

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.489/Ind/2017
Assessment Year 2013-14

Deputy Commissioner of Income Tax, Circle-1(1), Ujjain	Vs.	Smt. Gurucharan Kaur Oberoi, 279,AG, Scheme No.74, Vijay Nagar, Indore
(Revenue)		(Respondent)
PAN AAIPO5785C		
ITA No.490/Ind/2017 Assessment Year 2013-14		
Assistant Commissioner of Income Tax-2(1), Ujjain	Vs	Shri Jaswinder Singh Oberoi, 279,AG, Scheme No.74, Vijay Nagar, Indore
(Revenue)		(Respondent)
PAN AAIPO7177J		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	15.04.2019
Date of Pronouncement	14.05.2019

ORDER

PER MANISH BORAD, AM.

The above captioned appeals relating to two different assessee's pertaining to Assessment Year 2013-14 are filed at the instance of Revenue and are directed against the orders of Ld. Commissioner of

Income Tax (Appeals) (in short 'Ld.CIT(A)'), Ujjain dated 28.04.2017 and 25.04.2017 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 31.03.2016 and 18.03.2016 respectively framed by DCIT-Ratlam.

2. Revenue has raised following grounds of appeal No. ITA No.489/Ind/2017 in the case of Smt. Gurucharan Kaur Oberoi

(1) Whether on the facts and in the circumstances of the case, Ld.CIT (A) was justified in not upholding the rejection of books of accounts in spite of specific defects pointed out in the assessment order and deleting the addition of Rs.3,09,63,422/-.

(2) Whether on the facts and in the circumstances of the case, Ld.CIT (A) was justified in restricting the addition of Rs.3,09,95,390/- made on account of suppression of sal to Rs.31,968/- allowing relief of Rs.3,09,63,422/- without taking into consideration that suppression of sales has been logically derived by AO by taking into consideration the duties on purchases and other factors as mentioned in assessment order.

(3) Whether on the facts and in the circumstances of the case, Ld.CIT (A) was justified in deleting the addition of Rs.13,97,442/- made on account of undervaluation of closing stock without appreciating the fact that huge breakage of bottles is not possible as the assessee has mainly purchased goods in plastic bottles and as such there cannot be breakage of such a large number of bottles and no supporting evidence given by the assessee for the claim.

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date; the appeal is finally heard for disposal.

ITA No.490/Ind/2017 in the case of Shri Jaswinder Singh Oberoi

1. Whether on the facts and in the circumstances of the case, Ld.CIT(A) was justified in not upholding the rejection of books of accounts inspite of specific defects pointed out in the assessment order and deleting the addition of Rs.6,16,66,374/-

2. Whether on the facts and in the circumstances of the case, Ld.CIT(A) was justified in deleting in deleting the addition of Rs.6,16,66,374/- made on account of suppression of sale without taking into consideration that suppression of sales has been logically derived by AO by taking into consideration various factors as mentioned in assessment order.

3. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Ra.12,85,423/ - made on account of undervaluation of closing stock without appreciating the fact that huge breakage of bottles is not possible as the assessee had mainly purchased goods in plastic bottles and as such there cannot be breakage of such a large number of bottles and no supporting evidence given by the assessee for the claim made.

3. In the appeals Revenue has disputed following two issues ;

(a) Addition for suppression of sales

S.No.	Name of the assessee	Appeal No.	Amount
1	Smt. Gurucharan Kaur Oberoi	489/Ind/17	Rs.3,09,63,422
2	Shri Jaswinder Singh Oberoi	490/Ind/2017	Rs.6,16,66,374

(b) Under valuation of closing stock

S.No.	Name of the assessee	Appeal No.	Amount
1	Smt. Gurucharan Kaur Oberoi	489/Ind/17	Rs.13,97,442
2	Shri Jaswinder Singh Oberoi	490/Ind/2017	Rs.12,85,423

4. As the issues raised in these appeals are common, therefore these were heard together and are being disposed off by this common order for sake of convenience and brevity. As both the parties have accepted that the issues and facts raised in these two appeals are same, therefore in order to adjudicate the common issue, we will take up the facts of Smt. Gurucharan Kaur Oberoi (ITA No.489/Ind/17).

5. Brief facts of the case as culled out from the records are that assessee is an individual deriving income from sale and purchase of liquor. Assessee filed her e-return of income declaring income of Rs.38,94,610/- on 01.10.2013. Case selected for scrutiny and notice u/s 143(2) and 142(1) were duly served. During the course of assessment Ld. A.O observed that the assessee has disclosed the net profit @ 3.4% of the total turnover as against 3.17% shown in the immediately preceding assessment year. On examining the books of accounts as well as the documents placed before him he noticed that various purchases and sale bills were not produced, no regular sale bills are issued which makes the verification of sale difficult. In absence of sale bills Ld. A.O took the basis of MSP (Maximum Sale Price) and MRP (Maximum Retail Price) mentioned on the label of bottles to compute the sales. Quantity of liquor was taken from the document of Excise Department showing the goods purchased by the assessee. Ld. A.O also observed certain anomalies relating to entry of purchase in the books of accounts and he also challenged the valuation of closing stock being made incorrectly. He accordingly on the basis of following observations rejected the books of accounts and applied provisions of Section 145(3) of the Act:-

1. The assessee has not maintained sale bills and in absence of sale bills correct sales are not verifiable.
 2. The sales declared by the assessee found undervalued due to assessee applied the rate below than MSP whereas as per Govt. norms the liquor cannot be sold below the rate of MSP. On view of above it is proved that the sales are not correctly declared.
 3. In the books of accounts purchase price is entered but quantity of purchase is not entered resulting suppression of sales.
 4. The stock has been undervalued as such the books do not declare correct profit.
- 6.** Ld. A.O proceeded ahead to compute the suppressed sales in the following manner;

Particulars	Sales as determined above	Sales as declared by assessee in books	Suppressed sales
Sale of Plain Country Liquor	51525169	40525669	10999500
Sale of Plain Country Liquor	10008520	6910615	3097905

Sale of IMFL Sprit	51959731	35061746	16897985
Total sales suppression of sales			30995390

7. As regards valuation of closing stock Ld. A.O rejected the assessee's claim of the damaged stock being part of the closing stock and made the addition of Rs.13,97,442/- towards under valuation of closing stock observing as follows;

Type of Liquor	Boxes of stock	Rate adopted by assessee	Value of closing stock
Sprit	174	2800	4,87,200
Beer	149	1000	1,49,000
Total stock of Country Liquor			6,36,200

The total valuation of the closing stock is worked out at Rs. 19,23,761/(6,36,200+12,87,561), while the assessee has shown valuation of Rs. 5,26,319/only. As such the difference of Rs, 13,97,442/- (1923761-526319) is added to the income of the assessee.

8. Accordingly income assessed at Rs.3,63,83,850/- after making addition for suppressed sales at Rs.3,09,95,390/-, addition for under

valued closing stock at Rs.13,97,442/- and addition for excess purchase of Rs.96,405/-.

9. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded.

10. Now revenue is in appeal before the Tribunal challenging the addition for suppressed sales of Rs.3,09,63,442/- and for deletion of addition of under valuation of closing stock at Rs.13,97,442/-.

11. Ld. Departmental Representative vehemently argued and supported the orders of Ld. Assessing Officer.

12. Per contra Ld. Counsel for the assessee supporting the orders of Ld. CIT(A) also made following written submissions commonly for both the assessee's.

1. The assessee is an individual deriving income from sale and purchase of liquor. The return of income has been filed declaring the income of Rs.38,94,6101-. The accounts are audited and the TAR is filed. The total sales during the year has been shown at Rs.23.62 crores with a gross profit of Rs.2.17 crores which comes to 9.220/0 and the net profit is

shown at 3.9.

1. The detailed procedure of the business is enumerated hereunder:

a. The tenders are floated for the group shops which are allotted to the highest bidder. The tenders are also renewed with an increase of 15 every year.

b. The shops of foreign liquor and country liquor are grouped separately and the amounts payable are determined as per the allotment of group shops.

c. After getting the tender or the renewal of the licence

(a) 10 of the amount is deposited as the initial amount for the 0.::of the shop (Dharohar Rash).

(b) 90 of the balance amount is divided into 24 parts and is payable every fortnightly.

(c) 45 i.e. half the amount is paid as **basic license fees** which is fixed against which the goods are not delivered.

(d) 45 i.e. half the amount is *paid* as license fees against the supply of goods. This amount is payable irrespective of the fact whether the goods

are purchased or not.

(e) For the amount of 90 of the tender price a bank guarantee of 12 is required to be given immediately on acceptance/renewal of tender.

(f) If the basic license fees or the normal license fees is not paid within a stipulated fortnightly period then after the expiry of three days the shop would be closed/sealed. Thereafter, there would be a re-auction for that area. If the new tender is auctioned at a lesser value the difference is recovered from the bank guarantee given.

(g) Goods required are delivered against the payment through bank. A delivery challan is given on production of the proof of payment and the goods are supplied from the warehouse as per requirement. The assessee is required to pay for the goods purchased at a fixed rate.

(h) On delivery of the goods, 8 is paid as transport fees.

(i) The duty payable for basic license fees and the license fees is divided as: 30 for April, May, June; 20 for July, August, September and 25 for next two quarters.

3. During the course of the assessment the assessee filed complete month-wise details of purchases and sales (attached with the assessment order as Annexure-A). The purchases are all verifiable since they are all made from the Govt. agencies after payment through bank. The necessary tax is collected by the Government supply agencies. For sales the sale bills are **not maintained since it is not possible to issue the sale bills in the rush** hours. This fact is in existence for all the dealers. The MRP and MSP are printed on the bottles. The sale rate is fixed as per the market condition and the marriage season. The prices are normally lesser in the rainy **season and at the time of harvesting. In the village area when the stocks** are piled up the same is required to be cleared by selling the liquor below the MSP price, since the basic license fees and normal license fees is required to be paid irrespective of the fact whether the assessee makes purchases or not. Under these circumstances the assessee is required to clear the stocks at the lesser price to avoid the loss of 100. Thus, the **assessee is forced to clear-up the stocks by selling the same below the** MSP price. If the sales are made below the MSP price then the government has right to levy the fine and even to close down the shop.

4. While framing the assessment the Ld. A.O. calculated the sale price and applied the sale rate for the month of April, May and June which fetches a better price because of marriage season and harvesting of crop. The Id. A.O. applied the thumb rule on the assumption that the assessee has sold the goods at 15 above the MSP and made the addition of Rs. 1,15,53,323/_ for foreign liquor. Similarly, he has calculated the sale of country liquor by adopting 15 of MSP and made the addition of 3,03,91,278/-. For IMFL spirit he has adopted the sale rate at 15% above MSP and made the addition of Rs.1 ,92,21,773/-. Thus, the total addition is made at Rs.6,16,66,374/-.

The Ld. A.O. further disallowed the breakages and shortages claimed by the assessee at Rs.12,85,423/- on the ground that these shortages are not mentioned in the audit report. This addition has been made for undervaluation of stock assuming the full quantity of stock is available with the assessee.

5. The Ld. CIT(A) after considering the submissions of the assessee and after discussing the trade practice of selling the goods below the MSP observed that many shops are selling the goods below the MSP price and against the action be the Department the penalties have been levied of

Rs.10,000/-. It is submitted that such an information was obtained under the R TI Act and the copies of the orders are placed in the paper book from Pgs.27-47. It was the business expediency to pay the penalty of *Rs.10,000/-* rather than incurring the loss of 100 by way of basic license fees. The order in the case of *M/s. Maxima Traders* is enclosed at Pg.27 and the order in the case of *Millenium Traders* is enclosed at Pg.34. The Ld. CIT(A) further in para 4.1 has observed that the A.O. has not pointed out any specific defect in the books of accounts and has failed to point out any discrepancy in the quantitative details of sale and purchases. He further considered the various cases of the Hon'ble Tribunal wherein the NP rate of 1.5 was adopted. In the similar type of cases the rate was adopted by the Ld. CIT(A) at 3.5. The assessee has shown a better profit, as such the Ld. CIT(A) deleted the addition of *Rs.6,16,66,374/-*. Regarding the addition of valuation in stock, the Ld. CIT(A) observed that the breakage and shortage is 0.54 which is quite reasonable and he therefore deleted the addition.

6. It is humbly submitted that in this trade of dealing in liquor the assessee is required to pay the fixed amount to the Government by way of license fees. Whether the sales are effected or not the minimum payment

is required to be made on a stipulated date. In the mofussil /villages the quantity of the liquor is not easily saleable. The assessee is required to pay the minimum tender price irrespective of the fact whether the sales are effected or not. To minimize the loss the assessee is required to sell the goods below the MSP and clear the stock. This practice is being adopted in this trade by many traders. The assessee has filed instances of sale of goods below the MSP and levy of penalty by the authorities. This Hon'ble Tribunal in number of cases has adopted the net profit rate at 1.77 and recently has adopted the net profit rate at 3.5. The assessee has shown practically the same rate. In the earlier years no additions were made on account of the NP rate. In view of this, it is humbly submitted that the order of the Ld. CIT(A) may please be maintained and the additions deleted by the Id. CIT(A) may please be approved.

13. We have heard rival contentions and perused the records placed before us. Revenue has raised two common grounds firstly challenging the deletion and addition of suppressed sales and secondly for deleting the addition of undervaluation closing stock.

14. We will first take up Ground No, 1 & 2 of the revenue wherein the revenue has challenged the finding of Ld. CIT(A) not upholding the

rejection of books of accounts and deleting the addition for suppressed sales of Rs.3,09,63,442/-.

15. Ld. CIT(A) deleted the addition for suppressed sale of Rs. 3,09,63,442/- observing as follows;

“4.1 Ground No.1: Through this ground of appeal the appellant has challenged the addition of Rs.3,09,95,390/- on account of suppression of sale. I have gone through the assessment order and reasons brought out by the AO. The AO has stated that the appellant has made the sale of liquor below the minimum sale price on presumptive basis particularly when the books of account are duly maintained and audited by the auditor u/s 44AB. Moreover, the AO has not pointed out any specific defects in the books of accounts. The AO failed to point out any discrepancy in quantitative details of sale and purchases. The AO has simply rejected the books of accounts u/s 145 of the I.T. Act without pointing out any specific defects. The AO's action of arriving suppression of sale at Rs.3,09,95,39/- after rejecting books of account without any basis is not justifiable.

4.1.1 The appellant's case was not comparable with other case particularly for the reason that different shops are having different turnover, different location and sealing bardana. Therefore, in my opinion the estimation of turnover is not justified. Further, while applying the minimum sale price, the AO has not taken into account the other comparable cases. It is to be mentioned here that in the cases of Naman Traders and Navin Traders, in the A Y.2009-10, the department had estimated the net profit Of 5% as against 3.76% and 3.1 5% respectively shown by these parties. The facts of the case of these parties are not known. Moreover, from perusal of the assessment order, it transpires that the AO has not conl'onted similar type of cases to the appellant during the course of assessment

proceedings.

4. I .2 Further, the appellant during the course of appeal proceedings, through a written submission has brought to my notice that, the department, in the assessment year 2006-07, had accepted the net profit of 1.94% to 1.80% in most of the cases. It has also been contended that the results of assessment year 2005-06 should not have been compared with the results of other assessment years in the case of appellant. The contention of the appellant has merit. Therefore, prima-facie these are not comparable cases particularly when the estimated rates have been applied by the department. In view of above discussion, it is observed that if the net profit arrived by the AO is considered then the rate of net profit comes @ 25% which is highly unlikely in such type of business keeping in view the huge turnover. The appellant has disclosed the total NP @ 4.2% in the A. Y.20 11-12.

4.1.3 The amount of net profit rate i.e. 3.5% has been adopted by CIT(A), Ujjain while deciding the appeal of Shri Rajendra Ramavtar Jaiswal in Appeal No. U-298/2012-13 for the A. Y. 20 10-11. Therefore, the appellant has disclosed slightly less profit rate in comparison to the above cited case. The appellant furnished the quantitative details of sales and purchase during the course of assessment proceedings and no defects have been pointed out by the AO. By merely non-issuance of sales bills it cannot be presumed that the appellant has suppressed the sales. Most of the time liquor vendors indulging in the sale of liquor below minimum sale price (MSP). It is a common practice to sale the liquor below MSP because of the competition in the market. In most of the cases the excise department has imposed the penalty for indulging in the sale of liquor below MSP. Although the prohibition of sale below MSP and above MRP as per the licensing condition may be true but the fact that liquor contractors in the State sell the liquor even below the MSP is also equally true and is a matter of fact. In fact the sale of liquor below MSP, if noticed by the State Excise authorities is merely an irregularity and in such case, the license of the concerned contractor is liable to be suspended minimum for a period of 3 days and maximum for one week and in case of violation for more than once, the license for remaining period of year can be cancelled. The liquor contractors under the conditions of license are required to purchase minimum guaranteed

quantity of liquor which is the basis for fixation of the license fees. Such minimum guaranteed quantity of liquor is required to be purchased irrespective of whether the contractor in question has been able to sale quantity earlier purchased by him and if the minimum guaranteed quantity is not purchased the contractor is liable to pay Excise Duty on such minimum guaranteed quantity. In view of these conditions of license, the liquor contractors do undertake the risk of action for sale below MSP. The appellant submitted that the appellant has gathered information under the Right to Information Act from the State Excise Department of the Ujjain and Dhar about the facts whether the liquor contractor in the area sale liquors below MSP and if such sale below MSP is found what is the action taken against such contractor and the Excise Department has provided information about violation of such condition in case of one . of the contractor viz Maxima Traders Shopal Pvt. Ltd. Ujjain, in whose case on coming to know about such irregularity a penalty was imposed, which was later on set aside in appeal by the Commissioner of Excise. Similar information about a dealer in Dhar has also been received from State Excise Department in which case also a nominal penalty of Rs.10,000/- has been imposed for sale below MSP. Therefore, the appellant's contention is correct tha the sale of liquor at the price below MSP is not unusual but the liquor contractors do sale the liquor at the prices below the MSP. In view of this factual and legal position about the practice of liquor contractors of selling liquor below MSP, no allegation about suppression of sales on the ground of recording of sale below MSP could be made by AO without brining on record positive and cogent material to prove beyond doubt that the appellant in fact sold liquor at higher price than that recorded in the books of accounts. There is no evidence that the appellant has sold liquor at rate higher than recorded in books. However, the AO has not made any attempt to bring on record any such material to prove the allegation made by him against the appellant. It is well established proposition of law that mere suspicion cannot take the place of proof and no addition can be made on the basis of mere imagination and presumption. Reliance in this respect is placed on following decisions ITAT, Indore Bench, Indore:-l. ACIT V/S Avinash Chalana & Co reported in (2016) 28 IT J 295 , where the IT

AT after considering the position of strict regulation and condition over the country liquor contractor under the provisions of law and after considering the facts that regular books of accounts were maintained which is duly audited and in view of fact no discrepancy in any manner in the quantitative details maintained was found by AO, has, held that there was no justification in rejection of books of accounts and application of provisions of section 145(3). The ITAT also held that estimation of sales at higher figures are not justified and held that NP Rate of l. 77 was reasonable.

2. ACIT v/s Surewin Marketing Pvt Ltd reported in (2016) 28 ITJ 299. In that case also the ITAT disapproved the rejection of books of accounts in absence of any discrepancy in quantitative details of sales and purchases. The ITAT upheld the view of CIT (A) that the purchase of liquor was on the basis of permit granted by Excise authorities and in absence of any adverse finding or in absence of any discrepancy in daily sales recorded and in particular in absence of any material to show that the assessee was indulged in 'effecting sales outside the books of accounts. The rejection of books is not held to be proper. Finally the ITAT directed for applying NP Rate of 1.5% as against 1.25% declared by the assessee.

3. ACIT v/s Gulmohar Traders (a case of liquor contractor) reported in (2016) 28 IT J 302 In that case also the IT AT has disapproved the rejection of books of accounts only on the ground of non issuance of cash memos for sale and in view of the fact that no discrepancy is found in the accounts maintained by the assessee. The IT AT has accordingly upheld the order of CIT(A) whereby he had: disapproved rejection of books of accounts of the assessee.

4.1.4 Therefore, in view of the above settled position, the rejection of books of accounts in the instant case only on the basis of absence of cash memos is contrary to the judicial opinion. The AO is not justified in estimating the turnover of the appellant on presumptive basis. Net Profit Rate of 4.2 in case of Smt. Gurucharan Kaur Oberoi in appeal no. U-11/2014-15 and 3.56 in appeal no.U-17/2013-14 was upheld. In case of Ramavtar Jaiswal in appeal no.U-298/2012-

13 for assessment year 2010-11 the CIT(A) Ujjain had applied rate of 3.5%. The appellant during the year under consideration has declared the net profit rate of 3.47%. It will be appropriate to adopt net profit rate @ 3.5% in this year also. Therefore, the net profit of the appellant comes to Rs.39,45,372/-. The appellant herself declared the net profit at Rs.39,13,404/-. Therefore, the addition to the extent of Rs.31,968/(Rs.39,45,372/- _ Rs.39,13,404/-) is **Confirmed**. The appellant will get the relief of Rs.3,09,63,422/-. Therefore, the appeal on this ground is **partly allowed**”

16. We observe that the assessee is consistently engaged in the business of liquor. Gross Profit rate of 8.48% and Net Profit Rate of 3.47% has been declared for the year under appeal on the total turnover of Rs.11,27,24,922/- as against the Gross Profit of 9.10% and 3.17% shown for the immediately preceding assessment year. Books of accounts are audited u/s 44AB of the Act. Assessee being the liquor contractor all the purchases are duly vouched with the support of Excise Department records and the same has not been challenged by the revenue authorities. Assessee has fairly accepted before Ld.A.O that no cash memos are issued for liquor sales because in this line of business the customer is always in hurry to purchase the goods and is hardly interested in taking the sales bills. However regular quantitative details are maintained for the opening stock, purchases, sales and closing stock. Ld. A.O has

rejected the books of accounts merely on the observation that sale bills are not prepared which makes it difficult to verify the actual sales and there is always the possibility that assessee sales goods at a higher price but records at lower price in the books. Ld. A.O made the addition for suppressed sales at Rs.3,09,95,390/- riding on these observations.

17. We observe that no specific instance has been pointed out by the Ld. A.O about any transaction which could prove that the assessee had suppressed the sales by way of receiving higher amount for sales but entered the figure on lower price in the books of accounts. The basis taken by the Ld. A.O is the MSP and MRP. No weightage has been given by the Ld. A.O that the goods are not always sold on MRP due to competition which forces to make sale at lower price. Gross Profit rate remains consistent. Books of accounts have been duly audited. Quantitative details of various qualities of goods have been maintained. We find that in the similar set of facts the Co-ordinate Bench in the case of ACIT Vs Avinash Chalana & Co (2016) 28 ITJ 295, after considering the position of strict regulation and condition over the country liquor contractor under the provisions of law and after considering the facts that regular books of accounts were maintained which is duly audited and in

view of fact no discrepancy in any manner in the quantitative details maintained was found by the AO has held that there was no justification in rejection of books of accounts and application of provisions of Section 145(3) of the Act. The ITAT also held that estimation of sales at higher figures are not justified and held that Net Profit Rate of 1.77% was reasonable.

18. Hon'ble jurisdictional High court in the case of ACIT v/s Gendalal Hazarilal and Co 263 ITR 679 *laid down the ratio that the doctrine of res judicata is not applicable but consistency has to be maintained unless there is a manifest distinguishable feature.*

19. Applying this ratio on the facts of the instant case, we find that similar type of business has been carried out i.e. sale of liquor. Purchases are not doubted at any stage as they are through Excise Department controlled by the Government. Quantitative details have been filed for all the purchases. Books of accounts are duly audited. Better Net profit rate has been declared i.e. 3.47% as against 3.17% in the immediately preceding financial year. In these given facts and circumstances of the case we find no inconsistency in the well reasoned finding of fact by Ld. CIT(A) applying net profit rate of 3.5%. We

accordingly confirm the view of Ld. CIT(A) of deleting the addition of suppressed sales of Rs.3,09,63,442/- and dismiss revenue's Ground No. 1 & 2.

20. Apropos Ground No.3 relating the deletion and addition of Rs.13,97,442/- towards undervaluation of closing stock. We observe that the Ld. A.O has merely calculated the stock as per the price value on the Excise records without giving any benefit of damaged as shortages in goods due to handling and transportation. Surprisingly in the Tax Audit Report furnished by the assessee in Annexure-B showing the quantitative details NIL shortage has been shown. Before the lower authorities assessee has claimed about the element of breakage in stock damaged in the process of handling but no such shortage has been entered in the books of accounts nor has been pointed out in the tax audit report which does not support the contention of the assessee as well as finding given by Ld. CIT(A).

21. In these given facts and circumstances where on one hand no shortage has been reported in the audited financial statements and on the other hand one cannot deny the possibility of breakage and damage in the process of handling goods. In order to be fair to both the parties

and meet the ends of justice, we sustain addition of Rs.2,00,000/- for under valuation of closing stock and allow partly revenue's Ground No.3.

In the result Ground No.3 of the revenue's appeal is partly allowed.

22. Now we take up Revenue's Appeal No.490/1nd/17 in the case of Shri Jaswinder Singh Oberoi. As referred above that both the parties agreed that the facts and issues raised in both the appeals are same and therefore the decision taken by us while adjudicating the issues in the case of Smt. Gurucharan Kaur Oberoi in the preceding paras shall apply *mutandis mutandis* on the issues raised in the case of Shri Jaswinder Singh Oberoi. We accordingly confirm the findings of Ld. CIT(A) deleting the addition for suppressed sales of Rs.6,16,66,374/- and dismiss revenue's Ground No 1 & 2. Similarly as regards Ground No.3 relating to addition of undervaluation closing stock at Rs.12,85,423/-, as decided in the preceding paras, we partly confirm the addition for undervaluation closing stock at Rs.1,50,000/- on the basis of our observation given herein above in para 21.

23. In the result both the appeals of the revenue are partly allowed

The order pronounced in the open Court on 14.05.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 14 May, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore