

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

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

ITA No. 90/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Padma M. Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AJBPK 6745 Q		
Appellant		Respondent

ITA No. 91/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Smita Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: ALNPK 1191 N		
Appellant		Respondent

ITA No. 92/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Chandana Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AMBPK 2497 G		
Appellant		Respondent

ITA No. 93/NAG/2019
Assessment Year: 2015-16

D.C.I.T., Circle-2, Nagpur.	Vs.	Shri Narendra M. Kothari, Heirs of Late Ugambai Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: ABKPK 7746 A		
Appellant		Respondent

ITA No. 94/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Seema Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: ALNPK 1190 P		
Appellant		Respondent

ITA No. 95/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Sunita Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AFFPK 2282 L		
Appellant		Respondent

ITA No. 99/NAG/2019
Assessment Year: 2015-16

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Sheela N. Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AFMPK 8502 J		
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.

These are the appeals filed by the Revenue against the separate orders of the Id. CIT(A)-3, Nagpur dated 25/02/2019 and 27/02/2019, for the A.Y. 2015-16.

2. Common issues have been involved in all these appeals, therefore, for the sake of convenience and brevity, a common order is being.

3. Firstly, we take ITA No. 90/Nag/2019 for the A.Y. 2015-16 as a lead case for deciding the appeals of the A.Y. 2015-16. In this appeal, the Revenue have raised following grounds of appeal:

- “1. *On the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition of Rs. 20,26,807/- u/s 69 of the IT Act made by the A.O. on account of jewellery found during the course of search, holding it to be double addition without appreciating the fact that the assessee has not furnished any evidence during the assessment proceedings to prove that the jewellery found at the residence belonged to M/s Karan Kothari Jewellers Pvt. Ltd.*
2. *Any other question of law and fact to be raised at the time of appeal.*
3. *The monetary limit of CBDT circular dated 20/08/2018 does not apply as prosecution is filed in assessee’s case.”*

4. The brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short, the Act) was conducted on 10.09.2014 in the case of M/s Karan Kothari Jewellers Private Limited along with entire Kothari group including the family members. The assessee filed the return of income for the AY 2015-16 U/s 139(1) of the Act on 25.08.2014 declaring total income of Rs.6,15,8001- as income from other sources comprising of income from trading activity, interest income and gifts. In the case of assessee at her residential premises located just above the Itwari shop of M/s Karan Kothari Jewellers Private Limited, wherein

certain Jewellery were found during the course of search, which consisted of gold ornaments & Jewellery, diamond studded jewellery and silver articles. The same is physically verified and valued by the departmental valuer. The total quantity and value of jewellery and articles found is reflected as under:

Sr No	Particulars	Amount
1	Gold ornaments (824.55 Gms)	Rs.20,64,263/-
2	Diamond (14.46 Carats) In gold ornaments of 421.50 Gms	Rs.17,15,846/-
	Total:	Rs.37,80,109/·

From the above chart it can be observed that the quantity of gold found was 1246.05 Grams (824.55+421.50), of diamond 14.46 Ct. Assessee, during the course of search and assessment proceedings, tried to explain the sources of investment in Jewellery. However, AO partly accepted the explanation submitted before him and Jewellery as per CBDT Instruction 1916 dated 11/05/1994 only 535 grams of gold jewellery valued at Rs.13,39,373 and jewellery purchase bill of 165.34 Gms valued at Rs4,13,929 were accepted. Accordingly the total quantity of 700.34 gms valued at Rs.17,53,302/- was allowed and was considered as explained and the AO made the addition of balance quantity of jewellery of gold 545.71 gm and of Diamond 14.46 Ct total valued at Rs. 20,26,807/- u/s 69 of the Act.

5. 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 both the parties and material placed on record, deleted the addition so made by the A.O. U/s 69 of the Act.

6. Aggrieved by the order of the Id. CIT(A), the revenue has preferred the present appeal on the ground mentioned above.

7. In this appeal, the Revenue has basically aggrieved by the order of the Id. CIT(A) in deleting the addition of Rs. 20,26,807/- U/s 69 of the Act made on account of jewellery found during the course of search. In this regard, the Id. CIT-DR has vehemently supported the order of the A.O. and submitted that during the course of search at the residential premises of the assessee, gold ornaments and jewellery, diamond studded jewellery and silver articles were found. When the assessee was explained the source of jewellery found, she submitted some documentary evidence to prove the purchases and the A.O. accepted the jewellery of Rs. 17,14,032/-. Id. CIT-DR has further submitted that the assessee has not submitted documentary evidence to support the jewellery of Rs. 20,26,807/- and further submitted that the Id. CIT(A) has erred in deleting the addition made U/s 69 of the Act.

8. 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 submissions filed before the Bench and the same is reproduced below:

"2.1 The search and seizure operation u/s 132 of the Income Tax Act 1961 was conducted on 10.09.2014 in the case of M/s Karan Kothari Jewellers Private Limited along with the entire Kothari group including the family members. The search operations were continued for about 17 days, wherein various enquires and verification is done by the department including the physical verification of entire stock at business premises as well as at the residential premises of the entire group. Statements of various persons were recorded during the search proceedings.

2.2 After all the enquiries in respect of the stock in hand of the company and jewellery found at the residence, department seized 9404.13 valuing at Rs.2.5128 Cr of the entire Kothari group.

2.3 The only issue involved in the case before you pertains to addition made by the AO in respect of excess jewellery found (as per department) at the residential premises of the appellant ignoring the facts, findings and the supporting documents and evidences produced before the AO.

2.4 The appellant denies the alleged findings on the merits of the case and the addition made by the AO in respect of excess jewellery found in her case by the department. In support of the said denial the appellant submits the following reconciliations and justifications for your kind perusal.

2.5 During the course of search proceedings, total stock of all the jewellery was physically verified, inventorised and valued at all the business premises as well as at the adjoining residence of the family members of the directors of the Kothari group by department valuer. As per the report of department valuer, the summary of the quantity physically found at the business premises of M/s. Karan Kothari Jewellers Private Limited in respect of, Gold, Silver, Diamonds, precious stones, Platinum and artificial jewellery is as under:

PHYSICAL STOCK FOUND AS PER INVENTORY REPORT OF ALL THE 4 SHOPS

Show rooms	Gold (N.W) (Gms)	Platinum (Gms)	Diamond (Ct)	Silver (N.W) (Gms)	Precious Stone (Ct.)	Artificial Jewellery (Rs.)
Dharampeth	171,807.59	1,073.12	8,939.30	547,096.21	3,983.59	7,120,655
Nikalas Mandir	123,076.96	191.19	5,348.42	745,723.00	7,492.76	3,975,160

Mumbai	1,075.59	69.80	76.83	35,765.00	-	-
Shahid Chowk	15,597.69	-	-	196,732.00	-	2,547,600
Total Quantity	311,557.83	1,334.11	14,364.55	1,525,316.21	11,476.35	13,643,415

The chart above only contains the physical stock found at the 4 shops of M/s Karan Kothari Jewellers Private Limited. At the same time, the department has taken the details of the stock in hand duly recorded in the books of accounts of M/s. Karan Kothari Jewellers Private Limited to RECONCILE the same with the physical stock found at all the shops. The summary of the quantity of all the items duly recorded in regular books of accounts at the business premises of M/s. Karan Kothari Jewellers Private Limited in respect of, Gold, Silver, Diamonds, precious stones, Platinum and artificial jewellery is as under:

CONSOLIDATED STOCK IN HAND OF ALL THE 4 SHOPS DULY RECORDED IN THE BOOKS OF ACCOUNTS AS ON THE DATE OF SEARCH

Particulars	Gold (N.W) (Gms)	Platinum (Gms)	Diamond (Ct)	Silver (N.W) (Gms)	Precious Stone (Ct.)	Artificial Jewellery (Rs.)
Stock as per books	3,32,592.89	1,373.79	14,242.97	12,65,369.28	1,07,899.36	46,33,941.49
Total	3,32,592.89	1,373.79	14,242.97	12,65,369.28	1,07,899.36	46,33,941.49

From the above 2 charts PERTAINING TO ACTUAL PHYSICAL STOCK FOUND DURING THE COURSE OF SEARCH AND THE STOCK DULY RECORDED ON THE SAME DATE it is evident that total stock of gold physically found as per the valuers report was 3,11,557.83 gms as against stock of gold recorded in the regular books of accounts of the company which was 3,32,592.89 gms. Therefore, it's evident and clear that the quantity of Gold physically found was in fact short by 21,035.06 gms at the business premises of M/s. Karan Kothari Jewellers Pvt. Ltd. The Kothari group tried to explain the total reconciliation during the course of search proceedings and later on in the assessment proceedings however the submissions I reply of the group has not been considered by the department.

Moreover, the appellant wish to bring to your notice that, the Ld. AO has refrained himself from making any observation or comment on the quantity shortage I excess of gold and other items physically found by the department in the assessment order passed by the AO of M/s. Karan Kothari Jewellers Pvt. Ltd. From this it can be concluded that the

shortage of quantity of gold at the business premises is accepted by the Ld. AO in taciturn manner.

This fact was explained to the AO during the search proceedings and during the assessment proceedings also. But even after accepting the shortage of gold ornaments at the business premises of the group, AO did not completely accepted the fact and reconciliation submitted before him in respect the physical shortage of jewellery and other items found at the business premises is same as physically found at the residential premises of the family members or the source of investment in the jewellery to some extent is from the company's books of accounts stock only (which is discussed in details in later part of this submission).

2.6 The disputed issue of jewellery and other items found at the residential premises of the family members is explained in following paragraphs:

During the course of search action at the residential premises (which is adjacent to shop only) of the appellant and other group members of the Kothari group, the department authorities found certain jewellery in possession of the following family members of the group and as per department valuer's report it is summarized as under: PHYSICAL JEWELLERY AND OTHER ITEMS FOUND AT RESIDENTIAL PREMISES OF ALL THE FAMILY MEMBERS OF THE KOTHARI GROUP

Name	Gold (N.W) (Gms)	Platinum (Gms)	Diamond (Ct)	Silver (N.W) (Gms)	Precious Stone (Ct.)	Artificial Jewellery (Rs.)
Chandana Kothari	4,468.83	-	100.32	5,501	-	-
Padma Kothari	1,246.05	-	14.46	-	-	-
Sheela Kothari	1,634.70	-	72.96	4,660	-	-
Seema Kothari	2,554.25	-	76.45	18,738	-	-
Smita Kothari	3,944.04	-	53.95	1,070	-	-
Sunita Kothari	1,791.05	-	26.69	17,470	-	-
Ugambai	3,635.55	-	-	73,050	-	-
Mahesh Kothari	65.00	-	-	-	-	-
Total	19,339.47	-	344.83	1,20,489	-	-

Family members of the Kothari group tried to explain the jewellery found by the department through the various statement recorded during the course of search of Shri Pradeep Kothari and other family members of the group.

With respect to facts recorded in the statements during the course of search operations the group produced evidences available with them (such as old purchase bills, balancesheets, jangad receipts etc) and explanations about the entire jewellery found of 19339.47 gms was given. Out of all the submission and explanations recorded during the search proceedings only 3 submissions were accepted by the department which is explained as below:

1. In respect of jewellery found at the residence of Smt. Smita Kothari, it was recorded that out of total 3944.04gms of gold, 2090.39 gms of gold was pertaining to the Gahan Business of Shri Narendra Kothari and all the slips of gahan are available in the packets. Accordingly the same is reduced from the jewellery found from Smt Smita Kothari as it does not pertain to her.

2. In respect of jewellery found at the residence of Smt Sheela Kothari, out of total gold jewellery of 1634.70 gms, 380 gms was pertaining to her mother and the fact was duly confirmed by her mother to the department and accordingly department allowed this and reduced it from the jewellery found from Smt Sheela Kothari as it does not pertains to her.

3. In respect of the Bills produced for 4349.50 gms of gold jewellery purchased by the Kothari group during the year from 2004 to 2007 which were immediately available with them but were not considered by the department during the search proceedings, however the AO accepted only 907.29 gms out of total 4349.50 gms during the assessment proceedings and allowed the deduction of the same to the various family members in whose name the bills were produced. This 907.29 gms allowed by the AO is still not released by the department from the seized jewellery of the Kothari group. The AO did not allow remaining 3442.21gms of jewelery even though all the related bills produced before him, mentioning that the assessee is not assessed to wealth tax and in the balance sheet also, the jewellery found was not fully disclosed. Accordingly the total deduction allowed by the department during the search and assessment proceedings in respect of the details accepted by the department, from the entire gold jewellery of 19339.47 gms found, on account of above 3 partly considered as justified by the Kothari group is tabulated as below:

Name	Gold (N.W) (Gms)	Exemption allowed in assessment			Balance to be explained
		Gahan Jewellery	Jewellery of Maina Sundari	Gold Purchases accepted by AO	
Chandana Kothari	4,468.83				4,468.83
Padma Kothari	1,246.05			165.34	1,080.71
Sheela Kothari	1,634.70		380.00	163.28	1,091.42
Seema Kothari	2,554.25				2,554.25
Smita Kothari	3,944.04	2090.39		203.42	1,650.23
Sunita Kothari	1,791.05			101.42	1,689.63
Ugambai	3,635.55			273.83	3,361.72
Mahesh Kothari	65.00				65.00
Total	19,339.47	2,090.39	380.00	907.29	15,961.79

2.7 From the above chart it is clear that the total gold jewellery of 15,961.79 grams remained as balance in the above chart for which the explanation was asked by the department and accordingly the Kothari group has submitted the explanation.

2.8 The entire jewellery found of 15961.79 gms as per above chart, during the continuation of the search proceedings was kept in PO at the premises of Kothari group. Out of this the department released 1809.08 grams (Gross weight 1934.226 Grams) of jewellery seized from the various family members of the Kothari Group, as they have produced details during the search proceedings that the same was pertaining to M/s Karan Kothari Jewellers Pvt Ltd received by them for approval or as jangad. From this it is clear that the jewellery remain pending for reconciliation as per department after this release is 14152.79 gms.

2.9 The released 1809.08 grams of gold jewellery as explained, was pertaining to M/s Karan Kothari Jewellers Pvt Ltd- was well established before the assessment was done by the AO. Even after this the AO not bothered to consider the same as explained one and reduce it from the so called excess quantity found by the department before making any additions on account of excess jewellery in the cases of family members of the Kothari group. The AO ignored the fact well established accepted by the department during the search proceeding and before the release of 1809.08 grams of gold jewellery, was not considered by the AO in the

assessment order and no reduction in the quantity of gold jewellery and its corresponding value is allowed from the addition made by the AO in respect of excess jewellery found. This clearly indicates the intention of the AO during the assessment as arbitrary. The act of AO defines that he was arbitrary and prejudice to make the addition of so called excess jewelley and accordingly all the explanation and supporting's submitted by the appellatant were not considered. Even the AO did not consider the fact accepted by the department during the search proceedings that the 1809.08 gms of gold jewellery pertains to M/s Karan Kothari Jewellers Pvt Ltd.

2.10 Shri Pradeep Kothari during the course of search, in his statement immediately recoded U/S 132(4) on 19/09/2014 in Q No. 9 & Q.10 clearly mentioned that 5749Gms plus stock found in the residential premises family members of the Kothari group pertains to shop. The same is regularly going to family members of the Kothari group for approval basis. The referred questions and responses are reproduced as under:

Q9. Please confirm that there is no stock of your business kept at residence. Please explain with the help of supporting evidences.

Ans: In regards of this query, I will attach the details of the same since some bills shown to you have been seized by you as per annexure 8-1/2, 8-1/3 and 8-114 in respect of business stock of 5749 gm at home.

Q10. Please explain stock of 5749 gm to being claimed by you with source and genuineness of transaction.

Ans: I will give reply as earliest."

From the above it is evident that Shri Pradip Kothari during the search proceedings itself informed with the available evidences, that the certain quantity of the jewellery is kept at the residence and the fact was duly acknowledge by the department. He also informed that the details will be submitted later on after verifying certain details which were seized by the department.

Further, Shri Pradeep Kothari in his statement recorded on 22.09.2014 as a continuation of statement U/s 132 (4) during the search in Q 24 and its answer reproduced as below:

Q24. As stated by you in this statement supra and after giving ample opportunity, no proof of any stock in trade was given by you till date. Please explain this give documentary evidence.

Ans: As explained supra, our practice for giving goods (stock in trade) to family members and other customers by approval. Sometimes, directors carry jewellery from inventory. For example Annexure 8-1119 (from my office at Itwari dated 10.09.2014) and annexure 8-1114 (from my office at Dharampeth dated 11.09.2014) are my approval books. Some AP, approval books, were shown to your team on second day of search, these AP bills may be kept in your PO at first floor of my office.

2.12 Further, Shri Pradeep Kothari in his statement recorded on 25.09.2014 as a continuation of statement U/s 132 (4) during the search in Q 8 and its answer reproduced as below:

Q8. " this is your practice to record jewellery (Stock -in -trade) given to family members then explain how do you record in books of account of M/s. KKJPL.

Ans: These are only taken in stock in trade. No separate recording in books (given form approval) are maintained.

From the above all answers of Shri Pradip Kothari given on various dates during the search proceedings clearly make it evident that the Kothari group was in regular practice of sending jewellerys to residence for approval basis. And most importantly

NO ENTRIES IN THE REGULAR BOOKS OF ACCOUNTS FOR SUCH WAS MADE BY THE COMPANY RATHER IT WAS REFLECTED AS STOCK IN TARDE ONLY.

From this it is well established fact and duly accepted by the department that certain stock of the M/s Karan Kothari Jewellers Pvt Ltd is available at the residence of the family members of the Kothari group, as this matter was covered in various statements of the director of the company also. Accordingly the short stock of jewellerys found at the business premises of the Kothari group is directly linked, correlated and corresponding to the excess jewellery found at the residential premises of the family members of the Kothari Group to the extent related to each other. The AO has, in totality, ignored this as he was pre decided in his mind for the addition and the above justification was explaining the same in totality, so was not in a position to do the decided

addition. Accordingly by ignoring the recorded and established fact during the search proceedings he made the additions in respect of so called excess jewellery in all the family members cases.

2.13 From the jewellery chart of para 2.6., the AO allowed the jewellery to each family member as per CBDT Instruction 1916 dated 11/05/1994 as tabulated below and the excess found after this without considering the fact that the jewellery pertain to shop out which 1809.080 gms was already released by accepting the submission during the search proceedings itself as discussed above. Without considering all these, the AO in the appellant's case as well as in the cases of all other family members made the additions.

Name	Gold (N.W) (Gms)	Exemption allowed in assessment			Balance to be explained	Allowed as per CBDT Instruction	Balance Quantity
		Gahan Jewellery	Jewellery of MainaSundari	Gold Purchases accepted by AO			
Chandana Kothari	4,468.83				4,468.83	1,100.00	3,368.83
Padma Kothari	1,246.05			165.34	1,080.71	535.00	545.71
Sheela Kothari	1,634.70		380	163.28	1,091.42	600.00	491.42
Seema Kothari	2,554.25				2,554.25	850.00	1,704.25
Smita Kothari	3,944.04	2090.39		203.42	1,650.23	600.00	1,050.23
Sunita Kothari	1,791.05			101.42	1,689.63	600.00	1,089.63
Ugambai	3,635.55			273.83	3,361.72	500.00	2,861.72
Mahesh Kothari	65.00				65.00	65.00	0.00
Total	19,339.47	2,090.39	380.00	907.29	15,961.79	4,850.00	11,111.79

2.14 From the Chart above the addition made by the AO is of 11,111.79 Gms of golds and 344.84ct (less 7.30ct diamond studded with gahan jewellery) of diamond and 120,489 gms of silver as per chart in para 2.6 But the final quantity seized by the department was 9404.130 gms of gold, 65.080 ct of diamond. By considering 1707.66 gms of gold jewellery duly allowed by the department during the search only.

2.15 From the above it is clear that the gold jewellery seized by the department was 9404.130 gms however the addition made by the AO in respect of excess gold jewellery was of 11111.79 gms. The difference of 1707.66 gms was on account of the released gold jewellery duly considered by the department as explained during the search proceedings as pertains to

shop, was also added by the AO in the assessment orders. This clearly shows the ignorance of the AO and his prejudice way to do the addition.

2.16 To explain this we are submitting the following detailed consolidated chart in which stock of all the items physically found by the department during the course of search at the business as well as at the residential premises of the family members of the Kothari group is consolidated and produced below along with the stock of all the items recoded in the books of accounts of the appellant and the stock which is duly accepted by the department as explained is also clubbed. From this chart in totality it can be verified that all the items of jewellery found at the business and residential premises are duly explained and accordingly the addition on account of excess jewelley in the hands of individual family members is bad, unwarranted and unjustified.

Showrooms	Gold (N.W) (Gms)	Platinum (Gms)	Diamond (Ct)	Silver(N.W) (Gms)	Precious Stone (Ct.)	Artificial Jewellery (Rs.)
Dharampeth	1,71,807.59	1,073.12	8,939.30	5,47,096.21	3,983.59	71,20,655
NikalasMandir	1,23,076.96	191.19	5,348.42	7,45,723.00	7,492.76	39,75,160
Mumbai	1,075.59	69.8	76.83	35,765.00	-	-
Shahid Chowk	15,597.69	-	-	1,96,732.00	-	25,47,600
Sub Total (A)	3,11,557.83	1,334.11	14,364.55	15,25,316.21	11,476.35	1,36,43,415.00
Add: Jewellery of Individuals						
Chandana Kothari	4,468.83	-	100.32	5,501	-	-
Padma Kothari	1,246.05	-	14.46	-	-	-
Sheela Kothari	1,634.70	-	72.96	4,660	-	-
Seema Kothari	2,554.25	-	76.45	18,738	-	-
Smita Kothari	3,944.04	-	53.95	1,070	-	-
Sunita Kothari	1,791.05	-	26.69	17,470	-	-
Ugambai	3,635.55	-	-	73,050	-	-
Mahesh Kothari	65.00	-	-	-	-	-
Total (B)	19,339.47	0.00	344.83	1,20,489.00	0.00	0.00
Total Physically Found stock (A) + (B)	3,30,897.30	1,334.11	14,709.38	16,45,805.21	11,476.35	1,36,43,415.00
Less: Allowance in Assessment						
(A) As per CBDT Instruction						
Chandana Kothari	1,100.00	-	-	-	-	-
Padma Kothari	535.00	-	-	-	-	-
Sheela Kothari	600.00	-	-	-	-	-

Seema Kothari	850.00	-	-	-	-	-
Smita Kothari	600.00	0	-	-	-	-
Sunita Kothari	600.00	-	-	-	-	-
Ugambai	500.00	-	-	-	-	-
Mahesh Kothari	65.00	-	-	-	-	-
			-	-	-	-
(B) Jewellery of MainaSundari	380.00		-	-	-	-
(C) Gahan Jewellery	2090.39		7.3	-	-	-
(D) Purchase accepted by AO	907.29		-	-	-	-
Total Exemption (A)+(B)+(C)+(D)	8,227.68	0.00	7.30	0.00	0.00	0.00
Balance Business Stock	3,22,669.62	1,334.11	14,702.08	16,45,805.21	11,476.35	1,36,43,415.00
Stock with Karagir	2,710.00					
Actual Stock Arrived	3,25,379.62	1,334.11	14,702.08	16,45,805.21	11,476.35	1,36,43,415.00
Stock as per Books	3,32,592.89	1,373.79	14,242.97	12,65,369.28	1,07,899.36	46,33,941.49
(Shortage) / Excess	-7,213.27	-39.68	459.11	3,80,435.93	-96,423.01	90,09,473.51
Average Rate @	2,500.00	3,350.00	21,000.00	41.50	25.00	-
Total (In Rs.)	(1,80,33,175.00)	(1,32,928.00)	96,41,310.00	1,57,88,091.10	(24,10,575.25)	90,09,473.51
Total (In Rs.)						1,38,62,196.36
Declared In M/s KKJPL						2,18,00,000.00
Excess Declaration						(79,37,803.65)

From the above chart it is clear that the gold jewellery found at the business premises of the Kothari group was 3,11,557.83 and excess considered by the AO at the residential premises 11,111.79 gms and stock with Karagir of 2710 gms, in totality 3,25,379.62 gms is short by 7,213.27 gms even after considering all the excess gold jewellery found at the residential premises of the family members of the Kothari group. Accordingly no excess jewellery is found stands justified.

2.17 As explained in the foregoing submission, the quantitative details of jewellery found at business premises of Kothari Group and at their residential premises of the family members of Kothari group including the appellant is duly reconciled by the appellant as per consolidated chart narrated in para 2.17.

Further, after the above reconciliation in quantity terms the now matter of valuation of the consolidated jewellery and other items needed to be addressed. Accordingly, in respect of the valuation of entire jewellery and other items found at the residential premises of the family members of Kothari Group which includes gold, silver, platinum, diamonds, precious stones and artificial jewellery and quantified in the chart as per para 2.17 is valued at Rs.6, 14,00,5601- as per the valuation report provided by the registered valuers of department.

Out of the total valuation of jewellery and other items found during the search, jewelleryes valued at RS.2,24,54,035/- were considered as explained on account of Gahan Jewellery, Jewellery belongs to other persons, jewellery purchased duly explained and adhering to the CBDT instruction No. 1619/1994 by the department and AO during search and assessment proceedings. Accordingly, the jewellery valued at Rs.2,24,54,035 is considered as explained in the hand of family members of the Kothari group out of total Rs.6,14,00,560 valuation jewellery and other items found at the residence of the family members. Further, it is already stated by family member, in their statements recorded during the search proceedings, that the jewellery which remained after the due explanation i.e. 6,14,00,560 - 2,24,54,035=3,89,46,525 found excess, is nothing but the stock in trade belongs to M/s. KKJPL and received on approval or on jangad basis by the family member.

As per this submission the jewellery and other items found in excess at residential premises of the Kothari group valued at RS.3,89,46,525/- is now added to the stock in hand valued at RS.1 ,20,23,28,711/- by the departmental valuer of all the shops of M/s KKJPL on the date of search. After adding the value of the stock found at all the business premises and the value of excess jewellery and other items found at the residential premises, the total value of all the jewellery and other items of the entire Kothari group becomes RS.1 ,24,12,75,2361- as per department valuer's valuation report.

*In this Valuation the value of gold of 2,710 gms lying with the karagir having valuation of RS.70,46,0001- (2,710 gms*2,600 per gm) is required to be added to arrive at the total valuation of physical stock of jewelleryes and other items found with the entire Kothari group. Accordingly the valuation is worked out at Rs.124,83,21,236/-.*

It is worth note that, the valuation of entire stock in hand of jewellery and other items, as per the books of accounts of M/s. KKJPL' as on the date of search is of Rs.1,26,06,13,205/-. From this it is concluded that, the valuation of stock of jewelleryes and other items found during the course of search of the entire Kothari group and considering additionally the value of stock lying with the karagir, in totality it is valued short by RS.1 ,22,91 ,969, even after considering valuation of stock of all the shops of MIs KKJPL, valuation of Stock with the karagir and the excess jewellery and other items found at the residential premises of the family members of the Kothari group.

As explained above explanation, neither aggregate quantity of Gold jewellery is found excess, nor the valuation of jewellery found with the entire Kothari group is in excess as compared to valuation of the entire stock of jewellery and other items recorded in books of accounts as on the date of search. It is conclusively evident that the stock as found at showroom, lying with the karagir and excess found with the family members is duly recorded in the books of accounts of M/s KKJPL, hence the AO has erred in making addition despite of the fact on records that the nothing is found excess.

From the above explanation it is evident that the valuation of the stock found in the Kothari group after considering all the excess jewellery and other items considered by the department is less by Rs. (1,22,91,969/-) than the value recorded in the books of accounts by M/s KKJPL on the date of search. Even after this finding that the valuation of the physical stock taken of the entire Kothari group including all shops, with karagir and at the residential premises of the family members is short, still M/s KKJPL has surrendered Rs.2, 18,00,000/- towards discrepancies in stock as additional income of M/s KKJPL and the AO has duly accepted the said surrender and M/s KKJPL has paid all the necessary taxes on it.

So addition on account of the excess jewellery in the hands of the family members is as good as double addition made by the AO on the same stock found at the Kothari group is illegal and bad in law.

2.18 The appellants involvement in respect of addition in the entire group is now explained as below:

*The appellant was found in the possession of Total Quantity of Gold of **1246.05** gms. The appellant has, from time to time, to the best of her knowledge tried to explain the details the Jewellery of gold possessed by her. However, Ld. AO has disregarded the submission made by the appellant. The details jewellery found in possession of the appellant and her family members are as under:*

Name	Gold (Net Weight) (GMS)	Gold in Diamond studded with Gold Jewellery (Net Weight) (GMS) (As per Assessment order)	Total Gold as per valuation report.	Diamond in diamond studded with gold jewellery (CRTS)	Silver (Net Weight) (GMS)	Total found in Value (Rs.)
Padma Kothari	824.55	421.50	1246.05	14.46		37,80,109

2.19 It is important to note that from the entire so called jewellery of 11,111.79 gms found at the residential premises of all the family members of the Kothari group, 1809.080 Gms of gold jewellery was already accepted by the department that the stock pertains to the shop on the basis of supporting evidences produced during the search proceedings itself before the search team and it was duly released from the seizure wide release order dated 26.09.2014. Once this was accepted by the department after due verification that the jewellery mentioned in this para pertains to shop and agreed to the fact that it was stock in trade of shop, the same was required to be considered by the AO as duly explained as no new findings against this accepted fact was brought on record by the AO and it should have been reduced from the so called excess quantity required to be added in the cases of family members of the Kothari Group. However the AO grossly failed and neglected the accepted fact by the department during the search itself and made the addition of 11,111.79 gms without giving relief of 1809.080 gms quantity of gold which duly released by the department as a stock pertains to the shop. This act of the AO clarifies that the AO was prejudice to make the addition of the gold jewellery ignoring all the explanations and evidences produced before him.

2.20 The appellant submits the details of quantity of gold possessed by her as under:

Particulars	Jewellery (in gms) :-
Gold (including studded diamond jewels)	1246.05
Less: Gold found explained W.r.t. CSOT Instruction	535.00
Less: Purchase bill accepted by AO	165.34
Balance Quantity as stock on approval from KKJPL	545.71

In this regards, it is respectfully submitted by the appellant that the quantity of 545.71 gms was held by the appellant as stock of M/s. Karan Kothari Jewellers Pvt. Ltd. On approval basis. This fact was duly disclosed by the appellant in the statement recorded during the course of search.

2.21 The appellant in respect of the jewellery found during the search proceedings duly explained it, in her statement recorded U/s.132(4) on 26/09/2014 in Q6 and its answer reproduced as below:

Q6 : The search team found jewelry at your residential premises at 2nd and 3rd floor, Kothari Bhavan, Nikalas Mandir Marg as per annexure handed over to you out of which some jewellery belongs to you, your husband and your children. Please confirm.

Also Confirm, there is no stock of M/s KKJPL kept at the residence. If so, then please produce documentary evidences?

Ans: 1. Yes. I confirm.

2.21 The jewellery and article kept at residence are our personal jewellery and articles. Also, we have certain jewellery of M/s KKJPL at our home. We have given details in this regards. Mr. Pradip Kothari will be explaining more in this regards.

2.22 From the above statement recorded of the appellant and from the statements recorded of Shri Pradeep Kothari U/s.132(4) on 25/09/2014 in response to Q5, has stated that the out of total stock of jewellery of the shop some jewellery was given on approval to the family members. The appellant also specifically mentioned in her statement that certain jewellery pertains to shop and Shri Pradeep Kothari in his statement has mentioned that entry in respect of these items are not recorded in the books of the company and are reflected in the stock in trade only. Accordingly the department should have cross verified the said fact mentioned in the statement of the appellant and of Shri Pradeep Kothari. Instead of this the AO made the addition of the so called excess stock at the residence.

2.23 The, Ld. AO, during the course of assessment proceedings, has neither considered this release of stock on approval from the total quantity of jewellery found in the possession of the appellant, nor considered the submission made by the appellant in this regards. Therefore, the addition made by the Ld. Aa is due to his prejudice mind where he has not took cognizance to statement taken on oath before the investigation wing and where the facts of jewelry on approval was duly established before the investigation wing itself. Therefore, Ld. AO erred in gross negligence .of the records, panchnama and statements etc.

2.24 In view of above, the stock of jewellery found as possessed by the appellant stands explained and hence, the addition made by Ld. AO on account of unexplained jewellery stands void and liable to be deleted.

3. Prayer:

In view of foregoing submission, appellant hereby submits that Ld. AO had incorrectly considered the jewellery found during course of search as unexplained investment and accordingly made addition to the total income of appellant. The excess jewellery found during search period appellant's

residence is nothing but the received jewellery pertaining to M/s KKJPL on approval basis. Therefore, the stock of jewellery found as possessed by the appellant stands explained. Your honor to kindly consider the case of appellant and delete the addition made by Id AO which is made with prejudicial mind.

9. 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 6.19 of his impugned order and the same is reproduced as under:

“6. Ground Nos. 1, 2 and 3: The appellant has challenged the addition made by AO at Rs. 20,26,807/- as unexplained investment u/s 69 on account of jewellery found at the residential premises of the appellant. I have gone through the assessment order, grounds of appeal, submission made by the appellant. The appellant has made a detailed submission rebutting the contentions of the Assessing Officer (AO) by establishing the facts and agitating the incorrect addition and the same is discussed hereunder.

6.1. The search and seizure operations u/s 132 of Income Tax Act 1961 was conducted on 10/09/2014 in case of M/s Karan Kothari Jewellers Pvt. Ltd and entire Kothari group and search operations were continued for about 17 days. During the course of search, certain documents and jewellery in possession of the appellant was found by the department, and accordingly, notice u/s 153C was issued to appellant on 14/10/2016 for the AY 2009-10 to AY 2014-15. The case under consideration is for the AY 2015-16 and assessed by the AO u/s 143(3) of the Income Tax Act 1961. In the said order passed u/s 143(3) the AO mentioned that, during search action at the residential premises of the appellant, certain gold ornaments & jewellery, diamond studded jewellery and silver articles were found. These were

inventorised and valued by Departmental Registered Valuer as per Valuation Report dated 10/09/2014. Total quantity and valuation of jewellery found with the appellant was arrived at Rs. 37,80,109/- as under

<i>Gold ornaments (824.55 grams)</i>	<i>Rs. 20,64,263/-</i>
<i>Diamonds (14.46 Carats) in gold ornaments of 421,5 grams</i>	<i>Rs. 17,15,846/-</i>
<i>TOTAL</i>	<i>Rs.37,80,109/-</i>

- 6.1.1 Out of this total items found, certain gold ornaments, diamond studded gold ornaments & entire silver articles were not seized during the search after considering the CBDT Instruction No. 1916 dated 11/05/1994 on guidelines for seizure of jewellery, and such jewellery was considered as explained.*
- 6.1.2 It is also observed that, during the search proceedings the department valuer has valued and given the valuation report of the stockin- trade of gold ornaments & jewellery, diamond studded jewellery and silver articles and all the other items of jewellery found at all the business premises of M/s Karan Kothari Jewellers Pvt Ltd.*
- 6.1.3 After all the enquiries in respect of the total jewellery of 19339.47 gms found at the residence, the department seized 9404.13 gms of jewellery only, for the entire Kothari group, that was valued at Rs. 2.5128 Cr, and considered as excess jewellery found.*
- 6.1.4 However the AO during the assessment of the entire group has added 11,111.79 gms of jewellery as unexplained in the hands of various persons. The difference of 1707.66 gms in addition is due to the jewellery released by the department during the search through Release Order dated 26/09/2014 as explained jewellery as stock in trade of the shop of the Kothari group M/s KKJPL, which is also not considered by the AO as explained, and he has made the addition in the hands of respective assesseees of the Kothari group.*

- 6.2. *As per the submission of the AR in para 2.21 of the written submission, the appellant explained the jewellery found in her possession during the search proceedings in her statement recorded during the search proceedings and in the written submission filed during the assessment proceedings, that the jewellery and other items found during the course of search valued at Rs.37,80,109/- pertains to appellant, her husband, her children and partly, the stock in hand of shop M/s Karan Kothari Jewellers Pvt. Ltd. (M/s. KKJPL) . The appellant, in her statement recorded on 26/09/2014 during the search proceedings, specifically stated that KKJPL (Karan Kothari Jewellers Pvt Ltd) generally sent its stock in trade for approval basis, or on jangad basis to various family members, including her. She also specifically mentioned that sometimes the jewellery is borrowed and brought from the shop, but is not reported (recorded as given on loan) in the books of accounts of the shop. This fact is cross verified from the copies of statements put on record and is found correct.*
- 6.3. *It is also submitted that, the Business premises of Itwari Shop of M/s KKJPL and the residence of the appellant and other family members are adjacent to each other and in the same premises, i.e., shop is situated on the ground and 1st floor and residence of the appellant and other family members are situated of 2nd and 3rd floor of the same building.*
- 6.4. *The AR submitted the consolidated chart of Physical inventory found during the course of search at all the shops of M/s KKJPL. In this regard, the submission of the appellant is verified and it is found that, the total physical stock of all the jewellery items physically found and valued by the department valuer at all the Business premises is as under:*

Showrooms	Gold(N.W.) (Gms.)	Platinum (Gms.)	Diamond (Ct.)	Silver (N.W.) (Gms)	Precious Stone(Ct.)	Artificial Jewellery (Rs.)
Dharampeth	171,807.59	1,073.12	8,939.30	547,096.21	3,983.59	7,120,655
Nikalas Mandir	123,076.96	191.19	5,348.42	745,723.00	7,492.76	3,975,160
Mumbai	1,075.59	69.80	76.83	35,765.00	-	-

Shahid Chowk	15,597.69	-	-	196,732.00	-	2,547,600
Total Quantity	311,557.83	1,334.11	14,364.55	1,525,316.21	11,476.35	1,36,43,415

The AR also submitted the Consolidated chart for the inventory of the Book stock of all the shops of M/s KKJPL taken from the books of accounts by the department as on the day of search is as follows:

Particulars	Gold(N.W.) (Gms.)	Platinum (Gms.)	Diamond (Ct.)	Silver (N.W.) (Gms)	Precious Stone(Ct.)	Artificial Jewellery (Rs.)
Stock as per books of all the shops of M/s KKJPL	3,32,592.89	1,373.79	14,242.97	12,65,369.28	1,07,899.36	46,33,941.49
Total	3,32,592.89	1,373.79	14,242.97	12,65,369.28	1,07,899.36	46,33,941.49

6.5. *From the above chart is evident that, there are certain differences as excess / shortage in the items of jewellery physically verified and in the jewellery recorded in the books of accounts of M/s KKJPL. It is also observed from the above chart that, during the search proceedings, the physical stock of gold jewellery consolidated of all the shops were physically found short by 21,035.06 gms.*

6.6. *The consolidated chart of physical stock of jewellery found at the residential premises of the appellant and all other family members of the Kothari group is tabulated hereunder along with the details of the jewellery items which are duly considered by the AO as allowable-from the total gold jewellery of 19,339.47 gms found and is reproduced below:*

Name	Exemption allowed in assessment				Balance to be explained	Allowed as per CBDT Instruction	Balance Quantity (Addition Made by the AO)
	Gold (N.W.) Gms.	Gahan Jewellery	Jewellery of Maina Sundari	Gold purchase accepted by Assessing Officer			
Chandana Kothari	4,468.83	-	-		4,468.83	1,100.00	3,368.83
Padma Kothari	1,246.05	-	-	165.34	1,080.71	535.00	545.71
Sheela Kothari	1,634.70	-	380	163.28	1,091.42	600.00	491.42
Seema Kothari	2,554.25	-	-	-	2,554.25	850.00	1,704.25

Smita Kothari	3,944.04	2090.39	-	203.42	1,650.23	600.00	1,050.23
Sunita Kothari	1,791.05	-	-	101.42	1,689.63	600.00	1,089.63
Ugambai	3,635.55	-	-	273.83	3,361.72	500.00	2,861.72
Mahesh Kothari	65.00	-	-		65.00	65.00	0.00
Total	19,339.47	2090.39	380.00	907.29	15,961.79	4,850.00	11,111.79

From the above chart, makes it evident that the addition made by the AO in respect of the gold jewellery found in excess at the residential premises is 11,111.79 gms. However, the jewellery seized by the department as being excess was 9404.13 gms only. It is observed that the department during the search proceedings itself has allowed 1707.66 gms of jewellery from this excess jewellery found as being duly explained and pertaining to shop M/s KKJPL. Therefore, if in case the AO wanted to make an addition, it could be only of 9404.13 gms in the hands of the entire Kothari family. However, the AO has added 11,111.79 gms (value thereof), and of this, 545.71 gms in the hands of the appellant, which is found incorrect at the outset.

- 6.7. *The AR also submitted that statements were recorded of various persons in which details in respect of the short / excess stock found during the course of search were enquired into, mainly in the series of statements recorded of Shri Pradeep Kothari, Director and key person handling the business affairs of M/s KKJPL, and all the other directors and family members of Shri Pradeep Kothari. In the statements given by Shri Pradeep Kothari, which were recorded on various dates during the search proceedings and more specifically in the two statements recorded on 19/09/2014 and on 22/09/2014, as per the para 2.10 & 2.11, reproduced by the appellant in the written submission, it is clear that Shri Pradeep Kothari accepted the fact that certain jewellery and other items of the shops are regularly going to his residence for approval, or on jangad basis. This fact is neither disputed by the department at any point of time, nor quantified.*

- 6.8. *Further the AR also submitted that, in the statement recorded u/s 132 of Mr Pradeep Kothari, he has duly accepted the fact that M/s KKJPL generally sent their stock on approval basis to the residence of the directors and to the other family members. It was also explained and admitted fact (in the statement recorded on 25/09/2014 which is not disputed by the department during the search proceedings, and during the assessment proceedings) that, no entry in the books of accounts of the company is made for the stock sent to the residence of the directors and other family members on approval or jangad basis. It is clear that this fact is not contested by the department, and thus, the contention of the appellant that the jewellery found at the residence of the appellant includes the jewellery received from the shops of M/s.' KKJPL cannot be denied. However, the AO neglected to consider this aspect and has ignored the details submitted before him during the assessment proceedings, without providing the reason for such rejection. This action of the AO is not found reasonable.*
- 6.9. *The AR made a submission that 1809.08 gms of gold jewelleryes was released out of the total jewellery found from the residential premises of all the family members, on the basis of immediate explanations given, and these were accepted and considered as stock in trade of the shops and hence released from the attachment through Release Order dated 26/09/2014. During the assessment proceedings of other family members before the AO, the quantity of this released jewellery, was claimed as explained. However, interestingly, the AO did not consider the explanation provided that had been duly established and accepted during the search proceedings as explained- and has made the addition of this released jewellery in the hands of the respective family members, despite it being accepted as stock in trade of the shop and released during the search itself. On carefully considering the statements recorded and submissions of the appellant, this action of the AO is found unjustified and unnecessary.*

- 6.10. *The AR, during the appellate proceedings and before the AO in the assessment proceedings, has produced copies of certain bills of jewellery purchases by various family members of the Kothari group pertaining to years 2004 to 2007(much before the search period), that were found during the search proceedings and seized, -but were not considered as explained by the AO and treated as an afterthought. These bills were impounded during the search proceedings as per annexure B-1/3 and cannot be an afterthought as decided by the AO, as these were already in existence.*
- 6.11. *To summarise the facts in totality, and to correctly appreciate the issues of dispute in respect of jewellery found at shop and at the residential premises of the Kothari Group as claimed by the AR in his written submission, it is necessary to consolidate the jewelleries found physically from the entire Kothari group including all shops and residential premises. The AR of the appellant has prepared and submitted a consolidated chart containing information from materials documented during the course of search, which is provided in para 2.16 of his written submission and this comprehensively enumerates the total physical stock of jewelleries found at all the shops of M/s KKJPL and the jewellery which is considered as excess by the department, at the residence of the family members of the Kothari group. It is evident from the chart that even if the gold jewellery considered as 'excess' found from the residential premises of the family members of the Kothari group, is added to the total physical stock found at all the shops, it does not exceed the total stock of gold jewelleries duly recorded in the books of accounts of M/s KKJPL.*
- 6.12. *From the consolidated chart submitted as discussed above in para 6.11, it is evident that the total gold jewellery found at all the business premises of the Kothari group was 3,11,557.83 gms, and at the residential premises of the family members which is unexplained as per AO was 11,111.79 gms (even considering an incorrect quantity because it will not have any impact*

if consolidated quantity of all the shops and residence are taken together), aggregating to total gold jewellery of 3,22,669.62 gms. The stock of gold jewellery recorded in the regular books of accounts of M/s KKJPL in respect of gold jewelleries was 3,32,592.89 gms. Accordingly, even if this excess quantity of 11,111.79 gms is considered as pertaining to shop M/s KKJPL, there will still be an overall 9,923.27 gms shortage of gold jewelleries which was found by the department during the search proceedings. The AR also explained that, this shortage in jewellery found was due to 2,710 gms lying with the karigar for the making of jewelleries of M/s KKJPL which was duly accepted by the AO during the assessment. However, when the appellant along with other family members explained that certain jewellery- out of total jewellery found at the residence- pertains to M/s KKJPL as the recorded stock in trade that was found from the residence of the family members of the directors and relatives of the director, the AO has refused to accept this explanation without assigning any reason therefor. The explanation furnished by appellant is found valid, and in order, and is accepted in the face of the materials present in this case.

- 6.13. *It is necessary next, to evaluate the impact of valuation of all the jewelleries and other items found as excess / short during the search, and after considering the consolidated chart of the entire jewellery found with the Kothari group including all the shops and all the residential premises. The AR of the appellant has produced all the necessary evidences in support of his arguments and submissions before me, and the basis on which the consolidated valuation chart along with all the quantitative details of the corresponding jewelleries and other items found during the search has been examined. In the said chart submitted by the AR, it was explained that even after considering 11,111.79 gms of jewellery as part of stock in hand of M/s KKJPL, (which was added by the AO in the hands of various family members of the Kothari group as excess jewellery found at the residential premises),*

it does not exceed the book stock recorded in the books of account of M/s KKJPL as on date of search.

- 6.14 *Further, as submitted by the AR in Para 2.17 of the submission, the valuation of the entire jewellery and other items found at the residential premises of the family members of Kothari Group which includes gold, silver, platinum, diamonds, precious stones and artificial jewellery and quantified in the chart as per para 2.16, is valued at Rs.6,14,00,560/- as per the valuation report provided by the registered valuers of department. Out of the total value of jewellery and other items found during the search, jewellery valued at Rs.2,24,54,035/- were considered as explained on account of Gahan Jewellery/ Jewellery belonging to other persons/ jewellery purchased duly explained and adhering to the CBDT instruction No. 1916/1994 and accepted by the AO during search and assessment proceedings respectively. Accordingly, the jewellery valued at Rs.2,24,54,035/- is considered as explained in the hand of family members of the Kothari group out of total jewellery valued of Rs.6,14,00,560 found at the residence of the family members. Further, it is already stated by family member, in their statements recorded during the search proceedings, that the jewellery which remained after considering such explanation i.e. Rs. 6,14,00,560 - 2,24,54,035 = 3,89,46,525 , and treated as 'excess' at the residence, is nothing but the stock in trade that belongs to M/s. KKJPL and kept on approval or on jangad basis by the family members. As per this submission, the jewellery and other items found in excess at residential premises of the Kothari group valued at Rs.3,89,46,525/- if added to the stock in hand valued at Rs. 1,20,23,28,711/- of all the shops of M/s KKJPL on the date of search, the total value of all the jewellery and other items of the entire Kothari group becomes Rs. 1,24,12,75,236/- as per Department Valuer's valuation report. In this Valuation, the value of gold of 2,710 gms lying with the karigar having valuation of Rs.70,46,000/- (2,710 gms * 2,600 per gm) is required to be added to arrive at the total value of physical stock*

of jewelleryes and other items found with the entire Kothari group. Accordingly, this value adds up at Rs.124,83,21,236/-.

6.15. *As against this, the valuation of entire stock in hand of jewellery and other items, as per the books of accounts of M/s. KKJPL as on the date of search is of Rs.1,26,06,13,205/-. It is concluded therefore that, the value of entire stock of jewelleryes and other items found during the course of search of the entire Kothari group and considering additionally, the value of stock lying with the karigar, still remains short by Rs. 1,22,91,969. Therefore, in terms of valuation also, even after considering the value of stock of all the shops of M/s KKJPL, the value of Stock with the karigar and value of excess jewellery and other items found at the residential premises of the family members of the Kothari group, there remains a shortage. As explained above, neither the aggregate quantity of Gold jewelleryes found is in excess, nor the valuation of jewelleryes found with the entire Kothari group is in excess, once compared to value of the entire stock of jewelleryes and other items recorded in books of accounts as on the date of search. It is clearly evident therefore, that the stock which was found at showroom, and lying with the karigar and the 'excess' jewellery found with the family members were duly recorded in the books of accounts of M/s KKJPL, and hence, the AO has erred in making addition, despite the facts on records that the nothing is found excess. From the above explanation it is evident that the valuation of the stock found in the Kothari. group after considering all the excess jewellery and other items considered by the department is less, by Rs. (1,22,91,969/-) than the value recorded in the books of accounts by M/s KKJPL on the date of search.*

6.16. *It is noted that even though the total value of the entire physical stock as found, including in all shops, karigar a/c, and at the residential premises of the family members, is found short, yet M/s KKJPL has surrendered an amount of Rs.2,18,00,000/- towards any discrepancies in stock, as*

additional income of M/s KKJPL and the AO has accepted the said surrender. M/s KKJPL has also paid all the necessary taxes on the same. Hence, no addition in the hands of the family members on account of jewellery was warranted. In fact, such additions are as good as double addition made on the same stock found at the Kothari group- and cannot be considered as justified or legally tenable.

6.17. *To reiterate, M/s KKJPL has offered additional income of Rs. 2,18,00,000 for AY 2015-16 towards any discrepancies found in the stock during the assessment proceedings. This additional income is reflected in the return of income for the AY 2015-16 filed u/s. 153A, on which the necessary taxes are paid. The AO has duly accepted the disclosure in the hands of M/s KKJPL in the AY 2015-16 and has not disputed this disclosure. Thus, it is clear that the so-called excess in valuation of the jewellery found in the entire Kothari group is already taxed in the hand of the company M/s KKJPL in the AY 2015-16, and the addition in the hands of the appellant amounts to double addition of the same income.*

6.18. *I find that the entire issue of jewellery found and valued has not been considered in a proper manner, during the assessment. The findings pertaining to jewellery stock is a finding of fact- which in my opinion has been completely overlooked and incorrectly handled. The contention of AO that the appellant failed to provide sufficient explanation for the source of jewellery found during search at her residence is also due to ignoring the statements given by the Director, as well as the appellant. I find that the appellant as duly established the facts of the case and explained the source of jewellery found, both quantitatively and in terms of value. Her explanation was that jewellery found were out of the stock of KKJPL which were sent to her on approval basis. The fact that the jewellery pertained to the shop and is generally kept at residential premises for various reasons is duly established. Mr Pradeep Kothari had also stated and accepted this fact*

in his statement. Considering the quantitative analysis of the stock recorded in books, and found from various premises, it is clear that there is no excess jewellery found. Instead, reconciliation of stock shows that Department had found shortage in stock. Therefore, there is no case of unexplained investment and no addition u/s. 69 could have been made.

6.19. *I find that the AO has not mentioned in his assessment order, the reasons for non-acceptance of explanations given by appellant during assessment proceedings. Whereas the appellant explained the whole operation by reconciling the stock figures with shortage in stock found in KKJPL, the AO has not controverted the explanations provided. In view of the same, the explanations furnished by the appellant is accepted and the entire addition of Rs. 20,26,807/- u/s. 69 made by the AO is held as incorrect and directed to be deleted. Ground no. 1, 2 and 3 are allowed.”*

10. From perusal of the record, we observed that a search and seizure operations u/s 132 of Act was conducted on 10/09/2014 in case of M/s Karan Kothari Jewellers Pvt. Ltd and entire Kothari group and search operations were continued for about 17 days. During the course of search, certain documents and jewellery in possession of the assessee was found by the department and accordingly, notice u/s 153C was issued to assessee on 14/10/2016 for the AY 2009-10 to AY 2014-15. The case under consideration is for the AY 2015-16 and assessed by the AO u/s 143(3) of the Act. In the said order passed u/s 143(3) the AO mentioned that, during search action at the residential premises of the assessee, certain gold ornaments & jewellery, diamond studded jewellery and silver articles were found. These were inventorised and valued by Departmental Registered

Valuer as per Valuation Report dated 10/09/2014. Total quantity and valuation of jewellery found with the assessee was arrived at Rs. 37,80,109/-. Out of this total items found, certain gold ornaments, diamond studded gold ornaments & entire silver articles were not seized during the search after considering the CBDT Instruction No. 1916 dated 11/05/1994 on guidelines for seizure of jewellery and such jewellery was considered as explained.

11. We also observed that during the search proceedings the department valuer has valued and given the valuation report of the stock-in-trade of gold ornaments & jewellery, diamond studded jewellery and silver articles and all the other items of jewellery found at all the business premises of M/s Karan Kothari Jewellers Pvt. Ltd. After all the enquiries in respect of the total jewellery of 19339.47 gms found at the residence, the department seized 9404.13 gms of jewellery only for the entire Kothari group that was valued at Rs. 2.5128 Cr and considered as excess jewellery found. However, the AO during the assessment of the entire group has added 11,111.79 gms of jewellery as unexplained in the hands of various persons. The difference of 1707.66 gms in addition is due to the jewellery released by the department during the search through Release Order dated 26/09/2014 as explained jewellery as stock in trade of the shop of the Kothari group M/s KKJPL,

which is also not considered by the AO as explained and he had made the addition in the hands of assessee of the Kothari group.

12. We further observed that statements were recorded of various persons in which details in respect of the short / excess stock found during the course of search were enquired into, mainly in the series of statements recorded of Shri Pradeep Kothari, Director and key person handling the business affairs of M/s KKJPL and all the other directors and family members of Shri Pradeep Kothari. In the statements given by Shri Pradeep Kothari, which were recorded on various dates during the search proceedings and more specifically in the two statements recorded on 19/09/2014 and on 22/09/2014, it is clear that Shri Pradeep Kothari accepted the fact that certain jewellery and other items of the shops are regularly going to his residence for approval, or on jangad basis. This fact is neither disputed by the department at any point of time, nor quantified. In the statement recorded u/s 132 of the Act, Mr. Pradeep Kothari has duly accepted the fact that M/s KKJPL generally sent their stock on approval basis to the residence of the directors and to the other family members. It was also explained and admitted fact (in the statement recorded on 25/09/2014 which is not disputed by the department during the search proceedings, and during the assessment proceedings) that, no entry in the books of accounts of the company is made for the stock sent to the residence of the directors and

other family members on approval or jangad basis. It is clear that this fact is not contested by the department and thus, the contention of the assessee that the jewellery found at the residence of the assessee includes the jewellery received from the shops of M/s. KKJPL cannot be denied. However, the AO neglected to consider this aspect and has ignored the details submitted before him during the assessment proceedings, without providing the reason for such rejection. The Id. AR made a submission that 1809.08 gms of gold jewelleries was released out of the total jewellery found from the residential premises of all the family members, on the basis of immediate explanations given and these were accepted and considered as stock in trade of the shops and hence released from the attachment through Release Order dated 26/09/2014. During the assessment proceedings of other family members before the AO, the quantity of this released jewellery was claimed as explained. However, interestingly, the AO did not consider the explanation provided that had been duly established and accepted during the search proceedings as explained and has made the addition of this released jewellery in the hands of the respective family members, despite it being accepted as stock in trade of the shop and released during the search itself. The AR during the proceedings before the lower authorities had produced copies of certain bills of jewellery purchased by various family members of the Kothari group pertaining to years 2004 to

2007 (much before the search period), that were found during the search proceedings and seized, but were not considered as explained by the AO and treated as an afterthought. These bills were impounded during the search proceedings as per annexure B-I/3 and cannot be an afterthought as decided by the AO, as these were already in existence.

13. We found that the total gold jewellery found at all the business premises of the Kothari group was 3,11,557.83 gms. and at the residential premises of the family members which is unexplained as per AO was 11,111.79 gms (even considering an incorrect quantity because it will not have any impact if consolidated quantity of all the shops and residence are taken together), aggregating to total gold jewellery of 3,22,669.62 gms. The stock of gold jewellery recorded in the regular books of accounts of M/s KKJPL in respect of gold jewellery was 3,32,592.89 gms. Accordingly, even if this excess quantity of 11,111.79 gms is considered as pertaining to shop M/s KKJPL, there will still be an overall 9,923.27 gms shortage of gold jewellery which was found by the department during the search proceedings. The AR also explained that, this shortage in jewellery found was due to 2,710 gms lying with the karigar for the making of jewellery of M/s KKJPL which was duly accepted by the AO during the assessment proceedings. However, when the assessee alongwith other family members explained that certain jewellery out of total jewellery found at the residence

pertains to M/s KKJPL as the recorded stock in trade that was found from the residence of the family members of the directors and relatives of the director, the AO has refused to accept this explanation without assigning any reason. The valuation of entire stock in hand of jewellery and other items, as per the books of accounts of M/s. KKJPL as on the date of search is of Rs.1,26,06,13,205/-. It is concluded therefore that, the value of entire stock of jewelleries and other items found during the course of search of the entire Kothari group and considering additionally the value of stock lying with the karigar still remains short by Rs. 1,22,91,969. Therefore, in terms of valuation also, even after considering the value of stock of all the shops of M/s KKJPL, the value of Stock with the karigar and value of excess jewellery and other items found at the residential premises of the family members of the Kothari group, there remains a shortage. As explained above, neither the aggregate quantity of Gold jewelleries found is in excess nor the valuation of jewelleries found with the entire Kothari group is in excess, once compared to value of the entire stock of jewelleries and other items recorded in books of accounts as on the date of search. It is clearly evident therefore, that the stock which was found at showroom and lying with the karigar and the 'excess' jewellery found with the family members were duly recorded in the books of accounts of M/s KKJPL and hence, the AO has erred in making addition, despite the facts on records that the

nothing is found excess. From the above explanation it is evident that the valuation of the stock found in the Kothari group after considering all the excess jewellery and other items considered by the department is less, by Rs. (1,22,91,969/-) than the value recorded in the books of accounts by M/s KKJPL on the date of search. It is noted that even though the total value of the entire physical stock as found, including in all shops, karigar a/c and at the residential premises of the family members is found short, yet M/s KKJPL has surrendered an amount of Rs.2,18,00,000/- towards any discrepancies in stock, as additional income of M/s KKJPL and the AO has accepted the said surrender. M/s KKJPL has also paid all the necessary taxes on the same. Hence, no addition in the hands of the family members on account of jewellery was warranted. In fact, such additions are as good as double addition made on the same stock found at the Kothari group and cannot be considered as justified or legally tenable.

14. We also find that the entire issue of jewellery found and valued has not been considered in a proper manner during the assessment. The findings pertaining to jewellery stock is a finding of fact- which in our view has been completely overlooked and incorrectly handled. The contention of AO that the assessee failed to provide sufficient explanation for the source of jewellery found during search at her residence is also due to ignoring the statements given by the Director, as well as the assessee. We also find that

the assessee has duly established the facts of the case and explained the source of jewellery found, both quantitatively and in terms of value. Her explanation was that jewellery found were out of the stock of KKJPL which were sent to her on approval basis. The fact that the jewellery pertained to the shop and is generally kept at residential premises for various reasons is duly established. Mr Pradeep Kothari had also stated and accepted this fact in his statement. Considering the quantitative analysis of the stock recorded in books, and found from various premises, it is clear that there is no excess jewellery found. Instead, reconciliation of stock shows that Department had found shortage in stock. Therefore, there is no case of unexplained investment and no addition u/s. 69 could have been made.

15. 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.

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

17. Now we take ITA No. 91, 92, 93, 94, 95 & 99/Nag/2019 for the A.Y. 2015-16.

In all these appeals, grounds of appeal, facts of the case and submissions of both the parties are identical to the grounds, facts and submissions of ITA No. 90/Nag/2019, therefore, our finding given in ITA No. 90/Nag/2019 for the A.Y. 2015-16 shall apply mutatis mutandis in all these appeals of the Revenue also.

18. In the result, all these appeals of the Revenue are 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

Copy of the order forwarded to:

1. The Appellants- (i) The A.C.I.T., Central Circle-2(2), Nagpur.
(ii) The D.C.I.T., Circle-2, Nagpur.
2. The Respondents- (i) Smt. Padma M. Kothari, Nagpur.
(ii) Smt. Smita Kothari, Nagpur.
(iii) Smt. Chandana Kothari, Nagpur.
(iv) Shri Narendra M. Kothari, Nagpur.
(v) Smt. Seema Kothari, Nagpur.
(vi) Smt. Sunita Kothari, Nagpur.
(vii) Smt. Sheela N. Kothari, Nagpur.
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 90, 91, 92, 93, 94,95 & 99/Nag/2019)

By order,

Asst. Registrar