

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**BEFORE HON'BLE MANISH BORAD, ACCOUNTANT**  
**MEMBER AND**  
**HON'BLE MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 992/Ind/2019  
Assessment Year 2016-17

M/s Alankar Jewelers, : Appellant  
1, Kothi Bazar,  
Betul  
PAN : ABAFA8140Q  
V/s

DCIT,  
Itarsi : Respondent

Revenue by	Shri Harshit Bari, Sr.DR
Assessee by	S/Shri Asish Goyal & N.D. Patwa, ARs
Date of Hearing	07.04.2021
Date of Pronouncement	30.04.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeal filed at the instance of the assessee for Assessment Year 2016-17 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT],

Bhopal dated 17.10.2019 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 26.12.2018 framed by DCIT/ACIT, Itarsi.

2. Assessee has raised following grounds of appeal:-

1. *On the facts and circumstances of the case and applicable law, Ld. CIT(A)-I, Bhopal erred in dismissing the appeal and sustaining the assessment order of the Ld. A.O under this appeal which is contrary to the material on records and provisions of the Act, unjust, bad in law and without jurisdiction.*

2. *On the facts and circumstances of the case and applicable law, Ld. CIT(A)-I, Bhopal erred in sustaining the addition of Rs.1,59,19,451/- made by the Ld. AO on account of unexplained stock of gold and silver jewellery disregarding the facts of the case, settled legal position and explanation submitted by the appellant.*

3. *On the facts and circumstances of the case and applicable law, Ld. CIT(A)-I, Bhopal erred in dismissing the appeal and sustaining the addition of Rs.3,75,510/- made by the Ld. AO on account of undisclosed cash found during survey disregarding the facts of the case, settled legal position and explanation submitted by the appellant.*

4. *On the facts and circumstances of the case and applicable law, Ld. CIT(A)-I, Bhopal erred in dismissing the appeal and sustaining the addition of Rs.1,00,145/- made by the Ld. AO on account of unexplained expenditure disregarding the facts of the case, settled legal position and explanation submitted by the appellant.*

5. On the facts and in the circumstances of the case, the Ld. CIT(Appeals)-I, Bhopal erred in sustaining the levy of interest u/s 234A, 234B & 234C of the Act, whereas no such interest is chargeable

6. On the facts and in the circumstances of the case, the Ld. CIT(Appeals)-I, Bhopal erred in sustaining initiation of penalty proceedings u/s 271(1)(c) of the Act, whereas no occasion to initiate penalty.

7. The appellant, carves leave to add, amend, alter or otherwise raise any other ground of appeal.

3. Brief facts of the case as culled out from the records are that the assessee is a partnership firm engaged in the business of trading of gold, silver jewellery and pawning. Survey U/s 133A of the Act was conducted at the business premises of the assessee firm on 16.12.2015. Certain discrepancies were noticed by the survey officials which could not be instantly clarified by the partner of the firm. Statement was recorded and surrender of Rs.1,75,00,000/- was made on account of following:-

Particulars	Amount (Rs.)
On account of alleged excess stock of gold jewellery weighing 5770.96 grams found.	1,41,38,852
On account of alleged excess stock of silver jewellery weighing 99.50 kilograms found.	28,85,500
On account of alleged excess cash found	3,75,510

Un detailed surrender on account of other discrepancies (if any)	1,00,138
Total	1,75,00,000

4. Return of income was filed on 16.02.2016 declaring total income at Rs.11,45,390/-. Retraction letter dated 3.6.2017 was filed stating that surrender of Rs.1,75,00,000/- during the course of survey was made under stress and the discrepancies were only to the extent of Rs.11,04,901/- which had already been offered in the return of income filed on 16.02.2016. Subsequently the case of the assessee was selected for in Compulsory Manual Selection and notices u/s 143(2) and 143(1) of the Act served. During the course of assessment proceedings Ld. A.O confronted assessee why the income of Rs.1,75,00,000/- surrendered during the course of survey has not been offered to tax. Detailed reply was submitted by the assessee contending that the surrender was made under stress and after necessary reconciliation and examining the records only discrepancy was for Rs.11,04,901/-. It was also contended that statement given during the course of survey are not on oath and thus do not have any evidential value. However these submissions

could not satisfy the Ld. A.O and he completed the assessment assessing income at Rs.1,75,40,496/- in the following manner:-

Income as per return	Rs. 11,45,390/-
Addition on account of undisclosed stock u/s 69B	Rs.1,70,24,352/-
Less: undisclosed stock offered under the head profits and gains of business profession	Rs.11,04,901/-
Add: Undisclosed cash found during the course of survey	Rs.3,75,510/-
Add: Addition on account of unexplained expenditure	Rs.1,00,145/-
Assessed Total Income	Rs.1,75,40,496/-
R/o	Rs.1,75,40,500/-

5. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed. Though the detailed submissions were made before Ld. CIT(A) also but he on the strength of judicial precedents and on the strength of the statement given by the assessee during the course of survey was of the view that assessee should have honoured the surrender made. Relevant extract of the finding of Ld. CIT(A) is mentioned below:-

*Xxxx*

*j) Thus, from the above analysis it emerges that :*

*i. The retraction was made after a period of fifteen months;*

*ii. It was never communicated to the Departmental authorities, merely not disclosed with the return of income;*

*(iii) From record it is impossible to hold that any threat or coercion has been exerted during the confession statement of the assessee.*

*iv. Irrespective of the form or validity of the voluntary disclosure statement or of the deposition taken from the assessee on 16.12.2015, the evidence of testimony cannot be wiped out and does not become non-existent and this evidence can well be utilized to frame the assessment on that basis.*

*v. Shri Arun Gothi in his sworn statement recorded on oath on 16.12.2015 has admitted his undisclosed income of Rs. 1,75,00,000/- in AY-2016-17. Thus, the disclosure made was in true spirit and after analyzing various incriminating documents found during the course of search.*

*In view of the above position, the appellant's unsuccessful attempt to retract from the disclosure is untenable being an afterthought and is rejected. Therefore, the additions made by the AO amounting to Rs. 1,59,19,451/-, Rs. 3,75,510/- and Rs. 1,00,145/- in AY 2016-17 is Confirmed. Therefore, the appeal on these ground are Dismissed.”*

6. Aggrieved assessee is now in appeal before the Tribunal.

7. Ld. Counsel for the assessee argued at length referring to the written synopsis as well as the paper book running page 1 to 69

and also stock details and VAT returns filed with the written synopsis from page 6 to 19. The written submission filed by the assessee are reproduced below:-

SYNOPSIS

Business : Trading in Gold and silver jewellery

Survey : 16.12.2015. Income surrendered and later retracted is as under:

Chart 1

Head of Disclosure	Amount surrendered during survey (By partner Arun Gothi)	Amount retracted subsequently vide retraction letter dt. 03.06.2017 (PB 7-8)	Amount offered in return dated 16.02.2017 (PB 9-11)
Excess Cash	3,75,510	3,75,510	-
Excess gold jewellery	1,41,38,852 [5770.96 grams x Rs. 2,450 per gram]	1,38,72,459 [5662.228 grams x Rs. 2,450 per gram]	2,66,366 [108.732 grams x Rs. 2,450 per gram]
Excess Silver jewellery	28,85,500 [99.50 kgs x Rs. 29,000 per kg]	20,46,965 [70.585 kgs x Rs. 29,000 per kg]	8,38,535 [28.915 kg x Rs. 29,000 per kg.]
Surrender without details	1,00,138	1,00,145	-
TOTAL	1,75,00,000	1,63,95,099	11,04,901

Ld. AD relying on the surrender during survey u/s. 133A added Rs. 1,63,95,099/- as unaccounted income of the assessee. This order was confirmed by Ld. CIT(A). However, both the Id. Authorities brushed aside the reasons for retraction. The surrender was made under mistake and the reasons for retraction were specific. The reasons for retraction in respect of each head of disclosure, are as under:

(1) Excess Cash [Covered in Ground no. 3]- Rs. 3,75,510/-

Chart 2

Particulars	Cash found	Cash as per books	Excess cash
As per Id AO	Rs.8,34,120/-	Rs. 4,58,610/-	Rs.3,75,510/-
As per assessee	Rs. 4,58,610/-	Rs.4,58,610/-	NIL.

It is submitted that cash found was Rs. 4,58,610. PB 29 is the Inventory of cash found during the course of survey.

During the survey, Ld. Authorised officer wrongly mentioned in the statement that cash found was Rs. 8,34,120/- PB 5.

Further, Id. AO/ CIT(A) wrongly mentioned cash found during the course of survey as Rs. 8,34,120/- and treated Rs. 3,75,510/- as excess cash, merely brushing aside the

fact that cash found was Rs. 4,58,610/-.

In the preliminary statement [PB 2 que 6], when asked, assessee stated that approximately the cash balance was Rs. 4 lakhs.

It is therefore prayed that the addition of Rs. 3,75,510/- may kindly be deleted as there was no excess found.

(2) Excess Gold and silver Jewellery found [Ground no. 2] - Rs. 1,59,19,451

The addition for gold and silver jewellery is as under: -

Excess gold jewellery	1,38,72,459 [5662.228 grams x Rs. 2,450 per gram]
Excess Silver jewellery	20,46,965 [70.585 kgs x Rs. 29,000 per kg]

(A) Excess Gold Jewellery Found - Rs. 1,38,72,459/-

(a) The details of quantity of excess stock of gold jewellery found is as under: -

Chart 3

Particulars	Gold Jewellery physically found	Gold Jewellery as per books	Excess gold jewellery
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As per Id AO	20,689.200 grams	14918.240 grams	5770.960 grams
As per assessee	20,689.200 grams	20580.468 grams	108.732 grams *

\* This excess gold Jewellery has already been offered In the return u/s. 139.

(b) During survey, it was stated by the survey party that the stock of gold jewellery (as on 15.12.2015) as per the books of accounts was 14918.240 grams. PB 4 que. 12. No basis as to how this quantity of 14918.240 grams was determined by the survey party, has been brought on record.

(c) The correct stock of gold jewellery, as per books, was 20580.460 grams. This quantity of jewellery is duly verifiable.

(i) The trading account of gold - PB 52 clearly shows the quantitative details of opening stock, purchases, sales and closing stock on 15.12.2015.

(ii) So far as the opening stock of 21154.550 grams on 01.04.2015 is concerned, the same is verifiable from:

- the quantitative trading account as certified by the auditor. PB 36.

~Form - 8 (Le. stock certificate) submitted to VAT department. PB 37.

~ Assessment order u.s, 143(3) for A.Y. 2015-16. PB 38-42. Specific PB41.

(iii) In regard to the purchases and sale of gold jewellery between 01.04.2015 to 15.12.2015, the details of month-wise purchases and sales are given at PB 30. Stock register is at pg. 6-11 of Synopsis.

~ The purchase of gold jewellery during 01.04.2015 to 15.12.2015 is 6388.660 grams as per the trading account (PB 52).

~All the entries of purchases can be verified from PB 53, where details of each purchase is given.

~ The purchases of gold jewellery are from one party (Silver Gold Point'. The ledger account of (Silver Gold Point' is at PB 64-65. It can be seen that the payment for all purchases were made through banking channel, before the date of survey. The last bill is dated 09.12.2015, the payment of which was also made on 07.12.2015 Le. before date of survey.

~ The sale of gold jewellery during 01.04.2015 to 15.12.2015 was 6962.740 grams. The ledger for sales is at PB 54-57. The sales have been accepted by department and the profit on same has been accepted.

- The sales are also subject to VAT. Invoices have been issued, which were verifiable during survey.

~ How the survey party calculated the stock as per books at 15026.972 grams is unknown. What quantity was taken as opening stock, purchases, and sales between 01.04.2015 to 15.12.2015 is not on record. The stock as per books, is therefore wrongly taken by the survey party.

(iv) Thus, it is submitted that since opening stock, purchases and sales were verifiable, the correct stock as per the books was 20580.468 grams.

(B) Excess Silver Jewellery Found - Rs. 20,46,965/-

(a) The details of quantity of excess stock of silver jewellery found is as under: -

Chart 4

Particulars	Silver Jewellery found	Silver Jewellery as per books	Excess silver jewellery
As per Id AD	236.500 kgs	137.000 kgs	99.50 kgs
As per assessee	236.500 kgs	207.585 kgs	28.915 kgs *

\* This excess silver jewellery has already been offered in the return u/s. 139.

(b) During survey, it was stated by the survey party that the stock of silver jewellery (as on 15.12.2015) as per the books of accounts was 137 kgs. PS 5 que. 13. No basis as to how this quantity of 137 kgs was determined has been brought on record.

(c) The correct stock of silver jewellery, as per books, was 207.585 kgs. This quantity of jewellery is duly verifiable.

(i) The trading account of silver - PS 58 clearly shows the quantitative details of opening stock, purchases, sales and closing stock on 15.12.2015.

(ii) So far as the opening stock of 171.461 kgs on 01.04.2015 is concerned, the same is verifiable from

- the quantitative trading account as certified by the auditor. PS 36.

- Form - 8 (Le. stock certificate) submitted to VAT department. PS 37.

- Assessment order u.s, 143(3) for A.Y. 2015-16. PS 38-42. Specific PS41.

(iii) In regard to the purchases and sale of silver jewellery between 01.04.2015 to 15.12.2015, the details of month-wise purchases and sales are given at PS 33. Stock register at pg. 12-16

of Synopsis.

- The purchase of silver jewellery during 01.04.2015 to 15.12.2015 is 280.913 kgs as per the trading account (PS 58).

-All the entries of purchases can be verified from PS 59-60, where details of each purchase is given.

- The sale of silver jewellery during 01.04.2015 to 15.12.2015 was 244.788 kgs. The ledger for sales is at PS 61-63. The sales have been accepted by department and the profit on same has been accepted.

- The sales are also subject to VAT. Invoices have been issued, which were verifiable during survey.

- How the survey party calculated the stock as per books at 137.000 kgs is unknown. What quantity was taken as opening stock, purchases, and sales between 01.04.2015 to 15.12.2015 is not on record.

(iv) Thus, it is submitted that since opening stock, purchases and sales were verifiable, the correct stock as per the books was 207.585 kgs.

(3) Surrender without details [Covered in Ground no. 4] - Rs 1,00,145/-

There is no basis for this surrender. It is submitted that it is a trite law that surrender without any basis cannot be a basis of making addition in the hands of the assessee. Assessee places reliance on the judgement of Hon'ble ITAT, Indore Bench in the case of Ajit Singh Melhotra vs ACIT {Central}, IT{SS}A 63/ IND/ 2019 , order dated 22.10.2020, whereby the Hon'ble ITAT has held that no addition can be made merely on the basis of statement recorded during search.

It is further submitted that, the present case is on a much better footing, as the statement was recorded during survey u/s. 133A. Statement *uls.* 132{4} recorded during search is recorded on oath; whereas statement u/s. 133A recorded during survey is no on oath. It is a settled proposition of law that the statement during survey has no evidentiary value [*reliance is placed on S. Khader Khan Son (2012) 25 taxmann.com 413 (SC) confirming CIT vs S. KHadar Khan Son 300 ITR 157 (Mad.)*].

In the present case, the very basis of the Ld. Lower authorities is the statement recorded during survey. The Ld. Lower authorities have simply brushed aside the explanation given for the retraction and merely based the entire addition on the mere surrender during survey and nothing else.

It is therefore prayed that the appeal of the assessee may kindly be allowed.

8. Per contra Ld. Departmental Representative apart from relying the finding of both the lower authorities also submitted that the quantity referred by the Ld. A.O as per the books of accounts were mentioned by the partner of the firm only during the course of survey. Ld. Departmental Representative referred to the statements given by the assessee during the course of survey to support the fact that the basis of surrender was the quantity as per books mentioned by the partner of the assessee firm the onus is on the assessee firm to explain why there was a difference between the stock as per books mentioned by the partner during the course of survey vis-a-vis the stock shown in the books which were produced before the Ld. A.O during assessment proceedings. He further contended that the statement during the course of survey was not given under any duress and the retraction was also after a lapse of considerable time which in this case is almost 18 months.

9. We have heard rival contentions and perused the records placed before us. As regards Ground No.1 challenging the validity of assessment being unjust, bad in law and without jurisdiction, we find no merit in this ground as no submission have been forwarded

by the Ld. Counsel for the assessee. It seems that assessee is not interested to press this ground. We therefore confirm the finding of Ld. CIT(A) on this issue and dismiss Ground No.1 as not pressed.

10. Ground No.2,3 & 4 are with regard to the additions made by the Ld. A.O at Rs.1,59,19,451/- for the alleged unexplained stock of gold and silver jewellery and Rs.3,75,510/- for the undisclosed cash found during the survey and Rs.1,00,145/- made on account of unexplained expenditure. We find that the survey action was conducted at the business premises of the assessee firm on 16.12.2015 and surrender of Rs.1,75,00,000/- was made by the partner of the firm on account of following:-

Particulars	Amount (Rs.)
On account of alleged excess stock of gold jewellery weighing 5770.96 grams found.	1,41,38,852
On account of alleged excess stock of silver jewellery weighing 99.50 kilograms found.	28,85,500
On account of alleged excess cash found	3,75,510
Un detailed surrender on account of other discrepancies (if any)	1,00,138
Total	1,75,00,000

11. Subsequently in the return of income filed on 16.12.2016 assessee offered only Rs.11,04,901/- as undisclosed income found

during the course of survey. For the remaining amount retraction statement was filed on 03.06.2017 contending that after reconciliation of the stock records and other documents and also after reconciling various figures connected to stock and cash it was observed that surrender was wrongly made at Rs.1,75,00,000/- and the unaccounted income liable to be surrendered is only at Rs.11,04,091/-.

12. We further observe that complete details were filed before both the lower authorities in order to reconcile the mismatch in stock of gold and silver jewellery and the cash in hand. However on perusal of the assessment order as well as the finding of Ld. CIT(A) it emerges that major thrust has been only on the statement given by the partner during the course of survey accepting to offer Rs.1,75,00,000/- as undisclosed income. Even Ld. CIT(A) has only taken the statement as the basis treating to be a statement on oath which in his view the assessee was duty bound to honour and offer surrendered income to tax. No efforts seems to have been made to examine the incriminating material if any, to verify the correctness of various quantity details and abstract of books of accounts filed

by the assessee. Nothing adverse has been observed in the order of both the lower authorities against the quantitative details, Trading and Profit & Loss Account details of purchase and sales and the audited financial statements.

13. First issue which needs to be examined is whether the statement given during the course of survey u/s 133A of the Act is “*a statement on oath having any evidential value*”.

14. We find that this issue is time and again examined by the Hon'ble Apex Court. In the case of *CIT V/s S. Khadar Khan Son* (2012) 25 taxmaan.com 413 (SC), Hon'ble Apex Court has dismissed the special leave petition filed by the Department observing the same to be without any merit which was filed against the judgment of Hon'ble High Court of Madras in the case of *CIT V/s S. Khadar Khan Son* (2008) 300 ITR 157 (Mad.). The findings of Hon'ble High Court of Madras in the case of *CIT v. s. Khadar Khan Son (Supra)* affirmed by Hon'ble Apex Court [Supra] which are very much relevant in the instant case of the appellant are reproduced hereunder:

*"An admission is extremely an important piece of evidence but it cannot be said that it is conclusive; and it is open to the person who made the admission to show that it is incorrect.*

*The word 'may' used in section 133A(3)(iii), viz. 'record the statement of any person which may be useful for, or relevant to, any proceeding under this Act', makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive pieces of evidence by themselves. The statement obtained under section 133A would not automatically bind upon the assessee.*

*Section 133A does not empower any ITO to examine any person on oath. In contradistinction to the power under section 133A, section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A is not given an evidentiary value. The statement obtained under section 133A would not automatically bind upon the assessee.*

*Therefore, admission made during such statement cannot be made the basis of any addition. "*

*The scope of section 132(4) and section 133A [with regard to recording of statement of any person on oath] has been considered at length by Hon'ble High Court of Kerala in the case of **Paul Mathews and Sons v. CIT [2003] 263 ITR 101 [Kerla]**. Relevant findings of Hon'ble Court are reproduced hereunder:*

*" ... we find that such a power to examine a person on oath is specifically conferred on the authorised officer only under section 132(4) of the Income-tax Act in the course of any search or seizure. Thus, the Income-tax Act, whenever it thought fit and necessary to confer such power to examine a person on oath, the same has been expressly provided whereas section 133A does not empower any Income-tax Officer to examine any person on oath. Thus, in contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence, under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A of the Income-tax Act it is not given any evidentiary value obviously for the reason that the officer is not authorised to*

*administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law ... Therefore, the statement elicited during the survey operation has no evidentiary value and the Income-tax Officer was well aware of this. (emphasis supplied)"*

15. Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax, Rajkot -III v. M.P. Scrap Traders [2015] 60 taxmann.com 205 (Gujarat) has affirmed the decision of ITAT deleting the addition made by the AO solely on the basis of statement of partner which was subsequently retracted. Head note of the above decision is as under:

*"Section 69, read with section 133A, of the Income-tax Act, 1961 - Unexplained investments (Retraction of statements) - Assessment year 2007-08 - Assessing Officer made addition in hands of assessee-firm as well as its partner, as unexplained investments solely relying upon statement at-partner recorded at time of survey. . which was subsequently retracted - Except said statement, there was no other material or corroborative material with Assessing Officer to justify said addition - Whether additions made by Assessing Officer were to be deleted - Held, yes [Para 5]"*

16. The CBDT vide its circular F.No. 286/2/2003-IT(Inv.) dated 10<sup>th</sup> March 2003 has issued an advisory to its field officer regarding confession of additional income during the course of search and survey operations. Relevant portion of the above said circular is reproduced hereunder:

*"Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course Of the search and seizure and survey operations. Such confessions is not based u on credible evidence are later retracted by the concerned assesseees while filing returns of income. In these circumstances. on confessions during the course of search and seizure and survey Operations do not serve any useful purpose. It is. therefore. advised that there should be ocus and concentration on collection O evidence O income which leads to in formation on what has not been disclosed or is not likely to be disclosed before the Income-tax Department Similarly. while recording statement during the Course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. An action on the contrary shall be viewed adversely.*

*Further. in respect of pending. assessment prot5eedings also. the Assessing Officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment 'orders. "*

17. From perusal of the judgment as well as the CBDT circular it opines that the statement given during the course of survey is not a statement on oath as given u/s 132(4) of the Act and therefore has no evidentiary value. Reliance should be placed upon the evidence/ materials gathered during the course of survey operations while framing the assessment orders. Therefore this finding of Ld. CIT(A) that the assessee was required to honour income surrendered during the course of survey at Rs.1,75,00,000/- and offer it to tax finds no merit.

18. Now coming to the submissions made by the assessee that the retraction was correct and as per the records only Rs.11,12,901/- needs to be offered to tax is to be examined.

19. First issue is with regard to excess gold jewellery found which has been raised in Ground No.2. The addition for excess gold jewellery was made at Rs.1,38,72,459/- for the alleged excess gold jewellery of 5662.228 grams @Rs.2450/- per gram. Addition for excess silver jewellery was at Rs.20,46,965/- for excess stock of 70.585 Kg @Rs.29,000/- per kg.

20. The alleged excess stock of gold jewellery as per the Ld. A.O and as per the assessee is computed below:-

Particulars	Gold Jewellery physically found	Gold Jewellery as per books	Excess gold jewellery
As per Ld.AO	20,689.200 grams	14918.240 grams	5770.960 grams
As per assessee	20,689.200 grams	20580.468 grams	108.732 grams

21. In the above chart the gold jewellery as per the books adopted by the Ld. A.O is on the basis of statement given during the course of survey by the assessee who stated that the stock as per books as on the date of survey is 14918.240 grams. Whereas the assessee after checking its books of accounts and relevant records submitted

that the stock of gold jewellery as on 15.12.2015 as per books is 20580.468 grams. There is no dispute at the end of both the parties with regard to the physical stock of gold jewellery found during the course of survey. Now we need to examine the correctness of stock of gold jewellery as per books as on the date of survey. The claim of the assessee is that it is 20580.468 grams. Following Trading account for the period 1.4.2015 to 15.12.2015 has been filed and placed at page 52 of the paper book:-

Particulars	Quantity	Amount	Particulars	Quantity	Amount
To Opening stock	21,154.55	4,19,60,444.87	By Sales	6,962.74	1,96,64,655.00
To Purchases	6,388.66	1,64,53,849.00	By Closing stock	20,580.47	4,41,71,188.99
To Gross Profit		54,21,550.12			
Total	27,543.21	6,38,35,843.99	Total	27,543.21	6,38,35,843.99

22. In the above trading account the figure of opening stock is verifiable from the balance sheet of preceding financial year i.e. 2014-15 and the same is rightly taken as 21154.55 grams. Closing stock i.e. stock on the date of survey is mentioned 20580.47 grams but physical stock found was 20689.200 grams and difference of 108.732 grams of gold jewellery is offered to tax by the assessee.

Now the remaining two figures are purchase and sales. Complete details of purchase of gold jewellery of 6388.66 grams is available at page 53 of the paper book. Complete quantitative details with invoice number and party name are available. Similarly for the sales 6962.74 grams details of sales have been filed. Since the assessee is registered under the Value Added Tax all these details of sales are filed before VAT authorities and the invoice up to the date of survey were examined by the survey team. Thus going through the above details of trading account for the period 01.04.2015 to 15.12.2015, we find that the quantity details filed by the assessee with regard to the opening stock purchase sales and closing stock are correct and are duly supported by material evidence and thus should be accepted in place of the oral statement given by the partner during the course of survey. Therefore the excess stock of gold jewellery at the time of survey was only at 108.732 grams and not the alleged figure of 5770.960 grams. Therefore no addition for excess gold jewellery at Rs.1,38,72,459/- was called for.

23. As regards addition for excess silver jewellery at Rs.20,46,965/-, we have gone through the trading account for

01.04.2015 to 15.12.2015 placed at page 58 of the paper book. Figures of opening stock of 171.461 kg is not in dispute. Closing stock is shown at 207.585 kg. Physical stock was found at 236.500 kg but shown in books of accounts is 207.585 kg and the difference of 28.915 kg of silver jewellery has been offered to tax. Whereas the stock as per the books adopted by the Ld. A.O on the basis of statement of the partner on the date of survey is 137.000 kg. Complete details have been filed at page 58,59 and 60 for purchase of silver jewellery and from page 61 to 63 for the details of sale of silver jewellery. All these details of purchase and sales has not been confronted by the revenue authorities at any stage. Sales are subject to VAT, Invoices have been issued which were verified during survey and assessment proceedings. Under these facts in our considered view the "Evidence" needs to be given preference to the 'oral' statement given by the partner of the firm. Therefore silver jewellery as per the books has rightly been computed at 207.585 gram and therefore the excess stock of silver jewellery is only 28.91 kg (Physical stock 236.500 kg less books stock 207.585 kg). Since the value of excess stock of silver jewellery has already been offered

to tax in the return of income filed u/s 139 of the Act no addition was called for unexplained silver jewellery at Rs.20,46,965/- by the Ld. A.O and the same is deleted. In the result addition for excess gold jewellery and silver jewellery at Rs.1,59,19,451/- (Gold Jewellery Rs.1,38,72,459/- and Silver Jewellery Rs.20,46,965/-) stands deleted and Ground No.2 of the assessee's appeal is allowed.

24. Now we take up Ground No.3 for the addition for excess cash of Rs.3,75,510/- made by the Ld. A.O. Ld. A.O made this addition after observing that physical cash was found at Rs.8,34,120/- which was in excess by Rs.3,75,510/- against the cash as per books at Rs.4,58,610/-. Ld. Counsel for the assessee claimed that the physical cash as on the date of survey is Rs.4,58,610/- only and therefore there is no excess cash. On perusal of page 29 of the paper book relating to the inventory of cash found at the assessee's business premises the document shows that total cash found at the time of survey was Rs.4,58,610/- only. This inventory of cash found is signed by the Officer present during the course of survey. Thus it remains undisputed that physical cash found at the time of survey was at Rs.4,58,610/- only and the cash as per the books has also

at Rs.4,58,610/-. Ld. Departmental Representative could not controvert this fact by placing any contrary material. Since there is no excess cash as on the date of survey we hereby delete the addition made of excess cash of Rs.3,75,510/- made by the Ld. A.O. Thus Ground No.3 of the assessee's appeal is allowed.

25. Now we take up Ground No.4 for the addition of Rs.1,00,145/- made by the Ld. A.O on account of unexplained expenditure. We observe that Rs.1,00,145/- was part of the surrender of Rs.1,75,00,000/- made during the course of survey. Admittedly no incriminating material was found with regard to any unaccounted expenditure nor the Ld. A.O has referred any such incriminating material in the assessment order. Ld. CIT(A) has also not referred to any such material found during the course of survey showing any proof of unaccounted expenditure not accounted for in the books. Under these given facts it is blatant that the alleged addition of Rs.1,00,145/- for unexplained expenditure u/s 69C is based merely on the statement made during the course of survey which has no evidentiary value and thus this addition of

*M/s Alankar Jewelers*

*ITA No.992/Ind/2019*

Rs.1,00,145/- could not stand for and the same is deleted. Thus Ground No.4 of the assessee is allowed.

26. Ground No.5 & 6 are consequential in nature which needs no adjudication.

27. Ground No.7 is general in nature which needs no adjudication.

28. In the result appeal of the assessee is partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 30.04.2021.

Sd/-

(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 30<sup>th</sup> April, 2021

/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