

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 194/Mum/2018
(Assessment Year: 2014-15)**

DCIT-Central Circle-8(3)
(erstwhile DCIT, Central Circle-46
Room No.659, Aaykar Bhavan,
M.K.Road, Churchgate, Mumbai 400 020

Shri Manekchand Kothari
A/7 Bharat Nagar, MS Ali Road, Grant Road,
Mumbai-400 007 (Maharashtra).

Vs.

PAN – AEJPK7982J

(Appellant)

(Respondent)

Appellant by: Shri H.N. Singh, CIT/DR

Respondent by: Shri Chetan A Karia, A.R

Date of Hearing: 09.12.2019

Date of Pronouncement: 17.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-50, Mumbai, dated 25.10.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 29.03.2016 for A.Y. 2014-15. The revenue has assailed the impugned order on the following ground of appeal before us :-

- “1. Whether on the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in deleting the addition of Rs.1,95,88,013/- u/s. 69A on account of unexplained jewellery by not appreciating the preponderant improbability brought by the Assessing Officer.”
2. Briefly stated, the assessee had filed his return of income for A.Y 2014-15 on 30-07-2014, declaring a total income of Rs. 2,00,900/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.
3. Search and seizure proceedings were conducted on 11.06.2013 at the residential premises of the assessee and his family members. In the course of the search proceedings

diamond jewellery of an aggregate value of Rs. 2,70,72,253/- was found. As the main persons of the assessee group were not available at the time of the search proceedings, therefore, their statements could not be recorded under Sec. 132(4) of the Act. Statement of Smt. Dimple Mahesh Kothari (daughter-in-law of the assessee) who was available at the time of the search proceedings was recorded under Sec. 132(4) of the Act. However, in her statement she expressed her inability to explain the source of acquisition of the aforesaid diamond jewellery. Subsequently, the statement of Shri Rakesh Manekchand Kothari (son of the assessee) was recorded on 08.08.2013 i.e at the time of revocation of the prohibitory order in the presence of other family members. On being confronted with the details of the diamond jewellery which was found in the course of the search proceedings, it was submitted by him that the same belonged to him and his family members. As regards the source of acquisition of the aforesaid diamond jewellery, it was submitted by him viz. (i) that, diamond jewellery of a value aggregating to Rs. 1,23,95,850/- was sourced out of the cut and polished diamonds which were purchased in the month of May, 2013 in the name of S/smt. Dimple Kothari and Nikki Kothari (daughters-in-law of the assessee) and Smt. Devuben Kothari (wife of the assessee) from certain jewellers viz. M/s Opulent Jewels Pvt. Ltd., M/s H.D.K. international Pvt. Ltd. and M/s Shree Shyam International; (ii) that, the old diamond jewellery found during the search proceedings was duly disclosed in the wealth tax returns of his family members; (iii) that, certain diamond jewellery belonged to Shri Rajesh Kothari and his wife Smt. Shilpa Kothari (non-resident son and daughter-in-law of the assessee), which matched with the respective 'valuation reports' of the government approved valuers prepared way back in the year 1994 and 2005; (iv) that, the diamond jewellery that was found on the person of Smt. Nikki Kothari during the course of the search proceedings was her *stree dhan* that was received by her on various occasions; and (v) that, the diamond jewellery that was found in the course of the search proceedings from Shop No. 8 Bapty Road, Daval Bhuvan, Kamathipura, Mumbai was purchased in cash, though no supporting bills as regards the same had been retained. Thereafter, the statement of the assessee was also recorded under Sec. 132(4) on 07.08.2013. In his statement, the assessee also came forth with a similar explanation as regards the source of acquisition of the diamond jewellery that was found in the course of the search proceedings.

4. In the course of the assessment proceedings, the assessee on being called upon to explain the source of acquisition of the diamond jewellery of an aggregate value of Rs.2,70,72,255/- that was found in the course of the search proceedings, therein reiterated his earlier reply. It was the claim of the assessee before the A.O that in May, 2013 i.e prior to the search proceedings cut and polished diamonds were purchased by him (on credit) in the name of his family members viz.(i) Smt. Devuben Kothari: Rs.63,09,275/-; (ii) Smt. Dimple Kothari: Rs.25,18,081/-; and (iii) Smt. Nikki Kothari: Rs.35,68,494/- from certain jewellers viz. M/s Opulent Jewels Pvt. Ltd., M/s H.D.K. international Pvt. Ltd. and M/s Shree Shyam International, which thereafter were given to certain parties for making of diamond jewellery. It was the claim of the assessee that the aforesaid diamond jewellery was found in the course of the search proceedings. On a perusal of the details, it was observed by the A.O that the assessee had claimed to have paid the purchase consideration of the cut and polished diamonds to the aforesaid jewellers on 09.07.2013 i.e subsequent to the search proceedings. On being queried by the A.O that as to whether in the past 10 years he had ever carried out a similar purchase of diamonds, the assessee replied in the negative. On a query raised by the A.O as to what was the occasion for purchasing the diamonds, it was submitted by the assessee that he had made the investment as at the relevant point of time the purchase value of diamonds had witnessed a fall. However, the A.O was not satisfied with the genuineness of the aforesaid claim of the assessee. Observing, that the assessee in his attempt to justify his unexplained investment in the diamond jewellery that was found in the course of the search proceedings had come up with a concocted story, the A.O declined to accept the same. As such, the explanation of the assessee that he had purchased cut and polished diamonds before the search proceedings in the name of his family members viz. (i) Smt. Devuben Kothari: Rs.63,09,275/-; (ii) Smt. Dimple Kothari: Rs.25,18,081/-; and (iii) Smt. Nikki Kothari: Rs.35,68,494/-, which thereafter were given to certain jewellers for making of diamond jewellery was rejected by the A.O. As regards the claim of the assessee that part of the diamond jewellery belonged to his NRI son and daughter-in-law viz. Shri Rajesh Kothari (Rs.10,15,373/-) and Smt. Shilpa Kothari (Rs.12,39,346/-), who in their absence from India had kept their jewellery with him, also did not find favour with the A.O. Further, as the assessee was unable to substantiate on the basis of supporting documentary evidence that the balance diamond jewellery of a value of Rs. 49,37,444/- was acquired by him from his explained sources, the A.O declined to accept the said claim of the

assessee. On the basis of his aforesaid observations, it was concluded by the A.O that the assessee had made an unaccounted investment in diamond jewellery of a value aggregating to Rs.1,95,88,013/-.

5. Aggrieved, the assessee assailed the assessment before the CIT(A). Observing, that the assessee had adduced all the evidences in the form of old 'valuation reports' as regards the jewellery belonging to Smt. Shilpa Kothari (NRI-daughter in law) and Mr. Rajesh Kothari (NRI-son), purchase bills of diamonds, remaking bills for conversion of the diamonds into jewellery and payment details in support of its acquisition, both at the time of the post search proceedings and also in the course of the assessment proceedings, the CIT(A) found favour with the claim of the assessee and vacated the addition of Rs. 1,46,50,569/- [Rs. 1,23,95,850/- (+)Rs.10,15,373/- (+) Rs.12,39,346/-] that was made by the A.O. As regards the claim of the assessee that the balance diamond jewellery of Rs. 49,37,444/- was acquired by him out of the withdrawals made over the years, the CIT(A) after considering the status of the assessee's family and the fact that there were substantial cash withdrawals aggregating to Rs. 1.36 crores over the years vacated the addition to the extent of Rs. 24,68,722/- [50% of Rs.49,37,444/-]. Accordingly, the CIT(A) on the basis of his aforesaid observations partly allowed the appeal of the assessee.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') took us through the facts of the case. It was submitted by the Id. D.R that a perusal of the assessee's explanation as regards the source of acquisition of the diamond jewellery of a value of Rs.1,23,95,850/- , revealed beyond doubt that the same was nothing short of a concocted story. It was submitted by the Id. D.R that the claim of the assessee that he had purchased cut and polished diamonds in the month of May, 2013 i.e. immediately prior to the search proceedings, which thereafter were converted into diamond jewellery, did not inspire any confidence. It was submitted by the Id. D.R that the CIT(A) was in error in accepting the unsubstantiated explanation of the assessee. It was further submitted by the Id. D.R that the fact that no 'purchase bills' evidencing any such purchase of diamond jewellery were found in the course of the search proceedings further evidenced the falsity of the claim of the assessee. Further, it was submitted by the Id. D.R that the claim of the assessee that certain diamond jewellery found in the course of the

search proceedings belonged to Mr. Rajesh Kothari (NRI-son) and Smt. Shilpa Kothari (NRI-daughter in law), being an unsubstantiated claim was also rightly rejected by the A.O. As regards the claim of the assessee that the purchase of the balance diamond jewellery of Rs.49,37,444/- was sourced from his withdrawals made over the years, it was submitted by the Id. D.R that as the assessee had failed to corroborate his aforesaid claim on the basis of any supporting documentary evidence, therefore, the A.O had rightly held the same as an unexplained investment of the assessee under Sec. 69A of the Act.

7. Per contra, the Id. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was submitted by the Id. A.R that it was incorrect on the part of the A.O to conclude that the assessee had failed to provide any explanation as regards the source of acquisition of the diamond jewellery of a value of Rs.1,95,88,013/- that was found in the course of the search proceedings. It was submitted by the Id. A.R that as the main persons of the assessee group were not present at the time of the search proceedings, therefore, their statements could not be recorded and an explanation as regards the source of acquisition of the diamond jewellery could not be provided at the relevant point of time. It was submitted by the Id. A.R, that Shri Rakesh Manekchand Kothari (son of the assessee) in his statement recorded on 08.08.2013 had categorically explained the complete source of acquisition of the diamond jewellery that was found in the course of the search proceedings. It was vehemently submitted by the Id. A.R, that despite the fact that the assessee had placed on record the 'purchase bills' of the diamonds and also supporting documentary evidence as regards remaking of diamond jewellery, along with the details of the payments that were made for purchase of cut and polished diamonds to the aforementioned jewellers, the A.O had most arbitrarily without making any verification dislodged the said claim of the assessee and had drawn adverse inferences as regards the genuineness and the veracity of the aforesaid transactions. It was submitted by the Id. A.R that the A.O had grossly erred in drawing adverse inferences and therein dislodging the duly substantiated claim of the assessee de hors any verifications from the aforementioned respective parties. On the basis of his aforesaid contentions, it was the claim of the Id. A.R that the A.O had most arbitrarily on the basis of assumptions, presumptions, surmises and conjectures concluded that the assessee had made an unexplained investment within the meaning of Sec. 69A in diamond jewellery of a value of

Rs.1,95,88,013/-. Further, it was submitted by the Id. A.R that involving identical facts the co-ordinate bench of the Tribunal viz. ITAT "B" Bench, Mumbai had deleted similar additions which were made by the A.O in the case of the related parties of the assessee viz. (i) DCIT, CC-8(3), Mumbai Vs. Shree Bhawarlal S. Kothari, ITA No.195/Mum/2018, the order dated 19.08.2019 and (ii) DCIT, CC-8(3), Mumbai Vs. Shri Prithviraj Kothari, ITA No. 196/Mum/2018, dated 09.04.2019. It was the claim of the Id. A.R that the CIT(A) after appreciating the facts of the case had in all fairness sustained the addition on an estimate basis to the extent of Rs.24,68,722/- [50% of Rs.49,37,444/-]. It was averred by the Id. A.R that as the appeal of the revenue was devoid of any merit, therefore, the same may be dismissed.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, diamond jewellery of a value aggregating to Rs.2,70,72,255/- was found in the course of the search proceedings conducted at the premises of the assessee and his family members. As is discernible from the assessment order, the A.O did not find favour with the explanation of the assessee as regards the source of acquisition of diamond jewellery of a value of Rs. 1,95,88,013/-. As observed by us hereinabove, the explanation of the assessee as regards the source of the aforesaid diamond jewellery of a value of Rs.1,95,88,013/- comprised of three parts viz.(i) that, diamond jewellery of a value of Rs.1,23,95,850/- was sourced out of the cut and polished diamonds which were purchased in the month of May, 2013 in the name of S/ssmt. Devuben Kothari, Dimple Kothari and Nikki Kothari from M/s Opulent Jewellers Pvt. Ltd., M/s H.D.K. International Pvt. Ltd. and M/s Shree Shyam International; (ii) that, the diamond jewellery of a value of Rs.10,15,373/- belonged to Shri Rajesh Kothari (Non-resident son); (iii) that, diamond jewellery of a value of Rs.12,39,346/- belonged to Smt. Shilpa Kothari (Non-resident daughter-in-law); and (iv) that, the balance diamond jewellery of a value of Rs.49,37,444/- was purchased out of withdrawals that were made over the years. As the explanation of the assessee did not find favour with the A.O, therefore, he had held the entire value of the diamond jewellery of Rs.1,95,88,013/- as an unexplained investment of the assessee under Sec. 69A of the Act. On appeal, the CIT(A) accepted the explanation of the assessee insofar the source of acquisition of diamond jewellery of Rs.1,46,50,569/- [Rs.1,23,95,050/- (+)Rs.10,15,373/- (+) Rs.12,39,346/-] was concerned. As

regards the balance addition of Rs.49,37,444/-, the same was restricted by the CIT(A) to the extent of Rs.24,68,722/- [50% of Rs. 49,37,444/-].

9. We shall first advert to the addition of the value of the diamond jewellery aggregating to Rs.1,23,95,850/- made by the A.O under Sec.69A of the Act. As is discernible from the assessment order, the aforesaid addition pertained to the diamond jewellery which was claimed by the assessee to have been sourced from the diamonds which were purchased just before the search action i.e in the month of May, 2013, in the name of S/ssmt. Devuben Kothari, Dimple Kothari and Nikki Kothari. The jewellery held in the name of the aforesaid persons is stated to have been found in the course of the search proceedings, as under:

Dimple Kothari

Premise	Sr. No. of diamond jewellery valuation report	Value (Rs.)
Bed Room of Dimple Kothari Shreepati Arcade, Nana Chowk	1	20116
Safe of Devkumari Kothari, Shreepati Arcade,	1	189890
Safe of Devkumari Kothari, Shreepati Arcade,	29	886047
Safe of Devkumari Kothari, Shreepati Arcade,	31	749698
Safe of Devkumari Kothari, Shreepati Arcade,	32	491380
	Total	2518081

Devkumari Kothari

Premise	Sr. No. of diamond jewellery valuation report	Value (Rs.)
Bed Room of Dimple Kothari Shreepati Arcade, Nana Chowk	2	109115
-do-	10	457465
-do-	13	199885
-do-	15	104556
-do-	16	99488
-do-	17	149895
-do-	41	116493
Bed Room of Dimple Kothari Shreepati Arcade, Nana Chowk	2	384820
-do-	4	435470
-do-	6	811689
-do-	7	871475
Safe of Devkumari Kothari, Shreepati Arcade,Nana Chowk	2	426424
-do-	3	196530
-do-	5	719130
-do-	12	256840
-do-	16	105880

-do-	21	711720
-do-	23	152400
	Total	6309275

Nikki Kothari

Premise	Sr. No. of diamond jewellery valuation report	Value (Rs.)
Bed Room of Dimple Kothari Shreepati Arcade, Nana Chowk	9	78186
-do-	14	78824
Bed Room of Devkumari Kothari Shreepati Arcade, Nana Chowk	1	903406
-do-	5	334813
Safe of Devkumari Kothari, Shreepati Arcade, Nana Chowk	27	293065
Devkumari Kothari, A-43, Bharat Nagar, Grant Road, Mumbai	4	1880000
	Total	3568294

It is the claim of the assessee that he had purchased cut and polished diamonds from certain jewellers viz. M/s Opulent Jewellers Pvt. Ltd., M/s H.D.K. International Pvt. Ltd. and M/s Shyam International in the month of May, 2013 i.e prior to the search proceedings, which thereafter were given to certain goldsmiths for making of diamond jewellery. However, as observed by us hereinabove, the aforesaid claim of the assessee was rejected by the A.O for multiple reasons viz. (i) that, the assessee had never in the last 10 years made such alike purchases of cut and polished diamonds; (ii) that, the cut and polished diamonds were claimed to have been purchased by the assessee in the month of May, 2013 while for the search was conducted on 09.07.2013; (iii) that, there was no occasion for making of such purchases by the assessee; (iv) that, the fact that the assessee had made investments in the purchase of diamonds (on credit) was beyond comprehension; (v) that, no payments were made to the jewellers from whom the cut and polished diamonds were claimed to have been purchased till the date of search; and (vi) that, the claim of the assessee of having given the cut and polished diamonds for making of diamond jewellery to the jewellers was an afterthought.

10. We have deliberated at length on the observations of the lower authorities and are unable to persuade ourselves to subscribe to the unsubstantiated view arrived at by the A.O. Admittedly, in the course of the search and seizure proceedings conducted on the assessee diamond jewellery of a value of Rs. 2,70,72,255/- was found. As observed by us hereinabove, on account of non-availability of the main persons at the time when the search proceedings

were conducted, their statements could not be then so recorded under Sec. 132(4) of the Act. However, the statement of Shri Rakesh Manekchand Kothari (son of the assessee) was recorded on 08.08.2013 i.e at the time of revocation of the prohibitory order in the presence of other family members. On being called upon to explain the source of acquisition of the diamond jewellery of a value aggregating to Rs.2,70,72,255/- that was found in the course of the search proceedings, as under:

Sr. No.	Places where found	Diamond jewellery found		
		Gold	Diamond	Value
1.	Residence of Manekchand Kothari at A-43 Bharat Nagar, Grant Road, Mumbai	90.5	14.7	2423500
2.	Residence of Rakesh Kothari and Mukesh Kothari at 3001-04, Shreepati Arcade Nana chowk, Mumbai	2032.75	317.64	12089201
3.	From the safe of debuben at Shreepati Arcade at the residence of Mukesh & Rakesh Kothari	1682.464	238.53	9717638
4.	Locker No. B-442, in the name of Rakesh Kothari, Shilpa Kothari and Devkumari Kothari at Standards Chartered Bank, Breach candy, Mumbai	243.2	19.95	1024215
5.	Locker No. B-452, in the name of Rakesh M. Kothari, Dimple Kothari, and Mukesh M. Kothari at Standard Chartered Bank, Breach candy Mumbai	0	0	0
6.	Locker No. B-160, Crescent Safe deposit vault pvt. Ltd. Bharat Nagar, M.S. Road, Mumbai	0	0	0
7.	Locker No. 56/1 in the name of Manekchand Kothari at Jalore Nagrik Sahakari Bank Ltd.	0	0	0
8.	Locker No. 53/1 in the name of Manekchand Kothari at Jalore Nagrik Sahakari Bank Ltd.	0	0	0
9.	Locker No. 239/5 in the name of Manekchand Kothari at Jalore nagrik Sahakari Bank Ltd.	0	0	0
10.	Locker No.874-B in the name of Manekchand Kothari at Bank of Baroda, Morland Road Branch, Mumbai	0	0	0
11.	Locker No. B-486 in the name of Rakesh M. Kothari and Nikki Kothari at Standard Chartered Bank. Breach candy Mumbai.	0	0	0
12.	Jewellery found in the case of Bhanwarlal Kothari & Rakesh M. Kothari at shop No. 8, 257 Bapty Road, Mumbai.	295.6	51.72	1817701
	Total of jewellery found	4344.514	642.54	27072255

,it was submitted by him that the same belonged to him and his family members. On a perusal of his statement, we find, that while explaining the source of acquisition of the aforesaid diamond jewellery it was submitted by him viz. (i) that, diamond jewellery of a value aggregating to Rs.1,23,95,850/- was sourced out of the cut and polished diamonds which were purchased in the month of May, 2013 in the name of S/smt. Dimple Kothari and Nikki Kothari (daughters-in-

law of the assessee) and Smt. Devuben Kothari (wife of the assessee) from certain jewellers viz. M/s Opulent Jewels Pvt. Ltd., M/s H.D.K. international Pvt. Ltd. and M/s Shree Shyam International; (ii) that, old diamond jewellery found in the course of the search proceedings was duly disclosed in the wealth tax returns of his family members; (iii) that, certain diamond jewellery belonged to Shri Rajesh Kothari and his wife Smt. Shilpa Kothari (non-resident son and daughter-in-law of the assessee), which matched with the respective 'valuation reports' of government approved valuers that were prepared way back in the year 1994 and 2005; (iv) that, the diamond jewellery that was found on the person of Smt. Nikki Kothari during the course of the search proceedings was the *stree dhan* that was received by her on various occasions; and (v) that, the diamond jewellery which was found in the course of the search proceedings at Shop No. 8 Bapty Road, Daval Bhuvan, Kamathipura, Mumbai was purchased by him in cash, but no supporting documents as regards the same was retained by him. However, the A.O was not persuaded to accept the claim of the assessee that diamond jewellery of a value of Rs.1,23,95,850/- was sourced out of the cut and polished diamonds which were claimed to have been purchased in the month of May, 2013 in the name of S/smt. Dimple Kothari & Nikki Kothari (daughters in law of the assessee) and Smt. Devuben Kothari (wife of the assessee), from certain jewellers viz. M/s Opulent Jewellers Pvt. Ltd., M/s H.D.K. Internationals Pvt. Ltd. and M/s Shree Shyam International. As for the reasons for doubting the authenticity of the aforesaid explanation, the same had already been discussed at length by us hereinabove.

11. We shall now advert to the sustainability of the view taken by the A.O, wherein he had rejected the explanation of the assessee as regards the source of acquisition of diamond jewellery of a value of Rs.1,23,95,850/-. On a perusal of the orders of the lower authorities, we find, that the assessee in order to substantiate his claim that the aforesaid diamond jewellery was sourced out of the cut and polished diamonds which were purchased in the month of May,2013 in the name of S/smt. Dimple Kothari & Nikki Kothari (daughters-in-law of the assessee) and Smt. Devuben Kothari (wife of the assessee) from the aforementioned jewellers viz. M/s Opulent Jewellers Pvt. Ltd., M/s H.D.K. Internationals Pvt. Ltd. and M/s Shree Shyam International, had placed on record the 'purchase bills' in the course of the assessment proceedings. However, we find that the A.O had chosen not to verify the authenticity of the

aforesaid claim of the assessee by making necessary verifications from the aforesaid jewellers, despite the fact that their complete details were furnished by the assessee with him. In other words, the claim of the assessee that he had purchased cut and polished diamonds from the aforementioned jewellers viz. M/s Opulent Jewellers Pvt. Ltd., M/s H.D.K. International Pvt. Ltd. and M/s Shyam International in the month of May, 2013, was rejected by the A.O without dislodging or disproving the documentary evidence that was filed by the assessee before him. In fact, the AO instead of verifying the factual position had rather harped on certain assumptions, presumptions, surmises and conjectures for arriving at a self suiting inference that no genuine purchase of diamonds was made by the assessee from the aforementioned jewellers. In our considered view, the aforesaid approach that was adopted by the A.O for dislodging the substantiated claim of the assessee without making necessary verifications as regards the genuineness of the documentary evidence which was filed by him, cannot be subscribed on our part. On a perusal of the Sec. 69A of the Act, we find, that it is only where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article which is not recorded in his books of accounts, if any maintained by him for any source of income and the assessee offers no explanation or the nature and source of acquisition of the aforesaid money, bullion, jewellery or other valuable article or the explanation offered by him is not, in the opinion of the A.O, satisfactory, the money and the value of such bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year. On a perusal of the aforesaid statutory provision, it can safely be gathered that it was obligatory on the part of the A.O to have verified to the hilt the authenticity of the explanation of the assessee as regards the source of acquisition of the diamond jewellery that were found in the course of the search proceedings conducted upon him. In our considered view, the A.O without dislodging the authenticity of the explanation of the assessee as regards the 'nature' and 'source' of acquisition of the aforesaid diamond jewellery, could not have summarily held the same as an unexplained investment within the meaning of Sec. 69A of the Act. Admittedly, in case the explanation offered by the assessee is not in the opinion of the A.O satisfactory. therein as per the mandate of Sec. 69A of the Act, he is vested with the jurisdiction to deem the value of the bullion, jewellery or other valuable article as the deemed income of the assessee. However, the A.O remains under a statutory obligation to conclusively prove that the explanation of the assessee about the 'nature' and 'source' of the acquisition of the money,

bullion, jewellery or other valuable article was found to be false. Now, in the case before us the A.O had merely harped on the fact that as per the principle of preponderance of probability the explanation of the assessee was not free from doubts. However, while concluding as hereinabove, the A.O had lost sight of the statutory obligation which was cast upon him, as per which he was obligated to disprove the authenticity of the explanation of the assessee, which in our considered view could have done only after dislodging the documentary evidence that was furnished by the assessee in support of his claim. As such, the A.O ought to have disproved the claim of the assessee and therein should have established on the basis of necessary verifications that the assessee had not made any genuine purchases of cut and polished diamonds in the month of May,2013 i.e prior to the search proceedings. As the assessee had supported his aforesaid claim on the basis of documentary evidence viz. purchase bills of the aforesaid jewellers, which evidenced that cut and polished diamonds were purchased by him on the dates therein specified, therefore, a very heavy onus was cast upon the A.O to prove the falsity of the aforesaid claim of the assessee, which we are afraid he had failed to do. As such, the aforesaid serious infirmity on the part of the A.O to dislodge the authenticity of the aforesaid claim of the assessee that he had purchased cut and polished diamonds in the month of May, 2013 cannot be subscribed on our part. In fact, the Id. A.R in the course of the proceedings before us had drawn our attention to the aforesaid purchase bills of the jewellers, which duly evidenced the factum of purchase of cut and polished diamonds by the assessee from the aforesaid jewellers. Apart from that, we find, that the assessee had claimed that after purchasing the aforesaid cut and polished diamonds from the aforementioned jewellers he had delivered the same to certain jewellers for making of diamond jewellery. In fact, in order to fortify the aforesaid fact, the assessee had claimed to have made payment of labour charges to the aforesaid parties in cash and had placed on record documentary evidence supporting the same. However, we find, that the A.O had not even considered it apt to verify the authenticity of the aforesaid claim of the assessee by either summoning the aforesaid parties or calling for any confirmations from them. Rather, at no stage in the course of the assessment proceedings the A.O had even asked the assessee to substantiate the veracity of his aforesaid claim by producing the parties to whom the payment of making charges of diamond jewellery were claimed to have been paid. On the basis of the aforesaid facts, we are of a strong conviction that the A.O had without any basis and in fact backed by a pre-determined mind most arbitrarily

concluded that the assessee had made an unexplained investment within the meaning of Sec. 69A in diamond jewellery of a value aggregating to Rs.1,23,95,850/-. On the basis of our aforesaid deliberations, we are unable to persuade ourselves to accept the view taken by the A.O. Apart from that, we find that involving identical facts the co-ordinate bench of the Tribunal viz. **ITAT "B" Bench, Mumbai** had in the case of the related parties of the assessee deleted similar additions which were made by the A.O without dislodging the factual claim of the assessee viz. (i) **DCIT, CC-8(3), Mumbai Vs. Shri Bhawarlal S. Kothari, ITA No. 195/Mum/2018, dated 19.08.2019**; and (ii) **DCIT, CC-8(3), Mumbai Vs. Shri Prithviraj Kothari, ITA No. 196/Mum/2018, dated 09.04.2019** (copy of orders placed on record). As such, finding no infirmity in the view taken by the CIT(A) who in our considered view had rightly concluded that as the assessee by placing on record supporting documentary evidence viz. purchase bills of diamonds, remaking bills for conversion of diamonds into jewellery and payment details in respect of its acquisition, both at the time of post-search proceedings and the assessment proceedings had duly explained the source of acquisition of the diamond jewellery of a value of Rs. 1,23,95,850/-, therefore, the A.O was in error in treating the same as an unexplained investment of the assessee under Sec. 69A of the Act, we uphold his order to the said extent.

12. We shall now advert to the claim of the assessee that part of the diamond jewellery found in the course of the search proceedings belonged to his NRI son and daughter-in-law viz. Shri Rajesh Kothari (Rs.10,15,373/-) and Smt. Shilpa Kothari (Rs.1,39,346/-), who had kept the same with him for safe custody during their absence from India. As observed by us hereinabove, the aforesaid explanation of the assessee did not find favour with the A.O and was rejected by him. On appeal, the CIT(A) had observed that the assessee on the basis of the respective valuation reports of wealth that were prepared way back in the year 1994 and 2005 of Shri Rajesh Kothari (NRI Son) and Smt. Shilpa Kothari (NRI Daughter-in-law), respectively, had substantiated the fact that certain jewellery found in the course of the search proceedings belonged to the aforesaid persons. On the basis of the aforesaid facts the CIT(A) held a conviction that now when the assessee had duly evidenced his aforesaid claim, therefore, the A.O was in error in dislodging the same without proving to the contrary. We have given a thoughtful consideration and find no infirmity in the view taken by the CIT(A). In our considered

view, though the assessee had placed on record supporting documentary evidence in the form of 'valuation reports' pertaining to the jewellery owned by Shri Rajesh Kothari (NRI son) and Smt. Shilpa Kothari (NRI daughter-in-law) which was stated to have been kept by the said respective persons with him for safe custody during their absence from India, the A.O on the other hand had summarily discarded the said claim of the assessee and had without placing on record any material which could evidence the falsity of the said claim, had drawn adverse inferences. In fact, we find that the A.O had not even recorded any reasoning for disbelieving the aforesaid claim of the assessee. As such, we are unable to persuade ourselves to subscribe to the aforesaid view taken by the A.O and uphold the observations of the CIT(A) in context of the issue under consideration.

13. We shall now advert to the claim of the assessee that the balance diamond jewellery of a value aggregating to Rs.49,37,444/- that was found in the course of the search proceedings, was acquired by him out of the withdrawals made over the years. As observed by us hereinabove, the A.O being of the view that the aforesaid claim of the assessee was not substantiated on the basis of any corroborative material, therefore, had rejected the same and treated the aforesaid diamond jewellery of a value of Rs.49,37,444/- as an unexplained investment of the assessee under Sec.69A of the Act. On appeal, the CIT(A) taking cognizance of the fact that the assessee belonged to a high profile marwari family and had substantial withdrawals of Rs.1.36 crores over the period A.Y. 2008-09 to A.Y. 2014-15, therefore, it could safely be concluded that 50% of the aforesaid diamond jewellery was acquired by the assessee from his disclosed sources. As such, the CIT(A) had restricted the addition to an amount of Rs.24,68,722/- [50% of Rs.49,37,444/-].

14. We have given a thoughtful consideration to the aforesaid issue, and considering the fact that the assessee who belonged to a high profile marwari family having a substantial withdrawals of Rs.1.36 crores over the period A.Y. 2008-09 to A.Y. 2014-15, therefore, his claim that the aforesaid jewellery of a value of Rs.49,37,444/- was sourced from the cash withdrawals made over the years could not have been summarily scrapped by the A.O. At the same time, we also cannot remain oblivious of the fact that the assessee could not substantiate its aforesaid claim on the basis of supporting documentary evidence. In our considered view, the CIT(A) in all fairness, in the totality of the facts of the case, adopting a balanced approach

had fairly concluded that 50% of the aggregate value of the diamond jewellery of a value of Rs.49,37,444/- could safely be held to have been acquired by the assessee out of the withdrawals which were made by him from his disclosed sources in the preceding years. Accordingly, we are of the considered view that the sustaining of the addition on a fair estimation by the CIT(A) to the extent of Rs.24,68,722/- [50% of Rs.49,37,444/-] cannot be held to be suffering from any infirmity. Accordingly, finding no infirmity in the aforesaid view taken by the CIT(A), we uphold the same.

15. On the basis of our aforesaid observations we uphold the view taken by the CIT(A). The **Ground of appeal No. 1** raised by the revenue is rejected.

16. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 17.01.2020.

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 17.01.2020
Ps. Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai