

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री डी. करुणाकरा राव , लेखा सदस्य, के समक्ष।
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.717/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Ajay Shantilal Lalwani HUF
C/o. M/s. Mahaveer Jewellery
House, 'Yashodeep' 117,
Navi Peth, Jalgaon-425 001
PAN : AACHA7082C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Joint Commissioner of Income Tax,
Range-1, Jalgaon.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Naresh Kumar
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 22.10.2018
घोषणा की तारीख / Date of Pronouncement : 28.11.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This is the appeal filed by Assessee against the order of CIT(A)-2, Nashik dated 12.03.2015 for the assessment year 2010-11.

2. Briefly stated relevant facts include that the assessee is an HUF and the proprietor of M/s. Mahaveer Jewellery House, Jalgaon. Assessee is

engaged in the business of gold, silver and diamonds. There was survey action on 24.09.2009 u/s.133A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in this case. This action resulted in the discovery of certain valuation of closing stock. Assessee filed the return of income declaring total income at Rs.96,38,859/-for this assessment year.

3. During scrutiny assessment proceedings u/s.143(3) of the Act, the Assessing Officer determined the assessed income of the assessee at Rs.3,49,61,900/- against the return of income Rs.96,38,859/-. The Assessing Officer made various additions in the assessment and gist of the same as given in his order is extracted as under:

<i>"Total income as per return</i>	96,38,859/-
<i>Add: Additions as discussed above,</i>	
<i>On a/c of unsecured loans of M/s. Mahaveer Green Gold & Others as per Para 5.</i>	82,79,700/-
<i>On a/c of salary paid, as per para 6</i>	13,35,000/-
<i>On a/c of Valuation of diamond para 7</i>	6,22,170/-
<i>On a/c of Silver Stock as per para 8</i>	8,69,800/-
<i>On a/c of loss due to theft Para 9</i>	6,99,636/-
<i>On a/c of valuation stock of gold Ornaments 91.6 para 10</i>	1,86,486/-
<i>On a/c of valuation of closing stock Para 11</i>	1,07,27,204/-
<i>On a/c of vishwamangal bogram yatra Exp. as per para 12</i>	40,285/-
<i>Reg. estimation of GP as per para 13</i>	25,00,000/-
<i>On a/c of GDS gold para 14</i>	62,760/-
	<u>2,53,23,041/-</u>
<i>Total income</i>	3,49,61,900/-"

From the above, it is evident that the Assessing Officer made various additions. Apart from others, the addition on account of unsecured loans of Rs.82,79,700/- (Rs.38,79,570/- + Rs.44,00,130/-) and the addition on account of valuation of closing stock of Rs.1,07,27,204/- are major ones.

4. Aggrieved with the assessment order, assessee filed appeal before the CIT(A) by raising 17 grounds. During the proceedings before First Appellate Authority, Assessee made various submissions and the same are extracted in the impugned order as the need demands. Eventually, the CIT(A) partly allowed the appeal of the assessee.

5. Aggrieved with the decision of CIT(A), assessee filed the present appeal by raising following grounds. Revenue did not file any appeal.

“1.1 The Ld CIT (A) erred on facts and in law in confirming the action of the Ld AO in taking up the case of the appellant for scrutiny by issuance of notice u/s.143(2) of the IT Act. The notice u/s.143(2) had been issued by the Ld AO in contravention of the then existing instructions of the CBDT. Hence, the notice issued u/s.143(2) is illegal and needs to be quashed.

1.2 The Ld. CIT(A) erred on facts and in law in confirming the assessment order passed by the Ld. AO. The entire assessment order passed by the Ld. AO in the case of the appellant is void ab-initio and ought to have been cancelled.

1.3 The Ld. CIT(A) erred on facts and in law in confirming the addition of Rs.38,79,570/- on account of loan raised by the appellant from M/s. Mahaveer Green Gold.

1.4 The Ld CIT(A) erred on facts and in law in confirming the addition of Rs.5,86,680/- out of the addition of Rs.6,22,170/- made by the Ld AO on account of difference in valuation of the diamonds.

1.5 The Ld CIT(A) erred on facts and in law in confirming the addition of Rs.6,71,485/- out of the total addition made of Rs.8,69,800/- by the Ld AO on account of alleged suppression of silver stock.

1.6 The Ld.CIT(A) erred on facts and in law in confirming the disallowance of Rs. 6,99,363/- on account of theft of the silver stock.

1.7 The Ld CIT(A) erred on facts and in law in confirming the addition of Rs.1,07,27,204/- on account of alleged difference in the valuation of closing stock of gold.

1.8 The Ld CIT(A) erred on facts and in law in confirming disallowing of interest of Rs.59,652/- out of total interest of Rs.62,760/- paid on gold deposits.

1.9 The appellant craves to add, alter, amend or delete any of the above grounds of appeal any time before or at the time of hearing.”

6. Before us, at the outset, Ld. Counsel for the assessee submitted ground No. 1.5 relating to confirming of the addition of Rs.6,71,485/- on account of alleged suppression of silver stock is not pressed. Accordingly, after hearing Ld. Counsels for both the parties, the **ground No. 1.5 raised in appeal by assessee is dismissed as 'not pressed'**.

7. Similarly, Ld. Counsel for the assessee also submitted that ground No. 1.8 is also not pressed in view of the smallness of the addition. Assessee contested the decision of invoking the provision of section 40(a)(ia) of the Act, in respect of the interest payments made without making of disallowance of TDS on gold deposits. The Assessing Officer disallowed the interest of Rs.59,652/- out of total interest of Rs.62,760/- paid on gold deposits. Accordingly, after hearing the parties, **ground No. 1.8 raised in appeal by assessee is also dismissed as 'not pressed'**.

We shall now take up the rest of the grounds for detailed adjudication in the following paragraphs.

A. Ground No. 1.1 & 1.2 - Issue of notice u/s.143(2) of the Act.

8. Ground No. 1.1 relates to the issue of notice u/s.143(2) of the Act. The assessee claims in the ground that the said notice was issued in contravention of the then existing instruction of CBDT. As per the assessee, the said notice is illegal and the same needs to be quashed.

9. Before us, Ld. Counsel for the assessee informed the Tribunal stating that the issue of validity of notice u/s.143(2) of the Act was already the subject matter of litigation before the Hon'ble Bombay High Court by way of Writ Petition No. 630 of 2013 dated 10.05.2013. The Hon'ble High Court

dismissed the said writ petition and decided the issue against the assessee. In this regard, Ld. Counsel for the assessee brought our attention to the copy of the judgment of the Hon'ble Bombay High Court and the same is placed at page 48 of the paper book. Bringing our attention to the contents of Para 22 of the judgment at page 58 of the paper book, Ld. Counsel for the assessee fairly submitted that this issue stands decided against the assessee. However, with due regard for the said judgment, Ld. Counsel argued relying on the ratio laid down in the case of **UCO Bank Vs. CIT reported as 237 ITR 889 (SC)** on one side and the CIT(A)'s order in the case of assessee's sister concern where the issue was decided in favour of the assessee on similar facts, Ld. AR prayed for considering the above mentioned judgment/order and decide the issue in favour of the assessee.

10. On the other hand, Ld. DR for the Revenue read out the contents of said paragraphs (Para 22) of the judgment of the Hon'ble Bombay High Court (supra.) and submitted that the CBDT instructions were duly followed by the Assessing Officer in the matters relating to issue of notice u/s.143(2) of the Act. In this case, Assessing Officer obtained requisite approval and therefore, there is no contravention of law/instruction in following the said instruction of CBDT.

11. On hearing both the parties on this limited issue, we find the contents of Para 22 of the judgment of the Hon'ble Bombay High Court are relevant for extraction and the same reads as under:

*“22. The position is that the relevant guidelines relied on show that the assessing officer under clause (g) thereof is empowered to select a particular case for ‘scrutiny assessment’ Respondent No.1 who then was assessing officer after recording reasons for selection of petitioner’s case sought approval of Respondent No. 2 who was then the approving authority and had approved the selection. Subsequently, pursuant to provisions of IT Act, the case was assigned to Respondent No. 2 for assessment. **Requisite***

procedure before issuing notices under section 143(2) and 142(1) of the IT Act appears to have been followed.”

From the above, it is evident that the Hon'ble High Court already considered requisite fact and held that the Assessing Officer duly complied with the requisite procedure in the manner relating to issue of notice u/s.143(2) of the Act and u/s.142(1) of the Act. Further, it is also fact that Writ Petition filed by assessee stands dismissed by the Hon'ble High Court. Therefore, **ground No. 1.1 and 1.2 raised by the assessee are dismissed.**

B. Ground No. 1.3- Addition of Rs.38,79,570/-

12. Ground No. 1.3 relates to the addition of Rs.38,79,570/- on account of loan raised by the assessee from M/s. Mahaveer Green Gold (MGG). The assessee received other loans too amounting to Rs.44,00,130/- from four creditors i.e. (i) Rs.25,00,000/- on account of loan raised from M/s. Swastik Gems, Surat, (ii) Rs.18,00,000/- on account loan raised from M/s. Gyan Exports, Surat, (iii) Rs.8,130/- on account of difference in the account of Multi Media Features Pvt. Ltd. and (iv) Rs.92,000/- on account of interest paid to M/s. Backbone Construction.

During the assessment proceedings, the Assessing Officer invoked the provisions of section 133(6) of the Act to verify the genuineness of said loans. On observing the assessee's failure to discharge of onus by the assessee, these amounts were added as income of the assessee. The said unsecured loan and the interest accrued thereon i.e. (Rs.38,79,570/-+ Rs.44,00,130/-), amounting to Rs.82,79,700/-, was added to the income of the assessee. The Assessing Officer discussed this issue vide para 5 and its sub paras of the

assessment order. Loans from M/s. MGG was scrutinized thoroughly by the Assessing Officer.

12.1 In this connection, the Assessing Officer recorded statement u/s.131 of the Act of Shri Arvind Rameshchandra Kale, Proprietor of Maharashtra Krushi Seva Kendra, who sold seeds to M/s. Mahaveer Green Gold. Earlier, MGG confirmed the loan and stated that the loans were given out of its agricultural income. M/s. Mahaveer Green Gold confirmed the fact of giving loans to the assessee by filing a confirmation letter and submitted the agricultural status of the assessee for various years. MGG gave loans in the past too to the assessee and the said loan transactions were accepted by the Assessing Officer in earlier assessment year. The details are available in Para 5.2 of the assessment order. It is the submission of the assessee as well as MGG, the creditor that the loans were given to the assessee out of agricultural income of MGG. The assessee further mentioned that Mr. & Mrs. Lalwani are the partners of M/s. Mahaveer Green Gold in their individual capacity. The Assessing Officer enlisted the land holding of the M/s. Mahaveer Green Gold and mentioned the said lands were taken on lease by M/s. Mahaveer Green Gold from 39 farmers. Relevant details are discussed in Para 5.3 of the assessment order. The Assessing Officer examined this issue at length in Para 5.10 to 5.17 of the assessment order. Eventually, the Assessing Officer held that M/s. Mahaveer Green Gold obtained bogus bills from M/s. Maharashtra Krushi Deva Kendra and manipulated his agricultural income by creating bogus bills and bogus notings made in 7/12 extracts from the Revenue records. Further, the Assessing Officer relied on the report of his Inspector who gave report against the assessee. The contents of Para 5.11 and 5.12 are relevant and the same are reproduced herein below:

“5.11 As can be seen from the Inspector’s report, the statement of the persons who have issued bills stating therein that even though there are no actual purchases, duplicate bills have been issued inserting the name of the assessee in the duplicate bills. Further, the genuineness of transaction is totally unproved for the fact that the evidence by way of statement recorded on oath, Inspector’s report etc. Further, the assessee has relied upon the case of Golden Remedies Pvt. Ltd. Vs. ITA is not at all applicable to the facts of the case. In the case of assessee, the other person had clearly submitted that duplicate bills have been issued inserting the name of the assessee in the bill that too in duplicate bills even though actually there are no purchases. Further, the existence of the person from whom purchases have been proved beyond doubt showing that the said firm have already been closed since last 8 to 10 years and license have been cancelled. Without any proper authentication, no person can sale any valid goods.

5.12 From the above, it is crystal clear that M/s. Mahaveer Green Gold has obtained bogus bills from M/s. Maharashtra Krishi Seva Kendra and has tried to manipulate his agricultural income by creating bogus bills as well as bogus notings made in 7/12 extracts. In view of the full proof documentary evidence, I have no hesitation to hold that M/s. Mahaveer Green Gold has not earned any agricultural income but has only used the money of Shri Ajay Shantilal Lalwani HUF and has tried to route through legitimate channels. The Unsecured loan, therefore, held in the name of M/s. Mahaveer Green gold is nothing but the unaccounted cash /investment earned which is hereby added u/s.68 and added back to the total income. Thus an amount of Rs.38,79,570/- i.e. unsecured loans accepted during the year is hereby added to the total income of the assessee. Penalty proceedings u/s.271(1)(c) are separately initiated. AO is further directed to take necessary action in the earlier years also in the case of the assessee, as well as to take necessary action in the case of M/s. Mahaveer Green Gold and M/s. Shree Krishi Seva Kendra for the year under consideration and also for the earlier years also.”

13. The Facts Regarding other loans of Rs.44,00,130/- : Assessee’s submission regarding other loans involving M/s. Swastik Gems, Surat and M/s. Gyan Exports, Surat etc. were not accepted by the Assessing Officer too. Accordingly, Assessing Officer made addition of Rs.44,00,130/-. Para 5.16 of the assessment order is relevant in this regard and the same is extracted as under:

“5.16. Since the assessee could not offer any plausible explanation with regard to the letters issued u/s.133(6) and the onus on the assessee to prove the same have not been proved, I hereby add the same i.e. Rs.25,00,000+18,00,000+ 8,130+ 92,000 = 44,00,130 to the total income of the assessee.”

Thus, the Assessing Officer made addition of Rs.82,79,700 on account of unsecured loans.

14. In the First Appellate Proceedings, First Appellate Authority granted relief on account of addition of Rs.44,00,130/-. There is no litigation on this relief. The First Appellate Authority confirmed the addition of Rs.38,79,570/-. The CIT(A) dealt with this issue vide para 9.1 of his order. The CIT(A) noticed that Assessee received total loan amounting to Rs.77,10,570/- from MGG which includes the loan taken in earlier years too from MGG. Agricultural income is the common source of income for the M/s.Mahaveer Green Gold to give the said loans to the assessee. Reacting to the land holding of the assessee, the CIT(A) also discussed the fact that the assessee-firm did not have enough agricultural land and therefore, it had taken agricultural lands on lease from 39 farmers for paying the rent of Rs.1,500/- per acre per annum. In Para 9.2, CIT(A) held that the lands were actually not cultivated which is reflected from the contents available on 7/12 extract furnished by the assessee before the Assessing Officer. Further, CIT(A) expressed the doubts about the facts relating transportation of agricultural products by the said firm for sales and for earning of the income from M/s. Maharashtra Krishi Seva Kendra, Jalgaon. The CIT(A) also discussed the adverse statement given by the Proprietor of M/s. Maharashtra Krushi Seva Kendra about bogus nature of bills as well as sale of seeds by the said Kendra to the assessee for cultivation. The CIT(A) also noted that Assessing Officer made enquiries through his Inspector of Income Tax who reported in his enquiry report that the said party Shree Krishi Seva Kendra was not found at the address given. He also reported the cancellation of license long back. Eventually, the CIT(A) held in Para 9.4 of his order that M/s. Mahaveer Green Gold and its agricultural activities are not genuine. The contents of the Para 9.4 are extracted as follows:

“9.4 In my considered view, the AO had made out a case against the appellant. There is no genuine agricultural activities carried out by M/s. Mahaveer Green Gold and as such, there is no agricultural income as

claimed by the appellant. During the year, the appellant has accepted a sum of Rs.38,79,570/- as unsecured loan from the said firm. The AO has added the said amount u/s.68 of the Act as the appellant's explanation is found to be unsatisfactory. After considering the facts of the case, the said addition is confirmed."

15. Aggrieved with the said adverse decision of CIT(A), Assessee raised ground No.1.3 before the Tribunal which has already been extracted above.

16. Before us, Ld. Counsel for the assessee narrated the above facts and submitted that addition made by the Assessing Officer and confirmed by the CIT(A) is not justified. He further mentioned that this is a case where the assessee and creditors confirmed the correctness of the transaction of loan. In such circumstances, enquiry of the Assessing Officer becomes case of "source of source". Relying on the various binding judgment, Ld. Counsel for the assessee submitted that the Assessing Officer travelled into the prohibited zone of "source of the source" where sources are established consistently by the assessee in the assessment over the years. Further, Ld. AR mentioned that these loans are not taken first time from MGG in this year. Similar loans were taken in the past and source were remained the same. The Assessing Officer accepted the said claims in the past and therefore, making addition in this year under consideration is unsustainable in law as per set rule of consistency.

17. On the other hand, Ld. DR for the Revenue relied heavily on the order of Assessing Officer and CIT(A). Further, Ld. DR brought our attention not only on the report of Income Tax Inspector but also to the statement of Shri Arvind Rameshchandra Kale which reveals that transaction of taking loan from M/s. Mahaveer Green Gold is bogus.

18. We have heard both the parties on this issue. Relevant facts necessary for adjudicating this issue include that the assessee took loans from MGG of Rs.38,79,570/- in continuation of the earlier loans in the earlier years. The sources of the loans taken in current year as well as past year are the agricultural income of the MGG. Further, it is undisputed fact that assessee and his wife are the partners of the MGG in individual capacity. Further, similar loans taken by assessee in the past year and the same were accepted by the Assessing Officer without making any addition. MGG the creditor, not only confirmed the giving loans to the assessee but also confirmed the fact of being assessed to income tax regularly. MGG informed the Department about the modus-operandi of earning and declaring the agricultural income in its return of income over the years. Modus-operandi includes leasing the land from many landlords, using the same for agricultural produce for selling and earning agricultural income. This modus-operandi remained undisturbed by the Revenue over the years. Efforts made by the Assessing Officer for generating any incriminating evidence in the matter of the purchase of seeds from Maharashtra Krushi Seva Kendra, questioning the transportation related services linked to the said purchase and sale of agricultural produce etc. were not conclusively fruitful.

In such circumstances, in our view, assessee demonstrated the sources of the loan. The Assessing Officer should have made addition, if any, in the hands of MGG in case if any incriminating evidence is gathered relating to the claim of agricultural activities of the MGG. In our view, so far as assessee concerned, onus is rightly discharged by the assessee by giving all necessary details on the identity, creditworthiness and genuineness of

transaction etc. Therefore, the assessee is eligible for relief in respect of loans received from MGG too.

19. Regarding the argument relating to source of source, it is a settled proposition that the Assessing Officer is not allowed to travel in the issue of source of source as held by catena of judgments. Further, we examine the order of CIT(A) and contents of Para 9.4 are already extracted above. The CIT(A) dismissed the Revenue's contention that no genuine agricultural activities were carried out by the MGG. Therefore, from the above point of view i.e. lack of clear cut incriminating evidence both against the assessee as well as MGG, the principles of consistency etc, we are of the opinion that order of CIT(A) is required to be reversed on this addition. Accordingly, **ground No. 1.3 raised in appeal by assessee stands allowed in favour of the assessee.**

C. **Ground No. 1.4 relates to the addition of Rs.5,86,680/-**

20. Ground No.1.4 relates to confirming addition of Rs.5,86,680/- out of gross addition of Rs.6,22,170/- made on account of difference in valuation of the diamonds. Relevant facts includes on this issue that there was survey action in this case on 24.09.2009. During the said proceedings, assessee submitted the details of stock of diamond and the value per carat. The Closing stock as on the date of survey is 115.154 carat. As per the details of stock, rate per carat and the amount submitted by the assessee at the day of survey action i.e. 24.09.2009, the closing stock as on 31st March, 2010 works out to 85.97 carat. The assessee offered valuation of said stock at Rs.19,16,940/-. The details of the working of stock and rates are reproduced as under:

"Opening Stock (CT)	= 135.000
Less: Sales	= <u>19.846</u>
Closing Stock	= <u>115.154</u>

Closing stock at the year end, i.e. 31.03.2010 was under:

Opening Stock (CT)	=115.154
Less: Sales	= <u>29.184</u>
Closing stock	= <u>85.97</u>

As per the details of stock, rate per carat and the amount submitted by the appellant at the time of survey operation and as per the statement given by the appellant, the valuation of stock of 85.97 (CT) should be as under:

<u>Particulars of stock</u>	<u>Weight</u>	<u>Amount</u>	<u>Rate (Rs.)</u>
Purchase 2007-08	11.590	2,43,390/-	21,000/-
Up to 31/03/2007	<u>74.380</u>	<u>16,73,550/-</u>	<u>22,500/-</u>
	85.970	19,16,940/-	

From the above, it is evident; the diamond purchased in F.Y.2007-08 was valued as per the assessee at Rs.21,000/- per carat whereas, diamond prior to F.Y.2007-08, was valued at Rs.22,500/-. The Assessing Officer made addition by observing as under:

"7.6. In view of the above I have no hesitation to add the difference as worked out above i.e. Rs.5,86,680/- to the total income of the assessee. Apart from the above, the diamond sold over Rs. 50,380 has not been made out of opening stock as there is no higher rate purchase in opening stock or purchases made during the year. Hence it is taken as outside purchase from books of accounts and since its sale has been taken in account in toto, hence an addition u/s. 69 is being made. However, the same quantity is available with the assessee out of opening stock of 1.69 CT @ Rs.21,000, hence its value at Rs.35,490 is further added towards suppression of closing stock. The sale rate of diamond goes upto Rs. 30,570 is considered to be made out of opening stock. Hence total additions on this count comes to Rs.6,22,170/-. Penalty proceedings u/s.274 r.w.s. 271(1)(c) are separately initiated."

21. During First Appellate proceedings, the CIT(A) analyzed this issue vide para 14.2 and gave part relief to the assessee of Rs.35,490/- confirming the balance amount of addition Rs.5,86,680/-. Otherwise, in the assessment Assessing Officer made addition of Rs.6,22,170/- on this account.

22. Before us, Ld. Counsel for the assessee fairly submitted that the rates of Rs.21,000/- and Rs.22,500/- were supplied by the assessee during survey action. However, the same are the market rates of that period. Further, Ld. Counsel for the assessee submitted for the purpose of valuation of closing stock, only cost figure should be considered. If the same is applied, the addition will be either 'Nil' or 'lessor' than the sum of Rs.6,22,170/-.

23. On the other hand, Ld. DR for the Revenue relied heavily on the order of Assessing Officer and CIT(A). Ld. DR for the Revenue argued by stating that figures of Rs.21,000/- and Rs.22,500/- given by the assessee constitutes purchase price only and not market rates. Further, the fact that assessee failed to substantiate the arguments evidencing the payment regarding purchase of diamond of 85.970 carat was not evidenced otherwise. In the absence of furnishing of such evidence, the figures furnished by assessee held to be considered as purchase/ cost price only.

24. We have heard both the parties on this issue and perused the order of Revenue Authorities in general and contents of Para 14.2 in particular. For the sake of completeness, contents of Para 14.2 are extracted as under:

"14.2 Whereas the appellant had valued at Rs.15,473/- per carat in respect of the opening stock of 85.970 (CT) thereby valuing the stock at Rs.13,30,260/- as against the above valuation of the said stock at Rs.19,16,940/-. The appellant has submitted that' the value arrived at the time of survey is tentative and is open to mistakes. This explanation of the appellant is not reasonable. The appellant is a jeweller having many years of experience. The valuation of diamond in India is standardized. The appellant knows the value of each diamond and therefore, he had given the valuation of the diamonds at the time of survey. The diamonds purchased after 31/03/2007 are valued at the higher rate. The lowest possible value of diamonds purchased prior to 31/03/2007 is Rs.21,000/- per carat. Therefore, the value of Rs.15,473/- per carat adopted by the appellant is without any basis and evidence. Therefore, the addition of Rs.5,86,680/- is justified. The AO has also made an addition of Rs.35,490/- without' basis and the same is deleted. Therefore, the addition of Rs.5,86,680/- is confirmed. The appellant gets a relief of Rs.35,490/-.

From the above, it is undisputed position that the figure of Rs.21,000/- and Rs.22,500/-, as the case may be, are the figures furnished by assessee during survey action. It is the submission of the assessee during survey action that these figures represent the cost price of the diamonds. Now the assessee argues conveniently that the same constitutes market values of the diamonds, the closing stock. In our view, the same constitutes change of opinion. When the assessee raised this new argument, the onus is upon the assessee to demonstrate with evidences the figures furnished by him during survey action are the market values. Assessee needs to supply the purchase cost figures with evidences. Assessee failed to do so even before us. In such circumstances, contrary to the submission made by him during survey action, these new arguments become self serving submissions only. It becomes a case of an after-thought. Therefore, we find the order of CIT(A) is fair and reasonable and it does not call for any interference on this issue. Thus, **ground No.1.4 raised in appeal by assessee is dismissed.**

D. Ground No. 1.6 relates to disallowance of Rs.6,99,363/-

25. Ground No.1.6 relates to the confirming the disallowance of Rs.6,99,363/- on account of theft of the silver stock of the assessee. Relevant facts includes that the assessee reported theft of silver stock and filed FIR with police authorities. However, the assessee did not furnish any evidence about Action Taken Report on the said FIR. The Assessing Officer doubted the assessee's claim of theft and consequently, Assessing Officer rejected the claim of Rs.6,99,363/-. The Assessing Officer discussed this issue vide para 9 of assessment order and the same is extracted as under:

“9. Claim of loss due to theft:

During the course of assessment proceedings, the assessee filed only a copy of FIR and no final report for the theft has been furnished and

hence, the claim of loss is not determined. Hence claim of loss is disallowed and an addition of Rs.6,99,363/- to the total income. However, the assessee can claim it in the year in which it is determined by the proper authority.”

26. During First Appellate proceedings, no evidence has been filed by the Assessee substantiating genuineness of the FIR. In the impugned order, CIT(A) commented that the same is a stage-managed one. Thus, CIT(A) confirmed the disallowance of Rs.6,99,363/-. Aggrieved with the same, assessee is in appeal before the Tribunal.

27. Before us, Ld. Counsel for the assessee explaining the above facts of the theft, brought our attention to the contents of FIR dated 28.05.2009 placed at pages 137 to 141 of the paper book and mentioned that it is not a case of stage managed theft. Further, Ld.A.R. stated that the assessee has no reason to resort to the same. He also reported non-return of the stolen goods by the Police.

28. On the other hand, Ld. DR for the Revenue mentioned that the event of theft is stage managed one. However, he relied heavily on the order of Assessing Officer and CIT(A).

29. We have heard both the parties on this issue of occurrence of theft of silver items. We find, in principle, the FIR is filed by the assessee reporting the event of theft occurred on 28.05.2009. This event falls within the assessment year under consideration. Considering the arguments advanced by both the parties, we find that the assessee has filed copy of the FIR to prove that the fact of occurrence of theft, Assessing Officer did not establish that is a stage managed event. It is not the case of the Assessing Officer that the stolen goods are returned safely by the police. The onus is upon the

Assessing Officer to demonstrate the mala-fide in filing FIR. Assessing Officer failed to do so. In this case, Assessing Officer merely dismissed the claim of reporting of the event to the police authorities. The FIR constitutes an extract from the records of the police, Government of Maharashtra and the same should be accepted as genuine. Otherwise, there is no evidence on the contrary from the Assessing Officer's side. Therefore, we are of the opinion that disallowance, made by the Assessing Officer and confirmed by the CIT(A), is unsustainable in law. Accordingly, **ground No. 1.6 raised by the assessee is allowed.**

E. Ground No. 1.7 relates to addition of Rs.1,07,27,204/-

30. Ground No. 1.7 relates to addition of Rs.1,07,27,204/- on account of alleged difference in the valuation of closing stock of gold.

31. During assessment proceedings, the Assessing Officer, on the issue of valuation of gold, followed the principle of FIFO and valued the closing stock at Rs.6,05,30,845/- against the assessee's valuation figure of Rs.4,98,03,641/-. The difference works out to Rs.1,07,27,204/-. The Assessing Officer invoked the provisions of section 145(3) of the Act and added the said amount to the total income returned by the assessee. The facts about excess stock, rates of gold and other details are discussed in Para 11.5 to 11.9 of the assessment order. For the sake of completeness, the said paragraphs are extracted as under:

"11.5 The rate of pure gold as on 31/3/2008, 31/03/2009 and 31/3/2010, as per ready reckoner is as under:

<i>31/3/2008</i>	<i>Rs.12,125/-</i>
<i>31/3/2009</i>	<i>Rs.15,105/-</i>
<i>31/3/2010</i>	<i>Rs.16,320/-</i>

Whereas above details shows the valuation of rate of gold as on 31/3/2010 have been shown less than the rate as on 31/3/2009 which is

not correct as on 31/3/2009 the rate for purchases shown in F.Y. 2008-09 has been taken at 1276.82 per gram and for old stock of F.Y. 2007-08 has been shown at 1081.66 per gram and as on 31/3/2010 it has been reduced to 1027.96 per gram and 940.35 per gram.

11.6. Now coming to the assessee's submission at the first instance, the assessee has given the details of stock items i.e. gold in diamond ornaments, gold mode, gold ornaments 94, gold pure, and so on. But while explaining the details of valuation of opening stock of gold as on 1/4/2009 of all items of gold, the assessee has not shown item wise as shown in details of stock items. On going through the all items of gold as on 1/4/2009, the assessee has shown stock of gold of 36484.53 bifurcating as out of opening stock as on 1/4/2008 at 12,791.53 and balance of 23693 as purchases in F.Y. 2008-09. This means that the assessee, since adopted FIFO method, the assessee is having stock of gold as on 1/4/2008 at 12,791.53 grams. Now coming to the details of closing stock of gold as on 31/3/2010, the assessee has shown stock of gold as on 31/3/2010 at Net weight of 35,962.68 grams. But while bifurcating such net weight, the assessee has tried to mislead by stating herein that out of stock of gold 35962.68 grams, the break up is as under

Stock being purchased in F.Y. 2007-08	8446.23
Out of opening stock of 1.4.2007	7409.34
Purchases during the year	20107.11

11.7 From the above details as on 31/03/2010, the assessee is now relying on the fact that he was having the stock before 1/4/2007 of 7409.34 grams while submitting the details for the year under consideration, whereas while submitting the details for the F.Y.2009-10, the said opening stock as on 1/4/2007 was not at all appearing i.e. to say as on 1/4/2008 it has shown 12791.53. Thus on one hand it can be said that the assessee is having gold stock as on 1/4/2009 at 15,855.57 grams. Thus here also there is a difference.

11.8. The assessee has not maintained item to item weight wise purity wise stock details of ornaments or other items and thus it is not possible to verify that which item of particular year has been sold and during the course of survey the assessee has disclosed last year purchase of 12575.5 grams for a vale of Rs. 1,60,32,031 having a rate of 1274.86 per gram besides current year purchase and then why in closing stock as on 31/3/2010 its value has been taken at 1274.86 per grand and Rs.940.35 per gram by the assessee. The rate of gold has increased from 24/9/2009 to 31/3/2010. Thus just to reduce the income and avoid to pay taxes, the assessee has deliberately undervalued its closing stock.

11.9 From the above, it can be easily inferred and held without any hesitation that the assessee is valuing the stock as per his own will and whim without having any base and without any proper supporting evidences i.e. books of accounts. Thus, I have no hesitation to hold that the closing stock as shown by the assessee is to be valued on the basis of purchase value of current year, as old stock has already been sold out. Thus I hereby value the closing stock of the assessee at Rs.5,98,26,435/- (35962.68 x 1663.57) + Labour charges i.e. Rs.7,04,410 = 6,05,30,845 no whereas the assessee has shown closing stock at Rs. 4,98,03,641/-. Thus, the difference of Rs. 1,07,27,204/- (6,05,30,845 - 4,98,03,641) is hereby added to the total income of the assessee, by applying the provisions of Section 145(3) of the I.T.Act , 1961."

32. During First Appellate proceedings before the CIT(A), assessee submitted that, barring the stock of "Gold Ornaments-94", the method of accounting of gold was consistently followed on the settled principle of FIFO. Only with reference to valuation of the said stock of "Gold Ornaments-94", the assessee changed the method of accounting and therefore, there is difference in value of closing stock valuation. The CIT(A) considered the facts of the case and confirmed the addition made by the Assessing Officer as per discussion given in Para 18.1 and 18.2 of his order. Thus, the AO and CIT(A) did not allow the change in the method of valuation.

33. Before us, referring to the Assessing Officer's decision as discussed in Para 11.9 extracted above, Ld. Counsel for the assessee submitted that valuation of closing stock of gold at Rs.1663.57/- per gram is not proper and is completely a case of adhocism. Further, Ld. Counsel for the assessee submitted that closing stock valuation of "Gold Ornament-94" is only disturbed in this year by the assessee.

Further, referring to the opening stock Balance figure in the next assessment year, Ld. AR submitted that this change in method qua the "Gold Ornament-94" is followed consistently in the subsequent assessment years too. Further, Ld.AR submitted that the Assessing Officer in the next assessment year did not grant consequential benefit in the opening stock valuation of the subsequent assessment year. This failure of AO is patently wrong on facts. This argument is raised by Ld. AR without prejudice to the demand for accepting the changed mode of valuation. Therefore, Ld. Counsel submitted for deletion of entire addition of Rs.1,07,27,204/-. Further, on this issue, alternative argument advanced by the Ld. Counsel for the assessee to grant consequential benefit to the opening stock in the next assessment year.

Then, Ld. AR is fair in admitting that the assessee altered the method of account qua the "Gold Ornament-94" which had the effect of profit reduction of Rs.1,07,27,204/- in real terms.

34. On the other hand, Ld. DR for the Revenue placed reliance on the order of Assessing Officer and CIT(A). Relying on various judgments, Ld. DR submitted that the decision of the assessee in going for the change in method of valuation of stock has the direct effect on the profit of the year of the assessee. Therefore, AO/CIT(A) are justified in rejecting the claim of the assessee.

35. We have heard both the parties on this issue and perused the order of Revenue Authorities in general and contents of Para 18.1 and 18.2 of the order of CIT(A) in particular. For the sake of completeness, the same are extracted as under:

"18.1 From the above facts, the AO has made following observations:-

1) While valuing the opening stock at Rs. 4,44,81,390/-, the AO has considered gold purchased in F.Y. 2008-09 at 23,636 grams and stock of gold out of opening stock as on 01/04/2008 at 12791.53 grams.

2) While valuing the closing stock at Rs.4,98,03,641/-, the AO has considered closing stock of 8446.23 grams + 7409.34 grams = 15855.34 grams as purchased before 01/04/2007 to 01/04/2008.

3) In view of the above two observations, the AO has noticed that when in opening stock the stock acquired before 01/04/2008 was 12791.53 grams, the same cannot be 15855.34 grams in closing stock. This mistake pointed out by the A.O. in the valuation of closing stock is an apparent mistake of the appellant.

4) The A.O. has further noted that as the appellant has followed FIFO method and has affected huge sale during the year having the cost of gold sold at Rs. 9.57 crores, there cannot be any opening stock balance. The above contention of the AO is also found to be logical and acceptable. The appellant has also not filed any convincing submission or quantitative detailed stock record proving that the items in opening stock have not been sold in the year under appeal and the same are included in closing stock and accordingly the closing stock has been arrived at. In view of the above facts, I am of the considered view that the AO is justified in valuing the closing stock of gold at Rs. 1663.57/- per gram i.e. value of purchase of gold during the year under appeal. The AO is therefore justified in arriving at the value of the closing stock as under:-

Gold weight 35962.68 grams X Rs.1663.57 = Rs.5,98,26,435/-

Add : Labour Charges = Rs.7,04,410/-

Total value of closing stock = Rs.6,05,30,845/-

18.2 The addition of Rs.1,07,27,204/- (Rs.6,05,30,845/- - Rs.4,98,03,641/- on account undervaluation of closing stock of gold is therefore confirmed.”

From the above, it is the finding of the Assessing Officer that the quantification of the closing stock of 15855.34 grams is not correct. Assessing Officer also found mistakes in matters relating to FIFO adopted by the Assessee. Therefore, CIT(A) confirmed the Assessing Officer's calculations leading to the addition of Rs.1,07,27,204/-. We have also considered the alternative argument of the Ld. AR regarding the necessary corrections to be made to the opening stock balance figure in the next assessment year.

On hearing both the parties and on perusal of the orders of the AO/CIT(A), we find that “all is not well” with the way the assessee maintained the closing stock account qua its valuation. For the first time before us, Ld. AR came up with the explanation that the stock of “Gold Ornament-94” and the change in its valuation in the year under consideration are the cause of the discrepancies in valuation noted by the AO/CIT(A). Further, it is the alternate arguments of the Ld. AR that the assessee shall be content if the consequential benefit is granted adjusting the opening stock in the subsequent assessment years. In that case, Ld. AR shall not press for accepting the earlier arguments in favour of deletion of the addition of Rs.1,07,27,204/-. On considering all the above, we are of the opinion that there is merit in the said **alternative submission** made by the Ld. Counsel for the assessee regarding the grant of consequential benefit with respect to adjustment to the opening stock in next assessment year. Accordingly, we direct the Assessing Officer to consider the same after hearing the assessee

and allow consequential benefit as per the law, if any, in the next assessment year. Hence, we allow the alternative submission of the assessee as mentioned above. Considering this relief, we are of the view that the other arguments made by the Ld. AR stand dismissed as academic. Accordingly, **ground No.1.7 raised in appeal by the assessee is partly allowed.**

36. In the result, appeal of the assessee is partly allowed.

Order pronounced on 28th day of November, 2018.

Sd/-
(सुषमा चावला / Sushma Chowla)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(डी.करुणाकरा राव/D. Karunakara Rao)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28th November, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-2, Nashik.
4. The Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.