

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.284/Ind/2018
Assessment Year 2011-12

Shri Dwarka Prasad Tayal,
4, Jawahar Ganj,
Sendhwa (M.P)
PAN : AAOPT4070B : Appellant
V/s
Income Tax Officer
Sendhwa (M.P) : Respondent

ITA No.334/Ind/2018
Assessment Year 2011-12

Income Tax Officer
Sendhwa (M.P) : Revenue
V/s

Shri Dwarka Prasad Tayal,
4, Jawahar Ganj,
Sendhwa (M.P)
PAN : AAOPT4070B : Respondent

Revenue by	Smt. Ashima Gupta
Assessee by	Shri S.N. Agrawal, CA
Date of Hearing	09.09.2020
Date of Pronouncement	13.10.2020

ORDER

PER BENCH

The above captioned appeals filed at the instances of the assessee and revenue pertaining to Assessment Year 2011-12 are directed against the order of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'), Indore dated 15.01.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 07.07.2014 framed by ITO, Khargone.

2. Brief facts relating to this issue are that the assessee is an individual engaged in the business of cotton trading and ginning and running two proprietorship concerns namely M/s Monika Trading Co & M/s White Gold Enterprises. Return of income was filed on 20.09.2011 for Assessment Year 2011-12 declaring income of Rs.5,80,310/-. The return was processed u/s 143(1). This case was manually selected for scrutiny and notice u/s 143(2) dated 24.09.2012 was served upon the assessee followed by questionnaire u/s 142(1)(ii) dated 15.1.2013. The appellant assessee maintained 19 [Nineteen] bank accounts, out of that 14 [Fourteen] bank accounts were incorporated in the regular books of account. However, following five bank accounts

remains to be incorporated in the regular books of account:-

S.No	Name the Bank	Type of A/c	A/ c in the name of	A/c Number
1	HDFC Bank	Current	M/s White Gold Enterprises	2572560004723
2	Union Bank of India	Current	M/s White Gold Enterprises	582601010050069
3	Union Bank of India	Current	M/s Monica Trading Co	582601010050068
4	Buldhana Urban Co-op Bank Ltd	Loan A/c	Shri Dwarka Pd Tayal	181/ 2005 to 1210
5	Buldhana Urban Co-op Bank Ltd	CIA	Shri Dwarka Pd Tayal	21/180

3. The appellant assessee offered additional income to the tune of Rs 27,32,000/- [1.33% of Rs 20,53,98,366/-] before the Investigation wing on the total unrecorded turnover of Rs 20,53,98,366/- as executed through the above bank accounts. That disclosed/undisclosed turnover as executed through all the bank accounts of the assessee firm are as under:-

S. No	Name of the Firm	Disclosed (Rs)	Undisclosed (Rs)	Total Turnover (Rs.)
1	M/s Monika Trading Co	5,77,24,480	5,44,64,764	11,21,89,244
2	M/s White Gold Enterprises	17,24,13,447	15,09,34,202	32,33,47,649
		23,01,37,927	20,53,98,966	43,55,36,893

4. During the course of assessment proceedings assessee furnished copy of additional Profit & Loss Account and balance sheet of both the sole proprietorship concerns and furnished revised computation of income showing income at Rs.33,08,911/- (Original income Rs.5,80,301 + income of Rs.27,28,601/- offered on undisclosed turnover of Rs. 20,53,98,366/- @ 1.33%)

5. The assessing officer while passing the assessment order computed the following amount as the total income of the assessee:-

S.No	Particulars	Amount (Rs.)
1	Net profit as estimated on total turnover @5% on Rs.43,55,36,893/-	2,17,76,845
2	Addition on account of investment @12.50% of unrecorded turnover of Rs.20,53,98,966/-	2,56,74,870

	Gross Total Income	4,74,51,715
	Less: Deduction u/s 80C	1,00,000
	Total taxable income	4,73,51,715

6. The appellant assessee has preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide his order dated 15.01.2018 has allowed the following reliefs:-

S.No	Particulars	Income as returned (Rs.)	Addition made by AO (Rs.)	Relief allowed by the CIT(A)	Addition as maintained (Rs.)	Income finally assessed (Rs.)
1	Net Profit	33,08,911	1,94,67,934	1,84,21,477	10,46,457	43,55,368
2	On account of investment in undisclosed business		2,56,74,870	2,05,08,966	51,65,904	51,65,904
		33,08,911	4,51,42,804	3,89,30,443	62,12,361	95,21,272

7. The appellant assessee and department both have preferred an appeal before the Hon'ble Bench. The grounds of appeal as taken by the appellant assessee and also by the department are as under:-

[A] GROUNDS OF APPEAL AS TAKEN BY THE APPELLANT ASSESSEE

1.1] That on the facts and in the circumstances of the case the Ld CIT[A] erred in approving the reference to the special audit as correct without properly appreciating the facts of the case and submission made before him.

1.2] That on the facts and in the circumstances of the case the Ld Assessing officer failed to bring on records any complexity in the books of account of the appellant prior to reference to the special audit U / s 142 [2A] of the Act.

1.3] That on the facts and in the circumstances of the case the Ld CIT[A] erred in approving the assessment order as passed during the extended time period as allowed as per proviso to section 142[2C] of the Act as valid.

2] That on the facts and in the circumstances of the case the Ld CIT[A] erred in estimating the net profit of the appellant at Rs 43,55,368/ - as against net profit as declared by the appellant was of Rs 34,08,911/-.

3] That on the facts and in the circumstances of the case the Ld CIT[A] erred in maintaining the addition on account of investment in unrecorded business to the tune of Rs 51,65,904/- even when sufficient amount of stock and cash was lying in the regular books of account of the appellant.

(B) GROUNDS OF APPEAL AS TAKEN BY THE DEPARTMENT

1] The Ld CIT(A) has erred in directing the AO to estimate the Profit of business @1% of total turnover as against 5% of total turnover applied by the AO. In view of the Hon'ble ITAT, Indore Bench decision in the case of M/s Amar Agrawal (ITA No 611/Ind/2012) wherein the Hon'ble ITAT directed to apply net profit @5% of total turnover in such case.

2] The Ld. CIT(A) has erred in restricting the addition of Rs.2,56,74,870/- made on account of profit of turnover shown in undisclosed bank accounts to Rs.51,65,904/- being the peak unrecorded turnover, grossly ignoring the following peculiar facts:-

- a. Purchases made from M/s Raghu Cotton Corporation, Sutala and Anand Prasad Daliya, Warangal were itself totalling to Rs. 1.07 Cr. (Page 7 para (c) & (d) of CIT(A) order.
- b. Cotton purchase is a seasonal activity and cannot be spread over 300 days as taken by Ld. CIT(A).
- c. The fact of doing unaccounted business was accepted by assessee in the inquiry proceedings.
- d. Set off of funds & stocks in the books cannot be given while determining unaccounted investment outside books of accounts.

8. Apropos Ground No.1 raised in Assessee's Appeal No.284/1/2018 through which the assessee's grievance is that the Ld. CIT(A) erred in approving the assessment order passed during the extended time period as allowed as per proviso to Section 142(2C) of the Act. In support of this ground Ld. Counsel for the assessee referred to the following written submission:-

b.

3] GROUND No1 of the Appellant assessee:

3.1] The appellant assessee in this ground of appeal has challenged the reference to the special audit U/s 142[2A] of the Income Tax Act and also challenged that the assessment order as passed by the assessing officer was barred by limitation of time.

3.2]The date of events in the case of the above assessee is as under:-

S.No	Particulars	Date/ Events
1	Date of filing of the return of total income	20-09-2011
2	Notice U/s 143[2] of the Act was issued on	24-09-2012
3	Time till which the assessment order can be p[assed U/s 153 of the Act	31-03-2014
4.1	Letter dt 23-12-2013 being proposal for special audit U/s 142[2A] served on the counsel of the assessee	23-12-2013
4.2	Proposal sent to get approval for special audit from the Hon'ble Chief Commissioner of Income Tax , Indore	06-01-2014
4.3	The assessing officer has filed his objection for invoking the provision of section 142[2A] of the Income Tax Act taken on record on	16-01-2014
4.4	After verifying the books , final report was sent to the Hon'ble CCIT, Indore recommending the case of the assessee for Special Audit U/s 142[2A] of the Act	28-01-2014
4.5	Approval was received from the Hon'ble Commissioner of Income Tax -2, Indore VIDE Letter No CIT-2/Indore/ Tech/ Spl. Audit/ 13-14/ 6088 dt 18/02/2014 & 20/02/2014	21-02-2014

4.6.1	The assessee again objected the reference to the Special Audit on	
4.6.2	The objection as raised by the assessee was rejected by the assessing officer vide letter F.No ITO/KGN/2013-14/ 4238 dt 26-02-2014	26-02-2014
4.7	The assessing officer directed the assessee to get his accounts audited from M/s Mahesh C Solanki & Co, Chartered Accountants vide letter F.No ITO/KGN/2013-14/4252 dt 26-02-2014 dt.	26-02-2014
4.8	The time allowed to the apecial auditor to submit his report by	15-04-2014
4.9	The special auditor requested to extend time for completing the special audit letter is received by the assessing officer on	23-04-2014
4.10	On the request of the special auditor, the time for completing the special audit was extended upto	15-05-2014
4.11	The speical audit report dt 15-05-2014 but the same was submitted by the special auditor on	23-05-2014
4.12	The assessment order was passed by the assessing officer on	07-07-2014

3.3] Copy of order sheet entry as noted by the assessing officer are attached on Page Nos 187 to 195 of the Compilation. On perusal of the same, it is evident that, time allowed to submit the report was till 15-04-2014. The extension was sought by the Auditor on 23-04-2014 which was not correct. Since, the extension in any case be sought on or before 15-04-2014. After expiry of the time as allowed to furnihs the repoert, extension cannot be granted.

3.4] The extension of time as allowed on 23-04-2014 to till 15-05-2014 was not correct. Since, the due date for filing of the report expired on 15-

04-2014. Thus, limitation for the passing of the assessment order start from 15-04-2014 which was expired on 14-06-2014 but the assessment order was passed by the assessing officer on 07-07-2014 which was barred by limitation of time. The order so passed on 07-07-2014 therefore requires to be quashed as barred by limitation of time.

9. Per contra Ld. Departmental Representative vehemently argued and relied to the following finding of Ld. CIT(A):-

“4.1] In Ground Nos 1 and 3 of the appeal, the appellant has challenged that the assessment order as passed was barred by limitation of time. The appellant had filed his return of total income on 20.09.2011, notice u/s 143(2) was issued on 24.09.2012 and therefore the assessment order was to be passed by the Assessing officer till 31-03-20 14. The appellant during the course of assessment proceeding produced revised books of account after incorporating the bank accounts which remained to be included at the time of filing of the original return of total income. Considering the complexity in the accounts as prepared by the appellant and produced during the course of assessment proceeding, the assessing officer issued show cause notice for special audit and objection from the assessee was also obtained, and after considering the objection of the assessee proposal was send to the Pr CIT-2, Indore and approval was obtained on 21-02- 2014. On receipt of the approval from the Pr CIT-2, Indore M/s Mahesh C Solanki &Co, Chartered Accountants of Indore was appointed for conducting of the special audit and time to furnishing of audit report was allowed till 26-02-2014. However, on receipt of request for more time for conducting of special audit, the same was extended from time to time to till 15-05-2014 and assessment order was passed on 07-

07-2014 i.e. within sixty days from the date of receipt of the audit report from the special auditor. Thus, the order as passed by the assessing officer was within the time as allowed U Is 153 of the Income Tax Act. Thus, these grounds of appeal as taken by the appellant are hereby dismissed .

4.2] In ground No 4 of the appeal, the appellant has challenged the rejection of the books of account by invoking the provision of section 145[3] of the Act. It is an undisputed fact that out of 19 [Nineteen] bank accounts of the appellant, only 14 [fourteen] bank accounts were incorporated in the books of account and five bank accounts remains to be incorporated. The appellant himself during the course of assessment proceeding produced revised books of accounts wherein all other bank accounts were duly incorporated, the books of account so produced were also referred for special audit, hence, books of account as prepared at the time of filing of the return of total income were not reliable and the books of account as produced during the course of assessment proceeding were also not reliable. The assessing officer was therefore justified in rejecting the books of account by invoking the provision of section 145[3] of the Income Tax Act. Thus, this ground of appeal is also dismissed”.

10. We have heard rival contentions and perused the records placed before us and carefully gone through the findings of Ld. CIT(A) as well as written submission filed by the assessee. Through Ground No.1 assessee has challenged the finding of Ld. CIT(A) approving the reference to Special Audit u/s 142(2A) of the Act and

also approving the assessment order passed during the extended time period as allowed as per proviso to Section 142(4C) of the Act.

11. We observe that during the course of assessment proceedings Ld. A.O looking to the complexities of the case coupled with unaccounted entries appearing in 5 undisclosed bank accounts submitted a proposal to the Ld. CCIT, Indore for granting permission for referring the assessee's books of accounts and unaccounted bank accounts for special audit u/s 142(2A) of the Act. Necessary approval was received on 21.2.2014. Objections of the assessee were placed on record and were rejected on 26.02.2014 and on the same date Ld. A.O directed the assessee to get his accounts audited from the Auditor namely M/s Mahesh C Solanki & Co, Chartered Accountant. As per the order of the Ld. A.O Special Auditor was to submit the report latest by 15.04.2014. From this point onwards the controversy began. Records shows that on 23.04.2014 request was made by the Special Auditor to Ld. A.O for extending time limit which was accepted and time was extended to 15.05.2014. Through a letter dated 15.05.2014 along with the Audit Report u/s 142(2A) of the Act dated 15.05.2014 was

submitted with the Income Tax Department. The receipt by the Department is shown as 23.05.2014, copy of the receipt is placed at page 97 of the paper book. The assessment u/s 143(3) of the Act was completed on 07.07.2014. In the light of above facts Ld. Counsel for the assessee has contended that firstly the Special Auditor did not apply for extension of time for submitting the report before 15.4.2014. Secondly the time was extended to 15.05.2014 and report was submitted on 23.05.2014 which was delayed. Major emphasis of the Ld. Counsel for the assessee was that first due date allowed by Ld. A.O to the Special Auditor i.e. 15.04.2014 was important. Since till this date no extension was applied the assessment ought to have been completed latest by 14.06.2014 i.e. within two months from 15.04.2014. Since the limitation for passing the order was expired on 14.06.2014 the impugned assessment order dated 07.07.2014 is barred by limitation.

12. For examining this aspect we will first go through the relevant provisions which in this case are Section 142(2A), 142(2C) and proviso to Section 142(2C) and the same are reproduced below:-

Section 142(2A)

If, at any stage of the proceedings before him, the Assessing Officer, having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner], direct the assessee to get the accounts audited by an accountant as defined in the Explanation below sub- section (2) of section 288, nominated by the Chief Commissioner or Commissioner] in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the Assessing] Officer may require.

Section 142(2C)

Every report under sub- section (2A) shall be furnished by the assessee to the Assessing Officer within such period as may be specified by the Assessing Officer:

Provided that the Assessing Officer may, on an application made in this behalf by the assessee and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit; so, however, that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred and eighty days from the date on which the direction under sub- section (2A) is received by the assessee.

13. Now after going through the above section, as far as Section 142(2A) is concerned there is no dispute at the end of Ld. Counsel for the assessee. The issue is confined to the provision of proviso of Section 142(2C) of the Act which refers to the submission of report within such period as may specified by the Ld. A.O. On going through the proviso of Section 142(2C) of the Act we observe that the time for furnishing the report could be extended not exceeding 180 days from the date on which the directions u/s 142(2A) of the Act is received by the assessee. Extension can be either *suo-moto* by the Ld. A.O or on an application made in this behalf by the assessee quoting good and sufficient reasons. In the proviso there is no mention that whether the Special Auditor can approach for extension of time limit to submit the report. In our view the power is vested with the Ld. A.O which either on the application of the assessee or *suo-moto* (emphasis applied) can extend the time period up to 180 days. In the instant case the assessee has not approached for extension of time period. It was only between the Ld. A.O and the Special Auditor that there was a communication of extension of time period. In our considered view Ld. A.O who is having sufficient powers under proviso to Section 142(2C) of the Act

to *suo-moto* extend the period not exceeding 180 days from the date of issue of order u/s 142(2A) of the Act. Ld. A.O has acted well within his power and extended the time period and subsequently accepted the Special Audit Report dated 23.05.2014 and further completed the assessment u/s 143(3) of the Act within two months from the date of receipt of Special Audit Report. We therefore find no reason to interfere in the findings of Ld. CIT(A) and find no merit in Ground No.1 raised by the assessee. Accordingly Ground No.1 of assessee's appeal is dismissed.

14. Now we take up Ground No.2 raised by the assessee and Ground No.1 raised by the Revenue.

15. The Assessee has challenged the finding of Ld. CIT(A) who has estimated the net profit of the assessee at Rs.43,55,368/- as against Rs.34,08,911/- declared by the assessee. On the other hand Revenue has challenged the relief given by Ld. CIT(A) of having applied 1% of net profit rate as against 5% net profit rate applied by Ld. A.O on total turnover. With regard to this issue of application of net profit rate Ld. Counsel for the assessee referred to the following written submissions:-

1.1] The appellant had filed his original return of total income on 20-09-2011 declaring total income at Rs 5,80,310/-.

1.2] The net profit as declared by the appellant assessee in his both the firms are as under:-

S.No	Particulars	Monika Trading Co [Rs]	White Gold Enterprises [Rs]
1	Sales	5,77,24,480	17,24,13,447
2.1	Net Profit	1,66,660	5,13,645
2.2	% of Net Profit	0.29%	0.29%

1.3] The appellant assessee declared net profit on the amount of unrecorded total turnover by applying the net profit rate at 1.33%. The same is calculated as under:-

S.No.	Particulars	Monika Trading Co [Rs]	White Gold Enterprises[Rs]	Total [Rs]
1	Sales as disclosed	5,77,24,480	17,24,13,447	23,01,37,297
2	Net Profit as disclosed in the regular books of account	1,66,660	5,13,645	680,305
Add	Interest as debited in the P & L A/c			
	Paid to Bank	27,157	3,72,485	3,99,642
	Others	1,52,720	18,22,806 [80% of Rs]	19,75,526

			2278508/-]	
	% of Net Profit			1.33%
	% of Net profit applied			1.33%

1.4] The appellant assessee himself not claimed deduction in respect of interest paid to Bank and part deduciton in respect of Interest paid to others while calculating the net profit in respect of unrecorded sales as executed with bank accounts which remains to be incorporated in the regular books of account.

1.5] The Net profit as shown by the appellant assessee in respect of disclosed and undisclosed source is as under:-

S.No.	Particulars	Monika Trading Co (Rs.)		White Gold Enterprises (Rs.)		Total
		Disclosed	Undisclosed	Disclosed	Undisclosed	
1	Sales	5,77,24,480	5,44,64,764	17,24,13,447	150934202	435536893
2.1	Net Profit	1,66,660	7,24,381	45	225	34,08,911
2.2	% of Net Profit	0.29%	1.33%			0.79%
3.1	Consolidate Total turnover	11,21,89,244	47,649		3.1	Consolidate Total turnover
3.2	% of Consolidated Net Profit	0.79%		3.2	% of Consolidated Net Profit	0.79%

1.6] The assessing officer applied the rate of net profit at 5% on the amount of total turnover which includes both disclosed and undisclosed turnover. However, the Ld CIT(A) while deciding the appeal restricted the rate of net profit rate at 1% as against 5% as applied by the assessing officer and 0.79% as disclosed on the amount of consolidated total turnover by the appellant assessee.

1.7.1] The assessing officer on the basis of discrepancies as pointed out from the undisclosed bank account rejected the books of account as maintained by the appellant assessee.

1.7.2] The assessing officer has not described any genuine reason for rejection of the regular books of account as maintained by the appellant assessee.

16. Ld. A.O estimated net profit rate @5% placing reliance on the decision of Hon'ble ITAT, Indore Bench in the case of ACIT V/s Amar Agrawal ITA No.611/Ind/2012. Ld. Counsel for the assessee submitted that the case of the assessee is clearly distinguishable from that in the case of *Shri Amar Agrawal (supra)* on account of following reasons:-

- (a) The case of *Shri Amar Agrawal (supra)* pertains to Assessment Year 2007-08 and Hon'ble Tribunal referred to the provisions of Section 44AF whereas the assessee's case pertains to Assessment Year 2011-12 and provision of Section 44AF are not applicable.
- (b) In the case of *Shri Amar Agrawal (supra)* the case involved the application of Mandi Tax Rules, payment to farmers on purchase and the assessee having no record of payments made to the farmers on the date of purchase whereas in the case of assessee,

in the instant case there is no such issue raised by the Ld. A.O that payments were made by the appellant from the undisclosed sources.

- (c) In the case of *Shri Amar Agrawal (supra)* the issue was with regard to the payment made to the farmers from undisclosed sources on a particular date which were shown as outstanding in the books wherein in the case of assessee in the instant case the issue relates to unaccounted turnover carried out through five undisclosed bank accounts.

16(A) Further Ld. Counsel for the assessee submitted that the issue of Net profit rate raised in this appeal is squarely covered by the decision of Hon'ble Indore Bench of ITAT in the case of *Shri Sitarm Agrawal ITA No.925/Ind/2018 order dated 20.08.2020*.

16(B). Ld. Counsel for the assessee also referred to the assessment of succeeding year i.e. Assessment Year 2012-13 wherein the percentage of net profit declared by the assessee was duly accepted and the same is calculated as under:-

S.No	Particulars	Monika Trading Co	White Gold Enterprises	Total [Rs]
1	Sales	1,12,73,581	9,50,94,395	10,63,67,976

2.1	Net Profit	1,60,220	4,45,282	6,05,502
2.2	% of Net Profit	1.42%	0.47%	0.57%

17. The assessee has also collected some of the audited final account of the following firms which are also regularly assessed to tax with the income tax department for the Asst Year 2011-12 and percentage of Net Profit as declared by them is as under:-

S.No	Particulars	Mittal Industries	Pawan Cotton Ind	Navin Ginning Factory
1	PAN No	AACFM0427D	AAJFP0999G	AAOPT4069Q
2	Sales	40,80,89,647	46,56,19,435	42,19,25,011
3.1	Net Profit	9,10,601	6,42,047	28,12,927
3.2	% of Net Profit	0.22%	0.14%	0.67%

18. Reliance also placed on the following decisions:-

- (i) Hon'ble Jurisdictional High Court in the case of *CIT vs Bal Chand Ajit Kumar* (263 ITR 0610).
- (ii) Hon'ble Gujarat High Court in the case of *CIT vs President Industries* (258 ITR 0654)
- (iii) Hon'ble Jurisdictional High Court in the case of *Man Mohan Sadani vs CIT* (304 ITR 0052)
- (iv) Hon'ble ITAT, Indore Bench in the case of *Shri Sitaram Agrawal [Prop of M/s SMO Industries]* (Appeal No ITA No 925/Ind/ 2018 dt 20-08-2020]

19. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

20. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred and relied by the Ld. Counsel for the assessee. The issue raised in Ground No.2 by the assessee and Ground No.1 raised by the Revenue relates to estimation of Net profit rate. We observe that the assessee carried out various transactions of purchases and sale through 5 undisclosed bank accounts. The undisputed figure of undisclosed turnover in the case of M/s Monika Trading Co and M/s White Gold Enterprises is Rs.5,44,64,764/- and Rs.15,09,34,202/- respectively. The assessee has offered 1.33% of net profit on the undisclosed turnover in the Revised computation of total income filed during the course of assessment proceedings. Ld. A.O after relying on the decision of *Amar Agrawal (Supra)* applied the net porofit of 5% on the total turnover (disclosed + undisclosed) thereby computing Net Profit of Rs.2,17,76,845/-.

21. When the matter came up before Ld. CIT(A) substantial relief was granted by Ld. CIT(A) observing as follows :-

“4.4.1] In Ground Nos 2 & 6 of the appeal, the appellant has challenged the, estimation of income of Rs 2,17,76,845/ - from business by adopting the rate of profit at 5 on the gross turnover

of Rs 43,55,36,893/-. The appellant while filing his return of total income declared total turnover of his both the proprietorship concern is as under: -

S.No.	Name of the Proprietorship concern	Amount (Rs.)
1	M/s Monika Trading Co	5,77,24,480
2	M/s White Gold Enterprises	17,24,13,447
		23,01,37,927

4.4.2] The amount of total turnover after incorporating all the bank accounts was increased from Rs 23,01,37,927 to Rs 43,55,36,893/-, the same is calculated as under:-

S.No.	Name of the Proprietorship concern	Original	Additional in revised	Additional in revised
1	M/s Monika Trading Co	57724480	54464764	112189244
2	M/s White Gold Enterprises	172413447	150934202	323347649
				435536893

4.4.3 The appellant on the amount of total turnover as declared at the time of filing of the original return of total income and also after incorporating the revised turnover calculated as under:-

S.No	Particulars	Monika Trading Co		White Gold Enterprises	
		Disclosed	Undisclosed	Disclosed	Undisclosed
1	Sales	57724480	54464764	172413447	150934202
2.1	Net profit	166660	724381	513645	2004225
2.2	% of Net profit	0.20%	1.33%	0.29%	1.33
3.1	Consolidate Total turnover	11,21,89,244		32,33,47,649	
3.1	Consolidate Net profit	8,91,041		25,17,870	
3.2	% of consolidated net profit	0.79%		0.79%	

4.4.4] On perusal of the above table it is evident that the appellant has shown net profit at 0.29 only in both his

proprietorship concern but the percentage of net profit increased from 0.29 to 1.33 on the amount of turnover as not recorded in his books of account. The case of the appellant for the Asst Year 2012-13 was also selected in scrutiny and book result as declared by the appellant was duly accepted, the appellant in that year declared net profit at 1.42% in his proprietorship concern M/s Monika Trading Co and 0.47% in the proprietorship concern M/s White Gold Enterprises, the same is summarised as under:-

S.No	Particulars	Monika Trading Co	White Gold Enterprises
1	Sales	1,12,73,581	9,50,94,395
2.1	Net profit	1,60,220	4,45,282
2.2	% of Net profit	1.42%	0.47%
3.1	Consolidated turnover	10,63,67,976	
3.2	Consolidated Net profit	0.57%	

4.4.5] On perusal of both the table Le. as provided in paras 4.4.3 & 4.4.4, it is evident that of consolidated profit as declared by the appellant on the amount of disclosed or undisclosed turnover in the year under appeal was at 0.79 and consolidated profit as declared in the Asst Year 2012-13 which was duly accepted by the assessing officer was 0.57 . The margin of the appellant in large volume is significantly lower than the rate as provided U / s 44AF / 44AD of the Act. The assessing officer while passing the assessment order applied the rate of net profit at 5 based on the decision the case of Shri Amar agrawal [Appeal No ITA No 611/ Ind/ 2012]. The appellant deals in Agro product and the price of the product varies due to the quality of rains and soil, availability and supply of the material. Hence, net profit rate of one assessee cannot be applied in the case of other assessee. The appellant

during the course of hearing also provided rate of net profit of few more concerns in the same assessment year, the same is reproduced as under:-

S.No	Particulars	Mittal Industries	Pawan Cotton Ind	Naving Ginning Factory
1	PAN No	AACFM0427D	AAJFP0999G	AAOPT4069Q
2	Sales	408089647	465619435	421925011
3.1	Net profit	910601	642047	2812927
3.2	% of Net profit	0.22%	0.14%	0.67%

4.4.6 On perusal of the above, it is clear that the percentage of net profit of all the concerns varies from 0.22 to 0.67 but the appellant himself in his case accepted consolidated net profit rate at 0.79 in the year under appeal and 0.57 in the succeeding assessment year i.e. in the Asst Year 2012-13. Hon'ble jurisdictional High court in the case of CIT Vs Bal Chand Ajit Kurnar as reported in 263 ITR 0610 and in the case of Man Mohan Sadani Vs CIT as reported in 3'04 ITR 0052 has held that only net profit rate is to be applied in case of unrecorded sales. In the present case, though the books of account of the appellant was rejected and rightly so but the rate of net profit can be applied on the basis of net profit as declared by the appellant himself in his own case and also considering the other comparable cases as available. The appellant in his own case in the year under appeal had declared consolidated net profit at 0.79 and 0.57 in the Asst Year 2012-13 but in all the other similar cases where turnover is more or less similar to the revised turnover of the appellant the percentage of net profit varies between 0.22 to 0.67. Hence, to meet the end of justice, net profit rate in the case of the appellant applied at 1% on total turnover of Rs 43,55,36,893/- which

calculated comes to Rs 43,55,368/- as against net profit as declared by the appellant in his revised Profit & loss account was of Rs 34,08,911/-. I hereby direct the assessing officer to considered the net profit of Rs 43,55,368/- in place of Rs 2,17,76,845/-. The appellant accordingly get relief of Rs 1,74,21,447/-.”

22. Now before us the assessee has challenged the addition confirmed by Ld. CIT(A) and the Revenue has challenged the relief granted by Ld. CIT(A). As submitted by Ld. Counsel for the assessee that similar facts and issue came up before this Co-ordinate Bench in the case of *Shri Sitaram Agrawal (supra)*. On going through this decision we find that in the case of *Shri Sitaram Agrawal (supra)* also there were undisclosed bank accounts which had undisclosed turnover. Assessee accepted the undisclosed turnover and offered net profit on such undisclosed turnover. Net profit rate adopted by the assessee namely *Shri Sitaram Agrawal (supra)* was the average net profit rate accepted by the department in the earlier years and the percentage of financial expenses (Bank interest, other finance charges) already incorporated in the regular books. In these given facts the Tribunal confirmed the finding of Ld. CIT(A) and accepted the net profit rate offered by the assessee observing as follows:-

"26. From perusal of the detailed finding of fact by Ld. CIT(A) and the factual aspect we observe that the Ld. A.O has only taken the basis of undisclosed bank account for rejecting the books of accounts. Nowhere in the assessment order he has pointed out any other irregularity in the regular books of accounts maintained by the assessee which are duly audited. Ld. Departmental Representative has failed to bring on record any such observation of the Ld. A.O. It is well evident that the fact of undisclosed bank account has duly been admitted by the assessee in the revised return of income and has offered the net profit @2.5% on the total transactions of the undisclosed bank account treating it as undisclosed sales at Rs.18,82,79,709/- on which net profit of Rs.47,06,993/- has been offered. Apart from this fact during the course of assessment proceedings Ld. A.O while examining the stock records and books of accounts has not come across any mistake or irregularity which could prove that the books of accounts regularly maintained by the assessee and book results are questionable. In these given facts and circumstances of the case we are of the view that the action of the Ld.A.O rejecting the book results thereby invoking provisions of section 145(3) of the Act was not justified and so was also not justified in estimating the net profit on the regular turnover in the books of accounts @2.5% as against 0.73% offered by the assessee. Revenue has also failed to rebut the fact that Ld. A.O has not pointed out any mistake in the submissions of the assessee wherein it was mentioned that net profit rate of 2.5% applied on the undisclosed turnover was on the basis of calculation as per which the interest and bank charges were claimed in the regular books which in percentage terms were around 1.82% of the total disclosed turnover and since they have already been claimed so the percentage of interest and bank charges were added to the net profit offered in the books of accounts and fair net profit @2.5% was applied. This application of 2.5% on undisclosed turnover cannot be equated to be applied on the regular turnover disclosed by the assessee. In the immediately preceding assessment year 2013-14 assessee has offered

0.91% as net profit rate which has been accepted by the revenue. In these given facts and circumstances of the case we hereby find no reason to interfere in the finding of Ld. CIT(A) deleting the addition of Rs.67,76,734/- and we also find no justification in the action of the Ld. A.O rejecting the books of accounts u/s 145(3) of the Act. We accordingly dismiss Ground No.2 of the revenue's appeal."

23. Examining the facts of the instant case with the case of *Shri Sitaram Agrawal (supra)*, we are satisfied that the issue and the facts are verbatim similar. In the case of the assessee net profit rate @ 0.29% is declared on the turnover disclosed in the regular books. Ld. A.O has not pointed out any mistake in the regular books maintained by the assessee. Just because that the assessee is having 5 bank accounts and not shown in the regular books cannot be the sole basis to reject the regular books of accounts. On the undisclosed turnover the assessee has already opted and duly offered the net profit separately but on the disclosed turnover unless the Ld. A.O points out specific mistake or doubt about the genuineness of the purchase/sale and expenses transactions, the book results cannot be doubted. This is also a fact that the assessee has maintained quantitative details and books are duly audited. So far as the book results i.e. net profit shown in the regular books @0.29% on the disclosed turnover of Rs.23,01,37,927/- is concerned, we are of the

view that the same should be accepted and estimation of Ld. A.O applying @5% of net profit and Ld. CIT(A) @1% of net profit on the disclosed turnover is *devoid* of any merits.

24. Now as far as the undisclosed turnover is concerned the assessee has offered net profit of 1.33%. This net profit rate has been calculated by adding interest cost @1.03% which has been calculated by dividing the total finance charges of Rs.23,75,168/- divided by the disclosed turnover of Rs.23,01,37,927/-. The assessee *suo-moto* accepted that the bank charges have already been charged in the regular books and therefore net profit rate before claiming of finance charges should be adopted as net profit on the undisclosed turnover. Assessee has accordingly added 1.04% of finance cost to 0.29% of the net profit offered in the regular books and the total i.e. 1.33% is adopted as Net Profit rate and accordingly offered net profit of Rs.27,28,606/- on the undisclosed turnover of Rs.20,53,98,966/-. We are thus satisfied with the net profit offered by the assessee in the Income Tax Return on the disclosed turnover and Net profit of 1.33% offered on undisclosed turnover during assessment proceedings and thus applying the ratio of the decision in the case of *Shri Sitaram Agrawal (supra)* which is squarely applicable in the instant case, we

allow Ground No.2 of the assessee's appeal and dismiss Ground No.1 of the Revenue's appeal.

25. Now we take Ground No.3 raised by the assessee and Ground No.2 raised by the Revenue. The common issue raised by both the assessee and Revenue in this grounds relates to addition made on account of peak balance in undisclosed bank accounts.

26. During the course of assessment proceedings when the Ld. A.O was satisfied that the books of accounts needs to be rejected since various transactions of sales were not recorded in the regular books. The Ld. A.O apart from estimating higher net profit on total turnover also made addition for undisclosed investment in the unrecorded turnover. For making the alleged addition on account of investment in unrecorded turnover Ld. A.O examined the balance sheet of both the proprietorship concerns of the assessee and observed that the assessee has employed funds at Rs. 2.88 crores and the disclosed turnover is Rs. 23.01 crores. Taking this basis of the ratio of fund employed to total accounted turnover Ld. A.O applied the same to the unaccounted turnover and computed the unaccounted investment at Rs.2,56,74,870/- and added the same to the income of the assessee. When the matter came before Ld. CIT(A) he granted partial relief by

sustaining the addition of Rs.51,65,904/- taking the basis of peak bank balance of the total 5 unaccounted bank accounts.

27. Now both the assessee and Revenue are in appeal before the Tribunal. Assessee has challenged the addition confirmed by Ld. CIT(A) and Revenue is aggrieved with the relief granted by Ld. CIT(A).

28. Ld. Counsel for the assessee referred to following written submissions:-

2.1] The assessing officer while passing the assessment order estimated the net investment at 12.5% of the Unrecorded sales as executed by the appellant assessee.

2.2] The appellant assessee having total turnover of Rs 23,01,37,927/- in his proprietorship concerns, the amount of total turnover , cash and stock in these units are as per audited final account are as under:-

S.No	Name of the Firm	Total Turnover [Rs]	Cash & Bank [Rs]	Stock [Rs]
1	M/s Monika Trading Co	5,77,24,480	7,11,867	NIL
2	M/s White Gold Enterprises	17,24,13,447	9,61,814	2,80,89,197
		23,01,37,927	16,73,681	2,80,89,197

2.3] The assessing officer while passing the assessment order estimated the amount of Investment in the unrecorded sales of Rs 2,56,74,870/- i.e 12.5% of total unrecorded turnover of Rs 20,53,98,966/-.

2.4.1] The assessing in the assessment order further observed that the appellant assessee had shown purchases from M/s Ragho Cotton Corporation , Sutala in his Proprietorship Concern M/s Monika Trading Company to the tune of Rs 81,81,365/- during the period from 13-08-2010

to 01-12-2010 and payment to the said party was made on 03-02-2011 and 09-02-2011. It was also stated by the assessing officer that the Inspector in his report has submitted that the said party is not available in the addresses as provided. Similarly in the case of Shri Anand Prasad Daliya, Warangal purchases was shown in the book of M/s Monika Trading Company during the period from 04-10-2010 to 09-10-2010 to the tune of Rs 25,20,120/-. In this case a letter was issued under section 133(6) of the Act which was also return unserved.

2.4.2] The payment made to both these parties from the bank account of the appellant assessee was duly reflected. Please refer Page No 276 of the compilation, wherein the amount paid to these parties were duly highlighted.

2.4.3] It is pertinent to note that appellant assessee while calculating the peak, credit of purchases as made from both these parties have not taken into account. However, the cash balance and stock as lying in the regular books of account only was considered by the appellant assessee for working of peak.

2.5] The appellant assessee before the Assessing officer and also before the Ld CIT(A) claimed that the amount of cash and stock as lying in his regular books of account is sufficient as to executed total turnover through these Five bank accounts which remained to be incorporated in the regular books of account.

2.6] The appellant assessee during the course of assessment proceeding obtained revised Audited final accounts after incorporating entries transactions as executed through these five bank accounts which remained to be included in the regular books of account. The audit report as obtained on the basis of revised books has also been filed before the assessing officer. On perusal of the same it was clearly evident that stock and cash as

per regular books of account duly justified all the transactions as executed through these five bank accounts.

2.7] The amount of cash in hand and stock as lying in the regular books of account of the appellant assessee as summarized are attached herewith. The said detail was prepared on the basis of books of account which was before the assessing officer and also referred for Special Audit. Few dates as summarized is as under:-

**Dwarkaprasad Chiranjilal Tayal
Monika Trading Company & Whitegold Enterprise Peak Calculation
For The Date 01-04-2010 To 31-03-2011**

DATE	CASH BALANCE AVAILABLE IN MONIKA TRADING	CASH BALANCE AVAILABLE IN WHITE GOLD	STOCK VALUATION MONIKA TRADING	STOCK VALUATION WHITE GOLD	TOTAL CASH & STOCK BALANCE AS PER BOOKS	Buldana Urban Bank (Monika) AC NO 21/180	Union Bank (Monika) AC NO. 5826010100 50068	HDFC (White Gold) AC NO. 0257256000 4723	Union Bank (White Gold) AC NO. 58260101005 0069	BULDHAN A LOAN A/C (UNDISCLOSED) AC NO. 181/1205-10	TOTAL BANK BALANCE AS PER UNDISCLOSED BOOKS	BALANCE OF CASH AND STOCK AVAILABLE
1-Apr-10	65,465	10,26,759	-	3,45,42,274	3,56,34,498					-	-	3,56,34,498
2-Apr-10	65,465	10,26,759	-	3,27,95,689	3,38,87,913					-	-	3,38,87,913
15-Oct-10	3,26,957	27,49,780	56,29,061	25,59,663	1,12,65,461		50,791		17,05,546	-	17,56,337	95,09,124
16-Oct-10	3,26,957	27,49,780	56,29,061	25,59,663	1,12,65,461		50,791		17,05,546	-	17,56,337	95,09,124
17-Oct-10	3,26,957	27,49,780	56,29,061	25,59,663	1,12,65,461		50,791		17,05,546	-	17,56,337	95,09,124
18-Oct-10	3,26,957	27,49,780	55,26,708	25,59,663	1,11,63,108		50,791		16,16,638	-	16,67,429	94,95,679
19-Oct-10	3,26,957	27,49,780	55,26,708	25,59,663	1,11,63,108		16,16,313		11,66,588	-	27,82,901	83,80,207
20-Oct-10	3,26,957	27,49,780	55,26,708	25,59,663	1,11,63,108		7,16,313		2,66,588	-	9,82,901	1,01,80,207
21-Oct-10	3,26,957	27,49,780	55,26,708	25,59,663	1,11,63,108		7,16,313		2,66,588	-	9,82,901	1,01,80,207
22-Oct-10	3,26,957	27,49,780	55,26,708	25,59,663	1,11,63,108		16,313		22,51,229	-	22,67,542	88,95,566
23-Oct-10	3,26,957	27,49,780	56,25,609	25,59,663	1,52,62,009		16,313		38,84,203	-	39,00,516	1,13,61,493
24-Oct-10	3,26,957	27,49,780	56,25,609	25,59,663	1,32,62,009		16,313		38,84,203	-	39,00,516	93,61,493
25-Oct-10	3,26,957	27,49,780	56,25,609	25,59,663	1,32,62,009		21,73,983		8,83,953	-	30,57,936	1,02,04,073
26-Oct-10	3,26,957	27,49,780	56,25,609	25,59,663	1,22,62,009		12,73,958		22,20,576	-	34,94,534	87,67,475
27-Oct-10	3,26,957	27,49,780	56,25,609	25,59,663	1,22,62,009		51,65,904		24,14,381	-	75,80,285	46,81,724
28-Oct-10	3,26,957	25,66,780	56,25,609	25,59,663	1,10,79,009		42,65,904		21,66,558	-	64,32,462	46,46,547
29-Oct-10	3,26,957	33,03,273	56,25,609	58,96,334	1,51,52,173		33,65,904		29,81,663	-	63,47,567	88,04,606
30-Oct-10	3,23,377	30,31,040	56,25,609	66,40,369	1,56,20,395		33,65,904		29,81,613	-	63,47,517	92,72,878
31-Oct-10	3,13,877	28,06,393	56,25,609	69,87,698	1,57,33,577		33,65,904		29,81,613	-	63,47,517	93,86,606
1-Nov-10	3,02,187	22,39,400	56,25,609	86,02,704	1,67,69,900		41,16,080		20,81,613	-	61,97,693	1,05,72,207
2-Nov-10	3,02,187	26,72,691	56,25,609	1,01,84,082	1,87,84,569		29,66,080		14,18,487	-	43,84,567	1,44,00,002
3-Nov-10	3,02,187	31,67,630	56,25,609	1,07,51,796	1,98,47,222		11,16,080		11,04,640	-	22,20,720	1,76,26,502
4-Nov-10	3,02,187	28,77,309	56,25,609	1,15,48,200	2,03,53,305		8,15,999		3,04,590	-	11,20,589	1,92,32,716
5-Nov-10	3,02,187	28,04,094	56,25,609	1,17,22,931	2,04,54,822		8,15,999		3,04,590	-	11,20,589	1,93,34,233
6-Nov-10	3,02,187	26,32,879	56,25,609	1,21,83,828	2,07,44,503		12,50,999		3,04,590	-	15,55,589	1,91,88,914
7-Nov-10	3,02,187	24,37,867	18,93,838	1,22,59,222	1,68,93,114		12,50,999		3,04,590	-	15,55,589	1,53,37,525
8-Nov-10	3,02,187	30,81,209	18,93,838	1,41,90,101	1,94,67,335		7,50,974		4,590	-	7,55,564	1,87,11,771
9-Nov-10	3,02,187	24,86,959	18,93,838	1,59,28,015	2,06,10,999		20,974		4,590	-	25,564	2,05,85,435
10-Nov-10	3,02,187	23,08,149	18,93,838	1,73,95,328	2,18,99,502		11,73,766		9,04,590	-	20,78,356	1,98,21,146
11-Nov-10	3,02,187	21,74,841	18,93,838	2,21,46,376	2,65,17,243		7,73,766		4,590	-	7,78,356	2,57,38,887
12-Nov-10	3,02,187	30,42,442	18,93,838	2,25,27,762	2,77,66,229		18,29,363		4,590	-	18,33,953	2,59,32,276
13-Nov-10	3,02,187	26,56,639	18,93,838	2,52,32,344	3,00,85,008		1,29,313		4,590	-	1,33,903	2,99,51,105
14-Nov-10	3,02,187	24,85,017	18,93,838	3,51,42,165	3,98,23,207		1,29,313		4,590	-	1,33,903	3,96,89,304
15-Nov-10	3,02,187	20,69,561	18,93,838	3,64,53,584	4,07,19,171		17,50,586		4,590	-	17,55,176	3,89,63,995
16-Nov-10	3,02,187	17,60,116	18,93,838	3,60,62,288	4,00,18,430		3,86,514		4,590	-	3,91,104	3,96,27,326
17-Nov-10	3,02,187	15,51,854	18,93,838	3,32,06,207	3,69,54,086		3,86,514		4,590	-	3,91,104	3,65,62,982

2.8] That in view of the above, there was no negative balance of cash and Stock even after considering the closing bank balances of all the five bank accounts which remains to be incorporated in the regular books of account.

2.9.1] The appellant while calculating the peak has considered the following components:

S.No	Particulars
1	Cash as per regular books of account and as available with the assessee for his business
2	Stock of goods as per books of account and as available for sale out of book proceed of which was deposited in the bank accounts which was not incorporated in the regular books of account

2.9.2] The appellant assessee also declared additional income of Rs 27,28,601/- on the amount of total unrecorded turnover. The said amount is also available with the appellant assessee against the peak credit if any calculated. However, in the present case, the cash balance and stock as per regular books of account was much higher than the bank balance as reflected in all five bank accounts. Hence, there was no reason for making any addition to the total income of the appellant assessee on account of unexplained investment in the unrecorded total turnover.

29. Ld. Counsel for the assessee submitted that the issue raised in this ground is also squarely covered by the decision of Co-ordinate Bench in the case of *Shri Sitaram Agrawal (supra)* so much so that in the case of assessee also the total of cash in hand and stock in hand in the regular books of accounts was always more than the peak balance of the undisclosed 5 bank accounts and thus the assessee was having sufficient fund available in the regular books

to carry out transactions of undisclosed turnover and to cover the peak balance. Reliance was also placed on following decisions:-

- (i) Hon'ble Jodhpur Bench of ITAT in the case of ACIT vs Kashmir Trading Company as reported in 20 Taxmann.com 337.
- (ii) Hon'ble Allahabad High Court in the case of CIT vs Fertilizer Traders as reported in 42 taxmann.com 476
- (iii) Hon'ble Gujarat High Court in the case of CIT vs Tirupati Construction Co as reported in 55 taxmann.com 308.
- (iv) Hon'ble Punjab & Haryana high court in the case of CIT vs Aggarwal Engg Co (JAL) (302 ITR 0246).
- (v) Hon'ble ITAT, Indore Bench in the case of Shri Sitaram Agrawal [Prop of M/s SMO Industries] (Appeal No ITA No 925/Ind/ 2018 dt 20-08-2020]

30. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

31. We have heard rival contentions and perused the records placed before us. Through Ground No.3 in the assessee's appeal and Ground No.2 of Revenue's appeal, the issue raised relates to peak credit/investment unrecorded turnover. We observe that the assessee in addition to the regular transactions of sales recorded in regular books also carried out unaccounted transactions of sales through 5 bank accounts. The assessee has admitted that the sales

carried out in the 5 bank accounts mentioned in the impugned assessment order were carried out by him but there is no record in the books of accounts. After admitting the same assessee had offered net profit on the unrecorded sales turnover. During the assessment proceedings Ld. A.O also examined the aspect of investment carried out in the unaccounted sales turnover. Ld. A.O took the basis of regular books of accounts and after examining the balance sheet in the case of the assessee that the assessee had employed funds to the tune of Rs. 2.88 crores and shown a turnover of Rs. 23.30 crores applied the same ratio and computed the unaccounted investment of Rs. 2.57 crores for carrying out the unaccounted turnover of Rs. 20.54 crores. Ld. CIT(A) while adjudicating this issue substained the addition to the extent of peak balance available in the 5 bank accounts on a particular date which in this case was 27.10.2010 and adopted the peak balance as Rs.51,65,904/-. Ld. CIT(A) confirmed this addition of peak credit observing as follows:-

“4.5.1] In Ground Nos 2 & 7 of the appeal, the appellant has challenged the addition of Rs 2,56,74,870/- made on account of unexplained investment. The assessing officer while passing the

assessment order added 1/8th of total unrecorded turnover of Rs 20,53,98,966/- which calculated comes to Rs 2,56,74,870/- was added to the total income of the appellant on account of unexplained investment in the business of the appellant. The appellant during the course of hearing with the table tried to explain that total unrecorded turnover in his both the proprietorship concern was of Rs 23,01,37,927/- breakup of the same was as under:-

SN	Name of the Firm	Total Turnover [Rs]	Cash & Bank [Rs]	Stock [Rs]
1	M/s Monika Trading Co	5,77,24,480	7,11,867	NIL
2	M/ s White Gold Enterprises	17,24,13,447	9,61,814	2,80,89,197
		23,01,37,927	16,73,681	2,80,89,197

4.5.2 The appellant further claimed that even if the amount of total unrecorded turnover is considered for 300 days in that case also, the total unrecorded turnover calculated comes to Rs 6,84,663/ - per days. The appellant further claimed that he had sufficient amount of cash and' also stock in his regular books of account and therefore no addition on account of unexplained investment was justified in the case of the appellant. The appellant further relied on the decision of the :-

Hon'ble Punjab & Haryana High Court in the case of CIT vs Agrawal Engg Co (JAL) as reported in 302 ITR 0246 wherein it was held that that no separate addition on account of cash credit and on account of unexplained payments for purchases made outside the books can be made once the net profit rate is applied on contract receipts of an assessee for estimating his income from contract work.

*Hon'ble Gujarat High Court in the case of CIT vs President Industries as **reported in 258 ITR 0654 has held that:-***

2] The Tribunal also found that there is no material on the record to suggest that the assessee made any investment outside books of accounts to make alleged unaccounted sales in respect of the aforesaid appellate order. The applicant made an application under s. 256(1) for referring the aforesaid two questions said to be arising out of Tribunal's order.

Hon'ble Allahbad High Court in the case of CIT vs Banwarilal Banshidhar as reported in 229 ITR 0229 has held that:-

Where income is assessed at G.P. rate by rejecting the books of assessee under s. 145(1), proviso, no disallowance can be made separately under s. 40A(3).

That Hon'ble Allahabad High Court in the case of Ashok Kumar Rastogi vs CIT as reported in 100 CTR 204 has held that [refer preamble]

"For recalling its finding, the Appellate Tribunal has not relied upon or referred to any document and addition of Rs. 50,000 as unexplained investment has been made merely on the basis of the sale transactions amounting to Rs. 4,24,396 estimated on the basis of documents seized in raid. Even the ITO and the CIT(A) have given the same reason for adding the aforesaid Rs. 50,000 as unexplained investment. Though the ITO is not bound by the technical rules of evidence and pleadings and is entitled to consider any material which may not be technically accepted as evidence in a civil court, but he cannot make the assessment on a pure guess without reference to any evidence or material.

No evidence or material has been referred to any evidence or material. No evidence or material has been referred to any relied upon for ,treating the aforesaid sum of Rs. 50,000 as unexplained investment and the only circumstance which has been referred in this connection is the estimated sale of Rs. 4,24,396. From the estimated sale it cannot necessarily be inferred that the assessee has invested Rs. 50,000 in some unexplained business. It being not a necessary inference is a pure guess and the finding seem to be based on surmises and conjectures. Thus, there was no material for the Tribunal to hold that the assessee had made an unexplained investment of Rs. 50,000 outside the account books.-Dhakeswari Cotton Ltd. vs. CIT(1954) 26 ITR 775 (sq relied on.)"

Hon'ble Gujarat High Court in the case of CIT vs Gurubachhan Singh J Juneja reported in 302 ITR 63 has held that [refer from preamble] :-

"In absence of any material on record to show that there was any unexplained investment made by the assessee which was reflected by the alleged unaccounted sales) the finding of the Tribunal that only the GP on the said amount can be brought to tax does not call for any interference."

4.5.2] Thus, as such although the appellant was having sufficient cash and stock in his regular books of account and more so when the books of account was rejected and net profit rate was applied there was no justification for making addition of Rs 2,56,74,870/- to the total income of the appellant on account of Unexplained investment for unrecorded total turnover; however, the appellant has not been able to corroborate the fact that the cash and stock in hand of the business was used for making the

initial investment in the out of books sales. Thus, it cannot be denied that the appellant must have made some initial investment for doing business outside the books of account. But this addition on account of initial unexplained investment for doing business outside books of account can not exceed the peak of the unrecorded turnover in the books of account. This peak works out to Rs 51,65,904/- as on 27.10.10 which is on page 276-'or~the paper book of the appellant.

"4.5.3 Thus, I feel that it would serve the ends of the justice and it would be fair and reasonable to restrict this addition to Rs 51,65,904/- on account of unexplained investment for unrecorded turnover. Hence, I therefore direct the assessing officer to restrict this addition to Rs 51,65,904/ - made to the total income of the appellant. The appellant accordingly gets part relief.

5.0 As a result, this appeal is partly allowed".

32. Before us when the matter was being heard Ld. Counsel for the assessee referred to the decision of Hon'ble ITAT Indore Bench in the case of *Sitaram Agrawal (supra)* which was also authored by us. In this case of *Sitaram Agrawal (supra)* similar issue of unaccounted turnover through undisclosed bank account was there. The Ld. A.O computed the peak balance of the unaccounted bank accounts. We however confirmed the finding of Ld. CIT(A) that the addition for peak balance can be made only if it is more than the cash or stock in hand available in the regular books and

profit offered as unaccounted turnover of preceeding year or years.

Our relevant findings in the case of *Sitaram Agrawal (supra)* adjudicating this issue reads as under:-

In our considered view assessee had carried out the transactions of sales and purchases with the regular parties of which some have been recorded in the regular books and some have not been recorded which are routed through the ICICI bank. This facts strongly supports the submission of the assessee that the physical stock and cash in hand in the regular books have been utilised for making unaccounted sales. It is noteworthy that the assessee is carrying out of books sales transactions in the past also and till the date of peak bank balance on 28.2.2014 the profits earned on unrecorded sales have been offered to tax and they form part of the peak bank balance. So in nutshell against peak balance found in the bank account not disclosed in the regular books in the instant case three things have to be considered, firstly stock in hand available with the assessee, secondly cash in hand available in regular books and thirdly the undisclosed profit earned on the unaccounted sales till the date of peak balance which have been offered to tax. Taking these factors together, in the instant case the peak balance in the undisclosed ICICI bank account is much less than the total of stock in hand, cash in hand and unaccounted profits offered to tax. We therefore in the given facts and circumstances of the case and considering judicial precedence find no inconsistency in the finding of Ld. CIT(A) deleting the peak credit addition of Rs.1,25,33,136/-. We accordingly dismiss revenue's Ground No.1.

33. Now examining the instant case and in the light of our above decision we observe that on 27.10.2010 the total peak bank balance

as per undisclosed bank accounts is Rs. 75,80,285/- (which however has been wrongly taken by Ld. CIT(A) at Rs. 51,65,904/- as he ignored the bank balance of Union Bank at Rs.24,14,381/-). Against this peak balance of Rs. 75,80,285/- if we look at the book results we find that on the very same date i.e. 27.10.2010 cash balance available in M/s. Monika Trading Company and M/s. White Gold Enterprises is Rs. 3,26,957/- and Rs.3,74,978/- totalling to Rs. 40,76,737/-. Apart from cash the assessee also has stock in hand and the same in the case of M/s. Monika Trading Company and M/s. White Gold Enterprises is Rs. 56,25,609/- and Rs. 25,59,663/- respectively totaling to Rs.81,85,272/-. So as on 27.10.2010 total of cash and stock in hand available in the regular books of the two proprietorship concerns run by the assessee totals to Rs. 1,22,62,009/- and this figure is much more than than the peak balance of unaccounted bank accounts at Rs. 75,80,285/-. So there is no negative balance of cash and stock after considering the total closing balance of all the 5 bank accounts. We thus applying our own finding in the case of *Sitaram Agrawal (supra)* are of the considered view that in the instant case Ld. A.O as well as Ld. CIT(A) erred in making the addition of unaccounted investment/

peak balance of undisclosed 5 bank accounts. We therefore set aside the finding of Ld. CIT(A) and delete the addition of Rs.51,65,904/- sustained by Ld. CIT(A). Thus Ground No.3 raised by the assessee is allowed and Ground No.2 raised by the Revenue is dismissed.

34. In the result appeal of the assessee ITA No.284/Ind/2018 is partly allowed and that of the Revenue ITA No.334/Ind/2018 is dismissed.

The order pronounced in the open Court on 13.10.2020.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 13th October, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore