

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 3578/Del/2010 : Asstt. Year : 2007-08**

**&**

**SA No. 187/Del/2020 : Asstt. Year : 2007-08**

M/s GTM Builders & Promoters Pvt. Ltd., G-5, Pushkar Enclave, Outer Ring Road, Pachim Vihar, New Delhi-110063	Vs	ACIT, Central Circle-12, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2716R</b>		

**ITA No. 3783/Del/2010 : Asstt. Year : 2007-08**

ACIT, Central Circle-12, New Delhi	Vs	M/s GTM Builders & Promoters Pvt. Ltd., G-5, Pushkar Enclave, Outer Ring Road, Pachim Vihar, New Delhi-110063
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2716R</b>		

**Assessee by : Sh. K. Sampath, Adv.**

**Revenue by : Ms. Sunita Singh, CIT DR**

**Date of Hearing: 14.01.2021**

**Date of Pronouncement: 10.02.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee and the revenue against the order of Id. CIT(A)-I, New Delhi dated 28.05.2010.

2. In ITA No. 3578/Del/2010, following grounds have been raised by the assessee:

*"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the part addition of Rs. 3,01,00,000/- out of the total additions of Rs. 6,84,50,134/- made on account of the undisclosed investment in land alleging that there was a nothing in seized dairy (Annexure A 21 page 9) indicating the cash payment of Rs. 3,01,00,000/- made by the appellant ignoring the submissions of the appellant. The action of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law.*

*2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not appreciating the facts that the appellant has not made the cash payment of Rs. 3,01,00,000/- apart from the amount mentioned in the registered purchase/sale deed for the investment in the purchase of land. Further, before the tax authority, the person who is alleged to have received the cash payment had confirmed that he had not received any amount over and above the consideration stated in the sale deed. Therefore, the Ld. Commissioner of Income Tax (Appeals) is not justified in confirming the additions of Rs. 3,01,00,000/- in the hands of the appellant.*

*3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not appreciating the judgments of the various High Court and the Apex Court relied upon by the appellant which squarely applies to the facts of the case while confirming the additions of Rs. 3,01,00,000/- and therefore, the action of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law.*

*4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the G.P. Rate @7% applied for the calculation of value of alleged excess stock of jewellery by the Assessing*

*Officer in making the additions of Rs.4,27,22,971/- which is arbitrary, unjustified and against the provisions of law.*

*5. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the action of the Assessing Officer for disallowing the difference in amount of Rs. 24,28,921/- for G.P. Rate on gold jewellery of Rs. 3,46,98,876/- which is arbitrary, unjustified and against the provisions of law.*

*6. The Ld. Commissioner of Income Tax (Appeals) in law and facts in not accepting the submissions of the appellant regarding mode of valuation of stock of jewellery which is arbitrary unjustified and against the provisions of law.*

*7. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not entertaining the additional evidence as per Rule 46 A of the Income Tax Rates by ignoring the facts of the case which is arbitrary, unjustified and against the provisions of law."*

3. In ITA No. 3783/Del/2010, following grounds have been raised by the revenue:

*"1. The order of the Ld. CIT(Appeals) is not correct in law and facts.*

*2. In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,83,50,134/- out of addition of Rs. 6,84,50,134/- towards unexplained investment in properties in Dehraduri under section 69 of Income Tax Act 1961 on the basis of seized documents.*

*3. In the facts and circumstances of the case, Learned CIT(A) has erred in law and facts in deleting the addition of Rs. 3,83,50,134/- towards unexplained investment in properties in Dehradun on the basis of seized documents while ignoring the provisions of section 132(4A) and 292-C of Income Tax Act 1961.*

4. *In the fact and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 90,34,000/- towards unexplained investment in GTM Kashipur - II in Uttarakhand whereas such undisclosed investment is found recorded in seized documents.*

5. *In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 90,34,000/- towards unexplained investment in land while admitting additional evidence that the land in respect on noting are made, has not been purchased and adjacent land was purchased, was admitted in violation of Rule 46A(3) of Income Tax Rule 1962.*

6. *In the fact and circumstance of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 90,34,000/- towards unexplained investment in GTM Kashipur - II on the basis of seized documents while ignoring the provisions of section 132(4A) and 292- C of Income Tax Act.*

7. *In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,25,00,000/- towards undisclosed income on sale of flats as recorded in documents seized during search in GTM Group and impounded during survey under section 133A in M/s Haryana Citizen Co-operative Housing Society while ignoring the provisions of section 132(4A) and 292-C of Income Tax Act, 1961.*

8. *In the facts and circumstances of the case, Learned CIT(A) has erred in law on facts in deleting the addition of Rs. 1,80,00,000/- towards undisclosed expenditure for acquiring certain rights in Wings CGHS Limited, Gurgaon while ignoring the provisions of section 132(4A) and 292-C of Income Tax Act, 1961.*

9. *In the fact and circumstances of the case, Learned CIT(A) has erred m law and on facts in*

*deleting the addition of Rs. 34,78,000/- towards undisclosed investment in M/s Sargam Estates Pvt. Ltd. without appreciating facts on records.*

*10. In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 34,65,559/- on account of unexplained advertisement expenses without giving opportunity to AO to examine the correct claim recorded in books of accounts."*

**ITA No. 3578/Del/2010 AY 2006-07 (Assessee)**  
**ITA No. 3783/Del/2010 AY 2006-07 (Revenue)**

**Brief backdrop:**

4. A search and seizure operation was carried out on the GTM Group of companies which was controlled by Sh Gautam Kumar and his son Sh Tushar Kumar. During the course of search and seizure proceedings Sh Tushar Kumar surrendered an amount of Rs.17 crores as undisclosed income while making statement u/s 132(4) in front of the search parties. The disclosure relates to purchase of land at Dehradun, undisclosed investment in jewellery, share capital, unsecured loans and advances for different project etc. The statement was subsequently retracted by the assessee as the disclosure was allegedly made under pressure and no corresponding incriminating documents was found during the course of search to substantiate the said disclosure.

**Undisclosed Investment in Land:****Ground No. 2 & 3 ITA No. 3783/Del/2010 A.Y. 2007-08****Ground Nos. 1, 2 & 3 ITA No. 3578/Del/2010 A.Y. 2007-08**

5. The AO had made the addition on the basis of statement made during the course of search and seizure proceedings and also on the basis of analysis of the seized documents Annexure A-21 page-9 a diary in the handwriting of Sh Tushar Kumar which was found from the office premises of the company and some other connected documents thereof.

6. The content of page 9 of Annexure A-21 is as under:

*"Register Dehradun*

<i>Ch. No.</i>	<i>Date</i>	<i>Amount</i>
<i>263310</i>	<i>23.08.2006</i>	<i>8995000</i>
<i>263309</i>	<i>21.08.2006</i>	<i>15955000</i>
<i>263285</i>	<i>21.08.2006</i>	<i>20850000</i>
<i>262286</i>	<i>21.08.2006</i>	<u><i>32857000</i></u>
<i>Cheques given to Iqbal at the time of Registry</i>		<i>78657000</i>

*Amount paid in cheque*

300000

500000

1000000

8995000

4612000

5000000

4000000

1500000

3500000

1500000

*Cheques to be paid of Rs.2,27,50,000/-*

500000

*Cash of Rs.2,53,98,497/-*

1000000

1827124997

2000000

2500000

8500000

10500000 B.N.B.

55907000

*The other side of the above page showed the following entries:**Total deal*271420134*Paid in cheque*

174771637

*Cash - 12100000**+ 7500000**+10500000*

30100000

*Balance*

204871637

48148497

400000044148497

*The AO had drawn the following conclusion on the above seized documents.*

*"Rs.25,30,20,134/- represents the cost of the project without registry. (Registry of the land was done at Rs.1,84,00,000/-). The total cost of the project is rs.27,14,20,134/-. Amount paid by cheque is Rs.17,47,71,637/-. Amount paid by cash is Rs.3,01,00,000/-. Therefore total amount paid is Rs.20,48,71,637/-. Balance amount payable is Rs.25,30,20,134/- less Rs.20,48,71,637/- = Rs.4,81,48,497/-*

*From the above, it can be deduced that the balance amount payable by cheque is Rs.18,45,70,000/- less Rs.17,47,71,637/- = Rs.97,98,363/-.*

*Accordingly, the balance amount payable by cash should be Rs.4,81,48,947/- less 97,98,363 = Rs.3,84,50,134/- and the total 'amount payable in cash would be Rs. 6,85,50,134/- (Rs.3,0100,000 + Rs.4,81,48,497)," (Rs.48148497/- should be read as Rs.38350134/- as there is apparently typographical mistake).*

*To summarize the land deal, as per the noting on the sheet, the total cost of the project is Rs.27,14,20,134/- and the sale consideration on the sale deed alongwith registry is Rs.20,29,70,000/-. Accordingly, GTM has paid a total of Rs.6,84,50,134/- in cash (Rs.27,14,20,134 - Rs.20,30,27,000/-) for the 58 bighas of land at Dehradun."*

*Thus, the AO has concluded on the basis of the above calculation that a sum of Rs 68450134/- i.e. (30100000 +*

*38350134 = 68450134 ) has been paid in cash and treated the same as undisclosed investment in land of the project."*

7. The deal was in a joint manner between GTM Builders and Promoters and Sargam Estates Pvt. Ltd. and the payment was made by GTM Builders and Promoter, substantive addition was made in the hands of GTM Builders and Promoters and protective addition was made in the hands of Sargam Estates Pvt. Ltd.

8. The Id. CIT (A) confirmed the addition of Rs.3.01 Cr. said to have been paid in cash by the assessee and deleted an amount of Rs.3.83 Cr. as there was no corroborative evidence to establish the said payment in cash.

9. The revenue came into appeal against the deletion of Rs.3.83 Cr. whereas the assessee is in appeal against the confirmation of Rs.3.01 Cr. Since, the matters are inter linked arises out of the addition made by the AO of Rs.6.84 Cr. on account of unexplained investment in properties in Dehradun they are being dealt together.

10. Before us, the Id. AR argued that as per the four sale deeds, M/s GTM Builders and Promoters Ltd. group company and M/s Sargam Estate Pvt. Ltd. purchased 58 Bighas of land for a total consideration of Rs. 20,30,27,000/- which included stamp duty. The entire amount was paid by the assessee.

11. The Id. AR argued that the seized documents of Annexure A-21, page 9 of the dairy front & back page and as per the noting on the diary pages and also the loose slips seized vide

Annexure-21, Page-1, Annexure A- 16 page 28-29 & 7 are rough calculations which have been made by calculating the amounts required but it cannot be treated as amounts paid.

12. He argued that while the rough pages reflects total payment of Rs.27,14,20,134/-, the actual payment made for the said land was infact Rs.20,30,27,000/-. Hence, the conclusion of the Assessing Officer that the undisclosed investments on the land amounts to Rs.6,84,50,134/- was wrong on facts.

13. It was argued that the AO has wrongly made addition of this amount of Rs.6,84,50,134/- substantially in the hands of the assessee and protective assessment has been made in the hands of M/s Sargam Estate Pvt. Ltd. on the premise that the cheque payment has been made by the assessee and the cash payment could have been made by the M/s Sargam Estate Pvt. Ltd. and since both the amounts are generated by the assessee, the same has been added substantially in the hands of the assessee. It was argued that while the land of 58 Bighas was purchased on 22.08.2006 for total consideration of Rs.20,30,27,000/- including the stamp duty. The payment made to Shri Iqbal Wasu of Rs.4,44,07,000/- was post purchase of the land. It was argued that the sellers of the land have denied that any cash received by them from the assessee as cost of land. Without having any concrete evidence in support of the fact that the assessee has paid excess amount than what has been indicated in the deeds, the purchase price of the land by the assessee is as per the value shown in the purchase deeds which are accounted for in the books of account of the assessee. Therefore, the conclusion arrived at by the Assessing

Officer that the assessee has paid cash in excess of purchase price indicated in the deeds, which has come out of undisclosed sources, is not justified. Thus, the AO was not correct in making the addition of Rs. 6,84,50,134/- on this account in the hands of the assessee and further making a protective addition of same amount of Rs. 6,84,50,134/- in the hands of M/s Sargam Estate Pvt. Ltd on the ground that the purchase of land was done jointly by assessee and Sargam Estate Pvt. Ltd.

14. On the other hand, the Id. DR argued that the diaries seized are in the handwriting of the Director of the company and related to financial transactions for purchase of land in Dehradun for GTM Forest and Hills Project and hence the figures quoted giving the details of cheques as well as cash to the sellers of the land cannot be disputed. The amount paid for 58 Bighas was Rs.18,45,70,000/- and Rs.1,84,54,000 towards the stamp duty and the total amount paid was Rs.20,30,27,000 and hence, the cash payment mentioned on the seized material cannot be simply brush aside. The page no. 9 of Annexure 21 clearly shows that the transactions have taken place indeed. So it cannot be accepted that the noting in the seized diaries are rough noting.

15. The said noting go against the purchase of 58 Bighas of land for Rs.20.30 Cr. Weighed this noting against the actual purchase, the balance of Rs.6.8 Cr. has to be treated as undisclosed income of the assessee.

16. Heard the arguments of both the parties and perused the material available on record.

17. The point revolves around whether payment of Rs.6.85 Cr. in cash has been made against the registered purchase value of Rs.20.30 Cr. in view of the page no. 9 of Annexure A 21 seized from the premises of the assessee.

18. We have gone through the page no. 9 of Annexure A 21, page no. 28, 29 of Annexure A 16, page no. 7 of Annexure A 16.

19. Page no. 9 of Annexure A 21 is a diary relied upon by the Assessing Officer to treat the summary of transactions and payment of the land. Page no. 1 Annexure A 21 reflects calculation of cost of land area, average rate, car parking etc. Page no. 7 of Annexure A 16 gives the details of payment made to the sellers. Page no. 28, 29 of Annexure A 16 are the details of payments made to Iqbal.

20. Page no. 9 of Annexure A 21 reflects writing "cheques to be paid" to Rs.2,27,50,000/- and "cash → 2,53,98,497 below that is a figure of 18,27,12,497. On the back side of page no. 9 (page 143 of paper book) mentions above cost per bigha @ Rs.43,62,416/- which amounts to Rs.27,14,20,137/- including registration and other amounts. The page shows Rs.3,01,00,000/- and a total of Rs.20,48,71,637/-. We also find that the total consideration for purchase of land at Dehradun was Rs.20,30,27,000/-. Hence, it cannot be said that the amount of Rs.3.01 Cr. has been paid in cash. Had Rs.3.01 Cr. been paid in cash, the total cost of purchase paid in cheque as per the four sale deed should be Rs.17,47,71,637/- whereas in reality the total amount of Rs.20,30,27,000/- has been paid in cheque. Hence, there is no scope to treat the amount as paid in

cash to be brought under unexplained investment u/s 69. Regarding the addition made by the AO of Rs.3,84,00,000/-, we find no material to come to such a conclusion. The AO has merely subtracted the amount of Rs.27,14,20,134/- mentioned in the seized material which are the estimates of cost of lands and cost of sale value area, average rate, car parking and mall from Rs.20,30,27,000/- paid by the assessee in cheque to the farmers for purchase of the land. There was no material to corroborate such an addition, the Assessing Officer merely went back the Annexure A 21 page no. 1 to make such addition. Hence, the action of the Assessing Officer cannot be supported. The appeal of the assessee on this ground is allowed and appeal of the revenue is dismissed.

**ITA No. 3783/Del/2010 AY 2007-08 Ground Nos. 4, 5 & 6**  
**Unexplained Investment in Kashipur Land:**

21. The Assessing Officer held that the assessee has purchased land in Kashipur for the project designated as GTM Kashipur –II. The said land has been purchased in the name of Sargam Estate Pvt. Ltd. which is group company of the assessee in Uttaranchal. During the search, copies of the registered sale deeds were seized. As per the register deed, the land was purchased from one Shri Virender Singh and Shri Parajeet Singh and the amounts have been paid of Rs.1 Cr. and Rs. 2,65,700/- respectively. The total area purchased as per the AO was 10.02 acres. Thus, the average rate, purchase of land as determined by the Assessing Officer was Rs.10,24,000/-.

22. During the search, seized material marked as Annexure A 20 containing page nos. 19 & 20 were seized. The seized material contain noting of Shri Tushar Kumar in his handwriting. It mentions that - "Kashipur new land 9.81 acres - Rs.1930000/- . On page no. 19 further shows Rs.77,20,000/- till 20.07.2006.

23. Based on the seized material, the Assessing Officer held that the actual value of the land was Rs.19,30,000/- per acre whereas the registration value was Rs.1,02,65,700/- and calculated an amount of Rs.90,34,300/- and held that this amount has been paid in cash out of the disclosed income of the assessee group. The AO made protective assessment in the hands of Sargam Estate Pvt. Ltd. and substantive assessment in the case of the assessee.

24. The Id. CIT (A) deleted the addition on the grounds that there has been no evidence on record by the AO to show that Sargam Estate Pvt. Ltd. is a dummy company of the assessee. The Id. CIT (A) held that the addition has been made on the basis of statement recorded which cannot be given any credence. The Id. CIT (A) held that the transactions with Shri Virender Singh and Shri Paramjeet Singh could not be with the notings/jottings on Annexure A-20 on page 19-20. If the AO had doubt about the rate of land reflected in the notings and purchase rate as disclosed in the records and deal he should have made thorough inquiry from the sellers and investigation about Mr. Shishir as to whether he was seller or broker etc. before jumping to any conclusion. He also held that the transaction of land had taken place with Mr. Virender Singh &

others and Mr. Parmjeet Singh whereas on the notings in Annexure A-20 on page 19-20 is in the name of 'Mr. Shishir' and land measurement is '9.81' in place of 10 acre.

25. Before us, the Id. DR relied on the order of the Assessing Officer while the Id. AR supported the order of the Id. CIT (A).

26. We have gone through the issue *de novo* and find that the Assessing Officer has made addition based on the seized material of Annexure A 20 page no. 19 wherein it was mentioned that "Kashipur -10 acres @ Rs.19,30,000 per acre". On page no. 20, it was mentioned Kashipur new land Mr. Shishir @ Rs.19,30,000/- land 9.81 acres. On page no. 19, it was also mentioned,

"Net Rs. 1380 p.sft

Total flats 44 of 1650 sft

Refund                    220 paid

                                  160 profit

Total                      380

Payment 60 to 90 days

Kahshipur            10 acres

Rs. 193000 p/acre

Payment 31/7/06

Rs 7720000"

27. On going through the entire factum and orders of authorities below, we find that the addition has been made on a presumptive basis. There was no evidence on record reflecting any payment of cash. Further, while the land has been

purchased that Sargam Estate Pvt. Ltd. and reflected in the balance sheet of Sargam Estate pvt. Ltd., no addition is called for in the case of the assessee. It cannot be said that while the cheque has been paid on behalf of Sargam Estate Pvt. Ltd. cash has been paid by the assessee. The nature and contents of the seized material do not reflect any unexplained investment in the land purchased in Kashipur. Hence, we decline to interfere with the order of the Id. CIT (A) on this issue. The appeal of the revenue on this ground is dismissed.

**ITA No. 3783/Del/2010 AY 2007-08 Ground Nos. 7 & 8**  
**Amount received from Harayana Citizen CHS:**

28. The relevant part of the Assessment Order dealing with this issue is reproduced as under for ready reference:

*"53. In the course of the search operation, various incriminating documents were found and seized from the various premises relating to cooperative societies in Gurgaon and Dwarka. These included copies of application forms on the letterhead of the society requesting for membership, correspondence between the societies and the members regarding payment of installments, copies of share certificate of members, correspondence by members with the office bearers of the society, copies of cheques paid by members to the society, - copies of letters regarding disputes with the office bearers of the society! etc. In particular these documents were found and i seized from the residence of Shri Mohit Vohra who is an employee of GTM group and recently has been made one of the directors of the flagship company. In his statement recorded during the search as well as during post search proceeding, Shri Mohit Vohra stated that these papers were handed over to him by Mr. Tushar Kumar for further handing over to same to one Mr. Kansal at Sector 56, Gurgaon. He expressed his ignorance about the nature of these papers and did not give any further explanation. In addition to*

*the above, some documents relating to cooperative societies were also found from the residence of Shri Tushar Kumar.*

*During the course at the residence of Shri Mohit Vohra various documents were found which were related with the Bhagwanti cooperative group housing society.*

*61. Shri Mohit Vohra was asked about these papers during the course of search at his residence. He was asked*

*Q.1 I am showing you annexure A 1 containing pages 1 to 10, which is seized from your residence during the course of search. Please go through each page of this annexure thoroughly and carefully, please tell what they are about?*

*Ans. I have gone through each and every page of this annexure, but I find myself unable to explain them and they are not related to my duty, but I was asked to hand over these papers to Mr. Kansal, who resides at sector 56, Gurgaon by Shri Tushar Kumar Director at M/S GTM Builders and Promoters, G-5 Pushkar Enclave New Delhi 63.*

*Q.2 I am showing you annexure A 4 containing pages 1 to 101, annexure A 5 containing pages 1 to 62, annexure A 6 containing pages 1 to 95, annexure A 7 containing pages 1 to 109, annexure A 8 containing pages 1 to 103 annexure A 9 containing pages 1 to 159, annexure A 10 containing pages 1 to 108 and annexure A 11 containing pages 1 to 170. Please go through these annexures carefully thoroughly and state what they are all about?*

*Ans. I have gone through annexures A 4 to A 11 thoroughly and carefully and state that the pages contained in these annexures were handed over me yesterday by Shri Tushar Kumar director of M/S GTM builders and promoters private limited at G-5 Pushkar Enclave Outer Ring Road, Paschim Vihar New Deihi for further handing over to one Shri Kansal at sector 56 Gurgaon.*

*Therefore I am unable to throw light on papers of these annexures.*

*Q.3. During the course of search various documents pertaining to*

- 1. M/S Haryana Citizens cooperative Group Housing Society Ltd*
- 2. M/S Bhagwanti cooperative group housing society*
- 3. Shri Ganesh cooperative group housing society*
- 4. Sukhmany sahib realtors and builders & developers limited were found. Please state how you and your concern employer are related to them?*

*Ans. I do not know anything about these concerns and about the owners of our employer M/S GTM Builders & Promoters Pvt. Ltd. and Sargam Estate Private Limited only Directors of them can tell.*

*In the questionnaire when Shri Mohit Vohra was asked about them:*

*A-5/ pages 36 to 46 and page 62 these are handwritten loose papers and relate to geysers and other electrical fixtures to be fixed in flats of various projects. The names of the flat owners and the flat numbers are given alongside. On the top of the page (hi name of the society is given as "GTM Ananda, Bhagwanti Society, Plot 83, Sector 50 Gurgaon" or "GTM Garima, GH-1 HUDA Society, Sector 56, Gurgaon. Please explain the same. Whether you have shown these transactions in your books of accounts.*

*He replied*

*I earlier used to provide geysers, electrical fixtures and other items in various societies/housing schemes on contract basis. I also used to assist in getting loans as I was having experience of arranging finance having worked with a finance company. This is only prospective list of the names of the flat owners*

*along with the flat nos. for contacts etc. There is no transaction pertaining to me.*

*62. The reply provided is clearly an afterthought as there is a clear contradiction in the reply provided by Shri Mohit Vohra. Further when he was asked*

*A-3/1-48 Copies of letters relating to payment of installments by members who have booked flats in Haryana CGHS Ltd., original receipts issued by Bhagwanti CGHS for payments made by members. Please explain the same. Whether you have shown these transactions in your books of accounts.*

*He replied*

*I was an authorized loan coordinator of Loan Pundit and Trendsetters Finance Company vide their letter dated 10.01.2006 I was a mediator between the mentioned companies and various clients for different housing projects. The clients in various housing projects would approach me for arranging financial assistance or I used to contact them so that I could arrange housing loans for them and they could pay the outstanding amount for their flats. The papers of various parties/members of housing societies etc. were lying with me for this purpose or for arranging supplies as stated in Item 1 above. There is no transaction pertaining to me.*

*63. When the same question was put to M/S GTM Builders and promoters ltd:*

*A-5/ pages 36 to 46 and page 62 these are handwritten loose papers and relate to geysers and other electrical fixtures to be fixed in flats of various projects. The names of the flat owners and the flat numbers are given alongside. On the top of the page the name of the society is given as "GTM Ananda, Bhagwanti Society, Plot 83, Doctor 56 Gurgaon" or "GTM Garima, GH-1 Huda Society, Sector 56, Gurgaon. Please explain*

*the same. Whether you have shown these transactions in your books of accounts.*

*They filed the reply saying that*

*The documents mentioned in this item and all subsequent items have not been recovered from our premises but from the premises of Shri Mohit Vohra and he is the proper person to answer the queries. We may, however, state that Shri Mohit Vohra is our employee and, besides working for us, he has been doing separate and independent side business/moonlighting with which we are not concerned. We are told by Shri Mohit Vohra that some of queries in the questionnaire under reply have already been replied by him in his case and we request that the reply already given by him should meet your requirement from us. We reiterate that we have nothing to do with the societies mentioned in the query and no transaction appears as such in our books of accounts. This reply may be taken into consideration for subsequent replies pertaining to Shri Mohit Vohra only for the sake of brevity.*

*78. Interestingly, a newspaper article had appeared in the Indian Express on 11.08.2006 titled "How green is the valley". The article states that "For those who travel on the Gurgaon-Faridabad road, Valley View Estate must be a familiar sight. The project spread over 22 acres consists of 14 towers housing separate societies One of the towers, GTM's Tower 11, is being promoted by Sri Balaji & Company which has an ISO 9001:2000 certification. They also have to their credit smaller projects in Gurgaon Ananda and Garima of around 40-50 flats each.*

*79. When Shri Tushar Kumar was confronted with this article during his statement on 13.03.2006 he was asked*

*Q.7 I am showing you a printout of a newspaper article of Indian express dated 11.08.2006 which says that GTM projects also include Ananda and Garima in Gurgaon. What do you have to say?*

*Ans. The facts are incorrect. GTM has nothing to do with the projects.*

*As the matter of Bhagwanti Co-operative G/H Society pertains to Asstt. Year 2006-07, further discussion regarding the same is in Asstt. Order for Asstt. Year 2006-07.*

**The Haryana Cooperative Group Housing Society, GH No. 80, Sector 56, Gurgaon**

*87. A survey was conducted u/s 133A of the I T. act 1961 on 21.03.07 on Haryana Cooperative Group Housing Society. This society was formed in 1998 but construction of the society is in progress. The society has 43 flats. During the course of survey, a diary was found in the possession of Shri Kishan Gopal Rastogi who was the construction supervisor at the site which was impounded as Annexure A-10. The diary has various notings in the handwriting of Shri Kishan Gopal Rastogi of payments made and received. On page 7 of the diary the following has been written:*

*"Tushar credit 5000000/refundable.*

<i>5000000</i>	<i>1000000 by cheques</i>
	<i>(15) 10.4.2006</i>
	<i>(5) 23.4.2006</i>
	<i>(10) 4.5.2006</i>
	<i>(10) 11.5.2006</i>
	<hr/>
	<i>(50)</i>

<i>B/F (75)</i>	<i>(5) 8.12.2006</i>
	<i>(30) 26.5.2006</i>
	<i>(15) 20.6.2006</i>
	<i>(10) 26.6.2006</i>
	<i>(4) 8.7.2006</i>
	<i>(6) 29.7.2006</i>
	<i>(5) 8.8.2006</i>
	<i>(5) 10.10.2006</i>
	<hr/>

88. *The above details show that total payment of Rs 1.25 crores has been made to Tushar. The date wise break up of these payments are also provided. Apart from the cheque payment of Rs 10 lakhs, the other payments appear to be made in cash. Shri Rastogi when questioned about the notings he stated that it was his personal diary in which he writes various estimates and that he had not given the amounts to anyone. He stated that he did not know who Tushar was and it may be someone who had asked for an estimate.*

89. *However, it does not seem that the notings in the diary are only estimates. On page 3 of the same the account of Mama Khan is given totaling Rs.3,10,24,048. Mama Khan is the nick name of Shri Rastogi. The account gives the details of cheque payments "CH" and cash payments "C". On verifying the cheque payments with the bank ledger of HDFC Bank in the books of Haryana CGHS it was seen that the Cheque payments are clearly reflected therein thereby proving the authenticity of the account statement as a record of transactions pertaining to Haryana CGHS. By inference therefore, it may be said that the notings on page 7 of the diary relating to Tushar are also authentic details of payments made on behalf of the society and not just estimates as claimed by Shri Rastogi.*

90. *However, in spite of these denials there is no denying that there is a business connection between the two. There is no plausible explanation for the presence of share certificates, application forms, correspondence etc lying at the premises of Shri Tushar Kumar and Shri Mohit Vohra. Some of the documents as shown in the table earlier clearly mention the name of GTM in correspondence with the society. Accordingly it would be reasonable to infer from the above that the notings in the diary of Shri Rastogi pertain to payments made to Tushar Kumar/GTM.*

91. *When Haryana Cooperative Group Housing Society was questioned about various papers were found and seized from the residence of Shri Mohit Vohra, then filed the reply*

*acknowledging that the paper related to their society but said that individual members might have applied for loans and hence the society cannot answer the question. When questioned about the dairy found and seized from Shri Rastogi replied that,*

*This is a Rough and personal diary of Shri Kishan Gopal Rastogi. He is neither a member nor office bearer of the society. We have thoroughly scrutinized the accounts of the Society and could not establish any correlation with the noting of this page. As per the sources known, it is found that Shri Kishan Gopal Rastogi used to work as supervisor for few contractors of this as well as other societies. It is further mention that there is no link even with Tushar. The Society cannot provide any proof of what so ever in this regard, hence there is no question of even thinking any income to the society. It has not issued or received any cheque from or to Tushar. This can be verified from our books of accounts which are produced before your good self hence this page has no relation or link with society.*

*When further questioned about entries on other pages the society replied that*

### **Annexure A - 10 (Page 3)**

*We have made effort to reconcile and trace the details of followings:-*

*(a) Cheque Dt. 30.11.06 of Rs.1,85,000/- As per our Bank book following two cheque were issued drawn on HDFC Bank.*

<b>Cheque No.</b>	<b>Date</b>	<b>Amount</b>	<b>Name of the party</b>
403501	30.11.2006	100000.00	<b>Devender Singh</b>
403502	30.11.2006	85000.00	<b>Jagmag Tyagi</b>
	<b>Total</b>	<b>185000.00</b>	

*(b) Cheque dt. 14.12.2006 of Rs.1,29,761/- As per our Bank book following details can be linked:*

<b>Cheque No</b>	<b>Date</b>	<b>Amount</b>	<b>Name of the party</b>	<b>Bank</b>
403507	14.12.2005	99509.00	Jyoti Shankar	HDFC Bank
403508	14.12.2006	12921.00	Jagmag Tyagi	HDFC Bank
327207	14.12.2006	6509.00	Devender Singh	Gurgaon Central Corporation Bank
327208	14.12.2006	2921.00	Janki Prasad	Gurgaon Central Corporation Bank
327209	14.12.2006	7921.00	Rajesh Kumar Pandey	Gurgaon Central Corporation Bank
	<b>Total</b>	<b>129781.00</b>		

(c) Cheque Dt. 22.01.2008 of Rs.2,09,268/- As per our Bank book following cheques drawn on HDFC Bank have been issued to various parties as per details given below:

<b>Cheque No</b>	<b>Date</b>	<b>Amount</b>	<b>Name of the party</b>
403522	22.01.2007	28166.00	Mohd. Ashraf
403523	22.01.2007	36166.00	Ajay Kumar Yadav
403524	22.01.2007	31166.00	Mahesh Tiwari
403525	22.01.2007	33125.00	Ashish Dubey
403526	22.01.2007	29918.00	Rakesh Singh
403527	22.01.2007	35085.00	Mohd. Akram
403528	22.01.2007	15642.00	Om Prakash
	<b>Total</b>	<b>209268.00</b>	

Thus, it is absolutely clear that the entries in the diary of Shri Rastogi are not fictitious figures but represent real figures. When M/s GTM Builders were questioned about the entries in the diary of Shri Rastogi replied that we request for cross

*examination of Shri Kishan Kumar Rastogi whose statement is recorded at our back and for supply of copy of material being relied. We deny the allegations and have received any such amount as a least.*

*In spite of giving a copy of diary of Shri Kishan Kumar Rastogi no reply was received.*

*Discreet market enquiries reveal that Haryana Citizens Cooperative Group Housing Society is also known as the Park Royal. When the society was questioned about it, replied*

*It is also advised that 'Park Royal' is the name of the building of the society considered by the member of the society.*

*During the course of search in the office of M/s GTM Builders, a diary as found and seized annexured as party A-3, annexure 19. On page 34 of this diary following has been written in the hand writing of Shri Tushar Kumar.*

*"Transfer charges P. Royal, Shri Sankalp Gautam, Shri Hari Singh and Shri A. K. Mishra." When M/s GTM Builders were questioned about them then he replied that these are only rough notings. When Haryana Citizen Group Housing Society then they replied that*

*Party A-3 "Annexure XIX" page 34 in connection with above we can only say that Shri Sankalp Gautam, Hari Singh and A.K. Mishra appears to be the member of the society.*

*Thus, it is absolutely clear that M/s GTM Builders were involved in the working of Haryana Citizen Group Housing Society.*

*When the Haryana Citizen Group Housing Society were questioned about why it should not be treated as a benami concern of M/s GTM Builders they replied saying that*

*That the society is a Artificial Judicial Person having separately distinct from its members. The registrar of cooperative society Chandigarh, Haryana closely monitors the account and activities of the society and regarding various documents and papers seized from Shri Mohit Vohra are not related with the society.*

*The reply of the society cannot be accepted as it has been clearly established that society was having illegal links with M/s GTM Builders. The diary seized from Shri Kishan Gopal Rastogi shows very clearly that money was paid to Shri Tushar Kumar in Cash. Thus, an addition of Rs.1.25 Crores is being made in the hands of M/s GTM Builders on substantive basis and in the hands of Shri Tushar Kumar and M/s Haryana Citizens Cooperative Group Housing Society on the protective basis, on the basis of diary seized from Shri Kishan Gopal Rastogi which shows clearly that Cash payment was made to Shri Tushar Kumar director of M/s GTM Builders.”*

29. Before us, the Id. DR relied on the order of the Assessing Officer while the Id. AR supported the order of the Id. CIT (A).

30. We have gone through the entire material on record and the orders of the authorities below. We find that the Assessing Officer has made addition by holding that the society has illegal links with the assessee and the diary seized from Shri Kishan Gopal Rastogi indicates that money was paid to Shri Tushar Kumar in cash. The Assessing Officer made addition in the hands of the M/s Haryana Citizens Cooperative group housing society on a protective basis and in the hand of the assessee on substantive basis. The Assessing Officer made addition in the case of the assessee as the Director, Shri Tushar Kumar has allegedly received the amounts.

31. We have gone through the details of the survey conducted by the revenue. Shri K.G. Rastogi was a construction supervisor at the site. The AO held that from the diary of Shri K.G. Rastogi, the order payments "appear to be made in cash". There was no evidence that cash has been paid to the assessee company or to the Director of the assessee company. Even the cheque entries were not proved to be encashed in the bank account of the assessee or the Director. The presence of share certificate, application forms and correspondence at the premises of Shri Tushar Kumar and Shri Mohan Vohra swerved the Assessing Officer to make the addition. The society clearly submitted before the AO that he was neither a member nor office bearer of the society. He was a work supervisor for few contractors of HCCGHS and also to other societies. No link with the society has been found as per the statement of the society. The allegation of the revenue that the HCCGH society is a benami of the assessee company cannot be held to be a valid statement as the society is a separate distinct entity and registered with Registrar of Cooperative Societies, Chandigarh. There was no proof that the society has given money in cash to the company or is Director. In the absence of any material depicting or indicating payment of cash to the assessee, no addition is called for. Hence, we decline to interfere with the order of the Id. CIT (A) on this ground. The appeal of the revenue on this ground is dismissed.

**ITA No. 3783/Del/2010 AY 2007-08 Ground No. 8****Undisclosed expenditure in Wings CGHS:**

32. During the search, at the residence of Director a MoU was seized as annexured as Annexure A 4. This MoU is between one Shri Ajay Jain and Shri Tushar Kumar for replacement 20 members in the WCGHS. The excerpts of MoU are as under:

- Ajay Jain is in possession of plot 1, sector 9, Gurgaon and a society presently consists of 20 members which can be increased to 30 members.
- Ajay Jain agrees to apply for increase in members from 20 to 27 and agrees to add members as and when recommended by Shri Tushar Kumar.
- Tushar Kumar agrees to pay Rs.1.80 crores to Ajay Jain in installments and on payment, the managing committee and bank accounts would be handed over by Ajay Jain to Tushar Kumar.
- The agreement was signed by Ajay Jain on 17.5.2005.
- The agreement was not signed by Tushar Kumar.

33. During the statement record on the date of search itself it was answered that Shri Ajay Jain was misleading Shri Tushar Kumar and Shri Tushar Kumar did not want to enter into any agreement with Shri Ajay Jain.

34. The AO held that on page 35 of annexure A19, there are details of receipt or payment made to various persons and it specifically says 3 lacs paid to Wings on 13.04.06. Further there is a hand written note in the handwriting of Shri Tushar Kumar which was seized has been annexured as A 16/31 which may

be seen on the following page. This note is in the handwriting of Shri Tushar Kumar and has been signed by two persons. One signature is dated 21.1.2006. The other signature is the same as the one which is on tint MOU seized from the residence of Tushar Kumar which presumably is the signature of Shri Ajai Jain. Thus it is certain that this paper is regarding the introduction of members into Wings Society. Further, Tushar Kumar has written on the paper that "new members shall be enrolled" which obviously is a reference to the introduction of new members into the society. There is further evidence to correlate the paper with the MOU. Firstly, in the paper the total deal is for "1.5" which can be taken to mean 1.5 crores. In the MOU although the total deal is shown for Rs 1.8 crores, it specifically says that Rs 30 lakhs has been already paid as advance. This brings the balance to Rs 1.5 crores which is mentioned on the paper. Secondly, the paper shows that Rs 40 lakhs has been received on 21.1.2006 by the signatory (Jhri Ajai Jain). As already mentioned above, in the diary seized from the office of Tushar Kumar, there is a noting relating to payment of Rs.40 lacs to "Ajai Wings". This undoubtedly proves a crucial link between the MoU and the handwritten paper.

35. The AO held that from the seized material, it is absolutely clear that Shri Tushar Kumar has paid an amount of Rs. 1.80 Crores for enrolling members and taking control of the society and the amount was added u/s 69 of the Act.

36. The Id. CIT (A) deleted the addition on the grounds that the agreement has not fructified *prima facie*.

37. Before us, the Id. DR relied on the order of the Assessing Officer while the Id. AR supported the order of the Id. CIT (A).

38. We have gone through the entire material on record and the orders of the authorities below. We find that the Assessing Officer has made addition by holding that the MoU mentions about payment of amount by Shri Tushar Kumar to Shri Ajay Jain whereas the facts speak otherwise. During the search itself, it was conveyed that Shri Tushar Kumar did not want to enter into an agreement with Shri Ajay Jain as per the MoU. The said MoU was also not signed by Shri Tushar Kumar. The MoU cannot be treated as executed. There was no evidence of payment of cash. The seized material did not mention any payment of cash. Hence, it cannot be held that the assessee has paid an amount of Rs.1.80 Cr. for taking the control of the WCGHS which is a Co-operative Society registered with Registrar of Cooperatives. Hence, we decline to interfere with the order of the Id. CIT (A). The appeal of the revenue on this ground is dismissed.

**ITA No. 3783/Del/2010 AY 2007-08 Ground No. 9**

**Undisclosed investment in M/s Sargam Estate Pvt. Ltd.:**

39. During the year under consideration, it was alleged that M/s GTM Builders & Promoters invested in M/s Sargam Estate Pvt. Ltd. and acquired the company. The Balance sheet of M/s Sargam Estate Pvt. Ltd. for the assessment year 2006-07 shows that the assessee was having share holders fund of Rs.33,18,000/- and loan fund of Rs.1,60,000/- whereas in the

year 2007-08, the share application money of the company increased to Rs.53,86,000/-.

40. Before the AO, the assessee vide its submission dated 17.12.2008 replied that during the assessment year 2007-08, the company after receiving and payment/adjustments of share application money stood at Rs.53,86,000/- as on 31.3.2007. But no reply was given to the fact that how the share holders fund of Rs.33,18,000/- and loan fund of Rs.1,60,000/- was adjusted. Hence, the Assessing Officer concluded that adjustment of Rs.34,78,000 was made through the unaccounted income and hence an addition of Rs.34,78,000/- is being made in the income of M/s GTM Builders and Promoters.

41. The Id. CIT (A) deleted the addition on the grounds that the original share application money was returned by M/s Sargam Estate Pvt. Ltd. in their bank account of Rs.32,18,100/- and balance of Rs.1,00,000/- is the share capital of the company. The loan fund of Rs.1,60,000/- was repaid by M/s Sargam Estate Pvt. Ltd. from their own source.

42. We have gone through the facts on record and balance sheet of M/s Sargam Estate Pvt. Ltd., the share capital of Rs.1,00,000/- remained constant as at 31.03.2007 and as at 31.03.2006. The share application money as at 31.03.2006 was Rs.32,18,000/- which was refunded to the assessee company after receipt of fresh share application money of Rs.53,86,000/- by M/s Sargam Estate Pvt. Ltd. Instead of enquiring, the source of application money, the AO brought to tax the amount of share application money refunded to the assessee by M/s

Sargam Estate Pvt. Ltd. Hence, the addition made has been rightly deleted by the Id. CIT (A).

**ITA No. 3783/Del/2010 AY 2007-08 Ground No. 10**

**Unexplained advertisement expenses:**

43. The AO held that the GTM group has tried exceedingly hard to build a brand image through advertising on T.V., FM Radio and the print media on a very large scale. They are one of the highest advertisers in terms of spending on Red FM Channel and advertisements of "GTM Jewellery Mart" and "Jewellery Tips by Tushar Kumar" are a regular feature on the channel. It was held that the revolving box of the GTM group can invariably be seen on the Ticker on the Sahara Channels. In order to ascertain the quantum of advertisement expenditure summons were issued by the Investigation Wing to the following parties,

(i) Sahara TV network (ii) Radio City (FM) (iii) Red FM (iv) Radio Mirchi

to ascertain the actual amount of advertising expenditure being incurred by the group.

The results are presented as under

F.Y.	Sahara TV	Radio City	Radio Mirchi	Red FM		
		GTM(J)	GTM(B)	GTM(J)	<i>GTM(B)</i>	
04-05			2109050		1625044	1479224
05-06					75873	
06-07	5928229	5639178	2070286		3495904	14844666

JTM(J) is GTM Jewellery Mart Pvt. Ltd.

GTM(B) is GTM Builders and Promoters Pvt. Ltd.

44. The assessee was asked to produce details of expenditure incurred on advertising. Assessee filed ledger copy of the advertisement expenses. The advertisement expenses of the assessee started from 17.11.2004. In the A.Y. 2007-08 assessee had spent an amount of Rs.28,512,704/- as per the details filed. Whereas as per the details collected the amount spent was of Rs.31,978,263/-. Hence an addition of Rs.34,65,559/- was made in the A.Y. 2007-08 for expenditure from undisclosed sources.

45. The Id. CIT (A) deleted the addition on the grounds that all the expenses on account of advertisement have been made by account payee cheques and duly recorded in the books of account maintained by the assessee. No cash payment has been made on this account. Relevant copies of account in this regard were produced. In the profit and loss account, the total debit of Jewellery division is Rs.2,85,12,704/- besides in the builders divisions there is a advertisement expenditure of Rs.3,92,29,402/- as per schedule 19 under the head "Direct Expenses" (Schedule 19) which has been ignored by the Assessing Officer.

46. The Id. CIT (A) further held that the expenditure on advertisement was debited in two division of jewellery and building amounting to Rs.28512704/- and Rs.39229402/- respectively as per the books of account of the assessee. During the assessment proceedings the AO has not considered the amount debited in the building division of the company. The total details of expenditure collected by AO is of Rs 3,19,78,263/- whereas the total expenses debited by assessee

is much more at Rs 6,77,42,106/- (2,85,12,704 + 3,92,29,402). Therefore, on the facts of the case since no additions can be made on this account, the AO was therefore directed to delete the addition on this account.

47. Having heard the arguments of both the sides, we have perused the facts on record available before us and find that the Id. CIT (A) has rightly deleted the addition as the total expenditure debited on account of advertisement was Rs.3.19 Cr. as against Rs.2.85 Cr. alleged by the Assessing Officer. Hence, we decline to interfere with the order of Id. CIT (A) on this ground.

**ITA No. 3578/Del/2010 AY 2007-08 Ground No. 4 & 5**

**Unexplained investment in stock of jewellery:**

**Addition on account of GP:**

48. The GTM group has diversified into certain other areas of business activity, one of them being the sale of jewellery. A separate company by the name of GTM Jewellery Mart Pvt. Ltd has been formed for this purpose with effect from 26.7.2006. A jewellery showroom has been opened at the main office premises of the Group namely GTM House, G-5, Pushkar Enclave, Paschim Vihar, New Delhi.

49. The excerpts from the order of the AO are as under:

“During the course of search the physical inventory of the jewellery stock lying at the showroom was taken and valuation was done by the Government registered valuers. As a result the total stock of jewellery lying at the premises was found to worth

Rs.7,19,07,124/-. However, as per the stock statement appearing in the books of accounts, the total stock of jewellery was shown at Rs.2,17,34,864/-. Accordingly, on the date of search, there was found to be excess stock of Rs.5,01,72,260/- lying at the premises of the company.

When asked to explain this discrepancy, the Director of the company Shri Gautam Kumar stated that in the case of the diamond jewellery the value had been taken at the "tag price" or the sale price which was tagged by the company on each item of jewellery. This he said, was higher than the purchase price of the jewellery and therefore stated that the G.P rate should be deducted to find out the cost of the jewellery.

Shri Gautam Kumar was specifically asked during the course of search whether the stock of any other parties was lying at the office premises and whether any purchase bills were to be entered into the books. Shri Gautam Kumar in reply stated that certain purchases of jewellery had not been entered in the books of accounts and accordingly, the bill values of the same should also be taken into account while determining the value of jewellery shown in the books on the date of search. There were two purchases specially mentioned by Shri Gautam Kumar. One relating to purchase of Rs.22,19,063/- from Zaveri Jewellers, Mumbai and the other relating to purchase of gold ornaments from M/s KK Exports for Rs.26,25,649/-, Enquiries were carried out during the search itself by officials of the department to verify the genuineness of the same. Shri Gautam Kumar stated that no goods of any other parties were lying at the showroom

and also that no stock of GTM Jewellery Mart Pvt. Ltd. was lying anywhere outside the premises.

Accordingly, after given credit for the purchases not recorded in the books, the total value of stock as per the books was computed at Rs.2,65,79,576/-. Further, on account of the fact that the value of diamond jewellery was taken at the tag price, further correction was carried out by reducing the GP rate of 7 percent from the value. Shri Gautam Kumar in the course of his statement during the course of search had specifically stated that the rate of Gross Profits of the company is about 7% of the total sales of gold and diamond jewellery in the current year. Therefore after making all the above corrections, the final value of the physical stock lying at the premises of GTM Jewellery Mart was found to be Rs.6,68,73,626/- i.e. [7,19,07,124 less 2,65,79,576 (stock as per books) less 50,33,498(GP)]

Therefore the value of physical stock found at the premises on the date of search was found to Rs.6,68,73,626/- while the stock being shown in the books was only Rs.2,65,79,576/-. Thus there was excess stock of jewellery to the extent of Rs.4,02,94,050/- which had not been shown in the books of accounts and thus clearly represented investment made by the group out of its undisclosed income. When confronted with this fact, Shri Gautam Kumar replied as under:-

"As my son Tushar Kumar has already declared Rs 17 crores as undisclosed income and offered for taxation on account of overall business activities of GTM Group i.e., M/s GTM Jewellery Mart Pvt. Ltd, M/s GTM Builders and Promoters Pvt.

Ltd, M/s GTM Blanket Udyog Pvt. Ltd, including residence of Tushar Kumar and myself. The bifurcation of this surrender u/s 132(4) of the I. T Act will be submitted later”

As stated earlier, in his statement recorded during the search Shri Tushar Kumar has specifically surrendered an amount of Rs 4.57 crores on account of the undisclosed investment in the jewellery.

Revised value of excess stock of jewellery

The value of the excess stock was arrived at during the search by reducing from the gross value of Rs.7,19,07,124/-, the stock as per books Rs.2,65,79,576/- as well as the GP @ 7% which worked out to 50,33,498. It may be noted that the GP of 7% was calculated on the gross value of Rs.7,19,07,124/-. However, only GP on the diamond jewellery which had been valued on the basis of the tag price was required to be reduced from the gross value of jewellery. The gold jewellery had not been valued on the basis of the tag price but as per the prevailing rate of gold on the date of search and thus the GP on Gold Jewellery had erroneously been reduced from the Gross Value. After correction of this discrepancy, the value of the excess stock is arrived at Rs.4,27,22,971/- in the following manner.

1) Gross Value of Jewellery as as Per valuation reports	Rs 7,19,07,124
2) Less: Stock as per books	
Existing value: Rs2,17,34,864 corded	
Add unrecorded purchases: Rs.48,44,712	(-) Rs 2,65,79,576
	4,53,27,548

3) Less GP @ 7%      Rs.50,33,498 on Rs 7,19,07,124	(-) 50,33,498
	4,02,94,050
4) Add : <u>Wrongly deducted</u> <u>GP on Gold Jewellery</u>	
7% on Rs.3,4698,876      Rs.24,28,921	(+) 24,28,921
Value of Excess Stock	<b>Rs.4,27,22,971</b>

As per the calculations, the value of undisclosed investment in jewellery made by GTM Jewellery Mart Pvt. Ltd amounts to Rs.4,27,22,971/-.

GTM Jewellery mart is a unit of GTM Builders and promoters. During the assessment proceedings they were asked

Question: During the course of search the physical inventory of the Jewellery stock lying at the showroom was taken and valuation was done by the Government registered valuers. As a result the total stock of Jewellery lying at the premises was found to worth Rs.7,19,07,124/-. However, as per the stock statement appearing in the books of accounts, the total stock of Jewellery was shown at Rs.2,17,34,864/-. Accordingly, on the date of search, there was found to be excess stock of Rs.5,01,72,260/- lying at the premises of the company. Please explain the above excess stock of Jewellery found at your premises.

The assessee filed the reply saying that

That as stated in Para-1 that by giving the deduction of G.P. rate the excess stock found as per statement is Rs.40,294,050.

<i>Stock as per Books accounts of</i>	<i>2,17,34,864</i>	<i>As per physical inventory held on 12/12/06</i>	<i>71,9,07,124</i>
<i>Add: Bills which were accounted for in the books of accounts</i>	<i>48,44,712</i>	<i>Less: G.P.</i>	<i>50,33,498</i>
	<i>2,65,79,576</i>		<i>6,68,73,626</i>

*Difference (6,68,73,626 - 2,65,79,576): 4,02,94,050*

But in fact the stock has not been valued by applying the mode of valuation adopted by the assessee since from their incorporation. They have always valued the stock "at cost or market price whichever is lower/average cost method. While in the instant case the stock has been valued merely by taking the tag value of each item. It will not be out of place to state here that even the valuer has stated in his certificate that it has been valued at tag value. The facts cannot be denied that in the assessee's line the tag value had never been its "cost/average cost". Apart from it, the facts cannot be denied that there is day to day's fluctuation in the market in this line. One has to follow the rate declared early in the morning on that day. That without prejudice to such facts the stock is to be valued by applying the mode of valuation which has been adopted by the assessee. The assessee had prepared the list by taking its valuation on the mode applied by them.

The assessee was further asked

The value of the excess stock was arrived at during the search by reducing from the gross value of Rs.7,19,07,124/-, the stock as per books Rs.2,65,79,576/- as well as the GP y the rate of 7% which worked out to 50,33,498. It may be noted that the GP

of 7 % was calculated on the gross value of Rs.7,19,07,124/-. However, only GP on the diamond Jewellery which had been valued on the basis of the tag price was required to be reduced from the gross value of Jewellery, The gold Jewellery had not been valued on the basis of the tag price but as per the prevailing rate of gold on the date of search and thus the GP on Gold Jewellery had erroneously been reduced from the Gross Value. After correction of this discrepancy, the value of the excess stock is arrived at Rs.4,27,22,971/- in the following manner:-

1) Gross Value of Jewellery as as Per valuation reports	Rs 7,19,07,124
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Existing value: Rs2,17,34,864 corded	
Add unrecorded purchases: Rs.48,44,712	(-) Rs 2,65,79,576
	4,53,27,548
3) Less GP @ 7% on Rs 7,19,07,124	Rs.50,33,498 (-) 50,33,498
	4,02,94,050
4) Add : <u>Wrongly deducted</u>	
<u>GP on Gold Jewellery</u>	
<u>7% on Rs.3,4698,876</u>	<u>Rs.24,28,921</u> (+) 24,28,921
Value of Excess Stock	<b>Rs.4,27,22,971</b>

Please produce necessary books of accounts to show that that the GP rate on diamond Jewellery (as against gold Jewellery), varies from the average GP rate of 7% and why addition on the above head should not be made in your total income.

The assessee replied saying that

"It relates to the reworking of value of excess stock found on the day of an action u/s 132 of Income tax act. 1961. The contention has been given that G. P. Rate is to be reduced only on the valuation relating to diamond which were valued at tag value while the reduction of G. P. is not required in golden ornaments as its value were taken on the prevalent price on that day.

In this connection it is submitted that even the reduction of G.P. rate has been given by applying the G.P. rate on total sale while in fact it is not an appropriate mode. When the physical inventory was taken it deserves to be valued at cost or market price whichever is lower/average cost method adopted by the assessee since its incorporation. As stated in the earlier paragraphs the assessee has prepared a list with supporting documents for its purchase, thus, the value desen/es to be considered accordingly."

Further assessee filed a letter dated 17.12.2008 saying that

The assessee company had complied with your questionnaire letter dated 3rd November. 2008 by filing the sought information on 524 items of your questionnaire letter along with relevant documents to the support of each and every item, however, to avoid the lengthy process of its verification on each and every item of the questionnaire letter which may take considerable time as well as sufficient factors to arrive at that all the loose papers have been considered precisely or not. Further, in support of the statement recorded on the day of the action u/s 132 of income tax act 1961 we may summarise the facts that its (jewellery) valuation has been ascertained

amounting to Rs. 6,68,73,626/- while the books of accounts were revealing to the tune of Rs. 26579576/-, the maximum justification could have ended by assessing the assessee-company on ascertained value as the entire seized records/papers related to Jewellery unit are again ultimately to be concentrate with "physical inventory". That nothing/no one can supersede it, thus, the maximum adverse or to say the maximum justification for the sake of revenue could have ended by treating an addition of Rs. 4,0294050/- as the deficit found by taking the "physical inventory" on the day of search operation subject to the humble submission that it has been valued at "tag" value while it deserves to be valued "cost or market price whichever is lower/average cost method."

In support of the above submission the list is enclosed where there is no change in the quantitative figures, the change is only confined to its value in view of the facts submitted above. The valuation taken is supported with invoices which are also in your possession and no doubt has also been accounted for in the books of accounts accordingly.

It will be precise to state here that enclosed comparative "annexure" to the Revenue Valuer's valuation apparently reveals that there is no change in "Gold Jewellery", the change pertains only to "Diamond article". It will not be out of place to state here that it is supported with invoices which are in your possession, the reference of such invoices have also been given to make it convenient, thus, it leaves no scope of any doubt and deserves to be accepted.

Apart from it, the other difference pertains to labour/making charges related to 22 Kt which has been taken twice/double by the Govt, valuer. We may make it clear that the value taken by the Valuer for each item related to 22 kt. gold includes the labour charges as it has been ascertained by taking its Gross Weight" at the rate prevalent on that date. Further, it has been added in computing its aggregate value, therefore, in an enclosed annexure the labour added by the approved Valuer amounting to Rs. 8,65,188/- and Rs. 3,60,000/- = Rs.12,25,188/- is not recommended and is excluded in view of the well settled principle.

Further, the difference also pertains to certain purchases which were not accounted for in the books of accounts as generally it is entered only on final approval, while it were taken in "physical inventory" on the day of search operation. Moreover; the concession of G.P. rate is given by applying 7% probably keeping in view the G.P. rate shown in the prescribed Form 3CD of Audit Report u/s 44AB of Income Tax Act, 1961 while in fact the G.P. rate of Jewellery Unit is 19.47 % as an annexure is enclosed. It is needless to state here that in the previous year i.e. Asstt. Year 2006-07 when there was very nominal business the G.P. rate was .48%. However, in the enclosed annexure the value has been ascertained by applying the G.P. rate @ 19.47%.

It is quite admissible that the Director Sh. Tushar Kumar in the statement recorded on 13th December, 2006 in continuation to the statement recorded on the date of search and seizure operation dated 12th December, 2006 agreed to surrender an

amount of Rs. 4.57 Crores as undisclosed investment in the stock of jewellery in a reciprocal manner on the terms and conditions that no penal action u/s 271(1)(c) shall be taken in this respect. The other Director Sh. Gautam Kumar also confirmed the statement of Sh. Tushar Kumar in this respect. It is humbly submitted that the quoted amount of Rs. 4.57 Crores was surrendered in haste after continuous seizure operation of 36 hours while in fact the difference even as per statement recorded is Rs. 4.02,94,050/-.

In the circumstances and the facts stated above and to maintain the spirit of reciprocal agreement / statement and to have peace of mind by avoiding the lengthy process for its verification the assessee-company is prepared to surrender the deficit given in the enclosed annexure with the condition that no penal action would be taken against them in respect of Jewellery Unit.

The contention of the assessee cannot be accepted as at the time of search assessee himself had accepted a G.P. of 7%. The return filed by assessee for the year 2007-08 is dated 14.11.2008. It is the first year of business on a large scale by the unit GTM Jewellery Mart. In the previous year, a sale of only Rs.88,000/- was made by the unit on which a gross profit of 44% registered. In the present year, a sale of around Rs. 10 crores has been shown on which the assessee is trying to claim a gross profit of 19%. The, contention of the assessee that they have a G.P. of 19% cannot be accepted and it looks like an afterthought on the part of the assessee to decrease their amount of surrender. Ld. Authorized Representative in his reply

dated 17.12.2008 which has been quoted above at full length has nowhere accepted that there was any unaccounted stock. Although he had accepted that value of gold jewellery cannot be challenged as it is based on the weight of gold and the prevailing price of gold which is taken by the valuer at the time of valuation. Further the assessee has not produced any proof whatsoever how he is claiming a G.P. of 19% and how he is concluding about the making charges. There is no separate profit and loss account and balance sheet that has been filed for the jewellery unit and hence the contention of the assessee cannot be accepted. Thus, reducing the gross profit from the tag price of the diamond jewellery brings the undisclosed stock at Rs.4,27,22,971/-. Thus, an addition of Rs.4,27,22,971/- is being made to the total income of the assessee."

50. The Id. CIT (A) concurred with the order of the Assessing Officer on the grounds that the approval memos have not been brought to notice of the department till two years from the date of search. The relevant part of the Id. CIT (A) on this issue is as under:

"9.1 The AO found that the Appellant has diversified into the business of jewellery under the name of GTM Jewellery Mart Pvt. Ltd. During the course of search physical inventory of the jewellery stock lying in the show room was taken and the valuation it was worth Rs. 7,19,07,124/-. However, as per stock records; the same was shown at Rs.2,17,34,864/-. He, therefore found excess stock of jewellery at Rs.5,01,72,260/-. When asked to explain, the discrepancy, Sh. Gautham Kumar, Director of the company stated that in the case of Diamond

Jewellery, the value had been taken at tag price of sale price. Since this was higher than the purchase price of the jewellery, he stated that the GP rate should be deducted to find out the value jewellery. Considering this request, the AO valued the cost at Rs. 6,68,73,626/- whereas the stock shown was Rs.2,65,79,576/-. The difference of Rs.4,02,94,050/- was treated as unexplained cost of jewellery. The assessee further stated that the difference pertains to certain purchases which were not accounted for in the book of accounts as it is generally entered only on final approval. Further he also stated that the GP rate of jewellery is about 19.47% as against 7% shown in Form 3CD. The AO was not convinced with the reply of the assessee. In the absence of any proof of GP of 19%, he made an addition of Rs.4,27,22,971/-.

9.2 Sh. G S Kohli AR represented the case on the issue on behalf of the appellant.

During the appellate proceedings only the appellant had made request for admission of fresh evidences u/r 46A of the Income Tax Rules, 1962.

The appellant has submitted in the appeal that Jewellery items worth Rs. 26987283/- were received on approval and the same were also part of physical stock taking during search operation. These purchase bills of Rs. 26987283/- were accounted for in the books of accounts on 31.03.2007 and 14.12.2007 as claimed by the appellant co. in the appellate proceedings. This fact was never brought to the knowledge of search party. The appellant had never given list of 'Goods on Approval' to the

search party during/after search operation. During the assessment proceedings also these bills or list of so called 'Goods on Approval' were never produced/claimed before the AO even after almost 2 years of the search operation. In the appellate proceedings this claim has been made first time on 26.02.2010 i.e. after more than 3 years of search operation.

In this regard the appellant has made a submission before me which as under:-

'It is admitted fact that "Goods received on Approval" could not be filed during the course of Asstt. Proceedings as it were initiated in the month of Nov-Dee.2008, it deserves to entertained in the course of appellate hearing Under Rule 46 of Income Tax Rules, 1962.'

This fact is totally new one as there is nothing mentioned in the assessment order. Moreover, no evidence was produced before the AO despite that the AO had afforded sufficient opportunity for detailed discussion and submissions. As per the submission of the appellant these facts were recorded in the books of accounts on 31/03/2007 and 14.12.2007 but evidences as claimed and details in this regard were not at all produced before the AO during the assessment proceedings even within/after 2 years of search operation/accounted for in the books of accounts, as claimed by the appellant, for the reason best known to the appellant co. In the appellate proceedings the appellant has requested for admission of the same u/r .46 of the Income Tax Rules, 1962 without assigning any reason for admission in the appellate proceedings. While going through the

said rule it is noted that rule 46 is not applicable in the case of the appellant as there is no mentioning in the said rule for admission of fresh evidences in the appellate proceedings. However, it was treated as typing mistake in referring the rule 46 in place of rule 46A.

In its submission before me the appellant has pleaded that the search party as well as the AO has allowed two unrecorded purchase bills of Rs. 4844712/- to arrive at correct stock as per books of accounts, similarly bills for 'Goods on Approval' should be admitted u/r 46A which were accounted for on 31.03.2007 and 14.12.2007.

In this regard it is worth noting and question arises as to why the list of so called 'Goods on Approval' was not produced before the search party like two unrecorded purchase bills of Rs. 4844710/- and even after search operation. A further question arises as to why these bills for so called 'Goods on Approval' which are claimed to have been entered into books of accounts on 31.03.2007 and on 14.12.2007 were not produced before the AO during the assessment proceedings. The appellant has not given any reason for not producing the same before the search party or the AO. From the facts it appears that it is after thought, fabricated and not genuine.

Before admitting/non-accepting the additional evidences produced by the appellant it is better to go through the rule 46A(1) of the Income Tax Rules, 1962 which are reproduced as under:-

(1) "The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer] except in the following circumstances, namely:-

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer]; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant any ground of appeal."

From the plain reading of above rule prescribing the circumstances for admission of additional evidence it is crystal clear that the matter of the appellant is not covered by any circumstance where additional evidence could be admitted. The appellant has also not given reason as to why such evidences may be admitted u/r 46A of the Income Tax Rules, 1962. Moreover, no separate application u/r 46A of the Income Tax Rules, 1962 has been made before me. The appellant co. has also not assigned any reason as to why these facts and evidences could not be produced before the AO during the assessment proceedings even after so called recording in the

books of accounts. From these facts it appears to be after thought, fabricated and manipulated. Hence, the authenticity and reliability of such evidences are doubtful.

Rule 46A of the Income Tax Rules, 1962 prescribes four conditions for admission of fresh evidences as mentioned above. In the present case:

- 1) The AO has not refused to admit the evidences as the same were never produced before him. or
- 2) The appellant was not prevented by any cause, or
- 3) The appellant was not prevented by any cause from producing the evidences before the AO which is relevant to this ground of appeal, or
- 4) The AO has afforded sufficient opportunity before passing the assessment order. Since this issue was never raised before the AO as it is admitted fact.

Therefore, in view of above I do not find any circumstance or situation to admit the additional evidence u/r 46A of the Income Tax Rules, 1962. Hence, no fresh evidence is admitted u/r 46A of the Income Tax Rules, 1962.

The AO found that the Appellant has diversified into the business of jewellery under the name of GTM Jewellery Mart. During the course of search physical inventory of jewellery stock lying in the show-room was taken and the same was valued at Rs. 71907124/- by the Govt. registered valuer. However, in the books of accounts it was shown at Rs. 21734864/-, He, therefore found excess stock of jewellery at Rs. 50172260/-. When asked to explain the discrepancy, Sh.

Gautam Kumar, Director of the appellant co. stated that in the case of Diamond jewellery, the value had been taken at tag price of sale. Since this was higher than the purchase price of the jewellery, he stated that GP rate should be deducted to find out the value of jewellery. Considering this request, the AO valued the cost at Rs. 66873626/- after allowing the GP rate @ 7% on all value of physical stock whereas stock as per books was taken at Rs. 26579576/- after allowing unrecorded two purchase bills. The difference of Rs. 40294050/- was treated as unexplained investment in jewellery.

In the statement recorded during the course of search it was stated that valuation of diamond jewellery had been made on 'tag price' which includes GP. The GP rate was taken at 7% from the Form 3CD annexed to Tax Audit Report u/s 44AB of the Income Tax Act, 1961 of the appellant co. for the reason that there was no separate/exclusive books of accounts were available for jewellery unit. After considering these facts the search party allowed credit for GP @ 7% on total physical stock of Rs. 71907124/- i.e. Rs. 5033498/- In this way the physical stock was ascertained at Rs. 66873626/- (71907124-5033498 ).

However, during the assessment proceedings the assessee has pleaded before the AO that GP rate on diamond jewellery should be taken at 19.47% in place of 7%. The assessee submitted evidences but the AO did not accept them as they were not credible evidence and no separate profit & loss account and balance sheet etc. were produced by the assessee in support of its contention. The assessee also did not produce separate set of books for jewellery unit or other credible evidence which

could support the contention of the assessee in respect of higher GP rate. The AO has also mentioned in the order that it is all fabricated and after thought story so that surrendered amount on account of undisclosed investment in jewellery might be reduced.

The AO has rejected the contention of the assessee on the ground that in the statement recorded during search the assessee has stated that GP rate was 7%. The contention of GP rate at 19.47% was taken by the assessee during assessment proceedings only on the basis of return of income for the assessment year 2007-08 filed on 14.11.2008 i.e. the assessee has manipulated the facts for the purpose of reducing the surrendered amount. The AO has further mentioned that the AR has nowhere mentioned the matter of surrender during the assessment proceedings. The AO has also mentioned in the assessment order that the assessee has not produced any proof whatsoever how it has arrived at GP rate of 19.47%. He has further mentioned that there is no separate profit and loss account and balance sheet that has been filed for the jewellery unit. It is also observed by the AO that the concession of GP @ 7% from the valuation of physical stock is given probably with a view of GP rate shown in the prescribed Form 3CD of Audit Report u/s 44AB of the Income Tax Act, 1961.

In the assessment order the AO has mentioned that in the statement recorded during the search Sh. Tushar Kumar has specifically surrendered to the extent of Rs. 4.57 crores on account of the undisclosed investment in the jewellery. Later on father of Sh. Tushar Kumar was confronted on this issue, he

also admitted that total surrender includes surrender of undisclosed investment in jewellery.

As mentioned above the AO found that two unrecorded purchase bills of jewellery worth Rs. 4844712/- had not been accounted for in the books of accounts for jewellery physically taken by the search party. The AO allowed the credits for bills of Rs. 4844712/- and consequently stock of jewellery was taken at Rs. 26579576/- (21734864+4844712) as per books of accounts.

Therefore, the value of physical stock found by the search party was Rs. 66873626/- whereas the stock was taken as per books at Rs. 26579576/-.

The assessee was asked to explain the difference of Rs. 40294050/- i.e.  $66873626 - 26579576 = 40294050$ . In reply the assessee co. could not explain the difference and made surrender for the said difference as undisclosed investment.

During assessment proceedings the AO found that cost of gold jewellery of Rs. 34698876/- was valued at prevailing rate and the same is also included in the total physical jewellery of Rs. 71907124/-. During assessment proceedings the AO found that GP rate was applied erroneously on overall value of physical stock on the date of search which includes the gold jewellery valued not on tag price but at cost price i.e. prevalent price of gold on that day whereon no deduction of GP was required. Since tag value was taken only for diamond jewellery. To correct this mistake the AO has disallowed the deduction for GP on gold jewellery of Rs. 34698876/- amounting to Rs. 2428921/- while making the assessment. In this way the AO

arrived at undisclosed investment of the appellant at Rs 42722971/- ( 40294050 + 2428921 ) in place of 40294050/-.

9.3 The appellant in the appeal has submitted as under:-

In respect of valuation of gold jewellery

"The contention of the A.O. is unlawful. It is quite admissible that the gold jewellery was on the prevalent price on the day of search and seizure operation. But the mode of valuation adopted by the appellant-company in regular return of income cannot be overruled. The audited balance sheet along with Auditor's report placed on the record apparently reveals its mode of valuation as 'average cost method for jewellery division'.

In the assessment proceedings the appellant has stated that it has been following the method of valuation of stock as cost or market price whichever is lower / average cost method for jewellery stock. Now in the appellant proceedings it is stating that it is following average cost method for valuation of stock.

I have considered the findings of the AO in the assessment order and facts & submission made before me by the appellant co. regarding GP rate. The AO has mentioned in the assessment order that the assessee co. has not maintained any separate books of accounts/profit & loss account and balance sheet of jewellery unit. Under such circumstances he took the GP rate as reflected in the profit & loss account, balance sheet and tax audit report of the appellant co.

In support of its contention the appellant has mentioned that it has filed all purchase and sales records/ relevant vouchers before the AO. Further, it has stated that by taking out the figures relating to jewellery unit from its balance sheet it has deduced the GP rate of 19.47%. In the appellate proceedings the appellant has filed the copy of purchase bills and a working sheet drawing the GP rate of 19.47%. But in support of such working no separate books or any other proper/reliable/authenticate evidence whatever has been produced wherefrom the reliability and authenticity could be established. It has not given details of opening stock and closing stock such as method of valuation and how they have been arrived at and on what basis. Further it is also observed that nothing concluding is there to know the correctness and genuineness of the figures of purchases and sales. Moreover, no expenses in the so called Trading account has been claimed to arrive at GP rate of 19.47%. In all the appellant co. could not establish the reliability and authenticity of such working. Moreover, the appellant has stated that it has taken out figures relating to jewellery unit from its balance sheet etc., it also implies that no separate books of accounts for jewellery unit have been maintained. Under such circumstances reliability and authenticity of the GP rate of 19.47% are not established. Hence, in the absence of such separate records GP rate of 19.47% as deduced / contended by the appellant is not possible to be relied upon. Under such circumstances the department is left with no option but to adopt the rate as shown in the audited balance sheet of the appellant co. and as reported by the auditor of the appellant co. in Form 3CD for tax audit u/s 44AB

of the Income Tax Act, 1961. Further, it is also worth to note that during the search operation and later on the appellant had made surrender for the undisclosed investment.

I, therefore, confirm the GP rate at 7% for allowing deduction from the valuation of physical stock taking of diamond jewellery.

In regard to dispute regarding method of valuation of jewellery I have considered the facts and submissions made by the appellant. From the perusal of tax audit reports for the A. Y. 2006-07, copy of which was furnished by the appellant in the course of appellate proceedings, it is noted that the Auditor of the appellant co, has mentioned in the Form 3CD annexed to audit report u/s 44AB of the I.T Act, 1961 for the A.Y, 2006-07 that the appellant has followed cost or market whichever is less for all divisions. But for the assessment year 2007-08 It is reported in the audit report u/s 44AB that the appellant has followed average cost method for jewellery division. It means the appellant has changed the method of valuation of stock of jewellery division from cost or market price whichever is low to average cost method as per audit report. Since jewellery division was also very much there in the A.Y. 2006-07.

From the above it is clear that the appellant has not been following consistently the single method for valuation of stock of jewellery. It has changed the method of valuation after search operation for its convenience and benefit. Hence, the submission regarding mode of valuation is not accepted.

Since the AO found a mistake that deduction for GP was made from the valuation of overall physical stock found on the date of search whereas it should have been deducted from the value of diamond jewellery only which was valued on tag price. The gold jewellery was valued at prevalent market price i.e. cost based on market price. Therefore, extra deduction of GP, worked out at Rs. 2428921/- on gold jewellery of Rs. 34698876/- @ 7%. I have considered this issue and hold that correction made by the AO is based on facts. Therefore, keeping in view discussion made in the previous paragraphs I confirm the addition of Rs. 2428921/- made by the AO for gold jewellery. I do not find any infirmity in the action of the AO. Since this addition is a matter of mistake of facts. As far as issue regarding mode of valuation is concerned it is held that it is not tenable in view of irregularity and inconsistency in employing the method of valuation of stock on the part of the appellant for its benefit, as discussed above.”

51. Having heard the arguments of both the sides who relied on the respective orders and submissions, we have perused the facts on record available before us and find that,

1. A panchanama has been prepared by party A-4 showing warrant in the case of : M/s GTM Jewellery Mart Pvt. Ltd. (showroom GTM house, G-5, Pushkar Enclave, Outer Ring Road, Paschim Vihar, New Delhi)
2. M/s GTM jewellery Mart Pvt. Ltd. has been incorporated on 04.08.2006 relevant to the assessment year 2007-08.
3. Date of search in the case of the assessee - 12.12.2006

4. The other valuable articles or things as per Annexure – 2 & 3 consists of 25 sheets have been inventorised during the search in the case of M/s GTM Jewellery Mart Pvt. Ltd.
5. The valuation was done as per the price prevalent on the date of search instead of the cost price. The business of gold and diamond ornaments, the prices vary on day to day basis.
6. Shri Gautam Kumar stated that no stock of M/s GTM Jewellery Mart Pvt. Ltd. was lying outside the premises.
7. The record shows that the G.P. was 19% as against the 17% allowed by the Assessing Officer.
8. Statement of Shri Gautam Kumar recorded on the date of search clearly mentioned about two distinct entities M/s GTM Jewellery Mart Pvt. Ltd. and M/s GTM Builders & Promoters Pvt. Ltd.
9. There has not been any quantitative difference between the book stock and the physical stock in comparison with the items.
10. The difference in the value is only because of the different price taken by the valuer, the pricing existing on the date of search instead of historical cost of the goods.
11. Further, the labour charges have been added up twice in certain instances while computing the aggregate value.
12. The revenue could not repudiate the quantities tallying with the book stock during the search or even during the assessment proceedings. Reliance is being placed in the

judgment of Hon'ble Supreme Court in the case of CIT Vs Hindustan Zinc Ltd. 291 ITR 391.

13. The Assessing Officer also acknowledges that a separate company by the name of M/s GTM Jewellery Mart Pvt. Ltd. has been found from 26.07.2006.
14. The addition made was based on the statement of the Director of that company Shri Gautam Kumar wherein due cognizance was taken of the factum of the separation of jewellery business from that of the assessee business of building activity.
15. The panchanama of the copy prepared after executing the warrant in the case of M/s GTM Jewellery Mart Pvt. Ltd. has been served on Shri Gautam Kumar, Director of the company wherein the jewellery was treated as stock-in-trade.
16. Even, if the jewellery is to be assessed in the assessee's hands it can be done only after recording a satisfaction of such items not belonging to the person from whose position they have been seized.
17. It is only after recording a satisfaction such items not belonging to the person from whose position they have been seized that the entity for the assessment can be shifted.
18. In the instant case, there has been no denial by the M/s GTM Jewellery Mart Pvt. Ltd. with respect to their ownership of the items. M/s GTM Jewellery Mart Pvt. Ltd. never mentioned in the statement that the jewellery do not belong to them but belong to the assessee.

19. The AO ignored this fact and without visiting the M/s GTM Jewellery Mart Pvt. Ltd. for obtaining explanation and elucidation as well as discharge of onus on that entity regarding the ownership of the jewellery straight away and made addition in the hands of the assessee which cannot be held to be legally valid as per Section 132(4A).

52. Keeping in view these facts, since there is a panchnama drawn in the case of M/s GTM Jewellery Mart Pvt. Ltd., stock inventory was made in the said company and keeping in view the fact that M/s GTM Jewellery Mart Pvt. Ltd. is a separate assessable entity, keeping in view the fact that the difference is due to difference in price but not in quantity, we hold that the addition cannot be made in the hands of the assessee in the instant year.

53. In the result, the appeal of the assessee is allowed and that of the revenue is dismissed.

54. Owing to the disposal of the appeal of the revenue as well as the assessee, the Stay Application No. 187/Del/2020 is treated as redundant.

Order Pronounced in the Open Court on 10/02/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 10/02/2021**

\*Subodh\*