

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ ITA No. 452/JP/2015
निर्धारण वर्ष / Assessment Year : 2011-12

Deputy Commissioner of Income Tax, (Central Circle), Ajmer.	बनाम Vs.	M/s Bhajan Lal Suresh Chand Saraf, 5 Batti, Beawar.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACFB 2942 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 314/JP/2015
निर्धारण वर्ष / Assessment Year : 2010-11

M/s Bhajan Lal Suresh Chand Saraf, 5 Batti, Beawar.	बनाम Vs.	Deputy Commissioner of Income Tax, (Central Circle), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACFB 2942 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri J.C. Kulhari, (JCIT).
निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya &
Shri Fazlu Rahman (Adv)

सुनवाई की तारीख / Date of Hearing : 10/04/2018
उदघोषणा की तारीख / Date of Pronouncement : 07/05/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

These cross appeals filed by the revenue and the assessee emanates from the order of the Id. CIT(A)-2, Udaipur dated 23/02/2015 for the A.Y. 2011-12.

2. Both the appeals are heard together and being disposed off by this common order.

3. The brief facts of the case are that the assessee is a partnership firm having its head office at Beawar, district- Ajmer and also a branch opened on 03/2/2010 at Kishangarh, district- Ajmer in the name and style of Swarnganga Jewellers. From both these premises, the assessee was carrying out wholesale and retail trade of gold, silver and other precious stones. A search and seizure operation was carried out U/s 132 of the Income Tax Act, 1961 (in short the Act) on 13-14/10/2010 at the residence of partners and also survey U/s 133A of the Act at business premises of the assessee in this group. The assessee has filed return of income for the A.Y. 2011-12 declaring total income of Rs. 4,96,46,130/- on 11/7/2011. The assessee has taken into account undisclosed stock of Rs. 5,84,80,096/- of gold and silver in his account. The assessee has admitted unaccounted stock of Rs. 6,36,80,096/- during the survey operation. The assessment was completed at a total income of Rs. 7,91,58,320/-. The Id. CIT(A) has granted part relief to the assessee.

4. Now the revenue and the assessee are in appeals before the ITAT by taking following grounds of appeal:-

Ground of revenue's appeal in ITA No. 452/JP/2015

"1. Whether on the facts and in the circumstances of the case, CIT(A) has erred in deleting the addition of Rs. 1,20,000/-

made on account of remuneration to the partners ignoring that the said amount admittedly represents the undisclosed investment of the assessee and no deduction u/s 40(b) can be allowed therefrom.

2. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in restricting the trading addition to 89,57,095/- without any basis whereas the AO had worked out the trading addition of Rs. 1,21,68,595/- after recording due reasons and basis.*
3. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,41,93,277/- on account of value of excess stock ignoring that the unaccounted stock was found during survey and same was admitted by the assessee but did not offer the same in the Return of income.*
4. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in restricting the addition of Rs. 4,11,908/- to the extent of Rs. 6,490/- ignoring that disclosure made on account of excess stock of diamond was brought to tax by considering the undisclosed investment u/s 69B of the Act.*
5. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 9,41,831/- ignoring that disclosure made on account of excess stock was brought to tax by considering the undisclosed investment u/s 69B of the Act.*
6. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 67,313/- ignoring that disclosure made on account of excess stock was brought to tax by considering the undisclosed investment u/s 69B of the Act.*
7. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 10,09,273/- made on account of negative cash balance*

ignoring that the cash balance reconciliation statement was reproduced by the assessee itself during the assessment proceedings.

8. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 6,00,000/- made on account of disclosure on miscellaneous loose papers ignoring that the assessee had made voluntary disclosure of Rs.6,00,000/- and retraction of sworn statement after more than 2 years.*
9. *The appellant craves the right to amend alter or add to any of the grounds of appeal given above '*

Grounds of assessee's appeal in ITA No. 314/JP/2015

- “1. *The Id. CIT(A) has erred in sustaining provisions of Section 145(3) of Income Tax Act, 1961.*
2. *The Id. CIT(A) has erred in sustaining the trading addition of Rs. 89,57,095/- without considering the facts.*
3. *The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”*

5. In the ground No. 1 of the revenue's appeal, the issue involved is deleting the addition of Rs. 1,20,000/- made on account of remuneration to the partners. The Id. CIT(A) has granted relief to the assessee by holding as under:

“3.3 *I have carefully gone through the facts & submission made by assessee. It is a matter of fact that the 'surrendered undisclosed income' is in form of business stock, in hands of firm and the firm itself has no other business than to trade the jewellery of gold, silver & precious stones. The statements as recorded u/sec. 131, 132(4) of Act of partners &*

others also clearly states that it is all business income & thus the surrender of income cannot be considered otherwise & thus the assessee firm is rightly entitled for claim of salary / remuneration to partners in terms of section 40(b) at Rs. 2,70,000.00 as claimed. In this view the first ground of appeal of appellant is allowed. The alternative plea of appellant is that the firm and partners all are taxable at maximum marginal rate and any disallowances made in hands of firm will attract the provisions of Section 28(v) of Income Tax Act, 1961. The ground of appeal is fully allowed."

6. We have heard both the sides on this issue. In view of findings recorded by the Id. CIT(A) with regard to the business income and entitlement of partners in view of provisions of Section 40(b) of the Act, we find no merit in this ground of revenue's appeal. Hence, the same is hereby dismissed.

7. In the ground No. 2 of the revenue's appeal and ground No. 2 of the assessee's appeal are on the issue of part relief granted by the Id. CIT(A) from the trading addition and ground No. 1 of assessee's appeal is against sustaining the rejection of books of account which is also connected to ground No. 2 of assessee's appeal. The Assessing Officer made addition of Rs. 1,21,68,595/- being trading addition by estimating sales at Rs. 12,00,00,000/- and applied G.P. rate @ 14.77%. The Id. CIT(A) restricted it to Rs.89,57,095/-. The Id. CIT(A) has dealt these issues by holding as under:

- 4.6 I have gone through the observation as made by A.O. & submissions as made by assessee as discussed in above paras. It is true that assessee maintains day to day accounting of sales, purchase & cash flow including quantitative tally of traded goods. But the discrepancies & excess stock as found during survey also cannot be denied & shows that assessee firm has indulged in transactions over and above the books. Thus the A.O. had no option & has rightly applied the provisions of section 145(3); since books results cannot be relied upon. However the jacking up the estimation of sales from Rs. 11,12,63,154/- worked out by AO himself to imaginary figure of Rs. 12 00 crore does not hold justified. If credit is given for the plausible explanations, reconciliation as filed by appellant for specific issues such as; Unrecorded sales made on a/c cash received from customers Rs. 16,94,840.00 and Considering gold received from customers on loose slips weighing 1655.380 Gr. Valuing Rs. 33 20,649.00, the estimated sales by the same methods worked out by AO would end up in Rs. 10,62,47,665/-. Therefore, instead of jacking up estimated sales arbitrarily, considering all explanations & evidences as per paper book & submission it would be fair and reasonable to hold the estimation of sales at Rs. 10,75,00,000 00 against total declared sales for the year at Rs. 10,32,62 598 00.
- 4.6.1 With regard to estimation of gross - profit margin at 14.77% (Taking average G.P.% of last 3 years e.g. 15.50%, 15.24% & 13.58% for asst, year 2010-11; 2009-10 & 2008-09) is also not fair and just because business has expanded in geographical bounds as well as items dealt in. Further several other factors such as: dealing in raw - gold, recently started business of diamond jewellery, volatility of gold prices has to be considered. In such situation G.P. rate just before survey 13.22% could be handy to resolve the issue instead relying on averages. Therefore, it would meet the end of justice to estimate the G.P. rate at 13.50% a little bit higher than G.P. rate just before survey i.e. 13.22% on estimated sales at Rs. 10.75 Crore. Thus the total gross profit to be estimated would be 13.50% on sales at 10.75 crore = 1,45,12,500.00 against declared G.P. of Rs. 55,55,405.00 & thus addition on this

ground of appeal would be Rs. 89,57,095/- (1,45,12,500.00 - 55,55,405.00) only. The ground is accordingly decided to restrict the Trading addition as per Para 5.2.4 of the assessment order to the extent of Rs. 89,57,095/-."

8. While pleading on behalf of the assessee, the Id AR regarding this issue has submitted as under:

Facts: The position of the excess stock found during survey was worked out by the AO as under:

Kishangarh Branch (Excess stock)		
Gold Ornaments	29,090.96 Gm	Rs. 4,54,00,000/-
Beawar Branch (Excess stock)		
Gold Ornaments	7,857.241 Gm	Rs. 1,43,00,179/-
Silver Ornaments	168.284 Kg	Rs. <u>39,79,917/-</u>
		Rs. 6,36,80,096/-

Reasons of invoking s.145:

(1) The A.O. observed that looking to vast variation in G.P. rate analysis the books of accounts are liable to be rejected u/s 145 of Income Tax Act, 1961, according to A.O.:-

G.P. Chart for last 3 years (Including surrender Amount)

A.Y	SALES (RS.)	G.P. (RS.)	G.P. %
2011-12	10,32,62,598/-	6,40,35,501/-	<u>62.00%</u>
2010-11 (Beawar) (Kishangarh) 03.02.2010)	2,51,12,770/-	38,91,575/-	<u>15.50%</u>
2009-10 (Only Beawar)	1,78,02,399/-	27,12,437/-	<u>15.24%</u>
2008-09(Only Beawar)	1,71,25,638/-	23,25,858/-	<u>13.58%</u>

Further on analysis & after excluding the surrender amount included in Gross Profit Amount, the analysis for A.Y. 2011-12 was as under:-

	<u>SALES (RS.)</u>	<u>G.P. (RS.)</u>	<u>G.P. %</u>
Pre Survey (01.04.10 To 12.10.10)	2,07,17,116/-	2739408.00	13.22%
Post Survey 13.10.10 To 31.03.11)	8,25,45,482/-	28,15,997/-	3.41%
01.04.10 To 31.03.2011	10,32,62,598/-	55,55,405/-	5.38%

Looking to this vast decline in G.P. % in post survey v/s pre survey, the A.O. preferred to apply the provisions of S.145 & has insisted on rejection of books & result.

Further other factors also prompted the A.O. to apply the provisions of section 145 were as under:-

(i) That during survey the assessee firm has surrendered excess stock of Gold & Silver to the extent of Rs.6,36,80,096/- & in this indulged in the business activities outside the books of accounts.

(ii) That as per survey impounded records & as per reconciliation statement of Gold & others the assessee firm has claimed that Gold weighing 1655.380 GR. (Valued at Rs. 31,50,000/-) received from customers for conversion (Making and remaking) & cash received from customers Rs. 16,94,840.00 as advance for supply (Cash received equivalent to Gold 1051.280 GR.) was not found recorded in financial books & stock register. (Page 19 para 3(ii) of AO's order)

(iii) That it was not feasible for A.O. to ascertain which old ornaments of which customers were given to the final outcome.

(iv) That as per exhibit A-8 to A-12 (PB 129-147) of seized records from customers weighing 1655.380 GR. and cash as advance from customers Rs. 16,94,840.00 are all unrecorded purchases / sales & forms basis of unrecorded transactions. (Page 4 of AO's order)

(v) Similarly few sales bills just before the survey dated 09.10.10 were found unposted in sales ledger & simultaneously Gold purchase just

before date of survey were not found recorded, only after survey on reconciliation of facts the things came into notice & were formed part of reconciliation.(Page 22 para 6 of AO's order)

(vi) The A.O. also noticed a negative cash balance at Kishangarh Branch of Rs. 10,09,273.00 (After reconciliation) the reasons of said negative cash balance was intimated to A.O. that in computer system the opening cash – balance as on 01.04.10 has been wrongly taken at Rs. 13,401/- whereas same should be Rs. 6,46,206/- as can be verified by audited accounts as on 31.03.10, by the time / date of survey these figures were already with department vide return filed for assessment year 2010-11 & it was system error & actual there was no cash negative, the reconciliation submitted for same is as per A.O's order page 26 (Para 10). (Page23 para 7 of AO's order) (Page 113 to 155)(PB 117)

Based on above issues & so called discrepancies the A.O. has prepared his sales – reconciliation chart as below:(AO's order page 28 para 5.2.3)

S.N.	Particulars	Amount (Rs.)	Remark
1.	Regular sales recorded in books 01.04.2010 to 31.03.10	10,32,62,598/-	
2.	Unrecorded sales made on a/c of cash Received from customers (Note: This is actually not sales upto survey dated 12.10.10, since only advance against order & converted into sales from 13.10.10 to 31.03.11 as per details in chart. (Page 17 to 18) (PB 118-119)	16,94,840/-	If considered sales, would prove <u>"DOUBLE- ADDITION"</u>

3.	<p>Unrecorded sales of gold weighing 1655.380 gms claimed to be received from customers(PB 116)</p> <p>(Note: as on date of survey on 12.10.10 this is advance in form of metal (Gold) for execution of orders of sales, in subsequent period from 13.10.10 to 31.03.11 this advance metal has been adjusted to sales bill raised on execution of orders, details as per chart.(Page 265 to 266)</p>	33,20,649/-	<p>If considered sales, would prove</p> <p><u>“DOUBLE-ADDITION”</u></p>
4.	<p>Unrecorded sales of gold bar weighing 1 Kg (1000 x 1980 per gram)</p> <p>(Note: This is Gold Bar not found which the A.O. believed in physical stock, whereas same are included in physical valuation report of registered valuer Shri Chander Khemsara Registration No. CAT IX/44/CCIT/JPR/7-2/99-2000 dated 13/14.10.2010 under head mix items weighing 706.500 GR & 5132.210 GR. gold ornaments (Refer S.no. 209 to 225) page No. 19,20 (S.No. 209 & 225 respectively) of registered valuation report of department valuers at the time of survey)</p>	19,80,000/-	<p>Alternatively if considered sales, than due set – off from surrendered stock & it's value should be granted since will become the source of surrender.</p> <p><u>(Page 214 to 237)</u></p>
5.	<p>Unrecorded sales of gold bar weighing 507.610 Gms @ Rs. 1980 per GR.</p>	10,05,067/-	
	Total Sales as per AO	11,12,63,154.00	

Note: The A.O. has not cared for facts that customer advances in form of cash, metal is subsequent period sales & already included in total

sales as per books, if considered separately than it would be a matter of "DOUBLE SALES" "DOUBLE ADDITIONS".

Similarly the A.O. has alleged for Gold bar not found in physical stock is again not justified since during survey complete stock was physically verified & was item wise inventorised. At few of the places the registered valuer's have mentioned "Mixed Items Weighing 706.50 GR. & 5132.210 GR. (S.No. 209 & 225 respectively) when the A.O. was asked for details no reply made".

Thus merely on surmises and assumptions no reality can be established. If A.O. believes his theory right, than should have disclosed the nature & items of "MIXED ITEMS".

Based on above defects or short comings the A.O. has estimated the assessee's firm sales at Rs.12,00,00 000/- against declared sales at Rs. 10,32,62,598.00 and has further applied G.P. @ 14.77% against declared G.P. @ 5.28% is average G.P. of last 3 years e.g. (15.50%, 15.24%, 13.58% for assessment year 2010-11, 2009-10 & 2008-09) & thus has applied the provisions of section 145(3) of Income Tax Act, 1961 & thus has preferred to make the trading addition of Rs.1,21,68,595/- (1,77,24,000.00(G.P. on sales of 12.00 Crore at 14.77%) 55,55,405.00 (G.P. as per books)

In the first appeal the Id. CIT(A) partly reduced the addition from Rs.1.42 Crore to Rs.89.75 Lakh by holding as under:

"I have gone through the observation as made by the A.O. & submissions as made by assessee as discussed in above paras. It is true that assessee maintains day to day accounting of sales, purchase & cash flow including quantitative tally of traded goods. But the discrepancies & excess stock as found during survey also cannot be denied & shows that assessee firm has indulged in transactions over and above the books. Thus the A.O had no option & has rightly applied the provisions of section 143(3); since books results cannot be relied upon. However the jacking up the estimation of sales forms Rs.11,12,63,154/- worked out by AO

himself to imaginary figure of Rs.12,00,000.00 crore does not hold justified . If credit is given for the plausible explanations ,reconciliation as filed by appellant for specific issues such as; Unrecorded sales made on a/c cash received from customers Rs.16,94,840.00 and Considering gold received from customers on loose slips weighing 1655.380 Gr Valuing Rs.10,62,47,665/- Therefore ,instead of jacking up estimated sales arbitrarily , considering all explanations & evidence as per paper book & submission it would be fair and reasonable to hold the estimation of sales at Rs.10,75,00,000.00 against total declared sales for the year at Rs.10,32,62,598.00.

4.6.1 With regard to estimation of gross –profit margin at 14.77% (Taking average G.P % of last 3 years e.g.15.50% & 15.24% &13.58% for asst. year 2010-11; 2009-10 % 2008-09) is also not fair and just because business has expanded in geographical bounds as well as items dealt in. Further several other factors such as: dealing in raw-gold, recently started business of diamond jewelry. Volatility of gold prices has to be considered. In such situation G.P rate at 13.50% a little bit higher than G.P rate just before survey i.e 13.22% on estimated sales at 10.75 crore. Thus the total gross profit to be estimated would be 13.50% on sales at 10.75 crore -1,45,12,500.00 against declared G.P of Rs.55,55,405.00 & thus addition on this ground of appeal would be Rs.89,57,095/- (1,45,12,500.00-55,55,405.00) only . The ground is accordingly decided to restrict the Trading addition as per Para 5.2.4 of the assessment order to the extent of Rs. 89, 57,095/-.

Submissions:

1. At the outset, we strongly rely upon the order of the CIT (A) to the extent it has granted relief to the assessee by reducing the estimated sale from Rs.12 crores to Rs.10.75 crores and the trading addition from Rs.1.42 crores to Rs. 89.57 lakhs.

2. Further the detailed submission filed before the Id. CIT (A) and reproduced in his order, are strongly relied upon. However, some of the extracts are reproduced hereunder:-

A. On Non-Applicability of S.145 it was submitted:

*“No care for following facts & evidences have been granted.
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The point wise assumptions of A.O. are subject to rebuttable with facts & findings as below:-

(i) The A.O. has presumed that excess stock found & surrendered during survey is one of the reason & this shows that assessee is regularly indulged in such unrecorded transactions. No care of for complete quantitative tally, unit wise, and rate wise granted. Ever the subsequent sales (of advance received) have been taken "DOUBLE" by A.O. as discussed above.

(ii) That the advances received from customers in form of Gold / Metal / & cash as per loose slips since not found recorded in books hence the books are incomplete, whereas these are advances from customers & not our "Own Stock". The advances are against execution of orders which only after work order completes, converts into sales & proper sales – bills subsequent by for such advances on loose papers are issued & entered in accounts.

(iii) That when complete premises served by Income Tax department & physical verification of stock made, than how it matters that which karigar has executed which assignments. It is worth to note that every karigar is expert in particular art / design & thus number of karigars together helps in execution of job. Thus it becomes irrelevant to have such doubt.

(iv) That further certain sales / purchases bill of 2-3 days were found un-posted in purchases / sales ledger also frame A.O. belief to reject the accounts, whereas these all are already considered in reconciliation while calculating "EXCESS STOCK" & these does not mean incomplete records.

(v) Further A.O. presumed negative cash balance at Kishangarh branch is also wrong for the reason that it was system's (Computer software) mistake. When audited accounts as on 31.03.10 have already filed with A.O. (As per return filed for assessment year 2010-11 on 18.09.2010 (E-filled)) than how a different cash – balance can be taken by system. The A.O. without considering the facts & evidences have simply framed the opinion ignoring the evidences on record.

(vi) Further the A.O. has also framed it's "Sales Reconciliation Chart" (AO Pg 28-29) (Incorporating advances from customers,

sales / purchases un-posted at the time of survey, & stock of Gold items already considered in physical report. All these factors are sort "DOUBLE SALES INCORPORATION" since all advances from customers, un-posted sales / purchases etc have already been considered in "Sales / Stock Reconciliation" as submitted by assessee for calculation of "EXCESS STOCK" & other refer charts as above.

These all doubts confirmed the opinion of A.O. for applying the provisions of section 145(3) of Income Tax Act, 1961. The A.O. himself has agreed in order that till (a) method of accounting is such that proper income cannot be deducted (b) accounts or records are incomplete (c) the valuation of stock is as per accounting standards than only the provision of section 145(3) of Income Tax Act, 1961 can be applied.

Now coming on facts & records the features of accounts are such:-

(1) That complete day to day accounts for all receipts / payments, sales / purchases, of all items, expenses etc. are being maintained as evidenced from the records impounded.

(2) That complete quantitative details item wise, nature wise (Diamond, Silver, Gold etc.) were found recorded & only based of same the excess stock determined the A.O. has also accepted this fact in his order.

(3) With regard to valuation of stock the assessee is following "Cost Price on Lifo Method" as evidenced from past audited accounts & form 3CD for the year & as per statement of partners, nowhere A.O. has challenged that the "Method of Valuation of Stock" or "Method of Accounting" is wrong or not as per accounting standards.

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(4) Thus at any stage the A.O. is not able to sustain the defects in "Accounting Methods" and "Valuation of Stock" only on his own surmises the A.O. has applied the provisions of section 145(3) of Income Tax Act, 1961.

B. On Merits: It was submitted

1.1 Fair estimation required - Legal Position: At the very outset, it is submitted that even invoking of S.145 does not confer blind powers upon the AO and he is not at liberty to assess the income at whatever figure he wants. He is bound to make an honest estimation of income, keeping in view of the material available on record, past history of the case, local knowledge and repute of the assessee. He is also supposed to collect necessary material for the purpose, if so required. An arbitrary, capricious and wild estimation, as done in the present case, are not at all permitted in the eyes of the law. The Id. AO however did not confirm to its settled requirement. Kindly refer Jotram Shershing vs. CIT 2 ITR 119 (All).

1.2 Addition Need Not Be Made, Even if Sec.145 Invoked : In the case of CIT v/s Gotan Lime Khaniz Udyog 256 ITR 243 (Raj), it has been held that mere rejection of books of accounts need not necessarily lead to additions to the returned income. It was also held that the books of account as also material collected by the AO (of course, after confronting the appellant) should be considered for estimation of income.

1.3 Estimation based on both relevant and irrelevant material cannot be sustained even partly. If an estimate is based partly on irrelevant material and partly on relevant material, it is difficult to sustain the estimate because it cannot be said as to what extent and which part of the figure of estimate depends upon the irrelevant portion of the matter – Surajmal Champalal v. CIT (1967) 66 ITR 396 (Pat.).

2. It was submitted before the Id. CIT(A) as under:

“Now coming on the G.P.% analysis the A.O. has not considered the following facts:-

(a) That the firm M/s BhajanLal Suresh Chand SarafBeawer was only sales counter uptill 31.03.09 & upto 03.02.10. The Kishangarh Branch has opened only on 03.02.10 & thus the sales quantum has jumped like anything.

Moreover the firm was not dealing in diamonds at Beawer & Diamond Jewellery Business was only started at Kishangarh, thus the G.P. analysis for last 3 years cannot be considered for analysis.

(b) That during the year due to change in trend in market & to increase the volume of turnover the firm has decided to make sale of “SOLID GOLD” (Metal) itself & sale of metal cannot fetch the profit margin as Gold jewellery can fetch, details of such metal (Gold) as sold is as under:-

<u>Gms</u>	<u>Amount Total Sales</u>	<u>Period</u>	<u>Beawer Sales</u>		<u>Kishangarh Sales</u>	
			<u>Gm.</u>	<u>Amount in (Rs.)</u>	<u>Gm.</u>	<u>Amount(Rs.)</u>
3658.850	Rs.68,03,642/-	01.04.10 to 13.10.10	3644.880	Rs.6778612/-	13.970	Rs.25030
10682.260	Rs.1,83,50,926/-	14.10.10 to 31.03.11	10676.950	Rs.18339806/-	5.310	Rs.11120/-
<u>Total</u>	<u>Rs.2,51,54,568/-</u>		<u>14321.83</u>	<u>Rs. 25118418/-</u>	<u>19.21</u>	<u>Rs. 36150</u>

Thus it is clear that the G.P. of last year is not comparable to this year, or suitable amendments needed.

(c) The assessee has also prepared monthwise quantitative / valuewise trading account depicting average rate of purchases, sales, quantity & Gross Profit Margin, the documents upto survey as on 13.10.10 are lying impounded with A.O. & thus cannot be denied for acceptance. (Page 1G)(PB 161-164)

(d) From this Gross Profit Margin (Monthly Chart) (PB 161-164) it is clear that there is Gross Profit in case of Gold Jewellery & other but "DIAMOND TRADING ACCOUNT" reflects "A LOSS" (of 22.04 PB-162) & A.O. has considered average G.P.% of all items whereas assessee is maintaining separate trading account of each segment separately with weight & rate.

(e) Further the "GOLD & SILVER METAL" rates are such volatile & fluctuating that keeps changing on daily hourly basis & thus G.P.% cannot be said comparable. It is the book & sales & purchases bills which reflects the true picture & A.O. has nowhere rejected the authenticity thereof. (Page 1G)

3. The law is well settled that a similar has to be compared with the similar. When there is complete change in the facts and circumstances of this year viz a viz of the preceding two years. The AO was not justified even then making a comparison with the past, more particularly, he failed to rebut the contention of the assessee on this factual aspect. Therefore, his comparison with the past year itself was bad and hence his estimated application of GP rate in the light of the past was erroneous.

4. In addition thereto, it is further submitted that keeping in mind the entire facts and circumstances and our detailed w/s as also the finding of the Id. CIT(A) wherein he appears to be in complete agreement with the stand of the assessee, still there was no valid basis as to why he

should not have confirmed the part addition. There was absolutely no basis of partly estimating the undeclared sale at Rs.10.75 crores as against Rs.10.33 crores declared nor was there any valid basis of applying the GP rate of 13.50% as against the 13.22% declared by the assessee in the period just prior to the survey when he himself has agreed that in the facts of the case, *the GP rate just before survey 13.22% could be handy to resolve the issue instead relying on averages*. But even 13.22% was not justified. Further estimation by applying 13.50% is nothing but a result of suspicion. It is evident from para 4.6.1 pg 17 of his order that he has not at all provided any basis to sustain the addition partly when the entirety of the facts and circumstances and his own finding, warranted a complete deletion of the order.

5.1 Unrecorded sales made on a/c of Cash/ Gold Received from customers-not justified : The explanation submitted by the assessee before the authorities below that the cash advance received towards the proposed purchase by them at Rs.16,94,840/- as also advance in terms of the quantity of 1655.30 grams (valued at Rs.31,50,000/-), was factually received from the customer themselves and all such advances were later on adjusted towards the sales made to them which is evidently clear from a detailed chart showing the relevant details (PB 118-119). The fact of receiving advance in cash and quantity was evident from the seized annexures A8 to A12 (PB 129-149) and the further column shows the details of the bills wherein the advance in terms of amount & quantity received, were adjusted. Sales in such cases was duly accounted for and this is also evident from some specimen copies of the ledger accounts of few customers (PBII 283-290) supported by the copies of the sales bill issued to them (PBII 291-311). The AO has not at all whispered any other evidence showing suppression of sale. Therefore, in absence of any further evidence to prove that there was still some sales remaining undisclosed, it was

nothing but a mere suspicion. A suspicion cannot take the place of reality as held in the case of Dhakeshwari Cotton Mills Ltd. (1975) 26 ITR 775 (SC). The assessee, this way, declared total sale of Rs.10.32 Crore however, the same was estimated by the Id. AO at Rs.12 Crore (but the CIT(A) reduced the same to Rs.10.75Crore).

5.2 Incomplete Accounts: The AO wrongly drawn adverse inference as regards suppressed sale from a few sale bills (no. 223-227) all dated 09.10.2010 (AO Pg. 22) totally to Rs. 90,000/- as were not found recorded for the simple reason that the Shri Vinod Kumar Agarwal already stated in Q. No. 4 (PB 64) that entries of few days already were pending and there was not much gap between 9th October and 13th October, 2010. The AO himself permitted the assessee to complete the ground w.r.t. the issue of the grounds.

5.3 Unrecorded sales of gold bar weighing 1 Kg (1000 x 1980 per gram):

5.3.1 It is submitted that unrecorded sale of gold bar weighing 1 kg of Rs. 19,80,000/- for which although no separate addition has been made by the AO (AO pg 41 last line) but has been considered for applying GP Rate in the undisclosed sale, the addition is based on a seized Annex-3 (PB-312) which is a copy of approval memo and assessee's person was to carry these goods to Kolkata but could not do so because on the same day i.e. 13.10.2010 search had taken place and as per assessee these items find placed in the list of Mix Items of the Approval Valuer called by the department itself (PB 201-202).

5.3.2 The AO though repeatedly insisted that such gold bar were neither found physically nor in the inventory prepared and therefore he assumed to be a case of suppress sale but at the same time completely failed to provide a complete list of miscellaneous items even though specifically requested by the appellant (AO Pg 41). The AO did not try

to locate 1 kg gold bar in the inventory of the seized items so as to categorically allege that such item was not found. Whereas, as per assessee and the registered valuer, such item were already included in the mixed items and as evident from the approval memo the goods, though were ready for carrying but could not be taken. If some document or article is already lying as search premises but still the survey team ignore the same, it is beyond the control of the assessee and such a negative fact can't be proved by the assessee. No enquiry was made by Shri Gaurav Singhal, who was to carry the goods to Kolkata as per approval memo. This was also stated by Shri Vinod Agarwal in answer to Q. No. 12 (PB 68) of the statement recorded on dated 13.10.2010.

5.3.3 Notably, on the seized document Annexure A-3 (PB II 312), there is a clear mention that such item was not meant for sale.

5.3.4 In absence of any other contrary evidence, no other, inference is possible. Hence, it was wrongly treated as undisclosed sale.

5.4 Unaccounted sale of gold bar of 507.610 Gm: Similarly assessee firm had purchased gold bar 995 weighing 507.610 Gms for Rs.10,00,000/- on 12.10.2010 from Shri S.K. Corporation, Jaipur, however the AO alleged that the assessee has not entered the same in the purchases and further alleging that it was not in the inventory, was presumed to be a suppress sale. It is submitted that it was a case of purchases made from S.K. Corporation, Jaipur, vide BN SKC/753 dated 12.10.2010 for Rs.10,00,000/- including VAT and Bill was also received on 12.10.2010 itself though the purchased was prior to survey but unfortunately remained to be entered because on the very next day survey was carried out. Notably, even payment had already been made vide Ch. No. 505436 through BOB on dated 08.10.2010. This was duly explained by Shri Ganpatlal Agarwar in Q-2 of his statement recorded u/s 131 on dated 20.10.2010. The AO himself made no separate

addition of Rs.10,00,000/- u/s 69 because it was considered in the GP addition.

6. It is evident from the above comparative chart that this year there is a sharp increase in the turnover from Rs.2.51 crores to Rs.10.32 crores which shows an increase by 311% despite there being tough competition in the market. Therefore A.Y. 2010-11 may not be strictly comparable. Needless to say that to achieve such increase in the turnover, one has to compromise on its margins and such a fact certainly deserved consideration in the matters of fair estimation CIT v/s Amrapali Jewels (P) Ltd. (2012) 65 DTR 196 (Raj)

6.2 Further the G.P. rate of A.Y. 2012-13, 2013-14 and 2014-15 has been 9.98, 9.53 and 10.53 respectively.

7. That in any case, the huge income surrendered this year in whatever form, if added, the GP after including such surrendered amount stood at Rs.6.40 crores on the sale of Rs.10.32 crores came to a huge 62% which clearly implied that the suppressed profit, if any, was of the current year also from date of 1st April, 2013 till date of 13th October, 2013 and stood included in the declared / enhanced GP and hence any other addition in the name of the GP rate over and above by making a comparison with the past history, was not at all justified, more particularly, in absence of any contrary evidence found/referred.

Therefore, there was no justification at all for the Id. AO to estimate it at Rs.12 crore and even for the Id. CIT(A) to have partly sustained the same at Rs.10.62 Crore only but not accepting the sales declared at Rs.10.32Crore. Therefore, the sales as declared should be accepted by the authorities below.

Hence the entire addition may kindly be deleted and at the same time the ground taken by the revenue kindly be dismissed.

9. On the other hand, the Id DR has relied on the order of the Assessing Officer and submitted that the Id. CIT(A) has wrongly granted part relief to the assessee and the whole addition deserves to be sustained. On the issue of rejection of books of account, the Id AR has submitted that the Assessing Officer should not have rejected the books of account as the assessee has already disclosed sufficient amount to cover up all the defects noted in the books of account and the G.P. rate estimated is only on the presumption not based on the ground reality. He also submitted that even if the provisions of Section 145(3) of the Act are invoked then also there is no requirement to make any addition. He also submitted that this addition was estimated on irrelevant material. Hence has not deserved to be sustained.

10. We have heard both the sides on this issue. The excess stock worked out by the Assessing Officer was of 29,090.96 gms. of gold ornaments at Kishangarh Branch of Rs. 4,54,00,000/-. The excess stock worked out by the Assessing Officer was of 7,857.241 gms of gold ornaments valued at Rs. 1,43,00,179/- and silver ornaments of 168.284 kg valued at Rs. 39,79,917/- at Beawar branch. The Assessing Officer rejected the books of account by comparing the G.P. of the earlier years and pre and post survey period. In the assessment year 2008-09 and 2009-10 the G.P. rate was 13.58% and 15.24% respectively. There was

only one establishment of the assessee located at Beawar and it was an old establishment. The turnover of three years was only Rs. 1,71,25,638/- for A.Y. 2008-09 and Rs. 1,78,02,399/- in A.Y. 2009-10. The turnover for A.Y. 2010-11 was of Rs. 2,51,12,770/-. In A.Y. 2010-11, Kishangarh branch was newly opened on 03/2/2010. Thus, almost for ten months, the business was done from Beawar branch only. In the assessment year 2011-12, the sales increased from Rs. 2,51,12,770/- in A.Y. 2010-11 to Rs. 10,32,62,598/-. If the surrendered amount is considered then the G.P. comes @ 62%. The Assessing Officer prepared his own sales- reconciliation chart, which the assessee has objected for various reasons. The amount of customer advances in the form of cash, metal has been subsequently included in the total sales as per books, therefore, the same will amount to double addition. The addition for unrecorded sales of gold weighing 1655.380 gms. received from the customer valued at Rs. 33,20,649/- shall be double in view of the fact that these advances of metal have been adjusted against the sale bill raised at later date. The details of the same were submitted as evidenced by page Nos. 265 and 266 of the paper book. Further the issue of unrecorded sales of 1 kg gold bar amount to Rs. 19,80,000/- has been considered and this gold bar was not found in physical stock while the same was included in the physical valuation of the stock by

the registered valuer Shri Chander Khemsara under the head mix items weighing 706.500 gms. and 5132.210 gms. gold ornaments. On this issue also, we are of the view that if it is considered for making any addition then due set off has to be provided from the surrendered stock. The other items, which is considered by the A.O. for estimating sales is unrecorded sales of gold bar weighing 507.610 gms of Rs. 10,05,067/-. The revenue claims that the assessee has purchased the item but not recorded in the inventory. The assessee has purchased this from S.K. Corporation on 12/10/2010 for Rs. 10.00 lacs including VAT and bill was also received. This purchase was prior to the survey and it was not entered into books, however, the payment has been made by cheque No. 505436 through Bank of Baroda dated 08/10/2010 and this fact also stated in the statement recorded U/s 131 of the Act. The A.O. has taken into account this amount as a ground for estimating gross profit and turnover. No separate addition was made by invoking the provisions of Section 69 of the Act. Thus, from the facts on which the A.O. rejected the books of account and estimated the G.P. and also turnover are partly justified. The unrecorded sales made on account of cash received from customers has been converted into the sales during the post survey period for which the assessee has submitted details in a chart placed at page No. 118 to 119 of the paper book. The other basis for

rejecting the book results based on presumed sales of gold weighing 1655.380 gms. received from customers has also been adjusted against the sales bills raised on the execution of the orders for the same. The evidences placed in this regard are at page No. 265 to 266 of the paper book. Similarly in the case of gold bar weighing 1 kg, which was not found during the survey operation, which has been also made a basis for estimating the gross turnover. There is no clear cut finding that it was not a part of the valuation made by the valuer at the time of survey. The other issue considered for rejection of books of account and estimating the gross turnover and gross profit is sale of gold bar of 507.610 gms. The payment claimed to have been made by cheque but the sale was not entered into the books of account. Considering all these aspects and facts and circumstances, we are of the view that the assessee has already disclosed substantial unaccounted stock in its return of income which takes care of the various discrepancies noted in the books of account. However, considering the totality of facts and circumstances, we are of the view that at least the addition to the tune of Rs.10.00 lacs need to be sustained and gross turnover is estimated at Rs. 10,42,62,598/- This addition is sustained as addition to net profit and after considering the fact that all expenses related to such income have been debited in P&L account and allowed. Accordingly, the ground

of assessee's appeal is partly allowed and ground of revenue's appeal is dismissed.

11. In the ground No. 3 of the revenue's appeal, the issue is deleting the addition of Rs. 1,41,93,277/- on account of value of excess stock. The Id. CIT(A) has considered this issue in his order at para 5.4 to 5.4.3., which is reproduced hereunder:

- 5.4 I have gone through the facts & observations made by A.O. as well as facts submitted by assessee.
- 5.4.1 It is true that Registered Department Valuer at Beawar & Kishangarh at both places was called & the complete stock got evaluated as per report of even date in form O8A as per Rule 8D of WT Rules. The Registered Department Valuer has specifically valued the individual items for fair market value of metal, precious stones etc; These valuation sheets are available on page 205 to 237 of Paper Book and no objection what so ever were ever raised by the survey / search team, assessing officer or appellant. For challenging valuation by registered valuer, there is prescribe procedure and same can be taken up by CIT/CCIT in accordance with WT Acts and Rules. Nothing of such nature has occurred.
- 5.4.2 Moreover, in this case, the A.O. has separately applied the provisions of section 145(3) as discussed in ground no. 2 above & once the sale's / gross margin estimated; than no further estimations for valuation or labour charges can be made. It is matter of factual verification that the appellant has separately shown labour income in GHADAI / Majuri KHATA for both business premises. The copy of this GHADAI / Majuri KHATA is available on page no.274 to page no. 277 of the Paper Book submitted before me. As against total expenses on account of GHADAI / Majuri of Rs. 837383 and Rs. 326335 for business at Kishangarh & Beawar respectively, the debited expenses on account of GHADAI / Majuri in P & L A/c is of only Rs. 335806 and Rs. 141685. This so

because, the differences of Rs. 501577 (Rs. 837383 - Rs. 335806) and Rs. 184650 (Rs. 326335- Rs. 141685) are credited in these GHADAI / Majuri KHATAS due to the receipts from customers as claimed by the appellant. Thus no separate addition for making charges as thought of by the AO can be contemplated. There is no basis for assumption by the AO that the making charges which would have incurred in creating above jewellery were not included in the valuation. No specific reasons with reference to items listed in valuation report of the registered valuer are advanced by the AO for making separate addition for making charges.

5.4.3 I also find that AO is not an expert to change the valuation of valuables found during the search and survey. More so when the excess stock found during search is valued by registered valuer and neither anything against the said valuation is pointed out by AO nor any action against the valuer has been taken by the department under the WT Act. Such addition based on hypothetical arithmetical recalculation cannot be sustained. The AO embarked upon such an exercise by misconstruing the statement of the partner Shri Vinod Agarwal about "Hall Mark jewellery". In fact before doing so the AO could have examine the individual items in valuation sheets of registered valuer and he could have found how the concept of "Hall Mark jewellery" has been used by discounting the Net Weight to Fine Weight. Thus the addition as made by A.O. is mis-appreciation of concept of "Hall Mark jewellery" without minute examination registered valuer's and accounting of making charges made by the appellant and same exercise is not supported by prescribe procedure to challenge the valuation report of registered valuer. Therefore, the unsustainable addition of Rs. 1,41,93,277/- for excess stock valuation & labour charges is hereby deleted.

12. After hearing both the sides on this issue, we find that the Id. CIT(A) has granted relief by passing a speaking order. The stock was valued by registered valuer. The Assessing Officer has not accepted the same without any basis. The assessee has separately shown labour income(Gadhai/Majduri) from both the premises. The difference of gadhai/majduri have been debited in P&L account. Thus, no separate addition is required to be made for such income. Similarly the A.O. has invoked the concept of 'hallmark jewellery' without any basis. There is no contrary material on record against the order of the Id. CIT(A), therefore, the same is hereby upheld. Hence, ground No. 3 of the revenue's appeal stands dismissed

13. In the ground No 4 of the revenue's appeal, the issue involved is restricting the addition to Rs. 6,490/- made on account of excess stock of diamond. The Id CIT(A) has dealt this issue in his order at para 6.3, which is reproduced as under:

*"6.3 I have gone through the observations as made by A.O. & the submissions & the reconciliation as submitted by assessee which is reproduced above from Page no 31 of appellant's submission. The lose papers analysis and final reconciliation justifies the marginal difference of .143 Gr. (158.450 Gr.- 158.307 Gr.) only. On converting this into carate (.143 Gr *5) the net carate difference remain at .715 carate. The value of which @ rate Rs. 9076.86, comes to Rs. 6489.85, say Rs. 6490.00 only. Hence, unaccounted investment in excess stock of diamond of Rs. 6490.00 confirmed. Accordingly, the addition as made by A.O. at Rs. 4,11,908/- is restricted to Rs. 6,490/-."*

14. After hearing both the sides on this issue, we find that the Id. CIT(A) has granted relief on merits and after analyses of loose papers and finally reconciliation of the diamond stock. Hence, we find no merit in this ground of revenue's appeal, hence dismissed.

15. In the ground No. 5 of the revenue's appeal, the issue involved is deleting the addition of Rs. 9,41,831/- made U/s 69B of the Act. The Id. CIT(A) has dealt this issue by holding as under:

"7.3 I have gone through the findings of A.O. & assessee & it is an established fact that registered valuer has valued the stock as found as per Income Tax Rules in form 08A. The labour charges are also being charged by appellant separately in bills & separate income has been shown in profit and loss account for the year. In view of same reasons that are given in para 5.4 above for similar addition discussed in para 5 above, this addition of Rs. 9,41,831/- on account of reworked valuation of excess stock cannot be sustained and is hereby deleted."

16. We have heard both the sides on this issue. The Id. CIT(A) has granted relief to the assessee that the assessee was charging labour charges separately, which has been shown in the P&L account separately and also the reasons recorded in his order at para 5.4, which has been reproduced in the earlier part of this order while dealing with the issue of deletion of addition of Rs. 1,41,93,277/-. Considering the

above facts and circumstances, we find no merit in this ground of revenue's appeal, hence the same is dismissed.

17. In the ground No. 6 of the revenue's appeal, the issue involved is deleting the addition of Rs. 67,313/- on account of excess stock U/s 69B of the Act. The Id. CIT(A) has dealt this issue by holding as under:

"8.3 I have gone through the findings of A.O. & appellant & it is an established fact that registered valuer has valued the stock as found as per Income Tax Rules in form 08A. The labour charges are also being charged by assessee separately in bills & separate income has been shown in profit and loss account for the year. In view of similar reasons that are given in para 5.4 above for similar addition discussed in para 5 above, this additions of Rs. 67,313/- on account of re-worked valuation of excess stock cannot be sustained & is hereby deleted."

18. After hearing both the sides on this issue, we find no any contrary material in the order of the Id. CIT(A), therefore, the same is hereby upheld. Hence ground No. 6 of the revenue's appeal stands dismissed.

19. In the ground No. 7 of the revenue's appeal, the issue involved is deleting the addition of Rs. 10,09,273/- made on account of negative cash balance. The Id. CIT(A) has dealt this issue by holding as under:

"9.3 I have gone through the aforesaid observations of AO & the submission of the appellant. As submitted by the appellant, the return for the year ended 31.03.2010 was already filed prior to survey; hence the figure of closing cash balance as on 31.03.2010 as

appearing in audited account is to be taken as final & should be replaced as. on 01.04.2010 while calculating the cash. Once it is done the reconciliation emerges as under:

PARTICULAR	AMOUNT
Cash Balance as per books as on 12.10.2010 as per I.T. Survey at Swamganga Jewellers, Kishangarh	389869
Add:- Difference of opening Cash Balance (646206-13401) as observed above.	632805
	1022674
Less:- reed. From Ashish Saxena Bluestar Wrongly entered as on 20.09.2010 was paid already last Financial Year	23294
•	999380
Add:- Reed. Ghadai & Majduri as on 20.09.2010 Bill No. 410	8250
	1007630
Add:- Cash Reed. From customers against order as per (Annexure 4)	1694840
•	2702470
Add:- bills of sales was not entered till survey date Bill No. 224 to 227 of date 09.09.2010	90000
	2792470
Less:- Purchase Gold from sundry customers for order as per loose paper 1'051.280GMS. @ 1950/- per GM (Annexure 2)	2050000
	742470
Less:- Cash withdrawal by Partner Shri Vinod Kumar Agarwal as on 12.10.2010 (AO miss this entry)	223170
Total physical cash found as on 13.10.2010 at the time of I.T. Survey at Swamganga Jewellers, Kishangarh	519300

Thus, the cash gets reconciled and therefore, the addition of Rs. 10,09,273/- is hereby deleted.”

20. After hearing both the sides on this issue and considering the reconciliation as elaborated in the order of the Id. CIT(A), we find no

merit in this ground of revenue's appeal. Hence, the same stands dismissed.

21. In the ground No. 8 of the revenue's appeal, the issue involved is deleting the addition of Rs. 6,00,000/- made on account of disclosure on miscellaneous loose papers. The Id. CIT(A) has dealt the issue by holding as under:

"10.3 I have gone through the facts & annexure A-1 of loose paper found from the Sanjay Garg (Staff) & it mainly consist of Karighar quantity of metal / silver for day to day stock transfer for making of item & after completion of job the item as manufactured taken back few loose slips also state about financial transactions for sales / purchases of silver on getting totalled all these loose slips for financial transaction the net sale purchases comes to sales / purchases thereof are already recorded in books as can be verified from records. The excess amount to it has already been surrendered to income & thus no further addition is warranted to this issue. In the result the addition of Rs. 6,00,000/- is hereby deleted."

22. After hearing both the sides on this issue, we find no any contrary material in the order of the Id. CIT(A), therefore, the same is hereby upheld. Hence, ground No. 8 of the revenue's appeal stands dismissed.

23. Ground No. 9 of the revenue's appeal is general in nature and does not require any adjudication.

24. In the result, the appeal of the revenue's stands dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 07/05/2018.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 07th May, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- The DCIT, (Central Circle), Ajmer.
2. प्रत्यर्थी / The Respondent- M/s Bhajan Lal Suresh Chand Saraf, Beawar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 452 & 314/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar