

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM and Dr. (Shri) Arjun Lal Saini, AM]

I.TA No. 1293/Kol/2016 A.Y 2013-14

Vivek Rohatigi PAN: ADRPR2276D	Vs.	D.C.I.T, Central Circle-1(2), Kolkata
Appellant		Respondent

I.TA No. 1437/Kol/2016 A.Y 2013-14

A.C.I.T, Central Circle-1(2), Kolkata	Vs.	Vivek Rohatigi PAN: ADRPR2276D
Appellant		Respondent

Date of Hearing	01-08-2019
Date of Pronouncement	30.10.2019

For the Appellant	Shri Manish Tiwari, FCA, Id.AR
For the Respondent	Shri A.K. Nayak, CIT, Id.DR

ORDER

PER SHRI A.T. VARKEY, JM

The cross appeals, filed by the assessee and the Revenue pertain to Assessment Year 2013-14, are directed against the order dated 12.04.2016 passed by the Id.Commissioner of Income Tax (Appeals)-20, Kolkata. Since the issues involved in the cross appeals are common, both the appeals are being disposed off together by this order.

2. Ground No. 1 of the appeal filed by the assessee is against the Ld. CIT(A)'s action of confirming the addition of Rs.1,33,92,316/- made by the AO u/s 69A of the Income-tax Act, 1961 ('hereinafter referred to as 'the Act'). Brief facts of the case are that the assessee is an individual who is involved in the trading and manufacturing of jewellery. Search operation u/s 132 of the Act was conducted upon the assessee at the Patna Railway Station where he was travelling from Kolkata to Patna. In the course of search, gold jewellery weighing 8357 gms and silver coins weighing 5 kgs was found from his possession, and this was valued by

the Revenue's valuer at Rs.2,42,19,293/-. Since the assessee was not carrying proper supporting documentary evidences, the gold jewellery and silver was seized by the Income-tax Department. Apart from the foregoing, certain loose papers and pocket diaries were also found from the assessee's possession which was seized with ID mark MKJ/01 to MKJ/06, [Pages 81 to 172 of the paper book]. Further in the course of search, statement of the assessee u/s 132(4) of the Act was recorded wherein he explained the source of the jewellery and silver coins found from his possession, [copy of which is available at Pages 72 to 80 of the paper book]. Consequent thereto survey operations were conducted at the office premises of the assessee at Kolkata and certain documents and loose papers with ID mark SD/01 to SD/03 were found and impounded by the Income-tax Department. In the assessment proceedings which followed the said search and survey operations, the assessee was required to substantiate the source of the jewellery and silver coins valued at Rs.2,42,19,293/-. In response the assessee [vide his letter dated 02.02.2014, which has been reproduced at Pages 3 to 4 of the assessment order], explained the source of the jewellery and silver coins found from his possession. The AO vide order sheet entry dated 02.02.2015 required the assessee to produce all his customers to substantiate the explanation furnished, to which the assessee expressed his inability to produce them but requested the AO to issue necessary statutory notices to them for attending the assessment proceedings. After examining some of the customers u/s 131 of the Act, and after perusal of the sworn affidavits furnished by the assessee from the customers, and after verifying the stock-register and books of accounts, the AO found that the source of gold jewellery and silver coins valuing Rs.1,08,26,977/- was established by the assessee and hence held the same to be explained. The AO however was not satisfied with documents and evidences furnished by the assessee in support of the remaining sum of Rs.1,33,92,316/- and hence added it by way of unexplained asset of the assessee u/s 69A of the Act. Aggrieved by the impugned addition, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the same. Being aggrieved by the Ld. CIT(A)'s order, the assessee is now in appeal before us.

3. Assailing the action of the Ld. CIT(A), the Ld. AR submitted that the assessee originally acted as a courier for different jewellery firms & concerns for deliveries and carrying them for repairs/re-modeling etc. He submitted that the assessee had thereafter set-up a modest business of purchase & sale of gold jewellerys and repairs & manufacturing

was done through karigars on a small scale. The Ld. AR thereafter submitted that the gold jewellery weighing 8357 gms found from the assessee's possession comprised of gold jewellery which he was carrying as courier for different jewellery firms & concerns and also the gold jewellery which he had got repaired / made for his customers. He pointed out that the AO had accepted the source of gold jewellery weighing 3319.44 gms which the assessee was carrying for jewellery firms, M/s Alankar Gems and M/s Sevika Diamond and also the gold jewellery weighing 278.100 gms reflected in his stock register. As regards the remaining jewellery weighing 4759.460 gms which was held to be unexplained by the AO, the ld. AR of the assessee explained that 700 gms and 548.300 gms belonged to one M/s Vikram Jewellers and Mr. Navtran Soni, jewellers on whose behalf the assessee was carrying gold jewellery to Patna. The Ld. AR further pointed out that 461.550 gms was jewellery made out of gold purchased by the assessee from M/s Magna Project. In respect of the remaining 3049.61 gms (4759.460– 700 - 548.300 - 461.550), the ld. AR submitted that it belonged to several customers of the assessee who had given their gold jewellery for repair work to the assessee. In support thereof, the Ld. AR referred to the sworn affidavits furnished by some of the customers, which are placed at Pages 33 to 38 of the paper book. He thus claimed that the source of remaining jewellery weighing 3049.61 gms was also explained by the assessee before the lower authorities who had erred in not correctly appreciating the evidences placed before them. The Ld. AR thus prayed that the impugned addition be deleted.

4. Per contra the Ld. CIT, DR appearing on behalf of the Revenue vehemently supported the order of the lower authorities. He submitted that the AO had objectively considered the evidences furnished before him in support of the source of jewellery and had rightly treated the jewellery worth Rs.1,33,92,316/- to be unexplained. He submitted that the assessee had failed to produce any of the customers before the AO to substantiate the genuineness of his claim and in that view of the matter, according to him there was no reason to interfere by us with the order of the lower authorities.

5. We have heard the rival submissions and perused the material placed on record. The issue involved in this ground is whether the lower authorities were justified in treating the gold jewellery weighing 4759.46 gms valued at Rs.1,33,92,316/- as unexplained asset of the

assessee u/s 69A of the Act. From the facts on record it is discerned that the assessee is an individual, who acts as a courier of jewellery and while doing so, collects and delivers jewellery for and on behalf of jewelers; And he also undertakes purchase & sale of gold jewellery on a modest scale under the name & style, M/s S.D. Enterprises. Out of the total gold jewellery weighing 8357 gms found from the assessee's possession at the Patna Railway station, the assessee had claimed that he was carrying gold aggregating 4567.74 gms for and on behalf of other jewelers namely M/s Alankar Gems, M/s Sevika Diamonds, M/s Vikram Jewellers and Mr. Navranta Soni. To verify the claim of the assessee, the AO had issued summons u/s 131 to all four parties, out of which M/s Alankar Gems and M/s Sevika Diamonds attended the summons and confirmed to the AO that the assessee was acting as a courier on their behalf to deliver jewellery for and on their behalf to their customers in Patna. As far as Mr. Navratna Soni is concerned, it is noted that although the summons was served on him he did not turn up before the AO. So, the AO was of the view that the assessee's explanation to be partially acceptable to the extent of gold jewellery weighing 3319.44 gms which he carried on behalf of M/s Alankar Gems and M/s Sevika Diamonds, but treated the gold jewellery weighing 1248.30 gms claimed to have been carried on behalf of Mr. Navranta Soni to be unexplained. However we are of the opinion that although the summons was not attended by Mr. Navranta Soni but the assessee had furnished the copy of the bailment of the jewellery from Mr. Navratna Soni, which fact the AO acknowledges at Para 8.2 on Page 4 of the assessment order. Hence, when the contention of the assessee that, he was acting as a courier for other jewellers to deliver their gold jewellery to customers was found to be factually correct from the sworn statements recorded from M/s Alankar Gems and M/s Sevika Diamonds u/s 131 of the Act, then we hold it plausible to believe the assessee's version with regard to the jewellery which he carried on behalf of Mr. Navratna Soni in the light of the fact that assessee produced the copy of the bailment of the jewellery from Mr. Navratna Soni, The case of the Revenue to draw adverse inference against the jewellery of Mr. Navratna Soni is only on the fact that Mr. Soni did not personally appear before him. In our opinion however when two out of the four parties had personally confirmed that the assessee indeed also acted as courier for delivering gold jewellery and the relevant documentary evidences in form of bailment, etc. had been placed on record, then in our considered view the assessee had discharged his initial onus of establishing the source of gold jewellery received from Mr. Navranta Soni.

The assessee therefore gets credit for the 548.30 gms of gold jewellery which he carried on behalf of Navranta Soni.

6. We however find that neither before the lower authorities nor before us, the Ld. AR of the assessee was able to bring on record any tangible material to substantiate he was carrying jewellery weighing 700 gms belonging to M/s Vikram Jewellers for delivery purpose. In absence of any convincing material brought on record in support of his explanation, we therefore hold that the lower authorities were justified in considering jewellery weighing 700 gms allegedly belonging to M/s Vikram Jewellers constituted unexplained investment of the assessee. Accordingly we uphold the addition on account of 700 gms and delete the addition to the extent of 548.30 gms received from Mr. Navranta Soni holding it to be explained.

7. In respect of the assessee's claim for credit of gold bar of 99.50 fineness of 461.550 gms purchased from M/s Meghna Projects Pvt Ltd, we note that the lower authorities did not allow the benefit on the sole premise that according to them the gold bar could not have been converted into gold jewellery within a span of two days. In our considered view this reasoning given by the lower authorities is based on pure conjecture and surmise and is not backed by any tangible material or corroborative evidence in the form of any expert jeweller opinion. We also find merit in the Ld. AR's contention that it is common practice in this line of trade, where the jeweller takes gold jewellery having lower cartage from karigars in exchange of gold bars having higher cartage and therefore it was possible for the assessee to get the gold bars exchanged for gold jewellery within a span of two days. It is further noted that the lower authorities have not disputed the assessee's explanation that gold bar weighing 461.550 gms was in fact purchased and they have also not disputed the source of acquisition. The only ground for disbelieving the explanation is that the gold bar could not have been made into jewellery within short span. Moreover, we find that simultaneously with the search conducted of the assessee's persona at the railway station at Patna, survey was also conducted at the business premises of the assessee at Kolkata and therefore the gold purchased in the form of gold bar should have been found at the time of search or survey, which admittedly was not found by the tax authorities. In the foregoing circumstances once the purchase of gold weighing 461.550 gms was accepted by the

Revenue and the same was not found at the time of search/survey as discussed, then the only logical conclusion that one can draw is that the jewellery found from the personal possession of the assessee which corresponded to the quantity of gold bar purchased, originated from the said gold. We therefore direct the AO to give credit for 461.550 gms and delete the addition of the corresponding value.

8. Before the AO the assessee had further explained that jewellery weighing 2248.610 gms belonged to his several customers and individual customer wise details were furnished. In order to substantiate the said explanation, the AO required the assessee to produce customers in person vide his order sheet noting dated 02.02.2015. In response the assessee had explained that it was not legally possible for him to enforce attendance of these parties before the AO since the assessee did not have any statutory power to do so. He therefore requested the AO to issue notices u/s 131 of the Act to the respective parties for enforcing attendance. Additionally in respect of seven customers namely Madhu Agarwal, Sumitra Rungta, Rita Verma, Triveni Gope, Santosh Devi, Asha Singh & Rakesh Kumar Sharma, the assessee had filed duly sworn affidavits in support of the explanation furnished in this regard. In respect of remaining customers from whom the assessee had received jewellery weighing 842.340 gms, the assessee was unable to furnish any more information or documentary evidences. The AO however rejected the explanation offered in its entirety and proceeded to assess it as unexplained investment u/s 69A of the Act. After considering the facts and circumstances and documents on record, we are of the opinion that the lower authorities were not entirely justified in drawing adverse inference in respect of jewellery weighing 2248.610 gms which the assessee claimed that it belonged to his customers. It is not in dispute that the assessee was engaged on a marginal scale in the business of dealing in jewellery. In the jewellery business, it is customary practice for the retail customers to handover the jewellery to the small jewelers for the purpose of remaking/remodeling of the existing jewellery. Having regard to the custom and practice regularly followed in the jewellery trade, it was therefore not an unusual phenomenon for the assessee to have in his possession jewellery belonging to his customers. No doubt the onus was on the assessee to identify the individual items of jewellery and owner thereof and establish their identity before the AO. We find that in discharge of such legal obligation of identifying the individual customers to whom the jewellery weighing 2248.610 gms belonged, the

assessee had furnished individual customer wise list. On receipt of such information the AO only required the assessee to produce the customers in person for his verification. Since the assessee did not possess requisite statutory powers of enforcing attendance, he had furnished affidavits from seven customers to whom jewellery totaling 1406.27 gms belonged. We find that in the affidavits duly sworn in, the seven parties had individually confirmed ownership of jewellery found from the assessee at the time of search at the Patna Railway Station. We find that in the affidavits the customers had given their addresses and also affirmed the ownership of the jewellery found from the assessee. After having received these affidavits, the AO did precious little to disprove the averments made by each deponent but simply chose to reject these affidavits solely on the ground that the assessee failed to produce these parties for his examination. We are of the opinion that once the assessee had filed affidavits from the customers, the onus on proving the transactions with the parties was discharged and the burden shifted on the AO to disprove the transaction by bringing on record some tangible material to show that the averments made in the affidavit or the explanation offered by the assessee was false or factually incorrect. We however find that having received these affidavits, no manner of any further enquiry was carried out by the AO. We find that in other cases where the assessee had claimed the jewellery belonged to jewelers or karigars, the AO had issued notices u/s 131 of the Act. However in the case of jewellery belonging to the customers, no enquiry from the customers were carried out by the AO by issuing notices u/s 131 of the Act, even though in the sworn affidavits complete address of the customers were available. Having regard to the foregoing facts and also having regard to the trade and custom practiced in the jewellery business and also having regard to the volume of assessee's business, we are of the opinion that the assessee's explanation with regard to jewellery weighing 1406.27 gms belonging to seven customers should have been accepted by the AO. However as regards jewellery weighing 842.340 gms, we find no further evidences were submitted by the assessee either before the lower authorities or before us to substantiate his explanation. We therefore direct the AO to delete the addition made with reference jewellery weighing 1406.27 gms and uphold the addition of jewellery weighing 842.340 gms.

9. For the reasons set out in the foregoing therefore we uphold the addition to the extent of 2343.34 gms (4759.460 – 548.300 – 461.550 – 1406.270) out of 4759.460 gms equivalent

to Rs.65,93,763/- and accordingly assessee gets relief of Rs.67,98,553/-. Ground No. 1 is therefore partly allowed.

10. Ground No. 2 of the assessee's appeal and the Ground Nos. 1 to 5 of the Revenue's appeal are inter-connected and are therefore considered together. Brief facts of this issue are that during the course of search, certain pocket diaries and loose documents bearing ID mark MKJ/01 to MKJ/06 was seized from the possession of the assessee. In the course of assessment the AO noted that the document bearing ID mark MKJ/5 contained notings regarding inward and outward movement of gold which according to him did not form part of the regular books of the assessee. The AO therefore considered the peak noting of 6529.06 gms of gold to be in the nature of unexplained investment made by the assessee in gold valued at Rs.2,04,69,909/- which was added u/s 69B of the Act. The AO further noted that MKJ/1, MKJ/2 & MKJ/4 contained notings of sale of gold & jewellery by the assessee. As far as notings in MKJ/1 was concerned, the AO observed that it contained notings of sale of gold. Granting the benefit of telescoping against the addition made on account of unexplained investment in gold, no further addition was made by the AO by way of undisclosed sale of gold. The AO however noted that MKJ/2 & MKJ/4 contained notings of sale of gold jewellery aggregating to Rs.2,23,09,128/- which he added separately by way of undisclosed income of the assessee. Aggrieved by this order, the assessee went in appeal before the Ld. CIT(A). On appeal the Ld. CIT(A) restricted the addition to Rs.18,39,219/- by observing as under:

“ I have considered the finding of the AO for both the above discussed and I have also considered the written submission filed and the oral submission made by the AR during the appellate proceedings. I think, additions for the sale of unaccounted of jewellery items logically demands for availability of stock of gold or purchase of gold for making such jeweleries. Here in this case as nothing was available or found as a stock with the assessee, so naturally in order to accept sale of unaccounted Jewellery items, argument of purchase of unaccounted gold has to be accepted. It is because gold jewellery items cannot be made out of air. There has to be gold in any form in order to convert it/make it in jewellery form. Here, the AO has made an addition for both, purchase of unaccounted gold as well as for sale of unaccounted gold. Logically it is not acceptable. In case sale of gold jewellery item is accepted, then purchase of gold is also to be accepted. Accordingly, both these additions are overlapping. So in order to accept AO's

finding of sale of jewellery item of Rs.22309128/-, purchase of gold of Rs. 20469909/- is to be accepted. Therefore, addition on account of unaccounted sales may be Rs.22309128/- minus Rs.20469909/- i.e. Rs.1839219/-. Accordingly, AO's addition of Rs.22309128/- + Rs.20469909 / - is restricted to Rs.1839219/ -. Hence, assessee's appeal on grounds no 5 to 10 are partly allowed.”

11. Assailing the aforesaid decision of the Ld CIT(A), the Ld. CIT, DR appearing on behalf of the Revenue contended that the ld. CIT(A) had not correctly appreciated the logical inferences drawn by the AO while making the impugned additions. According to him the ld. CIT(A) failed to appreciate that the assessee had two separate and distinct business i.e. (a) trading of raw gold and (b) trading in gold jewellery. According to him therefore the notings found in MKJ/1 & MKJ/5 which contained notings of trading in raw gold alone could be read together, and that the ld. CIT(A) erred in correlating MKJ/2 & MKJ/4, which contained notings of sale of gold jewellery, with MKJ/5 and thereby wrongly allowed set-off for sale of gold jewellery against the unexplained investment in raw gold. To buttress his contention, the ld. CIT, DR invited our attention to the contents of MKJ/1 to MKJ/5 to show that the gap between the dates of purchase of raw gold and sale of gold jewellery was 2-5 days. According to him it was not humanly possible to convert gold into gold jewellery within a span of 2-5 days, which therefore negated the assessee's theory that the gold jewellery sold was made out of the unexplained investment in gold. The Ld. DR thus contended that the addition of unexplained investment of Rs.2,04,69,909/- made by the AO was required to be upheld. As regards the addition of Rs.2,23,09,128/- made on account of undisclosed sales, he relied on the order of the AO. He therefore contended that both the additions made by the AO be upheld.

12. The ld. CIT, DR alternatively contended that in case the assessee's theory that the gold jewellery sold was made out of the unexplained investment in gold is upheld, then the sum total of unrecorded sales ought to be taken at Rs.3,23,30,332/- i.e. unrecorded sales of gold of Rs.1,00,21,204/- found in MKJ/1 but not separately added by the AO, and Rs.2,23,09,128/- being unrecorded sales of jewellery found in MKJ/2 & MKJ/4. He thus prayed that after deducting the unexplained investment of Rs.2,04,69,909/- from unrecorded sales, addition of Rs.1,18,60,423/- (3,23,30,332-2,04,69,909) atleast ought to be upheld.

13. Per contra, the ld. AR supported the order of the Ld. CIT(A). He contended that the Ld. CIT(A) had rightly considered the notings found in MKJ/5, MKJ2 & MKJ/4 together. He argued that it is logical to presume that the gold jewellery sold by the assessee was made out of raw gold purchased by the him and in that view of the matter the Ld. CIT(A) was right in assessing only the profit element of Rs.18,39,219/- embedded in the purchase of gold and sale of gold jewellery. He however further submitted that in case any addition on account of unexplained asset in the form of gold jewellery u/s 69A is upheld, then the assessee ought to be granted the benefit of telescoping such estimated profit against the addition, if any, upheld on account of unexplained asset i.e. jewellery. In support thereof, he placed reliance on the decision of Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co Vs. CIT reported in 123 ITR 457, which was followed by the Hon'ble Bombay High Court & Punjab & Haryana High Court in the cases of CIT Vs. Jawanmal Gemaji Gandhi reported in 151 ITR 353 and CIT Vs. Prem Chand Jain reported in 189 ITR 320 respectively.

14. We have considered the rival submissions and perused the documents, which were found and seized in the course of search and impounded in the course of survey. We have also examined the orders of authorities below and considered the rival submissions. On due consideration of the facts and circumstances, we find that both the lower authorities misdirected themselves in drawing inferences from the documents and records found and seized. Admittedly the documents found in the course of search were in the nature of diaries or records, which were not maintained in the ordinary course of business. The notings were found in the diaries or other documents which contained notings in abbreviated form made randomly and therefore in order to draw logical inference from such stray and adhoc notings one must apply some logic. We note that in AO's opinion notings found recorded in MKJ/5 which were only gold quantities pertained to the period December 2012 & January 2013. Taking into account the peak stock as on 07.01.2013, which was 6529.06 gms the AO made addition of Rs.2,04,69,909/- being peak undisclosed investment in stock. We however find that besides the notings made in the loose diary, there was no further material available with the AO which in any manner established that the assessee had actually invested any of his income in purchase of such gold or such gold stock was actually available with the assessee or whether such quantity of gold actually belonged to the assessee. These notings therefore

need to be viewed in the context that the assessee regularly performed the work as a courier or re-making/re-modelling of jewellery on behalf of his customers and therefore he was expected to maintain the record of the jewellery belonging to third parties and which were handled through him. In the circumstances therefore only with reference to the stray quantities giving quantitative details cannot be sole basis for concluding that the quantity of gold noted in the loose diary MKJ/5 actually belonged to the assessee. As regards the entries in MKJ/1 and MKJ/2 & MKJ/4, we find that these documents contained details of sale of gold and gold jewellery, part of which was found recorded in the regular books of accounts. After detailed examination of the books of accounts and the notings found in these documents, the AO found that the total quantum of unrecorded sales on account of gold and gold jewellery was of Rs.1,00,21,204/- & Rs.2,23,09,128/- respectively. According to AO the entire sale proceeds of Rs.2,23,09,128/- found recorded in MKJ/2 & MKJ/4 represented assessee's undisclosed income. On appeal the Ld. CIT(A) however held that entries both in respect of gold purchased recorded in MKJ/5 and gold jewellery sold recorded in MKJ/2 & MKJ/4 was required to be treated as undisclosed. He however concluded that since for sale of gold jewellery purchase of gold was necessary, he applied the principle of telescoping and netted off cost of purchase against sales and confirmed the addition of Rs.18,39,219/- which is the differential amount between the unrecorded sales of Rs.2,23,09,128/- and alleged unrecorded investment in gold of Rs.2,04,69,909/-.

15. We are of the considered opinion that the manner in which the Ld. CIT(A) dealt with the issue was not appropriate on the facts of the case. It is not in dispute that the sales recorded in MKJ/1 was also unaccounted sale of gold and therefore in arriving at income of the assessee such sale value of Rs.1,00,21,204/- was required to be taken into account by the Ld. CIT(A) which he failed to consider. If such sale value is also taken into account, then the sum total of unrecorded sales works out to Rs.3,23,30,332/-. We however find substantial force in the submissions of the Ld. AR that the assessee being a dealer in gold & gold jewellery, he was required to incur the cost of purchase. In the circumstances the gross sale proceeds found recorded in the stray notings by itself could not have been assessed as income of the assessee. It is settled proposition that in case where the notings are found in the course of search giving particulars of unrecorded sales, then for arriving at the true taxable income, only the profit attributable to such unrecorded sales has to be included in

the total income. Having regard to the facts and circumstances of the case, we are of the considered opinion that in the line of assessee's business, the profit margin 8% will be considered to be reasonable profit. Applying the profit margin of 8% to the undisclosed notings of purchase and sale found in MKJ/5, MKJ/1, MKJ/2 & MKJ/4; the profit element works out to Rs.25,86,426/- which in our opinion could be assessed as assessee's income in respect of unrecorded transactions found noted in the seized records. The AO is accordingly directed to consider such amount as assessee's income while framing the order giving effect to this appellate order.

16. We however also find force in the Ld. AR's further alternate submission that in the event any income from unrecorded purchase & sale transactions is estimated then the benefit of telescoping should be allowed against the addition made on account of unexplained investment u/s 69A of the Act. The assessee's alternative contention in this regard, is found to be supported by the decision of the Hon'ble Supreme Court in the case of *Anantharam Veerasinghaiah & Co Vs. CIT (supra)* wherein it was held as follows:

“8. There can be no escape from the proposition that the secret profits or undisclosed income of an assessee earned in an earlier assessment year may constitute a fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. But it is quite another thing to say that any part of that fund must necessarily be regarded as the source of unexplained expenditure incurred or of cash credits recorded during a subsequent assessment year. The mere availability of such a fund cannot, in all cases, imply that the assessee has not earned further secret profits during the relevant assessment year. Neither law nor human experience guarantees that an assessee who has been dishonest in one assessment year is bound to be honest in a subsequent assessment year. It is a matter for consideration by the taxing authority in each case whether the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or they are reasonably explained by reference to concealed income earned in that very year. In each case the true nature of the cash deficit and the cash credit must be ascertained from an overall consideration of the particular facts and circumstances of the case. Evidence may exist to show that reliance cannot be placed completely on the availability of a previously earned undisclosed income. A number of circumstances of vital significance may point to the conclusion that the cash deficit or cash credit cannot reasonably be related to the amount covered by the intangible addition but must be regarded as pointing to the receipt of undisclosed income earned during the assessment year under consideration.”

17. Since the assessee's transactions of purchase & sale preceded the date of search when unexplained jewellerys were found, the necessary inference which one should draw is that the income which the assessee had earned from his undisclosed trading transactions in gold and jewellerys was re-invested in purchase of jewellerys which were found from his possession at the time of search. Accordingly we hold that the profit of Rs.25,86,426/- determined with reference to the notings found in the seized documents should be telescoped against the addition of Rs.65,93,763/- as confirmed in Para 8 above and accordingly no separate addition of Rs.25,86,426/- shall be made. Ground No. 2 of the assessee and Ground Nos. 1 to 5 of the Revenue are therefore partly allowed.

18. Ground Nos. 3 & 4 of the appeal filed by the assessee were not pressed by the Ld. AR and are therefore dismissed.

19. In the result, the appeals of the assessee and revenue are partly allowed.

Order Pronounced in the Open Court on 30 October, 2019

Sd/-
Arjun Lal Saini
Accountant Member

Sd/-
A.T. Varkey
Judicial Member

Dated 30 -10-2019

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Vivek Rohatgi PAN: ADRPR2276D, 7 Hanspukur, 1st Fl., 1st Lane, Kolkata-7.
2. Respondent/Revenue: The DCIT/ACIT, Cir-1(2), Aaykar Bhawan, Poorva, 110 Shanti Pally, Kolkata-7.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order Assistant Registrar
ITAT Kolkata