

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.730/RPR/2025  
निर्धारण वर्ष / Assessment Year : 2011-12

Rajinder Singh Bhasin  
Prop. M/s. Bhasin Automobiles,  
In front of Anand Talkies Building,  
Moudhapara, Raipur (C.G.)-492 001  
PAN: ADFPB7161F

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income-1(1),  
Raipur (C.G)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi, CA  
Revenue by : Shri CH. Rajeswara Reddy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 19.05.2026

घोषणा की तारीख / Date of Pronouncement : 22.05.2026

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)-3, Bhopal dated 09.09.2025 for the assessment year 2011-12 as per the following grounds of appeal:

“1. Ld. CIT(A) erred in confirming addition of Rs.37,20,800/- made by A.O on account of stock found during survey treating it to be undisclosed. The addition made by the A.O and confirmed by the Ld. CIT(A) is arbitrary, baseless and without appreciating the facts of the case properly.

2. Ld. CIT(A) erred in confirming disallowance of Rs.15,000/- made by the A.O on account of interest expense invoking Sec. 36(1)(iii)/Sec.37(1). The disallowance made by the A.O and confirmed by the Ld. CIT(A) is arbitrary, baseless and without appreciating the facts of the case properly.

3. The appellant reserves the right to add, amend or alter any ground/s of appeal.”

2. At the very outset, the Ld. Counsel for the assessee submitted that he is not pressing **Ground of appeal No.2**. Having heard the submissions of the Ld. Counsel for the assessee, **Ground of appeal No.2** is dismissed as not pressed.

3. **Ground of appeal No.3** is general.

4. The only effective ground is **Ground of appeal No.1** which pertains to the addition of Rs.37,20,800/- confirmed by the Ld. CIT(Appeals) on account of stock found during survey treating the same as undisclosed.

5. The brief facts in this case are that survey u/s.133A of the Income Tax Act, 1961 (for short 'the Act') was conducted on 25.01.2011 in the premises of the assessee. During the course of survey, it was noticed by the survey team that the assessee had not maintained proper register, bills & vouchers etc. in support of his stock and business. The assessee subsequently, surrendered on the excess stock and cash found on the premises and in his statement committed to pay taxes on the surrendered amount of Rs.37,20,800/-. The assessee filed return of income on 02.12.2011 declaring total income at Rs.11,11,690/- and the case was selected through manual scrutiny. That on perusal of the ITR, it was noticed that the assessee while filing his return of income retracted on the excess amount of income and stock. That in the given facts and circumstances, the A.O completed the assessment making various additions/disallowances as appearing in the assessment order. That further, the undisclosed income as admitted during the survey, was not based on the statement of the assessee alone but it was based on material evidence in the form of excess cash and stock found during the course of survey. In fact, physical verification of the stock and cash was done in the presence of the assessee and employees. They were fully in agreement with the quantitative details of stock mentioned in the inventory made by the survey team. The relevant portion of the questions asked by the survey

team to the assessee finds place in the assessment order itself and the question No.3 that was asked to the assessee was to explain the excess stock amount of Rs.37,20,800/-. In answer to question No.3, the assessee replied categorically that the excess stock valued at Rs.37,20,800/- was his stock outside the books of account. The assessee in answer to question No.3 had also admitted that for this excess stock of Rs.37,20,800/- whatever would be the taxes, he would pay and such declaration has been done by him without any fear and pressure and absolutely voluntarily. Further, to other questions, the assessee has clearly stated that whatever excess stock was found, is his stock and does not belong to any other party. The relevant extract of the statement in Hindi is extracted as follows:

प्रश्न:३ आपने सर्वेक्षण कार्यवाही के दौरान जो जबाब प्रस्तुत किया है उसमें Closing Stock Rs. 2,12,36,413/- ( दो करोड़ बारह लाख छत्तीस हजार चार सौ तेरह मात्र) बतलाया गया है जबकि सर्वेक्षण कार्यवाही में पाये गये स्टॉक की जो इन्वेंट्री तैयार की गई तथा आपने जो उसका मूल्यांकन करवाया है, उसके आधार पर पाये गये स्टॉक का मूल्य रु. 2,49,57,213/- (दो करोड़ उन्नचास लाख सत्तावन हजार दो सौ तेरह) आता है अतएव स्टॉक के मूल्य के अंतर की राशि रु. 37,20,800/- (अंकन सैंतीस लाख बीस हजार आठ सौ ) के बारे में आपका क्या स्पष्टीकरण है?

उत्तर:३ उक्त स्टॉक में अंतर की राशि रु. 37,20,800/- (अंकन सैंतीस लाख बीस हजार आठ सौ) को मैं अपने खाताबही में पाये गये स्टॉक आधिक्य के रूप में स्वीकार कर रहा हूँ। उसमें नियोजित राशि चालू F. Y. 10-11 की नियमित आय के अतिरिक्त, उपार्जित रकम है, जिसे मैं, कराधान हेतु स्वेच्छा से बिना किसी दबाव के करारोपण हेतु स्वीकार कर रहा हूँ। तथा इस राशि रु. 37,20,800/- पर जो आयकर की राशि देय होगी, मैं उसका भुगतान ३१.०३.२०११ के पूर्व कर दूँगा। कृपया मुझे शास्ति एवं अभियोजन की



Rajinder Singh

Shri Rajinder Singh Bhasin  
A.Y. 2011-12  
PAN-ADFPB7161F

कार्यवाही से मुक्त रखा जाये। मैं अधिक आयकर की राशि एवं ब्याज की राशि समय पर अदा करने हेतु वचन बद्ध हूँ।

प्रश्न:४ आपकी दुकान पर ऐसा कोई स्टॉक तो नहीं है जिसका बिल आना शेष ही या बिक्री बिल काट दिया गया हो और माल डिस्पैच नहीं किया गया हों? कृपया यह भी बताएँ आपकी दुकान में किसी और पार्टी का स्टॉक तो नहीं रखा है?

उत्तर:४ नहीं ऐसा कोई माल या स्टॉक नहीं है जिसका बिल आना शेष हो या जिसका बिल काटा जा चुका हो। किसी और व्यक्ति का भी स्टॉक हमारे यहां नहीं है।

प्रश्न:५ आज दिनांक २५.०१.२०११ आपके इस व्यवसाय में सर्वेक्षण की कार्यवाही के दौरान ऐसा कोई खरीदी बिल मौजूद है जिससे स्टॉक/माल आपके इस परिसर में नहीं आया अर्थात् बिल आ गया है किंतु माल नहीं आया है।

उत्तर:५ जी नहीं ऐसा कोई खरीदी बिल मौजूद नहीं है जिसका माल आना शेष है। सभी बिल का माल आ चुका है।

6. Thereafter, the A.O held as follows:

“From the above discussion, it is clearly established that the assessee did not have any outstanding bills for entry or otherwise as stated by the assessee himself. Even at the time of survey he clarified this point in the excerpts above that all the stock belonged to him and he did not have any other bills that needed to be entered.

**Till ten months, the assessee kept silent and did not retract the admission made during the Survey deliberately with an intention to obviate the enquires that would have been initiated by the A.O. He did not complain to the Higher Authorities. He even paid a part of the taxes due on the undisclosed income admitted during the Survey. After an expiry of ten months when the time of filing the return of income came, he did not offer the undisclosed income admitted during the Survey for taxation.** Thus, the retraction has not been made within a reasonable time. During the assessment proceedings, the assessee has failed to discharge the onus of proving, with positive evidence, that confession made by him during the Survey was either as a result of intimidation, duress and coercion or that the same was made as a result of mistaken belief of law or facts.

3. As discussed above, the assessee himself had agreed for this addition though subsequently he has retracted the statement through his reply submitted on 17.01.2014. Wherein he has stated that the "certain goods before survey were accounted for on receipts of bills after the survey. This is an afterthought of the assessee, as in the statement recorded whilst the survey proceedings, the assessee had clarified on both the counts that the entire stock belonged to him and there were no pending bills that needed to be entered in the accounts. His submission is clearly a retraction of his earlier statement which is discussed in the earlier paragraphs. Further the bills produced by the assessee in support of his submission of 17.1.2014 has bills of Ravindra Auto Distributors Pvt. Ltd. and Rason Auto Products which are both related to the assessee's firm Bhasin Automobiles and he has also admitted the same on vide note Sheet entry 30.1.2014. It clearly shows that these bills produced on 17.1.2014 are an afterthought of the assessee and it is to misguide the revenue authorities in order to retract his earlier statement. It is also observed the chart submitted by the

assesse of the goods received are delivered by 'persons' and no freight has been paid by them on these goods.

4 In this case scenario reliance is placed on the decision of Hon'ble Supreme Court in the case of Surjeet Singh Chhabda Vs. Union of India, AIR 1997 (SC) 2560, 135 Taxation 711, 712(SC) it has been held that a confession, though retracted is an admission and binds the petitioner. Delivering its judgment with regard to the custom officials the Hon'ble Supreme Court has held that customs Officials are not Police and therefore, any admission made before them would bind the person. The same logic holds good in the case of income Tax Authorities. Therefore an addition of Rs.37,20,800/- which was treated as undisclosed stock in survey is hereby added back to the total income. Penalty proceedings u/s. 271(1)(c) are initiated for concealment of income and furnishing inaccurate particulars of income.”

7. The Ld. CIT(Appeals) had upheld the said findings of the A.O observing as follows:

“The appellant had in spite of admitting excess stock and making declaration did not pay additional tax on account of such declaration at the time of filing ITR of the relevant AY and had retracted from the admission made at the time of assessment proceeding. It is incorrect and unfair on the part of the appellant to claim that the excess stock was without verification of accounts working in survey. The extract of the statement shown in the part of the order clearly shows that the appellant himself had claimed the stock as on that date to be of value Rs.21236413/-and he himself admitted the difference. Had it been made under duress then he could have retracted immediately within a reasonable period which is not the case here.

Once the department had carried out the survey proceedings then the onus was on the appellant to explain his statement of affairs tallying with the books of accounts and documents maintained while doing the business activity. Even in case the appellant had made some Bonafide error then he could have approached the authorities with reason and credible evidences. However it is very clear that he only raised the issue at the time of assessment proceedings which clearly indicate that it is an attempt to misguide the authorities to get relief. The case citation relied by the appellant- Dhakeswari cotton mills v CIT, 26 ITR 775 is not applicable

here as it is based on the action taken by the department at the time of survey in the premises of the appellant and the same is an clear incriminating evidence against the appellant. The facts and circumstances clearly show the genuineness of the proceedings and the appellants attempt is clearly an afterthought.

The point that the appellant has voluntarily shown the excess stock and excess profit in this year is not acceptable as the department had found the excess stock which he was not able to explain to the authorities of the department by stating that it is more than the regular stock declared in the books and is sourced from income over and above the regular income of the current year (FY 10-11). It clearly means the appellant admitted this to be excess stock procured out of income which has not been declared. So the said amount of difference in stock is nothing but reflection of the unaccounted income of the current year and so should be added separately.”

8. This is a case where during survey proceedings, excess stock and cash was found in the premises of the assessee and admittedly, physical verification of such stock and cash was done in presence of the assessee and his employees. That also, it is fact that the assessee himself has admitted that an amount of Rs.37,20,800/- is his excess stock outside the books of account, for which, he had stated to pay the income tax. However, at the time of filing return of income, he has not paid such taxes, in fact, retracted from his earlier statement by saying that it was due to fear, pressure and duress, he had made the earlier statement. It is a matter of fact that there is no evidence on record to even suggest that the assessee had acted in fear or pressure while making declaration. In fact, he was present at time of physical verification of stock valuation and he himself

has declared that an amount of Rs.37,20,800/- is his excess stock outside the books of account, for which, he shall pay the taxes. In fact, in the statement recorded during survey, the assessee himself admitted that he is making such declaration voluntarily without any pressure or fear, thereafter, making any retraction of such statement without any evidence on record to suggest that the initial declaration made by the assessee during survey was due to any fear or pressure, is an afterthought only, a camouflage to defraud the Revenue from taxes due to it. That fraud vitiates everything, is the principle which can be traced in the English Legal Jurisprudence way back in **1889 in the House of Lords Derry vs. Peek [1889]** wherein it was established the classic definition of fraudulent misrepresentations stating that intentional or reckless deceit invalidates the contracts. Thereafter, in 1956 Lord Denning's ruling in the case of **Lazarus Estates Ltd Vs. Beasley (1956)** wherein it was stated that no judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. That in the Indian case laws foundation has been made way back in the year 2007 by the judgment of the **Hon'ble Supreme Court** in the case of **A.V. Papayya Sastry & Ors vs Government of Andhra Pradesh (2007), Appeal (civil) 5097-5099 of 2004, dated 07.03.2007** wherein it was held that order obtained by playing fraud on the Court, Tribunal or Authority is a nullity

and non-est in the eye of law. It can be challenged any time even in collateral proceedings.

9. One classic judicial example is the decision of the Hon'ble Supreme Court in the case of **M/s. Friends Trading Company v. Union of India in Civil Appeal No.5608/2011 vide order dated 23/09/2022** held in the context of availment of alleged forged in capital DEPB under the Customs Act held that exemption benefit availed on such forged DEPB are void ab initio on the principle that fraud vitiates everything. The ratio of this decision squarely applies to the conduct of the present assessee before us as he had done fraud with the Revenue by misreporting his income in the return filed for evading tax. Further, the application of principle of fraud was considered by the **Hon'ble Supreme Court** in the case of **Badami (deceased) by her LRs v. Bhali in Civil Appeal No. 1723/2008, dated 22/05/2012** wherein the Hon'ble Supreme Court has held that the Courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.

10. Reverting to the facts of the present case, the assessee himself admitted that such excess stock found was his undisclosed stock outside the books of account and he had admitted to pay taxes. But subsequently, he retracted saying that he made statement due to fear and coercion, for which, there is no evidence on record. When the return was filed, he had not paid taxes on the excess stock that was found during survey, for which, he had himself admitted that such stock was unaccounted in his books of account. In the case of the assessee it is not only statement based on which addition is made but it is on the basis of the physical verification of excess stock found and after proper questioning, the assessee gave his admission on record. The assessee by not paying taxes in the return filed and making retraction after 10 months, is nothing but the malafide intention to defraud the Revenue. That on the similar facts and circumstances, the Co-ordinate Bench of the Tribunal, Pune had dismissed the appeals of the assessee in the case of **Sanjeev Kumar Manchand Rajput Vs. ITO, Nashik, ITA Nos. 612 & 613/RPR/2023 for A.Y.2017-18 & 2018-19, dated 13.07.2023.**

11. This Bench at the time of hearing had asked the Ld. Counsel that what is the genuineness of such retraction by the assessee, he could not furnish any reply to the question.

12. That on careful examination of the facts on record, it is held that such retraction is nothing but an afterthought of the assessee and this kind of conduct should be nipped in the bud itself since addition made by the Department is not only on the basis of statement but on the basis of physical excess stock/cash which was available in the premises of the assessee hence backed by corroborative evidences. Therefore, the assessee cannot escape by merely retracting his statement, when of course, there is no ground for such retraction. At the same time, since he has not paid due taxes regarding the excess undisclosed stock and cash found, the addition made by the A.O and same being sustained by the Ld. CIT(Appeals) is absolutely correct in law and facts. Accordingly, we do not find any infirmity in the findings of the Ld. CIT(Appeals) and the same is upheld. Thus, the **Ground of appeal No.1** is dismissed.

13. That as per above terms, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> May, 2026.

Sd/-  
**AVDHESH KUMAR MISHRA**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 22<sup>nd</sup> May, 2026.

SB, Sr. PS

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

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.

3. The CIT(Appeals)-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.