





Sr. No.	Date	Orders
		<p data-bbox="368 338 549 376">29-1-2004</p> <p data-bbox="368 421 1326 501">Present Mr O.S. Bajpai for the appellant Mr R.D. Jolly with Mr Ajay Jhan for revenue.</p> <p data-bbox="368 553 612 591"><u>ITA 350/2003</u></p> <p data-bbox="564 636 679 674">Admit.</p> <p data-bbox="564 712 1350 757">The following question requires consideration:</p> <p data-bbox="608 801 1267 1070">“Whether on the facts and circumstances of the case, the finding of the ITAT confirming an ad hoc addition of Rs. 1,50,000/- out of Rs. 2,00,000/- made by the AO on account of alleged excess stock was perverse and without any material to support the finding.”</p> <p data-bbox="379 1111 1442 1330">At the request of both the counsel, we have taken up the matter for final hearing and dispense with the paperbook.</p> <p data-bbox="384 1402 1449 1935">We have read the order made by the assessing officer as well as the Income-tax Appellate Tribunal. The question is about the perversity of the finding with regard to the addition of Rs. 2 lakhs by the assessing officer, which has been reduced to Rs. 1.5 lakhs by the Appellate Tribunal. On page 25 of the paperbook the assessing officer has held as under:-</p> <p data-bbox="624 1980 1283 2114">“The views of the assessee are considered and are reasonable. However, there are number of instances where order/estimate forms are stated to have been converted into</p>



Sr. No.	Date	Orders
		<p>final bills after the date of search as per show cause dated 20.3.1997. Therefore such stock was not included in the surrender of income made and therefore a sum of Rs. 2 lacs is added to the investment in stock sent to parties before the date of search for which bills were raised after the search. The rest of the transaction as per the seized papers taken as covered by the additional investments declared after also taking into account the unaccounted expenses of the assessee as per the seized record."</p> <p>The Appellate Tribunal, on page 15 para 13, has considered some of the aspects. However, at the end of para 14 at page 17, it held as under:-</p> <p>"Since the assessee has not been able to file any reconciliation of excess stock vis-à-vis stock with its customers, we therefore, hold that the addition for excess stock was bound to be upheld in the case of assessee. However, the AO did not give complete basis for arriving at the estimate of Rs. 2 lakhs. We, therefore, keeping in view the entirety of the facts, circumstances of the case and the surrender so made by the partners vis-a-vis the income surrendered by the partnership firm, consider it just and reasonable to sustain ad-hoc addition of Rs. 1.5 lakhs as against Rs. 2 lakhs made by the AO. Ground of the revenue stands partly allowed."</p> <p>The Tribunal ought to have examined the matter as to why it would like to interfere and reduce the amount of Rs. 2 lakhs to Rs. 1.5 lakhs or ought to have arrived at a conclusion that addition is not required to be made. After holding that the AO had not given the basis for arriving at the estimate of Rs. 2 lakhs it committed the same error by</p>



Sr. No.	Date	Orders
		<p>ordering an ad-hoc addition of : Rs. 1.5 lakhs, without any cogent reasons or basis. Such a finding, which is without any basis amounts to a perverse finding.</p> <p>Learned counsel are in agreement that the matter is required to be remanded back to the Tribunal. However, on behalf of the Revenue, it is stated that only quantification is required to be carried out. On behalf of the appellant, it was urged that there is no addition required to be made on account of unaccounted transaction as, whatever has been declared has been accepted. We are not entering into the merits of this part of the controversy. We leave it to the Tribunal to decide the same in accordance with law and evidence adduced on record.</p> <p>It would be open for the Tribunal to remand the matter to the assessing officer if it deems it to be just and proper.</p> <p>A copy of this order be given Dasti under the signature of the Court master.</p> <p style="text-align: right;">  CHIEF JUSTICE </p> <p style="text-align: right;">  BADAR DURREZ AHMED, J. </p> <p>November 29, 2004 -vsp</p>