

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

[Before Shri J. Sudhakar Reddy, Accountant Member and Shri S.S. Godara, Judicial Member]

**I.T.A. No. 1329/Kol/2018
Assessment Year: 2014-15**

New Pooja Jewellers.....Appellant
[PAN: AAGFN 3979 B]

Vs.

ITO, Ward-44(3), Kolkata.....Respondent

Appearances by:

Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.

Sh. Supriyo Pal, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : January 21st, 2020
Date of pronouncing the order : February 26th, 2020

ORDER

Per J. Sudhakar Reddy, AM:

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-13, Kolkata ['CIT(A)' for short] dated 30.03.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2014-15.

2. The assessee is a partnership firm and is in the business of manufacturers, wholesalers and traders of gold ornaments. It filed its return of income on 21.07.2014 declaring total income of ₹4,24,260/- for the AY 2014-15.

3. On 21.05.2013 Mr. Rakesh Gupta, a partner of the firm was intercepted in Delhi Airport and was found in possession of ₹60 lakh in cash with him. Mr. Rakesh Gupta submitted that this amount belongs to the partnership firm, M/s. New Pooja Jewellers, the assessee of which he is the main partner. Consequential survey u/s 133A of the Act was conducted on the very same day on M/s. New Pooja Jewellers to verify the source of ₹60 lakh found in the possession of Mr. Rakesh Gupta. Mr. Rakesh Gupta stated that, the amount of ₹60 lakh found in Delhi Airport was being carried by him for the purpose of purchase of ornaments for being sold in Kolkata by M/s. New Pooja Jewellers. The assessee furnished a cash flow statement and explained that the source of money was advances received from various customers of the said firm on the auspicious occasion of

Ramnavami Nayakhata. On 08.07.2013 the assessee produced before the Directorate of Income Tax (Investigation), Unit IV(7), Kolkata, books of account, cash book, bank book, journal book, general ledger, sales day book, purchase day book, sundry debtors and sundry creditors books, stock registers, production register as well as cash flow statement explaining the cash balance of ₹60 lakh.

4. The AO passed an order u/s 143(3) of the Act determining the total income of the assessee at ₹64,24,257/- inter alia making the addition of ₹60 lakh. While doing so he observed as follows:

"In spite of given various opportunities of being heard, the assessee could not file any concrete justification of the source of Rs. 60.00 Lakhs. At the last day of hearing on 27/12/2016 the assessee has filed confirmation of 20 parties out of more than 450 parties from whom the assessee has received an Advance from customers on Ram Navami Nayakhata. From the above confirmation filed by the assessee neither the genuinity nor the creditworthiness could be proved because the number of parties involved in these transactions are more than 450 and also the confirmation filed without any documentary evidences. On perusal of the submission it is noticed that the assessee could submit only addresses of 32 parties and about the addresses of the rest of parties the assessee has taken plea that the rest customers were visit their shop premises very often. If they are very often visitors then it is hard to believe that how these parties deposited their hard earned money (though in small amount) to the assessee's shop without taking any cash memo, money receipts or any other documents in lieu of their deposits. The above plea taken by the assessee is not genuine. It is very difficult for any person to remember the name and amount of advance near about 500 parties. The assessee consciously and very cleverly filed his reply just before few days when the case will be going to time barred so that the documents filed will remain unverified. The said survey u/s 133A was conducted on 21/05/2013 i.e. three years before. So the record of these persons from whom the advance was taken should be kept in the possession of the assessee firm. But from then and during the entire scrutiny proceedings the assessee failed to file. The intention of the assessee firm to delay in submitting their submission is not only mala fide, planned and tailor made but also bogus."

5. Aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) without success.

6. The Id. CIT(A) referred to the statement recorded from Mr. Umesh Gupta on behalf of M/s. New Pooja Jewellers on 21.05.2013 and thereafter came to a conclusion that the assessee was not able to explain during the course of, survey conducted at its business premises, the source of the money seized from its partner Mr. Rakesh Gupta. He upheld the finding of the AO.

7. Aggrieved, the assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted that both the AO as well as the Id. CIT(A) were factually incorrect in stating that the assessee had not submitted any explanation immediately after the seizure of a cash of ₹60 lakh. He filed a paper book and submitted that a reply and explanation was submitted to the Investigation Wing on

08.07.2013 explaining this cash seizure of ₹60 lakh and also producing evidences and books of account along with tax invoices, inventory of cash found etc. He submitted that it was also factually incorrect on the part of the AO to state that the cash flow statement were given for the first time during the course of assessment proceedings and drew the attention of the Bench to point no. 2 of the reply given to the Investigation Wing on 08.07.2013. He explained that the cash flow statement was filed before the Investigation Wing immediately after the seizure of cash, explaining the source of cash. He submitted that the assessee has a part-time accountant and soon after the survey the part-time accountant had updated the books of account consisting of cash book, bank book, journal book, general ledger, sales day book, purchase day book, sundry debtors and sundry creditors books, stock registers, production register etc. and produced the same before the Investigation Wing. He submitted that the reasons recorded by the Id. CIT(A) that there is difficulty in verifying the advances received from 450 persons, cannot be a reason to disbelieve the claim of the assessee. He, further submitted that all his advances received from various customers were accounted for the sales and that these sales so recorded have been accepted as income of the assessee by the AO. Thus he submitted that yet another addition u/s 68 of the Act of the same amount cannot be done as a tantamount to double addition. He prayed for relief and cited case laws in support of the above propositions of law.

9. The Id. DR on the other hand, submitted that the Id. CIT(A) relied on the statement recorded from Mr. Umesh Gupta. He pointed out that at the time of survey, no register of advances from customers was found. He also pointed out that the assessee failed to produce the cash book, stock book etc. during the course of survey operation on 21.05.2013. He pointed out that Mr. Umesh Gupta in his statement admitted that he maintained calculations in rough pages. He argued that the claim of the assessee that advances were received from 450 parties on the occasion of Ramnavami Nayakhata was not supported with evidence and that the creditworthiness and identity of these parties were not proved by the assessee. He took this Bench to the findings of Id. CIT(A) at pages 12-14 of the order and relied on the same.

10. The Id. Counsel for the assessee relied on the decision of ITAT in the case of *M/s. Nitisha Silk Mills Pvt. Ltd. vs. ITO, Ward-1(4), Surat* reported in 2012 (11) TMI 281 - ITAT, Ahmedabad.

11. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows.

12. The AO is factually wrong in recording that the assessee for the first time before the AO had explained the source of ₹60 lakh found in the possession of Mr. Rakesh Gupta. The cash flow statements as well as the explanations were in fact filed by the assessee before the Investigation Wing which conducted the survey operation. The assessee submitted that it had a part time accountant and that the books of account and records were updated immediately after the survey and submitted before the Survey Authorities i.e. the Directorate of Income Tax (Investigation), Unit IV(7), Kolkata. These evidences cannot be brushed aside. The assessee has produced before us evidences that it had produced before the Directorate of Income Tax (Investigation), Unit IV(7), Kolkata, its cash book from 01.04.2012 to 31.03.2013 and 01.04.2013 to 08.07.2013, bank book, journal book, general ledger, sales day book, purchase day book, sundry debtors and sundry creditors books, stock registers, production register etc.

13. The explanation given by the assessee to the Survey Team is extracted for ready reference:

"1. GENERAL INFORMATION

1. THE ORGANISATIONS DEALS IN MANUFACTURING, WHOLE SALE AND TRADING OF GOLD ORNAMENTS AND BULLIONS UNDER THE NAME AND STYLE MESSRS NEW POOJA JEWELLERS AT BUSINESS PREMISES 24, NALINI SETH ROAD, GROUND FLOOR, BARABAZAR, SONAPATTT KOLKATA 700 007.

2. IT IS A PARTNERSHIP FIRM HAVING TWO PARTNERS SRI RAKESH KUMAR GUPTA AND SRI UMESH KUMAR GUPTA WITH A PROFIT SHARING RATIO OF 50% EACH.

3. PERMANENT ACCOUNT NUMBER (P A N) OF THE FIRM IS AAGFN3979B AND ASSESSED AT I.T.O.WD 43(3)

4. ALL BUSINESS ACTIVITIES OF THE FIRM ARE CARRIED OUT BY BOTH WORKING PARTNERS AND STAFFS EMPLOYED IN THE FIRM.

5. ON THE DAY OF SURVEY SRI RAKESH KUMAR GUPTA, SENIOR PARTNER OF THE FIRM, WAS OUTSTATION AT NEW DELHI FOR PURCHASE OF GOLD ORNAMENTS FROM VARIOUS DEALERS IN NEW DELHI ON BEHALF OF BUSINESS. SRI UMESH KUMAR GUPTA, ANOTHER PARTNER OF THE FIRM, WAS AT KOLKATA AND CARRYING OUT TO THE BUSINESS.

6. SRI RAKESH KUMAR GUPTA, SENIOR PARTNER OF THE FIRM, WAS CARRYING CASH AROUND 60 LAKHS PLUS ON THE DAY FOR PURCHASE OF GOLD ORNAMENTS AT NEW DELHI FOR BUSINESS AND AVAILED FLIGHT TO NEW DELHI FROM KOLKATA AIR PORT. UNFORTUNATELY HE WAS DETAINED AT THE NEW DELHI AIR PORT BY AIR PORT AUTHORITIES AND SEIZED HIS BELONGING OF CASH OF RS.60 LAKHS BY NEW F/ELHI AIRPORT AUTHORITIES.

7. THEIR BUSINESS PREMISES AT KOLKATA WAS ALSO SURVEYED BY SURVEY PARTY OF DIRECTORATE OF INCOME TAX (INVESTIGATION) UNIT IV, KOLKATA, HEADED BY SRI I. JAMIR, DDIT (INV) KOLKATA

AND FOUR INSPECTORS. THEIR FINDINGS ON SURVEY ARE EXPLAINED IN ANNEXUTES 1 TO 4 ABOVE. THE SURVEY PARTY HAS SEIZED DOCUMENTS STATED IN SL.NO. 1 TO 9 OF ANNEXURE 1 ONLY AND TOOK AND KEPT IN THEIR CUSTODY.

8. BOOKS AND ACCOUNTS OF THE FIRM ARE MAINTAINED IN COMPUTER CONSISTING OF CASH BOOK, BANK BOOK, JOURNAL BOOK, GENERAL LEDGER, SALES DAY BOOK, PURCHASE DAY BOOK, SUNDRY DEBTORS AND SUNDRY CREDITORS LEDGER, STOCK BOOKS, PRODUCTION AND CONSUMPTION REGISTERS, TRAIL BALANCE, PROFIT AND LOSS ACCOUNT AND BALANCE SHEET ETC. THESE RECORDS ARE PROCESSED WEEKLY AND MAINTAINED DAY TO DAY BASIS. ALL THESE RECORDS ARE UPTO DATE AND MAINTAINED UPTO LAST DAY OF THE 2ND WEEK OF JULY, 2013 I.E 07.07.2013.

II. INFORMATION AND EXPLANATIONS ON ARTICLES AND DOCUMENTS SURVEYED AND SEIZED BY THE DEPARTMENTS

1. SALE OF GOLD ORNAMENTS IS DOCUMENTATED WITH TAX INVOICES (SALES INVOICES). TAX INVOICES ARE MADE IN ACCORDANCE TO THE WEST BENGAL VALUE ADDED TAX ACT AND RULES CONTAINING OF VAT REGISTRATION NUMBER, TAX INVOICE NO. DATE, CUSTOMERS NAMES ETC AS REQUIRED BY THE W.B. VALUE ADDED TAX ACT. EACH SALE EITHER OF CASH OR CREDIT ARE SUPPORTED WITH THE TAX INVOICE.

BOUNDED SALES INVOICES STATED IN SL.NO. 1, 2, 3, 4, 5, & 6 CORRESPONDING TO I D MARK NPJ/1, NPJ/2, NPJ/3, NPJ/4, NPJ/5 AND NPJ/6 RESPECTIVELY IN ANNEXURE 4 ABOVE ARE SALES INVOICES ISSUED TO CUSTOMERS ON SALE ON THE DATES NOTED IN EACH TAX INVOICE.

A. SALES INVOICES IN ID MARK - NPJ/1 CONSISTING OF TAX INVOICE NO 1 TO 50 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 01.04.2013 TO 18.05.2013. THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2013-2014 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS AND ACCOUNTS. COMPUTARISED CASH BOOK ETC AND OTHER BOOKS FOR FINANCIAL YEAR 2013-2014 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS AND RECORDS.

B. SALES INVOICES IN ID MARK - NPJ/2 CONSISTING OF TAX INVOICE NO 1001 TO 1050 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 20.08.2012 TO 03.11.2012. THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2012-2013 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS AND ACCOUNTS IN THOSE YEAR. COMPUTARISED CASH BOOK AND OTHER BOOKS ETC. AND ACCOUNTS FOR FINANCIAL YEAR 2012-2013 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS, ACCOUNTS AND RECORDS.

C. SALES INVOICES IN ID MARK - NPJ/3 CONSISTING OF TAX INVOICE NO 901 TO 950 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 08.04.2012 TO 09.06.2012. THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2012-2013 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS ETC AND ACCOUNTS IN THOSE YEAR. COMPUTARISED CASH BOOK AND OTHER BOOKS AND ACCOUNTS FOR FINANCIAL YEAR 2012-2013 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS, ACCOUNTS AND RECORDS.

D. SALES INVOICES IN ID MARK - NPJ/4 CONSISTING OF TAX INVOICE NO 1051 TO 1100 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 05.11.2012 TO 31/12/2012 THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2012-2013 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS ETC. AND ACCOUNTS IN THOSE YEAR. COMPUTARISED CASH BOOK AND OTHER BOOKS AND ACCOUNTS FOR FINANCIAL YEAR 2012-2013 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS, ACCOUNTS AND RECORDS.

E. SALES INVOICES IN ID MARK - NPJ/5 CONSISTING OF TAX INVOICE NO 951 TO 1000 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 12.06.2012 TO 16.08.2012. THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2012-2013 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS ETC AND ACCOUNTS IN THOSE YEAR. COMPUTARISED CASH BOOK AND OTHER BOOKS AND ACCOUNTS FOR FINANCIAL YEAR 2012-2013 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS, ACCOUNTS AND RECORDS.

F. SALES INVOICES IN ID MARK - NPJ/6 CONSISTING OF TAX INVOICE NO 1101 TO 1150 DENOTES FOR SALES OF GOLD ORNAMENTS DURING THE PERIOD FROM 02.01.2013 TO 26.02.2013. THESE SALES ARE EFFECTED IN FINANCIAL YEAR 2012-2013 AND DULY RECORDED IN COMPUTARISED CASH BOOK AND

BANK BOOK, SALES DAY BOOK, SUNDRY DEBTORS REGISTER AND STOCK BOOKS ETC. AND ACCOUNTS IN THOSE YEAR. COMPUTARISED CASK BOOK AND OTHER BOOKS AND ACCOUNTS FOR FINANCIAL YEAR 2012-2013 ARE AVAILABLE. HONORABLE SIR MAY VERIFY THESE TRANSACTIONS WITH THESE BOOKS, ACCOUNTS AND RECORDS.

G. NOTE BOOKS IN ID MARK - APJ/7 & NPJ/ 8 CONTAINING MISCELLANEOUS ENTRIES DENOTES TO DISCUSSION MATTERS WITH CUSTOMERS AND KARIGARS ETC. DURING COURSE OF BUSINESS. THESE ARE COMPLETELY ON APPROVAL WHICH MAY OR MAY NOT MATTERIALIZED. MST OF THESE APPROVAL SLIPS RELATES TO THE SAME. FEW OF THEM ARE ESPECTED TO MATERIALISE IN COMING SESSION.

H. A BUNCH OF LOOSE SHEET CONTAINING PURCHASE /INVOICES SERIALLY NUMBERED 1 TO 39 AS REFERRED IN ID MARK NPJ/9 DENOTES PURCHASES OF GOLD AND SILVER BAR DURING THE PERIOD FROM 01.04.2012 - 31.03.2013 AND 01.04.2013 TO 31.05.2013. SL.NO. L, 2, 3 AND 5 ARE PURCHASES OF GOLD BAR FROM DEALERS ON 30.04.2013, 24.04.2013, 17.05.2013 AND 18.05.2013 RESPECTIVELY WHICH ARE DULY RECORDED IN COMPUTARISED PURCHASE BOOK, SUNDRY CREDITORS LEDGER AND STOCK BOOK. THEIR PAYMENTS ARE MADE BY CHEQUES ONLY WHICH ARE DULY RECORDED IN BANK BOOK OF THE FIRM. THESE TRANSACTIONS ARE RECORDED IN VAT RETURN AND VAT INPUT REGISTER ALSO SUBMITTED TO W.B.VAT TAX AUTHORITIES. HONORABLE .SIR MAY VERIFY THESE TRANSACTIONS WITH THAT RECORDS, IF THINK NECESSARY.

ITEM IN SL. NO. 4 REPRESENT BANK STATEMENT FOR THE MONTH OF APRIL, 2013 OF ICICI BANK. THE FIRM HAS A CURRENT ACCOUNT WITH ICICI BANK LTD, BURABAZAR BRANCH. THE TRANSACTIONS FOR DEPOSITS AND PAYMENTS ARE SELF EXPLANATORY AND DULY RECORDED IN BANK BOOK OF THE FIRM.

PURCHASE INVOICES, SERIALLY NUMBERED 5 TO 32 DENOTES PURCHASES OF GOLD AND SILVER BAR DURING THE PERIOD FROM 09.04.2012 TO 20.03.2013. THESE TRANSACTIONS RELATES TO THE FINANCIAL PERIOD 2012-2013 WHICH ARE DULY RECORDED IN BOOKS OF ACCOUNTS OF THAT YEAR HONORABLE SIR MAY VERIFY THESE TRANSACTIONS FROM BOOKS OF ACCOUNTS 2012-2013 AVAILABLE IN COMPUTARIED FORM.

2. INVENTORY OF CASH FOUND DURING THE COURSE OF SURVEY

A. PHYSICAL CASH IN HAND AMOUNTING TO RS.281,500.00, AS DETAILED IN ANNEXURE - 2 OF SURVEY REPORT, WAS FOUND ON THE DAY OF SURVEY AND NOTED IN SURVEY PROCEEDINGS REPORT BY SURVEY PARTY. ON RECEIVING OF PROPER EXPLANATIONS FOR CASH BALANCE IN HAND THE CASH WAS NOT SEIZED AND RETAINED IN THE BUSIN ESS SUBJECT TO WRITTEN EXPLANATIONS ASKED FOR THE SAME.

B. AIR PORT AUTHORITY AT NEW DELHI AIR PORT HAS, HOWEVER, FOUND CASH AMOUNTING TO RS.60,00,000 (RUPEES SIXTY LAKHS) ONLY WITH MR. RAKESH KUMAR GUPTA, SENIOR PARTNER OF THE FIRM, WHO WAS ON BUSINESS TOUR TO NEW DELHI FOR PROCUREMENT OF FRESH NEW DESIGN GOLD ORNAMENTS. HE WAS CARRYING THAT AMOUNT TAKEN FROM BUSINESS FOR THE PURPOSE OF PURCHASE OF STOCKS OF GOLD ORNAMENTS. INSPITE OF THAT EXPLANATIONS THE AIR PORT AUTHORITY WERE NOT SATISFIED WITH THE SAME AND SEIZED ENTIRE CASH AMOUNTS OF RS. 60,00,000.00 FROM MR. RAKESH KUMAR GUPTA. SINCE ALL RELATED DOCUMENTS ARE MAINTAINED AND AVAILABLE AT KOLKATA NOTHING COULD BE PRECEDED THERE EXCEPT TO RELEASE THE SAME AT KOLKATA AFTER PRODUCING OF PROPER BOOK'S AND DOCUMENT.

C. THE BUSINESS HAS ALWAYS INFLOW AND OUTFLOW OF CASH FROM CUSTOMERS, SALES, ADVANCE AGAINST ORDER, DEPOSITS ON RAM NAVAMI NAYAKHATA ETC. AND BANKING TRANSACTIONS. THE FOLLOWING ARE INFLOW AND OUTFLOW OF CASH AS ON DURING THE PERIOD FROM 01.04.2013 TO 21.05.2013. (ON THE DATE OF SURVEY)

OPENING CASH IN HAND ON 01.04.2013	Rs. 6,00,171.00
ADD: AMOUNT RECEIVED FROM DEBTORS, CASH SALES, DEPOSITS AGAINST ORDER WITHDRAWALS FROM BANK, DEPOSITS FROM CUSTOMERS ON RAM NAVAMI NAYAKHATA ETC	Rs.69,35,887.00
LESS: CASH DEPOSITED TO ICICI BA	Rs.(14,53,000.00)
AMOUNT PAID FOR EXPENSES ETC	<u>Rs. (1,87,642.00)</u>

BALANCE IN HAND AS ON 21.05.2013

Rs. 58,95,416.00

DETAILS OF INFLOW AND OUTFLOW OF CASH FOR THE PERIOD FROM 01.04.2013 TO 21.05.2013 ARE RECORDED IN CASH BOOK OF THE FIRM (COMPUTARISED) WHICH ARE ATTACHED WITH THIS EXPLANATIONS STATEMENT FOR VERIFICATION.

IN ABSENCE OF PROPER DOCUMENTS SURPLUS CASH IN HAND OF RS.3,86,084.00 COULD NOT BE TRACED OUT WHICH MAY PLEASE BE TAKEN FOR ADD/BACK AND SYMPATHY TO THE PARTY. WE SHALL BE HIGHLY OBLISED IF THE HONORABLE SIR WILL EXCUSE THIS MINOR IRREGULARITY.

SINCE, CASH OF RS. 60,00,000.00, WHICH WAS FOUND FROM MR. RAKESH KUMAR GUPTA, SENIOR PARTNER OF THE FIRM, AND SEIZED AT NEW DELHI AIR PORT BY THE AIRPORT AUTHORITY, IS BELONGING TO THE BUSINESS PROPERTY WE SHALL REQUEST YOUR HONOUR KINDLY TO RELEASE THE SAME AT YOUR EARLIEST.

YOUR PARTY BUSINESS HAS EFFECTED BADLY AND ALMOST ON FAILURE POSITION DUE TO ABOVE SEIZURE WE REQUEST YOUR HONOUR KINDLY TO RELEASE ABOVE SEIZURE AND OBLISE.

3. INVENTORY OF BANK ACCOUNTS FOUND FROM THE BUSINESS PREMISES - REFERRED IN ANNEXURE - 3 OF SURVEY PROCEEDING STATEMENT

i. MR. RAKESH KUMAR GUPTA AND MR. UMESH KUMAR GUPTA ARE THE PARTNERS OF THE FIRM. THEY HAVE PERSONAL SAVING BANK ACCOUNTS WITH INDIAN OVERSEAS BANK, BARABAZAR BRANCH, KOLKATA. BOTH PARTNERS ARE INCOME TAX ASSESSEE HAVING PAN AINPG5444P AND AINPG5445N, ITO, WD 43(3) AND 43(4) RESPECTIVELY. THEY HAVE SAVING BANK ACCOUNT NO. 8186 AND 8185 RESPECTIVELY. THESE ARE ONLY BANK ACCOUNTS OF THE PARTNERS WHICH HAVE BEEN PROPERLY DISCLOSED IN THEIR INCOME TAX RETURNS OF THE ASSESSMENT YEAR 2012-2013. THEIR INCOME TAX RETURN FOR ASSESSMENT YEAR 2013-2014 ARE YET TO FINALISE) AND TO BE SUBMITTED WITHIN DUE DATE TO THE AUTHORITY. SINCE THESE ARE VALID DOCUMENTS AND PROPERLY DISCLOSED IN INCOME TAX RETURN WE REQUEST YOUR HONOUR KINDLY TO DROP THIS OBSERVATION AND PERMIT TO PARTIES TO OPERATE IT WITHOUT RESTRICTION.

ii. MESSRS NEW POOJA JEWELLERS HAVE CURRENT ACCOUNT NO. 627905012054 WITH ICICI BANK, BURABAZAR BRANCH, KOLKATA. THE FIRM HAS ONLY BANK ACCOUNT WITH ABOVE BANK AND ALL TRANSACTIONS RELATING TO BUSINESS ARE OPERATED THROUGH THIS BANK ACCOUNT. WE ENCLOSE HEREWITH BANK BOOK OF THE FIRM FOR THE PERIOD FROM 01.04.2013 TO 21.05.2013. THE HONORABLE SIR CAN VERIFY BANKING TRANSACTIONS APPEARED IN BANK STATEMENT AND BANK BOOK MAINTAINED BY THE FIRM.

4. INVENTORY OF JEWELLERY AS DETAILED IN ANNEXURE 4 OF SURVEY STATEMENT

i. JEWELLERY VALUE Rs. 1,02,47,074.00, AS VALUED BY GOVT. APPROVED VALUER, WEIGHTED 4082.500Gms. WAS FOUND DURING THE COURSE OR SURVEY OPERATION CONDUCTED ON 21.05.2013.

ii. THE FIRM DEALS IN MANUFACTURING, WHOLE SALE AND TRADING OF GOLD ORNAMENTS. THIS JEWELLERY IS STOCKS HELD ITEM IN THE BUSINESS. SINCE THESE ARE REGULAR STOCKS OF THE BUSINESS AND EXPLAINED PROPERLY THE SAME HAVE NOT BEEN SEIZED AND RETAINED IN BUSINESS AFTER NOTING IN SURVEY REPORT.

iii. ALL TRANSACTIONS OF INWARD (RECEIPTS) AND OUTWARD (ISSUES) OF GOLD ORNAMENTS ARE PROPERLY RECORDED IN GOLD ORNAMENTS STOCK REGISTER MAINTAINED IN COMPUTER MANUFACTURED GOLD ORNAMENTS RECEIVED FROM KARIGAR AND ISSUES BY WAY OF SALES PER SALES INVOICES ARE RECORDED IN COMPUTARISED STOCK BOOK. WE FURNISH BELOW DETAIL MOVEMENT OF STOCK OF GOLD ORNAMENTS DURING THE PERIOD FROM 01.04.2013 TO 21.05.2013 AS FOLLOWS.

OPENING STOCK IN HAND AS ON 01.04.2013	3895.720 Gms.
ADD : MANUFACTURED GOLD ITEM RECEIVED FROM KARIGAR DURING THE PERIOD FROM 01.04.2013 TO 21.05.2013	620.410 Gms
LESS : GOLD ORNAMENTS ISSUES THROUGH SALES DURING ABOVE PERIOD	<u>(425.025 Gms)</u>
STOCK OF GOLD ORNAMENTS AS ON 21.05.2013	<u>4091.105 Gms.</u>

DURING THE COURSE OF SURVEY THE SURVEY PARTY WAS FOUND INVENTORY OF JEWELLERY (STOCK HELD ITEMS IN BUSINESS) WEIGHING 4082.500 Gms. AGAINST 4091.105 Gms RECORDED IN INVENTORY REGISTER. THERE IS A MINOR IRREGULARITIES OF 8.605 Gms. FOUND SHORT IN PHYSICAL INVENTORY. SINCE THE DIFFERENCE, WHICH ARISES DUE TO MISSING ETC. IS NOT MATERIAL WE REQUEST YOUR HONOUR KINDLY TO EXECUSE AND IGNORE IT.

WE ENCLOSE STOCK BOOK REGISTER FOR FINANCIAL YEAR 2013-2014, WHICH RECORDED INVENTORY INWARD AND OUTWARD TRANSACTIONS UPTO TODAY THE 8TH JULY, 2013 FOR KIND PERUSAL AND VERIFICATION.

ON CONCLUSION WE REQUEST YOUR HONOUR KINDLY EXCUSE THE PARTY FOR MINOR IRREGULARITIES, TO THE EXTENT CASH Rs. 3,86,084.00 FOUND EXCESS AND INVENTORY OF JEWELLERY WEIGHIN 8.605 Gms. FOUND SHORT, DURING THE COURSE OF SERVEY. WE SHALL BE KIND ENOUGH IF THE HONORABLE SIR WILL EXECUSE MINOR IRREGULARITIES AND APPROVE RELEASE OF SEIZED CASH AMOUNTING TO Rs. 60,00,000.00 (RUPEES SIXTY LAKHS) AT NEW DELHI AIR PORT AT EARLIEST."

14. This explanation has not been rebutted with evidence by the AO. The claim of the AO is that, the assessee has conveniently and very cleverly filed his reply before few days, when the case is going to be time barred and hence the documents filed cannot be verified is factually incorrect. Just because there are problems of time and manpower to conduct verification and detailed examination of the claims of the assessee, an addition cannot be made by rejecting the claim of the assessee.

15. Be it as it may, in the normal course, we would have restored the issue to the file of the AO for fresh verification of the claim of the assessee that it had received advances from customers on the occasion of Ramnavami Nayakhata. In other words, we would have given the AO more time to conduct enquiries and investigation. In this case we find that these advances have subsequently been recorded as sales of the assessee firm and that these sales have been accepted as income by the AO during the year. He has not disturbed the sales of the assessee. When a receipt is accounted for as income, no separate addition of the same amount as income of the assessee under any other Section of the Act can be made as it would be a double addition. In the result, we delete the addition made and allow its claim of the assessee.

16. In the result, the appeal of the assessee is allowed.

Kolkata, the 26th February, 2020.

Sd/-
 [S.S. Godara]
 Judicial Member

Sd/-
 [J. Sudhakar Reddy]
 Accountant Member

Dated: 26.02.2020
Bidhan

Copy of the order forwarded to:

1. ***New Pooja Jewellers, 24, Nalini Seth Road, Sonapatty, Burabazar, Kolkata-700 007.***
2. ***ITO, Ward-44(3), Kolkata.***
3. CIT(A)-13, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches