

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,  
NAGPUR**

**BEFORE SHRI SANDEEP GOSAIN, JM & SHRI O.P. KANT, AM**

ITA No. 315/NAG/2019  
Assessment Year: 2016-17

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	M/s Karan Kothari Jewellers Private Limited, 475, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440001.
PAN No. AACCK 3221 C		
Appellant		Respondent

Revenue by : Shri Pradeep Hedao (CIT-DR)  
Assessee by: Shri Hitesh P Shah (CA)

Date of Hearing: 27/10/2021  
Date of Pronouncement: 20/12/2021

ORDER

**PER: SANDEEP GOSAIN, J.M.**

This is the appeal filed by the Revenue against the order of the Id. CIT(A)-3, Nagpur dated 30/09/2019 for the A.Y. 2016-17 wherein following grounds have been taken.

- “1. *On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.33,18,94,091/- made by the AO as unexplained investment in closing stock without going into the merit of the case.*
2. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that AO is not empowered to making addition u/s 69 without rejecting books of account ignoring the merit of the case.*
3. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding the findings of the AO that the <salvalue> column in the Jilaba software represent*

*purchase price of the assessee is misplaced and' erroneous and without giving cogent reasons.*

4. *On the fact and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the appellant before the AO had not submitted any letter from the Jilaba manufacturer which clarified that the value of purchase / stock cannot be obtained from Jilaba data as purchases were not entered in the Jilaba system.*
5. *On the fact and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of stock as arrived by the AO which forms the basis of addition made u/s 69 is not based on any evidence and is merely based on presumption of the AO overlooking the fact that the <salvalue> column in Jilaba software is purchase price to the assessee.*
6. *On the fact and circumstances of the case in law, the learned CIT(A) erred relying on the fact that the stock has been verified by the Bank by appointing independent auditors which was not placed by assessee before AO, tantamounting to admission of additional evidence in violation of Rule 46A of Income Tax Rule 1962.*
7. *On the fact and circumstances of the case, the learned CIT(A) failed to appreciate that inadvertent credit of Rs.5,14,29,709/- on account of addition on unexplained stock for A.Y. 2015-16 was rectified by order u/s 154 of the I T Act dated 21.01.2019.*
8. *On the fact and circumstances of the case, the learned CIT(A) failed to appreciate that the order of ITAT for A.Y. 2015-16 relied has not been accepted by the Department and appeal against the same is filed in Hon'ble Bombay High Court, Nagpur Bench, Nagpur.*
9. *On the facts and circumstances of the case, the Ld. CIT(A) at best should have kept the adjudication of appeal in abeyance till the decision of jurisdictional High Court.*
10. *Any other grounds to be raised at the time of hearing?*

11. *It is humbly prayed to set aside the order of CIT(A) and restore the order of AO."*

2. The brief facts of the case are that the assessee is engaged in the business of trading and manufacturing of gold/silver, jewellery, articles and bullion. The assessee had filed its return of income on 17/10/2016 declaring total income of Rs. 2,92,54,840/-. It was processed U/s 143(1) of the Income Tax Act, 1961 (in short, the Act) on 05/11/2016. The AO has completed the assessment by making addition of Rs.33,18,94,091/- on account of unexplained investment in closing stock u/s 69 of the Act. As a result, the assessment order passed u/s 143(3) of the Act, the total income of the assessee was determined at Rs.36,11,48,931/-.

3. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and the material placed on record, deleted the addition made by the A.O. Against which, the Revenue has preferred the present appeal before the ITAT on the grounds mentioned above.

4. All the grounds taken by the Revenue are interrelated and interconnected and the department is mainly aggrieved by the order of the Id. CIT(A) in deleting the addition of Rs. 33,18,94,091/- made by the A.O. In this regard, the Id. CIT-DR has vehemently supported the

order of the A.O. and has submitted that the Id. CIT(A) was erred in deleting the addition made by the AO as unexplained investment in closing stock without going into the merits of the case.

5. On the contrary, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submitted filed before him. Contents of the written submissions are reproduced as under:

- "1.1 Our clients are engaged in the business of trading and manufacturing of gold/ silver jewellery, articles and bullion. They had filed their income tax return U/ S. 139(1) on 17/10/ 2016, declaring total income of Rs. 2,92,54,840/-. The said return was processed U/ s. 143(1) on 05/11/2016.*
- 1.2 Their case was selected under CASS for complete scrutiny and one of the reasons for selection was, 'large difference in the opening stock of current year and closing stock of previous year shown in the P & L account as per return of income'.*
- 1.3 In this regard, our client had filed all the required details with evidences to prove that there were no differences between the opening stock of assessment Year 2016-17 and closing stock of assessment Year 2015-16. After due verification of the said details and evidences, the same was accepted by the Ld. A.O.*
- 1.4 Thereafter vide his notice dated 13/ 12/2018, the Ld. A.O. called for the 'details of opening stock and closing stock as per Jilaba Software'.*

1.5 *In response to the said notice, our client, vide their submission dated 13/ 12/2018, had drawn the attention of the Ld. A.O. to the following facts :*

*"that after search operation, due to shortcomings of the jilaba software as explained to your honour, we had stopped using jilaba software.*

*Further after introduction of GST, the said software was of not much use as the person using the said software had left the job and hence it becomes more difficult to use the said software. In view of the above facts and circumstances of the case, the said software was removed from all the systems. Thereafter the company has maintained all the data in tally system. Under the circumstances, we are unable to provide said information."*

2. *Further, the following facts of the Jilaba software, were once again brought to the notice of the Ld. AO :*

*The main objective of purchasing the said software was to track the inventory movement from and to the counter staff to control pilferage/ theft.*

*Assessee had maintained its books of accounts in the existing accounting software i.e. Tally ERP package.*

*Under Jilaba, every product was allotted a bar coded "Tag Key" which captures details of products, viz. its weight, category, labels, location of the stock etc.*

*On generation of a sale invoice, the copy of invoice from Jilaba is made available to the Accounts Department for recording the Sales in books of accounts i.e. in Tally ERP. It is to be noted that beyond 'Tag*

*Key', Jilaba software was never monitored or reconciled by the assessee company.*

*Sales value entered in Jilaba software is an approximately inflated selling rate, which is subject to discounts to be given to customers during festive seasons for each category of metal stones, labour charges etc., to the satisfaction of the customers to make them feel privileged. The inflated sale value is under control of the sales executives of the sales counters.*

*It is also to be noted that the sale values are variable in nature on day to day basis as the prices of gold, silver and diamonds change on daily basis.*

3. *We would like to draw your honour's attention to the fact that during the search action, the department had found shortage of stock to the tune of Rs.5,82,84,494/ - and the then Ld. A.O. after satisfying himself, had accepted the said shortage. However, he had misdirected himself and on the basis of various assumed and presumed calculations, he had made huge addition of Rs.107 crores, on account of difference between the book stock and the Jilaba Software.*
- 3.1 *The said fact that no such huge excess stock was found during the course of search and that the "purchase value" assumed by the then A.O. was in fact the "sale value", was also brought to the notice of the Ld. A.O.*
4. *The copy of letter received from Jilaba software company, was also submitted to the Ld. A.O., which clearly specified that "Thirdly, if <salvalue> column is used to find the value of stock, then it may be wrong as the <salvalue> is only an approximate value calculated based on the gold rate, wastage/making charges*

*given at the time of tagging. While selling it, there may be a discount on wastage/making charges and also the gold rate may change. So, we cannot consider the <salvalue> column for the calculation of stock value. Apart from that, it is not calculated based on the purchase cost. So, we cannot consider it as stock value."*

5. *However, the Ld. A.O. has not appreciated the said facts and has made huge addition of Rs.33,18,94,091/ to the Income of Our Client, on following assumptions and presumptions :*

5.1.1. *That assessee company has stated that till the GST implementation, jilaba software' was in use. Hence, it becomes clear that though in Assessment Year 2016-17, the said software was in use, assessee company was unable to provide the requisite information (based on jilaba software) to this office till date.*

5.1.2. *That the company has failed to provide requisite data, which is required for proper assessment of the income of the assessee company for Assessment Year 2016-17.*

5.1.3. *That the then Ld. A.O., after using various modules, commands, filters and queries as per Microsoft SQL software, had arrived at a decision that the figures of sales as shown in the Jilaba Software were in fact the purchase price of the stock items and therefore there is difference in value of closing stock.*

5.1.4. *That difference in the closing stock found as per the jilaba software and the closing stock as per the tally software, is around 30% of closing stock as per the tally software in each assessment year.*

6. *As regards the above contentions of the Ld. A.O., we would like to draw Your Honour's attention to the following facts of our client's case*

*which have been deliberately ignored by the Ld. A.O. even though the same were brought to his notice during assessment proceedings :*

*6.1.1. That Our Client had stopped using the said jilaba software immediately after the search as due to the said software only a confusion arose in the minds of the then Ld. A.O., who had interpreted the said "sale" column as the "purchase" column and thereby had made total addition of Rs.107,19,96,565/- even though no such excess stock was found during the search. Further the Ld. A.O. was also informed that license of the said software, was also not renewed and it was removed from all the systems after the implementation of GST as the employees using the said software had also left the job due to non-renewal of license.*

*6.1.2. Since the said software was removed from all the systems after implementation of GST i.e. from 01/ 07/ 2017, it was not possible to give the required details in the month of December 2017.*

*6.1.3. Further, the Ld. A.O. has ignored the basic fact that was brought to his notice that the main objective of purchasing the said software was to track the Inventory movement from and to the counter staff to control pilferage/ theft and that beyond 'Tag Key, Jilaba software was never monitored or reconciled by the assessee company.*

*6.1.4. The Ld. A.O. has also failed to appreciate the said clear fact brought to his notice and has harped on production of details as per Jilaba software.*

*6.1.5. It is to be noted that the Ld. A.O. has not brought on record any discrepancy in the quantity of the closing stock during the year under consideration. Infact, he has accepted the fact that there was no difference between the stock of the earlier year and the current year after satisfying himself from all the details submitted before*

*him. Hence, the said huge addition merely on assumptions and presumptions is not Justified.*

*6.1.6 Merely because the details of Jilaba data could not be provided as desired by the Ld. A.O., due to the circumstances beyond control, the Ld. A.O. should not have made adhoc disallowance, without pinpointing any defects in the audited books of accounts and financial statements that were produced before him.*

*6.1.7 We would like to draw Your Honour's attention to the fact that the Hon. ITAT, Nagpur Bench, vide its Order Dated 03/ 12/2018, in Appellant's own case has deleted the entire addition of Closing stock made on the suspicious assumption of difference between the book stock and the said Jilaba Software by observing as under :*

*"in our considered view, the AO has misconstrued the column sale value so as to arrive at purchase cost of stock, as the assessee had explained the same as per which the name <salvalue> itself suggest that it is not a purchase cost. The Assessing officer's opinion that 'the sale value shown is constant and hence it is purchase cost in case of closing stock' and accordingly assessing officer made addition on the basis of total of <salvalue> column of all times, gets contradicted by the actual data as reproduced below, i.e. there are many cases where value of the Tag Key is changing and hence cannot be constructed as purchase cost."*

*"it was also pointed out by the AR that the AO has not pointed out any quantitative discrepancies in the stock found nor has pointed out any large scale purchases or sales that were found to be entered in the Jilaba data but were not entered in the regular book of accounts, which were maintained in the tally software.*

*We further noticed that the CIT(A) in his order for assessment year 2012-13 has given a categorical finding that all the showrooms of the appellant were subjected to search and all*

*the stock in various showrooms were valued by the Departmental Valuer and hence all the stock on the date of search was in the possession of the Department and was subjected to valuation by the department valuer."*

*'The appellant has also submitted a letter from 'Jilaba' which clarifies that the value of purchases/stock cannot be obtained from the Jilaba data as purchases were not entered in the Jilaba system. The Id. CIT(A) further observed that the Jilaba software was primarily being used by the appellant as a bar coded system and as a point of sale POS system to facilitate sales.*

*The purpose of maintaining the stock items in Jilaba was inventory management and to generate the sale bills. The appellant, during the course of appellate proceedings has given adequate evidence and submissions to demonstrate that the value as mentioned in the column Sale value of the stock items is not the purchase price/cost of the appellant. All the doubts raised by the AO in the assessment order have been adequately answered by the appellant, during the course of appellate proceedings. The copy of seized data, on the basis of which the AO has made these additions, the assessment records and the remand report sent by the AO has been considered along with various submissions of the appellant. The Assessee has given a detailed reply and working, which has been test checked by the CIT(A) and found to be correct. The CIT(A), has appraised the facts in right perspective before coming to the conclusion that the AO was erred in making addition towards difference stock U/S. 69 of the Act. The DR has not been able to point out any discrepancy during the hearing of the above appeal nor has been able to contradict the letter submitted by the Assessee from the Jilaba Software company, clearly stating that the <salevalue> in the Jilaba Software, cannot be considered as purchase price as contended by the AO."*

7. *Since the Hon. ITAT has confirmed the deletion of the said entire so called difference in the closing stock found as per the jilaba software and the tally software, the Ld. A.O. was not justified in once again assuming and presuming the said differences specially when after the Order of Hon. ITAT, the closing stock for all the years, as per books remains unchanged and as such there is no difference between both the stocks.*
- 7.1 *We would further like to draw Your Honour's attention to the Hon. Supreme Court's judgement in the case of M/s. Dhakeswari Cotton Mills Ltd. Vs. Commissioner Of Income Tax (1954) 26 ITR 0775, wherein it is held that "The ITO is not barred by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but in making the assessment under sub-s. (3) of s. 23, the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under s. 23(3)."*
- 7.2 *In the case of our client, the Ld. AO has merely relied on the so called differences worked out by the erstwhile AO, on the basis of various workings, which were neither approved by the Hon. CIT(A), nor by the Hon. ITAT and both the higher Authorities have deleted the entire addition of Rs.107 Crores, without any reservation. The said decisions of both the higher authorities clearly establish the fact that there are no such differences as is assumed and presumed by the Ld. AO. It is also to be noted that during the appellate proceedings before the Hon. ITAT, the Ld. DR was not in a position to establish a single difference in the workings and reconciliation provided by the assessee.*
8. *We would also like to draw Your Honour's attention to the Hon. Supreme Court's judgement in the case of M. Appukutty v. STO*

*(1966) 17 STC 380 (Ker.) wherein it was held that "where the assessing officer refuses to apply his mind and makes the assessment as he likes, the assessment suffers from arbitrariness and so is bad in law." In the case of our client, the Ld. AO has not brought on record any cogent or clinching evidence to disprove the details and explanation submitted by our client and has made the addition only on the basis that the erstwhile A.O., had found out differences between the Jilaba software and accounts of the appellant and that the Jilaba details were not provided during the course of assessment proceedings. He has deliberately ignored the orders of the Hon, CIT(A) and the Hon. ITAT, even though both were submitted to him during the assessment proceedings. This fact proves that the AO has not at all applied his mind to the explanation provided by the assessee and hence the assessment suffers from arbitrariness and so is bad in law.*

9. *Further we would also like to bring to Your Honour's notice to a circular dated 27/ 7/ 1973, wherein it has been clearly specified that "the commissioners should advise the assessing officers in their charge to eschew unjustified over-assessments. The assessments have to be made in a reasonable and fair manner after considering all the relevant circumstances of the case. Even where the assessments has to be made ex parte, the information available should be reasonably weighted and a proper estimate made in the exercise of best judgement in the circumstances. There should be no tendency to frame assessments even in such cases mechanically on past basis, if there is evidence to the contrary."*
- 9.1 *The copies of all the above judgments are enclosed herewith for your Honour's immediate reference and record.*

10. *Also, the books of accounts of our client are duly audited under the Income Tax Act and no qualification was observed nor any adverse remark on the closing stock, was given by the auditor. This fact also clearly proves that during the audit, no discrepancy was noticed and there are no differences in the stock recorded as per books of accounts.*
11. *The Ld. AO has not only applied his mind to the facts and circumstances of our client's case but has also not brought out any material defects in the books of accounts submitted during the course of assessment proceedings. Hence the books of accounts of the appellant and the details submitted could not be disapproved only on the basis of the working done by erstwhile AO.*
12. *Further any addition made on account of difference between the stocks as shown in Jilaba software and Tally software, will only increase the gross profit to unimaginable high level and will also give rise to the chain effect.*

*Under the circumstances, we humbly request Your Honour to kindly and sympathetically consider our client's submissions and delete the unjustified addition made to their Income and oblige.*

*Thanking Your Honour, in anticipation of kind and sympathetic consideration in the matter."*

6. We have considered the rival contentions and carefully perused the material placed on record. We have also perused the orders of the authorities below. From perusal of the record, we observed that the Id. CIT(A) has dealt with the issue from para 6 to 6.13 of his impugned order and the same is reproduced as under:

"6. I have gone through the assessment order, the grounds of appeal and submissions made by the appellant. The appellant is a private limited company engaged in the business of trading and manufacturing of gold/silver jewellery, articles and bullion.

6.1 I find that the AO has heavily relied on the assessment orders passed by the then AO, for AYs 2010-11 to 2015-16, wherein he had added Rs. 107,19,96,565/- on account of unexplained closing stock on the basis that the sale value column in the Jilaba Software represent purchase price. The AO had based his theory of treating the Jilaba Data, <salvalue> column as purchase cost to the appellant mainly for the following two reasons:

6.2 Whenever an item from inventory is sold, its sale price is more than the value assigned to it in Jilaba sale value column. Therefore, it is purchase price to the assessee. The relevant observations of the AO in para 38 on page 28 of the assessment order is as under:

"On verification it is found that the movement the inventory item of closing stock (having null minus date) is sold, the price gets changed to a value which is more than the value assigned to the inventory item. From this it is crystal clear that the value assigned to the inventory item of closing stock (having null minus date) is nothing but the purchase cost."

6.3 The sale value of unsold product brought forward from earlier year remains same in the subsequent years, therefore it is purchase price to the assessee. The relevant observation of the AO in page 32 of the assessment order forming part of para 42 is as under :

"for proper appreciation the valuation of a few top items of closing stock (minus date null) on the basis on value in Jilaba data was examined. The valuation of the closing stock is as per the sale value column and from the verification made out of the product tables of earlier years, using the tag key number, it was found that

*said sale value remains the same for the unsold product and actually it is the purchase cost to the assessee."*

- 6.4 *The AO had given various workings on the basis of the seized hard disk found during the course of search, which according to him revealed that the valuation of stock in trade was more than the book position in stock. The AO extensively discussed the issue in his assessment order so as to come to the conclusion that there is difference in price of purchase as per Jilaba software and books. He accordingly worked out difference in closing stock of gold and jewellery for AY 2010-11 to AY 2015-16 and added Rs.1,07,19,96,565/- to the total income of the assessee for all the said years.*
- 6.5 *The AR has vehemently argued that the AO never disputed quantity of stock and infact there is no difference in the quantity of stock maintained in Jilaba software and stock found in tally software. Therefore, when there is no difference in the quantity of closing stock as per 2 software, addition cannot be made towards unexplained investment in stock merely because there is difference in price of certain items in Jilaba software, more particularly when assessee has explained such difference in price.*
- 6.6 *The then Hon. CIT(A) in his appellate order for AY 2012-13 had given a categorical finding that all the showrooms of the appellant were subjected to search and all the stock in various showrooms were valued by the departmental value and hence all the stock on the date of search was in the possession of the department and was subjected to valuation by the departmental valuer. Any discrepancy found as a result of this exercise was offered as additional income in its return of income for AY 2015-16 by the appellant. The appellant had also submitted a letter from the Jilaba manufacturer which clarified that the value of purchase/stock*

*cannot be obtained from Jilaba data as purchases were not entered in the Jilaba system.*

- 6.7 *I find that during the said assessment proceedings, the appellant had also submitted a letter from the Jilaba which clarified that "if <salvalue> column is used to find the value of stock, then it may be wrong as the <salvalue> is only an approximate value calculated based on the gold rate, wastage/ making charges given at the time of tagging. While selling it, there may be a discount on wastage/ making charges and also the gold rate may change. So, we cannot consider the <salvalue> column for the calculation of stock value. Apart from that, it is not calculated based on the purchase cost. So, we cannot consider it as stock value."*
- 6.8 *Further, the Hon. ITAT, Nagpur Bench had also confirmed the deletion of addition made by the then Hon. CIT(A) by observing in their Order at para 41 as under:*

*"We have heard both the parties, perused the materials on record and gone through orders of authorities below. The AO has made addition towards unexplained investment in stock on the basis difference in prices of certain items of stock as per Jilaba software and as per books of accounts maintained in tally ERP software. Admittedly there is no difference in quantity of stock as per Jilaba software and tally ERP software. In fact it is not the case of AO. On the other hand, the assessee had filed enough materials to prove that there is no difference in stock and also amount mentioned in salevalue column in Jilaba software is not purchase price of the assessee. It is also worth noting that the final result or trial balance taken out from Jilaba system shows very poor trading results i.e. it shows purchases/ sales much lower than actual purchases/ sales shown in tally ERP. It is pertinent to note that the assessee has maintained regular books of accounts in Tally ERP, but AO could not find any defects. The books of accounts are audited and quantitative details have been given. There has been no rejection of books of accounts u/ s.145 by the AO and as such book results are accepted. Thus, the AO cannot resort to some other accounting method*

*and cherry pick certain data points from one source, another set of data from another source. Assessee's stock has been subject to verification and valuation by the bank, who has given loan and has appointed independent auditors for said purpose. On one side the Ld. A.O. asks assessee to clarify the shortage of stock on the date of search and on other side he is making addition of Rs. 107,25,96,565/- in respect of stock in trade without the stock in such huge quantity being found during the exhaustive search operation. In absence of any defects pointed in books, and also when the search operation could not establish any unaccounted stock, merely for the reason of difference in price of stock items in one software which is used for monitoring stock movement, such a huge addition cannot be made towards unexplained investment in stock, that too when assessee has clarified the said difference and also the software developer clarified that the data in Jilaba software cannot be considered as true. Therefore, we are of the considered view that the AO was erred in making addition towards unexplained stock"*

- 6.9 *I find that during the assessment year under consideration also the AO has made addition only on the basis of the addition made by the then AO, as the appellant could not give details of stock as per Jilaba software. However, the AO has not brought on record any defects in the books of accounts nor has pointed out any unrecorded sales/purchases. I further, find that during the year under consideration also the appellant has obtained bank loan against the stock and the said stock has been verified by the bank by appointing independent auditors.*
- 6.10 *Also, the whole of the said addition made in earlier years has been deleted by the then Hon. CIT(A) and the said deletion has been confirmed by the Hon. ITAT. Further, the AO during the year under consideration has also not rejected the book results nor has brought on record anti unaccounted sales or purchases.*
- 6.11 *The AR has also pointed out that the AO has misrepresented the fact by mentioning that "Assessee Company stated that till implementation of*

*GST, the 'Jilaba' software was in use." In fact, the assessee company had clearly stated that "after search operation, due to shortcomings of the Jilaba software, as explained to Your Honour, we had stopped using Jilaba software. Further, after introduction of GST, the said software was removed from all the systems." I also find force in the argument of AR that once the said software was stopped being used after the search due to its shortcomings and was also removed from all the systems, it was not possible for the appellant to give required details of stock as per Jilaba software.*

6.12 *It is also a fact on record that though the AO has made huge addition of Rs. 33,18,94,091/- to the income of the appellant, he has not brought on record any quantitative difference and the said addition is only on estimate basis. Further, he has also given credit of Rs.5,14,29,709/-, being addition made on account of unexplained stock made in AY 2015-16, which has already been deleted by the Hon. ITAT.*

6.13 *In view of the above discussion and respectfully following the decision of Hon'ble ITAT in the assessee's own case, the said addition made by the AO is held as untenable and is directed to be deleted. In the result the appeal is allowed."*

7. From perusal of the record, we observed that the assessee is a private limited company engaged in the business of trading and manufacturing of gold/silver jewellery, articles and bullion. The added Rs. 107,19,96,565/- on account of unexplained closing stock on the basis that the sale value column in the Jilaba Software represent purchase price. The AO had based his theory of treating the Jilaba Data, <salvalue> column as purchase cost to the assessee mainly for the following two reasons:

- (i) *Whenever an item from inventory is sold, its sale price is more than the value assigned to it in Jilaba sale value column. Therefore, it is purchase price to the assessee. The relevant observations of the AO in para 38 on page 28 of the assessment order is as under:*

*"On verification it is found that the movement the inventory item of closing stock (having null minus date) is sold, the price gets changed to a value which is more than the value assigned to the inventory item. From this it is crystal clear that the value assigned to the inventory item of closing stock (having null minus date) is nothing but the purchase cost."*

- (ii) *The sale value of unsold product brought forward from earlier year remains same in the subsequent years, therefore it is purchase price to the assessee. The relevant observation of the AO in page 32 of the assessment order forming part of para 42 is as under:*

*"for proper appreciation the valuation of a few top items of closing stock (minus date null) on the basis on value in Jilaba data was examined. The valuation of the closing stock is as per the sale value column and from the verification made out of the product tables of earlier years, using the tag key number, it was found that said sale value remains the same for the unsold product and actually it is the purchase cost to the assessee."*

8. We further observed that the AO had given various workings on the basis of the seized hard disk found during the course of search, which according to him revealed that the valuation of stock in trade was more than the book position in stock. The AO extensively discussed the issue in his assessment order so as to come to the conclusion that there is difference in price of purchase as per Jilaba software and books. He accordingly worked out difference in closing stock of gold and jewellery

for AY 2010-11 to AY 2015-16 and added Rs.1,07,19,96,565/- to the total income of the assessee for all the said years. With regard to this, the Id. AR has vehemently argued that the AO never disputed quantity of stock and in fact there is no difference in the quantity of stock maintained in Jilaba software and stock found in tally software. Therefore, when there is no difference in the quantity of closing stock as per software, addition cannot be made towards unexplained investment in stock merely because there is difference in price of certain items in Jilaba software, more particularly when assessee has explained such difference in price. We noticed that the Id. CIT(A) in his appellate order for AY 2012-13 had given a categorical finding that all the showrooms of the assessee were subjected to search and all the stock in various showrooms were valued by the departmental value and hence all the stock on the date of search was in the possession of the department and was subjected to valuation by the departmental valuer. Any discrepancy found as a result of this exercise was offered as additional income in its return of income for AY 2015-16 by the assessee. The assessee had also submitted a letter from the Jilaba manufacturer which clarified that the value of purchase/stock cannot be obtained from Jilaba data as purchases were not entered in the Jilaba system.

9. We found that during the assessment proceedings, the assessee had also submitted a letter from the Jilaba which clarified that "if <salvalue> column is used to find the value of stock, then it may be wrong as the <salvalue> is only an approximate value calculated based on the gold rate, wastage/ making charges given at the time of tagging. While selling it, there may be a discount on wastage/ making charges and also the gold rate may change. So, we cannot consider the <salvalue> column for the calculation of stock value. Apart from that, it is not calculated based on the purchase cost. So, we cannot consider it as stock value.

10. We also noticed that the Coordinate Bench of ITAT Nagpur Bench in the assessee's own case for the AY 2010-11 to 2012-13 had also confirmed the deletion of addition made by the the Id. CIT(A) by observing in their order at para 41 as under:

*"We have heard both the parties, perused the materials on record and gone through orders of authorities below. The AO has made addition towards unexplained investment in stock on the basis difference in prices of certain items of stock as per Jilaba software and as per books of accounts maintained in tally ERP software. Admittedly there is no difference in quantity of stock as per Jilaba software and tally ERP software. In fact it is not the case of AO. On the other hand, the assessee had filed enough materials to prove that there is no difference in stock and also amount mentioned in salevalue column in Jilaba software is not purchase price of the assessee. It is also worth noting that the final result or trial balance taken out from Jilaba system shows very poor trading results i.e. it shows purchases/ sales much lower than actual purchases/ sales shown in tally*

*ERP. It is pertinent to note that the assessee has maintained regular books of accounts in Tally ERP, but AO could not find any defects. The books of accounts are audited and quantitative details have been given. There has been no rejection of books of accounts u/ s.145 by the AO and as such book results are accepted. Thus, the AO cannot resort to some other accounting method and cherry pick certain data points from one source, another set of data from another source. Assessee's stock has been subject to verification and valuation by the bank, who has given loan and has appointed independent auditors for said purpose. On one side the Ld. A.O. asks assessee to clarify the shortage of stock on the date of search and on other side he is making addition of Rs. 107,25,96,565/- in respect of stock in trade without the stock in such huge quantity being found during the exhaustive search operation. In absence of any defects pointed in books, and also when the search operation could not establish any unaccounted stock, merely for the reason of difference in price of stock items in one software which is used for monitoring stock movement, such a huge addition cannot be made towards unexplained investment in stock, that too when assessee has clarified the said difference and also the software developer clarified that the data in Jilaba software cannot be considered as true. Therefore, we are of the considered view that the AO was erred in making addition towards unexplained stock"*

11. We found that during the assessment year under consideration, the AO had made addition only on the basis of the addition made by the then AO, as the assessee could not give details of stock as per Jilaba software. However, the AO has not brought on record any defects in the books of accounts nor has pointed out any unrecorded sales/purchases. We further, found that during the year under consideration also the assessee has obtained bank loan against the stock and the said stock has been verified by the bank by appointing independent auditors. The Id. AR has also pointed out that the AO has misrepresented the fact by mentioning that "Assessee Company stated

that till implementation of GST, the 'Jilaba' software was in use." Further, after introduction of GST, the said software was removed from all the systems." We also find force in the argument of AR that once the said software was stopped being used after the search due to its shortcomings and was also removed from all the systems, it was not possible for the assessee to give required details of stock as per Jilaba software. Considering the totality of facts and circumstances of the case, we found that the Id. CIT(A) has passed a well-reasoned and speaking order discussing all the facts and circumstances of the case, therefore, we do not find any reason to interfere or to deviate from the findings so recorded by the Id. CIT(A), accordingly, we uphold the same.

12. In the result, this appeal of the Revenue stands dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

**Sd/-**  
**(O.P. KANT)**  
**Accountant Member**

**Sd/-**  
**(SANDEEP GOSAIN)**  
**Judicial Member**

Nagpur  
Dated:- 20/12/2021  
\*Ranjan

\*Ranjan

Copy of the order forwarded to:

1. The Appellant- The A.C.I.T., Central Circle-2(2), Nagpur.
2. The Respondent- M/s Karan Kothari Jewellers Private Limited, Nagpur.
3. CIT

4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 317/Nag/2019)

By order,

Asst. Registrar