.02.2012 से 23.02.2012 तक अपंजीकृत से खरीद विभिन्न ग्राहको द्वारा खरीद किया गया है जिनकी छायाप्रति संलग्न है। अन्तर शुन्य है।

चॉदी का बुलियन (किग्रा)

सर्वे के दौरान प्राप्त (के.जी में)	लेखा पुस्तक के अनुसार (किग्रा में)	अन्तर
4.958	शुन्य	4.958

Neeraj Agrwal

कमशः पेज 4.....

(4)

यहकि चॉदी बूलियन 4.958 के.जी. सर्वे के समय पाया गया था जो श्री घुरहू यादव द्वारा बेचने के लिए लाया गया था लेकिन सौदा न होने के कारण दिनांक 27.02.2012 को वापस कर दिया गया। शपथ पत्र संलग्न है।

4b. The AO considered the reply of the assessee and observed as under:

(i)"Regarding Silver Items:

The assessee's contention that the bills regarding purchases made on 21.02.2012 and on 23.02.2012 have been produced during the course of assessment proceedings, cannot be accepted because the same are based on after thought as no such bills (except the bill regarding purchase of the jewellery to the extent of 34.826 K.G.) were either found during the course of survey or were produced during the recording of statement, therefore, the evidences produced before the undersigned cannot be treated to be reliable because they are nothing but evidences created after being caught on wrong footing. On perusal of the statement recorded, during the course of survey, it is seen that bills regarding purchase of jewellery to the extent of ***34.826*** *K.G. have been produced, hence the benefit of the same, is being given to the assessee and the rest of the stock i.e.* ***212.03 - 34.826=177.174*** *is being treated as undisclosed investment in stock and accordingly addition of the value of investment i.e.* ***56,32,361/-*** *is being made to the total income of the assessee u/s* ***69B*** *of the Act. The rate has been adopted at the rates prevailing as on date of the survey, as taken by the registered valuer i.e. @* ***57,800/-*** *with a purity of* ***55%.*** *The working is as under:*

*Total undisclosed stock=****177.174***
*Amount of investment =****177.174*** *x* ***57,800= 1,02,40,657/-***
55% *of the same* ***56,32,361/-***

Addition of Rs. 56,32,361/-

Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

(ii) Regarding Gold Jewellery:

Plain reading of the submission of the assessee on this issue, as quoted above, will make it sufficiently clear that the assessee has no concrete explanation to offer in this regard. The evidences filed by him at this stage cannot be relied upon, insofar as, it is a fact that no such bills of purchase have been ever found during the course of survey nor the same has been produced during the course of recording of statement. Even if for the sake of argument, the contention is considered to be true, the same should have been entered into the stock register concerned. In absence of these evidences, the claim of the assessee cannot be treated to be tenable and is accordingly being rejected. The addition of Rs. 2,68,800/- u/s 69B of the Act is hereby made to the total income of the assessee. The value is being taken as per the registered valuer's report at Varanasi premises i.e. Rs. 2,68,800/-. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. *2,68,800/-*

(iii) Regarding Silver bullions:

Plain reading of the submission of the assessee on this issue as quoted above, will again make it clear that the assessee has no concrete explanation to offer in this regard, the evidences filed by him (affidavit of Sri Ghurahu Yadav) at this stage, cannot be relied upon insofar as it is a fact that no documents whatsoever, indicating any such transactions having taken place, have been either found during the course of survey or during the course of recording of statement. Even if it is considered to be true, for the sake of argument, the same should have been entered (or at least mentioned in any manner) into the stock register concerned. In absence of the reliable evidences; the claim of the assessee cannot be treated to be tenable and, therefore, the same is accordingly being rejected. The addition of Rs. 78,059/- to the total income of the assessee u/s 69B of the Act is being made as consequence ofthe

above facts. The value is being taken as per the registered valuer's report at Varanasi premises i.e. Rs. 78,059/-. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 78,059/-/"

4c. The AO further observed that there are cash deposits recorded in the cash books maintained by the assessee, which were found during the course of survey operations u/s 133A on 24.02.2012, as detailed hereunder:

S.No.	Date	Concerned Perons/Firm name	Amount
1	01.04.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
2	20.05.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
3	30.06.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
4	15.09.2011	Shambhoo Nath Agrawal Sarraf	Rs. 4,00,000/-
5	24.05.2011	Raj Shree Palace	Rs.1,00,000/-
6	01.06.2011	Raj Shree Palace	Rs.1,00,000/-
7	13.12.2011	Raj Shree Palace	Rs. 65,000/-
8	30.01.2012	Raj Shree Palace	Rs. 50,000/-
		Total	**Rs. 10,15,000/-**

The assessee was confronted on this issue by the AO to explain aforesaid cash deposits, and the assessee submitted as under:

यहकि सर्वे की कार्यवाही के दौरान नगद धनराशि जिसका उल्लेख नोटिस में किया गया है वह फर्म सर्वश्री शम्भू नाथ अग्रवाल सराफ एवं राजश्री पैलेस का विभिन्न तारीखो में जमा है के सम्बन्ध में प्रार्थी का यह कहना है कि फर्म सर्वश्री शम्भू नाथ अग्रवाल सराफ, बसनही बाजार में मैं स्वयं नीरज अग्रवाल बतौर साक्षीदार कार्यरत हूँ चाँदी जेवर की बिक्री हेतु नगद जमा किया गया था। खाते की नकल एवं बिक्री बिल संलग्न किया जा रहा है। राजश्री पैलेस में मैं स्वयं प्रोपराइटर हूँ जो सिनेमाहाल है वहाँ से नगद रूपया लेकर उपरोक्त फर्म में जमा किया गया है। राजश्री पैलेस की आमदनी एवं उपरोक्त फर्म की आमदनी मेरे स्वयं की आमदनी है दोनो की आय सम्मिलित करते हुए आयकर दिया जाता है। खाता का नकल संलग्न है।

The AO considered the aforesaid reply of the assessee and observed that no such explanations have either been produced during the course of survey nor any such evidences have been produced during recording of statement. It was further observed thatthe same has not been adequately explained and substantiated by the assessee during the course of assessment proceedings. The AO observed that the assessee was required to substantiate the explanation submitted by it with credible evidences regarding the source of the aforementioned cash deposits in the cash book, and merely filing the copy of the account did not make good evidence for such claims to be accepted . The amount of Rs. 10,15,000/- with respect to aforesaid cash deposit in the cash books was treated by AO as cash

credit u/s. 68 of the Act, in the absence of proper evidences and the same was added by AO to the income of the assessee.

4d. The AO further observed that there were differences found in physical cash found during the course of survey u/s 133A on 24.02.2012 in the premises of the assessee surveyed andthe cash available as per books of account/cash book maintained by the assessee, asdetailed hereunder:

	In Rs.
Cash found from Mirzapur premises =	*2900/-*
Cash found from Varanasi premises =	*6,05,400/-*
Total	***6,08,300/-***
Cash as per cash book	*20,876/-*
Difference	***5,87,424/-***

The AO confronted the assessee with this issue, and the assessee submitted before the AO as under:

7 यहकि सर्वे के दौरान पाये गये नगदी एवं बही खाते में दिखाये गये नगदी के अन्तर के सम्बन्ध में स्पष्टीकरण मीरजापुर प्रतिष्ठान एवं वाराणसी ब्रांच आफिस का निम्न प्रकार है –

क. मीरजापुर प्रतिष्ठान

पाया गया नगद	लेखा पुस्तक में
2900.00	दिनांक 24.02.2012 को रू0 2900.00

पर रू0 20,000.00 दीप अलंकार मन्दिर, धुन्धी कटरा, मीरजापुर एवं रू0 19,814.00 मुकेश यादव, बिसुन्दपुर, मीरजापुर से नगद रूप में जमा किया। 11/– नगद नीरज अग्रवाल का जमा है। 55,000.00 अग्रिम कर आयकर जमा करने के लिए दिया गया था। दिनांक 24.02.2012 को सर्वे के समय 2900.00 रोकड़ प्राप्त हुआ है बही खाता आपके अवलोकनार्थ प्रस्तुत है।

ख. वाराणसी प्रतिष्ठान

यहकि वाराणसी प्रतिष्ठान का रोकड़ बही दिनांक 20.12.2012 तक पूर्ण था। मुनिम जी के अस्वथता के कारण 21.02.2012 से 29.02.2012 तक का रोकड़ बही था पूर्ण नही रोकड़ की छायाप्रति संलग्न कर रहे है जिसमें अन्तिम रोकड़ बाकी रही 605400/– है। उस अवधि के दौरान जो 20000/– के उपर माल खरीदने हेतु एडवान्स जमा किया था उनका विवरण निम्न प्रकार है –

1	शैलेन्द्र यादव	रू0 105000/–	दिनांक 21.02.2012
2	शैलेन्द्र यादव	रू0 1,00,000/–	दिनांक 22.02.2012
3	शिव आधार यादव	रू0 95,000/–	दिनांक 22.02.2012
4	विजय अग्रवाल	रू0 75,000/–	दिनांक 22.02.2012
5	सुबेदार यादव	रू0 45,000/–	दिनांक 23.02.2012
6	विजय अग्रवाल	रू0 70,000/–	दिनांक 23.02.2012
7	शिव आधार यादव	रू0 55000/–	दिनांक 23.02.2012

उक्त के संदर्भ में शपथपत्र मय पहचान पत्र के (ID) साथ संलग्न कर रहे है।

The AO considered the reply of the assessee and observed that the reply/explanation submitted by the assessee is not substantiated properly with support of credible evidences. The AO observed that merely filing of an affidavit which is not substantiated with any material information or for that matter, filing of copy of account/bills and vouchers etc. which were neither found during the course of survey nor demonstrated/produced during the course of recording of statement at both the places i.e. Mirzapur and in Varanasi cannot be treated to be sufficient in any manner . The AO observed that differences of the cash could not be corroborated with cash book/other relevant documents, during the course of survey or during the course of assessment proceedings., and hence, the AO added the same i.e. Rs. 5,87,424/- to the total income of the assessee under Section 68 of the Act.

4e. Based on the fact that there were differences in the physical stock as well physical cash found during survey ,the AO observed that books of accounts as well other records were not properly maintained by the assessee. The AO observed that the assessee has not given satisfactory reply /explanations during the course of survey or even during assessment proceedings. The AO observed that under these circumstances, the books of accounts submitted by the assessee cannot be treated to be reliable because not only correctness of the books of account but also the completeness of the books of account is in question. The AO rejected the books of accounts by invoking provisions of Section 145(3).

4f.The AO also observed that efforts were made by the Investigation Directorate to conduct enquiry from some of the sundry creditors by issuing summons u/s 131(1), but the summons issued in most of the cases have been reported to be returned undelivered. The AO in order to conduct necessary enquiries, called for following information from the assessee with respect to sundry creditors:

(i) Complete postal address for correspondence to be made with them., Confirmation in the case above Rs. 1,00,000/-,

(ii) copy of their accounts,

(iii) PAN/ITR of the persons concerned.

The AO observed that in response, the assessee neither provided complete postal address of the sundry creditors(the addresses provided by the assessee are incomplete and are absolutely vague and without proper house No. etc.) nor their PAN/ITR was furnished by the assessee. The AO observed that in the absence of the aforesaid information, it is not possible for AO to obtain necessary information either from returns of income or from the Departmental software i.e. AST for conducting physical verifications. TheAO observed that confirmations also could not be given in the following cases :-

D.D. Industries, Mandi Ram Das, Mathura.	Rs. 9,49,700/-
R.G. Ornaments, Namak Ki Mandi, Agra.	Rs. 6,00,284/-
Dashrath Silver Art Pvt. Ltd., Redak Road Near, Arya Nagar, Sant Kabir Road, Rajkot.	Rs. 14,26,243/-
Shri Sati Ram, Jitu Dustakpur, Varanasi.	Rs. 4,32,710/-
Shri Vari Payals, 216, Moongapadi Street, Gugai, Salem.	Rs. 73,770/-
Total	**Rs. 34,82,707/-**

The AO observed that the assessee was duty bound either to provide complete details of the sundry creditors to the Assessing Officer for reaching at right conclusion or to provide adequate information to conduct necessary enquiries for finding out correct position of the facts of the case, which the assessee failed to do. The AO observed that the assessee has only filed unconfirmed copies of account of these sundry creditors. The AO made addition of Rs. 34,82,707/- to the income of the assessee.

4g. The AO further observed that the assessee has raised unsecured loan to the extent of Rs. 33,70,000/- which have been shown to be obtained from various persons during the year under consideration. The details are as under:

M/s Raj Shri Jewellers , Basanahi Bazar , Mirzapur

Assessment Year 2012-2013		Loan Deposit Current Year
1	Goverdhan Das Agrawal , Pakkeghat Trimohani Mirzapur	495000.00
2	Goverdhan Das Agrawal (H U F) , Pakkeghat Trimohani Mirzapur	500000.00
3	KAditya Khaitan , Musaffarganj Mirzapur	200000.00
4	Shri Gopi Nath Agrawal , Purani Anjahi Mirzapur	575000.00
5	Shri Pramod Soni , Ganesh Ganj Mirzapur	300000.00
6	Smt. Shilpa Khaitan , Musaffarganj Mirzapur	600000.00
7	Smt. Suman Agrawal , Dankeen Ganj Mirzapur	400000.00
8	Sri Gopal Khaitan (H.U.F.) , Musaffarganj Mirzapur	300000.00
	Grand Total	3370000.00

The AO issued letters/notice under Section 133(6) to these persons for obtaining ,*inter-alia,*copy of the bank statements apart from the other documents. The AO observed that in some of the cases, Bank statements were submitted and on the perusal of the same, it was observed by the AO that unsubstantiated cash was deposited in the concerned bank accounts immediately before issuing the cheques for extending the said loan to the assessee. It was also observed by the AO that in some of the cases the ITR/PAN details etc. could not be provided by the respected

persons . The summary of the information as received by the AO through DAK , was reproduced by AO in his order , as under:

Name of the Lender	***Amount of Loan***	***Amount of Cash deposited for granting the loan***	***Remarks/Findings***
Smt. Shilpa Khaitan	*6,00,000/-*	*2,70,000/-*	*The amount of Rs. 2,70,000/- is treated as unsubstantial credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of Smt. Khaitan is not established because total income shown by her is only 1,94,830/-*
Sri K. Aditya Khaitan	*2,00,000/-*	*2,00,000/-*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender.*
Sri Gopal Khaitan HUF	*3,00,000/-*	*1,62,000/-*	*The amount of Rs. 1,62,000/-is treated as unsubstantiated credit in the books of account*

			of the assessee. The capacity also of the lender is not established because total income shown by her is only 1,85,400/-
Sri Sharad Agrawal	*5,75,000/-*	*No bank statement/ ITR/PAN submitted*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee. The capacity of the lender is not established because no details could be submitted.*
Shri PramodSoni	*3,00,000/-*	*3,00,000/-* *No ITR/PAN has been submitted.*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee. The capacity also of the lender is not established because no details could be submitted*
Smt. Suman Agrawal	*4,00,000/-*	*3,10,000/-*	*The amount to the extent of Rs. 3,10,000/- is treated as unsubstantiated credit in the books of account of the assessee.*

Sri Gowardhan Das Agrawal	*4,95,000/-*	*No details whatsoever could be submitted*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of the lender is not established because no details could be submitted.*
Sri Gowardhan Das Agrawal (HUF)	*5,00,000/-*	*5,00,000/-*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of the lender is not established because no details could be submitted.*

Thus, the AO made additions of Rs. 28,12,000/- in the hands of the assessee towards unsecured loans raised by the assessee, by treating it as undisclosed income of the assessee .

5. Aggrieved by assessment framed by the AO , the assessee filed first appeal before learned CIT(A). The assessee with respect to addition made on account of

difference in stock i.e. difference in stock on the date of survey of Rs. 45,63,994/- w.r.t. Mirzapur premises submitted before ld. CIT(A) that a survey operation under Section 133A of the 1961 Act was carried out at Mirzapur (Head Office) and Varanasi (Branch Office) premises , on 24.02.2012. It was submitted that during the course of survey operations, statement of the assesseewas recorded under Section 133A of the Act and the assessee was asked many questions. It was also submitted that the assessee was pressurized while statement was recorded by the Department. It was submitted that during course of survey operations , 10 Officers from the Department and 25 Police Officers were present at the assessee's premises to put pressure on the assessee. The assessee also submitted that the AO has not at all confronted and demolished the assessee's statement recorded during the course of survey proceedings and also at the time of assessment proceedings. The assessee also submitted that the addition was made on account of difference in physical stock and the stock as shown in stock register without considering the books of accounts impounded at the time of survey. It was also submitted that the additions were made without considering the statement given during the time of survey and the factual submissions made during the assessment proceedings . The assessee submitted that all matters regarding such difference are now duly explained vide reply submitted before ld. CIT(A). The assessee submitted that during the survey proceedings, the assessee categorically objected to the valuation and on the purity. The assessee also submitted that the assessee has requested AO vide letter dated 01.04.2012 and 08.04.2012 to provide the departmental valuer basis for valuation of weight, value and purity certificate/tunch formwhich is very important for the jewellery industry, but the assessee was never provided with the same. The assessee also submitted that proper explanation was submitted supported with an affidavit during assessment proceedings ,but the same was not considered by the AO. With respect to silver jewellery , the assessee submitted that the only pleadings of the AO was that the

valuation was done by the independent valuer and merely signing the valuation sheet 'under protest' does not exonerate the assessee from the onus to prove his contention. The assessee submitted before ld. CIT(A) that the AO had observed that the objections to the correctness of valuation are without any specification whatsoever regarding the type of mistake which has occurred during the course of valuation, and the assessee is creating unnecessary litigation in order to avoid payment of correct amount of taxes which he cannot be allowed to resort. The assessee submitted before ld. CIT(A) that despite that the assessee had requested to do the valuation of stock again, but the same was refused by the survey officers and by the AO during assessment proceedings, and the assessment order was passed without giving any opportunity of being heard to the assessee. The assessee also submitted before ld. CIT(A) that the assessee is questioning the valuation of the weight , basis of purity determined without having tunch certificate , which was not provided to the assessee, and purity was determined purely on estimation basis. The assessee relied upon the following decisions:

a) **Amritsar-tribunal decision in the case of Smt. Kailash Devi v. ITO, reportedin (2016) 68 taxmann.com 288(Amr-trib.)**

b) CIT v. Balaji Wire Private Limited, reported in (2007) 304 ITR 393(Del. HC)

The assessee submitted before ld. CIT(A) that it has duly discharged its onus after raising question on the valuation at the time of survey and signing the same under protest, but the onus was not discharged by the AO. The assessee requested Learned CIT(A) to delete the entire additions as was made by the AO considering the fact that the additions were made only on the basis of estimation. So far as addition made w.r.t. Gold Jewellery at Mirzapur HO, the assessee submitted that the AO while making aforesaid addition has mentioned that based on the past history, the assessee does not file the quantitative details of the stock kept by him

either in the audit report or in the Form No. 3CD. The AO further observed that keeping personal jewellery at home where the entire family of the assessee lives , is always better and safer, as compared to keeping the same at the shop where nobody stays during the nights. The assessee submitted before ld. CIT(A) that AO had further observed that the affidavits dated 12.02.2015 submitted by assessee of Smt. Suman Agrawal is meaningless and affidavit dated 12.02.2015 of Mrs. Poonam Tripathi cannot be accepted. It was further observed by AO that no stock register or other documents were found during the course of the survey , nor could the same being explained during the course of assessment proceedings. The assessee submitted that AO has not considered the statement of the assessee . The assessee submitted that quantitative details of the stock is available at page no. 208 of the paper-book-1 filed by the assessee, and value wise stock is available at page 213 of the paper book-1 filed by the assessee, and the contention of the AO that the quantitative stock record is not maintained by the assessee is not correct. It was also submitted that the assessee duly filed during the course of assessment proceedings before the AO ,all the documents like computation of Income, ITR, copy of audited books of account, bank statements, bank book and the tax audit report. The assessee also submitted before ld. CIT(A) that the affidavit of Smt. Suman Agrawal and Smt. Poonam Tripathi were duly filed before the AO, and the assessee had discharged its onus as the assessee is of the belief that an affidavit is a piece of evidence which along with other material on record has been taken into consideration before arriving at a finding. The assessee submitted that it is entitled to assume that the AO is satisfied with the affidavit, unless the same is discredited in the cross examination or the assessee had failed to produce other supporting evidences which the assessee was called upon to produce. The assessee relied upon following judgments :

(i) Mehta Parikh & Co. v. CIT , reported in (1956) 30 ITR 181 (SC)

(ii) CIT v. Dharam Pal Premchand Ltd. - 295 ITR (Del HC).

(iii) CIT v. Shankar Lal Ved Prakash – 300 ITR 243 (Del HC).

The assessee further submitted before ld. CIT(A) that the allegation of the Ld. AO that the stock register and other documents were not found during the survey or were not been explained during the assessment proceedings, is not correct. The assessee explained before ld. CIT(A) that with respect to gold jewellery and silver bullion , the assessee was not maintaining stock register but will do so from next year. The assessee submitted that it has duly submitted reconciliation of the stock differences. It was also submitted that in spite of all information in his possession and all the replies filed during the assessment proceedings , the AO has not considered the same and has passed the assessment order and made an addition. It was also submitted by assessee before ld. CIT(A) that during the time of survey, the assessee raised objection on the valuation and no Tunch certificate was provided to the assessee which means valuation is on estimated basis and not on proper weight and purity basis. The assessee made prayers before ld. CIT(A) to delete the additions as were made by the AO , as these additions were not factually and legally correct. The assessee also submitted that the assessee duly submitted during survey that books of accounts are not complete as the accountant is not well who shall come and complete the books of accounts. It was submitted that the AO has not passed speaking order and had not considered the submission of the assessee at the time of survey and also at the time of assessment proceedings .The assessee submitted that it is not mandatory to maintain stock register for traders of the jewellery industry. It was submitted that no show cause notice was issued by the AO that he is proposing to make the additions, before making additions in the hands of the assessee. It was submitted before ld. CIT(A) that the assessee has discharged its onus. The assessee also explained that the assessee duly submitted reconciliation of stock as per impounded books of accounts , and submitted quantitative as well value wise details of opening stock, purchases/transfer , sales/transfer and closing stock for the financial year. The reasons for difference

was also explained before the AO, was the contention of the assessee before ld. CIT(A). It was also submitted that the assessee had produced certified copies of impounded books of accounts along with supporting evidences for verification during the assessment proceeding , but no discrepancy was pointed out by the AO but additions of Rs. 45,63,994/- was made by the AO on account of differential amount of stock and treated as undisclosed investment merely on conjecture and surmises that the assessee does not keep proper and adequate records to substantiate the quantity of stock. It was also submitted that copy of statement recorded during the course of survey under Section 133A was not provided to the assessee by the AO before the conclusion of assessment proceedings ,and the same was provided after completion of the assessment which was unfair and against the principles of natural justice. It was also submitted by assessee before ld. CIT(A) that the statement recorded under Section 133A has no evidentiary value , and the admission made during the course of recording of statement during survey proceedings could not be made basis of addition without any corroborative material, and the additions so made by the AO is not justified. The assessee relied upon judgment and order of Hon'ble Supreme Court in the case of (2012) ***CIT v. S. Khader Khan & Sons (2012) 254 CTR 228(SC)***

5b. The Ld. CIT(A) after considering reply of the assessee , partly allowed the relief to the assessee on this issue , by holding as under:

> **"4.1. <u>Discussion:</u>**
>
> *Facts are that the appellant is an individual and proprietor of M/s Raj Shree Jewellers, Basnahi Bazar, Mirzapur, Uttar Pradesh-231001, and is into the business of trading in silver jewellery, gold jewellery and silver bullions since many years. Survey operations under section 133A of the income tax Act, 1961 were conducted at the business premises of the appellant on 24.02.2012 i.e. during the financial year 2011-12. The Assessing officer has made an addition on account of excess stock of silver jewellery,*

gold jewellery and silver bullion found in Mirzapur premises. I deal with each of these as under:

4.1.1 In case of Silver jewellery, the dispute is of weight and purity of silver jewellery. I have considered the statement recorded during the course of the survey proceedings, documents impounded during survey, documents submitted by the appellant during the time of assessment proceedings, assessment order and various submissions of the appellant. It has also been noted from the statement recorded during the course of survey that the appellant had requested the survey team to do the weight again but his request had been declined.

4.1.2 Decision:

As far as the weight of silver articles is concerned, the same had been weighed in presence of the assessee and/or his employees in the business premises of the assessee. During the weighement process, no objections were raised. It was only when the weight was found to be in excess that such an objection was raised. It has to be noted that these were survey proceedings and not search proceedings where the assets found could be put under prohibitory orders and the proceedings could be continued on any other day. On perusal of the valuation report (which has been submitted at pages 244 to 246 of the PB of the assessee), it is seen that the weighement has been done v meticulously. The assessee has also failed to give any reasons as to why the weighment was incorrect apart from making general averments. Accordingly, the objection raised by the assessee on account of weighment has no merit and is, therefore, rejected. As regards the purity of these silver articles, the departmental valuer has adopted the purity of silver articles at varying percentages, avg. of which comes to about 65%. I agree with the submissions of the assessee that the valuer has adopted the percentages of purity of the silver articles on no scientific basis. The assessee has filed certain tunch certificates, but these certificates are much after the date of survey and, therefore, not much reliance can be placed for evaluating the purity of the silver articles found during the course of survey. The Ld. AR has strongly relied on the quantitative details which had allegedly been filed along with the return of the income. I have gone through the said quantitative details and I find that there is no mention of the purity % of silver in

silver articles. Thus, as far as purity of silver is concerned, no reliance can be placed on these quantitative details too. I had requested the assessee to file tunch certificates obtained for the silver articles purchased or sold during the year and before the date of survey, however, no such tunch certificates were produced. I had also requested the assessee to produce the bills of purchase or sales which could demonstrate the purity of silver in silver articles, but no such bills of purchases or sales were produced which could help me in verifying the purity of silver in those silver articles. It is equally true that the purity % as determined by the departmental valuer is without any scientific basis and, therefore, cannot be accepted at its face value. In a similar case of survey, after due analysis of the trends as prevailing in this part of U.P., I had estimated the purity of silver jewellery at 55%. (which includes making charges @ 12-15%). The same % age is being adopted for this case too. The A.O.is directed to re-compute the value of excess stock accordingly

4.1.3 *In case of Gold jewellery, the dispute is of stock of gold jewellery before the date of survey. On perusal of the details as submitted by the assessee, it is seen that the assessee had an op. bal of 10 gm of gold jewellery. During the year, the assessee had made purchases of the following gold jewellery: 225.8 gm from one Om prakash Tiwari on 12.10.2011; 311.0 gm from one Sri Santosh Kumar singh on 14.10.2011 and 936.480 gm from one Sati Developers n Towers Pvt. ltd on 7.02.2012. All these purchase entries appear in the books impounded during the course of survey proceedings. Reference has been made to page 7 of the khatabahi, a copy of the same had been produced before me. The assessee has also shown that it had sold 450.1 gm to one Dhiraj jewelers on 1.02.2012. The relevant sale bill had also been impounded by the department, a copy of which appears at page 75 of the PB2. Thus, it has to be held that at the time of survey, the assessee had a net balance of 1033.180 gm of gold jewellery. The assessee had also stated during the course of his statement that gold jewellery weighing 850 gm belonging to his wife Suman Agarwal was lying in the shop. An affidavit to that effect was also submitted by her during the course of the assessment proceedings. The AO has doubted the veracity of the same and did not allow that benefit to the assessee. To my mind, the contention of the assessee that the gold jewellery of his wife was lying in the shop sounds incredible, yet the benefit of doubt*

has to be given to the assessee since he had mentioned about this fact during the course of the survey proceedings itself and thus, cannot be discarded as an afterthought. Accordingly, the AO is directed to accept further 850 gm of gold jewellery as explained. As far as the affidavit of Poonam Tripathi is concerned, it appears to be totally an afterthought as this fact was never mentioned by the assessee during the course of the survey, nor any slip or any noting in this regard was found nor the said jewellery was segregated. Thus, the contention of the assessee in this regard is not accepted. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the cases of ***Durga Prasad More (82 ITR 540)*** *wherein it was held by the Hon'ble Supreme Court that-*

> *"the taxing authorities were not required to wear blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in these documents."*

Further, in the case of ***DIT vs. Bharat Diamond Bourse [(2003) 179 CTR SC225],*** *the Hon'ble Supreme Court held that-*

> *"the story rings false from beginning to end, and yet, the tribunal accepted it by sayings, "As regards the bona fides of the transaction, in our opinion, there is nothing to suspect the same."The Tribunal says, "there is a transparency about the entire transaction which nullifies any attempt to make out the transaction as something unusual and out of the ordinary." That diamonds are not transparent, that they dazzle with a brilliance that blinds the eyes, seems to have escaped the notice of the Tribunal. It undeservingly accepted the glib explanation of the assessee, though teeming with improbabilities and strenuous on credulity."*

4.1.4 The AO is directed to work out the value of unexplained gold jewellery accordingly.

4.1.5 In case of Silver bullions, the dispute is of weight and purity of silver. Admittedly, there is no stock register being maintained by the assessee for silver bullion. The objection regarding the weighement is without any basis and is, therefore, rejected.

4.2 Accordingly, this ground of appeal is partly allowed as indicated above."

6. The next issue before ld. CIT(A) was concerning addition of Rs. 59,79,220/- on account of difference in stock at **Varanasi** Branch premises.The assessee submitted before ld. CIT(A) that a survey under Section 133A of the Act was carried out by Revenue at the Mirzapur (Head Office) and Varanasi Premises (Branch Office) ,on 24th February, 2012. It was submitted that statement of the assessee was recorded under Section 133A of the Act during the course of survey proceedings and the assessee was pressurized by Survey team during recording of the statement. It was submitted by assessee before ld. CIT(A) that there were 10 officers from the Department and 25 police officers who were present in the assessee's premises to put pressure on the assessee. It was also submitted that the AO has not at all confronted and demolished the assessee's statement during the survey as well as during the assessment proceedings. It was also submitted that the additions were made on account of difference in physical stock and the stock shown in the stock register without considering the books of accounts which were impounded at the time of survey . It was submitted that addition were made without considering the Statement recorded during the time of survey and the factual submissions made during the time of assessment proceedings. The assessee submitted that all the differences are explained in these submissions made before the ld. CIT(A). The assessee submitted that the AO has not considered the submissions of the assessee made during the course of assessment proceedings. It was submitted that the assessee raised categorical objection on valuation and on purity of the jewellery/ornaments.The assessee also submitted that the assessee has requested AO vide letter dated 01.04.2012 and 08.04.2012 to provide departmental valuer basis for valuation of weight, value and purity certificate/tunch formwhich is very important for the jewellery industry, but the assessee was never provided with the same. The assessee also submitted that proper explanation was submitted supported with an affidavit during assessment

proceedings , but the same was not considered by the AO. With respect to silver jewellery , the assessee submitted that the only reason of the AO for making the additions was that the valuation was done by the independent valuer , and that the assessee plea cannot be accepted because the same was based on afterthought as such no such bills were either found during the course of survey or were produced during recording of statement, therefore evidences produced by the assessee could not be treated to reliable as they are created after being caught on wrong foot. The assessee submitted before ld. CIT(A) that the assessee had requested Survey team during the course of survey proceedings to get the valuation of stock done again, but the same was refused by the survey officers , and also by the AO during assessment proceedings, and the assessment order was passed without giving any opportunity of being heard to the assessee. The assessee also submitted before ld. CIT(A) that the assessee is questioning the valuation as well the weight , basis of purity determined without having tunch certificate , which was not provided to the assessee, and purity was determined purely on estimation basis. The assessee relied upon the following decisions:

a) **Amritsar-tribunal decision in the case of Smt. Kailash Devi v. ITO, reported in (2016) 68 taxmann.com 288(Amr-trib.)**

b) CIT v. Balaji Wire Private Limited, reported in (2007) 304 ITR 393(Del. HC)

The assessee submitted before ld. CIT(A) that the AO has sufficient time to verify the bills and the affidavit submitted , but the same remained uncontroverted and the AO out-rightly rejected the same. It was submitted that no Show Cause Notice (SCN) was issued by AO, prior to passing of an assessment order. It was submitted by assessee before ld. CIT(A) that the assessee has duly discharged its onus after raising question on the valuation at the time of survey and signing the same under protest and submitting all the papers as and when desired by the AO. The assessee

submitted before ld. CIT(A) that if there is no material on record for doubting the veracity of the statements made in the affidavit and if the deponent has not been subjected to cross examination for bringing out falsity of his statement , then it will not be justified for doubting the correctness of the statement made by the deponent in the affidavit. The assessee relied upon following judgments :

(i) Mehta Parikh & Co. v. CIT , reported in (1956) 30 ITR 181 (SC)

(ii) CIT v. Dharam Pal Premchand Ltd. - 295 ITR (Del HC).

(iii) CIT v. Shankar Lal Ved Prakash – 300 ITR 243 (Del HC).

The assessee requested Learned CIT(A) to delete the entire additions as was made by the AO considering the fact that the additions were made only on the basis of estimation and the submissions of the assessee were not considered and non speaking order was passed by the AO. So far as addition made w.r.t. Gold Jewellery, the assessee submitted before ld. CIT(A) that the AO has not considered submissions filed during assessment proceedings and had not verified the same. The assessee submitted that the AO is only relying on survey proceedings without appreciating that the books of accounts impounded were not updated and the reason for not updating the same was already mentioned during survey.It was submitted that the assessee submitted before the AO that stock register was not maintained but the AO is still considering the stock register and not the impounded books of accounts on the date of survey. The assessee submitted that the AO has not considered the statement of the assessee. It was also submitted by assessee before ld. CIT(A) that the assessee duly filed during assessment proceedings before the AO all the documents like computation of Income, ITR, copy of audited books of account, bank statements, bank book and the tax audit report. The assessee further submitted before ld. CIT(A) that the allegation of the Ld. AO that stock register and other documents were not found during the survey or were not been explained during the assessment proceedings , is not correct. The

assessee explained before ld. CIT(A) that with respect to gold jewellery and silver bullion , the assessee was not maintaining stock register but will do so from next year. The assessee submitted before ld. CIT(A) that despite having all the information in his possession and all the replies filed during survey and assessment proceedings, the AO has not considered the same and additions were made without raising the question on the same. It was also submitted by assessee before ld. CIT(A) that during the course of survey proceedings , the assessee raised objection on the valuation and no Tunch certificate was provided to the assessee which means valuation is on estimated basis and not on proper weight and purity basis. The assessee made prayers before ld. CIT(A) to delete the additions as were made by the AO , as in the opinion of the assessee these additions were not factually and legally correct. With regard to silver bullion at Varanasi, it was submitted before ld. CIT(A) that the assessee has submitted that no stock register was maintained for silver bullion but will be maintained from next year. The assessee also submitted that the assessee duly submitted during survey proceedings that books of accounts were not complete as the accountant is not well who shall come and complete the books of accounts. It was submitted that proper reply was submitted during assessment proceedings, and even affidavit of Shri Gharau Yadav was also filed. It was submitted that the AO has not passed speaking order and had not considered the submission of the assessee at the time of survey and also at the time of assessment proceedings . The assessee submitted that it is not mandatory to maintain stock register for traders of the jewellery industry. It was submitted that no Show Cause Notice(SCN) was issued by the AO that he is proposing to make additions while framing assessment . It was submitted that the assessee has discharged its onus. The assessee also explained that the assessee duly submitted reconciliation of stock as per impounded books of accounts(already impounded by Revenue) , and submitted quantitative as well value wise details of opening stock, purchases/transfer , sales/transfer and closing

stock for the financial year. The reasons for difference was also explained before the AO, was the contention of the assessee before ld. CIT(A). It was also submitted that the assessee had produced certified copies of impounded books of accounts along with supporting evidences for verification during the assessment proceeding, but no discrepancy was pointed out by the AO , but , however, additions of Rs. 59,79,220/- was made by the AO on account of differential amount of stock by treating the same as undisclosed investment merely on conjecture and surmises that the assessee does not keep proper and adequate records to substantiate the quantity of stock. It was also submitted that copy of statement recorded during the course of survey under Section 133A was not provided to the assessee by the AO before the conclusion of assessment proceedings ,and the same was provided after completion of the assessment which was unfair and against the principles of natural justice. It was also submitted by assessee before ld. CIT(A) that the statement recorded under Section 133A has no evidentiary value , and the admission made during the course of recording of statement during survey proceedings could not be made basis of addition without any corroborative material, and the additions so made by the AO is not justified. The assessee relied upon judgment and order of Hon'ble Supreme Court in the case of (2012) ***CIT v. S. Khader Khan & Sons (2012) 254 CTR 228(SC)***

6b. The Ld. CIT(A) after considering reply of the assessee , partly allowed the relief to the assessee on this issue , by holding as under:-

> ***"5.2 <u>Discussion:</u>***
>
> *The Assessing officer has made addition on account of excess stock found in Varanasi premises in three categories, i.e. Silver jewellery, Gold Jewellery and Silver Bullions. I deal with each of these as under:*
>
> ***5.2.1 <u>Decision:</u>***

In case of Silver jewellery, the dispute is mainly on account of silver jewellery allegedly purchased from Mathura which was physically available at the time of survey but the bill wasn't available nor the same was entered in the stock register. It is the case of the appellant that the same stock had reached on the date of survey but the bill had not been received. The copy of the bill (by which the said artificial payals were allegedly purchased) has been enclosed at Page No. 63 of the Paper Book 1 and the payment for the same was through bank, proof of which was enclosed at Page No. 197 of the Paper Book I. All these documents were also present before the AO at the time of assessment proceedings. On perusal of the said bill, it is seen that the bill is dated 23 February, 2012 and the place is Mathura which is good 600 km away from Varanasi. The said bill contains reference of mode of the payment as Ch no. 003094 of Axis Bank, which is also dated 23.02.2012. When I enquired about this with the assessee, he stated that one of his employees, namely Sri Ramashrey yadav had been to Mathura and he had carried the said Cheque to Mathura and, therefore, the reference of the same got incorporated in the said bill. It was also stated by him that the same person had brought the impugned payals from Mathura and had deposited them in the shop in the morning of the survey date. The undersigned asked the assessee to produce the said person who had supposedly gone to Mathura and brought the payals from Mathura. He was examined u/s 131 of the I.T. Act by the undersigned in the presence of the assessee. The relevant part of the statement as recorded, is as under-

> *"Statement of Sri Ramashrey Yadav, Age 28 years resident of Gazipur district recorded by the undersigned u/s 131 of the I.T. Act on 20.01.2017 in presence of Sri Neeraj Agarwal, Assessee himself.*

Oath Administered –	*Oath Taken*
sd-	*Sd/-*
CIT(A), Allahabad	*(Ramashrey Yadav)*
(RajkumarLachhiramka)	

Q. (1) Please tell what do you do?

Ans. I work for the shop of Sri Niraj Agarwal ji at Varanasi. I work at shop and also outstation work for him.

Q. (2) Did you ever travel to Mathura for the shop-work?

Ans. 3-4 times.

Q. (3) Did you go to Mathura in February 2012?

Ans. Yes, I had gone to Mathura on 22 February by night train Magadh Express which reached Tundla in the morning and then next to Mathura by bus and reached Mathura at 12 noon.

Q. (4) What did you do at Mathura ?

Ans. I reached the shop and handed over the cheque to the owner of the shop who handed me payals in 6 bags weighing about 177 kg. The shopkeeper also gave me the bill for the same.

Q. (5) When did you reach Varanasi ?

Ans. From Mathura, I took the taxi to Tundia and then took the train to Mathura-Lichavi Express and reached Varanasi Cantt. At 8:30 am on 23 February and by auto reached the shop at Varanasi. The Manager was waiting for me at the shop and I took out the payals from these bags and alongwith the Manager took these payals in the counters/ Almirahs. After that I left to have tea and when I returned I found Police at the shop and they did not allow me to enter the shop. So I could not go inside.

Q. (6) Where was the bill?

Ans. The bill was with me only as I could not hand it over to manager in the morning.

Whatever I have stated above is truly to best of my knowledge and belief.

Recorded by
-sd-
CIT(A), Allahabad"

5.2.1.1 Since the Manager at the shop at Varanasi is an important witness to this event, I had requested/ directed the assessee to present him for examination. His statement was recorded u/s 131 of the Act by the undersigned. The relevant part of the statement so recorded is, as under:

"Statement of Sri Shiv Bachan Yadav, Age - 45 years resident of Varanasi recorded u/s 131 of the IT. Act on 20.01.2017 by the undersigned in presence of Sri Neeraj Agarwal, the assessee,

Oath Administered	*Oath Taken*
Sd/-	*Sd/-*
CIT(A), Allahabad	*(Shiv Bachan Yadav)*
(RajkumarLachhiramka)	

Q (1) Please tell what do you do?

Ans. I work in Rajshree Jewellers, Varanasi as Branch Manager since 10-15 years I am in-charge of the shop as Sri Niraj Ji generalily lives at Mirzapur.

Q. (2) Who is Ramashrey Yadav ? Do you know him? What does he do?

Ans. Yes Sir, he is our Staff. He works at our shop. He also travels outside to get goods if needed.

Q. (3) Do you recall that there was a survey by I.T. Department on 24th February at your shop?

Ans. Yes Sir, I was present at that time in the shop.

Q (4) Did Ramashrey Yadav bring anything that morning?

Ans. Yes, Ramashrey Yadav brought payals in 6 bags in the morning of 24th February from Mathura.

Q (5) What did you do after he came with these payals?

Ans. I and him put the payals in the almirahs and show case alongwith other and then I asked him to go and freshen up.

Q. (6) Did you take the bill from him?

Ans. No, I did not remember and the bill was with him.

Q. (7) Why did not you call him to the shop when Survey party came ?

Ans. The police did not allow anyone to come inside.

Q (8) When there was excess of Silver jewellery found, why did you not tell the survey party that the payals were received just in the morning 7.

Ans. I was frightened by the Group of I.T. Officers and Police and I was all alone. I did not know how to react.

Q (9) You maintain stock register for silver. Why did you not make entry of these goods?

Ans. The Munimji was not coming for the last two days. He only maintains all

the register & account.

Q (10) When the valuation was being done, why did you not say that these payals were not silver but gillet?

Ans. I had told the valuer that these were gillet but he did not consider it. I was also very frightened and I did not know how to react. That is why I told the survey party that only Sri Nirajji owner can explain. I was really frightened.

Q. (11) Your statement was recorded also. You could have said that in your statement?

Ans. I was really frightened and I had repeatedly asked the survey party to make me talk to Sri Nirajji but they did not let me talk to him. I did not know what to say and what not to say.

Q. (12) Why did you not say that 177 kg.ofpayals were gilletpayal.

Ans. As I said I was very frightened so I did not know what to say and what not to say. I also did not want to say about gilletpayals as I was afraid that our reputation will be at stake so I kept telling that only Nirajji can answer all the differences.

Q. (13) Why did you not call Ramashrey Yadav to present the bill?

Ans. The police did not allow anyone to enter the Katra and the shop.

Q. (14) I am showing you the cheque no. 003094 of Axis Bank. Please identify the signature?

Ans. The signature is that of Neerajji.

Q (15) Ramashrey Yadav had stated that this cheque was given to him by you. Was Mr. Niraj present in Varanasi on 22 February?

Ans. No, he was not there. But we keeps some signed cheques at Varanasi. And we fill the details as and when required.

Q (16) Please see the cheque again. Please state if this cheque details were filled by you or Nirajji on someone else.

Ans. This cheque has not been filled either by me or Niraj Ji. It is not in my handwriting. We had sent a blank cheque with only signature. And the details have been filled up by Mathura Party.

Q. (17) Do you want to state anything else?

Ans. No Sir.

Whatever I have stated above is truly to best of my knowledge and belief.

Statement by

Sd/-
CIT(A), Allahabad
In presence of Sri Niraj Agarwal"

5.2.1.2I had also asked the Axis Bank, Mirzapur to submit the copy of the said cheque (No. 003094), which was duly submitted. On perusal of the said cheque, it is seen that it had been dated 23.02.2012 and was in the name of R.S. Bullion & Jewellery and had been cleared on 02.04.2012(sic. 02.03.2012) . Looking at the totality of facts (i.e. version of the assessee which has been corroborated by two witnesses and the bank details), hereby hold that silver jewellery weighing 177 kg. had been purchased by the assessee from Mathura and the same could not be recorded in the stock register as it had been received only in the morning of the date of survey. The A.O. is thereby directed to exclude this weight i.e. from the excess weight of silver jewellery computed by him. If there is any excess weight beyond this, the same will be computed @ 55% of silver purity. Before parting with the issue, I would like to mention here that this transaction is being accepted by me for the reason that it is backed by a pucca bill/

invoice from the supplier and the payment was made through cheque which was dated 23.02.2012 and the same had also been cleared on 02.04.2012(sic. 02.03.2012). These facts support the contention of the assessee. It is a well-known dictum that the income tax proceedings operate on the theory of preponderance of probability, which works for both the parties i.e. in favour of the assessee as well as in favour of the department, depending upon a given factual matrix. In the instant case, the factual matrix supports the case of assessee.

5.2.2 In case of Gold jewellery, the dispute is with respect to difference of stock of 0.128 gm. The assesse has failed to explain the source of this stock. The opening stock credit has already been given to the gold jewellery found in the Mirzapur shop. Accordingly, this ground of appeal is dismissed and the addition so made is confirmed.

5.2.3 In case of Silver bullions, the dispute is with regard to difference of stock of 4.958 kg. It is seen from the statement recorded during the course of survey that no reason for such difference had been stated. During the time of assessment proceedings, for the first time, the details of Gharau Yadav were produced. The same is clearly an afterthought as there was no mention about him during the course of survey proceedings nor any entry or slip of paper in respect of this transaction was found. In this view of the matter, the pleading of the appellant with respect to the stock of 4.958 kg of silver bullion is hereby rejected as being an afterthought. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the cases of ***Durga Prasad More (82 ITR 540)*** *wherein it was held by the Hon'ble Supreme Court that-*

> *"the taxing authorities were not required to wear blinkers while looking at the documents produced before them. They were entitled to look into*

the surrounding circumstances to find out the reality of the recitals made in these documents."

Further, in the case of ***DIT vs. Bharat Diamond Bourse [(2003) 179 CTR SC 225], the Hon'ble Supreme Court*** *held that-*

> *"the story rings false from beginning to end, and yet, the tribunalaccepted it by sayings, "As regards the bona fides of thetransaction, in our opinion, there is nothing to suspect the same." The Tribunal says, "there is a transparency about the entire transaction which nullifies any attempt to make out the transaction as something unusual and out of the ordinary." That diamonds are not transparent, that they dazzle with a brilliance that blinds the eyes, seems to have escaped the notice of the Tribunal. It undeservingly accepted the glib explanation of the assessee, though teeming with improbabilities and strenuous on credulity."*

7a. The next issue before ld. CIT(A) was regarding addition of Rs. 5,87,424/- on account of difference between physical cash found during the course of survey on 24/02/2012 and cash balance as recorded in cash books. During the survey operations carried on by Revenue u/s. 133A on 24th February, 2012 ,cash of Rs. 6,08,300/- was found from Mirzapur as well as Varanasi Premises of the assessee, detailed as under:

Si. No.	*Address*	*Cash Found (Rs.)*
1	*Varanasi*	*6,05,000/-*
2	*Mirzapur*	*2,900/-*
	Total	***6,08,300/-***

The assessee submitted that cash book was not updated as on the date of survey operation which was confirmed at the time of survey as well as during the course

of assessment proceedings along with reasons for the non updatation of cash book , as mentioned below:

Si. No.	*Address*	*Date of last entry in cash book*	*Cash Book balance during the time of survey*	*Cash Found (Rs.)*
1	*Varanasi*	*20.02.2012*	*20,876/-*	*6,05,000/-*
2	*Mirzapur*	*23.02.2012*	*18,074/-*	*2,900/-*
		Total		***6,08,300/-***

It was also submitted by assessee before ld. CIT(A) that the assessee has already explained difference in statement recorded for cash in Mirzapur , while so far as Varanasi Branch is concerned because of extreme pressure the question was skipped and the same was never asked again. It was submitted that during assessment proceedings, all the details were submitted and even extracts of cash book impounded was also submitted. The AO never asked any question and even no Show Cause Notice(SCN) was issued by the AO and straightway additions were made in the assessment order, without appreciating that the books of accounts were audited and authenticity cannot be questioned. It was submitted before ld. CIT(A) that so far as the cash variation in Varanasi Branch, complete details were submitted during assessment proceedings, and extracts of cash book impounded were also submitted. The assessee submitted affidavits of the parties along with ID proof. It was submitted that the AO never asked any question on the same nor any SCN was issued by the AO before making additions , and additions were made despite books of accounts being audited and authenticity cannot be questioned. It was submitted that reasons for not updating of cash book was explained during survey operations. The assessee submitted that proper explanations were submitted during assessment proceedings, supported with relevant cash book extracts , but AO completely ignored the same and additions were made while framing assessment. It was also submitted that additions made by the AO are totally opposite and baseless, false and seem to be made without proper appreciation of the explanations furnished , materials produced and copies of the

cash book submitted.It was submitted by assessee before ld. CIT(A) that the AO has passed a non speaking order without application of mind and no inconsistency or reasons were pointed out by the AO as to why explanation given by the assessee is not acceptable . It was also submitted that relevant copy of statement recorded during the course of survey under Section 133A was not provided to the assessee before completion of assessment , and the same was provided after assessment order was passed. Thus, it was submitted that there is violation of principles of natural justice. It was also submitted that the assessee has duly explained the sources of cash found during the survey operations .It was submitted that the assessee duly explained the sources of cash found in the course of survey operations conducted by Revenue on 24.02.2012, during assessment proceedings, and submitted that cash found during the course of survey operations u/s 133A was as per books of accounts of the business concern of the assessee.It was submitted by the assessee before ld. CIT(A) that the copies of relevant portion of cash book of the assessee showing cash balance on the date of survey operations were duly filed. Thus, it was claimed that all relevant evidences were submitted, but the AO failed to appreciate the submissions made by the assessee along with evidences and made addition of Rs. 5,87,424/- as undisclosed cash only on the basis of surmises and conjectures. The assessee submitted that the AO did not provide proper and adequate opportunity of being heard to the assessee and the AO never called for further evidences . The assessee claimed that the AO made additions to the income of the assessee in a very general manner ignoring explanations and evidences submitted by the assessee. It was also claimed that no show cause notice(SCN) was issued by the AO before making additions. It was also submitted by assessee before ld. CIT(A) that AO is only relying on survey statement, and it was submitted that the statement recorded under Section 133A has no evidentiary value , and the AO has not given any weightage to the evidences produced during assessment proceedings. It was submitted that no additions can

be made only on the basis of statement recorded during survey proceedings without any corroborative material, and the additions so made by the AO is not justified. The assessee relied upon judgment and order of Hon'ble Supreme Court in the case of (2012) ***CIT v. S. Khader Khan & Sons (2012) 254 CTR 228(SC)***.

7b. The learned CIT(A) granted partial relief to the assessee to the tune of Rs. 18,074/- , by holding as under:

> ***"6.2 Discussion & Decision:***
>
> *The Assessing officer has made an addition on account of difference in amount of physical cash found during the course of survey and cash as per cash book. In regard to Cash found at Mirzapur premises, it is seen from the statement recorded during the course of survey that the appellant had already mentioned the details of balance of INR 18,074 in cash book and the receipt of INR 39,814 from the customer and the payment of INR 55,000 towards advance tax. Accordingly, I accept the pleading of the appellant in regard to the cash reconciliation at Mirzapur premises. As regards Cash found at Varanasi premises, It is seen from the statement recorded during the survey that the appellant had not offered any explanation with respect to the excess cash found. The explanation for the same had been provided for the first time during the course of the assessment proceedings. The explanation offered by the assesses is clearly an afterthought and lacks credible evidentiary value. Accordingly, this explanation is rejected and the addition so made by the AO gets confirmed. This grounds of appeal is partially allowed. Appellant gets relief to the extent of INR 18,074."*

8a. The next issue before ld. CIT(A) was with respect to addition of Rs. 10,15,000/- made on account of cash deposits as were foun recorded in the cash book. The assessee submitted before ld. CIT(A) that survey operations under Section 133A of the Act was conducted by Revenue on assessee's premises on 24th February, 2012, and by that time cash deposit of Rs. 10,15,000/- was there duly recorded in the cash book of the assessee. The books of accounts were impounded

by Revenue during survey operations but no question's were raised on the aforesaid cash deposits of Rs. 10,15,000/- . It was submitted by assessee before ld. CIT(A) that during the course of assessment proceedings, the assessee was asked by AO to explain the sources of cash deposit for the first time. The assessee ,in response, submitted before the AO that the cash deposited of Rs. 7,00,000/- was from M/s Shamboo Nath Agrawal Saraff (partnership firm) in which the assessee is also a partner and the same was taken as an advance for sale jewellery . It was also submitted that the assessee , after the date of survey, has sold jewellery to M/s ShambooNath Agrawal Saraff and the same is booked under the category of sale in the books of accounts of the assessee. It was also submitted by assessee before ld. CIT(A) that copy of accounts and the sale bills were duly submitted before the AO. It was also submitted that Rs. 3,15,000/- was deposited from the other proprietary concern of the assessee namely M/s Rajshree Palace, and both M/s Raj Shree Jewellers as well M/s Rajshree Palace are proprietary concerns of the assessee, and income is taxable in the hands of the assessee. The assessee submitted that accounts of M/s Raj ShreeJewellers in the books of Rajshree Palace as well vice versa were submitted before the AO. The assessee also submitted that account of Raj Shree Jewellers in the books of M/s Shambhoo Nath Agrawal Saraff and vice versa were also duly submitted by the assessee before the AO during assessment proceedings .It was submitted before ld. CIT(A) that the AO did not consider these vital facts, explanations and evidences, and has made the additions without any application of mind in hurry. It was submitted by assessee before ld. CIT(A) that it is the post-tax money of one proprietary concern to another (viz. cash deposited from M/s Rajshree Palace to M/s Raj Shree Jewellers) , of both of which the assessee is proprietor and ultimately income is going to be merged into the same income-tax return. It was submitted before ld. CIT(A) that no inconsistency was pointed out by AO and no further evidences were called for by the AO, and no reasons were given by AO for discarding genuine explanations

submitted by the assessee , and a completely non speaking order is passed by AO without any application of mind. It was submitted that question with respect to these receipts of cash of Rs. 10,15,000/- which were entered and recorded in cash book of the assessee even prior to date of survey, was asked for the first time by AO during assessment proceedings, and all the relevant explanations and evidences were furnished, but the same were not considered and assessment was made in a hurried manner, and a non speaking assessment order without application of mind was passed by the AO. It was submitted that the AO has stated in assessment order that no explanation was provided during survey proceedings, but the assessee claimed before ld. CIT(A) that no such explanation was called for during survey proceedings. No Show Cause Notice(SCN) was issued prior to framing of assessment, and principles of natural justice were not complied with. The assessee prayed before ld. CIT(A) to delete the additions. It was also submitted by assessee before ld. CIT(A) that the AO is only relying on survey statement, and it was submitted statement recorded under Section 133A has no evidentiary value , and the AO has not given any weightage to the evidences produced during assessment proceedings. It was submitted that no additions can be made only on the basis of statement recorded during survey proceedings without any corroborative material, and the additions so made by the AO is not justified. The assessee relied upon judgment and order of Hon'ble Supreme Court in the case of (2012) ***CIT v. S. Khader Khan & Sons (2012) 254 CTR 228(SC)***.

8b. The learned CIT(A) allowed the appeal of the assessee on this ground and deleted the additions to the tune of Rs. 10,15,000/- , by holding as under:

> ***"7.2 <u>Discussion & Decision:</u>***
>
> *The Assessing officer had made an addition of INR 10,15,000 on account of cash deposits in the cash book, which was purportedly received from –*
>
> *(i) ShambhooNath Agarwal Saraf - Rs.7,00,000/-*

(ii) Rajshree Palace - Rs.3,15,000/-

7.2.1 These amounts were shown as advance deposits in the books prior to the date of survey. As regards advance/ deposits of INR Rs.3,15,000/- from "M/s Rajshree Palace', it is seen that it is another proprietary concern of the assessee The copy of accounts of M/s Raj Shri Palace in the books of M/s Rajshree Jewellers and Raj shree Jewellers in the books of M/s Raj Shri Palacehave been seen by me which were submitted during the course of assessment proceedings. I observe that all these papers had been filed during the time of assessment proceedings but the A.O. did not raise any further query. I have seen and verified the cash book of M/s Raj Shree Palace and find that there was sufficient Cash Balance and there is suitable entry to that effect. As regards cash deposits/ advances from Shambhoo Nath Agarwal Saraff a copy of account of the party in his account book was submitted by the assessee during the course of assessment. Since the assessee had already shown these cash deposits/ advances prior to the survey and the depositor, there can be no reason for the A.O. to add this amount as unexplained cash deposits. The A.O should have rather informed the A.O. of the party, namely Shambhoo Nath Agarwal Saraf to take suitable measures under the provisions of Section 269SS of the Act for making such cash deposits/ advances. In this view of the matter, I accept the pleading of the appellant in regard to the above mentioned addition of INR 10,15,000 and delete the addition so made."

9a. The AO rejected books of account by invoking provision of Section 145(3). The assessee submitted before ld. CIT(A) that the survey operation was conducted by Revenue under Section 133A of the Act on 24th February, 2012 at Mirzapur and Varanasi premises of the assessee , and books of accounts were not updated at both the premises. It was submitted that reasons for non completion of books of accounts upto the date of survey, were duly explained during the survey proceedings. It was submitted that books of accounts were impounded during the survey, and the assessee requested that the accountant will come and update the same. The assessee submitted before ld. CIT(A) that the AO asked for the audited

books of accounts along with audit report of the assessee's proprietary concern during assessment proceedings , which were duly submitted before the AO. The AO asked assessee for reasons as to why these books of accounts be not rejected as these books of accounts were found to be not complete during the course of survey proceedings. It was submitted by assessee that on the one hand, the AO is relying on the same books of accounts while making additions to the income of the assessee, and on the other hand, the AO is rejecting the books of accounts and is not considering the documents/evidences submitted during assessment proceedings but relying only on the statement recorded during the survey proceedings. The assessee submitted before ld. CIT(A) that reasons for non completion of books of accounts were duly explained . It was submitted that during assessment proceedings,the audited accounts as well audit report was duly submitted before the AO. The assessee submitted before ld. CIT(A) that the AO was biased against the assessee and made assessment hurriedly. The AO is relying on the same books of accounts while making additions, which were rejected by the AO. It was submitted that the AO failed to appreciate the submissions along with all evidences furnished by the assessee, while rejecting books of accounts. It was submitted that assessee is maintaining books of accounts for last several years which were also subjected to tax audit u/s 44AB. The AO did not provide sufficient reasons for rejecting books of accounts and wrong allegations are levied by the AO while making assessment without considering evidences filed by the assessee during assessment proceedings . It was submitted that proper and adequate opportunity of being heard was not granted by the AO to the assessee before rejecting assessee's books of accounts .The AO also alleged that quantitative details of the stock was not maintained for silver bullion and gold jewellery and all these details are not filed as required under audit report under Form 3CD. It was submitted that the AO also alleged that Books of accounts were not found to be proper. The assessee further submitted before ld. CIT(A) that all the quantitative

details of the stock details were provided as part of tax audit report , but the AO rejected books of accounts with preconceived notion of not to consider books of accounts . The assessee submitted that the AO has not at all considered the submissions filed during assessment proceedings. It was also submitted that copy of statement recorded during course of survey under Section 133A was not provided to the assessee by AO before the conclusion of assessment proceedings , and the same was provided after completion of the assessment which was unfair and against the principles of natural justice. It was also submitted by assessee before ld. CIT(A) that the statement recorded under Section 133A has no evidentiary value , and the admission made during the course of recording of statement during survey proceedings could not be made basis of addition without any corroborative material, and the additions so made by the AO is not justified. The assessee relied upon judgment and order of Hon'ble Supreme Court in the case of (2012) ***CIT v. S. Khader Khan & Sons (2012) 254 CTR 228(SC)***

9b. The Ld. CIT(A) rejected the contentions of the assessee and upheld rejections of books of accounts of the assessee u/s 145(3), by holding as under:

> ***"Decision:***
>
> *The books were rightly rejected by the AO as the books were admittedly not written uptodate. Further, during the course of survey operations, substantial amount of excess silver and gold jewellery were found in both the premises of the assessee. No stock register was being maintained for gold n silver bullion. Further, there was excess cash found which could not be satisfactorily explained. In view of these major discrepancies, the AO was right in rejecting the books of account. In any case, the rejection of the books in this case is just an academic exercise since no additions have been made by the A.O. on account of G.P/N.P. or he turnover. The additions have been made on specific discrepancies found by the A.O.".*

10. The next issue before ld. CIT(A) was with respect to addition of Rs. 34,82,707/- on account of unexplained sundry creditors under Section 68 of the Act. The

assessee explained before learned CIT(A) that the assessee has duly submitted all the details of sundry creditors before the AO during the course of assessment proceedings. The assessee submitted that even books of account along with tax audit report were duly submitted before the AO.The copy of account of all the sundry creditors were also furnished. It was submitted that the AO issued summons under Section 131(1) to all the sundry creditors . In case where the summons under Section 131(1) returned unserved , the assessee was not informed by AO about the same and the reasons were not communicated to the assessee. It was submitted that it is only after the assessment order was passed, the assessee came to know about the same. It was submitted that the AO was having all the details but the assessee was again instructed to submit all the details which were submitted by the assessee during the course of assessment proceedings. The additions were made by AO without giving opportunity of being heard to the assessee. It was submitted by assessee before ld. CIT(A) that AO mentioned reason of addition made to the income of the assessee that the complete postal address of sundry creditors were never provided nor their ITR/PAN were furnished , but the assessee has duly provided all the information sought by the AO. It was submitted that out of ten sundry creditors, additions were made with respect to five sundry creditors. It was submitted that these parties are located outside city and the assessee had requested AO to give some time to submit confirmations from these parties but the AO rejected the request of the assessee and made the addition in spite of having sufficient time to pass assessment order which was passed in hurry without giving an proper opportunity of being heard to the assessee. It was submitted that no show cause notice(SCN) was issued by AO to the assessee before making additions, andthe AO suddenly concluded the assessment proceeding in violation of principles of natural justice . Prayers were made by assessee before ld. CIT(A) to delete the additions as the transactions are genuine business transactions. The assessee also filed

additional evidences under Rule 46A of the Income-tax Rules, 1962 (hereinafter called "the Rules") before ld.CIT(A) , which are copies of Sundry Creditors account for the financial year 2011-12 and financial year 2012-13 in the case of *M/s Dashrath Silver Arts Private Limited, M/s D.D. Industries, M/s R.G Ornaments and Shri VariPayals.*The assessee also enclosed copy of sundry creditors account for financial year 2010-11 with Shri Sati Ram and it was submitted that the assessee does not have any transactions with Shri Sati Ram during financial year 2011-12. The assessee made prayers before ld. CIT(A) to delete the additions.

10b. The ld. CIT(A) deleted the entire addition of Rs. 34,82,707/- as was made by the AO on account of unexplained sundry creditors under Section 68 of the Act , by holding as under:

*"**9.2 Discussion & Decision:***

As per the Assessing Officer, the assessee had failed to file the confirmations in regard to the credit balances from the following parties-

D.D. Industries, Mandi Ram Das, Mathura	*Rs. 9,49,700/-*
R.G. Ornaments, Namakki Mandi, Agra	*Rs 6,00,284/-*
Dashrath Silver Art Pvt. Ltd. , Redak Road Near, Arya Nagar, SantKabir Road, Rajkot	*Rs 14,26,243/-*
Shri Sati Ram, JituDustakpur, Varanasi	*Rs 4,32,710/-*
Shri VariPayals, 216, Moongapadi, Street, Gugai, Salesm	*Rs 73,770/-*
Total	***Rs. 34,82,707/-***

9.2.1 I have seen the list of sundry creditors. It has been informed to me that all the confirmations had already been called for by the survey team (after the survey proceedings) and all the trade creditors had already submitted the confirmations to the department directly. However, since these submissions were in the realm of speculation, I directed the assessee to file the confirmations duly signed by the trade creditors. Such Confirmations are already on the assessment records, but these have been signed only by the assessee and not by the vendors. The assessee filed these confirmations duly signed by the creditors as well. I discuss each of these trade creditors as under-

i) D.D. Industries - Rs.9,49,700-Before the AO., the assessee had filed a copy of account of the said party, on perusal of which it is seen that the impugned credit appears in these accounts. This copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the A.O. of the party for his verification. The addition made by the A.O. is hereby deleted.

ii) R.G. Ornaments, Agra - Rs.6,00,284 - the assessee has filed a copy of the account of the aforesaid party before the A.O., on perusal of which I find that there are series of purchases and payments. It is also seen that the ADIT (Inv.), Allahabad had issued summons u/s 131 dated 05.03.2012 to the aforesaid party, to which the party had made a reply vide letter dated 15.03.2012, wherein it had confirmed the three transactions of sales to the assessee in the F.Y. 2011-12. In this view of the matter, this credit of Rs.6,00,284/- is accepted as duly explained.

iii) Dashrath Silver Art Pvt. Ltd. - Rs. 14,26,243- the assessee had filed a copy of account of the said party; on perusal of which it is seen that the impugned credit appears in these accounts. Now this copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the AO of the party for his verification. The addition made by the A.O. is hereby deleted.

iv) Shri Sati Ram - Rs.4,32,710-As regards credit standing in the name of Shri Sati Ram, it had been informed to me by the appellant that the same is the opening balance for the FY 2011-12. It has been also informed that the person was no more

and the appellant had booked the same as his income in the next year. I have seen all the papers and based on that I am also deleting the addition of INR 4,32,710/- in regard to Shri Sati Ram.

v) Shri Vani Payals - Rs.73,770 - the assessee had filed a copy of account of the said party, on perusal of which it is seen that the impugned credit appears in these accounts. This copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the A.O. of the party for his verification. The addition made by the A.O. is hereby deleted."

11. The next issue before ld. CIT(A) was with respect to addition to the income of the assessee to the tune of Rs. 28,12,000/- made by the AO u/s 68 on account of unexplained Unsecured Loans . The assessee submitted before ld. CIT(A) that the AO asked assessee to give details of deposits from relatives and others along with complete postal address and the copy of accounts of these lenders, for the first time during the course of assessment which was submitted by the assessee. It was also submitted that the assessee submitted all the details from the relative and others . It was submitted that even the audited books of accounts along with the tax audit report was submitted before the AO ,and inspite of having all the details in the file , the AO asked assessee to submit the details again which was again submitted along with copy of account and complete postal address, ITR acknowledgement of all the lenders , along with copy of bank statements of the two lenders. It was also submitted that all the loans were taken through account payee cheque's and hence the assessee discharged the onus. It was also submitted that the AO had issued letters under Section 133(6) to various lenders which the assessee came to know after the assessment order is passed. It was also submitted that the AO did not inform the assessee that he is still in doubt and few of the documents were not provided to him by the lenders. The assessee contended that the AO has not given proper and adequate opportunity of being heard to the assessee. It was submitted that the AO made the additions on the grounds that in

some of the cases ,the information was not available and for the rest of the case, the AO observed that there was cash deposit in the accounts of the lender prior to giving loan to the assessee. It was submitted that proper opportunity was not granted to the assessee by AO to substantiate the same, and the additions were made in hurried manner wherein evidences and explanations filed were not considered . No Show Cause Notice(SCN) was issued by the AO before making the additions, and prayers were made by assessee before ld. CIT(A) to delete the additions.

11b.The learned CIT(A) granted part relief to the assessee, by holding as under:

"10.2Discussion & Decision:

I have seen the list of Loans and deposits and discuss each of the creditors/ depositors as under:

a. Smt. Suman Agrawal - Rs.3,10,000 - Details on Page 7-10 of the Paper Book 2. The appellant has submitted a copy of Confirmation and bank statements which was filed before the AO on 18/03/2015 Copy of ITR of Smt. Suman Agarwal is also at Page 23 of the Paper Book 1. In view of confirmation filed by Smt. Suman Agrawal and also the fact that she is a Tax payer, the addition so made is hereby deleted. The AO should send the confirmation letter filed by her to her A.O. for him to verify the transactions.

b. M/s Gopal Khaitan (HUF)- Rs.3,00,000- Details on Page 11-13 of the Paper Book 2. On perusal of the case records, it is seen that when the AO. had made enquiry u/s 133(6) of the I.T. Act, the said party had submitted Confirmation and bank statements before the A.O, on 18/03/2015. Copy of its ITR is at Page 24 of the Paper Book 1. In this view of the matter the genuineness of the credit is established and the addition so made is hereby deleted. The A.O. should send the confirmation letter filed by it to it's A.O. for him to verify the transactions.

c. K. Aditya Khaitan - Details are at page 14-19 of the Paper Book) 2. On perusal of the case records, it is seen that when the A.O. had made enquiry u/s

133(6) of the I.T. Act and the said party had submitted Confirmation and bank statements on 18/03/2015. Copy of ITR is submitted at Page 19 of the Paper Book 1. The A.O. should send the confirmation letter filed by him to her A.O. for him to verify the transactions. The addition so made is hereby deleted.

d. Shri. Gopi Nath Agrawal - Details are at page 20-21 of the Paper Book 2. No Confirmation and bank statements received as he was not well as per the letter of his son Shri Sharad Agrawal. But account number, bank name and branch was shared. In this view of the matter, the addition made is confirmed as the identify, creditworthiness and the genuineness of the transaction has not been proved.

e. Smt. Shilpa Khaitan - details at Page 25-28 of the Paper Book 2. Confirmation and bank statements filed on 17/03/2015. Copy of ITR is at Page 22 of the Paper Book 1. The AO should send the confirmation letter filed by her to her A.O. for him to verify the transactions. The addition so made is hereby deleted.

f. Shri Pramod Soni - Details @ Page 22-24 of the Paper Book 2. Confirmation and bank statements filed on 18/03/2015. Copy of ITR is at Page 21 of the Paper Book 1. The AO, should send the confirmation letter filed by him to his AO for him to verify the transactions. The addition so made is hereby deleted.

g. Shri Goverdhan Das Agrawal - Details at Page 31-32 of the Paper Book 2. Copy of the ITR submitted by the appellant.The AO.should send the confirmation letter filed by him to his AO for him to verify the transactions. The addition so made by the A.O. is hereby deleted.

h. Shri Goverdhan Das Agrawal (HUF) - Details at Page 33-34 of the Paper Book 2. Copy of the ITR submitted by the appellant.The AO.should send the confirmation letter filed by it to its A.O. for him to verify the transactions. The addition so made is deleted.

12a. The assesse filed an additional ground of appeal before learned CIT(A) which was claimed by assessee to be a legal ground , and prayers were made to

admit the same by placing reliance on judgment and order passed by Hon'ble Supreme Court in the case of **National Thermal Power Corporation Ltd. v. Commissioner Of Income Tax reported in 229 ITR 383 (SC) ,** as under:

"ADDITIONAL GROUNDS

i) That the Assessing Officer erred in law in charging interest under Sections 234B and 234C of the Income Tax Act by issuing Notice of Demand u/s 156 of the Income Tax Act; whereas there is no specific order in the assessment order for charging such interest and as such charging of interest under sections 234B and 234C of the Income Tax Act in the Demand Notice is wholly illegal and liable to be quashed.

ii) That, in any view of the matter interest under sections 234B and 234C is chargeable on the Income, as declared in the Return of Income and not on the assessed income."

12b. The learned CIT(A) admitted the additional ground of appeals raised by the assessee , and dismissed the same , by holding as under:

"11.1 Decision on admission:

The ground being a legal ground, is being admitted.

11.2 Decision on merits:

The Hon'ble Supreme Court in the case of CIT vs. Bhagat Construction Co.Pvt. Ltd., (Civil Appeal No. 1198/2006) after noting the decisions in the case of CIT vs. Ranchi Club Ltd (247 ITR 209) and that of Kalyankumar Ray vs. CIT [1992 Supp(2) SC 424] have held that-

> *"It will be seen that under the provisions of Section 234B, the moment an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such an assessee is less than 90 per cent of the assessed tax, the assessee becomes liable to pay simple interest at the rate of one per cent for every month or part of the month.*

Shri Guru Krishna Kumar is right in stating that levy of such interest is automatic when the conditions of Section 234B are met.

We are of the view that the facts of the present case are squarely covered by the decision contained in Kalyankumar Ray's case in asmuch as it is undisputed that contained a calculation of Interest payable on the tax assessed. This being the case, it is clear that as per the said judgment, this Form must be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143, which is referred to in Explanation 1 to Section 234B."

11.2.1 In the present case, I have verified that the ITNS 150 for this assessment year has been filled up and interest u/s 234A/ 234B/ 234C has been duly charged in that form. The form has also been signed by the A.O. Thus, the levy of interest u/s 234A/ 234B/ 234C is perfectly justified and is in order. The Ld. A.R. of the assessee has cited various High Court decisions, but with due respect, they are irrelevant in face of the categorical decision of the Hon'ble Supreme Court which lays down the law of the land under Article 141 of the Constitution. In this view of the matter, this ground of appeal is hereby dismissed."

13. Thus, the ld. CIT(A) partly allowed the appeal of the assessee , by holding as under:

"12. In the result, appeal is partly allowed."

14. Now, Aggrieved with the appellate order passed by ld. CIT(A), both assessee and Revenue has filed an appeal with tribunal.

14b. The ld. Counsel for the assessee opened arguments before the Bench and submitted that the present appeal pertains to ay:2012-13. It was submitted that the assessee is an individual and is proprietor of M/s Raj Shree Jewellers. The assessee deals in Silver Jewellery, Gold Jewellery and Silver Bullion. It was submitted that the assessee is also Proprietor of Cinema Hall namely Rajshree Palace. It was submitted that proprietary concern Raj Shree Jewellers have Head

Office(HO) at Mirzapur(U.P.) while Branch Office(BO) is at Varanasi(U.P.). It was submitted that two separate books of accounts were maintained , both at Head office as well at Branch office. It was submitted that the assessee maintained stock register of silver ornaments(jewellery), while no stock register was maintained for gold jewellery and silver bullion. It was submitted that Revenue conducted Survey u/s. 133A ,on 24.02.2012 simultaneously at business premises of Raj Shree Jewellers both at Mirzapur and also at Varanasi. The survey started on 24.02.2012 at 11.45AM at H.O., statement was recorded at 7.0 PM and the survey concluded at 9.15PM. It was submitted that statement u/s 133A(3)(iii) was recorded on oath of Shri Neeraj Agrawal(prop.) at Mirzapur on 24.02.2012, while statement of the Manager Shri Shiv Bachan Yadav was recorded on oath at Varanasi.It was submitted that statement of Part time Munim was also recorded. It was submitted that valuation of jewellery /bullion was done by department through independent valuer. It was submitted that return of income for the impugned assessment year was filed within due date on 15.09.2012, and an income of Rs. 30,31,050/- was declared in the return of income filed with department.It was submitted by ld. Counsel for the assessee that the assessee co-operated with department. It was submitted that no discrepancy was pointed by the AO in the books of accounts during assessment proceedings. It was submitted that no show cause notice(SCN) was issued by the AO before completing assessment. It was submitted that the assessment order u/s 143(3) was passed by the AO on 20.03.2015 assessing income of the assessee at Rs. 2,14,71,400/-. The assessment order was received on 01.04.2015. It was submitted that additions to the tune of more than Rs. 1.84 crores were made by the AO. It was submitted that books of accounts were not updated at the time of survey viz. 24.02.2012. Our attention was drawn to various additions made by the AO in the assessment order. It was submitted that no SCN was issued by the AO prior to making of assessment. It was submitted that two paper books were filed by assessee before ld. CIT(A), first carrying 248 pages and

second carrying 147 pages, which are also now filed before the tribunal and the same shall be referred to in these proceedings before tribunal. It was submitted that written submissions were filed before ld. CIT(A) on 09.06.2016. It was submitted that ld. CIT(A) passed an appellate order on 07.03.2017, and appeal of the assessee was partly allowed , wherein partial relief was granted by ld. CIT(A). It was submitted that now both assessee as well Revenue are in appeal before tribunal. It was submitted by ld. Counsel for the assessee that stock register was maintained for silver jewellery , while no stock register was maintained for gold jewellery as well silver bullion. It was submitted that ld. AO did not see books of accounts before making additions. It was submitted that books of accounts were impounded by Revenue during survey proceedings. It was submitted that no Show Cause Notice(SCN) was issued by the AO before making additions. Our attention was drawn to Para 3.2 of the assessment order, regarding stock at Mirzapur , U.P.. Our attention was drawn to page 153/PB-1, where details of stock of the year 2010-11 are placed.It was submitted that tax-audit report shows stock of all items and hence stock was recorded in books of accounts, stock register was maintained by the assessee for silver jewellery, while no stock register was maintained for silver bullion and gold jewellery Our attention was drawn to page 208 and 213/paper book-1, and it was submitted that stock records were furnished as part of tax-audit report for the year 2011-12 , both quantitative as well value-wise. It was submitted that as on 31.03.2010 , silver ingot was 5.751 Kg. .It was submitted that old stock of silver ingot is continuing as on 31.03.2011 and 31.03.2012. It was submitted that department has not considered opening stock of silver ingots. Our attention was drawn to para 4.13 of ld. CIT(A) order(page 10 of ld. CIT(A) order), with respect to gold jewellery at Mirzapur(U.P.). It was submitted that there was difference in gold jewellery to the tune of 1.057 Kg , as during survey operations, gold jewellery physically found was 2.090kg , while as per assessee's books of accounts, the gold jewellery on the date of survey was 1.033.18 Kg, and the

difference is due to Jewellery of assessee's Wife Mrs. Suman Agrawal of 850.800 gms lying in the Mirzapur showroom. The affidavit of Mrs. Suman Agrawal was submitted. It was explained in the survey statement that gold jewellery weighing 850.800 gms physically found during survey belonged to and owned by assessee's wife Mrs. Suman Agrawal. Our attention was drawn to assessment order. Our attention was also drawn to page 59 of the paper book, where affidavit of Mrs. Suman Agrawal (wife of the assessee) is placed. The date of affidavit is 12.02.2015, while date of survey was 24.02.2012. Our attention was drawn to page 11 of ld. CIT(A) appellate order, and it was submitted that ld. CIT(A) has accepted the contention of the assessee, and addition w.r.t. gold jewellery of 850.800 gms of Mrs. Suman Agrawal lying in Mirzapur premises was deleted. It was submitted that while recording statement during survey, the assessee stated about 850 gms of gold of wife lying in Mirzapur premises(HO). With respect to remaining difference, it was submitted that 202 gms of the gold jewellery which was physically found during survey, belonged to Mrs. Poonam Tripathi who left her jewellery in the Mirzapur premises(HO) on 24.02.2012 at 10.30AM for getting it valued. It was submitted that this explanation regarding 202 gms of gold jewellery of Poonam Tripathi lying in Mirzapur premises(HO) at the time of survey , was submitted by assessee before AO during assessment proceedings. This explanation about 202 gms of gold jewellery belonging to Mrs. Poonam Tripathi was not given during survey proceedings while recording statement. It was submitted that affidavit dated 12.02.2015 of Mrs. Poonam Triptahi is placed at page 61 of the paper book, and was submitted before AO during assessment proceedings, wherein she owned up said Gold Jewellery weighing 202 gms . It was submitted that the AO never recorded statement's of Mrs. Suman Agrawal and Mrs. Poonam Tripathi. Our attention was drawn to statement of Mr. Neeraj Agrawal recorded on 24.02.2012, which is placed in paper book at page 219-228 of the paper book-1. The assessee relied upon decision of Hon'ble Supreme Court in the case of ***Mehta***

Parikh& Co.(supra) and ***S. Kader Khan& Sons(supra).*** It was submitted that survey statement is not recorded on oath, while statement during search u/s 132(4) is recorded on oath. It was submitted that there is no evidentiary value of statement recorded during survey u/s 133A. it was submitted that Mrs. Poonam Tripathi gave 202 gms of gold jewellery to Mr. Sharad Agrawal , Manager of Mirzapur HO in the morning, and Mr. Neeraj Agrawal(assessee) was not aware of the same. On being asked by the Bench, the assessee's counsel submitted that no evidence was given by assessee to co-relate the jewellery of Mrs. Suman Agrawal and Mrs. Poonam Tripathi, with their Income-tax return/wealth-tax returns filed with the department, or with other evidences to substantiate that the gold jewellery found during survey belonged to and owned by them as stated by them in their affidavit. It was submitted that statements recorded during the survey were not provided to the assessee before conclusion of assessment proceedings, but were given after completion of the assessment. It was submitted that the assessee on its part also did not ask for the aforesaid statements.On being asked by the Bench, the assessee submitted that the assessee is only relying on the affidavits filed by Mrs. Suman Agrawal and Mrs. Poonam Tripathi.Our attention was drawn to valuer report dated 24.02.2012 , regarding valuation of stock found during survey at Mirzapur premises(HO), which is placed in paper book-1 at page 244-248. It was submitted that the assessee has duly disputed the quantities recorded in this valuation report as well purity. The ld. Counsel for the assessee submitted that ld. CIT(A) accepted partly the purity of the silver jewllery to the tune of 55% vis-à-vis purity of 66% adopted by AO, and part relief was granted. It was submitted that ld. CIT(A) did not applied scientific basis , to arrive at purity. Our attention was drawn to page 10 of appellate order passed by ld. CIT(A). It was submitted that as per ld. CIT(A) /para 4.1.2 bills were not produced to substantiate the purity/ weight. It was submitted by ld. Counsel for the assessee, that on the contrary , bills were duly submitted. Our attention was drawn to page

77/PB-II and it was submitted that purity was 40%, while at page 79/PB-II, the purity was 60%, and it was submitted that these are purchases made by the assessee. The assessee relied upon the judgment and order passed by Hon'ble Delhi High Court in the case of ***CIT v. Balaji Wire Private Limited*** reported in 304 ITR 393(Del.HC). With respect to difference in Silver Bullion, the ld. Counsel for the assessee submitted that the ld. CIT(A) did not consider the opening balance of silver ingots of 5.751 kg. . Our attention was drawn to page 12 of ld. CIT(A) order and Ground No. 1.5 raised before the tribunal. Thus, it was submitted that ld. CIT(A) erred in not considering opening stock of Silver Bullion of 5.751 Kg. . Regarding difference in stock at Varanasi, our attention was drawn to the order passed by ld. CIT(A) para 5.2.1 . It was submitted that no bill of artificial silver jewellery was found during survey . It was submitted that artificial jewellery being Gillet Payal was purchased from Mathura. It was submitted that no bill of Gillet Payal was found during survey. Our attention was drawn to page 63/PB-1, wherein bill issued by M/s R S Bullion and Jewellers, dated 23.02.2012 for 177.500 kg of Gillet Payal for Rs. 2,16,550/- is placed. Our attention was drawn to page 18 of ld. CIT(A) appellate order. It was submitted that statement of Mr. Shiv Bachan Yadav (Manager-Varanasi BO) was recorded at Varanasi, on 24.02.2012. It was submitted that stock was valued at Varanasi by registered valuer. It was submitted that vide reply to question number 9 , he replied in response to query with respect to difference in silver jewellery. The statementof Mr. Shiv Bachan Yadav (Manager-Varanasi BO) is placed in paper book-1(filed by the assessee) at page 229-233 . The valuation of stock was done , and valuation report is placed at page 237-243 of PB-1 filed by the assessee. It was submitted that Mr. Shiv Bachan Yadav was threatened and pressurized to surrender income in the hands of the assessee. Our attention was drawn to question number 10. It was submitted that cheque issued in favour of M/s R S Bullion & Jewellers was dated 23.02.2012, which was cleared by Bank in clearing on 03.03.2012 , and not on 03.04.2012 as mentioned in the

orders, and there is a clerical mistake to that effect in the order. The bank statement is placed at page 197/PB-1 filed by the assessee, to substantiate that cheque issued in favour of R S Bullion & Jewellers and .The assessee also drew our attention to statement of Mr. Ramashrey Yadav , statement dated 20.01.2017 , which is reproduced by ld. CIT(A) at page 18-19 of the appellate order. It was submitted that Mr. Ramashrey Yadav went to Mathura to bring artificial silver jewellery . On being asked by the Bench, the ld. Counsel for the assessee submitted that this is the first and the last dealing of the assessee in artificial silver jewellery being Gillet Payal. It was submitted that this Gillet Payal is not sold by the assessee and was lying in the stock .It was submitted that ld. CIT(A) deleted the addition of 177 kg of silver jewelry , while addition was made of 177.174 kgs.of silver jewellery . Regarding addition of Gold Jewellery at Varanasi, it was submitted that addition of 0.128 gms was made by the AO , which was sustained by ld. CIT(A). Our attention was drawn to assessment order as well appellate order passed by ld. CIT(A). Our attention was drawn to page 46/PB-1, wherein reply of the assessee explaining the stock physically found of gold jewellery was explained by the assessee. The gold jewellery was purchased from unregistered dealers ,from 21.02.2012 to 23.02.2012. Our attention was drawn to statement of Mr. Neeraj Agrawal , recorded during survey proceedings , which is placed in PB-1/page 219-228. Regarding difference in Silver Bullion at Varanasi Branch Office(BO), it was submitted that difference was 4.958Kg, and it was submitted that the same was received from Mr. Gharau Yadav for selling the same to assessee and was later returned to Mr. Gharau Yadav on 27.02.2012 as no sale deal materialized. It was submitted that AO never issued SCN before making addition. It was further submitted that department never recorded statement of Mr. Gharau Yadav.The ld. Counsel for the assessee relied upon the judgment and order of Hon'ble Supreme Court in the case of ***S. Khader Khan & Sons(supra).*** Regarding cash found during survey proceedings, it was submitted that there was difference of Rs.5.87 lacs in

physical cash found and cash balance in the cash book. It was submitted that there was difference in cash both at Mirzapur(U.P.) HO and At Varanasi, Branch office.It was submitted that ld. CIT(A) deleted additions of Rs. 0.18 lacs, while confirmed additions to the tune of Rs. 5.69 lacs. Our attention was drawn to page 18 of assessment order. It was submitted that cash was deposited by seven persons. It was submitted that affidavits were filed. It was submitted that the AO did not issue SCN, despite replies filed. Our attention was drawn to page 219-228 of PB-1(PB filed by the assessee) which is statement of the assessee, question no.2 and 3. Our attention was also drawn to Page 47-48 of the PB-1 (PB filed by the assessee), wherein explanations were submitted before the AO. Our attention was drawn to page 88 of PB-1 and 89-90 of PB-1(PB filed by the assessee), which are cash books of Mirzapur and Varanasi. Our attention was also drawn to Page 230 of PB-1(question no. 6 & 8)(PB filed by the assessee), which is the statement recorded of Shri Shiv Bachan Yadav , Manager of Varanasi Branch. Our attention was also drawn to Page 24 of ld. CIT(A) order. It was submitted that both AO as well ld. CIT(A) did not examine the persons who filed affidavits. It was submitted that Manager of Varanasi Branch was scared, during the course of survey proceedings. With respect to next addition of Rs. 10,15,000/- w.r.t. cash recorded in the cash book prior to survey operations, it was submitted that ld. CIT(A) rightly deleted the entire additions. It was submitted that Rs. 7 lacs were received in cash from Partnership firm M/s Shambhoo Nath Agarwal Sarraf . It was submitted that the assessee is partner in the said firm. It was submitted that Rs. 3.15 lacs was received in cash from M/s Rajshree Palace, a proprietary concern of the assessee. These amounts received in cash by assessee's proprietary concern M/s Raj Shree Jewellers were duly entered in cash book prior to date of survey. It was submitted that the assessee raised unsecured loans of Rs. 28.12 lacs , and ld. CIT(A) rightly deleted unsecured loans of Rs. 22.37 lacs while additions to the tune of Rs.5.75 lacs were wrongly confirmed by ld. CIT(A). Our attention was drawn to page 40 of ld.

CIT(A) appellate order. It was submitted that additions w.r.t. unsecured loan received from Mr. Gopi Nath Agrawal of Rs. 5.75lacs was confirmed by ld. CIT(A).It was submitted that notice u/s 133(6) was issued by the AO. Our attention was drawn to page 43 of ld. CIT(A) orders. Our attention was drawn to page 20 of PB-1, wherein ITR of Mr. Gopi Nath Agrawal is placed. Our attention was also drawn to Page 20-21 of PB-II, wherein notice u/s 133(6) , dated 13.03.2015 was issued by AO to Mr. Gopi Nath Agrawal and the reply dated 18.03.2015 submitted by his son Mr. Sharad Agrawal intimating AO that his father is unwell and seeking further time to submit reply. It was submitted that Mr. Gopi Nath Agrawal passed away on 01.04.2015. The copy of death certificate dated 06.04.2015 bearing registration number 476 issued by Registrar of Birth and Death (stamp not clear) , Government of Uttar Pradesh was submitted by ld. Counsel for the assessee before the Bench, certifying death of Shri Gopi Nath Agrawal s/o Late Mr. Tek Chand Agrawal , which is placed on record in file. Our attention was drawn to page 196 /PB-1 wherein bank statement of the assessee is placed, where this loan received from Mr. Gopi Nath Agrawal is credited. Our attention was also drawn to Page 200/PB-1 which is the Axis Bank book in the assessee's book , where the above amount is reflected. Our attention is drawn to page 212 of PB-1(PB filed by the assessee) , which is audited accounts of the assessee, where this amount is reflected as unsecured loan received from Mr. Gopi Nath Agrawal. Our attention was drawn to page 44 of ld. CIT(A) appellate order and it was submitted that the assessee had raised additional ground of appeal before ld. CIT(A) w.r.t. chargeability of interest u/s 234B and 234C. It was submitted that assessment order was passed on 20.03.2015, while notice of demand u/s 156 was issued on 24.03.2015. It was submitted that notice of demand issued u/s 156 was not part of the assessment order as it was issued on 24.03.2015, while assessment order was passed on 20.03.2015, and hence notice of demand u/s 156 is barred in law. It was submitted that interest u/s 234B and 234C were wrongly charged and are liable to

be deleted. The assessee relied upon decision of Hon'ble Supreme Court in the case of ***Kalyankumar Ray v. CIT, reported in (1991) 191 ITR 634(SC).***

14c. The ld. Sr. DR on the other hand submitted that department has filed written submissions , vide paper book-2 dated 28.02.2022(filed with tribunal on 03.03.2022) , which should be taken on record(Page A-U/PB dated 28.02.2022 filed by Department) . It was submitted by ld. Sr. DR that survey u/s 133A was conducted by Investigation Wing of department on 24.02.2012. It was submitted that silver ornaments of net weight 183.080 Kg. were seized by Railway (RPF) from Jodhpur-Howrah Express at Allahabad Junction on 29.11.2011, when they were transported from Agra to Mirzapur. The assessee owned up the said stock of silver ornaments being seized by RPF. The matter was before Railway Court. The ld. Sr. DR drew our attention to page 4-5/paper book-2 filed by department . Our attention was also drawn to Page 17-18/paper book-2 of PB filed by department , and it was submitted that the assessee is having two different sets of challans.It was submitted that the assessee is maintaining two different sets of challans. It was submitted that challans were produced before Court subsequently. Our attention was drawn to Page 6-7 of Paper Book-2 filed by Department , which is report of ACIT, Mirzapur to ADIT(Inv.). Our attention was also drawn to page 203,210 and 212 /paper book-I filed by the assessee. It was submitted by ld. Sr. DR that these are audited accounts of the assessee for the impugned assessment year, and there is an entry of DRI,Delhi Seizure of Rs. 2,31,364/- and it was submitted that the assessee is engaged in clandestine activities. Our attention was also drawn to Page G of written submissions filed by ld. Sr. DR. Our attention was also drawn to page 38-39 of PB-2 filed by department. Our attention was drawn to Para 2.2 of written submissions filed by department. It was submitted that two summons u/s 131 dated 27.02.2012 and 29.02.2012 were issued by ADIT(Inv.) to the assessee, and a subsequent letter dated 06.03.2012 was also sent to the assessee by ADIT(Inv.) , but the assessee did not responded to these summons u/s 131 and

letter sent by ADIT(Inv) which clearly indicates that the assessee did not want to extend co-operation to the department. It was submitted that the assessee avoided investigation. Our attention was also drawn to para 2.3 of written submissions filed by department. It was submitted that ADIT(Inv.) report , dated 16.04.2012 is enclosed in paper book-2 filed by department at page 67-72, and these are by way of post survey enquiries conducted by department. It was submitted that, however, department has not made any additions on the basis of seizure of silver ornaments by Railway Protection Force(RPF) on 29.11.2011, nor any additions have been made based on report of ADIT(Inv.). It was submitted that the AO made additions based on Survey conducted by Revenue u/s 133A on 24.02.2012 and on the basis of the assessment proceedings conducted by Revenue u/s 143(3) read with Section 143(2) of the 1961 Act. Our attention was drawn to Para 2.5 of written submissions filed by the department. Our attention was also drawn to Para 3.1 of written submissions filed by the department, which concerns with additions made on account of excess stock of silver ornaments found at Mirzapur-HO. Our attentions was drawn to assessment order passed by AO as well appellate order passed by ld. CIT(A) on this issue. It was submitted that the registered valuer computed purity of 65% while valuing silver ornaments at the time of Survey, while ld. CIT(A) computed purity of 55% without any basis. It was submitted that purity adopted by registered valuer is correct, as the registered valuer is an expert in this field. It was submitted that the purchase/sales bills are not showing any purity %age. It was submitted that in some of the biils , purity is recorded. With respect to claim of the assessee, as to error in weighment, it was submitted that the ld. Counsel for the assessee has claimed that box weight is not adjusted. It was submitted in rebuttal that some item may have been weighed with containers/boxes or with plastic bag, but the inventory shows that boxes weight was adjusted from gross weight. Our attention was drawn to page 237-243 of the PB-1 filed by the assessee. Our attention was also drawn to page 244-248 of PB-1

filed by assessee. These are valuation reports w.r.t. stock found during survey at Varanasi,Branch Office and Mirzapur Head Office. It was submitted that primary onus was discharged by the department by getting valuation done by Registered valuer . It was submitted by ld. Sr. DR that no valuation was done by assessee from their valuer , to counter the valuation of department. It was submitted that there was excess stock of gold ornaments found at Mirzapur HO, and our attention was drawn to para 3.2 of written submissions filed by department, and additions were made to the tune of Rs. 42,00,560/- by the AO. It was submitted that the assessee has supported excess stock by way of affidavits filed in 2015 of Mrs. Suman Agrawal and Mrs. Poonam Tripathi, which is after 3 years of survey conducted by Revenue in 2012. It was submitted that even in the aforesaid affidavits, there is no details of the items of gold jewellery belonging to Mrs. Suman Agrawal and of Mrs. Poonam Tripathi , as there is no specification/identification of items of gold jewellery claimed by them to belonging to Mrs. Suman Agrawal and Mrs. Poonam Tripathi. It was submitted that even in survey proceedings , the assessee never stated that which particulars items belonged to Mrs. Suman Agrawal. It was submitted that the assessee never stated during survey, that gold ornaments contained some items belonging to Mrs. Poonam Tripathi, as it is only at the stage of assessment , that the assessee came out with explanation that 202 gms of gold ornaments belonged to Mrs. Poonam Tripathi. There was no entry in books of accounts/stock records that the gold ornaments belonged to these two ladies, nor any slip etc was found during survey stating that these gold jewellery belonged to Mrs. Suman Agrawal and/or Mrs. Poonam Tripathi. It was submitted that it was merely an afterthought which the assessee is now coming out to explain excess stock of gold ornaments found during survey at Mirzapur HO. It was submitted by ld. Sr. DR that excess stock was unearthed during Survey. It was also submitted that unsubstantiated statement was made by the assessee during survey.It was submitted that name of Mrs. Poonam Tripathi was not referred to by the assessee

during survey, and it was only in assessment proceedings that the assessee came out with explanation that 202 gms of gold ornaments belonged to Mrs. Poonam Tripathi. The survey took place in 2012 while affidavits were filed in 2015 i.e. 3 years after survey. It was submitted that ld. CIT(A) grossly erred in relying on affidavit of Mrs. Suman Agrawal ,and relief was given wrongly by ld. CIT(A). It was submitted that there was no evidence found /filed by assessee to support the affidavit of Mrs. Suman Agrawal and Mrs. Poonam Tripathi. At this stage , the ld. counsel for the assessee intervened and submitted that no SCN was issued by AO to the assessee to file any further evidences, before making additions in the assessment order.With respect to additions of Rs. 2.38 lacs towards excess stock of Silver Bullion, confirmed by ld. CIT(A), the ld. Sr. DR relied upon the appellate order passed by ld. CIT(A). With respect to additions to the tune of Rs. 56.32 lacs made by the AO w.r.t. to discrepancy in stock of silver ornaments at Varanasi BO, the ld. Sr. DR submitted that the said addition was wrongly deleted by ld. CIT(A). Our attention was drawn to para 3.4 of written submissions filed by department.It was submitted that the claim of the assessee that it purchased artificial jewellery being Gillet Payal is an after thought. It was merely an accommodation entry and was a colorable transaction. It was submitted that there was unaccounted silver ornaments to the tune of 177.17 kgs found at Varanasi BO. It was submitted that out of total silver jewellery of 212.03 kgs being not entered in stock register, explanation of the assessee w.r.t. 34.826 kgs of silver jewelry was supported by a bill dated 21.02.2012 found during survey, and credit for 34.826 kgs were given by the AO itself and no addition were made to that . Thus, there was unaccounted silver ornaments of 177.174 kgs. , and the same was not supported by any invoice/books of accounts found during survey , which was treated as an excess stock. It was submitted during survey conducted by Revenue u/s 133A on 24.02.2012 , that the assessee did not gave any explanation for these excess stock. Even in post survey enquiry, ADIT issued 2 summons (dated 27.02.2012 and

29.02.2012) and one notice dated 06.03.2012 , but the assessee did not co-operated and did not respond to these summons as well notice. It was submitted that the assessee never traded in artificial silver jewelery in the past and as well in future, and this is the solitary transaction of alleged purchase of artificial silver ornaments viz. Gilet Payal which the assessee is trying to explain to justify unexplained stock of silver ornaments found during survey. It was submitted by ld. Sr. DR that the assessee is not engaged in the trading of artificial jewellery, and this fact was admitted by assessee itself that the assessee never dealt in artificial jewellery in the past prior to survey nor post survey, and this is the alleged sole transaction of artificial silver jewellery being Gilet Payal claimed to be entered into by the assessee. Our attention was drawn to page 47-48 of PB-2 filed by assessee ,and it was submitted that the entry w.r.t. 177.500 kgs of Gillet Payal was passed post survey.It was submitted that the assessee mixed up so called artificial silver jewellery with real silver jewellery in the display of jewellery in Varanasi premises (BO) which itself evidences that 177.500 Kgs of silver jewellery which is sought to be explained as artificial jewellery was in fact real silver jewelelry. It was submitted that the assessee is manufacturer of silver ornaments, the assessee is purchasing silver bullion/alloy to manufacture silver ornaments. Our attention was drawn by ld. Sr. DR to the tax-audit report for ay: 2011-12 , wherein there was silver bullion (silver ingot) purchase of 211.305 kgs (consumption 190.564 kgs.) and alloy purchased was 156.127 kgs (consumed 156.127 kgs.) , totaling 346.691 kgs.of consumption of silver ingot and Alloy. It was submitted net weight of silver jewelry ornaments manufactured was 345.637 kgs. as per tax-audit report, while 1.054 kg was metal wastage(page 153/PB-1 filed by assessee). It was submitted that silver ingot consumption was 190.564 kgs, while production of silver jewellery was 345.637 kgs, which translates into purity of 55%. It was submitted that in financial year 2011-12 , the assessee has shown no wastage in manufacturing of silver jewelry, while purity is shown at 40%. The next issue

argued by ld. Sr. DR is w.r.t. addition of Rs. 2.68 lacs made by the AO with respect to unrecorded gold ornaments at Varanasi of 128 gms.. It was submitted that purchase bills were produced subsequently , which were not found during survey. It was submitted that these bills were submitted post survey, and these bills start from days just before the date of survey viz. 24.02.2012. These bills are placed in PB-2 filed by assessee at page 88-101.It was submitted that there was no purchase of gold till the date of survey viz. 24.02.2011, and these purchases were claimed to be made from unregistered dealers. It was submitted that all these 14 bills are afterthought, and were produced after 3 years of survey and the explanation was given that these are purchases of old gold from unregistered dealers. It was submitted that no gold ornaments were manufactured by assessee. With respect to addition of Rs. 78,059/- made by the AO with regard to excess stock of Silver Bullion of 4.958 Kgs. found at Varanasi, it was submitted by ld. Sr. DR that no purchase bill was found during survey and there was no documents found in connection with purchase of these Silver Bullion and also that there was no entry in books of accounts of the assessee found at the time of Survey. It was submitted by ld. Sr. DR that after 3 years of survey, assessee came up with affidavit of Mr. Ghurahu Yadav, and claim is made that this silver bullion belonged to Mr. Ghurahu Yadav who left the said Silver Bullion with assessee for sale on 23.02.2012 but the transaction did not materialize , and it was later returned to Mr. Ghurahu Yadav on 27.02.2012. Thus, it was submitted that ld. CIT(A) rightly upheld the addition on this ground. With respect to cash physically found during survey at Varanasi, U.P. in excess of that recorded in cash book, the ld. Sr. DR submitted that it remained unexplained during survey , and while recording statement during survey. The ld. Sr. DR would rely on appellate order passed by ld. CIT(A). With respect to sources of cash deposits of Rs. 10.15 lacs in cash book of Mirzapur, HO , it was submitted that the cash was allegedly received from 2 related parties , namely M/s Shambhu Nath Agrawal Sarraf and M/s Raj Shree Palace. Our

attention was drawn by ld. Sr. DR to page 94-95/PB-1 filed by department. It was submitted that two different accounts were opened in the books of the assessee of M/s Shambhu Nath Agrawal Jewellers and M/s Shambhu Nath Agrawal Saraph(sic. Sarraf). In the first account, there was sale of 47,793/- of Silver Jewellery on 26.05.2011, for which payment of Rs. 47,800/- was received on 06.05.2011 through banking channel(credited on 11.05.2011 in bank account of the assessee with SBI, Mirzapur A/c No. 11137779012) . The bank statement / bank book of SBI is placed on record by assessee in PB-1 at page 191-194(PB filed by the assessee), while in the second account maintained in ledger , there were cash received of Rs. 7,00,000/- on different dates prior to date of survey viz. 24.02.2012 , starting from 01.04.2011(Rs. 1.0 lacs), 20.05.2011(Rs. 1.0 lacs) , 30.06.2011(Rs. 1.0 lacs) , 15.09.2011(Rs. 4.0 lacs) . It was submitted that the assessee has ostensibly shown sale of Rs. 7,07,002/- to M/s Shambhu Nath Agrawal Saraph(sic. Saraff) , which was shown post survey to adjust these cash receipts .It was submitted that the assessee has claimed that he is partner in the said firm Shambhu Nath Agrawal Saraff, but no evidence is placed on record. At this stage, it was submitted by ld. Counsel for the assessee that these entries were there in cash book found during survey which was impounded. Our attention was drawn by ld. Counsel for the assessee to Page 50/PB-1 filed by assessee, and it was submitted that at the time of survey itself these entries of cash received from M/s Shambhu Nath Agrawal Saraff , were found recorded in cash book. With respect to cash received of Rs. 3,15,000/- from M/s Raj Shree Palace, it was submitted by ld. Sr. DR that the assessee is proprietor of M/s Raj Shree Palace. The ld. Sr. DR submitted that ld. CIT(A) erred in deleting additions. With respect to addition of Rs. 34.82 lacs added by the AO on account of unexplained sundry creditors.Our attention was drawn to page 118-122 of PB-2 filed by department, which are copies of accounts of these creditors in the books of the assessee, and it was submitted that these confirmations are not signed by creditors. At this stage , the

counsel for the assessee stated that the assessee has filed duly signed confirmation by creditors, but these confirmations are not in PB filed with tribunal. The Division Bench asked department to file impounded material, for which ld. Sr. DR sought time, which was granted by the DB.

14d. The ld. Sr. DR submitted , when hearing effectively resumed, that relevant impounded material are filed on 21.07.2022 in the form of 3rd Paper Book(dated 20.07.2022) , carrying 229 pages. The said PB-3 filed by department is taken on record.The ld. Counsel for assessee submitted that department never summoned assessee, and these summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 were never received by the assessee. It was submitted by ld. Counsel for the assessee that the assessee duly co-operated during assessment proceedings as well during investigation proceedings conducted by department post survey. It was submitted that on 21.01.2012 i.e. prior to survey on 24.02.2012, statement of the assessee was recorded by department u/s 131. So far as summons sent u/s 131(1A) dated 27.02.2012 and 29.02.2012, and letter dated 06.03.2012 which were sent to assessee by investigation wing post survey, it was submitted by ld. Counsel for the assessee that these summons/letters were never received by the assessee. On the other hand, the ld. Sr. DR drew our attention to Annexure A-3 challan book for recording movement of goods from Mirzapur HO to Branch office at Varanasi(page 30-36 of PB-3 filed by department) . Our attention was drawn to Annexure A-5 , which is stock register of silver ornaments(page 43-54/PB-3 filed by department). Our attention was drawn by ld. Sr. DR to entry dated 29.11.2011, which shows that 183.080 kg (net weight) of silver ornaments were seized by RPF. Our attention was drawn to page 4-5 of PB-2 filed by department, which are challans bearing S.No. 4 and 5 both dated 28.11.2011 in favour of K.V.N.Payal , Salem, Tamil Nadu . Our attention was also drawn to page 17-18 of PB-2 filed by department, which are challan 004 and 005 dated 28.11.2011 in favour of K.V.N.Payal, Salem , TN. It was submitted that two different

sets of challans are kept/maintained by the assessee. It was submitted that survey took place on 24.02.2012.It was submitted that challans were manipulated. It was submitted that stock register of silver ornaments were kept, while no stock register was kept of gold ornaments as well silver bullion.Our attention was drawn by ld. Sr. DR to A-6/PB-2(page 55-91) filed by department, which is impounded ledger book of financial year 2011-12 i.e. year under consideration. It was submitted by ld. Sr. DR that gold ornaments claimed by Mrs. Suman Agrawal to be belonging to her was not recorded in these impounded documents. It was submitted by ld. Counsel for the assessee in rebuttal that the books of accounts were not updated , when survey took place on 24.02.2012. It was submitted by ld. Counsel for the assessee that Mrs. Suman Agrawal kept her jewellery for safe keeping at Mirzapur HO premises , as she was going to her parent house. It was submitted by ld. Sr. DR that there is an understatement of investment in gold ornaments found during survey. Our attention was drawn to page 35/PB-2 filed by department, which is the inventory of gold ornaments and valuation done by registered valuer, on the date of survey. It was submitted by ld. Sr. DR that no explanation was given about gold ornaments claimed to be belonging to Mrs. Suman Agrawal and Mrs. Poonam Tripathi. There was no entry in the ledger in the name of Mrs. Suman Agrawal and Mrs. Poonam Tripathi, with respect to their gold ornaments claimed to be received by the assessee, nor any chit is found during survey. It was submitted that this is nothing but the undisclosed stock of the assessee found during course of Survey proceedings conducted at Mirzapur HO premises . It was submitted by ld. Sr. DR that affidavits filed by Mrs. Suman Agrawal and Mrs. Poonam Tripathi are self serving documents, and are merely after thought to justify their stand which were filed in 2015 i.e. after three years of the date of survey on 24.02.2012. It was submitted that there was no corroboration by way of independent evidence which was filed by the assessee. Our attention was drawn by ld. Sr. DR to the impounded ledger and the account of

M/s Shambhu Nath Agrawal Saraff, which is placed at page 60 and 62 of paper book-3 filed by department. It was submitted that the assessee is claiming the same to be advances received in cash at various dates to the tune of Rs. 7.00 lacs which were all received in cash on different dates as advance against alleged sale of jewellery , as under:

S.No.	Date	Concerned Perons/Firm name	Amount
1	01.04.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
2	20.05.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
3	30.06.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
4	15.09.2011	Shambhoo Nath Agrawal Sarraf	Rs. 4,00,000/-
5	24.05.2011	Raj Shree Palace	Rs.1,00,000/-
6	01.06.2011	Raj Shree Palace	Rs.1,00,000/-
7	13.12.2011	Raj Shree Palace	Rs. 65,000/-
8	30.01.2012	Raj Shree Palace	Rs. 50,000/-
		Total	**Rs. 10,15,000/-**

Our attention was drawn to page 62 of PB-3 filed by department, wherein there was sale of 47,793/- of Silver Jewellery on 26.05.2011 to M/s Shambhoo Nath Agrawal Saraf, for which payment of Rs. 47,800/- was received on 06.05.2011 through banking channel(credited on 11.05.2011 in bank account of the assessee with SBI, Mirzapur A/c No. 11137779012) . The bank statement / bank book of SBI is placed on record by assessee in PB-1 at page 191-194(PB filed by assessee), while in the second ledger account , there were cash received of Rs. 7,00,000/- on different dates prior to survey on 24.02.2012 , starting from 01.04.2011(Rs. 1.0 lacs), 20.05.2011(Rs. 1.0 lacs) , 30.06.2011(Rs. 1.0 lacs) , 15.09.2011(Rs. 4.0 lacs) . It was submitted that the assessee has ostensibly shown sale of Rs. 7,07,002/- to M/s Shambhu Nath Agrawal Saraf, which was effected post survey. It was submitted that the assessee has claimed that he is partner of M/s Shambhoo Nath Agrawal Saraf, but there is no evidence filed by the assessee to substantiate the same. It was submitted that it is only after Survey , that the assessee has adjusted

the said amount of cash receipt of Rs. 7 lacs from M/s Shambhoo Nath Agrawal Saraf , by booking sale of jewellery in the same financial year but which is after the date of survey . It was submitted by ld. Sr. DR that Section 68 is hit and addition has been rightly made by the AO. The assessee has not filed any other details of M/s Shambhoo Nath Agrawal Saraf. Our attention was drawn by ld. Sr. DR to page 61 of PB-3 filed by the department, and it was submitted that this is the impounded ledger of M/s Raj Shree Palace, , where the assessee is proprietor. These are cash credit entries aggregating to Rs. 3,15,000/- received in cash , which were received from 24.05.2011 to 30.01.2012. It was submitted that the AO made additions by invoking provision of Section 68. Our attention was drawn to page 63/PB-3 filed by the department, and it was submitted that this is impounded ledger of Silver Bullion showing balance of Rs. 83,380/- and there is no mention of quantitative details. Our attention was drawn to Page 34-35 of Paper Book-2 filed by department, and it was submitted this is a valuation report of registered valuer valuing Silver Bullion found at Mirzapur HO, where in stock found was 6.180kg which was valued at Rs. 2,38,702/- by registered valuer on the date of survey. Our attention was drawn to Page M of written submissions filed by department in PB-2, and it was submitted that no quantitative details of Silver Bullion was maintained by the assessee, and hence additions were made by the AO of the excess stock of Silver Bullion found during survey was justified. Our attention was drawn to page 64. Our attention was drawn to Page 64,65 and 67 of PB-3 filed by department, which are impounded ledger accounts of stock. Our attention was drawn to Page 67/PB-3 filed by department, which is impounded ledger account of gold ornaments, and value comes to Rs. 7.33 lacs, while as per PB-2/page 35(PB filed by department) , physical stock of gold ornaments of 2.08 Kgs. found during survey at Mirzapur was valued by registered valuer at Rs. 42 lacs, which was unexplained stock of gold ornaments and addition was rightly made by the AO. Our attention was drawn by ld. Sr. DR to page 28/PB-3 filed by department, and it

was submitted that these are sale bills of gold ornaments of 450 gms, and this sale is dated 01.02.2012 amounting to Rs. 9.90 lacs which is not accounted for in the books and is sale out of books. Our attention was drawn to Page 67 of PB-3 . It was submitted that the names of Mrs. Suman Agrawal and Mrs. Poonam Tripathi did not found mentioned in impounded ledger of gold ornaments (page 67/PB-3 filed by deptt.). With respect to claim of the assessee as to artificial jewellery at Varanasi being Gillet Payal, it was submitted by ld. Sr. DR that this was an excess stock found during Survey. There was no bill found during the course of Survey. It was submitted that the assessee is claiming that the bill was with employee. The assessee has shown payment made for purchase of Gillet Payal, which was cleared much after on 03.03.2012, while survey took place on 24.02.2012. It was submitted that the entry for the so called Gillet Payal was not found recorded in stock records, during survey and even cheque paid for alleged purchase of Gillet Payal was not found recorded in the books of accounts, at the time of survey conducted by Revenue u/s 133A. It was submitted that cheque was issued subsequently to cover up stock found during survey, and this claim of artificial jewelry was an afterthought. The assessee has never in the past dealt with artificial jewelry nor the assessee dealt with artificial jewelry in future. This artificial jewelry also remained unsold. Our attention was drawn to page 86 of PB-3 filed by department, and it was submitted that this is an impounded ledger account of M/s. Vari Payal and there is one transaction of Rs. 73,770/- on 12.08.2011 which was towards Manufacturing Expenses(also refer page 141 of PB-1 filed by assessee). It was submitted that the AO made additions by invoking Section 68, as confirmations from these creditors as well complete details of these creditors , were not filed by the assessee during assessment proceedings .Our attention was also drawn to page 87-89 of PB-3 filed by department , which are ledger accounts of M/s R G Ornaments, M/s. Dashrath Silver Art Private Limited and M/s. Sati Ram, and it was submitted that additions were made by the AO by

invoking provisions of Section 68. Our attention was drawn to cash book found during survey , which was impounded, placed at page 92-95 /PB-3 filed by department. Our attention was also drawn to Annexure A-8, which is journal impounded during survey, placed in PB-3/page 96-98 filed by department. Our attention was also drawn to Annexure A-10/page 114-141, which are loose papers impounded during survey, and it was submitted that no evidence was found regarding gold ornaments claimed to be belonging to Mrs. Suman Agrawal and Mrs. Poonam Tripathi. Our attention was also drawn to documents impounded from Varanasi BO. It was submitted that there was no direct purchases by Varanasi Branch Office from any party , and there are only transfers from Mirzapur HO to Varanasi BO. Our attention was drawn to stock register of silver ornaments , which was impounded by Revenue(Page 145-148/PB-3 filed by department). It was submitted that the stock of 453.900 Kgs was the stock shown in stock register, while physical stock found on date of survey on 24.02.2012 was 665.93Kgs. .It was submitted by ld. Sr. DR that claim of the assessee that there was purchase of artificial silver ornaments being Gillet Payal of 177.500 Kgs , was merely an afterthought. Our attention was drawn to page 49-55 of PB-2 filed by department., and it was submitted that this is a valuation report prepared by registered valuer at Varanasi. The purity of silver ornament was assessed at 52%. It was submitted that excess stock of 212.030 Kg. was found during survey.It was submitted by ld. Sr. DR that no stock records were maintained for gold ornaments and silver bullion. Our attention was drawn to page 149-153/PB -3 filed by department and it was submitted that these are ledger account maintained at Varanasi B.O. . It was submitted that ledger account of silver ornaments were maintained and our attention was drawn to page 152/PB-3 filed by department.Our attention was drawn to page 153 /PB-3 (PB filed by department), and it was submitted that as per impounded document, stock of gold ornaments is Nil while gold ornaments found during survey at Varanasi BO was 128 gms. It was

submitted that the assessee tried to explain that it purchased gold ornaments from 14 persons who are not registered dealers. The affidavits were filed in 2015 which is after 3 years from the date of survey u/s 133A conducted by Revenue, on 24.02.2012.It was submitted that there was no evidence found during survey, which could justify that the assessee was having 128 gms of gold ornaments at Varanasi BO, and it was submitted that the AO was justified in making additions. Our attention was drawn by ld. Sr. DR to page 154-157 of PB-3 filed by department, and it was submitted that these are ledger account of shop expenses upto 07.01.2012. It was submitted that excess silver ornaments of 212.03 kgs were found during survey at Varanasi BO. It was submitted by ld. Sr. DR that Mr. Shiv Bachan Yadav, Manager of the Varanasi BO accepted correctness of purity as assessed by Valuer . Mr. Shiv Bachan Yadav submitted that the assessee will explain about stock found during survey. It was submitted that assessee was also asked about the purity at Mirzapur , and the assessee submitted that everything is in the books and Munim will come and explain. It was submitted that the owner Mr. Neeraj Agrawal did not explain the differences in quantity as well purity, and the owner did not co-operated during Survey as well post survey enquiries. It was submitted that it is only on 13.02.2015 during assessment proceedings , the assessee explained that the excess stock of silver ornaments of 177.500 kgs found during survey was artificial jewellery being Gillet Payal allegedly purchased from R S Bullions and Jewellers. It was submitted that the assessee claimed to have allegedly purchased these artificial silver Jewellery Gillet Payal only on 23.02.2012 and was brought on the Varanasi shop on the date of survey in the morning before the start of survey proceedings. It was submitted that the assessee is claiming that the person/employee of the assessee went to Agra to purchase these alleged artificial jewellery. It was submitted that it was an afterthought and even no documents substantiating that this transaction took place , was found during the course of survey proceedings .The ledger account of shop expenses was

maintained until 07.01.2012, and no bill was found for journey undertaken for visiting Agra and return to Allahabad. It was submitted that it was merely an afterthought and purchase of artificial silver jewellery viz. Gillet Payal was merely an accommodation entry, and it was the undisclosed /unexplained stock of the assessee of the silver ornaments, which was rightly brought to tax by AO.It was submitted by ld. Sr. DR that the ld. Counsel for the assessee has claimed before tribunal that ADIT(Inv.) conducted investigation from sundry creditors and additions were made, but it was submitted by ld. Sr. DR that no summons were issued by ADIT to sundry creditors u/s 131. The ld. Sr. DR prays that the appeal of Revenue be allowed and that of the assessee be dismissed.

14e. In rejoinder, the ld. Counsel for the assessee drew our attention to Department PB-2/written submissions at Page F, and it was submitted that so far as seizure of silver ornaments by RPF on 29.11.2011 of 183.080kg(net weight), this issue does not arises from assessment order.It was submitted that the AO never raised this issue of Seizure of silver ornaments by RPF , while framing assessment , and now this issue cannot be raised for the first time before tribunal, by Revenue. Our attention was drawn by ld. Counsel for the assessee to PB-2/page 3 and it was submitted that SCN was issued by Commercial Tax Department , U.P. based on newspaper reports appearing on 01.12.2011. It was submitted that no documents were found along with silver ornaments which were seized by RPF. Our attention was drawn to challan 4 and 5. It was submitted by ld. Counsel for the assessee that challans placed at page 4-5 of PB-2 filed by department are forged documents. Our attention was drawn to Page 1 /PB-2 filed by department. Our attention was also drawn to page 6-7 of PB-2 filed by department , and it was submitted that challans stated to be seized by RPF were forged. Our attention was drawn to page 10, which is statement recorded on 21.1.2012 of Shri Neeraj Agrawal, the assessee and it was submitted that items were regularly sent to Salem, Tamil Nadu for repairs. On being asked by the Bench to demonstrate other

transactions of sending material to Salem, T N for repair, it was submitted by ld. Counsel for the assessee that no other item was sent to Tamil Nadu for repairs. Our attention was drawn to page 51/PB-3 filed by department , and it was submitted that there is an entry in stock register of 183.293 kgs of silver ornaments w.r.t. items being sent to Salem, TN. Our attention was drawn to Page 37/PB-1/filed by department, and it was submitted that there is an entry of these silver ornaments seized by RPF on 29.11.2011 in the audited Balance Sheet. Our attention was drawn to question number 8 of statement recorded on 24.02.2012 u/s 133A(3)(iii) of the 1961 Act, of Mr. Neeraj Agrawal, wherein he explained the source of these silver ornaments (page 225/PB-1 filed by assessee). On being asked by the Bench, the ld. Counsel for the assessee submitted that there was no VAT form issued for movement of goods from U.P. to Tamil Nadu, to cover aforesaid movement of silver ornaments on 28/29.11.2011. Thus, the claim of the assessee that movement of Silver Ornaments on 29.11.2011 from U.P. to Salem, TN for repairs was not recorded with the VAT department at U.P. as well at Tamil Nadu. It was , however, submitted that silver ornaments seized by RPF were later released under the orders of the Court dated 07.09.2012 , subject to furnishing of Bond. The silver ornaments were released by RPF in pursuant to court orders, and were received in stock on 25.09.2012. These silver ornaments were sent to Salem, TN on 13.01.2013 . The silver ornaments were sent back from Salem to Mirzapur after repairs , on 19.01.2013. The entry was made for receipt of silver ornaments in stock register, on 23.01.2013. It was submitted that survey u/s 133A was conducted by Revenue on 24.02.2012, and no summons dated 27.02.2012 and 29.02.2012 were received from investigation wing post completion of Survey , on 24.02.2012 as claimed by Revenue and also no letter dated 06.03.2012 was received by the assessee. Our attention was drawn to Page 229/of PB-3 filed by the department. It was submitted that the assessee fully co-operated with department. It was submitted that no SCN was issued by AO before making

additions in the assessment order. It was submitted that there was bias/prejudice adopted by Revenue officials against the assessee. It was submitted that the AO erred in rejecting books of accounts u/s 145(3). It was submitted that confirmations from sundry creditors were called directly by the investigation wing. Our attention was drawn to page 3/PB-1 filed by the assessee, where list of sundry creditors as on 31.03.2012 is placed. It was submitted that ld. CIT(A) deleted all the additions of Rs. 34,82,707/- made by the AO. Our attention was drawn to Page 133-134 of PB-1 filed by the assessee, which are the accounts of M/s Dashrath Silver Art Private Limited & M/s R G Ornaments , in the books of the assessee. Our attention was drawn to page 140-141 of PB-1 filed by assessee, which are ledger accounts of these parties in the books of the assessee. Our attention was drawn to Page 41-46 of PB-2 filed by the assessee , and it was submitted that ld. CIT(A) rightly deleted the additions on account of sundry creditors. With respect to additions of Rs. 28,12,000/- made by the AO with respect to unsecured loans raised by the assessee,it was submitted that all the confirmations were before the AO. Our attention was drawn to Page 7-39/PB-2 filed by the assessee.With respect of unsecured loan from Shri Gopi Nath Agrawal, wherein confirmation could not be submitted , it was submitted by ld. Counsel for the assessee that Shri Gopi Nath Agrawal was not well when confirmations were sought, and he died on 01.04.15, and death certificate is now submitted before the tribunal. It was submitted that the aforesaid amount raised by the assessee as unsecured loan from Mr. Gopi Nath Agrawal is still not paid back , as there is a dispute between the sons of Shri Gopi Nath Agrawal. It was submitted that no bank statement was given by both the sons. It was submitted that in the case of unsecured loans raised by the assessee, the parties have deposited cash in their bank accounts before issung cheque to the assessee, but their confirmation/ ITR ,bank statements etc were duly filed. The ld. Counsel for the assessee drew attention to each of the loan confirmation given by these parties as well bank

statements, ITR filed by them . It was submitted that ld. CIT(A) rightly deleted additions, except in the case of Mr. Gopi Nath Agrawal. It was prayed that even in the case of Mr. Gopi Nath Agrawal , keeping in view facts and circumstances explained above, the addition is not sustainable. It was submitted that no interest u/s 234B and 234C could be levied as notice of demand is dated 24.03.2015 , which is not part of assessment order dated 20.03.2015. On the other hand, the ld. Sr. DR relied upon decision of Hon'ble Supreme Court in the case of Kalyan Kumar Ray(supra). Both the ld. Counsel for the assessee as well ld. Sr. DR reiterated gist of their contentions.

15. We have carefully considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee is engaged in the business of Trading and Manufacturing of Silver Jewellery ,Trading of Gold Jewellery , utensil and Silver Bullion in the proprietary concern namely M/s Raj Shree Jewellers . The said Raj Shree Jewellers has Head Office(HO) at Mirzapur, U.P. , while Branch Office(BO) is at Varanasi, U.P.. The assessee also runs cinema hall in the name and style of Rajshree Palace, Mirzapur,U.P. . There was a survey operations conducted by Investigation wing of the Department , Allahabad u/s 133A at the business premises of M/s Raj Shree Jewellers, both H.O. at Basnahi Bazar ,Mirzapur, U.P. and at B.O. at Sudiya Varanasi, U.P., on 24.02.2012, simultaneously. The assessee filed return of income for impugned assessment year on 15.09.2012, declaring income of Rs. 30,31,050/- , which was selected by Revenue for framing scrutiny assessment u/s 143(3) read with Section 143(2) of the 1961 Act. Statutory notices u/s 143(2) and 142(1) were issued by the AO from time to time during assessment proceedings as are recorded in assessment order , and the same were claimed to have been served on the assessee. The assessment proceedings conducted by AO culminated into an assessment order dated 20.03.2015 passed by AO u/s 143(2), assessing income of the assessee at Rs.2,14,71,400/- , as against returned income of Rs. 30,31,050/- . The assessee

filed first appeal with learned CIT(A) , which stood partly allowed by ld. CIT(A) , vide appellate order dated 07.03.2017. Being aggrieved , Both assessee and Revenue have now filed cross appeal before tribunal. The proceedings before the AO as well ld. CIT(A) are being elaborately recapitulated in the preceding para's of this order. During Survey proceedings, the books of accounts were found not complete uptodate. The department impounded books of accounts and other documents found during the survey proceedings, at both the premises of Raj Shree Jewellers surveyed u/s 133A viz. at Mirzapur (H.O.) as well at Varanasi(B.O.) Further, the stock register was found to be maintained by assessee only for silver ornaments/jewellery , while no stock register was found to be maintained by assessee for Silver Bullion and Gold Jewellery. The assessee stated that he will maintain stock register for Gold Jewellery and Silver Bullion from next year. Regarding completion of books of accounts, it was stated that accountant of the assessee is not well , and he will come and update the impounded books of accounts. The stock which was physically found at both the aforesaid premises, was got valued by department through registered valuer. Before proceeding further, it will be relevant to mention here that there was seizure by Railway Authorities by Railway Protection Force of silver ornaments aggregating to 188.220 kgs(gross weight) (net weight 183.293 kgs) from the possession of two persons on 29.11.2011 while travelling in the train Jodhpur-Howrah Express at Allahabad Junction, without proper documents. The assessee claimed ownership of these silver ornaments, which silver ornaments were seized by RPF . The assessee also claimed that the persons who were carrying slver ornaments in the train on 29.11.2011 are his employees. This information was passed on by Railway Authorities to Income-tax department. Statement of the assessee u/s 131(1)(d) was recorded by Department on 21.01.2012. Survey u/s 133A was conducted by Revenue on 24.02.2012. However, no addition to the income of the assessee was made by the AO with respect to the aforesaid seizure of 188

kgs(gross weight) (net weight 183.293 kgs) of silver ornaments on 29.11.2011 by RPF, and the matter rested there. The ld. CIT(A) also did not invoked his enhancement powers as are vested u/s 251(1)(a) of the 1961 Act. Even , no ground of appeal to that effect is raised by Revenue , before the tribunal. Now, we will proceed to adjudicate additions as were made by the AO , and as adjudicated by ld. CIT(A) , because for the relief granted by ld. CIT(A) the Revenue has filed an appeal with tribunal, and for the additions sustained by ld. CIT(A) the assessee has now filed an appeal with tribunal.

15A) **Differences in Stock at Mirzapur H.O.**

On reconciliation of physical stock found during survey on 24.02.2012 and stock as per books of account/records kept by the assessee, the AO observed that the following differences were worked out in the case of **Mirzapur premises(HO)** of the assessee , detailed as under:

Type of Stock	***Physical stock found as per inventory (in K.G.)***	***Stock shown in the Stock register kept, if any (in K.G.)***	***Difference (in K.G.)***
Silver Items/Jewellery	*250.06*	*246.74*	*3.32*
Gold Jewellery	*2.09*	*0*	*2.09*
Silver Bullions	*6.18*	*0*	*6.18*

The assessee was asked by AO to explain the aforesaid differences between physical stock and stock as per books of account/records kept by the assessee. The assessee filed following reply before the AO, stating as under:

(i)चॉदी के आभूषण में

सर्वे के दौरान प्राप्त (के.जी. में)	लेखा पुस्तक के अनुसार (के.जी. में)	अन्तर (के.जी. में)
250.06	246.741	3.32

यहकि 3.32 के.जी. चॉदी के आभूषण में जो अन्तर है वह तौलने वाले की भूल है मेरे द्वारा उसी समय आपत्ति किया गया था कि आप पुनः तौले परन्तु ऐसा नही किया गया जबकि मेरे द्वारा वैल्युवर रिपोर्ट पर हस्ताक्षर आपत्ति के साथ किया गया है। यह अन्तर प्लास्टिक डिब्बा में रखकर तौलने के कारण हुआ है। यदि मेरी बात मानते हुए पुनः वजन कराते तो तौल सही आता।

(ii)सोने के आभूषण

सर्वे के दौरान प्राप्त (के.जी. में)	लेखा पुस्तक के अनुसार (के.जी. में)	अन्तर (के.जी. में)
2.090	1.033.180	1.057

यहकि लेखा पुस्तक के अनुसार 1.033.180 सोने का आभूषण दिनांक 22.02.2012 तक का स्टॉक है उसके बाद दिनांक 23.02.2012 को मेरी पत्नी श्रीमती सुमन अग्रवाल का जेवर 850.800 ग्राम दुकान के लॉकर में सुरक्षार्थ रखने हेतु दिया गया था इस सम्बन्ध में सुमन अग्रवाल का शपथ पत्र संलग्न है। सोने का जेवर स्टॉक रजिस्टर न रखने के कारण लेखा पुस्तक में सोने का आभूषण की स्थिति स्पष्ट नही किया जा सका था। लेखा पुस्तक के अनुसार सोने के आभूषण का स्टॉक की स्थिति बनाकर संलग्न कर रहे है। 202 ग्राम सोने के आभूषण श्रीमती पूनम त्रिपाठी पत्नी श्री कुलपति त्रिपाठी निवासी मकरी खोह, मीरजापुर द्वारा आभूषण का मूल्यांकन कराने हेतु दिनांक 24.02.2012 को सुबह 10:30 बजे लेकर आई थी मेरे न रहने के कारण मेरे कर्मचारी शरद अग्रवाल के पास छोड़कर चली गयी थी। बाद में दिनांक 25.02.2012 को सुबह मुल्यांकन कराके अपना जेवर वापस ले गई। इस प्रकार लेखा पुस्तक में 1 के.जी. 33 ग्राम 180 मिली. ग्राम एवं पत्नी श्रीमती सुमन अग्रवाल का आभूषण 850 ग्राम एवं श्रीमती पूनम त्रिपाठी का 202 ग्राम कुल 2.085 के.जी. सर्वे के दौरान दुकान पर था। इस प्रकार मात्र 4 ग्राम तौल का अन्तर है जो प्लास्टिक पन्नी/नग का अन्तर है।

(iii) चॉदी के बुलियन

सर्वे के दौरान प्राप्त (किग्रा में)	लेखा पुस्तक के अनुसार (किग्रा में)	अन्तर
6.180	5.751	443 ग्राम

क्रमशः पेज 3

यहकि लेखा पुस्तक के अनुसार 5.751 के.जी. चॉदी बूलियन का स्टॉक था परन्तु सर्वे अधिकारी द्वारा लेखा पुस्तक के अनुसार स्टॉक चेक नही किया गया जिसके कारण लेखा पुस्तक के अनुसार स्टॉक स्वतः शुन्य लिख दिया गया जबकि लेखा पुस्तक अभिग्रहित है। प्रार्थी स्टॉक विवरण बनाकर संलग्न कर रहा है शेष 429 ग्राम तौल का अन्तर है। मेरे द्वारा पुनः तौलने के लिए कहा गया लेकिन सर्वे अधिकारी द्वारा नही तौला गया।

The AO considered the explanations of the assessee and observed that the assessee has not kept proper and adequate records to substantiate the quantity of the stock at any given date and time, and it was observed by the AO that the arguments extended by the assessee cannot be relied upon for the following reasons:

> *"(i) In case of Silver Jewellery. The contention of the assessee is not admissible because of the fact that the valuation of the said jewellery has not been done by the Department. It has been done by an independent person having adequate expertise and experience who is authorized for the valuation of the jewellery and enjoys the status of a registered valuer for this purpose. Therefore, the objection of the assessee had no meaning, during the course of survey proceedings as well as during the course of assessment proceedings. Merely signing the valuation sheet 'under protest' does not exonerate the assessee from the onus to prove his contention. The objections to the correctness of valution are without any specification whatsoever regarding the type of mistake which has occurred during the course of valuation. The relevant portion of the statement given on this issue is reproduced hereunder for the sake of clarity:*

"दुकान पर 246.741 स्तोक्क है आपके द्वरा 250.06 किलोग्राम तौला गया है उसमे कुछ भूल हुयी है आप चाहें तो पुनः तौल सकते hai."

3.2(b) Actually, no specification regarding the kind of mistake has been given, therefore, it becomes clear that the assessee is apparently contending just to create a ground for unnecessary litigation in order to avoid payment of correct amount of taxes which he cannot be allowed to resort to. Merely saying that कुछ भूल हुई है*is not sufficient to admit the contention of the assessee.*

3.2(c) It is imperative to mention that during the course of the survey proceedings, the valuation of stock was done by the registered valuer in front of Sri Sharad Agrawal, the employee of the assessee firm who did not point out any kind of mistake whatsoever. This also means the assessee is contending the issue with clear intention to mislead the Department. [Page 4, Question No. (iii) and concerned reply at Page 5, Reply No. (iii) of the statement recorded during the course of survey]

3.2(d). In the light of these facts of the case, the claim of the assessee cannot be treated to be reliable and is accordingly rejected and the differential amount of stock is treated as undisclosed stock. The value of investment is taken at the prevailing rates as on date of survey as specified by the registered valuer.

Amount of undisclosed stock =3.32 K.G.

Gross value of investment @ 57,800/-per K.G. = 3.32x57,800 = 1,91,896/-.

Net Value of investment @65% (average of the purity), as specified by the valuer=1,24,732/-.

This addition is, being made u/s 69B of the Income Tax Act, 1961.Penalty proceedings u/s 271(1)(c)is being initiated separately for concealment of income.

Addition of Rs.1,24,732/-

(ii) Regarding Gold jewellery:

Apparently, on the basis of the past history of the assessee that he does not file the quantitative details of the stock kept by him either in the audit report or in the Form 3CD, the survey action was conducted by the Investigation Wing of the Department and when the assessee was caught on wrong footing, unsubstantiated explanation has been offered by the assessee during the course of survey as well as during the course of assessment proceedings. This fact can be easily understood even by a common man that keeping personal jewellery at home where the entire family of the assessee lives, is always better and safer, as compared to keeping the same at the shop where nobody stays during the nights. The affidavit of Smt. Suman Agrawal, dated 12.02.2015, is meaningless and vitiated because of the mere fact that the arguments and reasons contained therein are not substantiated with any material evidence whatsoever. Similar is the case of Smt. Poonam Tripathi. If, at all it was necessary and expedient to keep the said personal jewellery at the shop at Mirzapur, necessary documents indicating the said safe deposit should have been found/produced during the course of survey itself. In absence of any document whatsoever indicating safe deposit of jewellery of the wife of the assessee as well as Smt. Poonam Tripathi, the affidavits dated 12.02.2015 cannot be accepted. Further, the claim of the assessee that they have shown gold jewellery to the extent of 1033.180gms in the books of account is grossly incorrect as per the findings transpired in the survey proceedings. No stock register or other documents were either found during the course of the survey, nor could the same be explained during the course of the assessment proceedings. In these circumstances, the contention of the assessee cannot be accepted. The value of investment as worked out by the registered valuer i.e. Rs. 42,00,560/-is being added to the total income of the assessee u/s 69B of the Income Tax Act, 1961.Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 42,00,560/-

(iii) Regarding Silver Bullions:

Likewise, the submissions regarding silver bullion is also grossly misleading because no such stock register or composite stock register has been either found during the

course of survey or during the course of assessment proceedings. Therefore, the entire differential amount as already tabulated above, is being treated as undisclosed stock and the purity of the silver bullion is taken as valued by the registered valuer (as mentioned on the inventory concerned), i.e. Rs. 2,38,702/- .Accordingly, the addition of Rs. 2,38,702/-is being made to the total income of the assessee u/s 69B of the Act. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 2,38,702/-"

The ld. CIT(A) gave partial relief to the assessee , by holding with respect to these aforesaid additions w.r.t. differences in stock at Mirzapur , by holding as under:-

"4.1. <u>Discussion:</u>

Facts are that the appellant is an individual and proprietor of M/s Raj Shree Jewellers, Basnahi Bazar, Mirzapur, Uttar Pradesh-231001, and is into the business of trading in silver jewellery, gold jewellery and silver bullions since many years. Survey operations under section 133A of the income tax Act, 1961 were conducted at the business premises of the appellant on 24.02.2012 i.e. during the financial year 2011-12. The Assessing officer has made an addition on account of excess stock of silver jewellery, gold jewellery and silver bullion found in Mirzapur premises. I deal with each of these as under:

4.1.1 In case of Silver jewellery, the dispute is of weight and purity of silver jewellery. I have considered the statement recorded during the course of the survey proceedings, documents impounded during survey, documents submitted by the appellant during the time of assessment proceedings, assessment order and various submissions of the appellant. It has also been noted from the statement recorded during the course of survey that the appellant had requested the survey team to do the weight again but his request had been declined.

<u>4.1.2 Decision:</u>

As far as the weight of silver articles is concerned, the same had been weighed in presence of the assessee and/or his employees in the business premises of the assessee. During the weighement process, no objections were raised. It was only when the weight was found to be in excess that such an objection was raised. It has to be noted that these were survey proceedings and not search proceedings where the assets found could be put under prohibitory orders and the proceedings could be continued on any other day. On perusal of the valuation report (which has been submitted at pages 244 to 246 of the PB of the assessee), it is seen that the weighement has been done v meticulously. The assessee has also failed to give any reasons as to why the weighment was incorrect apart from making general averments. Accordingly, the objection raised by the assessee on account of weighment has no merit and is, therefore, rejected. As regards the purity of these silver articles, the departmental valuer has adopted the purity of silver articles at varying percentages, avg. of which comes to about 65%. I agree with the submissions of the assessee that the valuer has adopted the percentages of purity of the silver articles on no scientific basis. The assessee has filed certain tunch certificates, but these certificates are much after the date of survey and, therefore, not much reliance can be placed for evaluating the purity of the silver articles found during the course of survey. The Ld. AR has strongly relied on the quantitative details which had allegedly been filed along with the return of the income. I have gone through the said quantitative details and I find that there is no mention of the purity % of silver in silver articles. Thus, as far as purity of silver is concerned, no reliance can be placed on these quantitative details too. I had requested the assessee to file tunch certificates obtained for the silver articles purchased or sold during the year and before the date of survey, however, no such tunch certificates were produced. I had also requested the assessee to produce the bills of purchase or sales which could demonstrate the purity of silver in silver articles, but no such bills of purchases or sales were produced which could help me in verifying the purity of silver in those silver articles. It is equally true that the purity % as determined by the departmental valuer is without any scientific basis and, therefore, cannot be accepted at its face value. In a similar case of survey, after due analysis of the trends as prevailing in this part of U.P., I had estimated the purity of silver jewellery at 55%. (which includes making charges @ 12-15%). The

same % age is being adopted for this case too. The A.O.is directed to re-compute the value of excess stock accordingly

4.1.3 *In case of Gold jewellery, the dispute is of stock of gold jewellery before the date of survey. On perusal of the details as submitted by the assessee, it is seen that the assessee had an op. bal of 10 gm of gold jewellery. During the year, the assessee had made purchases of the following gold jewellery: 225.8 gm from one Om prakash Tiwari on 12.10.2011; 311.0 gm from one Sri Santosh Kumar singh on 14.10.2011 and 936.480 gm from one Sati Developers n Towers Pvt. ltd on 7.02.2012. All these purchase entries appear in the books impounded during the course of survey proceedings. Reference has been made to page 7 of the khatabahi, a copy of the same had been produced before me. The assessee has also shown that it had sold 450.1 gm to one Dhiraj jewelers on 1.02.2012. The relevant sale bill had also been impounded by the department, a copy of which appears at page 75 of the PB2. Thus, it has to be held that at the time of survey, the assessee had a net balance of 1033.180 gm of gold jewellery. The assessee had also stated during the course of his statement that gold jewellery weighing 850 gm belonging to his wife Suman Agarwal was lying in the shop. An affidavit to that effect was also submitted by her during the course of the assessment proceedings. The AO has doubted the veracity of the same and did not allow that benefit to the assessee. To my mind, the contention of the assessee that the gold jewellery of his wife was lying in the shop sounds incredible, yet the benefit of doubt has to be given to the assessee since he had mentioned about this fact during the course of the survey proceedings itself and thus, cannot be discarded as an afterthought. Accordingly, the AO is directed to accept further 850 gm of gold jewellery as explained. As far as the affidavit of Poonam Tripathi is concerned, it appears to be totally an afterthought as this fact was never mentioned by the assessee during the course of the survey, nor any slip or any noting in this regard was found nor the said jewellery was segregated. Thus, the contention of the assessee in this regard is not accepted. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the cases of* ***Durga Prasad More (82 ITR 540)*** *wherein it was held by the Hon'ble Supreme Court that-*

> *"the taxing authorities were not required to wear blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in these documents."*

Further, in the case of ***DIT vs. Bharat Diamond Bourse [(2003) 179 CTR SC225],*** *the Hon'ble Supreme Court held that-*

> *"the story rings false from beginning to end, and yet, the tribunal accepted it by sayings, "As regards the bona fides of the transaction, in our opinion, there is nothing to suspect the same."The Tribunal says, "there is a transparency about the entire transaction which nullifies any attempt to make out the transaction as something- unusual and out of the ordinary." That diamonds are not transparent, that they dazzle with a brilliance that blinds the eyes, seems to have escaped the notice of the Tribunal. It undeservingly accepted the glib explanation of the assessee, though teeming with improbabilities and strenuous on credulity."*

4.1.4 The AO is directed to work out the value of unexplained gold jewellery accordingly.

4.1.5 In case of Silver bullions, the dispute is of weight and purity of silver. Admittedly, there is no stock register being maintained by the assessee for silver bullion. The objection regarding the weighement is without any basis and is, therefore, rejected.

4.2 Accordingly, this ground of appeal is partly allowed as indicated above."

<u>Analysis and Decision:</u>

We have carefully considered the entire material on record. It is observed that during survey proceedings conducted by Revenue u/s. 133A on 24.02.2012 , the stock at Mirzapur HO, was inventorised by department , and its weighment and valuation was done vide valuation report prepared by an registered valuer namely M/s Pankaj's Jewel Art Creation , Allahabad(page 31-35 of PB-2 filed by department), dated 24.02.2012 . The assessee as well his employee Mr. Sharad

Agrawal were present at the time of weighment and valuation by registered valuer. The assessee was maintaining stock register for silver ornaments/jewellery , while no stock register was maintained for Gold Jewellery and Silver Bullion dealt with by the assessee. The silver ornaments as per stock shown in stock register was 246.74 Kgs , while physical stock found was 250.06 kgs as on the date of survey u/s 133A on 24.02.2012. There was a difference of 3.32 kgs as excess stock found during survey on 24.02.2012, which led to additions to the tune of Rs.1,24,732/- in the hands of the assessee. It is true that the assessee signed the valuation report of registerd valuer dated 24.02.2012 under objection. His objection was regarding both purity as well weight of the silver jewelry. In the statement recorded u/s 133A on 24.02.2012 the assessee raised objection as to both weight as well purity of silver jewelry determined by registered valuer . The assessee did ask department for weighing again the silver jewelry during the course of survey , in his statement recorded on 24.02.2012. The department did not get the weighment as well valuation done again on the date of survey . The assessee has claimed that plastic boxes were also weighed along with the silver ornaments, which led to excess weight of 3.32 kgs, and for purity the assessee is contending that Tunch certificates were not provided while determining purity of silver ornaments , and the purity determined by registered valuer was not done by adopting scientific method rather it was done by estimation . The AO rejected the objections and adopted the weight as well purity computed by the registered valuer who was an independent expert in the field valuing the silver articles. The ld. CIT(A) rejected the objection of the assessee so far as weighment is concerned , but estimated purity @55% of silver ornaments as against the purity of average of 65% as per version of ld. CIT(A) adopted by registered valuer. The ld. CIT(A) referred to purity prevailing in this part of U.P. and the same purity followed by him in some other case, although he did not specify the name of the tax-payer on whose case he estimated purity of 55% in the case of silver ornaments. The ld.

CIT(A) asked assessee to file the necessary invoices and other details for purchase and sale of silver ornamnets by the assessee during the impugned period , as well ld. CIT(A) asked assessee to file tunch certificates for the silver ornaments purchased and sold by the assessee during the year before the date of survey, but the same was not complied with by the assessee and no such details were filed. The assessee filed details of the period post survey, which was considered not relevant by ld. CIT(A) as the said details pertained to the period after the date of survey. The ld. CIT(A) asked assessee to produce bills of purchases or sales , which could demonstrate the purity of silver in silver ornaments, but the assessee did not produced sale and purchase bills before ld. CIT(A) to evidence the purity of silver ornaments. The ld. CIT(A) still gave part relief to the assessee by adopting 55% of purity in silver ornaments based on the purity adopted in some other case of survey (no name mentioned of the said case/assessee) based on purity in silver articles prevailing in this part of U.P. . We have gone through the valuation report prepared by registered valuer at the time of survey on 24.02.2012, wherein silver ornaments were all inventorised , and both gross weight as well net weight(after excluding the weight of plastic box) of silver ornaments were mentioned . For purity of silver ornaments, different purity ranging from 40% to 70% was adopted for different silver ornaments. Thus, prima facie, it could not be said that the registered valuer did not consider the weight after excluding the weight of pastic box etc. to weigh the net weight of ornaments for valuing the silver ornaments. It is only the net weight(after excluding the weight of plastic box etc) of silver ornaments which was considered for valuation by registered valuer. Similarly, different purity ranging from 40-70% was adopted for different silver ornaments , by registered valuer in his report. The valuation is done by registered valuer who is an expert in the field. The department has discharged its onus, and now the onus shifted to the assessee to demonstrate that there are specific flaws in the valuation done by the registered valuer both in terms of purity as well weighment, and

merely general and balled statement is not sufficient. The assessee did not produce any valuation report of approved/registered valuer, prepred at his behest immediately after conclusion of survey, as no such valuation report by approved /registered valuer done at the behest of the assssee was ever filed by the assessee. The assessee never filed any evidentiary documents to substantiate its objections as to the weightment and purity of silver ornamnets, immediately after survey. The assessee was called upon by authorities to explain the differences, at three different stages, firstly by the investigation wing of the department, wherein the summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 , were issued wherein the assessee had opportunity to explain the differences in the stock. The ld. Counsel for the assessee Advocate Shri Divyanshu Agrawal , being officer of the Court made statement before the Bench , that these summons and letter dated 06.03.2012 were never received by the assessee and hence there is no question of compliance by the assessee. On perusal of the Survey Report dated 16.04.2012 , which is placed on record , in Departmental Paper Book filed on 09.11.2021 at Page 1-10, it is clearly mentioned at Para 5 that the assessee namely Mr. Neeraj Agrawal was duly issued Summon dated 27.02.2012 u/s 131(1A) by ADIT(Inv.) , for appearance before him on 28.02.2012 but the assessee did not comply with the summons. It is also mentioned in the said Survey Report at para 5 , that another summon dated 29.02.2012 u/s 131(1A) was issued by ADIT(Inv)to the assessee for appearance beforeADIT(Inv.) on 05.03.2012 at 11AM, but again the assessee did not comply. It is further stated that letter dated 06.03.2012 was issued to the assessee to remain present on 12.03.2012, but the assessee did not comply with the said directions . Still, the assessee had two more opportunities to explain the aforesaid difference , both at the assessment stage and an appellate stage before ld. CIT(A). Onus is now on the assessee to rebut the valuation report prepared by registered valuer on the date of survey , by cogent and credible evidences instead of making general and balled averments . The assesee was

called by AO as well ld. CIT(A) to explain the differences . The ld. CIT(A) asked assessee to produce sale and purchase bills to help determine the exact weight and purity. The assessee was asked by ld. CIT(A) to produce Tunch certificate obtained for the silver articles purchased or sold prior to date of survey. The assessee did not produce any such evidences, and only contentions are raised that weighment was not correctly done and purity adopted was not on scientific basis but rather estimation was adopted by registered valuer without basing the same on Tunch Certificate. The ld. CIT(A) adopted 55% of purity rate of silver ornaments based on some other survey conducted by department(name of the tax-payer not revealed by ld. CIT(A)) and purity rate prevailing in this part of U.P., as against as per his calculation 65% of average rate was adopted by registered valuer to value silver ornaments.We hold that ld. CIT(A) erronoesuly give relief to the assessee by adopting purity rate of 55% without any basis , as against specifie purity rate(ranging from 40-70%) adopted by registered valuer (who is an expert in the field) sepecifically for each silver ornaments. His valuation report cannot be discarded/discredited except through cogent material/evidences. It is true that the assessee did raised the objection as to both weighment and purity at the time of survey itself. It is also claimed that even statements recorded during survey were not provided to the assessee before the conclusion of assessment. The ld. CIT(A) did not grant opportunity of hearing to the AO , to rebut the average rate of purity 55% adopted by ld. CIT(A) based on purity rate adopted in some other survey(name of that tax-payer not revealed by ld. CIT(A)) in this part of U.P.. There are two parties before ld. CIT(A) and principles of nature justice demand that fair hearing be granted to both the parties. Reference is drawn to Section 250(1) and 250(2) of the 1961 Act, as well Rule 46A of the Income-tax Rules, 1962. In our considered view based on facts and circumstances of the case and in the interest of justice, one more opportunity is required to be granted to the assessee to rebut through cogent evidences the valuation report of the registered valuer as to both

weighment of the silver ornaments found during survey as also as to the purity of silver ornaments adopted by the registered valuer. So far as legal precedents relied upon by the assessee, it is not the case of the surrender of the undisclosed income during the course of survey proceedings, but incriminating material by way of excess stock of silver ornaments found during survey vis-à-vis stock recorded in stock register, and additions were made based on the incriminating material (being excess stock) found during survey conducted u/s 133A. The orders of the authorities are set aside on this issue of silver ornaments , and matter so far as additions made based on silver ornaments found at Mirzapur HO during survey, is restored to the AO for denovo assessment on merit, after giving proper and adequate opportunity of being heard to the assessee. We order accordingly.

With respect to Gold Jewelery at Mirzapur HO, it is observed that the gold jewellery found during survey on 24.02.2012 , was 2.09 kgs.. The gold jewellery during survey was inventorsied by department , and its weighment and valuation was done vide valuation report prepared by an registered valuer namely M/s Pankaj's Jewel Art Creation , Allahabad(page 31-35 of PB-2 filed by department), dated 24.02.2012 . The assessee as well his employee Mr. Sharad Agrawal were present at the time of valuation by registered valuer. The gross weight of the gold jewelery was 2.090 kgs , while net weight was 2.080 Kgs. . The valuation was determined at Rs. 42,00,560/- as on 24.02.2012 by registered valuer. It is admitted position that the assessee was not maintaining stock register of gold jewellery. The AO made addition of the entire gold jewellery found during survey on 24.02.2012 , at Mirzapur HO. The assessee explained that although no stock register was maintained by it, but its books of accounts has stock of 1.033.180 kgs of gold jewellery in stock at Mirzapur H.O. on the date of survey. The AO did not even accepted the claim of the assessee as to stock of gold jewellery of 1.033.180 kgs claimed by assessee to be as per books of accounts, because as per AO the claim of

the assessee that such stock is entered in books of accounts is grossly incorrect as per the findings transpired in the survey proceedings . As per AO , no stock register or other documents were either found during the course of survey , nor could be explained during assessment proceedings, and hence the AO denied the benefit to the assessee w.r.t. its claim that although no stock register for gold jewelery was maintained but stock of gold ornaments to the tune of 1.033.180 Kgs was as per books of accounts of Mirzapur HO. There was no evidence before the AO that even the stock of gold ornaments to the tune of 1033.80 gms was as per books of accounts. The ld. CIT(A) granted the benefit of 1033.80 gms of gold ornaments as available as per books of accounts , on the date of survey, by holding that during the year , the assessee had 10 gms of gold jewellery as the opening balance as on 01.04.2011, the assessee made purchases of the following gold jewellery viz. 225.8gms from Mr. Om Prakash Tiwari on 12.10.2011 ; 311.10 gms from one Shri Santosh Kumar Singh on 14.10.2011 and 936.480 gms from Sati Developers n Tower Private Limited on 07.02.2012 , and as per ld. CIT(A) all these purchases entries were found entered in the books impunded during the year course of survey proceedings . The ld. CIT(A) observed that copy of Khata Bahi is produced before him. The ld. CIT(A) further observed that the assessee has sold 450.1gms of gold ornaments to one Dhiraj Jewelers on 01.02.2012, and the bill was impunded on 24.02.2012(page 75/PB-2 filed by assessee/PB-3 filed by department at page 28). We have gone through ledger account of gold ornaments (page 67/PB-3 filed by department) and as contended by ld. Sr. DR that there were three entries in the ledger account of gold ornaments , opening balance of Rs. 20,500/- (without mentioning of any quanity) and there are two entries of purchases in the said impounded ledger account of gold ornaments at Mirzapur i.e. Rs. 293,540/- and Rs. 4,18,500/- on 12.10.2011 and 14.10.2011 respectively. There are no entry of alleged purchase of 936.480 gms from M/s Sati Developers n Tower Private Limited on 07.02.2012 in the impounded ledger which was

impounded on 24.02.2012. The ld. CIT(A) finding in accepting contentions of the assessee as to the stock of gold ornaments in the books of accounts as on 24.02.2012 is in contradiction to the finding of the AO as well the entries recorded in the impounded ledger account of gold ornaments. The ld. CIT(A) did not ask for comments from the AO before accepting the contentions of the assessee which were dehorse/contrary to the findings of the AO, as no opportunity was granted to AO to rebut the same . There are two parties before ld. CIT(A) and principles of nature justice demand that fair hearing be granted to both the parties. Reference is drawn to Section 250(1) and 250(2) of the 1961 Act, as well Rule 46A of the Income-tax Rules, 1962. In the pleadings filed by assessee before the AO as well before ld. CIT(A), we have observed that the assessee claimed that stock as per books of accounts as on 24.02.2012 was 1033.80 gms but no working was submitted. Thus, keeping in view facts and circumstances of the case and in the interest of justice , we are restoring this matter back to the file of the AO for verification of the claim of the assessee on merit , after giving proper and adequate opportunity of being heard to the assessee. We order accordingly.

With respect to the remaining gold ornaments found during the survey on 24.02.2011, the claim is made by the assessee during the course of survey while recording statement on 24.02.2011 , that 850 gms of gold ornaments belonged to his wife Mrs. Suman Agrawal who left the said personal jewellery in the business premises of Raj Shree Jewellers , Mirzapur HO for safe keeping as she proceded to see her ailing father at Satna(M.P.) . The assessee later supported the aforesaid contentions with the affidavit dated 12.02.2015 i.e. almost after three years of survey on 24.02.2012. There was no identification of the inventory of gold ornaments claimed to be belonging to his wife Mrs. Suman Agrawal , by the assessee at the time of survey nor it was done at any stage of proceedings including before us . The affidavit which is filed after three years of survey also does not identify as to which items of gold jewelery were claimed to be belonging

to and owned Mrs. Suman Agrawal. No evidence is filed to corroborate the statement made during the survey and also to substantiate the affidavit, by way of wealth tax returns of Mrs. Suman Agrawal or declarations in the ITR of Mrs. Suman Agrawal or purchase bills for purchasing personal jewelry by Mrs. Suman Agrawal, nor even photographs etc. to substantiate that the said jewelry was used by her on various occasions/cermenoy to identify and prove ownership of such gold jewellery belonging to and/or owned by Mrs.Suman Agrawal. However, the contention of the assessee at the time of survey that 850 gms of the gold ornaments belonged to her wife which was kept for safekeeping, is not completely out of preponderance of human probabilities as it is claimed that she went to her parental house at Satna, M.P. to see her ailing father and thus left the personal jewellery for safe keeping at the Mirzapur HO, as it is in the realm of possibilities that she kept her personal jewellery at Mirzapur HO premises keeping in view that it will be safe to keep jewellery in the showroom owing to safety equipments installed therein , but in normal circumstances the personal jewelry of the wife of the assessee ought to be at their residence as keeping in view the background of the assessee and his social status, it will not be out of place to assume that he must have taken sufficient safety measures at his home also to secure valuables. The assessee has stated in the statement recorded during survey that he is not having bank locker. No other evidence to corroborate truthfulness of statement of Mrs. Suman Agrawal is filed by the assessee. The department has also not examined Mrs. Suman Agrawal. There is no evidence that Mrs. Suman Agrawal visited parental house at that time as stated in affidavit . It is also seen that no entry of such gold ornaments of 850 gms belonging to his wife Mrs. Suman Agrawal was found recorded in the impounded material . Thus , based on facts and circumstances of the case and in the interest of justice , the appellate order passed by ld. CIT(A) granting relief to the assessee w.r.t. 850 gms of gold ornaments found during survey allegedly belonging to his wife Mrs. Suman Agrawal is set aside and

matter is restored to the file of the AO for fresh adjudication on merit, after providing opportunity of being heard to the assessee. The burden is heavy on assessee as claim is set up that personal jewelery of the wife is kept at business premises and that too without making any entry in the business records. We order accordingly.

With respect to contention of the assessee that 202 gms of gold ornaments found during survey belonged to one Mrs. Poonam Tripathi who gave the same for valuation purposes to the assessee's employee Mr. Sharad Agrawal on 24.02.2012 at 10.30AM as the assessee was not available at that time, is merely an afterthought, as during the course of survey proceedings , the assessee never stated that the said gold ornaments weighing 202 gms belonged to Mrs. Poonam Tripathi. There was no entry of the said gold ornaments of 202 gms in the records maintained by the assessee prior to survey and also in the impounded material. The assessee came out with this explanation after three years of survey , by filing affidavit dated 12.02.2015 of the said Mrs. Poonam Tripathi. Even in the affidavit , no inventorisation of the items of gold ornaments belonging to Mrs Poonam Tripathi was done. There is no other evidence apart from the self serving affidavit of Mrs. Poonam Tripathi filed by the assessee to support its contentions, and this affidavit is dated 12.02.2015 while survey u/s 133A took place on 24.02.2012. The reliance of assessee on the case law cited before us is misconceived, firstly it is not the case of surrender of income during survey rather incriminating material by way of excess stock of gold ornaments were found during survey on 24.02.2015. Secondly, the affidavit filed by the assessee of Mrs. Poonam Tripathi is a self serving documents without any corroboration with any evidences. It is incomprehensible to believe that Mrs. Poonam Tripathi will leave 202 gms of gold ornaments with the employee of the assessee for valuation without any receipt. No such receipt was found / impounded during survey. It is also incomprehensible to believe that the assessee will keep gold ornaments of 202 gms in his business

premises , without making entries in the record. No such entry or noting was found during survey or in the impounded material. It is further incomprehensible to believe that said Mrs. Poonam Tripathi gave the gold ornaments weighing 202 gms to Mr. Sharad Agrawal on 24.02.2012 at 10.30 AM , but the said Mr. Sharad Agrawal who was present along with assessee while stock was inventorised by department , weighed and valued by registered valuer , that Mr. Sharad Agrawal did not brought this to the notice of the assessee and put on record in the statement recorded or valuation report prepared by registered valuer or inventorisation being done by department , while the event of alleged receipt of 202 gms of gold ornaments from Mrs. Poonam Tripathi took place few hours back on the same day. It is further unbelievable that there is no mention of 202 gms of gold ornaments belonging to Mrs. Poonam Tripathi in the statement recorded of the assessee during survey on 24.02.2012 itself. Even initial statement of Mr. Sharad Agrawal was recorded on the date of survey on 24.02.2013, but he never disclosed that 202 gms of gold ornaments were received by him on 24.02.2012 itself at 10.30 AM allegedly from Mrs. Poonam Tripathi for valuation purposes and the same is to be excluded while determining the stock of the assessee, it is completely unbelievable. Thus, after considering the entire material on record, we uphold the appellate order of ld. CIT(A) in upholding the addition w.r.t. 202 gms of gold ornaments claimed to be allegedly belonging to Mrs Poonam Tripathi, by holding that this is the undisclosed stock of gold ornaments of the assessee. Thus, the addition made by the AO and as confirmed by ld. CIT(A) is sustained.We order accordingly.

With respect to Silver Bullion of 6.18 Kgs physically found during survey on 24.02.2012 at business premises of the assessee at Mirzapur HO, the assessee submitted that as per books of accounts of the assessee , the stock of Silver Bullion was 5.751 Kgs and there is a difference of 443 gms. which is owing to error in weighment. The AO rejected the contention of the assessee as no stock register or

composite stock register of Silver Bullion was found during the course of survey. The ld. CIT(A) also rejected the contentions of the assessee. It is admitted position that the assessee is not keeping stock register for Silver Bullion. The stock of Silver Bullion as was found during the course of survey at Mirzapur premises on 24.02.2012, was inventorised by the department, and weighed and valued by the Registered valuer M/s Pankaj's Jewel Art Creation, Allahabad on 24.02.2012. The valuer have identified two items, Silver Bullion of 4.556 Kgs valued at Rs. 1,44,835/-, and secondly Silver Bullion(Fine) of 1.624kgs which is valued at Rs. 93,867/- , totaling 6.180 kgs.(page 34 of PB-2 filed by department). The assessee during survey proceedings has raised objections with respect to weight and purity. The valuation is done by registered valuer who is an expert in the field. The department has discharged its onus, and now the onus shifted to the assessee to demonstrate that there are specific flaws in the valuation done by the registered valuer both in terms of purity as well weighment, and merely general and balled statement is not sufficient. The assessee did not produce any valuation report of approved valuer, done at his behest immediately after conclusion of survey, as no such valuation report by approved valuer was ever filed by the assessee. The assessee was called upon by authorities to explain the differences, at three different stages, firstly by the investigation wing of the department, wherein the summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 , were issued wherein the assessee had opportunity to explain the differences in the stock. The ld. Counsel for the assessee namely Advocate Mr. Divyanshu Agrawal, being officer of the Court made statement before the Bench , that these two summons and letter dated 06.03.2012 were never received by the assessee and hence there is no question of compliance by the assessee. On perusal of the Survey Report dated 16.04.2012 , which is placed on record , in Departmental Paper Book filed on 09.11.2021 at Page 1-10, it is clearly mentioned at Para 5 that the assessee namely Mr. Neeraj Agrawal was duly issued Summon dated 27.02.2012 u/s

131(1A) by ADIT(Inv.) , for appearance before him on 28.02.2012 but the assessee did not comply with the summons. It is also mentioned in the said Survey Report at para 5 , that another summon dated 29.02.2012 u/s 131(1A) was issued by ADIT(Inv)to the assessee for appearance beforeADIT(Inv.) on 05.03.2012 at 11AM, but again the assessee did not comply. It is further stated that letter dated 06.03.2012 was issued to the assessee to remain present on 12.03.2012, but the assessee did not comply with the said directions . Still, the assessee had two more opportunities to explain the aforesaid difference , both at the assessment stage and an appellate stage. Onus is now on the assessee to rebut the valuation report prepared by registered valuer on the date of survey , by cogent and credible evidences instead of making general and balled averments . The assesee was called by AO as well ld. CIT(A) to explain the differences . The valuation report prepared by registered valuer cannot be discarded /discredited except through cogent material /evidences. It is true that the assessee did raised the objection as to both weighment and purity at the time of survey itself. It is also claimed that even statements recorded during survey were not provided to the assessee before the conclusion of assessment. We have also observed that the assessee has claimed that 5.751 Kgs of Silver Bullion is appearing as stock in the books of the assessee on 01.04.2011 which continued even as on 31.03.2012, reference is drawn to audited accounts for the year 2010-11 and 2011-12. The assesse has claimed in its audited accounts that silver ingots of 49.180 kgs were purchased during financial year 2011-12 and same were consumed in the year 2011-12 for manufacturing silver ornaments , leaving old stock of Silver Ingot of 5.751 kgs which was there as on 01.04.2011. This requires verification of facts. Further, as per impounded ledger A-6, the Silver Fine is reflected as opening balance as on 01.04.2011 of Rs. 83,390/- (without mentioning quantity)(page 63/PB -3 filed by department). This stock of Rs. 83,390/- is reflected as Silver Ingot as on 01.04.2011 as opening stock in audited statement for 2011-12. The corresponding quantity of silver ingot is

5.751 kgs. (page 26 and 37/PB-1 filed by department) . Similar corresponding figures both valuation wise of Rs. 83,390/- of silver ingotas well stock of silver ingot of 5.751 kgs were there in the preceding year audited accounts for financial year 2010-11 (page 153 and 155/PB-1 filed by assessee). It is admitted position that no stock register was maintained by the assessee for Silver Bullion . This claim made by assessee as to opening stock of 5.751 kgs of Silver ingot(silver bullion) requires verification as to looking into dealing of the assessee in Silver Bullion viz. purchase , consumption for manufacturing silver ornaments during the year, as both the authorities rejected claim of the assessee at threshold without verifying in details.We refrain from commenting on merits of this claim. In our considered view based on facts and circumstances of the case and in the interest of justice , one more opportunity is required to be granted to the assessee to rebut through cogent evidences the valuation report of the registered valuer as to both weighment of the silver ornaments found during survey as also as to the purity of silver ornaments adopted by the registered valuer, as also assessee is required to prove the claim of stock of 5.751 kgs of Silver ingot in stock on date of survey . So far as legal precedents relied upon by the assessee, it is not the case of the surrender of the undisclosed income during the course of survey proceedings, but incriminating material by way of excess stock of silver bullion(silver ingot) was found during survey vis-à-vis stock recorded in stock register, and additions were made based on the incriminating material (being excess stock) found during survey conducted u/s 133A. The orders of the authorities are set aside on this issue of silver bullion , and matter so far as silver bullion at Mirzapur HO is restored to the AO for denovo assessment , after giving proper and adequate opportunity of being heard to the assessee. We order accordingly.

15B) **<u>Differences in Stock at Varansi B.O.</u>**

On reconciliation of physical stock and stock as per books of account/records kept by the assessee, the AO observed that the following differences were worked out

in the case of **Varanasi premises(Branch Office)** of the assessee , detailed as under:

Type of Stock	***Physical stock found as per inventory (in K.G.)***	***Stock shown in the Stock register kept, if any (in K.G.)***	***Difference (in K.G.)***
Silver Items/Jewellery	665.93	453.90	212.03
Gold Jewellery	0.128	0	0.128
Silver Bullions	4.958	0	4.958

The assessee was asked by the AO to explain the differences between physical stock and stock as per books of account/records kept by the assessee. The assessee filed following reply before the AO, stating as under:

चॉदी के आभूषण

सर्वे के दौरान प्राप्त (किग्रा में)	लेखा पुस्तक के अनुसार	अन्तर
665.930	453.900	212.030

यहकि सर्वे के दौरान प्राप्त चॉदी आभूषण के स्टॉक रजिस्टर में स्टॉक दिनांक 21.02.2012 को 453.900 ग्राम था। दिनांक 21.02.2012 को 34 किलो 826 ग्राम चॉदी के आभूषण की खरीद की गयी थी तथा 177.500 ग्राम आर्टिफिशियल पायल मथुरा से बिल नं0 16 दिनांक 23.02.2012 को खरीदा गया था जो दिनांक 24.02.2012 को सुबह 10 बजे माल आ गया था। बिल की छाया प्रति संलग्न है। इस प्रकार स्टॉक रजिस्टर में अंकित स्टॉक 453.900 + 34.826 + 177.500 टोटल 666.226 ग्राम चॉदी आभूषण एवं आर्टिफिशियल आभूषण का स्टॉक लेखा पुस्तक के अनुसार है। अन्तर 296 ग्राम तौल का अन्तर है

सोने का आभूषण

सर्वे के दौरान प्राप्त (ग्राम में)	लेखा पुस्तक के अनुसार (ग्राम में)	अन्तर (ग्राम में)
0.128	0.128 ग्राम	शून्य

यहकि दिनांक 21.02.2012 से 23.02.2012 तक अपंजीकृत से खरीद विभिन्न ग्राहको द्वारा खरीद किया गया है जिनकी छायाप्रति संलग्न है। अन्तर शुन्य है।

चॉदी का बुलियन (किग्रा)

सर्वे के दौरान प्राप्त (के.जी में)	लेखा पुस्तक के अनुसार (किग्रा में)	अन्तर
4.958	शुन्य	4.958

Neeraj Agrwal

कमशः पेज 4.....

(4)

यहकि चॉदी बूलियन 4.958 के.जी. सर्वे के समय पाया गया था जो श्री घुरहू यादव द्वारा बेचने के लिए लाया गया था लेकिन सौदा न होने के कारण दिनांक 27.02.2012 को वापस कर दिया गया। शपथ पत्र संलग्न है।

4b. The AO considered the reply of the assessee and observed as under:

(i)"Regarding Silver Items:

The assessee's contention that the bills regarding purchases made on 21.02.2012 and on 23.02.2012 have been produced during the course of assessment proceedings, cannot be accepted because the same are based on after thought as no such bills (except the bill regarding purchase of the jewellery to the extent of 34.826 K.G.) were either found during the course of survey or were produced during the recording of statement, therefore, the evidences produced before the undersigned cannot be treated to be reliable because they are nothing but evidences created after being caught on wrong footing. On perusal of the statement recorded, during the course of survey, it is seen that billsregarding purchase of jewellery to the extent of ***34.826*** *K.G. have been produced, hence the benefit of the same, is being given to the assessee and the rest of the stock i.e.* ***212.03 - 34.826=177.174*** *is being treated as undisclosed investment in stock and accordingly addition of the value of investment i.e.* ***56,32,361/-*** *is being made to the total income of the assessee u/s* ***69B*** *of the Act. The rate has been adopted at the rates prevailing as on date of the survey, as taken by the registered valuer i.e. @* ***57,800/-*** *with a purity of* ***55%.*** *The working is as under:*

*Total undisclosed stock=****177.174***
*Amount of investment =****177.174*** *x* ***57,800= 1,02,40,657/-***
55% *of the same* ***56,32,361/-***

Addition of Rs. 56,32,361/-

Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

(ii) Regarding Gold Jewellery:

Plain reading of the submission of the assessee on this issue, as quoted above, will make it sufficiently clear that the assessee has no concrete explanation to offer in this regard. The evidences filed by him at this stage cannot be relied upon, insofar as, it is a fact that no such bills of purchase have been ever found during the course of survey nor the same has been produced during thecourse of recording of statement. Even if for the sake of argument, the contention is considered to be true, the same should have been entered into the stock register concerned. In absence of these evidences, the claim of the assessee cannot be treated to be tenable and is accordingly being rejected. The addition of Rs. 2,68,800/- u/s 69B of the Act is hereby made to the total income of the assessee. The value is being taken as per the registered valuer's report at Varanasi premises i.e. Rs. 2,68,800/-. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. *2,68,800/-*

(iii) Regarding Silver bullions:

Plain reading of the submission of the assessee on this issue as quoted above, will again make it clear that the assessee has no concrete explanation to offer in this regard, the evidences filed by him (affidavit of Sri Ghurahu Yadav) at this stage, cannot be relied upon insofar as it is a fact that no documents whatsoever, indicating any such transactions having taken place, have been either found during the course of survey or during the course of recording of statement. Even if it is considered to be true, for the sake of argument, the same should have been entered (or at least mentioned in any manner) into the stock register concerned. In absence of the reliable evidences; the claim of the assessee cannot be treated to be tenable and, therefore, the same is accordingly being rejected. The addition of Rs. 78,059/- to the total income of the assessee u/s 69B of the Act is being made as consequence ofthe

above facts. The value is being taken as per the registered valuer's report at Varanasi premises i.e. Rs. 78,059/-. Penalty proceedings u/s 271(1)(c) is being initiated separately for concealment of income.

Addition of Rs. 78,059/-/"

The ld. CIT(A) gave partial relief to the assessee , by holding with respect to the three aforesaid additions w.r.t. differences in stock at Varanasi B.O. , by holding as under:-

"5.2 Discussion:

The Assessing officer has made addition on account of excess stock found in Varanasi premises in three categories, i.e. Silverjewellery, Gold Jewellery and Silver Bullions. I deal with each of these as under:

5.2.1 Decision:

In case of Silver jewellery, the dispute is mainly on account of silver jewellery allegedly purchased from Mathura which was physically available at the time of survey but the bill wasn't available nor the same was entered in the stock register. It is the case of the appellant that the same stock had reached on the date of survey but the bill had not been received. The copy of the bill (by which the said artificial payals were allegedly purchased) has been enclosed at Page No. 63 of the Paper Book 1 and the payment for the same was through bank, proof of which was enclosed at Page No. 197 of the Paper Book I. All these documents were also present before the AO at the time of assessment proceedings. On perusal of the said bill, it is seen that the bill is dated 23 February, 2012 and the place is Mathura which is good 600 km away from Varanasi. The said bill contains reference of mode of the payment as Ch no. 003094 of Axis Bank, which is also dated 23.02.2012. When I enquired about this with the assessee, he stated that one of his employees, namely Sri Ramashreyyadav had been to Mathura and he had carried the said Cheque to Mathura and, therefore, the reference of the same got incorporated in the said bill. It was also stated by him that the same person had brought the impugned payals from Mathura and had deposited them in the shop in the morning of the survey date. The undersigned asked the assessee to produce the said person who

had supposedly gone to Mathura and brought the payals from Mathura. He was examined u/s 131 of the I.T. Act by the undersigned in the presence of the assessee. The relevant part of the statement as recorded, is as under-

> *"Statement of Sri Ramashrey Yadav, Age 28 years resident of Gazipur district recorded by the undersigned u/s 131 of the I.T. Act on 20.01.2017 in presence of Sri Neeraj Agarwal, Assessee himself.*

Oath Administered –	*Oath Taken*
sd-	*Sd/-*
CIT(A), Allahabad	*(Ramashrey Yadav)*
(RajkumarLachhiramka)	

Q. (1) Please tell what do you do?

Ans. I work for the shop of Sri Niraj Agarwal ji at Varanasi. I work at shop and also outstation work for him.

Q. (2) Did you ever travel to Mathura for the shop-work?

Ans. 3-4 times.

Q. (3) Did you go to Mathura in February 2012?

Ans. Yes, I had gone to Mathura on 22 February by night train Magadh Express which reached Tundla in the morning and then next to Mathura by bus and reached Mathura at 12 noon.

Q. (4) What did you do at Mathura ?

Ans. I reached the shop and handed over the cheque to the owner of the shop who handed me payals in 6 bags weighing about 177 kg. The shopkeeper also gave me the bill for the same.

Q. (5) When did you reach Varanasi ?

Ans. From Mathura, I took the taxi to Tundia and then took the train to Mathura-Lichavi Express and reached Varanasi Cantt. At 8:30 am on 23 February and by auto reached the shop at Varanasi. The Manager was waiting for me at the shop and I took out the payals from these bags and alongwith the Manager took these payals in the

counters/ Almirahs. After that I left to have tea and when I returned I found Police at the shop and they did not allow me to enter the shop. So I could not go inside.

Q. (6) Where was the bill?

Ans. The bill was with me only as I could not hand it over to manager in the morning.

Whatever I have stated above is truly to best of my knowledge and belief.

Recorded by
-sd-
CIT(A), Allahabad"

5.2.1.1 Since the Manager at the shop at Varanasi is an important witness to this event, I had requested/ directed the assessee to present him for examination. His statement was recorded u/s 131 of the Act by the undersigned. The relevant part of the statement so recorded is, as under:

> *"Statement of Sri Shiv Bachan Yadav, Age - 45 years resident of Varanasi recorded u/s 131 of the IT. Act on 20.01.2017 by the undersigned in presence of Sri Neeraj Agarwal, the assessee,*

Oath Administered	*Oath Taken*
Sd/-	*Sd/-*
CIT(A), Allahabad	*(Shiv Bachan Yadav)*
(RajkumarLachhiramka)	

Q (1) Please tell what do you do?

Ans. I work in Rajshree Jewellers, Varanasi as Branch Manager since 10-15 years I am in-charge of the shop as Sri Niraj Ji generalily lives at Mirzapur.

Q. (2) Who is RamashreyYadav ? Do you know him? What does he do?

Ans. Yes Sir, he is our Staff. He works at our shop. He also travels outside to get goods if needed.

Q. (3) Do you recall that there was a survey by I.T. Department on 24th February at your shop?

Ans. Yes Sir, I was present at that time in the shop.

Q (4) Did Ramashrey Yadav bring anything that morning?

Ans. Yes, Ramashrey Yadav brought payals in 6 bags in the morning of 24th February from Mathura.

Q (5) What did you do after he came with these payals?

Ans. I and him put the payals in the almirahs and show case alongwith other and then I asked him to go and freshen up.

Q. (6) Did you take the bill from him?

Ans. No, I did not remember and the bill was with him.

Q. (7) Why did not you call him to the shop when Survey party came ?

Ans. The police did not allow anyone to come inside.

Q (8) When there was excess of Silver jewellery found, why did you not tell the survey party that the payals were received just in the morning 7.

Ans. I was frightened by the Group of I.T. Officers and Police and I was all alone. I did not know how to react.

Q (9) You maintain stock register for silver. Why did you not make entry of these goods?

Ans. The Munimji was not coming for the last two days. He only maintains all

the register & account.

Q (10) When the valuation was being done, why did you not say that these payals were not silver but gillet?

Ans. I had told the valuer that these were gillet but he did not consider it. I was also very frightened and I did not know how to react. That is why I told the survey party that only Sri Nirajji owner can explain. I was really frightened.

Q. (11) Your statement was recorded also. You could have said that in your statement?

Ans. I was really frightened and I had repeatedly asked the survey party to make me talk to Sri Nirajji but they did not let me talk to him. I did not know what to say and what not to say.

Q. (12) Why did you not say that 177 kg.ofpayals were gilletpayal.

Ans. As I said I was very frightened so I did not know what to say and what not to say. I also did not want to say about gilletpayals as I was afraid that our reputation will be at stake so I kept telling that only Nirajji can answer all the differences.

Q. (13) Why did you not call Ramashrey Yadav to present the bill?

Ans. The police did not allow anyone to enter the Katra and the shop.

Q. (14) I am showing you the cheque no. 003094 of Axis Bank. Please identify the signature?

Ans. The signature is that of Neerajji.

Q (15) Ramashrey Yadav had stated that this cheque was given to him by you. Was Mr. Niraj present in Varanasi on 22 February?

Ans. No, he was not there. But we keeps some signed cheques at Varanasi. And we fill the details as and when required.

Q (16) Please see the cheque again. Please state if this cheque details were filled by you or Nirajji on someone else.

Ans. This cheque has not been filled either by me or Niraj Ji. It is not in my handwriting. We had sent a blank cheque with only signature. And the details have been filled up by Mathura Party.

Q. (17) Do you want to state anything else?

Ans. No Sir.

Whatever I have stated above is truly to best of my knowledge and belief.

Statement by

Sd/-

CIT(A), Allahabad
In presence of Sri Niraj Agarwal"

5.2.1.2I had also asked the Axis Bank, Mirzapur to submit the copy of the said cheque (No. 003094), which was duly submitted. On perusal of the said cheque, it is seen that it had been dated 23.02.2012 and was in the name of R.S. Bullion &Jewellery and had been cleared on 02.04.2012(sic. 02.03.2012) . Looking at the totality of facts (i.e. version of the assessee which has been corroborated by two witnesses and the bank details), hereby hold that silver jewellery weighing 177 kg. had been purchased by the assessee from Mathura and the same could not be recorded in the stock register as it had been received only in the morning of the date of survey. The A.O. is thereby directed to exclude this weight i.e. from the excess weight of silver jewellery computed by him. If there is any excess weight beyond this, the same will be computed @ 55% of silver purity. Before parting with the issue, I would like to mention here that this transaction is being accepted by me for the reason that it is backed by a pucca bill/ invoice from the supplier and the payment was made through cheque which was dated 23.02.2012 and the same had also been cleared on 02.04.2012(sic. 02.03.2012). These facts support the contention of the assessee. It is a well-known - dictum that the income tax proceedings operate on the theory of preponderance of probability, which works for both the parties i.e. in favour of the assessee as well as in favour of the department, depending upon a given factual matrix. In the instant case, the factual matrix supports the case of assessee.

5.2.2 In case of Gold jewellery, the dispute is with respect to difference of stock of 0.128 gm. The assesse has failed to explain the source of this stock. The opening stock credit has already been given to the gold jewellery found in the Mirzapur shop. Accordingly, this ground of appeal is dismissed and the addition so made is confirmed.

5.2.3 In case of Silver bullions, the dispute is with regard to difference of stock of 4.958 kg. It is seen from the statement recorded during the course of survey

that no reason for such difference had been stated. During the time of assessment proceedings, for the first time, the details of Gharau Yadav were produced. The same is clearly an afterthought as there was no mention about him during the course of survey proceedings nor any entry or slip of paper in respect of this transaction was found. In this view of the matter, the pleading of the appellant with respect to the stock of 4.958 kg of silver bullion is hereby rejected as being an afterthought. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the cases of ***Durga Prasad More (82 ITR 540)*** *wherein it was held by the Hon'ble Supreme Court that-*

> *"the taxing authorities were not required to wear blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in these documents."*

Further, in the case of ***DIT vs. Bharat Diamond Bourse [(2003) 179 CTR SC 225], the Hon'ble Supreme Court*** *held that-*

> *"the story rings false from beginning to end, and yet, the tribunalaccepted it by sayings, "As regards the bona fides of thetransaction, in our opinion, there is nothing to suspect the same." The Tribunal says, "there is a transparency about the entire transaction which nullifies any attempt to make out the transaction as something unusual and out of the ordinary." That diamonds are not transparent, that they dazzle with a brilliance that blinds the eyes, seems to have escaped the notice of the Tribunal. It undeservingly accepted the glib explanation of the assessee, though teeming with improbabilities and strenuous on credulity."*

Analysis and Decision:

We have carefully considered the entire material on record. It is observed that during survey proceedings conducted by Revenue u/s. 133A on 24.02.2012 , the

stock at Varanasi B.O. , was inventorised by department , and its welighment and valuation was done vide valuation report prepared by an registered valuer namely M/s Girdhar Gopal , Varanasi,dated 24.02.2012 (Page 49-55/PB-2 filed by department). The assessee's Manager(Varanasi Branch) Mr. Shiv Bachhan Yadav was present at the time of valuation by registered valuer, and his statement was recorded (page 60-64/PB-2 filed by department). The assessee was maintaining stock register for silver ornaments/jewellery , while no stock register was maintained by assessee for Gold Jewellery and Silver Bullion dealt with by the assessee. The silver ornaments stock shown in stock register was 453.90 kgs , while physical stock found was 665.93 kgs. as on the date of survey u/s 133A on 24.02.2012. There was a difference of 212.03 kgs as excess stock of silver ornaments was found during survey on 24.02.2012. The assessee's Manager could not explain the aforesaid difference in the statement recorded during survey on 24.02.2012, except that he explained that 34.26 kgs of silver ornaments were received from M/s D. D Industries , Agra which could not be entered in the stock register. The assessee who was at Mirzapur , was also questioned by department on 24.02.2011 while his statement was recorded, with respect to aforesaid discrepancy in silver ornaments at Varanasi BO, but he also could not gave explanation w.r.t. aforesaid discrepancy and stated that he is not feeling well and the details will be given through his counsel-advocate. The assessee did not filed any details with department immediately after conclusion of survey. The assessee was called upon by authorities to explain the differences, at three different stages, firstly by the investigation wing of the department, wherein the summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 , were issued wherein the assessee had opportunity to explain the differences in the stock. The ld. Counsel for the assessee Advocate Mr. Divyanshu Agrawal, being officer of the Court made statement before the Bench , that these two summons and letter dated 06.03.2012 were never received by the assessee and hence there is no question of

compliance by the assessee. On perusal of the Survey Report dated 16.04.2012 , which is placed on record , in Departmental Paper Book filed on 09.11.2021 at Page 1-10, it is clearly mentioned at Para 5 that the assessee namely Mr. Neeraj Agrawal was duly issued Summon dated 27.02.2012 u/s 131(1A) by ADIT(Inv.) , for appearance before him on 28.02.2012 but the assessee did not comply with the summons. It is also mentioned in the said Survey Report at para 5 , that another summon dated 29.02.2012 u/s 131(1A) was issued by ADIT(Inv)to the assessee for appearance beforeADIT(Inv.) on 05.03.2012 at 11AM, but again the assessee did not comply. It is further stated that letter dated 06.03.2012 was issued to the assessee to remain present on 12.03.2012, but the assessee did not comply with the said directions . It is pertinent to mention here that the AO accepted the explanation of the assessee w.r.t. 34.826 kgs of silver ornaments which were stated to be purchased from D. D. Industries, Agra on 21.02.2012 and which was not entered in the stock register found on the date of survey on 24.02.2012, and no additions were made by the AO and matter rested there. This led to remaining difference of 177.204 kgs in silver ornaments as excess stock was found during survey on 24.02.2011. At the assessment stage in 2015, the assessee submitted before AO that the assessee had purchased 177.500 Kgs of artificial silver ornaments being Gillet Payal from Mathura from M/s R S Bullion & Jewellers , Mathura vide their invoice number 16 dated 23.02.2012 , for Rs. 2,16,550/-. It was claimed that aforesaid Gillet Payal(artificial silver jewelry) was received at Varaansi BO on 24.02.2012 at 10.00 AM from Mr. Ram Ashrey Yadav(employee of the assessee) who went to Mathura to bring the said alleged Gillet Payal to Varanasi, but the same was not entered in the stock register . The AO rejected the contentions of the assessee and made additions with respect to difference in physical stock of silver ornaments found during survey and the stock as per stock register. The ld. CIT(A) accepted the contentions of the assessee, on preponderance of human probabilities and deleted the additions as were made by

the AO to the tune of Rs. 56,32,361/-. The ld. CIT(A) recorded the statement of Mr. Shiv Bachhan Yadav, Manager of Varanasi BO as well Mr. Ramashrey Yadav(employee of the assessee), who brought the said alleged artificial silver ornaments being Gillet Payal weighing 177.50 kg from Mathura to Tundla by taxi, and from Tundla to Varanasi via Lichavi Express and allegedly reached Varanasi Cantt at 8.30 AM on 23.02.2012(sic. 24.02.2012) and by auto reached Varanasi B.O. at 10.00 AM. The ld. CIT(A) also noted that payment of Rs. 2,16,550/- was made by assessee through clearing cheque , which got cleared from bank on 02.04.2012(sic. 02.03.2012). Thus, in nutshell the explanation put forth by the assessee was accepted by ld. CIT(A) and the entire additions stood deleted. Revenue is aggrieved by the decision of ld. CIT(A), while the assessee is aggrieved as ld. CIT(A) deleted additions to the tune of 177 kgs while he ought to have deleted the entire addition of 177.174 kgs as was made by the AO. After carefully considering the entire factual matrix , we are afraid that the decision of ld. CIT(A) cannot be sustained and liable to be set aside on this issue. The assessee's Varanasi BO was also surveyed u/s 133A on 24.02.2012. The Manager of the assessee namely Mr. Shiv Bachan Yadav was present at the time of survey on 24.02.2012. There was difference of 212.03 kgs in the physical stock of silver ornaments found during survey and the stock as per stock register. Mr Shiv Bachan Yadav statement was recorded on 24.02.2012, and he instantly explained the difference of 34.826 kgs of silver ornaments being purchased from M/s D. D. Industries , Agra on 21.02.2012, which was not entered in the stock register. The AO accepted the explanation of Mr. Shiv Bachan Yadav, Manager and no addition was made by the AO w.r.t 34.826kgs of silver ornaments which were treated as being explained. Regarding remaining difference of 177.174 kgs of silver ornaments , no explanation was provided by Mr. Shiv Bachan Yadav, Manager of Varanasi BO. It is incomprehensive to believe that he had allegedly received the material at 10AM on 24.02.2012 from Mr. Ramashrey Yadav and he did not disclose the same to the

officers who were conducting survey on 24.02.2012 itself . Nor , he informed the registered valuer who weighed and valued the silver ornaments during the course of survey on 24.02.2012 itself, that these are aritifical jewelery being Gillet Payal. Further, it is also unbelievable that the registered valuer being expert in the filed, will value artificial silver ornaments being Gillet payals at the value of real silver ornamnets. Further, it is also unbelievable that Mr. Shiv Bachan Yadav, Manager of Varanasi BO , who is well experienced to deal in valued metals such as gold , silver , ornaments etc. will not differentiate between real silver ornaments and artificial silver ornaments, and that he will not object to the artificial silve jewellery being valued at the valuation of real silver jewellery . He was working with assessee for last 10-15 years as per his statement recorded before ld. CIT(A) on 20.01.2017 . Mr. Shiv Bachan Yadav, Manager signed on the valuation report dated 24.02.2012 prepared by registered valuer, valuing 177.50 kgs of aforesaid alleged Gillet Payal at value of real silver ornaments. After receiving the material , it is also incomprehensive to believe that Mr. Shiv Bachan Yadav , Manager of Varanasi BO displayed the said artificial silver jewellery in the show room alongside real silver ornaments for displaying meant for sales. It is incomprehensive to believe that knowingly well that it is artificial silver ornaments , he will mix the same with the real silver ornaments. The assessee was also asked by the Department to explain the difference in silver ornaments on 24.02.2012 while recording his statement , but he could not explain the difference while his statement was recorded. There is no mention of any entry recorded any where in the records/impounded material , prior to survey u/s 133A, of this alleged purchase of artificial silver ornaments being Gillet Payal nor there is any mention any where in the records/impugned material as to the cheque allegedly issued to supplier of these Gillet Payal, prior to the date of survey. Even the invoice No. 16 dated 23.02.2012 of R S Bullion & Jewellers,Mathura was not found during survey nor the same is part of impunded material . It is pertinent to mention that this is the first alleged dealing of the

assessee in artificial silver ornaments being Gillet Payal, as the assessee had never in the past purchased artificial silver ornaments and also the assessee has never purchased artificial silver ornaments in future. This alleged inventory of artificial silver jewellery being Gillet Payal also remained unsold. The ld. CIT(A) recorded the statements of Mr. Ramashray Yadav(employee) who brought the alleged material of artificial silver ornaments from Mathura to Varanasi as well of Mr Shiv Bachan Yadav , Branch Manager of Varanasi BO, wherein both of them affirmed the stand of the assessee.The statements of both Mr. Shiv Bachan Yadav as well Ramashrey Yadav are reproduced by ld.CIT(A) in his order(reproduced by us as above) .First of all statement was recorded in 2017 while survey took place in 2012, and there is a gap of more than five years. Secondly, these persons are interested witnesses being employees of the assessee, and not much credence can be paid to their statement recorded at such belated stage. Further, the ld. CIT(A) allowed assessee to be present while statement of both of them were recorded by ld. CIT(A). The assessee being employer of both these persons was in dominating/fiduciary positon as livelihood of both these persons depends upon assessee and thus the statement recorded at such a belated stage of these interested witnesses cannot be relied upon. Further, ld. CIT(A) did not confronted these statements to the AO and no comments/cross examination by AO was allowed. There are two parties before ld. CIT(A) and principles of nature justice demand that fair hearing be granted to both the parties. Reference is drawn to Section 250(1) and 250(2) of the 1961 Act, as well Rule 46A of the Income-tax Rules, 1962. Thus, both these statements are rejected, and we hold that this explanation of alleged purchase of 177.50 kgs of artificial silver ornaments being Gillet Payal is merely an afterthought by the assessee to wriggle out of tax liability. Thus, we set aside the appellate order passed by ld. CIT(A) and uphold/sustain the addition as was made by the AO. So far as legal precedents relied upon by the assessee, it is not the case of the surrender of the undisclosed income during the

course of survey proceedings, but incriminating material by way of excess stock of silver ornaments was found during survey vis-à-vis stock recorded in stock register, and additions were made based on the incriminating material (being excess stock) found during survey conducted u/s 133A. The orders of the ld. CIT(A) is set aside on this issue of excess silver ornaments and the assessment order is upheld . We order accordingly.

With respect to difference of stock of gold jewellery found during Survey on 24.02.2012 at Varanasi, U.P. of 128 gms vis-à-vis no stock shown in the stock register . It is an admitted position that the assesee is not maintaining stock register so far as gold jewellery and silver bullion is concerned. No explanation explaning source of acquisition of this gold jewellery of 128 gms was given by Shri Shiv Bachan Yadav, Manager of the assessee while recording statement during the course of survey. Even , the assessee could not give any explanation while recording of his statement during the course of survey on 24.02.2012. There was no entry found in the records at the time of survey with respect to this 128 gms of gold jewellery found during survey at Varanasi B.O. .There is no purchase invoices found during survey. Thus, there is no evidence which is part of impounded material to substantiate that this gold ornaments were out of disclosed and declared sources. The assessee was called upon by authorities to explain the differences, at three different stages, firstly by the investigation wing of the department, wherein the summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 , were issued wherein the assessee had opportunity to explain the differences in the stock. The ld. Counsel for the assessee Advocate Mr. Divyanshu Agrawal being officer of the Court made statement before the Bench , that these two summons and letter dated 06.03.2012 were never received by the assessee and hence there is no question of compliance by the assessee. On perusal of the Survey Report dated 16.04.2012 , which is placed on record , in Departmental Paper Book filed on 09.11.2021 at Page 1-10, it is clearly mentioned

at Para 5 that the assessee namely Mr. Neeraj Agrawal was duly issued Summon dated 27.02.2012 u/s 131(1A) by ADIT(Inv.) , for appearance before him on 28.02.2012 but the assessee did not comply with the summons. It is also mentioned in the said Survey Report at para 5 , that another summon dated 29.02.2012 u/s 131(1A) was issued by ADIT(Inv)to the assessee for appearance beforeADIT(Inv.) on 05.03.2012 at 11AM, but again the assessee did not comply. It is further stated that letter dated 06.03.2012 was issued to the assessee to remain present on 12.03.2012, but the assessee did not comply with the said directions . During assessment proceedings, the assessee sought to explain the difference by explaining that the same was purchased from 14 different persons who were not registered with VAT/Commercial Tax department, and the purchases were claimed to be mae by the assessee just few days prior to the date of survey on 24.02.2012 . There are no entries found of said purchase of gold jewelry of 128 gms from 14 different person in the books of accounts/stock records prior to the date of survey, nor these are part of impounded material. The assessee has during assessment stage in 2015 i.e. after three years of survey on 24.02.2012 tried to justify these purchases of gold ornaments by producing 14 invoices(page 71-84 of PB -1 filed by department). The AO rejected the contentions of the assessee. The ld. CIT(A) also rejected the contentions of the assessee, as source of the said gold jewellery could not be explained. It is highly improbable that the assessee purchssed gold ornaments from 14 different persons who all are unregistered dealers just within 3-4 days prior to the date of survey , and further that no evidence whatsoever related to said purchases were found during the course of survey conducted on 24.02.2012 . These evidences were created post survey , to justify the excess gold ornaments of 128 gms found during survey , which was otherwise undisclosed and undeclared stock of the assessee and but for the survey conducted on 24.02.2012 would not have come into record . As per document A-2 impounded from Varaansi B.O. , there is impounded ledger account of gold

ornaments which shows Nil Balance (page 153/PB-3 filed by department).We donot find any infirmity in the orders passed by authorities below, and we sustain the appellate order passed by ld. CIT(A) and the addition is sustained, on the toucshtone of preponderance of human probabilities as the explanation offered by the assessee is held to be mere after thought to wriggle out of tax liability. So far as legal precedents relied upon by the assessee, it is not the case of surrender of the undisclosed income during the course of survey proceedings, but incriminating material by way of stock of gold ornaments was found during survey for which no satisfactory explanation could be given by the assessee, and additions were made based on the incriminating material (being excess stock) found during survey conducted u/s 133A. The order passed by ld. CIT(A) on this isuse is upheld . We order accordingly.

With respect to 4.958 kgs of silver Bullion found during survey u/s 133A on 24.02.2012 at Varanasi BO vis-à-vis no stock shown in the stock register . It is an admitted position that the assesee is not maintaining stock register so far as gold jewellery and silver bullion is concerned. No explanation explaning source of acquisition of this silver bullion of 4.958 kgs was given by Shri Shiv Bachan Yadav, Manager of the assessee while recording statement during the course of survey. Even , the assessee could not give any explanation while recording of his statement during the course of survey on 24.02.2012. There was no entry found in the records at the time of survey with respect to this 4.958 kgs of Silver Bullion found during survey at Varanasi B.O. .There is no purchase invoices found during survey. Thus, there is no evidence which is part of impounded material to substantiate that this Silver Bullion were out of disclosed and declared sources. The assessee was called upon by authorities to explain the differences, at three different stages, firstly by the investigation wing of the department, wherein the summons dated 27.02.2012 and 29.02.2012 as well letter dated 06.03.2012 , were issued wherein the assessee had opportunity to explain the differences in the stock. The ld.

Counsel for the assessee Advocate Mr. Divynshu Agrawal being officer of the Court made statement before the Bench , that these two summons and letter dated 06.03.2012 were never received by the assessee and hence there is no question of compliance by the assessee. On perusal of the Survey Report dated 16.04.2012 , which is placed on record , in Departmental Paper Book filed on 09.11.2021 at Page 1-10, it is clearly mentioned at Para 5 that the assessee namely Mr. Neeraj Agrawal was duly issued Summon dated 27.02.2012 u/s 131(1A) by ADIT(Inv.) , for appearance before him on 28.02.2012 but the assessee did not comply with the summons. It is also mentioned in the said Survey Report at para 5 , that another summon dated 29.02.2012 u/s 131(1A) was issued by ADIT(Inv)to the assessee for appearance beforeADIT(Inv.) on 05.03.2012 at 11AM, but again the assessee did not comply. It is further stated that letter dated 06.03.2012 was issued to the assessee to remain present on 12.03.2012, but the assessee did not comply with the said directions . During assessment proceedings in 2015, the assessee sought to explain the difference by explaining that the same was brought by one Mr. Ghurahu Yadav for sale. . There is no entry found for said silver bullion of 4.958 kgs brought by Gurahu Yadav , in the stock records as well in the books of accounts prior to the date of survey, nor these are part of impounded material. The assessee has during assessment stage in 2015 tried to justify this stock of Silver Bullion of 4.958 kgs being brought by one Mr. Gurahu Yadav for sale, and claim is made that the sale did not materialize and the same was returned to Mr. Gurahu Yadav. The AO rejected the contentions of the assessee. The ld. CIT(A) also rejected the contentions of the assessee, as source of the said silver bullion could not be explained,and the explanation offered by assessee was held to be an afterthought. The assessee has produced affidavit of Mr. Ghurahu Yadav which aver that he brought 4.958 kgs of silver bullion to assessee premises for sale on 23.02.2012 , but the sale did not materialize and the same was returned to him by assessee on 27.02.2012.(page 85 of PB-1 filed by department) . No such entry was

found in the impounded material which could substantiate that Mr. Ghurahu Yadav deposited 4.958 kgs of silver bullion with assessee on 23.02.2012 for sale. It is incomprehensible to believe that Mr. Shiv Bachan Yadav , Manager of the assessee of Varanasi BO could not disclose these material facts during survey on 24.02.2012 (i.e. one day after alleged receipt of 4.958 kgs of Silver Bullion from Mr. Ghurahu Yadav on 23.02.2012) , to the department official who conducted survey as well to the valuer who weighed and valued the silver bullion on 24.02.2012 that this silver bullion belonged to and owned by Mr Ghurahu Yadav. No ledger account of Silver Bullion was found during survey proceedings at Varanasi BO. We donot find any infirmity in the orders passed by authorities below, and we sustain the appellate order passed by ld. CIT(A) and the addition is sustained. So far as legal precedents relied upon by the assessee, it is not the case of the surrender of the undisclosed income during the course of survey proceedings, but incriminating material by way of stock of silver bullion which was found during survey for which no satisfactory explanation could be given by the assessee, and additions were made based on the incriminating material (being excess stock) found during survey conducted u/s 133A. The orders of the ld. CIT(A) on this issue is upheld . We order accordingly.

15C Cash Deposits in Cash book of Rs. 10,15,000/-

The AO observed that there are cash deposits recorded in the cash books maintained by the assessee, which were found during the course of survey operations u/s 133A on 24.02.2012, as detailed hereunder:

S.No.	Date	Concerned Perons/Firm name	Amount
1	01.04.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
2	20.05.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
3	30.06.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
4	15.09.2011	Shambhoo Nath Agrawal Sarraf	Rs. 4,00,000/-
5	24.05.2011	Raj Shree Palace	Rs.1,00,000/-

6	01.06.2011	Raj Shree Palace	Rs.1,00,000/-
7	13.12.2011	Raj Shree Palace	Rs. 65,000/-
8	30.01.2012	Raj Shree Palace	Rs. 50,000/-
		Total	**Rs. 10,15,000/-**

The assessee was confronted on this issue by the AO to explain aforesaid cash deposits, and the assessee submitted as under:

यहकि सर्वे की कार्यवाही के दौरान नगद धनराशि जिसका उल्लेख नोटिस में किया गया है वह फर्म सर्वश्री शम्भू नाथ अग्रवाल सराफ एवं राजश्री पैलेस का विभिन्न तारीखो में जमा है के सम्बन्ध में प्रार्थी का यह कहना है कि फर्म सर्वश्री शम्भू नाथ अग्रवाल सराफ, बसनही बाजार में मैं स्वयं नीरज अग्रवाल बतौर साक्षीदार कार्यरत हूँ चाँदी जेवर की बिक्री हेतु नगद जमा किया गया था। खाते की नकल एवं बिक्री बिल संलग्न किया जा रहा है। राजश्री पैलेस में मैं स्वयं प्रोपराइटर हूँ जो सिनेमाहाल है वहाँ से नगद रूपया लेकर उपरोक्त फर्म में जमा किया गया है। राजश्री पैलेस की आमदनी एवं उपरोक्त फर्म की आमदनी मेरे स्वयं की आमदनी है दोनो की आय सम्मिलित करते हुए आयकर दिया जाता है। खाता का नकल संलग्न है।

The AO considered the aforesaid reply of the assessee and observed that no such explanations have either been produced during the course of survey nor any such evidences have been produced during recording of statement. It was further observed that the same has not been adequately explained and substantiated by the assessee during the course of assessment proceedings. The AO observed that

the assessee was required to substantiate the explanation submitted by it with credible evidences regarding the source of the aforementioned cash deposits in the cash book, and merely filing the copy of the account did not make good evidence for such claims to be accepted . The amount of Rs. 10,15,000/- with respect to aforesaid cash deposit in the cash books was treated by AO as cash credit u/s. 68 of the Act, in the absence of proper evidences and the same was added by AO to the income of the assessee.

The ld. CIT(A) deleted the additions of Rs. 10,15,000/- with respect to cash recorded in the cash book, by holding as under:

"7.2 <u>Discussion & Decision:</u>

The Assessing officer had made an addition of INR 10,15,000 on account of cash deposits in the cash book, which was purportedly received from –

(i) ShambhooNath Agarwal Saraf - Rs.7,00,000/-

(ii) Rajshree Palace - Rs.3,15,000/-

7.2.1 These amounts were shown as advance deposits in the books prior to the date of survey. As regards advance/ deposits of INR Rs.3,15,000/- from "M/s Rajshree Palace', it is seen that it is another proprietary concern of the assessee The copy of accounts of M/s Raj Shri Palace in the books of M/s RajshreeJewellersand Raj shreeJewellers in the books of M/s Raj Shri Palacehave been seen by me which were submitted during the course of assessment proceedings. I observe that all these papers had been filed during the time of assessment proceedings but the A.O. did not raise any further query. I have seen and verified the cash book of M/s Raj Shree Palace and find that there was sufficient Cash Balance and there is suitable entry to that effect. As regards cash deposits/ advances from Shambhoo Nath Agarwal Saraff a copy of account of the party in his account book was submitted by the assessee during the course of assessment. Since the assessee had already shown these cash deposits/ advances prior to the survey and the depositor, there can be no reason for the A.O. to add this amount as unexplained cash deposits. <u>The A.O should have rather informed the A.O. of the party, namely ShambhooNath Agarwal Saraf to take</u>

suitable measures under the provisions of Section 269SS of the Act for making such cash deposits/ advances. In this view of the matter, I accept the pleading of the appellant in regard to the above mentioned addition of INR 10,15,000 and delete the addition so made."

Analysis and Decisions:

We have carefully considered the entire material on record. There were cash deposits recorded/entered in the cash book at various dates (all prior to the date of survey) from the following parties:

S.No.	Date	Concerned Perons/Firm name	Amount
1	01.04.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
2	20.05.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
3	30.06.2011	Shambhoo Nath Agrawal Sarraf	Rs.1,00,000/-
4	15.09.2011	Shambhoo Nath Agrawal Sarraf	Rs. 4,00,000/-
5	24.05.2011	Raj Shree Palace	Rs.1,00,000/-
6	01.06.2011	Raj Shree Palace	Rs.1,00,000/-
7	13.12.2011	Raj Shree Palace	Rs. 65,000/-
8	30.01.2012	Raj Shree Palace	Rs. 50,000/-
		Total	**Rs. 10,15,000/-**

During assessment proceedings, the assessee explained that an amount of Rs. 3,15,000/-was received from the properitory concern namely M/s Raj Shree Palace on different dates, and the assessee is the properitor of M/s Raj Shree Palace . The said properitory concern namely M/s Raj Shree Palace is running Cinema Hall. The account of the assessee in the books of Raj Shree Palace as well account of M/s Raj Shree Palace in the books of the assessee were submitted, vide page 78-79 of PB-1 filed by the assessee. The assessee is proprietor of both the concerns. The AO rejected the contentions of the assessee, as the credibility of source of cash in the properitory concern could not be proved. The ld. CIT(A) accepted the contentions of the assessee , as sources of cash receipts in M/s Raj

Shree Palace as entered in its cash book , were held to be subtaintiated by ld. CIT(A). Both the concerns are properietory concern and assessment was framed by the AO after including , inter-alia , income of both the concerns. The records were available before the AO during assessment proceedings , and these entries were made prior to the date of survey. Thus, We donot hold infirmity in the appellate order passed by ld. CIT(A) deleting addition of Rs. 3,15,000/- with respect to cash received by one properitory concern of the assessee namely M/s Raj Shree Jewellers from another properitory concern of the assessee namely M/s Raj Shree Palace. The appellate order passed by ld. CIT(A) deleting adition of Rs. 3,15,000/- is confirmed. We order accordingly.

The assessee has also claimed that Rs. 7.00 lacs was received in cash on different dates from M/s Shambhoo Nath Agrawal Saraf as advance for sale of jewellery. The details are in above chart. The assessee has claimed that he is partner of the said partnership concern namely M/s Shambhoo Nath Agrawal Saraf. The assessee in its computation of income filed for impugned assessment year has disclosed salary income as well share of profit from said concern namely M/s Shambhoo Nath Agrawal Saraf. This return was filed post survey. No other evidence has been filed by the assessee to substantiate that he is partner of M/s Shambhoo Nath Agrawal Saraf. The copies of accounts of the said concern in the assessee' books as well account of the assessee in Shambhoo Nath Agrawal Saraf was filed , page 81-82/PB-1 filed by assessee. It is explained that this amount was received as advance towards sale of gold jewellery . The said sale bill was raised by assessee on 16.03.2012 i.e. post survey, while cash of Rs. 7 lacs was received from 01.04.2011 to 15.09.2011(details above in the chart) i.e. prior to survey. The AO rejected the contentions of the assessee and invoked provisions of Section 68. The assessee has to explain identitiy and creditworthiness of the party from whom the said cash of Rs. 7 lacs was received as well genuineness of transaction. It is incomprehensible to believe that advance cash was received on 01.04.2011 onwards, while sale is

made on 16.03.2012 for Rs. 7,07,002/- i.e. almost after one year and that too of a highly volatile item of gold ornaments where prices of gold are fluctuating on day to day basis. There is one more account of Shambhoo Nath Jewellers in the books of the assessee, and transaction through banking channel of Rs. 47800/- received on 06.05.2011 and sale having made within short time gap of Rs. 47,793/- on 26.05.2011 for sale of silver jewellery by assessee to the said party (page 94-95/PB-1 filed by department) . The ld. CIT(A) accepted the contentions of the assessee, without seeing whether mandate of Section 68 is satisfied or not, rather ld. CIT(A) invoked Section 269SS to take suitable measures against M/s Shambhoo Nath Agrawal Saraf, without appreciating that even if Section 269SS r.w.s. 271D is to be invoked, it is to be invoked against receipient who was the assessee in the instant case who infact received said cash of Rs. 7,00,000/- from M/s Shambhoo Nath Agrawal Saraf, and Section 269SS cannot be invoked against the lender namely from M/s Shambhoo Nath Agrawal Saraf for making payments to the assessee. Thus, ld. CIT(A) erred in granting relief to the assessee. The appellate order of ld. CIT(A) is set aside on this issue of addition of Rs. 7,00,000/- received in cash from M/s Shambhoo Nath Agrawal Saraf, and keeping in view facts and circumstances of the case and in the interest of justice, the matter is to be restored back to the file of the AO for denovo assessment on merits, after giving proper opportunity of being heard to the assessee, as necessary cross verifications are required to be made by the AO. The onus is on the assessee to satisfy the mandate of Section 68, which cast obligation on the tax-payer where any sum is found credited in the books of an tax-payer maintained for any previous year, and the taxpayer offers no explanation about the nature and source of credit thereof or the explanation offered by the taxpayer is found not satisfactory in the opinion of the AO, the entire sum so credited in books of the tax-payer may treated as income and charged to income-tax as income of the taxpayer of that previous year. The burden/onus is cast on the taxpayer and the

taxpayer is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make additions u/s. 68 of the Act as an income of the tax-payer.Thus, this issue is resored to the file of the AO for denovo assessment, after giving proper opportunity of being heard to the assessee. We order accordingly.

15D Excess Cash found During Survey

The AO observed that there were differences found in physical cash found during the course of survey u/s 133A on 24.02.2012 in the premises of the assessee surveyed and the cash available as per books of account/cash book maintained by the assessee, as detailed hereunder:

	In Rs.
Cash found from Mirzapur premises =	*2900/-*
Cash found from Varanasi premises =	*6,05,400/-*
Total	***6,08,300/-***
Cash as per cash book	*20,876/-*
Difference	***5,87,424/-***

The AO confronted the assessee with this issue, and the assessee submitted before the AO as under:

7 यहकि सर्वे के दौरान पाये गये नगदी एवं बही खाते में दिखाये गये नगदी के अन्तर के सम्बन्ध में स्पष्टीकरण मीरजापुर प्रतिष्ठान एवं वाराणसी ब्रांच आफिस का निम्न प्रकार है –

क. मीरजापुर प्रतिष्ठान

पाया गया नगद	लेखा पुस्तक में
2900.00	दिनांक 24.02.2012 को रू0 2900.00

पर रू0 20,000.00 दीप अलंकार मन्दिर, धुन्धी कटरा, मीरजापुर एवं रू0 19,814.00 मुकेश यादव, बिसुन्दपुर, मीरजापुर से नगद रूप में जमा किया। 11/– नगद नीरज अग्रवाल का जमा है। 55,000.00 अग्रिम कर आयकर जमा करने के लिए दिया गया था। दिनांक 24.02.2012 को सर्वे के समय 2900.00 रोकड़ प्राप्त हुआ है बही खाता आपके अवलोकनार्थ प्रस्तुत है।

ख. वाराणसी प्रतिष्ठान

यहकि वाराणसी प्रतिष्ठान का रोकड़ बही दिनांक 20.12.2012 तक पूर्ण था। मुनिम जी के अस्वथता के कारण 21.02.2012 से 29.02.2012 तक का रोकड़ बही था पूर्ण नही रोकड़ की छायाप्रति संलग्न कर रहे है जिसमें अन्तिम रोकड़ बाकी रही 605400/– है। उस अवधि के दौरान जो 20000/– के उपर माल खरीदने हेतु एडवान्स जमा किया था उनका विवरण निम्न प्रकार है –

1	शैलेन्द्र यादव	रू0 105000/–	दिनांक 21.02.2012
2	शैलेन्द्र यादव	रू0 1,00,000/–	दिनांक 22.02.2012
3	शिव आधार यादव	रू0 95,000/–	दिनांक 22.02.2012
4	विजय अग्रवाल	रू0 75,000/–	दिनांक 22.02.2012
5	सुबेदार यादव	रू0 45,000/–	दिनांक 23.02.2012
6	विजय अग्रवाल	रू0 70,000/–	दिनांक 23.02.2012
7	शिव आधार यादव	रू0 55000/–	दिनांक 23.02.2012

उक्त के संदर्भ में शपथपत्र मय पहचान पत्र के (ID) साथ संलग्न कर रहे है।

The AO considered the reply of the assessee and observed that the reply/explanation submitted by the assessee is not substantiated properly with support of credible evidences. The AO observed that merely filing of an affidavit which is not substantiated with any material information or for that matter, filing of copy of account/bills and vouchers etc. which were neither found during the course of survey nor demonstrated/produced during the course of recording of statement at both the places i.e. Mirzapur and in Varanasi cannot be treated to be sufficient in any manner . The AO observed that differences of the cash could not be corroborated with cash book/other relevant documents, during the course of survey or during the course of assessment proceedings., and hence, the AO added the same i.e. Rs. 5,87,424/- to the total income of the assessee under Section 68 of the Act.

The ld. CIT(A) granted part relief to the assessee, by holding as under:

> ***"6.2 Discussion & Decision:***
>
> *The Assessing officer has made an addition on account of difference in amount of physical cash found during the course of survey and cash as per cash book. In regard to Cash found at Mirzapur premises, it is seen from the statement recorded during the course of survey that the appellant had already mentioned the details of balance of INR 18,074 in cash book and the receipt of INR 39,814 from the customer and the payment of INR 55,000 towards advance tax. Accordingly, I accept the pleading of the appellant in regard to the cash reconciliation at Mirzapur premises. As regards Cash found at Varanasi premises, It is seen from the statement recorded during the survey that the appellant had not offered any explanation with respect to the excess cash found. The explanation for the same had been provided for the first time during the course of the assessment proceedings. The explanation offered by the assesses is clearly an afterthought and lacks credible evidentiary value. Accordingly, this explanation is rejected and the addition so made by the AO gets confirmed. This grounds of appeal is partially allowed. Appellant gets relief to the extent of INR 18,074."*

Analysis and Decision:

We have observed that cash book at Mirzapur was updated until 23.02.2012(as per impounded cash book) and cash balance was Rs. 18,074/-(page 95/PB-3 filed by department) as per impounded cash book, while cash found during survey on 24.02.2012 was Rs. 2900/- .The ld. CIT(A) granted relief to the assessee of Rs. 18,074/- by accepting the contentions of the assessee by way of reconciliation of the cash , wherein it is claimed that Rs. 39,814/- was received from the customer and while Rs. 55,000/- was given for deposit of advance tax, however no such further elaboration was done by ld. CIT(A) as to details of customer and actual deposit of advance tax. The order of ld. CIT(A) is not clear and moreover, no comments were called from AO. Thus, for limited verification, we are restoring this issue to the file of theAO for verification of truthfulness of the claim of the assessee. We order accordingly.

So far as difference between cash found during survey and the cash as per cash book at Varanasi BO, it is observed that cash book was written upto 20.02.2012, and balance in cash book was Rs. 20,876/- (page 227/PB-3 filed by department) , while actual cash found during survey was Rs. 6,05,400/-. The assessee is seeking to explain this difference by way of showing of cash receipt of Rs. 5,45,000/- as cash advances from 4 persons (7 entries from 4 persons) against future supplies of silver/gold ornaments, as detailed above, all cash received between 21.02.2012 to 23.02.2012 just prior to survey on 24.02.2012 . The affidavits of these four parties were submitted during assessment proceedings(page 93-100/PB-1 filed by assessee). No such explanation was furnished during survey that cash found during survey at Varanasi BO constituted advance cash given by these parties against future supplies of silver/gold ornaments. No entry was found recorded in the cash book/ledger or any other records , prior to date of survey, with respect to alleged cash receipts from these persons aggregating to Rs. 5,45,000/-. Cash of Rs. 6,05,400/- was found at Varanasi BO on the date of survey on 24.02.2012. The

cash book was completed until 20.02.2012 , and balance recorded was Rs. 20,876/-. These cash receipts from all the four persons(7 entries) have taken place between 21.02.2012 and 23.02.2012 just prior to date of survey on 24.02.2012 , which is highly improbable, and these entries/cash receipts were introduced in the books of accounts/cash book as the assessee was cornered as excess cash was found which was from undisclosed/undeclared sources. There are no trace of receipt of any of these alleged cash advances receipts to the tune of Rs. 5,45,000/- in the books of accounts or any other record , prior to the date of survey. There is no reference anywhere as to said alleged cash receipts in the impounded material. The authorities below have rightly rejected the contentions of the assessee. The affidavits filed are self serving and are not corroborated with any evidence found during survey. Even , receipts which ought to have been issued at the time of receipt of cash were not issued(no such receipt found during survey) and no evidence whatsoever was found during survey to substantiate the contentions of the assessee, and it is merely an afterthought to wriggle out of tax liability and stand rejected, and we hold that the cash of Rs. 6,05,400/- found at Varanasi during survey after excluding Rs. 20,876/- recorded in cash book , is an undisclosed income of the assessee . The appellate order passed by ld. CIT(A) w.r.t. unexplained cash found at Varanasi BO stands confirmed. So far as legal precedents relied upon by the assessee, it is not the case of the surrender of the undisclosed income during the course of survey proceedings, but incriminating material by way of excess cash was found during survey for which no satisfactory explanation could be given by the assessee, and additions were made based on the incriminating material (being excess cash) found during survey conducted u/s 133A. The orders of the ld. CIT(A) on this issue is upheld . We order accordingly.

15E Rejection of Books of accounts by invoking provisions of Section 145(3).

The authorities below rejected books of accounts as not reliable , as the books of accounts were not complete and further there were discrepancies in stock as well

cash, found during survey. We have already upheld the additions made on account of excess stock as well cash , found during survey, by holding the same being undisclosed income of the assessee. Even if books of accounts are rejected , there is no bar in making additions by relying on the incriminating material found during survey or other infringements of the provisions of the 1961 Act. Section 145(3) of the 1961 Act stipulates that where the AO is not satisfied about the correctness or completeness of the accounts of the assessee , or where the method of accounting provided in sub-section (1) of Section 145 of the 1961 Act has not been regularly followed by the assessee , or income has not been computed in accordance with the standards notified under sub-section (2), the AO may make an assessment in the manner provided in Section 144 of the 1961 Act, wherein Section 144(1) stipulates that the AO can then make assessment of the total income of the assessee to the best of his judgment after taking into all relevant material which the AO has gathered. First Proviso read with Second Proviso to Section 144(1) stipulates that there is no requirement of issuing SCN when notice u/s 142(1) is already issued by the AO prior to making of an assessment u/s 144. The AO in the instant case duly issued notices both u/s 143(2) and 142(1), which are found recorded in assessment order.

Reference is drawn to three judge bench decision of Hon'ble Supreme Court in the case of CIT v. Devi Prasad Vishwanath reported in (1969) 72 ITR 194(SC), wherein Hon'ble Apex Court held as under:

> *"There is nothing in law which prevents the Income-tax Officer in an appropriate case in taxing both the cash credit, the source and nature of which is not satisfactorily explained, and the business income estimated by him under section 13 of the Income-tax Act, after rejecting the books of account of the assessee as unreliable. This was so decided in Kale Khan Mohammad Hanif v. Commissioner of Income-tax [1963] 50 ITR 1 (SC). Whether in a given case the Income-tax Officer may tax the cash credit entered in the books of account of the business, and at the same time estimate the profit must, however, depend upon the facts of each case."*

Thus, we uphold the rejection of books of accounts u/s 145(3) by authorities below , keeping in view facts and circumstances of the case that the books of accounts were not updated as on the date of suvey as well that there were discrepancies in the stock as well cash physically found on the date of survey vis-à-vis as recorded in the records/books of accounts, and we have already confirmed additions on both the account of differences in cash as well stock vide this order. We order accordingly.

15F. Additions with respect to unexplained Sundry Creditors to the tune of Rs. 34,82,707/-

The AO observed that efforts were made by the Investigation Directorate to conduct enquiry from some of the sundry creditors by issuing summons u/s 131(1), but the summons issued in most of the cases have been reported to be returned undelivered. The AO in order to conduct necessary enquiries, called for following information from the assessee with respect to sundry creditors:

(i) Complete postal address for correspondence to be made with them., Confirmation in the case above Rs. 1,00,000/-,
(ii) copy of their accounts,
(iii) PAN/ITR of the persons concerned.

The AO observed that in response, the assessee neither provided complete postal address of the sundry creditors(the addresses provided by the assessee are incomplete and are absolutely vague and without proper house No. etc.) nor their PAN/ITR was furnished by the assessee. The AO observed that in the absence of the aforesaid information, it is not possible for AO to obtain necessary information either from returns of income or from the Departmental software i.e. AST for conducting physical verifications. The AO observed that confirmations also could not be given in the following cases :-

D.D. Industries, Mandi Ram Das, Mathura.	Rs. 9,49,700/-
R.G. Ornaments, Namak Ki Mandi, Agra.	Rs. 6,00,284/-
Dashrath Silver Art Pvt. Ltd., Redak Road Near, Arya Nagar, Sant Kabir Road, Rajkot.	Rs. 14,26,243/-
Shri Sati Ram, Jitu Dustakpur, Varanasi.	Rs. 4,32,710/-
Shri Vari Payals, 216, Moongapadi Street, Gugai, Salem.	Rs. 73,770/-
Total	**Rs. 34,82,707/-**

The AO observed that the assessee was duty bound either to provide complete details of the sundry creditors to the Assessing Officer for reaching at right conclusion or to provide adequate information to conduct necessary enquiries for finding out correct position of the facts of the case, which the assessee failed to do. The AO observed that the assessee has only filed unconfirmed copies of account of these sundry creditors. The AO made addition of Rs. 34,82,707/- to the income of the assessee.

The ld. CIT(A) deleted the entire addition of Rs. 34,82,707/- as was made by the AO on account of unexplained sundry creditors under Section 68 of the Act , by holding as under:

*"**9.2 Discussion & Decision:***

As per the Assessing Officer, the assessee had failed to file the confirmations in regard to the credit balances from the following parties-

D.D. Industries, Mandi Ram Das, Mathura	*Rs. 9,49,700/-*
R.G. Ornaments, Namakki Mandi, Agra	*Rs 6,00,284/-*
Dashrath Silver Art Pvt. Ltd. , Redak Road Near, Arya Nagar, SantKabir Road, Rajkot	*Rs 14,26,243/-*
Shri Sati Ram, JituDustakpur, Varanasi	*Rs 4,32,710/-*
Shri VariPayals, 216, Moongapadi, Street, Gugai, Salesm	*Rs 73,770/-*
Total	***Rs. 34,82,707/-***

9.2.1 I have seen the list of sundry creditors. It has been informed to me that all the confirmations had already been called for by the survey team (after the survey proceedings) and all the trade creditors had already submitted the confirmations to the department directly. However, since these submissions were in the realm of speculation, I directed the assessee to file the confirmations duly signed by the trade creditors. Such Confirmations are already on the assessment records, but these have been signed only by the assessee and not by the vendors. The assessee filed these confirmations duly signed by the creditors as well. I discuss each of these trade creditors as under-

i) D.D. Industries - Rs.9,49,700-Before the AO., the assessee had filed a copy of account of the said party, on perusal of which it is seen that theimpugned credit appears in these accounts. This copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the A.O. of the party for his verification. The addition made by the A.O. is hereby deleted.

ii) R.G. Ornaments, Agra - Rs.6,00,284 - the assessee has filed a copy of the account of the aforesaid party before the A.O., on perusal of which I find that there are series of purchases and payments. It is also seen that the ADIT (Inv.), Allahabad had issued summons u/s 131 dated 05.03.2012 to the aforesaid party, to which the party had made a reply vide letter dated 15.03.2012, wherein it had confirmed the three transactions of sales to the assessee in the F.Y. 2011-12. In this view of the matter, this credit of Rs.6,00,284/- is accepted as duly explained.

iii) Dashrath Silver Art Pvt. Ltd. - Rs. 14,26,243- the assessee had filed a copy of account of the said party; on perusal of which it is seen that the impugned credit appears in these accounts. Now this copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the AO of the party for his verification. The addition made by the A.O. is hereby deleted.

iv) Shri Sati Ram - Rs.4,32,710-As regards credit standing in the name of Shri Sati Ram, it had been informed to me by the appellant that the same is the opening balance for the FY 2011-12. It has been also informed that the person was no more and the appellant had booked the same as his incomein the next year. I have seen all the papers and based on that I am also deleting the addition of INR 4,32,710/- in regard to Shri Sati Ram.

v) Shri Vani Payals - Rs.73,770 - the assessee had filed a copy of account of the said party, on perusal of which it is seen that the impugned credit appears in these accounts. This copy of account has also been confirmed by the said party. The A.O. is directed to send this copy of confirmation of account to the A.O. of the party for his verification. The addition made by the A.O. is hereby deleted."

Analysis and Decisions:

We have carefully gone through the material on record . It is observed that the investigation department issued summons u/s 131 to sundry creditors to verify their genuineness , but the summons returned back. In order to verify these sundry creditors, the AO asked assessee to furnish complete details, but the same

were not furnished by the assessee. Unsigned copies of their ledger accounts in the books of the assesse were submitted, which are placed on record at page 41-46 of PB-2 filed by the assessee. The confirmations filed for these creditors are placed in PB-1 filed by department at page 118-122, which are only signed by the assessee and not by the creditors. The AO made additions to the income of the assessee by invoking provisions of Section 68. The ld. CIT(A) deleted the additions by holding that copy of confirmation signed by these creditors are now filed by the assessee. The ld. CIT(A) deleted the additions towards sundry creditors without calling from remand report from the AO. These confirmations filed by the assessee duly signed by the creditors have not stood verification by the AO. There is clearly breach of Rule 46A of the 1962 Rules. There are two parties before ld. CIT(A) and principles of nature justice demand that fair hearing be granted to both the parties. Reference is drawn to provisions of Section 250(1) and 250(2) of the 1961 Act, as well Rule 46A of the Income-tax Rules, 1962. These creditors are appearing in the books of accounts of the assessee, and the onus/burden is on the assessee to prove that the transactions recorded are genuine and mandate of Section 68 of the 1961 Act is fulfilled/complied with by the assessee. Section 68 cast obligation on the tax-payer where any sum is found credited in the books of an tax-payer maintained for any previous year, and the taxpayer offers no explanation about the nature and source of credit thereof or the explanation offered by the taxpayer is found not satisfactory in the opinion of the AO, the entire sum so credited in books of the tax-payer may be treated as income and charged to income-tax as income of the taxpayer of that previous year. The burden/onus is cast on the taxpayer and the taxpayer is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can

make additions u/s. 68 of the Act as an income of the tax-payer.Regarding one creditor Mr. Sati Ram , the balance appearing was the opening balance with no transaction reported for the year under consideration , and claim is made that the said amount is written back and offered for taxation in the next year , but, however no evidence to that effect is filed on record. Under these facts and circumstances and in the interest of justice , the entire matter regarding unexplained sundry creditor to the tune of Rs. 34,82,707/- need to be restored back to the AO for fresh adjudication on merits, after giving opportunity of being heard to the assessee. The appellate order passed by ld. CIT(A) is set aside, and the issue is restored to the file of the AO for denovo assessment on merits in accordance with law , after giving opportunity of being heard to the assessee. We order accordingly.

15G. Addition on account of Unsecured loans raised by assessee to the tune of Rs. 28,12,000/-

The AO observed that the assessee has raised unsecured loan to the extent of Rs. 33,70,000/- which have been shown to be obtained from various persons during the year under consideration. The details are as under:

M/s Raj Shri Jewellers , Basanahi Bazar , Mirzapur

Assessment Year 2012-2013 Loan Deposit Current Year

1	Goverdhan Das Agrawal , Pakkeghat Trimohani Mirzapur	495000.00
2	Goverdhan Das Agrawal (H U F) , Pakkeghat Trimohani Mirzapur	500000.00
3	KAditya Khaitan , Musaffarganj Mirzapur	200000.00
4	Shri Gopi Nath Agrawal , Purani Anjahi Mirzapur	575000.00
5	Shri Pramod Soni , Ganesh Ganj Mirzapur	300000.00
6	Smt. Shilpa Khaitan , Musaffarganj Mirzapur	600000.00
7	Smt. Suman Agrawal , Dankeen Ganj Mirzapur	400000.00
8	Sri Gopal Khaitan (H.U.F.) , Musaffarganj Mirzapur	300000.00
	Grand Total	3370000.00

The AO issued letters/notice under Section 133(6) to these persons for obtaining , *inter-alia,*copy of the bank statements apart from the other documents. The AO observed that in some of the cases, Bank statements were submitted and on the perusal of the same, it was observed by the AO that unsubstantiated cash was deposited in the concerned bank accounts immediately before issuing the cheques for extending the said loan to the assessee. It was also observed by the AO that in some of the cases the ITR/PAN details etc. could not be provided by the respected

persons . The summary of the information as received by the AO through DAK , was reproduced by AO in his order , as under:

Name of the Lender	***Amount of Loan***	***Amount of Cash deposited for granting the loan***	***Remarks/Findings***
Smt. Shilpa Khaitan	*6,00,000/-*	*2,70,000/-*	*The amount of Rs. 2,70,000/- is treated as unsubstantial credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of Smt. Khaitan is not established because total income shown by her is only 1,94,830/-*
Sri K. Aditya Khaitan	*2,00,000/-*	*2,00,000/-*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender.*
Sri Gopal Khaitan HUF	*3,00,000/-*	*1,62,000/-*	*The amount of Rs. 1,62,000/-is treated as unsubstantiated credit in the books of account*

			of the assessee. The capacity also of the lender is not established because total income shown by her is only 1,85,400/-
Sri Sharad Agrawal	*5,75,000/-*	*No bank statement/ ITR/PAN submitted*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee. The capacity of the lender is not established because no details could be submitted.*
Shri Pramod Soni	*3,00,000/-*	*3,00,000/-* *No ITR/PAN has been submitted.*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee. The capacity also of the lender is not established because no details could be submitted*
Smt. Suman Agrawal	*4,00,000/-*	*3,10,000/-*	*The amount to the extent of Rs. 3,10,000/- is treated as unsubstantiated credit in the books of account of the assessee.*

Sri Gowardhan Das Agrawal	*4,95,000/-*	*No details whatsoever could be submitted*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of the lender is not established because no details could be submitted.*
Sri Gowardhan Das Agrawal (HUF)	*5,00,000/-*	*5,00,000/-*	*The entire amount is treated as unsubstantiated credit in the books of account of the assessee, as the same could not be substantiated by the lender. The capacity also of the lender is not established because no details could be submitted.*

Thus, the AO made additions of Rs. 28,12,000/- in the hands of the assessee towards unsecured loans raised by the assessee, by treating it as undisclosed income of the assessee .

The ld. CIT(A) partly allowed the relief to the assessee, by holding as under:

"10.2Discussion & Decision:

I have seen the list of Loans and deposits and discuss each of the creditors/ depositors as under:

a. Smt. Suman Agrawal - Rs.3,10,000 - Details on Page 7-10 of the Paper Book 2. The appellant has submitted a copy of Confirmation and bank statements which was filed before the AO on 18/03/2015 Copy of ITR of Smt. Suman Agarwal is also at Page 23 of the Paper Book 1. In view of confirmation filed by Smt. Suman Agrawal and also the fact that she is a Tax payer, the addition so made is hereby deleted. The AO should send the confirmation letter filed by her to her A.O. for him to verify the transactions.

b. M/s Gopal Khaitan (HUF)- Rs.3,00,000- Details on Page 11-13 of the Paper Book 2. On perusal of the case records, it is seen that when the AO. had made enquiry u/s 133(6) of the I.T. Act, the said party had submitted Confirmation and bank statements before the A.O, on 18/03/2015. Copy of its ITR is at Page 24 of the Paper Book 1. In this view of the matter the genuineness of the credit is established and the addition so made is hereby deleted. The A.O. should send the confirmation letter filed by it to it's A.O. for him to verify the transactions.

c. K. Aditya Khaitan - Details are at page 14-19 of the Paper Book) 2. On perusal of the case records, it is seen that when the A.O. had made enquiry u/s 133(6) of the I.T. Act and the said party had submitted Confirmation and bank statements on 18/03/2015. Copy of ITR is submitted at Page 19 of the Paper Book 1. The A.O. should send the confirmation letter filed by him to her A.O. for him to verify the transactions. The addition so made is hereby deleted.

d. Shri. GopiNath Agrawal - Details are at page 20-21 of the Paper Book 2. No Confirmation and bank statements received as he was not well as per the letter of his son Shri Sharad Agrawal. But account number, bank name and branch was shared. In this view of the matter, the addition made is confirmed as the identify, creditworthiness and the genuineness of the transaction has not been proved.

e. Smt. ShilpaKhaitan - details at Page 25-28 of the Paper Book 2. Confirmation and bank statements filed on 17/03/2015. Copy of ITR is at Page 22 of the Paper Book 1. The AO should send the confirmation letter filed by her to her A.O. for him to verify the transactions. The addition so made is hereby deleted.

f. Shri PramodSoni - Details @ Page 22-24 of the Paper Book 2. Confirmation and bank statements filed on 18/03/2015. Copy of ITR is at Page 21 of the Paper Book 1. The AO, should send the confirmation letter filed by him to his AO for him to verify the transactions. The addition so made is hereby deleted.

g. Shri Goverdhan Das Agrawal - Details at Page 31-32 of the Paper Book 2. Copy of the ITR submitted by the appellant.The AO.should send the confirmation letter filed by him to his AO for him to verify the transactions. The addition so made by the A.O. is hereby deleted.

h. Shri Goverdhan Das Agrawal (HUF) - Details at Page 33-34 of the Paper Book 2. Copy of the ITR submitted by the appellant.The AO.should send the confirmation letter filed by it to its A.O. for him to verify the transactions. The addition so made is deleted.

Analysis and Decision:

We have carefully considered the material on record. We have observed that the assessee raised total unsecured loan of Rs. 33,70,000/- from the aforesaid eight lenders. They are described as friends and relatives. The unsecured loans are reflected in the books of the assessee and onus is on the assessee to prove its genuineness as well establish identitiy and creditworthiness of these lenders. The AO issued notices u/s 133(6) to these parties. The AO after analyzing the replies filed by these eight lenders observed that in the case of most of the lenders , the issue of cheque fvouring assessee is preceded by deposit of cash in their respective bank account, and the AO restricted the addition to the amount of cash deposits in their bank account which is preceded by the issue of cheque favouring assessee

granting of loan. The ld. CIT(A) erroneously deleted the additions and accepted the aforesaid loans(except in one case of Mr. Gopi Nath Agrawal) which were preceded by cash deposits before issuing the cheque in favour of the assessee , as confirmation , ITR, bank statements were filed notwithstanding that the return of income were of meagre amounts and further that loan to the assessee is preceded by cash deposit in the bank account of the lender, and additons made were deleted by ld. CIT(A) , except in the case of Mr. Gopi Nath Agrawal, where no confirmation and no bank statement was submitted, which addition in the case of Mr. Gopi Nath Agrawal was confirmed by ld. CIT(A), while rest of the addition stood deleted by ld. CIT(A). It was claimed that Mr. Gopi Nath Agrawal was not well and hence no details could be filed. Later on 01.04.2015 , Mr. Gopi Nath Agrawal died, death certificate was filed by assessee. It is submitted that no details could be submitted because of the aforesaid reasons, and no repayment to Mr. Gopi Nath Agrawal is made even to sons as the sons are fighting with each other. Based on facts and circumstances of the case and in the interest of justice , we are setting aside the appellate order passed by ld. CIT(A) as he erroneously granted relief to the assessee in rest of the cases except Mr. Gopi Nath Agrawal, and the entire issue is restored to the file of the AO for fresh adjudication, after giving one more opportunity of being heard to the assessee to satisfy the mandate of Section 68 which cast obligation on the tax-payer where any sum is found credited in the books of an tax-payer maintained for any previous year, and the taxpayer offers no explanation about the nature and source of credit thereof or the explanation offered by the taxpayer is found not satisfactory in the opinion of the AO, the entire sum so credited in books of the tax-payer may be treated as income and charged to income-tax as income of the taxpayer of that previous year. The burden/onus is cast on the taxpayer and the taxpayer is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with

the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make additions u/s. 68 of the Act as an income of the tax-payer. It is true that the assessee received loans from the aforesaid persons vide cheques which stood credited in his bank account and confirmations were filed , ITR etc. were filed(except in the case of Mr. Gopi Nath Agrawal) but the cheque issued by the lenders is preceded by cash deposit in their bank account, and hence onus is very heavy on the assessee. Thus,in the facts and circumstance of the case and in the interest of justice and in all fairness to both the parties,we are setting aside the appellate order passed by ld. CIT(A) and restore the matter back to the file of the AO for fresh adjudication of this issue on merits.So far as unsecured loan raised from Mr. Gopi Nath Agrawal , who had expired , his son has given his bank account details in the letter filed with AO in response to notice u/s 133(6). The AO is directed to write to the bank to obtain statement directly. However , we clarify that the onus still remain on the assessee to satisfy the mandate of Section 68. We order accordingly.

15H Chargebility of Interest u/s 234B and 234C

The assessee raised additional ground of appeal before ld. CIT(A) challenging the chargeability of interest u/s 234B and 234C pursuant to assessment order dated 20.03.2015 passed by the AO. It was brought to our notice that notice of demand was issued on 24.03.2015 and hence no interest u/s 234B and 234C can be charged as the assessment order is dated 20.03.2015. The levying of interest u/s 234B and 234C is mandatory and automatic. Reference is drawn to judgment and order of Hon'ble Supreme Court in the case of CIT v. Anjum S Ghaswala , reported in (2001) 119 Taxman 352(SC), decision of Hon'ble Supreme Court in the case of CIT v. Bhagat Construction Company Limited , reported in (2016) 383 ITR 9(SC) and also to decision of Hon'ble Supreme Court in the case of Kalyankumar Ray v.

CIT, reported in (1991) 191 ITR 634(SC) . The AO passed assessment order dated 20.03.2015 u/s 143(3) , wherein there is a directions to issue notice of demand / ITNS. 150 and challan. The notice of demand u/s 156 was issued on 24.03.2015 consequent to assessment order dated 20.03.2015 , which in our considered view was to compute tax and interest liability of the assessee, and to raise final demand payable by the assessee towards tax and interest thereon, pursuant/consequent to additions as were made by the AO and total income of the assessee computed by the AO, in the assessment order dated 20.3.2015. Section 156 deals with notice of demand and it stipulates that when any tax, interest, penalty , fine or any other sum is payable in consequence to any order passed under the 1961 Act , the AO shall serve upon the assesseee a notice of demand in the prescribed form specifying the sum so payable. Form No. ITNS 150 is prescribed as notice of demand. The AO issued notice of demand u/s 156 in prescribed form ITNS 150 on 24.03.2015 , while the assessment order was dated 20.03.2015. Notice of demand u/s 156 , dated 24.03.2015 was issued consequent to assessment order dated 20.03.2015, to give effect to the total income of the assessee computed by the AO vide assessment order dated 20.03.2015.It is well settled that the assessee does not have any vested right in procedures, and merely because the notice of demand u/s 156 was issued on 24.03.2015 while assessment order was dated 20.03.205 will not vitiate the liability to pay interest u/s 234B and 234C which is mandatory and consequential to the total income computed by the AO vide assessment order. The ld. Counsel has also pointed out that the date of assessment order mentioned in ITNS 150 is 24.03.2015, while correct date of assessment order is 20.03.2015. Merely because there is an clerical error in the ITNS 150 will not vitiate the liability of the assessee to pay interest u/s 234B and 234C , which is mandatory and consequential to assessment framed by the AO. Reference is drawn to provisions of Section 292B of the 1961 Act. Thus, we donot find any merit in the

contention of the assessee and uphold levy of interest u/s 234B and 234C and dismiss the ground raised by the assessee. We order accordingly.

16. In the result, appeal filed by the assessee in ITA Nos. 100 & appeal filed by Revenue in ITA no. 138Alld/2017 for ay: 2012-2013 are partly allowed for statistical purposes.

Order pronounced in Open Court on 14 /03/2023 at Allahabad , U.P.

sd/-	***sd/-***
[VIJAY PAL RAO]	**[RAMIT KOCHAR]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: 14 /03/2023

KdAzmi
Copy forwarded to:

1. Appellant –Mr. NeerajAgrawal, Prop. M/s Raj Shree Jewellers , Basnahi Bazar, Mirzapur - 231001, U.P.

2. Respondent –The DCIT Circle-3, Mirzapur, U.P.

3. The CIT(A) –AayakarBhawan, Civil Lines, Allahabad, U.P.

4. The CIT, Allahabad, U.P.

5. The ld. Sr. DR. ITAT, Allahabad, U.P.

6. The Guard File

By Order

P.S.