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8. On the other hand, Id. Counsel for the assessee vehemently argued referring to the following written submissions :

1. The present appeal preferred by the Revenue impugns the order of the Commissioner of Income-tax (Appeals), Panaji ('Ld. CIT(A)') under section 250 dated 17 February 2025. In this order, the CIT(A) had deleted the addition made by the Ld. Assessing Officer, the Deputy Commissioner of Income-tax, Central, Panaji ('LAO') vide his order under section 143(3) dated 30 June 2021.

GROUND OF APPEAL PREFERRED BY REVENUE

2. The grounds of appeal preferred by the Revenue impugn the Ld. CIT(A)'s finding on the following grounds:
 - a. That the excess stock was not separately identifiable.
 - b. That the excess stock was also included in the return of income filed.
 - c. That the excess stock was included in the books of account only after the survey under section 133A.
3. The grounds above are bad in law and hence, should be dismissed:
 - a. The grounds raised are not relevant considerations for sustaining additions as 'unaccounted investment'. The relevant considerations are, inter alia, those appreciated by the Ld. CIT(A).
 - b. The law under sections 68-69D does not contemplate the Revenue's reasoning to hold sums to be taxable.
 - c. What these provisions contemplate is that:
 - i. Amount should not be recorded in the books of account; and
 - ii. Assessee has not explained the source thereof.
 - d. The grounds of appeal themselves admit as follows and concede the incorrectness of the LAO's action:
 - i. The excess inventory is included in the books of account (Ground No. 3). Here kindly refer to pages 15, 16 and 26 of the PBC for relevant pages of the Respondent's audited financial statements and IT computation.
 - ii. The source of the excess inventory is the Respondent's business and here, the Respondent has suppressed the accumulated stock (Ground No. 4).



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- e. The Respondent has offered the excess inventory to tax as well as incorporated the same in its books. Tax at the rate of 30% *plus* applicable surcharge at 12% and education cess at 3%, aggregating to 34.61% has been paid. Therefore, there is no evasion of tax.
- f. None of the rulings cited by the LAO in his order support his case. In fact, these support the Respondent,
- g. On facts identical to that in the present case, numerous rulings as below have rejected the Revenue's approach to consider excess stock found during search / survey as unexplained investment:
 - i. Rajasthan High Court ('HC') in Bajargan Traders (466 ITR 397=ITA 258 / 2017 dtd. 12.09.2017) – page 33 of CLC.
 - ii. Madhya Pradesh HC in Krishna Kumar Verma (ITA 120 / 2023 dtd. 19.03.2024) – page 201 of CLC.
 - iii. Andhra Pradesh HC in Deccan Jewellery (P.) Ltd. (132 taxmann.com 73) – page 210 of CLC.
 - iv. Ahmedabad Income-tax Appellate Tribunal ('ITAT') in Chokshi Hiralal Maganlal v. DCIT (131 TTJ 1) – page 38 of CLC.
 - v. Jaipur ITAT in Sanjay Bairathi Gems Ltd. (ITA No.157 / JPR / 2017) – page 46 of CLC.
 - vi. Chandigarh ITAT in Gaurish Steels (P.) Ltd. (82 taxmann.com 337) – page 60 of CLC.
 - vii. Chandigarh ITAT in Veer Enterprises v. DCIT (ITA 255 / Chd / 2023) – page 66 of CLC.
 - viii. Raipur ITAT in Kulkarni & Sahu Buildcon Products Pvt. Ltd. v. DCIT (ITA 30 / Rpr / 2016) – page 114 of CLC.
 - ix. Chennai ITAT in Rameshlal Kailash (163 taxmann.com 379) – page 215 of CLC.
 - x. Karnataka HC in S.K. Srigiri & Bros. (298 ITR 13) – page 222 of CLC.
 - xi. Vizag ITAT in Pillala Ramakrishna Rao (ITA 81 / Vzg / 2016) – page 224 of CLC.

CROSS-OBJECTIONS PREFERRED BY RESPONDENT

- 4. Without prejudice to the correctness of the findings of the Ld. CIT(A), we submit as follows in the cross-objections preferred.



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Survey team's valuation has numerous discrepancies

5. The Respondent submits that the methodology adopted by the authorities to compute the inventory is defective and incorrect since:
 - a. The valuation is based on an approach different from that of the Respondent – since the authorities had computed the inventory in a manner different from the consistent method of the Respondent, there is bound to be a difference. Further the approach of the authorities is based on faulty facts and assumptions.
 - b. The valuation was done in haste and in a humanly impossible period of approx. 8 hours based on estimates, hunches and assumptions that were contrary to the facts on ground and also contrary to the principles of natural justice and good faith.
 - c. The Respondent himself has a stock variance of 2%-3% given normal loss, loss / gain on account of weightage and hence, the stock balance as reported by the Respondent is appropriate.

Approach adopted by authorities different from the Respondent and incorrect

6. The approach adopted by the authorities is different from that of the Respondent and incorrect. Since a different method was adopted by the authorities, it is inevitable that the stock value would be different from the Respondent. Secondly, the approach of the authorities is also incorrect. *To appreciate these aspects, it is relevant to understand the methodology adopted by the Respondent in the context of the Respondent's business, which have not even been considered by the Revenue.*
7. The Respondent is engaged in the trading of the following agricultural commodities: (a) maize; (b) toor dal, (c) bengal gram, (d) bajra, (e) sunflower seeds; (f) jowar; (g) rice and miscellaneous agricultural products / commodities.
8. All of these commodities are sourced from the farmers and stored in the Respondent's warehouses. The commodities are collected in gunny bags of different / uneven / non-standard sizes and weight at the warehouses. Sample photographs of such gunny bags of different / uneven / non-standard sizes and weight at the warehouses are provided in page no. 59-63 of the PBC.
9. These gunny bags are unpacked and poured in a heap. Sample photographs of the heap are provided in page 69 of the PBC.

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10. These commodities are then sorted and cleaned. Thereafter, these commodities are then repacked in standard and even bags and then stacked inside the warehouses. The bags used for this purpose weigh approx. 0.5 to 0.7 kilograms. Sample photographs of the stacked bags are provided in page 71-78 of the PBC.
11. The Respondent determines the stock at the end of the year based on quintals of the commodities held. The Respondent counts the stacks in the warehouse as of a particular period once in a month / year; the weight of the bags is deducted in arriving at the inventory value. In respect of the heaps, the Respondent computes the packing the heaped pulses and then taking a count thereof. The rate per quintal is determined based on weighted average of purchase cost. All of this data is collated to compute the stock value.
12. The method by the Respondent tracks stock prices on a periodic basis and hence, this price reflects the commodities stocked whose prices had increased / decreased from the date of purchase to the date of stock-taking. For instance, maize could be purchased in December 2017 at (Average) Rs.1192.68 / qtl / price at Rs.1240.00/Qtl while in February 2018, it was purchased at (Average) Rs. 1110.98/-Qtl /Price at Rs. 1150.00/-Qtl. These reflected at actuals. However, as of stock-taking date, the value would have increased / decreased.
13. This method also suitably factors loss of weight of the commodities due to drying up / gaining weight of the commodities, which are triggered by climatic factors. An example of the impact of moisture increasing and decreasing stock weight is provided in page 79-80 of the PBC.
14. In addition to the above, the Respondent had a long list of additional products apart from the above such as rice, wheat, rice and wheat flour, dal flour, refined oil etc.
15. The Respondent had on the day of the survey purchased goods worth approx. Rs. 68 lakh that was yet to be valued and brought into the books.
16. On the other hand, the authorities computed the stock as follows:
 - a. A count was taken of the bags in the warehouses – no distinction was made as to whether the bags were of uneven / non-standard sizes. By adopting this approach, the authorities identified 5,40,792 bags as follows:

Sl. No.	Block of commodity bags	Number of bags	Rate per bag
1	Maize	4,31,708	747 and 780



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2	Toor dal	68,892	2,400
3	Bajra	22,013	750
4	Bengal gram	1,132	2,400
5	Kadle	3,175	2,400
6	FMCG goods	13,872	1,858
	Total	5,40,792	

- b. The rate adopted was a uniform rate for all maize bags, toor dal bags etc. The basis for this rate was not shared with the Respondent. No distinction was made to account for different cost prices on account of (a) type of commodity, say, different type of maize, toor dal etc.; (b) point in time when the commodity was purchased (for example, Maize was purchased in December 2017 at Rs. 1192.68/-Qtl / Maximum price at Rs.1254.09/Qtl while in February 2018, it was purchased at Rs. 1110.98/-Qtl; (c) weight gain of the commodity stocks due to climatic conditions.
 - c. Here, we wish to highlight that the pulses were held in stock for more than 2 years. As such, the weight of the pulses had certainly increased over these 2 years vis-à-vis the date of purchase. This increase in weight is incorrectly not reduced by the authorities.
 - d. The authorities have not identified any discrepancies in the quantity of the stock maintained by the Respondent and have commented on the value of the stock alone.
 - e. The weight of the bags were not reduced to compute the inventory. As such, the value of the stock is artificially inflated.
 - f. The weight of commodities in the heaps were estimated and the basis thereof was not shared with the Respondent.
 - g. The authorities incorrectly factored the numerous miscellaneous agricultural commodities as FMCG goods and adopted a blanket rate of Rs. 2400 per bag.
 - h. The authorities had also considered the goods purchased by the Respondent on the day of the survey worth approx. Rs. 68 lakh that was yet to be valued and brought into the books. As such, the value of the stock per the Respondent was lower.
17. From the above, it can be seen that the authorities : (a) did not adopt the same method as the Respondent to value the stock; (b) the valuation was riddled with assumptions and hunches different from the facts on ground; (c) grossly incorrect amounts were considered both to compute the number of bags and the rate per ton for the commodities.
18. Considering the above, it is submitted that the valuation of stock was done by adopting an incorrect approach.



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Valuation was done in haste and in a humanly impossible period

19. The Respondent submits that the inventory valuation was done in haste and in period of time that is humanly impossible. The warehouses of the Respondent are spread over an area of 70000 & 56000/- sq. feet. These warehouses contain approx. 13-14 stacks and 3-4 heaps at any point of time. Each stack comprises of 30,000-36,000 bags. The heaps themselves comprise of material that would go to make 150-175 tons, approx. 2500 bags. All in all, approx. 4,00,000 – 5,00,000 bags are to be counted. A picture of a part of the warehouse which reflect a minor (non-standard) stack is provided in page 71-77 of the PBC.
20. Given the volume of stock mentioned above, the Respondent himself with the help of 4-5 personnel take approximately a week's time to complete the stock verification exercise. However, the authorities, comprising of 3 persons completed the task of stock verification in 8 hours. This was possible only because of assumptions and hunches and not a detailed and scientific exercise.
21. The haste in performing the stock valuation exercise has resulted in adopting assumptions and hunches to arrive at the value. These incorrect assumptions were outline previously. Hence, it is submitted that the valuation exercise of the authorities is incorrect.
22. In this regard, reliance is placed on the ruling of the Amritsar Income-tax Appellate Tribunal ('ITAT') in Smt. Kailash Devi Prop. v. ITO (68 taxmann.com 288).

Quantity of stock artificially inflated

23. Without prejudice to the above, we submit that the estimate of katas / bags in the valuation methodology is grossly overstated, as follows:
 - a. In page 1 of the valuation of the survey team, 8 lots of maize are counted. The lots range from approx. 24,000 kattas to 30,000 kattas. Please note that it is physically impossible to hold in our warehouses more than 25,000 kattas in each lot simply because of the restrictions of our warehouse, vis-à-vis the length, breadth and height of each lot and also due to spacing requirements between each lot for maintenance of stock. It would also not be possible to appropriate fumigate and store the stock if anything more than 25,000 kattas are stored in a lot.
 - b. In page 2 of the valuation of the survey team, in the bottom portion, it stated that there are 145,319 maize bags and 37,657 bags of toor. Please note that it is physically impossible



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to hold such quantities of bags in a single lot in our warehouses, because of the restrictions of our warehouse, vis-à-vis the length, breadth and height of each lot.

- c. It is humanly impossible to count 5,40,792 bags in a single day for the survey team given its size. Also, such huge quantities of stock needs to be counted using layer method and cannot be accurately counted on bag-to-bag basis. Also, only an experienced person can conduct the counting using various methods. No experts were engaged by the revenue to undertake the rectification.
- d. Respondent's warehouse has a maximum capacity to hold not more than 2.5 lakh bags if fully occupied in Rajguru Foods, Sy No 215, Plot No 90-93 location. The survey team has wrongly calculated a quantity of approx. 3.08 lakh which is higher by more than 20% of the Respondent's warehouse. Further, the warehouses were not fully packed as on date of survey.
- e. Further, on the date of the survey, there were heaps of toor to be repacked – the manner in which this has been considered is not known.

Value of stock artificially inflated

- 24. Assuming but not admitting that the quantity adopted by the survey team in the inventory valuation is correct, the values adopted for each type of cereals and pulses are grossly incorrect. This is especially because the Appellant procures daily, broadly two grades of cereals and pulses – high-grade and non-high grade. The price for each of these grades vary significantly. At best, the survey team and the LAO, ought to have applied their mind on this matter.
- 25. Considering the above, Respondent had filed before the Ld. CIT(A) (refer page 51 of Vol. 1 of the PBC) an illustrative valuation summary considering that the Appellant procures high-grade and non-high-grade cereals. This is assuming but not admitting that the katta count of the survey team is appropriate (please see submissions below). The assumptions underlying the valuation were also appended below the working. If this price distinction was noted, it can be seen that the Appellant's inventory valuation is appropriate and that the inventory valuation methodology adopted by the survey team is overstated.
- 26. Without prejudice to the above, the Respondent submitted that artificially enhancing the valuation leads to tax neutrality and hence would be pointless. Ultimately, the enhanced stock would be sold at some point in time and the corresponding income would be offered to tax; there is at best a timing difference and hence, no worthwhile objective will be achieved by underreporting/ overreporting the stock figures unless the department clearly identifies instances of purchases/ sales made outside the books of accounts.



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27. Without prejudice, the LAO has not at all considered the discrepancies in the stock valuation pointed out by the Respondent. The LAO does not clarify / respond to these submissions of the Respondent. The LAO's solitary response is that the Respondent is late in responding. Since any order of an assessing authority should be based on objective evidence, the LAO ought to have clarified that the valuation methodology that the survey team had adopted is robust and on merits and the Respondent is wrong. However, the LAO does not go to offer any such explanation.
28. The Respondent humbly submits that if the LAO was confident of the basis of the stock working by the survey team, he would have reproduced the basis and refuted the Respondent's submissions. The fact that he did not indicates that the LAO has no such basis to the stock working or the valuation is defective.

Valuation difference attributable to gain in weight of the stock

29. Without prejudice to the above, it is submitted that the difference between the stock value as reported by the Respondent and that identified by the authorities is approx. Rs. 5 crores. As stated previously, the stock comprised of goods that were purchased more than 2 years ago. As movement of the closing stock over the 3-year period is as follows:

FY	Opening stock (Rs.)	Closing stock (Rs.)	Average stock (Rs.)
2017-18	26,08,19,359	50,39,02,219	38,23,60,789
2016-17	18,95,66,684	26,08,19,359	22,51,93,021
2015-16	9,19,08,633	18,95,66,684	14,07,37,658

30. The difference of approx. Rs. 5 crore is approx. 6% of the total average stock. This is a value that can be attributed to normal loss / increase in wastage. As such, stating that this is a conscious under-reporting by the Respondent would be grossly incorrect.

Incorrect gross profit margin if the value identified by authorities is considered

31. It is submitted that if the stock value as identified by the authorities is considered, the gross profit margin of the Respondent would be abnormal. This is tabulated below with reference to prior year gross profit margins.

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FY	Turnover (Rs.)	Gross profit (Rs.)	GP%
2017-18 (based on stock as per AFS)	141,26,28,354	5,54,91,402	3.93%
2017-18 (based on stock as per authorities)	141,26,28,354	10,79,91,402	7.64%
2016-17	183,69,55,644	8,20,81,922	4.47%
2015-16	52,22,84,527	9,01,93,982	17.27%

32. Per industry practice, the gross profit rate is approx. 2%-3% and the gains if any are on account of the volumes transacted. From the table, it can be seen a gross profit margin of 7.64% is very high and abnormal. The above clearly indicates that the inventory difference as identified by the authorities is gross incorrect and against industry practice.
33. All of the above was not at all considered by the LAO, let alone the LAO responding to it. Hence, the Respondent submits that the LAO's action ought to be quashed.
34. Without prejudice to the above, the Respondent submits that the alleged investments have not been made during the year and the stock balances comprises of stock that has been held for more than 2 years. Hence it cannot be stated that the investment has been made in FY 2017-18.
35. Assuming but not admitting that there is excess stock, these could relate to stock only of the previous years, whose weight and value would have increased in the current year, sufficient explanation along with documentary evidences were provided for approx. Rs. 5.4 crores being wrongly computed.
36. Further, it is also to be noted that nowhere in the provisions of these sections (i.e., Section 68 to 69D), it has been provided that sufficient explanation needs to be provided at the time of the survey action. Had it been the case, the provisions would have also granted powers to pass requisite assessment order at that point of time itself without providing any right to adjudicate the case at the assessment stage, which the LAO is bound to do so based on facts and circumstance of each case.

Sworn statement is invalid and taken under duress

37. The Respondent submits that the sworn statement taken by survey team which contains the admission is invalid. This is because the sworn statement was taken under duress.

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38. The authorities started the survey in his presence at the Respondent's premises at 12PM on 08.03.2018. However, no incriminating material was found in the premises. **On that very same day**, the authorities 'performed' the inventory valuation and concluded the valuation of the stock. On 09.03.2018, Shri Kishore Jain, Partner of the Respondent-Firm was provided with the stock valuation. No opportunity was provided to Shri Kishore Jain to confirm the stock valuation.
39. Shri Kishore Jain then, was aged 53 years and was a person with a heart ailment. Medical prescriptions to demonstrate that he was undergoing medication in this regard was provided to the CIT(A) and enclosed in page 93-96 of the PBC. Given that during the survey, Shri Kishore Jain was asked questions continuously, his family was worried that his health condition may deteriorate. Under family advice and out of a larger health interest, Shri Kishore Jain admitted the 'discrepancy' in the stock. It is humbly submitted that in such circumstances, Shri Kishore Jain would obviously be unable to explain the differences, since no time was given by the authorities and his health issue concerning him and his family members.

Addition based solely on sworn statements

40. Without prejudice to the preceding submissions, it should be noted that additions cannot be made based solely on sworn statements. There is no evidentiary value of the statements recorded during survey proceedings unless corroborative evidence is brought on record. In the present facts, there are no explanations to the approaches adopted by the Department's survey team in counting the Respondent's stock and valuing the stock.
41. By conceding to the stock difference arrived by the survey team, does not by itself mean that there is undisclosed investments in the form of stock are not recorded in the books, rather the income was offered to tax out of good faith and not to further aggravate the issue.
42. We bring your attention to para 10.2 of the LAO's order. The LAO states that no evidence has been furnished on the survey findings. In contrast, the Respondent had demonstrated through objective statements the methodology adopted by it. These statements can be verified only when the Respondent's methodology historically adopted is tested. Photographs were also provided to demonstrate many of the aspects of inventory valuation. However, none of these have been even perused by the LAO.
43. The LAO states that recording of the transactions pursuant to the survey does not absolve the Respondent. *This aspect ought to have been mentioned by the survey team to the Respondent*



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at the time of the survey. If this was done, the Respondent would not have had admitted to the amount in the first place. Sri Kishore Jain was assured that if regular tax at 30% is paid on the admitted income, no further action would be taken against him. Of course, Sri Kishore Jain or Respondent has no evidence in this regard and for obvious reasons. The Department can of course take the stand that the Respondent and Sri Kishore Jain are only concocting an alibi at this stage. This would simply and only indicate the Department's high handedness and unfairness from bureaucratic tyranny. The Respondent submits that it is for this reason that the LAO has not furnished the Department's incorrect basis of the stock valuation despite Respondent's elaborate submission grounded in facts and evidence.

Respondent stock records consistently accepted and its valuation rejected on unverifiable evidence

44. The LAO has not considered that the Respondent's stock records have been consistently accepted by the Department, and even during the impugned assessment proceedings, the Respondent's stock records or its books of account were perused and accepted. There has been no prior year when the stock records were questioned. Even to this day, these records have been accepted as furnished by the Respondent. In fact, these records have been accepted by all authorities with whom the Respondent deals as well as its lenders who have a more relevant stake in the Respondent's business vis-à-vis the Department.
45. Considering this, it begs the question as to how can stock valuation for only one year be invalid. This aspect has not been considered by the LAO. For this reason as well, the LAO's action should be quashed.

We request you to take the above on record and render justice.

Thanking you,

For Singhvi Dev & Unni LLP

Chartered Accountants

Bharath Lakshminarayana

Authorised representative of the Respondent