

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD BENCH 'C', AHMEDABAD**

**[Coram: Justice P P Bhatt, President, and Pramod Kumar, Vice President]**

ITA No. 1497/Ahd/16  
Assessment year: 2011-12

**Mayankkumar Natwarlal Soni** .....Appellant  
*8-9 City Centre Complex, Kalanala,  
Bhavnagar 364 001 [PAN: ABTPS7337Q]*

**Vs**

**Additional Commissioner of Income Tax**  
**Range 2, Bhavnagar** .....Respondent

**Appearances by:**

**Mehul K Patel** *for the appellant*

**L P Jain** *for the respondent*

Date of concluding the hearing : August 5, 2019  
Date of pronouncement : September 5, 2019

**O R D E R**

**Per Pramod Kumar VP:**

1. This appeal, filed by the assessee, is directed against the order dated 29<sup>th</sup> March 2016 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12.

2. In ground nos. 1,2, 3, 6 , 7 and 8, which we will take up together and which challenge the addition of Rs 55,00.016 (i.e. 62,95,108 addition made by the Assessing Officer *minus* relief of Rs 7,95,092 given by the first appellate authority) on account of estimation of the GP, the assessee has raised the following grievances:

**1. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in confirming the action of the Ld. AO in**

rejecting the books of accounts under section 145(3) of the Income Tax Act, 1961.

2. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in partially confirming the action of the Ld. AO in estimating the sales by Rs.2,51,13,019/- on account of unaccounted credit sales.

3. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in confirming the gross profit rate of 20% instead of actual gross profit rate of 18.96% as shown by the assessee on the total sales declared by the assessee and also on unaccounted credit sales added by the Ld. AO totalling to Rs.7,10,24,538/-.

6. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in confirming the addition of Rs.50,00,000/- on account of "Seed Capital".

7. On the facts and circumstances of the appellant's case and under the law, the Ld. AO and Ld. CIT(A) has erred in making addition of unaccounted sales, gross profit and seed capital by completely ignoring the fact that income of Rs.2,19,47,722/- was offered for tax in computation of total income in pursuant to survey, that resulting into double taxation.

8. On the facts and circumstances of the appellant's case and under the law, the Ld. AO as well as Ld. CIT(A) has erred in not granting benefit of telescoping against the income quantified on "Income Theory" vis-a-vis "Application Theory".

3. So far as these grievances of the assessee are concerned, the relevant material facts are like this. The assessee before us is an individual carrying on the business of dealing in precious metals and ornaments in the name and style as "Mangalam

Jewellers". The assessee was subjected to survey proceedings on 28<sup>th</sup> October 2010. During the course of this survey, certain diaries were found indicating unaccounted credit sales. These diaries were impounded by the authorities. On the basis of the entire material and the books of accounts, the assessee offered to tax additional income of Rs 2,19,47,772. This amount was said to be worked out on the basis of application theory and consisted of (i) Rs.1,66,55,947/- on account of stock difference of Gold, (ii) Rs.8,23,860- on account of stock difference of silver (iii) Rs.62,429/- on account of stock difference of diamond, (iv) Rs.62,429/- on account of cash difference and (v) Rs.43,60,000- on account of debtors difference. The assessee filed an income tax return accepting this additional income. However, when the said income tax return came up for scrutiny assessment proceedings, the Assessing Officer, rather than examining the declaration based on the application theory, followed a different path, a more common and usual path infact, i.e. the income theory. What followed thereafter were a number of additions on different counts. One such addition was addition on account of estimated gross profit on estimated sales. The Assessing Officer noted that the assessee had disclosed a total sales of Rs 4,59,11,519 on which gross profit of Rs 87,04,892 was shown. This gross profit which worked out to 18.96% was much lower than last year's gross profit rate of 23.20%. The Assessing Officer also noted that when unaccounted credit sale of Rs 2,51,13,019 is discovered, there must be unaccounted cash sales as well. As against sales of Rs 4,59,11,519, he estimated the sales at Rs 7,50,00,000 and applied the gross profit rate of 20% on entire sales. It was thus estimated that the actual gross profit should have been of Rs 1,50,00,000 as against disclosed gross profit of Rs 87,04,892. The balance amount of Rs 62,95,108 was added to the income of the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without much success. While learned CIT(A) did delete the gross profit in respect of estimated cash sales of Rs 39,75,462, which worked out to Rs 7,95,092, he confirmed the remaining addition. Learned CIT(A) also observed that "the contention of the appellant that he has already offered Rs 2,19,47,722 as unaccounted income, and, therefore, the GP addition is not warranted as it will amount to addition on both account, i.e. application of funds and income, is not tenable". It was observed that "the AO has made GP addition on unaccounted sales only however addition on account of investment in corresponding purchase has not been

made” Learned CIT(A) further observed that “the appellant has given disclosure in application of money which has not accounted for investment and GP element, and, therefore, the AO is justified in making addition on account of undisclosed GP”. The main plea of the assessee thus stood rejected. The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

5. We have noted that, as evident from page 211 of the paper-book, the assessee has filed complete details of unaccounted sales, as per seized material, at Rs 1,33,38,002 and the Assessing Officer, vide letter dated 14<sup>th</sup> March 2014, has disputed it as incorrect without giving any other details or the correct details on his own. When Assessing Officer rejects the factual aspects, clearly based on the impounded material, it cannot be open to him to reject the same without giving specific details and cogent material in support of his alternative stand. The very approach adopted by the Assessing Officer is in violation of the fundamental principles of natural justice and unsupported by any facts on record. It cannot meet any judicial approval. The chart at page 216 of the paper-book, which is a part of the submissions dated 12<sup>th</sup> March 2014 made at the assessment stage shows that the disclosure made by the assessee is clearly much more than the possible additions on the basis of income theory. This chart is reproduced below for ready reference:

	In crores
The estimated gross profit on the hitherto unaccounted sales of Rs 1.33 crores at the maximum GP of 25%	0.33
Seed capital, estimated at say 80% of the unaccounted sales of Rs 1.33 crores actually found recorded in impounded material	1.07
The outstanding debtors as recorded in various impounded material and as increased by the interest and other differential amounts recovered from them	0.43
Total addition as per income theory	1.83
Total additional income offered as per application theory	2.19

6. When we pointed out the above position to the learned Departmental Representative, he did not have much to say except to place his reliance on the stand of the authorities below. Learned Departmental Representative could not also point out the basis on which the unaccounted sales is taken by the Assessing Officer at Rs 2,51,13,019. He, nevertheless, dutifully relied upon the stand of the authorities below. We have also noted that the learned CIT(A), despite specific submissions on this issue by the assessee, has been simply dismissive of these submissions and did not deal with the specifics. He has also, rather mechanically, approved the stand of the Assessing Officer. As for his observations, as extracted earlier in this order, to the effect that “the AO has made GP addition on unaccounted sales only however addition on account of investment in corresponding purchase has not been made” and that “the appellant has given disclosure in application of money which has not accounted for investment and GP element, and, therefore, the AO is justified in making addition on account of undisclosed GP”, overlooks the fact that overall addition made on account of profit in unaccounted sales and seed capital in unaccounted sales is much more than the unaccounted sales itself. As demonstrated in the chart above, the amount offered to tax by the assessee on the basis of application theory is far in excess of amounts on the basis of income theory. Given this factual scenario, in our considered view, the stand of the CIT(A) was clearly unsustainable in law.

7. We find that the addition made in the present case is in respect of the unaccounted sales are far in excess of the actual sales made by the assessee. In the working shown above, the profit is estimated at 25% and yet the seed capital is taken at 80%. Obviously, when the profit rate is 25%, the cost of goods, and entire related costs, cannot be more than 75%, and yet the seed capital is taken is more than 75%. The outstanding debtors, which are in respect of the sale itself, are also taken separately. The total income computed, after taking into account the estimated profit, seed capital and debtors, is far less than the actual amount offered on the basis of application theory at Rs 2.19 crores. When the income voluntarily offered to tax on the basis of material on record is far more than income, strictly speaking, legally justified on that basis, there cannot be any good reasons to make separate additions on the basis of the same material. In these circumstances, separate

addition on account of income, as profit or as seed capital or for any other related factor, is clearly unwarranted.

8. As regards the addition on account of low GP, we find that the assessee had offered to tax gross profit which worked out to 18.96% as against 20% adopted by the Assessing Officer, after taking into account the last year's gross profit rate of 23.20%. There is thus a variation of 1.04% in GP estimated by the Assessing Officer and the GP offered by the assessee. The business situations can never be so static so as allow such arithmetical precision in its computation. We have also noted that the assessee has given detailed explanations for the fall in the gross profit rate, on 12.9.2013 22.11.2013, 9.1.2014 and 20.1.2014. The copies of all these submissions are placed before us in the paper-book. The Assessing Officer has referred to, in the impugned assessment order, the submissions dated 12.9.2013 and has not even referred to, or apparently looked at, the other submissions. Without dealing with these submissions, it was not open to reject the stated reasons for fall in the GP rate. In any case, the variation is only 1.04%. In view of these discussions, as also bearing in mind entirety of the case, we hold that there are no legally sustainable reasons to disturb the GP rate of 18.96% as show by the assessee. This plea is also, therefore, upheld.

9. Ground nos. 1,2,3,6, and 8 7 are thus allowed in the terms indicated above.

10. In ground no. 4, the assessee has raised the following grievance:

**4. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in confirming the addition of Rs.1,90,21,318/- on account of "Gold Jangad Stock**

11. So far as this ground of appeal is concerned, the relevant material facts are like this. The assessee had offered excess stock of gold of 9,442.147 gms having value of Rs 1,66,55,947. On verification of the details, however, the Assessing Officer noted that the assessee had claimed gold of 8,740 gms as opening stock of 'jangad' basis and jangad inward of 402.56 gms from Kalindi Jewellers on

5.10.2010. It was also noted that the assessee had claimed that personal jewellery of assessee's wife, weighing 3,140 gms, was also included in the jewellery found at business premises. In response to the questions from the Assessing Officer, the assessee explained at length the justification for these items. The Assessing Officer, however, rejected the claim of 8,740 gms of jangad stock received from Mohanlal Vanmalidas on the ground that the related inward vouchers for the jangad stock were not found during the course of the survey and that confirmatory letters, in respect of the same, were also rejected as they were not noticed during the survey. As regards the explanation of the assessee that the jangad stock was all along shown in the stocks even in earlier years, the Assessing Officer took a hyper technical approach and observed that "the assessee has also tried to explain this opening jangad jewellery stock by furnishing copy of the audit report for the accounting year 2009-10 and stated that in its para 28(a) it has been mentioned that the closing stock of gold of 14,128.590 gms does not include the jangad stock of 8,740.5 gms of gold ornaments but again it cannot be accepted for the reason that this audit report does not contain the signatures of neither the auditor nor the assessee" and "further, there is no evidence as whether this audit report was furnished in the department prior to the date of survey, and, lastly if there was an explanation regarding the closing stock of jangad jewellery, why there was no explanation regarding the opening stock of jangad in this report as well as in the audit report for the year under consideration". As regards the personal jewellery of assessee's wife, once again the objection of the Assessing Officer was that there was no inward voucher for the same. While he accepted that the said jewellery was duly disclosed in the returns filed by the assessee's wife, he declined to accept the explanation of the assessee apparently for want of inward vouchers. As regards the receipt of jangad stock of 402.56 gms received from Kalindi Jewellers on 5.10.2010, he rejected the explanation of the assessee that this claim was not made during the survey and in the absence of the supporting voucher having been found in survey. The confirmatory statements were rejected. Rejecting the explanations of the assessee with respect to these claims of jangad stock, the Assessing Officer proceeded to make additions aggregating to Rs 1,90,21,318 for 10,738.06 gms of jangad stock.

12. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) confirmed the action of the Assessing Officer and declined to interfere in the matter. The assessee is not satisfied and is in further appeal before us.

13. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position

14. We find that the opening jangad stock of 7240.500 gms. in the name of Mohanlal Vanmalial & Co is duly supported by confirmatory letters of the said party which are on pages 231 and 232 of the paper book. These documents were duly filed before the Assessing Officer as well. We have also noted that the stand of the assessee that the Jangad Stock Register, supported by the confirmatory letters, was available at the time of survey but obviously it cannot be for the assessee to decided as to which records should be impounded by the survey team. In any case, the jangad stock was duly reflected in the tax audit reports. The Assessing Officer's objection that this audit report cannot be accepted as it does not deal with similar observations on the opening stock, overlooks the elementary position that the comments are required only with respect to the closing stock and the opening stock, for that purpose, is wholly irrelevant. In any event, opening stock pertains to what has been shown as closing stock of the preceding year and the audit examination is done at that stage. Once there is a specific disclosure in the audit report, that audit report cannot be rejected on the ground that it does not deal with the opening stock. The fact that the report was unsigned does indeed seem to be an inadvertent error and the same chartered accountant was the authorised representative of the assessee at the assessment stage. There is no denial of the content of the audit report and nothing prevented the Assessing Officer from asking the AR to give a signed copy. The audit report pertained to a period in respect of which e return was filed much before the date of survey. In any case, an explanation of the assessee cannot be rejected on such technicalities alone. One has to examine the explanation in the light of the business realities and not on the basis of suspicions and doubts alone. The corroborative material is in record. The confirmations are on record. The jangad stock have been accepted in the earlier years as well. Some of the jangad stock was returned 18.09

.2010 and 29 .09 .2010, as against survey on 28 .10 .2010, and all this is duly reflected in the Jangad Stock Register along with relevant confirmatory letters. The Jangad stock register and confirmatory letters of Mohanlal Vanmalidas & Co, were duly produced before the AO, but the learned AO did not cross verify the same with M/s. Mohanlal Vanmalidas & Co. The Assessing Officer cannot remain passive on all these evidences produced before him and yet reject the same. In view of these discussions, as bearing in mind entirety of the case, we are of the considered view that the explanation of the assessee, with respect to jangad stock of 7240.500 gms. in the name of Mohanlal Vanmalial & Cpo ought to have been accepted. We accept the same and direct the Assessing Officer to delete the related addition. Similarly, as regards the explanation of jewellery of 3,140 gms belonging to the assessee, we have noted that it was duly disclosed to the tax authorities and for obvious security reasons the jewellery being kept in business premises, which is under constant security, cannot be rejected as improbable. The Assessing Officer was not really justified in rejecting it only on the ground that there was no inward voucher for the same. That is too far fetched and theoretical an objection to suggest that inward stock vouchers are required to be made even for personal jewellery belonging to wife of the assessee. The addition in respect of 3,1490 gms jewellery belonging to the assessee's wife must also, therefore, stand deleted. As far as jangad gold jewellery of 402 .56 gms in the name of M/s. Kalindi Jewellers is concerned, we have noted the claim of the assessee that confirmatory letter of Kalindi Jewellers for Jangad jewellery of 402.56 gms was available at the time of survey. The inward of such jewellery was also recorded in the Jangad stock register. Yet, the Assessing Officer has not accepted the same. As he did so, he did not call for further enquiries either We have also noted that the jangad gold jewellery of 402 .56 gms received from Kalindi jewellers were later on purchased by Invoice No . 114 dated 1 .12 .2010 and entire amount of the said bill was paid through banking channel. The said purchase of gold is duly reflected on 17 .12 .2010 in the purchase register at Page No .173 of PB. However, the Assessing Officer has, without verifying purchase register available on record and invoices thereof produced during the assessment proceedings, has made addition of the value of 402.56 gms on account of jangad jewellery in the name of Kalindi Jewellers. In the light of these discussions, the addition in respect of 402.56 gms of jangad stock received from Kalaindi Jewellers

cannot be sustained either. In view of these discussions, as also bearing in mind entirety of the case, the entire addition of Rs 1,90,21,318 in respect of jangad stock must stand deleted. We, therefore, direct the Assessing Officer to delete this addition of Rs 1,90,21,318.

15. Ground no. 4 is thus allowed.

16. In ground no. 5, the assessee has raised the following grievance:

**5. On the facts and circumstances of the appellant's case and under the law, the Ld. CIT(A) has erred in confirming the addition of Rs. 14,63,550/- on account of "Silver Jangad Stock".**

17. So far as this grievance of the assessee is concerned, the addition of Rs 14,63,550 was made as the Assessing Officer, on an examination of details of silver stock- in respect of which the assessee had surrendered income of Rs 8,23,860 for excess silver stock of 27.462 kgs, the Assessing Officer declined to accept the claim of jangad stock of 8,250 gms silver from Mohanlal & Co, as the same was not disclosed during the survey, and that 40.535 kgs purchased from Chopra Brothers would have been received without accompanying bill. When assessee carried the matter in appeal, learned CIT(A) simply confirmed the action of the Assessing Officer. The assessee is not satisfied and is in further appeal before us.

18. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

19. We find that there is no dispute that Chopra Brothers had issued bill no 151 dated 25.10.2010 and bill no. 152 dated 27.10.2010, which suitably explain the purchase transaction, but the assessee's explanation that as the updation in the stock registers are done at the month end, these two entries could be made therein, cannot be disregarded. In any case, in the cross enquiries conducted by the Assessing Officer with Chopra Brothers, this aspect has been confirmed and the said confirmation is placed on record. One such an exercise is carried out by the

Assessing Officer, it has to be taken to the logical conclusion and it cannot be ignored by the Assessing Officer because the conclusion of the enquiry does not favour his stand. All the material in respect to this transaction were duly before the Assessing Officer and he did not probe the matter further, yet, because of his doubts, the addition has been made. Similarly, so far as jangad stock of 8.250 kgs received from Mohanlal & Sons is concerned, the transaction has been confirmed by the partner of that concern, which was subjected to the survey proceedings at the same point of time when the assessee was subjected to survey. In view of these discussions, as also bearing in mind entirety of the case, we delete this addition of Rs 14,63,550 as well.

20. In the result, ground no. 5 is also allowed.

21. In the result, the appeal is allowed. Pronounced in the open court today on the 5<sup>th</sup> day of September, 2019

Sd/-

**Justice P P Bhatt**  
(President)

Sd/-

**Pramod Kumar**  
(Vice-President)

**Ahmedabad, dated the 5<sup>th</sup> day of September, 2019**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*True Copy*

*By order*

*Assistant/Deputy Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*