

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM**

**आयकर अपील सं./ITA No.394/CTK/2018**

(निर्धारण वर्ष / Assessment Year :2013-2014)

M/s Laxmi Narayan Jewellery, Vivekananda Marg, District- Balasore, Odisha-756001	Vs.	ITO, Ward-2, Balasore
PAN No. : <b>AABFL 7440 A</b>		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
------------------------	----	---------------------------

निर्धारिती की ओर से /Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से /Revenue by	:	Shri Subhro Das, DR

सुनवाई की तारीख / Date of Hearing	:	18/06/2020
घोषणा की तारीख/Date of Pronouncement	:	10/07/2020

**आदेश / ORDER**

**Per L.P.Sahu, AM:**

The assessee has filed this appeal against the order of CIT(A), Cuttack, dated 30.08.2018 for the A.Y.2013-2014, on the following grounds of appeal :-

1. *For that, the order passed by the learned C.I.T.(A) is not just and proper under the facts and in the circumstances of the case, as such, the same is liable to be quashed in the interest of justice.*
2. *For that, the learned C.I.T.(A) should have deleted the entire addition of Rs. 1,30,26,864.00 made by the learned A.O. treating the same as undisclosed stock instead of reducing it to Rs.47,19,960.00. The findings given by the learned C.I.T.(A) being perverse and contrary to the facts on record, consequential addition sustained by him needs to be deleted in the interest of justice.*
3. *For that, when the closing stock as alleged by the learned A.O. do not belong to the Assessment year 2013-14, the learned C.I.T.(A) should have deleted the entire addition instead of reducing it to Rs.47,19,960.00 in the interest of justice.*

4. *For that, when the Appellant produced Books of Account for the impugned Assessment year and previous Assessment year and the closing stock of previous Assessment year were verified and accepted by the learned A.O. while completing the Assessment U/s. 143(3) of the Act, the learned C.I.T.(A) should have deleted the entire additions made instead of reducing it to Rs.47,19,960.00 in the interest of justice.*

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of retail trading in Jewellery at Motiganj Bazar, Balasore and Vivekanand Marg, Balasore. The assessee filed return of income on 29.10.2014 for the assessment year 2013-2014 declaring total income at Rs.9,36,080/-. Subsequently the case of the assessee was selected for compulsory scrutiny and statutory notices were issued to the assessee. Thereafter the case was fixed for hearing on different dates. A survey u/s.133A of the Income Tax Act, 1961 was conducted on 26.04.2012 in the business premises of the assessee and detected stock discrepancy of Rs.1,29,53,833/- at Motiganj Bazar Balasore and unexplained cash of Rs.73,031/-. During the course of survey proceedings u/s.133A of the Act, the assessee was agreed to pay self-assessment tax on it by accepting that the stock discrepancy noted was for the financial year 2011-2012 of Rs.40 lakhs in four instalments. Later on he distracted from his commitment to pay self-assessment tax for the financial year 2011-2012 of Rs.40,00,000/- in four instalments. Accordingly, the AO added the same into total income of the assessee for the financial year 2012-2013 relevant to assessment year 2013-

2014 to the tune of Rs.1,30,26,864/- under the head “stock discrepancy” after observing as under :-

*“However, the assessee firm distracted from his commitment and did not pay any self- assessment tax on undisclosed income of Rs. 1,30,26,864/- rather the assessee paid total advance tax of Rs.4,00,000/- (Rs.1,50,000/- on 08.05.2012, Rs.1,50,000/- on 14.05.2012 & Rs.1,00,000/- on 30.04.2012) for the assessment year 2013-14 instead of self-assessment tax for the A/Y 2012-13. As the assessee has distracted from his commitment to pay the S.A. tax for the F/Y 2011-12, and the survey was conducted during the financial year 2012-13, therefore the stock discrepancies was considered for the assessment year 2013-14.*

*During the course of assessment proceedings the assessee firm did not produce stock register or reconcile the stock discrepancy found during the course of survey operation u/s 133A of the IT. Act, 1961. The onus lies on the assessee to prove and reconcile the stock discrepancy with documentary evidences. During the course of survey operation the assessee firm agreed the stock discrepancy found and committed to pay the tax liability on the above stock discrepancy. As the assessee firm has not disclosed the above stock discrepancy found in the course of survey operation in its return of Income. Therefore, an amount of Rs.1,30,26,864/- is added to the total income of the assessee under the stock discrepancy.”*

**(Add: Rs.1,30,26,864/-)**

3. Feeling aggrieved from the order of AO, the assessee preferred appeal before the CIT(A). The ld. CIT(A) issued notice u/s.251(2) of the Act, in response to which the assessee replied the same and after considering all the records available before him, allowed relief of Rs.82,33,873/- and sustained the addition of Rs.47,19,960/-. Ld.CIT(A) noted that the assessee did not make any representation or submission regarding cash balance found in the cash box of Rs.73,031/- as unexplained cash, therefore, he dismissed this issue.
4. Feeling further aggrieved from the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

5. Ld. AR before us filed paper book containing page Nos.1 to 93 and reiterated the submissions made before the lower authorities. Ld. AR also stated that the stock discrepancy noted by the survey team relates to the financial year 2011-2012 and he was agreed to pay tax during the course of survey and he also stated that the AO completed the assessment for the assessment year 2012-2013 on 23.03.2015 but the AO did not make any addition in the assessment year 2012-2013. He added in the next financial year 2012-2013 i.e. the year of survey only for non-payment of committed self assessment tax of Rs.40 lakhs in the financial year 2011-2012. Ld. AR also agitated to the enhancement notice made by the CIT(A). Further the ld. AR submitted that the assessee was maintaining regularly stock register which were sent to the Chartered Accountant for the preparation of the VAT return, therefore, at the time of survey the assessee was not able to produce the stock register.

6. On the other hand, ld.DR relied on the orders of authorities below and submitted that the survey was conducted on 26.04.2012, therefore, the AO has correctly assessed in the impugned assessment year i.e. 2013-2014. He also submitted that the assessee distracted from his commitment made during the course of survey proceedings conducted at the partner's firm. It was also contended by ld. DR that during the survey proceedings the assessee accepted that he has not maintained

stock registers for the quantity of goods purchased and sold. Therefore, the Id. DR submitted that the CIT(A) has correctly computed the addition made by the AO.

7. After considering the submissions of both the parties and perusing the entire material available on record as well as the orders of both the authorities below, it is clear from the records that the survey was conducted at the business premises of the assessee and some discrepancies were noted which were offered for taxation by the partner firm for the financial year 2011-2012 and the assessee had also given undertaking to the revenue authorities that he will pay self-assessment tax of Rs.10,00,000/- each in four instalments but he did not pay. Therefore, the AO treated it as income for the assessment year 2013-2014 because the survey was conducted on 26.04.2012. Later on the CIT(A) has enhanced the income by issuing show cause notice u/s.251(2) of the Act and reduced the addition made by the AO. It is important to reproduce the statement of partner Shri Laxmi Narayan Rana at question No.6 and answer given by the partner of the firm which reads as under :-

*Q.6 During the course of survey operation u/s 133A of the I.T. Act, 1961 today in the business premises i.e. Motiganj, Balasore, physical stock of gold ornaments and silver has been taken as per annexure-B. The details of which are given as under:*

- |    |                   |                       |
|----|-------------------|-----------------------|
| 1. | Gold              | 4517.500 grams        |
| 2. | Silver (coins)    | 182.69 grams          |
| 3. | Stones (1000 No.) | value at Rs. 20,000/- |

However, during the course of survey no stock register was found in the business premises of the firm. How do you explain the stock discrepancy of gold, silver, stones and cash, since no register was found? Please furnish your explanation. .

Ans. It is true that this showroom is not maintaining stock register of the firm M/s Laxminarayan Jewellery. However the physical stock found during the course of survey (as per annexure-B) of gold 4517.500 gram, silver- 182.69 grams and stones worth of Rs.20,000/- is related to the firm M/s Laxminarayan Jewellery.

As I am unable to furnish books of account and stock registered in support of the above stock discrepancy i.e. gold, silver, and stones and cash found during the course of survey in the business premises i.e. Motiganj, Balasore. I have no other alternative but to buy peace from the department, I hereby offered the value of such gold, silver, stones and cash, as undisclosed income of the firm for the F.Y. 2011-12 relevant to the assessment year 2012-13 and accordingly, I will pay the self assessment :ax liability of Rs.40 lakhs approximately on the undisclosed income of Rs. 1,30,26,864/-. The calculation of undisclosed income is given as under:

Gold- 4517.500 grams x 2840 per gram	Rs. 1,28,29,700/-
Silver-182.690 grams x 570 per gram	Rs. 1,04,133/-
Stones (1000 No.)	Rs. 20,000/-
Unexplained cash	Rs. 73.031/-
Unexplained income	Rs.1,30, 26,864/-

Further, I also hereby undertake to pay the self tax liability on the above undisclosed income of Rs.1,30,26,864/- in 4 installments @ 10,00,000/- on 27.04.2012 each on 01.05.2012, 17.05.2012 and 31.05.2012 respectively for the assessment year-2012-13.

Further the statement of Shri Deepak Kumar Rana is as under :-

Q.31 Do you want to disclose anything?

Ans. Since one of our partner Sri Laxmi Narayan Rana has already disclosed unexplained income of Rs.1,30,26,864/-, I am also agreed with the statement of Sri Laxmi Narayan Rana. I also undertake to pay self assessment tax liability on the above undisclosed income of Rs.1,30,26,864/- in four installments @10,00,000/- on 27-4-2012 and Rs.10 lakhs each on 01-5-12, 17-5-12 & 31-5-12 respectively for the Asstt. Year 2012-13 on account of firm M/s Laxmi Narayan Jewellery.

Q.32 Do you want to say anything else?

Ans. As stated earlier, I hereby disclose unaccounted income of the firm at Rs.1,30,26,864/- for A.Y.2012-13 and accordingly I undertake to pay self asstt. tax of Rs.40 lakhs in four installments as stated earlier.

8. From the above submissions of the assessee, it is clear that he has offered for taxation in the assessment year 2012-2013 which has been accepted by the AO on conditional basis i.e. for payment of self-assessment tax of Rs.40,00,000/- but the assessee distracted from his commitment, therefore, the AO treated it as undisclosed income for the assessment year 2013-2014. It is clear from the assessment order that the AO has taken two views. It is also clear that if the assessee would have offered it as additional income for the assessment year 2012-2013, the AO would have accepted it. Therefore, it is clear that in the assessment order as reproduced supra there are two views adopted by the Assessing Officer. As per our considered view, two views are not sustainable under the provisions of Income Tax Act. The AO should have taken one view for taxing the discrepancy found during the course of survey. The Income Tax Act has provided other tools/provisions for the escapement of income done by the assessee, which has not been exercised by the AO. It is worthwhile to mention here that the assessment for the assessment year 2012-2013 was completed on 23.03.2015 whereas the survey u/s.133A of the Act was conducted on 26.04.2012 and documents were also available with him. The AO should have made additions in the assessment year 2012-2013 because at the time of survey in the statement proceedings, the assessee had accepted for income of the assessment year 2012-2013.

9. We observe from the order passed u/s.143(3) of the assessment year 2012-2013, there is no any single word found in regard to survey proceedings u/s.133A of the Act, whereas the documents were available with the same AO i.e. Ward-2(2), Balasore and the assessee accepted some discrepancy in stock and agreed to pay tax thereon. Further we observe from the order of CIT(A) that the Id. CIT(A) after taking into account of the two branches, enhanced/modified the assessment made by the AO but has given substantial relief after considering all the submissions and documents available before him. We have also gone through the statements recorded by the survey team of partners of the firm named as M/s Laxminarayan Rana in case of Motiganj premises at Balasore and statement of Shri Deepak Kumar Rana, M/s Laxminarayan Jewellery, Vivekananda Marg, Balasore. In both the statements the total discrepancy in stock declared of Rs.1,30,26,864/-, which are evident from the para No.6 of Annexure-4 filed in paper book at pages 42 & 43 and Question Nos.31 & 32 in Annexure-5 at page 50 of the paper book. The total declaration made by them is Rs.1,30,26,864/- only for the assessment year 2012-2013 in which they have undertaken payment of self-assessment tax of Rs.40 lakhs in four installments. Except the above declaration, there are nowhere in the statements recorded during the course of search, any other declaration by the partners. We noted from the order of both the



authorities below that they have made additions for the financial year 2012-2013 relevant to assessment year 2013-2014. Once the statements have been accepted by the survey team the tax should be calculated by them for the relevant years accepted by the assessee. In view of the above findings noted by us, it should be taxed in the assessment year 2012-2013. Accordingly, we quash the order of both the authorities below and delete the entire addition made by the AO.

10. In regard to issue of cash balance found in the cash box as agitated by the assessee in ground No.5, we have decided the entire issue that declaration should be added in the assessment year 2012-2013, therefore, there is no question for deciding this issue again because the amount in question as stated in this ground is included in the entire amount of declaration made by the partners.

11. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 10/07/2020.

**Sd/-**  
**(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 10/07/2020

*Prakash Kumar Mishra, Sr.P.S.*

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

1. अपीलार्थी / The Appellant-  
M/s Laxmi Narayan Jewellery,  
Vivekananda Marg,  
District- Balasore, Odisha-756001
2. प्रत्यर्थी / The Respondent-  
ITO, Ward-2, Balasore
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack