

आयकर अपीलीय अधीकरण, न्यायपीठ –“C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
[Before Shri P. M. Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

**I.T.A. No. 30/Kol/2020**  
**Assessment Year: 2016-17**

DCIT, Circle-9(1), Kolkata	Vs.	M/s Shree Anjani Sarees Pvt. Ltd. (PAN: AAKCS 8068 F)
Appellant		Respondent

**C.O. No. 13/Kol/2020**  
**(Arising out of I.T.A. No. 30/Kol/2020)**  
**Assessment Year: 2016-17**

M/s Shree Anjani Sarees Pvt. Ltd. (PAN: AAKCS 8068 F)	Vs.	DCIT, Circle-9(1), Kolkata
Appellant		Respondent

Date of Hearing	16.03.2021
Date of Pronouncement	21.04.2021
For the Appellant	Shri Supriyo Paul, Addl. CIT
For the Respondent	Shri Akkal Dudhwewala, FCA

**ORDER**

**Per Shri A. T. Varkey, JM:**

This is an appeal preferred by the Revenue and the cross objection filed by the assessee against the order of Ld. CIT(A)-3, Kolkata dated 08.11.20219 for Assessment year 2016-17.

2. The sole issue raised by the Revenue is against the action of Ld. CIT(A) in giving partial relief to the assessee by deleting partly the excess stock found during survey, which the AO has added; and also the Gross-Profit (GP) on it.. The assessee has preferred cross objection against the partial addition sustained by the Ld. CIT(A) in respect of both excess stock and GP.

3. Brief facts of the case is that the assessee has filed its return of income for AY 2016-17 disclosing the total income of Rs. 1,23,58,190/-. The AO notes that the case was selected for scrutiny manually under compulsory category as per guideline of the CBDT. The AO notes that during the relevant assessment year, the assessee was engaged in the business of trading in fabrics, lace, borders and sarees. The AO notes that a survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act) was conducted in the office premises as well as godown of the assessee company on 12.10.2015. And in the course of survey, according to AO, physical stock of sarees were inventorised and stock aggregating to Rs. 3,59,51,307/- was found. However the AO notes that the computerized books of account of the assessee reflected stock only at Rs. 1,10,80,923/- on the said date. Thus, according to AO, undisclosed stock of sarees amounting to Rs. 2,48,70,384/- was found [Rs. 3,59,51,307/- - Rs. 1,10,80,923/-]. According to AO the assessee's director failed to reconcile the said stock on the day of survey and then, offered the same as its undisclosed stock for the purpose of taxation by making payments of additional advance tax amounting to Rs. 75 Lacs. Thereafter according to AO, during the assessment proceedings, it was found that neither the assessee has disclosed the undisclosed stock (Rs. 2,48,70,384/-) in its accounts nor in its return of income. Therefore, a show cause notice (SCN) was issued calling upon the assessee to show cause as to why the undisclosed stock amounting to Rs. 2,48,70,384/- found during the course of survey should not be added to its total income. In the SCN to the assessee it was also reminded to it that the director of the assessee company had admitted during the survey the difference of Rs. 2.50 crores as the assessee's unexplained stock and consequently had also paid the additional amount as advance tax on the suppressed stock. Pursuant to the SCN, the assessee filed its reply denying the allegation of excess stock found during the survey by letter dated 21.12.2018 which according to AO is nothing but a new story to wriggle out of the situations and did not find any merit in the allegation/infirmities pointed out by the assessee in respect of the inventory made during the survey on page 76. Further in its reply the assessee had contended that page 76 of the inventory got prepared later and not during the survey by pointing out the apparent discrepancy viz., the handwriting on it

appears to have been not written on the survey spot/premises etc. According to assessee, a perusal of page 76 of inventory made by the survey team would reveal that all other pages have been written in a hurried manner (*running hand and not legible*) and only page 76 has been written in neat and legible hand writing in a peaceful atmosphere & circumstances; and further according to assessee, the inventories made also includes the dead stock of Rs. 8,79,415/-. In the assessment order the AO reproduced the relevant portion of the reply of the assessee from page 2 to 6 and thereafter the AO opined that there is no merit in the aforesaid reply and he repelled the allegation of assessee in respect of page 76 of the inventory made during survey by stating that the details of inventory were taken during the survey are written from page no. 1 to 86 wherein the signature/initial of the assessee's director is affixed and the same initial/signature is seen at page 76 of the inventory also and since there are several officers who takes part in the survey operation, according to AO, it is natural that hand-writing differ and so he rejected the said claim/allegation of the assessee. Further he observed from the details of inventories recorded at page 76 that the value of each fancy sarees has been duly recorded which ranges between Rs. 3,200/- to Rs. 6,500/- and that the quantity of each saree in stock has also been recorded. And according to AO, the value of the sarees recorded in other pages is more or less same as that recorded in this page i.e. page 76. Thereafter the AO reproduced at page 6 and 7 of the assessment order few statements given by the Director of assessee company Shri Gopal Singrodia i.e. question and answer of question no. 8, 9 and 10 which is reproduced as under:

*“Q.8. In course of survey u/s 133A of the I.T. Act, 1961 stock found and inventorised aggregated to Rs. 3,59,51,307/- whereas the books of a/c shown the stock at Rs. 1,10,80,923/- as on date. Please explain the discrepancy?”*

*Ans: At the present moment I am not in a position to explain the discrepancy without going through the books of a/c. It may also be noted that the stock inventorised by you contains some dead stock. However, in order to by peace of mind I am disclosing the difference in stock of Rs. 2,50,00,000/- as my unexplained stock.*

*Q.9. Do you agree with the method of stock taking.  
Ans: Yes.*

*Q.10. Would you like to add or alter your above statement?*

*Ans: Yes, I am giving six postdated cheques (five cheques of Rs. 13,00,000/- and one cheque of Rs. 10,00,000/-) as payment of additional advance tax on account of unexplained stock.*

*The cheques are payable on 20<sup>th</sup> of every month starting from 20<sup>th</sup> October, 2015 to 20<sup>th</sup> of February, 2016 and the last cheque will be payable on 15<sup>th</sup> of March, 2016.”*

Thereafter the AO observed that from the aforesaid statement it is clear that the assessee company could not reconcile the difference in stock during survey as well as post survey proceedings. And since the director of the assessee company has accepted that there was unexplained stock of Rs. 2,48,47,384/- on the survey day and the assessee had already paid the additional advance tax on the said unexplained stock, he was of the opinion that excess stock of Rs. 2.48 crore discovered during survey since could not be properly explained /reconciled by the assessee needs to be taxed. Further the AO notes that the assessee in its reply also contended that even if there is unexplained stock of Rs. 2.48 crores, then also the same cannot be added in its entirety as the income of the assessee. This contention of the assessee according to AO signifies that the assessee is accepting that assessee had in its godown undisclosed stock of Rs. 2.48 crores which was suppressed by it. The AO, therefore, concluded that the undisclosed stock found in the course of survey was nothing but its undisclosed investment during the relevant financial year and the dead stock of Rs. 8,79,415/- has also been purchased by the assessee by using its own undisclosed funds. Thereafter, the AO notes that in its reply the assessee has pointed out certain arithmetical mistake i.e. as per page 86 of inventory though the total amount of stock was only amounting to Rs. 6,14,928/-, however the total amount of undisclosed stock was wrongly shown as amounting to Rs. 7,37,913/- instead of Rs. 6,14,928/- which give rise to a difference of Rs. 1,22,985/- [Rs. 7,37,913/- - Rs. 6,14,928/-]. The AO accepted the mathematical error and hence the AO excluded the said amount (Rs. 1,22,985/-) from the undisclosed stock. Thus, balance amount of Rs. 2,47,24,399/- was added to the total income of the assessee as per Section 69B of the Act and thereafter the AO notes that the assessee has offered gross profit @ 8.49% of its turnover. The AO justified the addition of entire stock of sarees by reasoning out that the assessee might have already claimed all the expenses to its profit and loss account for the relevant assessment year, so the undisclosed stock is nothing but the undisclosed investment of the assessee. Further the AO observed that the assessee has not reflected the undisclosed stock in its books, which fact, according to AO,

signifies that the assessee did not include the undisclosed stock in its closing stock, so according to AO, the assessee must have sold the said excess stock during relevant assessment year. While calculating the gross profit of the undisclosed stock which was supposed to have been sold, the AO excluded the dead stock of Rs. 8,79,415/- and thereafter the AO calculated the gross profit of the assessee @ 8.49% of Rs. 2,39,67,969/- [Rs. 2,48,47,384/- - Rs. 8,79,415/-] and thus made another addition of G.P of Rs. 20,34,881/-.

4. Aggrieved by the aforesaid action of AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give partial relief to the assessee and confirm Rs. 27,84,000/- in place of Rs. 2,47,24,399/- made by the AO, thereby deleting Rs. 2,19,40,399/- on account of excess stock of sarees; and the Ld. CIT(A) gave relief to the assessee in respect of gross profit addition by confirming Rs. 2,36,362/- [@8.49% of Rs. 27,84,000/-] in place of Rs. 20,34,881/- as made by the AO and thereby G.P. addition of Rs. 17,98,519/- was ordered to be deleted as under:

“I have carefully considered the submission of the A/R of the appellant and perused the documents furnished in the course of appellate proceedings. I have also gone through the AO’s observations in the impugned order. From the facts on record, it is noted that the appellant company is engaged in the business of trading in sarees and fabrics. Survey u/s 133A was conducted at appellant’s business premises located at P-16, Kalakar Street, 5th Floor, Kolkata - 700 007 on 12.10.2015, During the course of survey the AG conducted physical verification of sarees and fabrics held in stock. A detailed inventory of stock found at the premises was prepared which inter alia included the following items:

Part -1 is the inventory of narrow woven fabrics of different sizes, taken from stock room, comprising of Pages 1 to 17, Each Page of the said inventory has description showing item, brand, quantity, selling price per unit, cost price per unit and total cost price. This is a detailed inventory showing the thickness and length of the woven fabrics.

Part 3 (1st half) comprising of Pages 18 to 23 is the inventory of blouse pieces, fabrics, fabric sarees, rolls, fabric than, embroidery than, taken from the Channel Godown on the 5th Floor. Each Page of the said inventory has description showing item, brand, quantity, selling price per unit, cost price per unit and total cost price. This is a detailed inventory showing the colour of rolls, length and make of each item.

Part - 2 is the inventory of laces and narrow woven fabrics, comprising of Pages 24 to 26. Each Page of the said inventory has description showing item, brand, quantity, selling price per unit, cost price per unit and total cost price. This is a detailed

inventory showing the thickness and length of the woven fabrics. The number of pieces of laces and its length has also been mentioned in the inventory.

**Pages 27 to 40 are not found in the inventory report.**

Part 3 (2nd half) comprising of Pages 41 to 43 is the inventory of fancy fabrics. Each Page of the said inventory has description showing item, brand, quantity, selling price per unit, cost price per unit and total cost price. This is a detailed inventory showing the length and breadth of fancy fabrics.

**Pages 44 to 45 are not found in the inventory report.**

Part 4 comprising of Pages 46 to 48 is the inventory of printed fabrics, dupian fabrics, saree borders, chinki fabrics etc. Each Page of the said inventory has description showing item, brand, quantity, selling price per unit, cost price per unit and total cost price. This is a detailed inventory showing the length and breadth of different kinds of fabrics.

**Pages 49 to 60 are not found in the inventory report**

Part 5 comprising of Pages 61 to 70 is the inventory of embroidery sarees which is described as 'fresh stock - finished goods'. Each Page from 61 to 69 of the said inventory has description showing Item, brand, code, quantity, selling price per unit. This is a detailed inventory showing the code of embroidery sarees. Page 70 contains the sum total of the value of embroidery sarees found at Pages 61 to 69 and also the value of fabrics found at Pages 71 to 77.

It is to be noted the total number of embroidery sarees from Pages 61 to 69 is 1053 sarees for the total value of Rs.28,98,050/-.

Part 6 comprising of **Pages 71 to 85** inter alia include of the following Items:

**Pages 71 to 73** is the inventory of visces, borders, art dupian, net embroidery laces taken from pooja room. Each Page of the said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of different kinds and sizes of borders used on sarees.

**Pages 74 to 75** comprises of fancy fabrics, art dupian, laces and borders taken from godown. Each Page of the said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of different kinds and sizes of fabrics.

**Page 76** is described as 'finished sarees' comprising of inventory of embroidery sarees. No code of the items has been provided nor the location of the premises from which such items were found have been provided The handwriting appearing on this Page is different from the handwriting appearing on all after Pages.

It is to be noted that this is the disputed Page of the inventory which the appellant has retracted by filing an affidavit before the AO on 21.01.2016. In this Page the total number at sarees inventorized is 5596 sarees as against 1487 sarees found on

pages 61 to 69, 77 and 80 to 82 of the inventory report. The value of sarees inventorized on this Page is of Rs.2,38,88,000/- as against Rs.38,05,550/- found on Pages 61 to 69, 77 & 78 and 89 to 82 of the inventory report.

**Pages 77 to 78** is the inventory of fabrics, borders, laces, bandhni sarees and embroidery sarees (36 pieces), taken from order room. Each Page of the said inventory has description showing item, quantity, selling price (at some places) cost price per unit and total cost price. This is a detailed inventory showing the description of different of borders and laces.

**Page 79** is the inventory of ciffon synthetic, visces, cancon; taken from “upper three bonks’. The said inventory has description showing item, quantity, cost price per unit and total cost price.

**Page 80** is the inventory of embroidery sarees, taken from the 2<sup>nd</sup> row of the show room. The said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of embroidery sarees found from each rack on the 2<sup>nd</sup> row of the showroom.

**Page 81** is the inventory of embroidery sarees, taken from the 3<sup>rd</sup> row of the show mom. The said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of embroidery sarees found from each rack on the 3<sup>rd</sup> row of the showroom.

**Page 82** is the inventory of embroidery sarees, taken from the 4<sup>th</sup> row of the show room. The said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of embroidery sarees found front each rack oh the 4<sup>th</sup> row of the showroom.

**Pages 83 to 84** is the inventory of satin, viscose, different nets etc. taken from raw material room, Each Page of the said inventory has description showing item, quantity, cost price per unit and total cost price. This is a detailed inventory showing the description of different of satin, viscose and nets.

**Page 85** is the inventory of velvet, tissue, traders etc. taken from the kitchen room. Part 7 comprising of **Page 86** is the inventory of dupian fabrics, cut piece, lace and net. The said inventory has description showing item quantity, cost price per unit and total cost price.

It is therefore seen that the complete inventory prepared during the course of survey proceedings has been discussed and analyzed in detail as above. According to the survey party there was a discrepancy between the physical stock of sarees and the stock reflected in the books of accounts. This was confronted to the Director of the appellatant, in his statement recorded u/s 133A, the Director was unable to explain the discrepancy and therefore admitted to pay tax on the difference, if any, by way of unexplained stock. Subsequent to conclusion of survey, the appellatant requested the AO to provide copy of the inventory report so that the explanation regarding the alleged discrepancy could be furnished. Pursuant to the request made by the appellatant, a copy of the inventory report was handed over to them by the AO, On scrutiny of the said report, the appellatant noted patent errors and discrepancies in the stock inspection report and therefore on 22.01.2016 the Director of the appellatant

filed a retraction statement claiming that Page No. 76 of the stock taking report was false. The relevant extracts of the retraction affidavit are reproduced as below:

“5. That my answer to. Question No. 8 in the said statement was given under duress and coercion and without being afforded and opportunity to peruse the book of accounts, stock register and the physical stock found during the course of survey.

7. That after going through the stock statement it is noticed that the Page No. 76 of the said statement is false mid erroneous and in as much as the content therein appear to be fabricated/incorrect.

8. That the value of stock of Rs. 1,10,80,923/- stated to have been taken from the book of account of the company on 12<sup>th</sup> October 2015, also does not represent the actual stock position as on date as the books were not complete nor up-to-date and several entries in respect of purchase and sales made during the past month were pending.

9. That in view of the above averment thy answer to Question No. 8 offering sum of Rs. 2,50,00,000/- by way of different in stock was given without understanding the correct facts and provisions of law and under duress and coercion.

10. That there is no understatement or undisclosed stock of M/s Shree Anjani as on 12<sup>th</sup> October 2015 and hence no income shall be offered on this account at the time of tiling of return of income for the period 1<sup>st</sup> April, 2015 to 31<sup>st</sup> March 2016."

The appellant therefore in a sworn statement submitted that the contents of Page No, 76 were false and hence required to be ignored, it was therefore argued that other than the items inventoried on Page No. 76, the physical stock actually found during survey stood reconciled and matched with the stock as per the books on the date of survey. Accordingly while filing the return of income for AY 2016-17, the appellant did not take into consideration the value of alleged stock difference. The AO did not take any cognizance of the retraction letter filed by the appellant. No verification or enquiry was made to ascertain the veracity of the retraction statement In feet fee crux of the retraction statement was that it would impossible to store 7038 embroidery sarees, in total, at the premises of the appellant. In the course of assessment the AO asked the appellant to explain as to why the difference between the physical stock of sarees as per inventory report prepared in the course of survey and the book stock on the date of survey, should not be assessed as its income u/s 69B of the Act. In reply, the appellant pointed out that Page No. 76 of the stock taking report which contained notings of alleged stock of 5596 embroidered sarees valued at Rs. 2,38,88,000/- was factually wrong. In submission made to the AO it was pointed out feat the statement given in the course of survey was under duress and coercion and that the Director was not in the proper state of mind and had admitted the sum of Rs. 2,50,00,000/- without going through the inventory report, in support of this contention the appellant also pointed out several tactual infirmities which were noted on Page No, 76 of the inventory report. The AO however outrightly rejected the assessee's contention. No cogent reasons were given for rejection of the retraction statement. Relying solely on the admission made by the Director u/s 133A, the AO added sum



of Rs. 2,47,34,399/- u/s 69B of the Act, The AO further noted that the appellant did not include such undisclosed stock in its books and therefore he presumed that the appellant had sold the undisclosed stock during the relevant year. He estimated profit at the rate of on the stock of Rs.2,47,34,399/-, being Rs.20,34,881/- as profit on sale of undisclosed stock and added it additionally to the appellant's total income.

In the appellate proceedings the A/R of the appellant reiterated the submissions made before the AO. The contentions raised by the appellant are two-fold which are as under:

(a) The physical stock taking report of fee Revenue, particularly Page No, 76 of the said report was materially false and hence it was claimed that stock of 5596 sarees recorded on that Page should be ignored. Once the same is overlooked, physical stock on the date of survey stands reconciled with books and addition of Rs. 2,47,34,399/- made u/s 69B stands deleted, and

(b) without prejudice to (a), if it is held that there was discrepancy in stock even then it was only the gross profit margin embedded therein which could alone be assessed by way of undisclosed income of the appellant and not fee entire value of unexplained stock.

I have given due consideration to the facts and the observations of the AO and also the arguments put forth by the A/R of the appellant. The moot point in this appeal is regarding the veracity of Page No. 76 of the inventory report prepared during the course of survey. The A/R of the appellant argued that the inventory was erroneous because it was physically impossible to store 7038 sarees in the appellant's premises surveyed by the AO, In order to verify this contention, the following details/documents were called from the assessee along with the architect's plan of the premises.

- Layout plan of the shop and store room area covered during survey,
- Diagrams of the rack sizes and the layout showing capacity and storage volume.
- Photographs of the different sections of the shop and storage area to show how much sarees can be stored therein.
- Closing stock of sarees and other fabrics for the last three years,
- Monthly stock as per books in last thirty six months, and
- Month- wise details of embroidery sarees sold in last three years.

The appellant vide submission dated 30.10.2019 has submitted the schematic drawing of the showroom prepared by M/s Vikash Furniture which showed that the business premise of the appellant is divided into three sections namely, show room and two store rooms. The said drawing also contained the detailed description of the internal storage spaces along with rack sizes where the sarees are regularly stored. The A/R of the appellant also furnished few photographs of the showroom and storerooms where the stock of sarees and fabrics was stored. It has been certified by the architect that the stock room and showroom had the maximum capacity of storing 1680 and 780 embroidery sarees respectively.

It is noted that the assessee besides dealing in sarees also deals in fabrics. There is no dispute with regard to the stock of fabrics whose details are noted at Page Nos. 1 to 60, 71 to 75, 79 and 83 to 86 of the inventory report. The stock details of sarees were noted on Pages 61 to 70, 76, 77 & 78 and 80 to 82 of the inventory report. Total value of sarees estimated by the survey team was Rs. 2,76,93,550/-. On scrutiny of the inventory report it is noted that barring Page No.76 which contained details of stock of 5596 sarees valued at Rs.2,38,88,000/-, the remaining Pages contained detailed description of the stock of sarees found totaling 1487 sarees for the value of Rs.38,05,550/-. These pages of Inventory have details which are found lacking in Page No. 76 of the inventory report. For example. Pages Nos. 77 & 78 of the inventory report contained details of sarees, fabrics, borders, laces etc. stored in 'Order Room?'. In these pages individual item wise description of the material found is given and the total serial numbers of sarees are 5 out of 29 and value of 36 sarees inventorized on these two pages was only Rs. 1,09,000/-. Pages 61 to 69 of inventory report contained detailed description of embroidered sarees which were described as 'fresh stock'. The stock report claims this to be Part-5 of the inventory report. From these pages it is observed that there are total 181 serially inventorized saree items giving details of the stock of 1053 sarees. On each Page the survey team recorded the quantities of sarees found of any particular description. It is observed that the number of sarees of any particular description found by the survey team ranged between 2-11 sarees. Page 70 of the inventory report contained the summary of stock of embroidered sarees detailed on Pages 61 to 69 from which it was noted that on each Page the total number of sarees recorded were as follows:

Page No.	Number of sarees	Value
61	115	3,32,300
62	101	2,64,700
63	135	4,38,200
64	81	2,41,400
65	116	2,89,850
66	97	3,53,700
67	106	3,08,800
68	84	2,27,100
69	218	4,42,000
<b>Total</b>	<b>1053</b>	<b>28,98,050/-</b>

From the said summary it is noted that on each Page the quantity of sarees found did not exceed maximum of 218 sarees and the value of sarees found was maximum at Rs. 4,42,000/-. The aggregate value of sarees noted on nine pages totalled Rs.28,98,050/-. Similarly Page Nos. 80 to 82 of the inventory report contained details of sarees found on 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> rack in the showroom. While preparing the inventory report, the survey party also noted the number of sarees in each rack. The maximum number of sarees inventoried in one particular rack is 16 sarees i.e. in Rack No. 6 of 2nd row of the showroom. From these Pages it was noted that the number of sarees stored in each rack ranged between 3-16 and the total number of sarees stored in showroom was only 425 having value of Rs.7,98,500/-. Except for the items inventoried in the Pages 61 to 70, 76, 77 & 78 and 80 to 82, the remaining Pages contained details of stock of fabrics, laces, borders etc. The total number of sarees noted on these Pages was 7083 sarees and corresponding value thereof was Rs.2,76,93,550/-. As opposed to 1487 number of sarees recorded on 16 Pages (61 to

70, 77 & 78 and 80 to 82) and together valued at Rs.38,05,550/-, Page No, 76 of the inventory report alone contained 5596 sarees valued at Rs. 2,38,88,000/-. Moreover it is notice that on Page No. 76, the code number, fo'catibn and the rack details are missing which can otherwise be found on other Pages inventorying sarees. In Page Nos, 61 to 70 and 77 to 82, the average number of sarees per Page was 93 sarees valued at Rs.2560/- each whereas Page No. 76 atone contained inventory of 5596 sarees valued at RsA27Q/- per saree in comparative terms, the number of sarees recorded on this single Page was more than three times the sarees found and recorded on 16 Pages of the inventory report. In value terms also the stock value noted on Page No. 76 was more than 6 times of the saree stock recorded on the other 16 pages. Further in respect of the stock recorded on Pages 6.1 to 70 and 80 to 82, the survey team had provided detailed description including the places from where the sarees were stored along with the code numbers etc. In respect of stock of sarees recorded on Page No. 76, it is noted no detailed description has been given nor the survey team specified the exact ideation from where such huge stock of 5596 sarees was found stored. On examination of the inventory report, I also note that the manner in which the entries were recorded by the survey team on other Pages, substantially differed from the manner in which the entries were recorded on Page No, 76. Even the handwriting of Page 76 differs significantly from the handwriting on other Pages of the inventory report. It was also noted that average value of embroidered sarees which were found on other Pages varied between Rs. 2000 to Rs. 4000 whereas on Page No. 76 the value of saree was taken to be between Rs.3200 to JRs.6500. Therefore it is observed that there are significant discrepancies in the stock of embroidery sarees recorded on Page No. 76 of the inventory report.

From the material brought before me, I find that the assessee's business premises at P-16, Kalakar Street, 5th Floor, Kolkata - 700 007 which was subjected to survey admeasures only 800 sq. ft. As directed during the course of hearing, the A/R of the appellant furnished the layout plan of the showroom prepared by M/s Vikash Furniture which contained the detailed description of the internal storage spaces along with few photographs of the showroom and storerooms where the stock of sarees and fabrics was stored. On examination of the schematic drawings of the showroom and the photographs, it is observed that the number of racks located in the showroom & storerooms did not have adequate capacity to store 7083 embroidered sarees which is also been corroborated by the architect. In fact it is noted that on Page Nos. 61 to 70 and 76 to 82 where the survey party noted stock of other embroidered sarees, the average numbers of sarees stored per rack was in the range of 2-16 sarees. However on Page No. 76 the survey party has noted sarees in the range of 390 to 526 sarees per rack. The architect after having personally visited the premises has prepared an architectural diagram of the storage area. According to him the maximum storage capacity of the appellant's premises was 2460 embroidery sarees. The appellant also vehemently, argued that the premises of the appellant in no way could accommodate or store more than 2500 embroidery sarees. Therefore to verify the explanation put forward by the assessee which was supported by the schematic drawings of the showroom and store rooms as prepared by the architect, the A/R of the appellant was asked to submit the details of average monthly stock of sarees for the immediate past three years and also provide the average monthly sales for the same period. On examination of the data provided by the appellant, it is noted the average number of embroidered sarees which the appellant kept in stock was 582, 1603 & 2230 for the financial years 2012-13, 2013-14 & 2014-15 respectively.

From these figures it is apparent that in none of past three years, the audited figures at any time showed thnr foe assessee maintained stock of 7083 sarees which the survey team Claimed to have found on the date of survey. From the details of average monthly sales, also note that average sale price realized by the assessee on sale of embroidered sarees was Rs.3,094/-, Rs.3,264/- & Rs,3,313/- for the financial years 2012-13, 2013-14 & 2014-15 respectively. On the contrary the average sale price adopted for valuing stock recorded on Page 76 was in the range of Rs.3200/- to Rs.6500/-. This material discrepancy in value and quantity supports the assessee's contention that the stock recorded on Page No. 76 did not reflect the true state of affairs.

In this factual background the AO before passing of the impugned order should have objectively considered the appellant's retraction statement dated 21.01 .2016 wherein he bad categorically dented the contents of Page No. 76 of the inventory report and the statement of the Director recorded u/s 133A with reference to the said inventory report admitting additional income of Rs. 2,50,00,000/-. This retraction statement has been filed by the appellant within one week of the receipt of the copy of the stock inventory report prepared during the course of survey so it cannot be said that it was an after-thought. From the perusal of the assessment order, I note that although the appellant had made submissions denying the contents of Page No. 76 of the inventory report yet the addition was made solely on the ground that the Director in his statement u/s 133A had admitted to pay tax on income of Rs. 2,50,00,000/-, However this statement has subsequently been retracted on the ground that it was given under duress in a stressful state of mind during the course of survey without properly going through the inventory report. The appellant after having critically examined the stock inventory report has filed a retraction statement with a detailed explanation as to why the inventory is not correct, particularly with, regard to Page No. 76 of the inventory report. The AO however has not made any enquiry or investigation in the context of the retraction statement filed. Except relying on the statement u/s 133A, the AO did not bring on record any further material to negate the appellant's contention or to corroborate the addition. In this background therefore, the material question to be answered is whether based solely on the statement recorded in the course of survey (which was subsequently retracted) any addition can be made. This very issue was considered by the Hon'ble Madras Court in the case of CIT Vs S Khader Khan (300 ITR 157) wherein the Court recorded following findings:

*"In the instant case, there was a survey operation conducted under section 133A of the Act in the assessee's premises and a statement was recorded from one of the partners. Assuming there-were discrepancies and irregularities in the books of account maintained by the assessee, an offer of additional income for the respective assessment years was made by the partner of the firm. But, such statement, in view of the scope and ambit of the materials collected during the course of survey action under section 133A shall not have any evidentiary value, as rightly held by the Commissioner and the Tribunal since such statement was not attached to the provisions of section 133A of the Act. It could not be said solely on the basis of the statement given by one of the partners of the assessee-firm that the disclosed income was assessable as lawful income of the assessee. Since there was no material on record to prove the existence of such disclosed income or earning of such income in*

*the hands of the assessee, it could not be said that the Revenue had lost lawful tax payable by the assessee.*

The Hon'ble High Court in the said judgment has laid down the following principles of law regarding the evidentiary value of statement recorded in the course of survey u/s 133A of the Act.

- (i) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in Pulkngode Rubber Produce Co. Ltd. vs. State of Kerala [1973] 91 ITR 18:
- (ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews and Sons v. CIT [2003] 263 ITR 101 (Ker):
- (iii) The expression "such other materials or Information as are available with the Assessing Officer" contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide CIT v. G. K. Senniuppan [2006] 284 ITR 220 (Mad):
- (iv) The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S Ajit Kumar [2008] 300 ITR 152 (Mad)
- (v) Finally, the word "may" used in section 133A(3)(iii) of the Act. viz., "*record the statement of any person which may be useful for, or relevant to, any proceeding under this Act*", as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.

The above judgment of the Hon'ble Madras Court was upheld by the Hon'ble Supreme Court in 352 ITR 480. Similar view was expressed by the Hon'ble Delhi High Court in its judgment in the case of Dhigra Metal Works Vs CIT (196 Taxman 488). The facts of the said case are that a survey action was conducted at the premises of the assessee and discrepancies in the physical stock, vis-a-vis book stock were found. One of the partners of the assessee firm could not explain the said difference at that particular point of time and, therefore, to buy peace of mind, certain additional income was offered for assessment. Subsequently, the assessee

firm submitted that the statement of partner about stock was incorrect; and that the impugned discrepancy had been reconciled as it was only a mistake. The assessee therefore withdrew the offer for additional income on account of excess stock. The AO however relying on the statement of the partner given in survey u/s 133A added the excess stock found as the income of the assessee. On appeal the Hon'ble High Court held as under:

"From the aforesaid, it is apparent that while section 132(4) of the Act specifically authorizes an officer to examine a person on oath, section 133A does not permit the same.

13. The Kerala High Court in Paul Mathews & Sons v, CIT[2003] M3 JTR 101 and Madras High Court in C/T v. S. Khader Khan Son [2008] 300 ITR 137 have also taken a similar view. The relevant portion of the Kerala High Court judgment in the case of Paul Mathews & Sons (supra) is reproduced hereinbelow :—

*"The provision also enables the income-tax authority to impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him, provided the authority records his reasons for doing so and also shall not retain the books of account for a period not exceeding 15 days. Section 133A(3)(iii) enables the authority to record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. Section 133A, however, enables the income-tax authority only to record any statement of any person which may be useful, but does not authorize taking any sworn statement. On the other hand, we find that such a power to examine a person on oath is specifically conferred on the authorised officer only under section 132(4) of the Income Tax Act in the course of any search or seizure. Thus, the income-tax Act, whenever it thought fit and necessary to confer such power to examine a person on oath, the same has been expressly provided whereas section 133A does not empower any Income-tax Officer to examine any person on oath. Thus, in contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the income-tax Act. On the other hand, whatever statement is recorded under section 133A of the income-tax Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law. Therefore, there is much force in the argument of learned counsel for the appellant that the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this,"*

14. Moreover, the word 'may' used in section 133A(3)(iii) of the Act clarifies beyond doubt that the material collected and the statement recorded during, the survey is not a conclusive piece of evidence by itself.

15. In any event, it is settled law that though an admission is extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person who has made the admission to show that it is incorrect.

16. Since in the present case, the respondent-assessee has been able to explain the discrepancy in the stock found during the course of survey by production of relevant record including the excise register of its associate company, namely, M/s. D.M.W.P. Ltd., we are of the opinion that the Assessing Officer could not have made the aforesaid addition solely on the basis of the statement made on behalf of the respondent-assessee during the course of survey. ”

The facts of the impugned case are similar. In the present case also, excess stock was found by survey party u/s 133A which was admitted by the Director to buy peace of mind. Subsequently however the appellant had retracted the statement of the Director by way of a sworn affidavit. The AO however without rebutting the affidavit and the contentions raised therein regarding the discrepancies pointed out in the inventory report simply proceeded to make addition based on the statement of the Director recorded u/s 133A of the Act. Therefore, on conjoint reading of these judgments it is noted that the statement of an assessee recorded in the course of survey u/s 133 A cannot be the conclusive evidence for justifying an addition to the asses, income. It is necessary for the AO to substantiate the said statement with corroborative evidence and in absence of any tangible material to support admission by an assessee, it is not open for the AO to make addition solely based on the admission made in the course of survey. Applying this judicial principle to the present case, it is noted that there were obvious and patent discrepancies and infirmities the inventory report prepared by the survey team. The statement of the Director on the basis of which the AO justified the addition was retracted by the Director of the appellant in writing on 21.01.2016. Thereafter the AO did not bring on record any tangible material to justify the addition.

It is observed from the appellant's statement that according to them at best 2500 embroidery sarees could have been physically found from its premises. As noted above, the Director of the appellant has pointed out the discrepancies noted on Page No.76 of inventory report. It is however never disputed by the appellant either before the AO or before the undersigned that the stock physically found on the date of survey could be fully reconciled with the stock records maintained. The case of the appellant rests on the fact that maximum upto 2500 sarees could be accommodated at his own premises, Therefore, even by assessee's own admission the capacity of the appellant's showroom to hold sarees was approximately 2500 sarees, whereas as per the appellant's books number of sarees held in stock at the time of survey was 1572. Apparently therefore the number of sarees available with the assessee at the time of survey was excess by 928 sarees. As per the appellant's books for the relevant year, the average cost of embroidered sarees was approximately Rs.3000/- and therefore I hold that at the time of survey the value of excess stock of 928 sarees was Rs.27,84,000/- (928 X 3000) I thus uphold the addition of Rs 27,84,000/- being value of excess stock of 928 sarees and the remaining sum of Rs. 2,19,40,399/- (2,47,24,399 - 27,84,000) stands deleted.

Since the said stock did not reflect in the appellant's books for the relevant financial year, I agree with the AO's proposition that such excess stock was sold outside the books and thereby gross profit at the rate of 8.49% was required to be further added as appellant's income. Accordingly the addition of Rs. 2,36,362/- (8.49% of

Rs.27,84,000) is retained and the remaining sum of Rs. 17,98,519/- (20,34,881-2,36,362) is deleted.

Overall, addition made by the AO is restricted to Rs. 30,20,362/-. Therefore these grounds in appeal are partly allowed.

IV. In view of the above the appeal of the assessee treated as partly allowed.

5. Assailing the action of Ld. CIT(A), the Additional CIT D.R Shri Supriyo Paul submitted that Ld. CIT(A) has erred in giving relief to the assessee with the aid of some architectural drawings/photos by virtues of it he came to the conclusion that only 928 sarees could have been found as excess sarees/stock in assessee's shops and godown and thereby he confirmed the investment only in respect of 928 sarees at Rs. 27,84,000/- [928multiplied by Rs.3000]. This unilateral action of Ld. CIT(A) according to Ld. D.R cannot be accepted because there was per-se violation of Rule 46A of Income Tax Rules, 1962 (hereinafter referred to as the Rules) i.e. without giving the AO an opportunity to file his remand report against the new evidence which the assessee presented before the Ld. CIT(A). So according to Ld. D.R there was violation of natural justice and Ld. CIT(A) erred in disregarding the physical inventory carried out by the survey team on the assessee's premises. According to Ld. D.R the handwriting at page 76 of the inventory made by survey team could have been different because during survey operation, number of officers takes part and obviously some handwriting will be different from the others and therefore the allegation in respect of page 76 of the inventory was rightly disregarded by the AO. According to Ld. D.R, the stock found at page 76 i.e. of more than 5000 sarees is plausible because in a godown, the sarees are kept/stacked up at every inch of the rooms and also in the passages etc. Therefore, according to Ld. D.R, since there is a violation of Rule 46A of Rules, he prayed that the issue may be set aside back to the file of AO for de novo assessment.

6. Per contra, the Ld. A.R Shri Akkal Dudhwewala supporting the action of Ld. CIT(A) in giving partial relief to the assessee to the tune of Rs. 2,19,40,399/- [excess stock of saree] and gross profit of Rs. 17,09,519/- submitted that the Ld. CIT(A)



suo-motto has exercised his powers under sub-section (4) of Section 250 of the Act and directed the assessee to produce the architectural drawings, schematic diagram of the premises/show-room/shop/stock room/passages which were surveyed inter alia including the details of area, measurement of racks, stock rooms etc as well as the photographs of the fully stocked showroom and the stock room etc. and also the Ld. CIT(A) gave direction to produce the statement giving month-wise details of sales along with average rate per sarees sold and sarees held in stock. And pursuant to the direction of Ld. CIT(A), these documents were produced before him. According to Ld. AR, the Ld. CIT(A) while exercising his appellate powers u/s 250 of the Act has power even to suo-motto pass orders and this power can be seen located under sub-section (4) of Section 250 of the Act and, therefore, according to Ld. AR, there was no necessity for the Ld. CIT(A) to confront the AO or call for the remand report from the AO as contended by the Ld D.R. Therefore according to Ld. A.R., the grounds of appeal of the department alleging violation of Rule 46A is without merits and for this proposition he relied on the decision of this Tribunal in DCIT vs. Century Plyboards (I) Ltd. in ITA NO. 2149/kol/2019 for AY 2014-15 dated 04.11.2020 wherein similar issue had come up for adjudication, and the Tribunal in that case held as under:

*“29. .... We note that it was with a view to further verify the averments of the assessee and in exercise of his co-terminus powers that the ld. CIT(A) had issued enhancement notice u/s 251 of the Act and, thereafter made suo moto enquiries in exercise of the powers vested in him u/s 250(4) of the Act. Hence, it was a clear case of exercise of overriding power by ld. CIT(A) in terms of Rule 46A(4) and it was not a case where the assessee on his own volition had furnished additional evidence or fresh document, which would have been subjected to sub-rule (1) to (3) of Rule 46A of the Rules. In the instant case, the explanations regarding the factors influencing the higher profitability of the eligible Assam Unit had come on the record of the ld. CIT(A), because he had decided to examine the facts of the case in depth and then adjudicate upon the matter on the basis of evidence and material, thus, gathered. We note that the ld. CIT(A) was empowered to do so under the provisions of section 250(4) of the Act. The result of such enquiry conducted by him could have either gone to further cement or enhance the case made out by the AO or help out the assessee against the findings of the AO. In the instant case, the results of the enquiries thus conducted supported the case of the assessee and not that of the Revenue. However, the fact remains that such material was gathered by the ld. CIT(A) on his own motion, and therefore there was no requirement, in law for him, to consult the AO on the same. Our foregoing proposition is supported by the following judicial precedents:*

- CIT vs Sagar Construction (P) Ltd. (56 taxmann.com 434) [Patna HC]
- PCIT vs KM Sugar Mills Ltd. [ITA No. 187 of 2016] [Allahabad HC]
- ITO vs Industrial Roadways (112 ITD 293)[ITAT, Mumbai]
- DCIT vs NE Technologies India (P) Ltd. (47 taxmann.com 405) [ITAT Hyderabad]

*30. Hence, we do not find any merit in the ld. CIT. DR's plea for sending the issue back to the file of the AO. Moreover, we find that the ld. CIT, DR was also unable to point out any perversity in the factual findings recorded by Ld. CIT(A), therefore, sending this issue back to AO will be abuse of process of law."*

7. Thereafter coming to the merits, the Ld. A.R submitted that survey took place on 12.10.2015 and it would be clear from the reply given by the assessee to question no. 8 (supra) that the assessee's director expressed his inability to explain the discrepancy without going through the books of accounts; and since the survey was continuing till early hours of night and next day morning, and the director being an elderly person was under tremendous pressure and had made the statement under duress with a view to buy peace of mind. So according to him, the conditional offer disclosing the difference of stock as unexplained stock cannot be the basis for addition of entire stock. And thereafter according to Ld. A.R, the assessee had moved an application before the AO to give a copy of the inventories prepared by the survey team; and pursuant to same, the assessee received the copy of inventory prepared by the survey team only in the month of December, 2015; and after going through the contents of the inventory report made by the survey team to their astonishment found glaring discrepancies especially in page 76 of survey report, on the basis of which the assessee's director had retracted the statement in respect of undisclosed stock by filing a letter dated 20.01.2016 and drew our attention to page 104 to 106 of PB wherein an Affidavit sworn by Shri Gopal Singrodia, director of assessee company is found placed. And from a perusal of the same, it reveals that Shri Gopal Singrodia admits about the survey u/s 133A which was conducted on the business premises of the assessee on 12.10.2015 wherein his statement was recorded by ITO, Ward-9(4), Kolkata during the wee hours/mid night on 12.10.2015. According to Director, at the time of recording of the statement he was not in proper state of mind and was under immense pressure and, therefore, the contents of the statement recorded by survey team are not fully correct and especially the answer given by him to question no. 8 was obtained under duress and due to coercion; and the Ld. AR pointed out that from a perusal of the answer to question no. 8, it can be noticed that the answer was given with a caveat that for giving the answer to the

said question he needs to look into the books of accounts, stock register vis-a-vis the physical stock found during the course of survey. Further it was submitted in the affidavit that after having received the copies of inventories/stock statement only on 20.11.2015, he found that page 76 of the said inventory is false and concocted, so erroneous inasmuch as the contents therein appears to be cooked up/fabricated/incorrect and according to assessee, if this page 76 is removed and some arithmetical errors are corrected, then assessee can reconcile the stock physically examined vis a vis its regular books maintained by it on that date on its computer; and according to him, the answer to question no. 8 offering sum of Rs. 2.50 crores by way of difference in stock need to be appreciated in this back ground as well as was given without understanding the correct facts and provision of law and that too under duress and coercion, so according to him could not have been acted upon by the AO against the assessee. In the light of the aforesaid facts, the director of Assessee Company contends in his affidavit that there was no understatement or undisclosed stock as on 12.10.2015 which document we note has been notarized. According to Ld. A.R since the survey statement recorded u/s 133A has been retracted in few weeks after receipt of the copy of inventories recorded and since the admission made was on the basis of mistake of fact which the assessee could demonstrate, the admission made by the assessee during the survey operation cannot be used against him (assessee) as held by the Hon'ble Supreme Court in CIT vs. S. Khader Khan & Sons in [2013] 352 ITR 480 (SC)] and since it (survey statement) was based on wrong facts and given under duress does not have any evidentiary value, it cannot be used against the assessee. According to Ld. A.R, from a perusal of page 76 of inventory (placed at pg.89 of PB) it can be seen that all other pages of the inventory found placed from page 44 to 99 (Pg 1 to 86) have been written in an illegible manner, in hurry and it included the code numbers of designer sarees which fact can be specifically seen. However, according to Ld. AR, a perusal of page 76 would reveal that it has been written legibly and in good hand writing and the total quantity of sarees in that page 76 alone is more than 5,596 pieces of sarees in numbers whereas in all other inventories/sarees recorded from 43 to 99 of paper book does not cross in a page more than 110 to 200 sarees and all the sarees

recorded from page 1 to 85 (except page 76) the total piece of sarees is only 1487 and total cost of sarees was only Rs 38,05,550/-. The Ld. A.R thereafter drew our attention to the fact the survey team had inventoried sarees at page nos. 61 to 65 of the stock report where different category and designs and different serial numbers had been clearly jotted down. In contra distinction at page no. 76 (page 89 of PB) the Ld. AR pointed out to us that no reference has been made to the specific category or design or serial number of the alleged embroidery sarees found therein by the survey team. The Ld. A.R also pointed out that all the pages of the stock report, i.e. page 1-86 except page no. 76, indicate as to from which part of the premises the stock has been taken. However, page no. 76 does not indicate the same and apparently stands out as completely different and an isolated page from the other pages i.e. 1 to 86. All these facts, according Ld. A.R when considered cumulatively support the assessee's case that page no. 76 (page 89 of PB) did not belong to it and it was an afterthought to bring/tally the value of excess stock to Rs.2.50 cr. and for that they fabricated the same at page 76; and the Ld. CIT(A) taking note of these glaring errors, and the assessee's assertion that in its premises/show room/stock room/passages even if the entire area is stocked with sarees/designer sarees it is impossible to stock more than 2460 sarees. So the Ld. CIT(A) appreciating these facts have exercised his suo-motto power u/s 250(4) of the Act and ordered the assessee to produce the architectural drawing etc., which was necessary to unfold the mystery of page 76 (page 89 of paper book) and its irreconcilable contradiction with the space assessee had in its possession ; and the Ld. CIT(A) in the quest of truth has given the suo moto direction for finding out the excess stock of sarees which action of Ld. CIT(A) should be appreciated and upheld. Thus, after the assessee had provided all the details before the Ld. CIT(A) and the Ld. CIT(A) appreciated the same and after analyzing the facts was pleased to give partial relief to the assessee by adding only the cost of 928 sarees i.e. Rs. 27,84,000/- and also gross profit of @ 8.49% on the sales of it which does not require any inference from our part and so he prayed for dismissal of Revenue Appeal.

7. Coming to cross objection filed by the assessee, it is noted that assessee has preferred the same against the partial confirmation of addition by Ld CIT(A). According to Ld. A.R, the Hon'ble Calcutta High Court in a similar case i.e. PCIT vs. Subarna Rice Mills in [2-18] 96 taxmann.com 286 (Cal) has held that in a case of detection of un-disclosed stock, the value of entire stock undisclosed need not be made and only the profit embedded in it need to be taxed and drew our attention to the Hon'ble High Court decision wherein it was held as under:

*“The legal issue that the Revenue has raised in this appeal is whether the Appellate Tribunal could have disregarded the value of the unaccounted purchases made by the assessee and required additional tax to be imposed by taking into account notional sales when no corresponding sales had taken place during the relevant assessment year.*

*In course of survey operations conducted on March 24, 2010 at the rice mill of the assessee, it was discovered that there were large quantities of undisclosed stocks. The assessing officer did not weigh the additional stocks but went by the number of bags since the bags, presumably, were of uniform or standard weight.*

*The assessing officer discovered the undisclosed quantum of paddy to be to the extent of 37647 quintal. The excess stock of rice was to the extent of 581 quintal and the excess stock of bran was to the extent of 45 quintal. It also appears that the undisclosed, excess stocks were corroborated by the entries in certain registers maintained at the relevant point of time at the rice mill and certain confessional statements were made by or on behalf of the assessee. On the basis of the additional stocks found, the assessing officer assessed the total taxable income to be to the extent of Rs.3.92 crore and a tax demand in excess of Rs.1.61 crore was made on the assessee.*

*The assessee's appeal before the Commissioner (Appeals) failed and by an order of August 25, 2014, the assessment order of March 28, 2013 was upheld. The Commissioner looked into the facts, the statements made by or on behalf of the assessee and the books of the assessee that had been looked into at the time of survey which the assessee subsequently claimed had been lost or destroyed and, in respect whereof, no complaint had been lodged by the assessee. On facts, the Commissioner (Appeals) found no grounds to interfere with the quantum of excess stocks discovered by the assessing officer in course of the survey. The Commissioner also agreed with the assessing officer as to the quantum of income which had escaped assessment.*

*There are two aspects to the order impugned dated June 30, 2015 passed by the Appellate Tribunal: the factual findings of the Commissioner (Appeals) as appear to have been interfered with by the Appellate Tribunal; and, the direction given for taking sales of rice and bran into account before arriving at the additional income which could be said to have escaped assessment.*

*Before the Commissioner (Appeals), the assessee had relied on a document signed by an official of the Food Corporation of India that evidenced the stock figures at the relevant point of time. The Commissioner (Appeals) dealt with such aspect of the matter in great detail and by referring to the admitted statements of the representatives of the assessee, which were not sought to be controverted at any point of time on behalf of the assessee,*

*concluded that it was the physical verification of the stocks undertaken by the Assessing Officer in course of the survey operation that was to be given primacy. Indeed, the Commissioner (Appeals) found that there was no evidence that the FCI official who had issued the certificate had undertaken any physical verification of the stock at the rice mill of the assessee and the document appeared to have been filled up by the assessee and merely signed by the FCI official. Such part of the order of the Commissioner (Appeals) was unexceptionable and could not have been interfered with by the Appellate Tribunal. Indeed, no reasons have been furnished by the Appellate Tribunal in disregarding the physical verification of the stocks carried out by the Assessing Officer. Further, the area of the godown as indicated in the FCI certificate was of no consequence since the Assessing Officer found stocks piled outside the godown at the time of the survey.*

*Accordingly, to the extent that the Appellate Tribunal accepted the quantum of additional stocks on the basis of the certificate issued by the concerned FCI official, such order is unacceptable and is set aside. The order of the Commissioner (Appeals) in such regard is restored. The additional quantum as discovered during the course of the survey operation will fasten to the assessee.*

*However, the other aspect of the matter was dealt with by the Appellate Tribunal on a point of principle and such matter does not call for any interference.*

*According to the Appellate Tribunal the value of the entire quantity of additional stocks that were discovered in course of the survey operation could not be regarded as the additional income of the assessee and amenable to tax. There was a specific ground taken before the Appellate Tribunal, which was a legal question, as to whether the undisclosed purchase could be taken as the additional income without reference to the possible sale of the paddy when converted.*

*The assessee refers to a judgment of the Gujarat High Court reported at 388 ITR 377. The principle enunciated in such judgment is that when undisclosed purchases of such nature are discovered, it is only the profit embedded in the transaction which can be added to the total income. The Gujarat High Court relied on some of its previous judgments to hold that "not the entire purchase price but only the profit element embedded in such purchases can be added to the income of the assessee."*

*In the circumstances and particularly since the factual findings rendered by the Commissioner (Appeals) as to the quantum of additional stocks have now been restored, the order impugned on the methodology for the ascertainment of the income which escaped assessment would pass muster. The Appellate Tribunal merely directed the gross profit that the additional purchase was capable of generating to be regarded as the additional income for tax to be assessed on such basis. Such view of the Appellate Tribunal does not call for any interference.*

*Accordingly, ITAT No.196 of 2015 and GA No.4047 of 2015 are disposed of by modifying the judgment and order of the Appellate Tribunal dated June 30, 2015 as indicated."*

Therefore according to Ld AR, in a case of detection of un-disclosed stock, the value of entire stock undisclosed need not be made and only the profit embedded in it need to be taxed and he prayed that the partial addition sustained by Ld CIT(A) of Rs.

27,84,000/- may be deleted and we may only confirm the gross profit percentage of undisclosed stock if any.

8. We have heard both the parties and perused the records. We note that the assessee in this relevant assessment year (AY 2016-17) returned an income of Rs. 1,23,58,190/-. It is noted that the assessee is engaged in the business of trading in fabrics, laces, borders and sarees. A survey u/s 133A of the Act was carried out at the business premises of the assessee on 12.10.2015. According to AO, during the survey physical stock of sarees/goods were inventorized and stock amounting to Rs. 3,59,51,307/- was discovered. But, according to AO the computerized books of the assessee as on the date (12.10.2015) reflected only stock of Rs. 1,10,80,923/-. Thus, according to AO, there was a stock difference of undisclosed stock amounting to Rs. 2,48,70,384/- was discovered in the shop & godowns. According to AO, during survey, the assessee was confronted with the difference of stock which was discovered, but the director of assessee Shri Gopal Singrodia failed to reconcile or give satisfactory explanation regarding the undisclosed stock and in fact in his statement the director of assessee Shri Gopal Singrodia has admitted the fact of undisclosed stock and agreed to remit the advance tax on it and gave post dated cheque amounting to Rs. 75 Lakhs. However, later during the scrutiny assessment, the AO noticed that the assessee while filing the return of income (ROI) did not disclose the undisclosed stock which was admitted by its' director during the survey; and when confronted by him, the assessee turned 360 degrees and took a stand that there was no undisclosed stock by pointing out some discrepancy about page 76 of the inventory made by the survey team which is found placed at page 89 of PB. However, the AO brushed aside the objections/discrepancies pointed out by the assessee and did not accept the post survey stand of the assessee and made an addition of undisclosed investment in stock of sarees at Rs. 2,47,24,399/-; and further according to AO, since the assessee has not shown the undisclosed stock found during survey in its regular books as closing balance of stock, the AO presumed that assessee had sold the same. Thus the AO made the gross profit (G.P) addition of 8.49% of Rs. 2,47,24,399/- i.e. Rs. 20,34,881/- (which was supposed to have been

sold). On appeal, the Ld. CIT(A) gave partial relief to the assessee by confirming Rs. 27,84,000/- [investment in undisclosed sarees numbering 928 pieces at a cost of Rs. 3000/- each] and on the same reasoning as adopted by the AO, he sustained at G.P. of 8.49 % of Rs. 27,84,000/- i.e. Rs. 2,36,362/-. Aggrieved by the aforesaid action of deletion of addition made by the Ld. CIT(A), the Revenue is in appeal and the assessee has preferred the cross objection against the addition partly sustained by the Ld. CIT(A).

9. The first question before us is whether the Ld. CIT(A) was justified to give relief to the assessee by calling for architectural plan, schematic diagram of the shelf/racks/show room, stock room, photos, etc. to interfere/discard with the physical verification carried out by the survey team. We note that the AO's case is that physical verification of stock was carried out by the survey team in the assessee's premises and the stock/sarees found therein has been inventorised by the survey team, and the director of assessee company admitted during survey his inability to reconcile the difference in stock of Rs 2.5 crores and offered undisclosed stock of Rs 2.5crores along with post dated cheque amounting to Rs 75 lakhs as advance tax. We note that after the conclusion of the survey, the assessee had sought copies of the stock taking report (inventory report), and the impounded documents like impounded books of accounts and the statement given u/s 133A of the Act, so as to enable them to arrive at the final disclosure and the correct income which has to be offered to tax in the financial year 2015-16/AY 2016-17. And we note that a copy of survey report was provided to the assessee in December 2015 which comprised of 86 pages which corresponds to page 44 to 99 of PB. However, we note that in the PB filed before us there are only 55 pages (Page 44 to 99) of the inventory report prepared by the survey team. On an enquiry from us, as to the remaining pages the Ld. A.R filed the following chart reconciling the pages of PB with that of the inventory report which is self explanatory [*i.e. 26 blank pages (27-40, 44-45 & 49-60) among page 1 to 86 were not given to assessee by AO and the Ld CIT(A) has noted about this fact at page 10 of the impugned order supra*]. The chart is given below:



**Reconciliation of Pages of Inventory Report specified at Pgs 10-12 of Appellate Order vis-à-vis Pages of the Paperbook**

Page No. in Inventory Report	Page No. in Paperbook	Location of Inventory	Remarks
1 to 17	44 to 57	Stock Room	Inventory of narrow woven fabric of various sizes, giving details of item, quantity, selling & cost price per unit, total cost etc.
18 to 23	62 to 67	Channel Godown at 5th Floor	Inventory of blouse pcs, saree sabric, rolls with or without embroidery, found at the Channel Godown on the 5th floor, giving details of item, quantity, selling & cost price per unit, total cost etc.
24 to 26	59 to 61	NA	Inventory of lace and narrow woven fabric
27 to 40	NA	NA	Pages not there in Inventory Report. Kindly refer findings of CIT(A) at Page 10 of appellate order
41 to 43	68 to 70	Channel Godown at 5th Floor	Inventory of fancy fabric
44 to 45	NA	NA	Pages not there in Inventory Report. Kindly refer findings of CIT(A) at Page 10 of appellate order
46 to 48	71 to 73	NA	Inventory of printed fabric, dupian fabric, saree borders, chinki fabric etc.
49 to 60	NA	NA	Pages not there in Inventory Report. Kindly refer findings of CIT(A) at Page 10 of appellate order
61 to 69	74 to 82	Showroom	Inventory of embroidery sarees described as 'fresh stock-finished goods'
70	83	Showroom	Contains total value of embroidery sarees listed at Pgs 61 to 69
71 to 73	84 to 86	Pooja Room	Inventory of visces, borders, art dupian, net embroidery lace, taken from puja room
74 to 75	87 to 88	Godown/Store room	Inventory of visces, borders, art dupian, net embroidery lace, taken from godown
76	89	NA	<b>Disputed page - Inventory of 'finished' embroidery sarees, without item code or location where items were found</b>
77 to 78	90 to 91	Order Room	Inventory of fabrics, borders, laces, bandhni & embroidery sarees
79	92	Upper three bonks	Inventory of chiffon synthetic, visces, cancon
80	93	2nd row of showroom	Inventory of embroidery sarees
81	94	3rd row of showroom	Inventory of embroidery sarees
82	95	4th row of showroom	Inventory of embroidery sarees
83 to 84	96 to 97	Raw Material Room	Inventory of satin, viscose, nets
85	98	Kitchen Room	Inventory of velvet, tissue, borders etc
86	99	NA	Inventory of dupian, cut piece, lace & net

10. We note that after receipt of the stock taking report in December 2015, and other impounded documents, the assessee noticed that the quantitative details as well as the corresponding values allegedly reported by the department on physical stock taken team was incorrect and erroneous. According to assessee, on a detailed scrutiny of the inventory report it was found that there were discrepancies in particular at Page No.76 of the stock report (corresponding to page 89 of PB) which was completely different and the stock supposed to be reflected therein therefore did not belong to the assessee. The Ld. A.R pointed out that the details of the inventories, the value assigned, quantity, and the nature of product were significantly different

from the business and functional profile of the assessee company. Accordingly, the assessee brought these glaring discrepancies immediately to the notice of the AO by way of retraction statement filed on 22.01.2016 wherein the contents of Page No.76 (Page 89 of PB) were contested/denied to be that of the assessee. Therefore Return of Income was filed at Rs. 1,23,58,190 and these facts were again reiterated to the AO in the course of regular assessment. Apart from the foregoing, according to Ld. A.R there was other minor reconciliation issues, *inter-alia* involving valuation of dead stock and ad hoc addition of 20% on a particular page, which was also pointed out to the AO. Accordingly, a detailed reconciliation statement was filed by the assessee before the AO wherein it was claimed that there was no discrepancy between the physical stock taken at the time of survey and the stock appearing as per the books of accounts. However, according to Ld. AR, the AO completely disregarded the discrepancies/infirmities put forth regarding Page No.76 (Page 89 of PB) of the inventory report and instead took the same into account for justifying addition of Rs. 2.47 cr & Rs. 20.34 lakhs. We note that the assessee has enclosed in the paper book the inventory report (Page 44 to 99 of PB) report prepared by the department in the course of survey and has brought to our notice why the other pages are not filed in the paper book and the reason for not filing along with the other pages can be discerned from a perusal of the chart itself which is self-explanatory and as discussed 26 pages out of this 86 pages are blank pages which fact has been noted by Ld. CIT(A) at page 10 of his order (supra). On perusal of the survey report we note that only the Page No.76 is in a different hand writing and different style, which is altogether different from the other pages when we compare with the rest of the report. Unlike the other total 85 pages, it is apparent that this Page No. 76 (Page 89 of PB) was written by some other person in good handwriting in a leisurely manner which makes it standalone page from all other pages of inventory report, which raises doubt as to whether it was written at the time of physical stock taking in to consideration the flow of writing, the language used and the way of writing which is completely distinguishable. We note that when all other pages appear to have been written in a hurry in running hand (illegibly) and callous manner, Page 76 is written with good hand writing giving an impression as if someone was just copying the

contents on it after it has been prepared/finalized elsewhere. In the other 85 pages abbreviations have been used and the sign ‘-do-’ have been used wherever same items were found and repeated in the stock report. However in Page No.76 it can be seen that each of the 13 line item although being of the exact same nature has been written and repeated every time which normally during survey etc. officers don't have the luxury to sit and write patiently each and every such details again and again. These facts apart, the most glaring fact which is discernible from this single Page No. 76 (Page 89 of PB) is regarding the total quantities of sarees i.e. 5,596 pieces of embroidery sarees have been listed, whereas sarees in all the other 85 pages taken together total comes to only 1487. Moreover, it is noted that the value of sarees at Page No.76 is the convenient approximation of the alleged difference found by the Department in the stock record i.e. Rs. 2.5 crores and which was the undisclosed figure confronted to the director of the assessee to explain. The Ld. A.R drew our attention to the fact the survey team had inventorized embroidery sarees at page nos. 61 to 65 of the stock report where different category and designs and different serial numbers had been clearly jotted down. In contrast drawing our attention to page no. 76 (page 89 of PB) he brought to our notice that no reference has been made to the specific category or design or serial number of the alleged embroidery sarees found and inventories by the survey team. The Ld. A.R also pointed out that all the pages of the stock report, except page no. 76, indicate as to from which part of the premises the stock has been taken/accounted for. However, page no. 76 does not indicate the same and apparently stands out as completely different and an isolated page from the others as discussed. All these facts, according Ld. A.R when considered cumulatively support the assessee's case that page no. 76 (page 89 of PB) did not belong to it and was therefore incorrect/fabricated/cooked up; and on appeal, the Ld. CIT(A) taking note of these glaring errors as one of the reasons have exercised his suo-motto power u/s 250(4) of the Act and ordered the assessee to produce the architectural drawing etc. Another important fact that was brought to our notice was that the assessee runs its business involving trading of sarees from only a part of the 1<sup>st</sup> Floor premises having an area of 800 sq. ft. And according to Ld. A.R if one takes into account the area of the assessee's premises, it shall be practically impossible to fit in 5,596

embroidered sarees over and above the stock of sarees & fabrics found in the other 85 pages. According to him, it is common knowledge that the weight of an average embroidered saree is between 1.5 Kg to 5 Kg and considering the nature and craft involved in making these sarees, they are generally not kept together because it will damage the saree kept below. And so only maximum 4 or 5 embroidered sarees are kept in an average rack space and also because it is easy to take out the sarees and display before the customer. Thus taking into account the total area available with the assessee for storing the sarees and presuming that each and every available places/racks are filled up with only embroidery sarees (*although the assessee also maintains stock of fancy sarees and fabrics*) then also it can be seen that utmost 2460 number of sarees could have been stored at the assessee's premises. In view of the foregoing facts, it was pointed out by the assessee that it is highly improbable that the survey team could have found a total by 7083 sarees at the assessee's premises when it was practically impossible to maintain stock of such stock of sarees in such little space; and according to Ld AR, the Ld. CIT(A) in order to examine this factual claim of assessee along with the other infirmities pointed out at page 76, exercised his power u/s 250(4) of the Act calling for photos, drawing etc.

11. Be that as it may let us examine whether the action of Ld. CIT(A) to call for photos, drawing etc. of assessee's premises and thereafter discarding the survey report and go for estimation to restrict the addition is warranted in the facts and circumstances of the case. For appreciating these aforesaid facts in the light of the infirmities alleged against the contents of page 76, we need to reproduce by scanning page 75 (Page 88 of PB) as well as for sample another page 76 (Page 89 of PB) to appreciate the aforesaid discussion on how page 76 (Page 89 of PB) is different/stand-alone from the other pages. And please note that the first page scanned and placed herein below is scanned page 75 (Page 88 of PB) which page and hand writing is found to resemble with the handwriting of the survey report (1-86) placed before us (44-99 of PB) and the next page scanned after page 75 i.e. Page 76 (Page 89 of PB) is the disputed page. [*Since page numbering is not visible on the scanned pages the aforesaid description is necessary*]



S.No.	Item Description	Quantity	S.P/Unit	C.P/Unit	Total C.P.
22	Fancy Fabric (Fay)	8x100		90	7200
23	R.Pupear (Bund(e))	(10) 8x1920		50	4800
24	Fancy Fabric (Fay)	8x80		90	5760
25	Boiler (Bore)	35pc.		600	21000
26	Lace (Bag)	100pc.		100	10000
27	Bridit (Fay)	4x250m		25	25000
28	Lace (Bag) (2 bags)	100pc.		100	10000
29	Fancy Fabric (Fay)	6x26m		100	15600
30	" " (ii)	27x25m		TD	3550
31	" " "	3x35m		60	6300
32	" " (ii)	2x26m		100	5200
33	Miscose (Rau)	80m		79	63200
34	R.Dubear (Bore)	8x900m		TD	80000
35	Boiler (Bore)	2x80pc.		600	96000
36	" (ii)	100pc.		100	10000
37	Fancy Fabric (Fay)	5x18m		90	7200
38	Fancy Net (Bore)	7x20m		50	7000
39	Boiler (Bore)	5pc.		600	30000
					15098

PAGE

SIGNATURE OF THE PARTY

SIGNATURE OF AO WITH SEAL

मुद्रा





12. In the light of the aforesaid facts discussed in respect of infirmity of page 76 set out above, in addition to that according to Ld. A.R, the item-code of each saree are endorsed on the price tag of each sarees, however, at page 76 the details of item codes are conspicuously absent, and so according to Ld AR, we should appreciate the claim of the assessee that the page no. 76 (Page 89 of PB) of the inventory report did not belong to the assessee. And in this context, we note that these facts/infirmities were also brought to the notice of the AO vide retraction statement/affidavit filed in his office on 22.01.2016. However, the AO brushed aside the objections and made the entire addition of undisclosed stock and G.P on it. On appeal, when the aforesaid infirmities at page 76 were brought to the notice of Ld CIT(A), he in order to unravel the truth conducted enquiry u/s 250(4) of the Act to examine/satisfy himself as to whether there is any merit in the assessee's claim that even if the entire premises of the assessee is presumed to be filled with the sarees it cannot exceed 2460 pieces of sarees and therefore exercising his power suo-motto directed the assessee to produce the schematic diagram/architectural drawings of the store/store rooms/passages/premises surveyed inter alia including architect plan of show room, godown/passages measurement etc and the details of area in its possession, area of racks, stock rooms etc. photographs of a fully stocked showroom and the stock room and also the statement giving month wise details of sales along with average rate per sarees sold and sarees held in stock etc. And pursuant to the Ld CIT(A) direction, when the assessee provided the same, the Ld. CIT(A) appreciated the merit of the assessee's aforesaid contention and came to the conclusion that not more than 2500 sarees cannot be stocked in assessee's premises. And since assessee on the date of survey has only shown 1572 sarees in its books, the remaining sarees 928 sarees (2500-1572) were undisclosed stock of sarees. And restricted the addition to Rs 27,84,000/- (928 multiplied by Rs 3000/-) and G.P @ 8.49% of it at Rs 2,36,362/-.

13. Further in order to bolster his plea of fudging carried out at page 76, the Ld. AR brought to our notice certain interesting facts/coincidence which can be seen at page 101 of paper book and on a perusal of it (*which is not part of the inventory*

report of survey team, but it is the working sheet which was provided to the assessee along with inventory report in December 2015) we note that there are writing /calculation by hand written which is as under:

$$\begin{array}{r}
1,46,00,000 \\
- 3,00,000 \\
\hline
1,43,00,000 \\
+ 2,38,89,000 \\
\hline
3,81,89,000 \times 100/106.74 = \text{Rs. } 3,59,51,307/- \text{ (C.P.)} \\
4200 \times 437 = 18,35,400/- \\
3200 \times 512 = 16,38,400/- \\
3500 \times 498 = 17,43,000/- \\
4000 \times 456 = 18,24,000/- \\
4200 \times 420 = 17,64,000/- \\
4500 \times 390 = 17,55,000/- \\
5000 \times 390 = 19,50,000/- \\
6500 \times 412 = 26,78,000/- \\
4200 \times 401 = 16,84,200/- \\
3500 \times 380 = 13,30,000/- \\
4400 \times 422 = 18,56,800/- \\
5200 \times 352 = 18,30,400/- \\
3800 \times 526 = 19,98,800/- \\
\hline
2,38,89,000/-
\end{array}$$

14. When we asked the Ld. AR to explain this page 101 of paper book, he pointed out that this working sheet would reveal that the inventory report prepared by the survey team was only at Rs. 1,43,00,000/-. However since the survey team extracted an admission illegally at midnight of undisclosed stock of Rs. 2.5 crores, in order to tally this figure of Rs. 2.5 crores, the team has resorted to back calculation so as to match the inventory report with the extracted admission of Rs. 2.5 crore undisclosed stock from the assessee. Referring to the above notings made by the Survey team on the working statement [obtained by the assessee upon inspection of records], the Ld. AR pointed out that this sheet further substantiates the assessee's contention that the survey team had made-up Page No. 76 of the inventory report (Pg 89 of the PB) with the intent to correlate the disclosure of Rs.2.5 crs extracted from the director of the assessee company. To substantiate this averment, the Ld. AR first invited our



attention to Para 3 of the assessment order wherein the AO had observed that the stock available as per books on the date of survey was Rs. 1,10,80,923/-. Therefore, to justify the extracted disclosure of Rs.2.5 crs, the survey team had to report the cost of physical stock at Rs.3.6 crs [Rs. 1.10 crs (as per books) + Rs.2.5 crs (extracted disclosure)].

15. The Ld. AR thereafter submitted that the notings across the inventory report showed that the survey team had jotted down the selling/item code details and the corresponding selling price printed on the sarees, fabrics, garments etc. Understandably therefore, the sum total of the value of inventory set out in the report was the selling price, which was required to be adjusted by the gross profit, so as to arrive at the cost price of the products. Having regard to the foregoing, the Ld. AR now invited our attention to the right hand corner of the sheet (Pg. 101 of the Paper book), where the survey team had taken the figure of cost price (hereinafter referred to as 'C/P') of stock at Rs.3,59,51,307/- (equivalent to Rs.3.60 crs). This C/P was back calculated according to him by applying the gross profit rate of the preceding FY 2014-15 i.e., 6.74% so as to arrive at the approximate selling value of Rs.3,81,89,000/-. According to him, this figure was further adjusted and back calculated with reference to the selling value of stock which was actually physically found and noted on the 85 pages of the inventory report [except Pg. No. 76] i.e. Rs. 1,43,00,000/- (noting on top left hand corner of the Sheet placed at page 101 of paper book) so as to arrive at the difference of Rs.2,38,89,000/-, which the survey team had to add to the inventory report so as to justify the extracted disclosure of Rs.2.5 crs. He further pointed out that this figure of Rs.2,38,89,000/- was further broken up and divided by the survey team into 13 line items with the corresponding selling value and number of sarees, and the same was jotted down just below these notings on the bottom half of the same sheet. The Ld. AR submitted that it was only when the calculations made on this working sheet reconciled so as to justify the extracted disclosure that the survey team drew up Page 76 of the inventory report. The Ld. AR pointed out that the 13 line items noted on this sheet exactly matched with the 13 line items noted on Page No. 76 of the inventory report (Pg 89 of the PB). He specifically

pointed out that the number of sarees on each line item, the selling value on each line item and the total value of each line item fully tallied. This according to him goes on to prove/corroborate the assessee's contention that the Page 76 of the report prepared by the survey team was an after-thought to justify the disclosure of Rs.2.5 crs extracted from the Director at midnight of 12th October 2015. Thus the Ld AR pleaded that the action of Ld CIT(A) to discard the survey teams inventory report was correct and may be upheld.

16. So, when we examine the action of the Ld CIT(A) to discard the survey report prepared by the survey team on 12 Oct 2015, we have to keep in mind that there is a presumption as per the Indian Evidence Act 1872 ( herein after in short the Evidence Act) by virtue of section 114 of the Evidence Act that *the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct of public and private business in their relation to the facts of the particular case* and illustration (e) states that *the court may presume the official acts to have been regularly performed*. However, before presuming that the official act has been regularly performed, *the court shall also have regard to such fact as to whether the official act in question was performed in exceptional circumstances*. And "May Presume" as per the Indian Evidence Act states that whenever it is provided by the Evidence Act that the Court may presume a fact, it might either report such fact as proved, unless and until it is disproved, *or may call for proof of it*. So, here in this case, the Ld. CIT(A) has declined to presume the official action of survey (report) as proved, but has gone through the assessment folder and thereafter has called for proof of it, which the assessee has submitted before the Ld. CIT(A). So while examining the action of Ld. CIT(A) to call for external evidence in the form of diagram, photos etc. and his final action of discarding the survey report (1-86) we need to see whether there is any exceptional circumstances which warrant interference as stated in illustration (e) to section 114 of Evidence Act. In this context, we have to examine the allegation/infirmities pointed out by the assessee in respect of page 76 of the survey report.

We have considered the notings found on Page No. 76 of the inventory report along with the other pages of the inventory report and also the working sheet of the survey team enclosed at Pg 101 of the PB. Having regard to the discussions made in the preceding paragraphs, we find force in the findings of the Ld. CIT(A) that the veracity of Page No. 76 of the inventory report was indeed in serious doubt and it could not be said to contain the true details of stock found in the course of survey, and so he rightly discarded it. And for the following reasons, we also concur with the Ld CIT(A) to discard page 76 of survey report. We note that even though at the earliest of point of time the assessee has pointed out the infirmities the AO has brushed aside the same by merely saying *firstly* that the contents of page 76 (89 of PB) is correct because on the date of survey, the assessee's (director) has put his initial on page 76 (89 of PB) of the survey report, and *secondly*, during survey the director of assessee admitted about the un-disclosed stock of Rs 2.5cr and his subsequent conduct on the same day of issuing post-dated cheques as advance tax goes on to show that he accepted the undisclosed stock; and *thirdly* it is evident from of perusal of page 76 that the cost of sarees has been recorded between Rs. 3,200-6,500 which according to AO is more or less the same as in other pages; and *fourthly* at page 76 the number of sarees have been recorded; and *fifthly* since the survey operation was carried out by team of several officers, the handwriting on the inventory prepared cannot be the same and so it would be different and therefore at page 76 hand writing might be of some other official who was in the survey team. So according to AO, the contents of page 76 (89 of PB) is true and according to AO, even in the assessee's reply, the assessee has pleaded that even if there is undisclosed stock, then also the entire stock should not be added, which plea itself according to AO is a sign of admission of undisclosed stock and the assessee was desperately trying to get some relief. So according to AO, the assessee after failing to reconcile the undisputed stock during survey followed by admission of the undisclosed stock in director's statement and offer of advance tax has hatched a new story which is nothing but an afterthought of assessee to wriggle out of the undisclosed stock found during the survey and thus he repelled the allegation/infirmities raised by assessee.

So we will deal with each of the reason given by AO to justify page 76 of the inventory report of survey team.

18. First let us look at the merit of the AO's reason to rebuff the infirmities pointed out at page 76 by observing that since the director had initialed under Page 76 (89 of PB), it was prepared during survey. In this context we recall the fact that assessee has not placed all the pages 1-86 of the survey report and on our direction the Ld. AR had filed the reconciliation chart (supra); and on perusal of which we note the reason for non-filing of 26 pages of Survey Report paged from 1 to 86 was because the AO did not hand over the same along with the other pages of Survey Report, since they were blank sheets in the Survey Report comprising of total 86 pages. This fact that certain pages in Survey Report (1-86) were blank pages has been taken note by the Ld. CIT(A) at page no. 10 of the impugned order that pages 27-40, 44-45 and 49-60 of the Survey Report are not found in the inventory report. This finding of Ld. CIT(A) has not been challenged/assailed in the grounds of appeal by the Revenue. So this finding of fact crystallizes. It was pointed out by the Ld. A.R that these blank sheets in the survey Report i.e. pages 27-40, 44-45 & 49-60 in the survey Report from pages 1-86 were also found to have been initialed by the director of assessee, which fact he discovered during inspection and that is the reason why copies of blank sheet though paged between 1-86 was not provided to assessee. The Ld. AR explained that after the survey was over after the midnight, the assessee's director who was an elderly person was exhausted & tired and when pages were shown to him, he mechanically without looking into the contents of pages kept on initialing it so that he will be left free from the survey operation going on from morning; and according to Ld AR, merely because the director has initialed on all pages, (*including the blank sheets i.e. pages 27-40, 44-45 & 49-60 in the survey Report*) cannot be the basis to believe that the contents of all pages of the survey report (1-86) are true. Therefore, according to Ld. AR merely because initial of assessee's director is seen under page 76 (89 of PB) cannot be the main reason for concluding that the contents of page 76 is true. We find force in the contention of Ld. A.R., and note that Ld. CIT(A) has noted that some of the pages in survey Report

(i.e. 27-40, 44-45 & 49-60) stated to be in page 1-86 were blank sheets i.e, 26 pages out of 86 pages were blank sheets, and therefore AO did not give copies of it to assessee along with the other pages of Survey Report wherein the inventory of goods are recorded. So when there were blank sheets of 26 pages inside the survey Report which was paged in serial from 1 to 86, then the assessee's contention/allegation in respect of page 76 (89 of PB) could not have been lightly brushed aside by the AO mainly on the reason that director of assessee has initialed on it. So this reason of AO is not acceptable to us in the light of serious infirmities brought by the assessee in respect of page 76.

19. Secondly, the AO clings on the admission of undisclosed stock during survey to justify page 76. In this context, we should keep in mind that a voluntary admission about a fact is a good/best piece of evidence and that has statutory recognition given by section 58 of the Evidence Act. However, if the admission is made on threat, coercion or inducement then, there is no probative value attached to the said admission and it loses its evidentiary value. Also it has to be noted that if a statement is recorded on oath u/s. 132 of the Act (search) it stands on a higher pedestal than the statement recorded during survey u/s. 133A of the Act and the Hon'ble Supreme Court has held in the case of Kader Khan & Sons (supra) that the statement recorded on oath by a survey team u/s. 133A of the Act does not have evidentiary value. In this case, we note that during survey u/s. 133A of the Act after mid night, the assessee's director's an elderly person's statement was recorded u/s 133A of the Act. We note on a perusal of the same that the Director had not given an absolute offer of Rs.2,50,00,000/-instead it was a conditional offer. The director has stated in his reply to question no. 8 that *he was not in a position to explain the discrepancy (stock difference) which was alleged without going through the books of accounts*. So it can be seen that assessee's director though expressed his inability to explain the discrepancy has given the offer of undisclosed stock at Rs. 2.5 crores subject to discrepancy, if any, found in the regular books vis-a-vis physical stock taking report prepared by the Department. Thus, from the aforesaid statement recorded of the director of the assessee we are of the opinion it was a conditional

admission which was based on verification after looking in to the books. So the reply given by the director cannot be termed as an admission of the undisclosed stock and the AO erred in assuming so. And we note that at the earliest point of time the director has even retracted the conditional admission after going through its books and infirmities inter alia about page 76 of survey report . And it should be borne in mind that if an admission is based on mistake of fact (*not mistake of law*) then the maker of the admission can validly retract it. So, from any angle we look, we are of the opinion that there was no admission by the director of undisclosed stock during survey as wrongly assumed by AO.

20. Coming to the other observations of AO to justify page 76 cannot be accepted i.e, AO observes that survey team has written down the number of sarees at page 76, so it is correct. We don't agree, for the reason that it is highly improbable to have recorded so many number of sarees at page 76 which itself makes it a suspect. The number of embroidery sarees at page 76 alone is 5596 pcs, whereas sarees figuring in 8 pages (pages61-68) in a page are between 82 sarees to 145 sarees(max) and the total sarees are only 1487 sarees which are found recorded on 16 pages (61-70, 77 &78, and 80-82). And the total cost of sarees at page 76 alone is Rs. 2,38,89,000/- whereas, the total cost of total 1487 sarees recorded on 16 pages (61-70, 77 &78, and 80-82) is only Rs 38,05,550/- . So just because number of sarees were noted on page 76 does not justify the truth of the contents of page 76.

21. Moreover, in this case, we note that even though the assessee had raised hue and cry about page 76 at the earliest possible time and also brought to the notice of the AO during the assessment proceedings why the assessee's director is retracting from the purported admission of undisclosed stock of Rs.2.5 cr. by filing sworn affidavit, we note that AO has not rebutted the serious allegations/infirmities pointed out by the assessee in respect of page 76 of the survey stock report. When such an allegation is raised in respect of page 76 of the survey report, we presume that the AO was aware of the officers who were involved in the survey operation at the assessee's premises on 12 Oct 2015 or which fact will be available in the file; And in

order to counter the allegation the AO should have found out who all prepared/had written on the pages 1 to 86 of the inventory report. So, when there is a direct attack on the contents of page 76 of the survey report and serious allegation are imputed against it, then the AO ought to have made effort to find out who has written the contents of stock on page 76 ; and find out the truth; and if page 76 was prepared during survey, then he could have got an affidavit prepared of the officer who had jotted down the contents of the page 76 along with the assistance of officers who must have helped him prepare that page since to count 5596 sarees and calculate the cost of Rs 2.38 crores could not have been a one man task; and thus the AO could have brought some material on record which unfortunately the AO has not done other than erroneously harping on the assessee's purported admission and initial put on the page 76 and other flimsy reasons which cannot be countenanced for the reasons given (supra).

22. And the AO's justification about the obvious difference in hand writing of page 76 since several officers take part in survey operation and the handwriting may be different also does not inspire confidence to believe that page 76 was prepared during survey for the same reason stated (supra) that nothing prevented the AO to have identified the officer who prepared page 76 and brought evidence on record, which AO did not and the general observation made to justify cannot be accepted in the light of the glaring infirmities discussed supra which cast serious doubt about the veracity of the contents of page 76. Therefore we cannot accept the aforesaid reasons given by AO to justify page 76 of the inventory prepared by survey team. And during the appellate proceedings the Ld. CIT(A) in order to appreciate whether there is merit in the infirmities pointed out supra and in the exceptional circumstances pointed out (supra) and also to find out the truth of the allegation/infirmities in page 76 (89 of PB) directed the assessee to prove the same by adducing additional evidence in the form of architectural drawing, photos etc. which in the facts of the case as discussed (supra) was necessary to find out/unravel the truth and we do not find any illegality or irrationality in his action. According to us, page 76, with the infirmities pointed out does not inspire confidence to rely on it, therefore, the Ld.

CIT(A) rightly discarded it being unsafe to rely on the contents of page 76, since it is irreconcilable by the AO/Revenue. And since we concur with the reasoning given by the Ld CIT(A) to discard page 76 of the survey report, we are not repeating the reasons for the sake of brevity

23. However, at the same time, we do not completely agree with action of Ld. CIT(A) to completely discard the survey report (1-86) and to have resorted to estimation by presuming that 2500 sarees could have been found its premises and so according to Ld CIT(A) since assessee's books on the date of survey reflected only 1572 sarees, he concluded that 928 sarees were found to be in excess and restricted the addition by valuing one saree at Rs 3000, thus confirmed addition of Rs 27,84,000/- and G.P on its sale at Rs 2,36,362/-. We disagree this action of Ld CIT(A) for resorting to estimation without rejecting the books of account of the assessee as envisaged under section 145(3) read with section 144 of the Act (Best judgment assessment). Further it is to be noted that assessee has raised serious allegation/infirmities only in respect of page 76 of inventory prepared by the survey team comprising of 86 pages (including 26 blank pages). Meaning thereby that when assessee has not imputed any infirmity regarding the other pages of the inventory prepared physically by the survey team, the other pages need not be discarded as done by the Ld CIT(A). So according to us, the Ld CIT(A) erred in discarding the entire stock report (1-86) other than page 76. In the aforesaid facts discussed we are of the opinion that we need to only discard page 76 since there was no infirmities other than certain arithmetic/dead-stock etc., which has been taken care of. And in this context, we have to bear in mind that our Hon'ble Supreme Court has not accepted the maxim *falsus in uno, falsus in omnibus* meaning false in one thing, false in everything. So, after ignoring Pg. No. 76 of the said report and having regard to the working statement of the survey team (Page 101 of the PB), it cannot be denied that the survey team had physically found stock having selling value of Rs. 1,43,00,000/-. Applying the GP rate of 6.74%, the cost price of such stock works out to Rs, 1,33,97,040/-. As noted earlier, and also at Para 3 of the assessment order, the stock available in the books as on the date of survey was Rs.1,10,80,923/-. Giving



the benefit of the dead stock of Rs.8,79,415/-, as allowed by the AO at Para 5 of the impugned order, the discrepancy in the stock works out to Rs.14,36,702/-[Rs. 1,33,97,040 - Rs.1,10,80,923 - Rs.8,79,415]. Considering the aforesaid facts and circumstances, we are of the view that the value of excess physical stock found in the course of survey can be reasonably estimated at Rs. 14,36,702/- and G.P rate of 6.74% on it are sustained (BOTH). The CO of the assessee is partly allowed to this extent.

24. In the result, the appeal of the revenue is dismissed and the C.O of the assessee is partly allowed.

Order is pronounced in the open court on 21<sup>st</sup> April, 2021.

Sd/-  
(P.M.Jagtap)  
Vice-President

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 21.04.2021

*SB, Sr. PS*

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-9(1), Kolkata
2. Respondent – M/s Shree Anjani Sarees Pvt. Ltd., P-16, Om Tower, Kalakar Street, Burrabazar, Kolkata-700007.
3. The CIT(A)- 3, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata