

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3968/M/2019
Assessment Year: 2012-13**

**ITA No.3969/M/2019
Assessment Year: 2013-14**

**ITA No.3970/M/2019
Assessment Year: 2014-15**

**ITA No.3971/M/2019
Assessment Year: 2015-16**

**ITA No.3972/M/2019
Assessment Year: 2016-17**

DCIT, CC-8(2), Room No.658, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	Shri Jhaverilal P. Dedhia, Shop No.3-4, Ground Floor, 19, Sangeet Sagar Bldg., Laxmi Narayan Lane, Matunga (Central), Mumbai - 400 019 PAN: AABPD1400C
(Appellant)		(Respondent)

Present for:

Assessee by : Shri A.K. Ghosh, A.R.
Revenue by : Shri Jasinta Zimik Uashani, D.R.

Date of Hearing : 14.01.2021

Date of Pronouncement : 06.04.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals have been preferred by the assessee against the separate orders of even dated 28.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17.

2. Since the issues raised in all the appeals are common, the grounds of appeal by the Revenue are taken from ITA No.3968/M/2019 A.Y. 2012-13 which are reproduced as under:

“(i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting all the figures mentioned in seized loose papers from A-11 to A-21 of Rs.72,21,05,180/- as unaccounted purchase of assessee ignoring the fact that during remand proceedings, assessee could not produce the names & addresses of suppliers, karigars, customers etc. before the Assessing Officer.

(ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deciding the unaccounted profit of Rs. 13,44,424/- @ 21.24% on the amount of Rs. 63,29,681/-, ignoring the fact that Rs. 63,29,681/- is unaccounted profit itself, since Ld. CIT(A) himself deducted the unaccounted purchase held by him from A-11 to A-21 from unaccounted sales mentioned in assessment order.

(iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting the contention of assessee that figure in A-11 to A-21 are unaccounted purchases ignoring the provisions of Section 40A(3) of the IT. Act. 1961.”

3. The facts in brief are that there was a search action under section 132 of the Act on 03.12.2015 at the business/residential premises of Dedhia Jewellers group in which certain incriminating materials/documents were found. The assessee being proprietor of Dedhia Jewellers, was naturally covered in the search. Consequently, the AO issued notices u/s 153A of the Act to the assessee for six assessment years 2010-11 to 2015-16 on 27.09.2016 including the assessment year under consideration. The assessee, in compliance, filed the return of income on 07.10.2016 declaring a total income of Rs.3,17,67,850/-. The AO finally framed the assessment order u/s 153A r.w.s 143(3) of the Act dated 28.12.2017 wherein, he made the addition on account of unaccounted sales of Rs. 1,80,23,935/-. Pertinent to mention that addition on account of unaccounted sales in the various years covered under search were made aggregating to Rs. 149,62,14,314/- based on seized materials/evidences found during the course of search which

were marked as Annexure A-1 to A-26 in AY 20010-11 to AY 2016-17 by the AO as against unaccounted sales determined by the search party of Rs. 2,33,33,14,390/-. The details of both the estimates by AO as well as search team are given as under:

Estimation of Unaccounted sales by the AO

AY	Unaccounted sales
2010-11	71,29,865
2011-12	5,13,573
2012-13	1,80,23,935
2013-14	10,27,12,417
2014-15	24,26,44,371
2015-16	53,36,32,236
2016-17	59,15,57,917
Total	1,49,62,14,314

Estimation of Unaccounted sales by the Search Team

AY	Unaccounted sales
2009-10	3,21,87,359
2010-11	71,29,865
2011-12	25,70,880
2012-13	3,75,99,399
2013-14	12,09,71,952
2014-15	44,75,77,628
2015-16	88,17,44,471
2016-17	80,35,32,836
Total	233,33,14,390

4. Aggrieved by the appellate orders, the assessee challenged the assessment order before the Id CIT(A). During appellate proceedings the Id CIT(A) directed the AO clarify as to how the consolidated figure of Rs. 149,62,14,314/- for the six years was arrived at as against the amount quantified by Investigation Wing at Rs. 233,33,14,390/-. In response to CIT(A)'s direction, the AO submitted the remand report, wherein, he provided some comments which are extracted by the Id CIT(A) in the appellate order. The Id CIT(A) confronted the remand report to

the assessee and assessee filed his rejoinder. After taking into consideration the remand report and rejoinder of the assessee, the addition made by the AO in the assessment order of Rs. 149,62,14,314/- was revised to Rs. 121,71,83,798/- by reducing the addition by Rs. 27,90,30,516/-.The beak up of total unaccounted sales determined by ld CIT(A) is as under:-

Sr. No.	AY	A1 to A6	Whatsa pp	A11 to A21	A22 - A27	Deficit in stock	Total
1	2010-11	-	-	-	7,129,865	-	7,129,865
2	2011-12	-	-	-	513,573	-	513,573
3	2012-13	-	4,272,373	11,694,254	2,057,308	-	18,023,935
4	2013-14	-	130,000	52,827,549	4,351,678	-	57,309,227
5	2014-15	-	4,300,000	87,616,934	62,966,374	-	154,883,308
6	2015-16	18,784,727	800,000	191,102,111	285,372,507	-	496,059,345
7	2016-17	71,414,349	1,325,000	99,833,816	199,431,851	111,259,529	483,264,545
	Total	90,199,076	10,827,373	443,074,664	561,823,156	111,259,529	1,217,183,798

5. Finally , ld.CIT(A), after considering the written submissions and rejoinder to remand report filed by assessee and remand report submitted by assessing officer, has passed the appellate order allowing partial relief.

6. The ld AR submitted at the outset that the assessee filed appeal before tribunal in ITA No 3652 to 3658/Mum/2019 for AY 2010-11 to 2016-17 challenging the quantification of alleged unaccounted sales at Rs. 66,28,49,605/- made by CIT(A). The department has also filed appeals for AY 2012-13 to 2016-17 challenging the partial relief allowed by the ld CIT(A) to the assessee on account deletion of stock deficit , quantification of unaccounted sales and application of GP to the said unaccounted sales. The ld AR submitted that the issues challenged in the revenue's appeal are same as raised by the assessee in his appeal. The ld AR further submitted before the bench that the appeals filed by the assessee have been decided and disposed off by the coordinate bench vide order dated 31.07.2020 in ITA No. 3652/Mum/2019 and others AY 2010-11 to 2016-17 whereas the appeals of the revenue remained pending which are listed for hearing today. The ld AR filed copy of the coordinate bench decision before the bench. The ld AR submitted that the issues raised in cross appeals are common as the assessee has challenged the part sustaining of additions whereas the revenue has challenged the part deletion of additions by ld CIT(A). The ld AR argued that the issues in the revenue appeals have already been adjudicated by the coordinate bench and are covered by the order passed by said order. The Ld. AR therefore prayed that the appeals of the revenue are infructuous and may be dismissed. The ld. DR fairly conceded that the cross appeals of the assessee have already been disposed off having the same issues however stressed that the issues may be decided afresh. The ld DR relied on the order of ld. AO.

7. We have heard the rival contentions and perused the materials on records including the decisions of the coordinate bench of the tribunal dated 31.07.2020 in ITA No. 3652/Mum/2019 and others AY 2010-11 to 2016-17 whereby the cross appeals of the assessee were decided and disposed off. After perusal of the order we find that the issues raised by the revenue in its appeals are already adjudicated by the tribunal as stated hereinabove. Consequently the appeals of the Revenue required no adjudication and are disposed off accordingly.

8. The first issue raised by the revenue in ground no. 1 & 3 is against the order of CIT(A) deleting the addition by considering the amounts appearing on seized material as purchases. We note that Id CIT(A) has deleted the addition by considering the amounts appearing in the seized material as purchases which has been decided by the tribunal upholding the order of Id CIT(A) and is covered in paras 20 to 24 of the impugned ITAT order and is reproduced as under:

“20. As regards, exclusion of a sum of Rs. 72,21,05,180/- on account of claim of purchases, we find that the Id. CIT(A) had recorded categorical findings while excluding the amount of purchases as per which the Id AO has failed to offer any comments on claim of the assessee that data contained in annexure A11 to A21 is purchases. The said findings is based on the observations of the AO in his remand report, where he had stated that on the seized pages words ‘RETURN’, ‘ESTIMATE’, ‘ESTIMATE ON APPROVAL’ etc. are mentioned and these seized material doesn’t mention the name of customers/vendors, their address, phone numbers etc. The Id. CIT(A) further observed that the AO has finally concluded in the remand report that in the absence of corroborative evidence, it is not possible to reach at any conclusive findings that whether these entries represents unaccounted sales or unaccounted purchases and thus, the AO stated that claim of appellant may be decided on merits based on the facts of the case and seized documents. Thereafter, the CIT(A) has independently analyzed this issue and examined explanation given by appellant and he also stated that the AO has failed to rebut these explanations given by appellant. The CIT(A) further referred to the statement of Jayesh Waghela, Accountant of Dedhia Jewellers, wherein, he has explained that the entries mentioned in the Annexure A11 to A21 represents the Jewellery received

from karigar (Entered in Manual Register)'. Thus, the CIT(A) stated that on the basis of this particular comment given by the Jayesh Waghela, these entries emanating from Annexure A11 to A21 cannot be treated as unaccounted sales. Further, the CIT(A) has analysed each annexure A11 to A21 on sample basis to understand the nature of transaction to verify the claim of appellant that these entries represent unaccounted purchases. Thus, the Id. CIT(A) in para 30.2 of his appellate order has held that the unaccounted entries contained in Annexure A11 to A21 relates to unaccounted purchases and accordingly excluded the same from unaccounted sales quantified by the AO. The above said finding of the Id. CIT(A) goes unchallenged by the Revenue and become final. We, therefore, concurred with findings of the Id. CIT(A) for exclusion of a sum of Rs.72,21,05,180/- on account of claim of purchases.

21. As regards, final unaccounted sales quantified by the Id. CIT(A), of Rs.66,28,49,605/-, which is on the basis of Annexure A1 to A6, Annexure A22 to A26 and WhatsApp message. Let us first deal with sales as per annexure A1 to A6, being excel-sheets found during the course of search, which contain unaccounted sales of five months as admitted by the assessee. The Investigation wing has quantified total unaccounted sales on the basis of annexure A1 to A6 at Rs.27,66,83,204/- for the period of five months, which has been subsequently recomputed by the AO at Rs. 9,01,99,076/- for two assessment years, i.e. A.Y. 2015-16 and 2016-17 at the time of assessment. During assessment proceedings, the said working has been arrived at after considering various averments made by the assessee in light of duplicate entries, sales accounted in regular books of account and amount received through banks. Even during appellate proceedings, the assessee could not produce any evidences to prove that unaccounted sales worked out by the AO of Rs.9,01,99,076/- on the basis of annexure A1 to A6 is recorded in books of accounts for both assessment years. Even before us, the assessee could not produce any details to prove that said unaccounted sale is recorded in books of account. Although, assessee made a general statements in light of retraction statements, the same cannot be considered as conclusive evidences to delete unaccounted sales computed by the AO and which is supported by incriminating materials found during course of search and further confirmed by the assessee and his staff. We, therefore confirm unaccounted sales computed by the AO and confirmed by the Id. CIT(A) at Rs. 9,01,99,076/- for AY 2015-16 and 2016-17 on the basis of annexure A1 to A6.

22. In sofaras unaccounted sales computed on the basis of WhatsApp message at Rs.1,08,27,373/-, although the AO and the Id. CIT(A), computed unaccounted sales on the basis of WhatsApp messages, but no reasons have been given to come to the conclusion that contents of whatsapp message is in fact unaccounted sales not recorded in regular books of account. On the other hand, the assessee has explained that details of sales found in whatsapp message is either accounted in regular books of account or it pertains to rough estimate of jewellery sent to customers on approval (Jangad). The assessee had also filed reconciliation statement explaining contents of message found in whatsapp and sales recorded in regular books of account or data maintained in pen drive on account of Jangad. Therefore, we are of the considered view that the AO as well as the Id. CIT(A) were erred in considering details of whatsapp message as unaccounted sales and

hence, we direct the AO to delete unaccounted sales computed on the basis of whatsapp message.

23. As regards unaccounted sales computed on the basis of annexure A22 to A26, being data stored in pen drive, the assessee has challenged said findings on the ground that data contained in Annexure A22 to A26 is noting but stock sent on approval to customers(Jangad) which cannot be considered as sales. The AO has quantified unaccounted sales at Rs.56,18,23,156/- on the basis of annexure A22 to A26 (Jangad) for all assessment years covered under search. But, while arriving at above figure, he had not considered reconciliation submitted by the assessee explaining data contain in Jangad and sales recorded in books. We have gone through facts, findings of the Id. AO and various evidences filed by the assessee and we find that addition made on account of data found in pendrives (A22 to A27) are not unaccounted sales but are actually details of 'Jangad' i.e., goods given on approval to customers. The name of excel file itself is 'J-Det' which means 'Jangad details' and hence, the goods given on approval to customers cannot be considered as unaccounted sales. Further, the appellant has also provided the details of sales recorded in the regular books out of J-Details (Jangad) found in the seized pendrives, which is placed at page nos.325 to 328 of the Paper book. Thus, it can be seen from above that the appellant has quantified the stock given on jangad and also reconciled the stock as per books. But, the AO has made the addition in respect of Jangad details found in seized pen drives as AO noted that these are not accounted in the books of assessee without rebutting claim of assessee on Jangad. Under these facts, we are unable to subscribe to the findings of the AO as well as the Id. CIT(A) that Jangad details found in pen drive as unaccounted sales. Accordingly, unaccounted sales computed on the basis of Jangad at Rs. 56,18,23,156/- is rejected. However, as regards, stock shortage found during course of search, although the assessee claims to have reconciled stock shortage with reference to annexure A22 to A26, but fact remains that, the assessee failed to explain with evidences as to how and when stock sent on approval to customers was returned and how the same has been accounted in regular books of accounts. Further, the assessee has admitted stock shortage, but failed to give party wise details as to whom goods are sent on approval. The assessee had also, failed to furnish details of goods returned from customers or sales accounted in books. We, therefore, are of the considered view that stock shortage found during course of search and claimed by the assessee as Jangad is nothing but unaccounted sales which is not recorded in regular books of accounts of the assessee. Hence, we direct the AO to consider stock shortage as unaccounted sales for the AY 2016-17. Thus, out of total unaccounted sales computed by the Id. CIT(A) of Rs. 66,28,49, 605/-, we confirm unaccounted sales of Rs. 9,01,99,076 being unaccounted sales as per annexure A1 to A6 and unaccounted sales on account of stock shortage of Rs. 11,12,59,529/-, and in total a sum of Rs.20,14,58,605/-. The balance amount of Rs.46,13,91,000 being unaccounted sales worked out on the basis of 'Jangad' is deleted."

9. Since the issue raised by the revenue has been decided by the coordinate bench in the above paras, the ground no. 1 & 3 become infructuous and are dismissed.

10. The second issue raised by the revenue in ground no. 2 is against the order of CIT(A) estimating the profit @ 21.24% instead of 100% addition made by the AO. We note that this issue pertaining to estimating gross profit @ 21.24% on final unaccounted sales determined by the CIT(A) is covered by the order of the tribunal dated 31.07.2020 in para 24 & 25, wherein, the Hon'ble ITAT has directed the AO to estimate profit at 3% of final unaccounted sales confirmed by bench in its said order. The relevant paras are extracted below:

"24. Coming to profit rate adopted by the Id. CIT(A) on unaccounted sales. The Id. CIT(A) has applied assessee own gross profit declared for earlier years and has estimated 21.24% gross profit on unaccounted sales for all assessment years. In addition to gross profit, he had also estimated initial investment required for business and accordingly, had taken 21% on first year sales to arrive at total addition towards unaccounted sales. But, the question that needs to be considered in the given facts and circumstances of the case is whether the Id. CIT(A) is right in estimating profit on unaccounted sales and if so, then what is appropriate rate of profit that needs to be applied in the given facts of the case. In so far as estimation of profit on unaccounted sales, it is well settled principles of law that when unaccounted sales is found, then only profit element embodied in such sales needs to be estimated, but now whole unaccounted sales. This is because, when there is unaccounted sales, there must be corresponding unaccounted purchases and other overhead expenses. In this case, on perusal of facts available on record we find that the AO had expressed his inability to find out correct amount of unaccounted sales which is evident from the fact of arriving at different sales figure at different point of time. Further, the assessee claims unaccounted purchase which was recorded in seized incriminating materials marked as Annexure A11 to A21 and this claim has not been refuted by the AO. In fact, the Id. CIT(A) has accepted claim of assessee towards unaccounted purchases. Further, as per seized material if there is unaccounted purchase and unaccounted sales, then addition on account unaccounted sales ignoring unaccounted purchases is incorrect. Therefore, we are of the considered view that the Id. CIT(A) was right in estimating profit on unaccounted sales.

25. Having said so, let us examine the rate of profit adopted by the Id. CIT(A). The Id. CIT(A) has adopted 21.24% gross profit on unaccounted sales and such rate is based on average gross profit declared by the assessee in earlier financial year. As we have noted in earlier paragraph, when documents found during search indicates both unaccounted sales and unaccounted purchases and other overhead expenditure, then gross profit cannot be a good yardstick for estimation of income. Therefore, to this extent, we do not concur with findings of the Id. CIT(A). Further, if gross profit cannot be adopted for estimation of income, then obviously, it can be

net profit that can be used as good yardstick for estimation of income. If, net profit is a good indicator for estimation, then there are two methods to find out correct rate of profit, viz, assessee own rate of profit or some comparable cases of similar nature of business. In this case, assessee own profit rate cannot be considered as good indicator of profit level in this line of business, because, the books of accounts of assessee are not reliable, which is evident from the fact that the assessee is in the habit of not accounting complete transactions in books of accounts. If assessee profit rate is not a good yardstick, then it should be any other comparable cases of similar business. Further, there is no uniform method or yardstick for estimation of income. It depends upon facts and nature of business carried out by the assessee. In this case, the assessee is in the business of trading in diamond and gold jewellery. The rate of profit in this kind of business is very low and it varies from 2% to 5% depending upon volume of business carried by the assessee. Further, various courts and Tribunals have considered facts and nature of business of jewellery trading and depending upon facts of each case, has estimated profit ranging from 2% to 5% on total sales. We, therefore, considering nature of business of the assessee, are of the considered view that 3% net profit on total unaccounted sales is fair and reasonable and hence, we direct the Id. AO to estimate 3% net profit on total unaccounted sales confirmed by us for assessment years 2015-16 to AY 2016-17."

11. Accordingly, the ground no. 2 in the revenue appeal becomes infructuous and is dismissed.

12. The issue raised in ground no. 1 & 3 in ITA No. ITA No. 3969 to 3972/Mum/2019 is identical to one as decided by us in ground no. 1 & 3 in ITA No. 3968/Mum/2019 AY 2012-13(supra). Therefore our decision in ITA No. ITA No. 3968/Mum/2019 AY 2012-13 would, mutatis mutandis, apply to ground no. 1 & 3 in all these appeals as well. Consequently the ground 1 & 3 in all the above appeals of the revenue are dismissed.

13. The issue raised in ground no.4 in ITA No. 3972/Mum/2019 is against the CIT(A)'s action in deleting the addition on account of stock deficit of Rs. 11,12,59,529/- on account of stock deficit by ignoring the fact that purchases were already recorded in the books of accounts and corresponding

sales were not recorded thereby suppressing the income to that extent.

14. After perusal of the order of the coordinate bench dated 31.07.2010, we note that the issue pertaining to deletion of addition by CIT(A) on account of stock deficit is covered by the ITAT order in para 19 which is extracted below:

“19. Coming to unaccounted sales determined by the Id. CIT(A). The Id. CIT(A) has arrived at total unaccounted sales for AY 2010-11 to AY 2016-17 at Rs.66,28,49,605/-. The said amount has been arrived at after allowing deductions of Rs.11,12,59,529/- towards stock shortage and Rs.72,21,05,180/- towards purchases claimed on the basis of annexure A11 to A21 found during course of search. We have gone through reasons given by the Id. CIT(A) to allow deductions towards stock shortage and found that there is no reason to find fault with reasons given for deleting additions made on account of stock shortage, because stock difference is on account of major stock was given to customers on 'Jangad' and the appellant had submitted reconciliation for the same. Further, the CIT(A) noted that the said stock is already considered while making addition on the basis of pen drive marked as Annexure A26 being 'Jangad' a statement maintained for movement of stock given to customers on approval basis. Thus, in our view once it has been added as unaccounted sales as recorded in pen drive (Jangad) and had been taxed by AO, the taxation of the same stock again has resulted into double addition. The assessee had also, furnished all evidences to prove data contained in pen drives in on account of Jangad. To prove its claim, the assessee had provided the details of sales recorded in the books out of J-Details (Jangad) found in the seized pendrives, which is placed at page nos. 325 to 328 of the paper book. Thus, it can be seen from above that the appellant has quantified the stock given on jangad and also reconciled the stock as per books with stock as per valuation report except the meager difference of 166.720 gms in gold and 12.890 cts in diamond which is negligible difference considering the overall quantity weighed and value. The above said findings of the Id. CIT(A) goes unchallenged by the Revenue and become final. Therefore, we are of the view that the Revenue has failed to controvert the findings of the Id. CIT(A) that stock shortage is nothing but Jangad which is given to customers on approval basis and is also part of annexure A22 to A26 and has been included in unaccounted sales quantified on the basis of annexure A26, consequently no separate addition is required on account of stock shortage.”

Consequently, the ground no. 4 becomes infructuous and is dismissed.

15. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 06.04.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 06.04.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.