

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री सुधांशु श्रीवास्तव, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI. SUDHANSHU SRIVASTAVA, JM

आयकर अपील सं./ ITA No. 310/Chd/2021
निर्धारण वर्ष / Assessment Year : 2017-18

Smt Charu Aggarwal H.No. 123-C, Model Town Patiala-147001- Punjab	बनाम	The DCIT Central Circle Patiala-147001, Punjab
स्थायी लेखा सं./PAN NO: AAKPA9875F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Priyanka Dhar, Sr. DR

आयकर अपील सं./ ITA No. 311/Chd/2021
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Kalaneedhi Jewellers LLP, H.No. 123 C, Model Town Patiala-147001	बनाम	The DCIT Central Circle, Patiala- 147001 Punjab
स्थायी लेखा सं./PAN NO: AALFK4800D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Shri Vivek Nangia, CIT, DR

सुनवाई की तारीख/Date of Hearing : 21/02/2022
उद्घोषणा की तारीख/Date of Pronouncement : 25/03/2022

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These two appeals by the different assesseees are directed against the separate orders each dt. 30/09/2021 of the Ld. CIT(A)-5, Ludhiana.

2. Since the appeals were heard together and one of the issues is common in both these appeals therefore these are being disposed of by this consolidated order for the sake of convenience and brevity.

3. At the first instance we will deal with the appeal in ITA No. 311/Chd/2021 wherein following grounds have been raised :

1. *That the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana has erred in confirming the addition of Rs. 2,04,85,395/- against the addition of Rs. 2,19,85,395/- on account of alleged unexplained cash deposits in the regular bank account of the assessee, during demonization period, which was on account of accounted for sales of the assessee, duly recorded in the regular books of accounts of the assessee.*

2. *That the Ld. CIT(A) has failed to appreciate that all the purchases and sales are fully vouched and no defects in the quantitative details or in the day to day stock register, maintained by the assessee have either been found and, therefore, the confirmation of addition of Rs. 2,04,85,395/- is against the facts and circumstances of the case.*

3. *That the Ld. CIT(A) has failed to appreciate that there was no difference in the stock of jewellery as noticed by departmental officials during the course of search, conducted in the premises of assessee in April 2017 and, therefore, it is not a case of 'unexplained money' as being alleged by the CIT(A) but the accounted for sale proceeds of the jewellery, which have been deposited in the regular bank account of the assessee.*

4. *That the Ld.CIT (A) has failed to appreciate that the Assessing Officer having not found any fault in the regular books of accounts during the course of assessment proceedings and, therefore, no such addition was liable to be made.*

5. *That the Ld. CIT(A) has failed to appreciate that the sales of jewellery as per books of accounts having been accepted and the cash realized on account of such sales of jewellery having been deposited in the regular bank account of the assessee and the stock of jewellery reduced from the stock register of the assessee and, then sustaining of addition of Rs. 2,04,85,395/- is uncalled for.*

6. *That the Worthy CIT(A) having accepted that it is a case of 'double addition' and then only giving relief of net profit @ 1.57% on sales of Rs. 2,19,85,395/- is not proper since the total sales of Rs. 2,19,85,695/- having already been included in the sales already declared in the audited accounts, the entire amount of Rs. 2,19,85,395/- was liable to be reduced not the net profit/gross profit or a sum of Rs. 15 lacs on adhoc basis as allowed by the CIT(A).*

7. That the CIT(A) has failed to appreciate the past history of the case, where under the similar circumstances, the cash sales have been accepted in the order passed u/s 143(3) and even the assessment of the assessee for Asstt. Year 2018-19 having been framed u/s 143(3) and, thus, the confirmation of addition by the CIT(A) is against the facts and circumstances of the case and the detailed submissions as filed on number of occasions, during the course of 'appellate proceedings' have not been considered properly.

8. That the Ld. CIT(A) has failed to appreciate that merely on the basis of oral statement of part time Accountant, the confirmation of addition by the Ld. CIT(A), specially, when no cross examination of the Accountant have been afforded to the assessee, is uncalled for.

9. That the Ld. CIT(A) has erred in confirming the addition of Rs.7,96,905/-on account of unexplained investment on the construction of show room, which is against the facts and circumstances of the case.

10. That notwithstanding the above said ground of appeal, the CIT(A) has erred in confirming the action of the Assessing Officer for reference to the Valuation Cell of the construction of shop and has not followed the various judgments as filed before him.

11. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

4. Vide Ground No. 1, to 8 the grievance of the assessee relates to the sustenance of addition of Rs. 2,04,85,395/- on account of alleged unexplained cash deposits in the regular bank account.

5. The facts related to this issue in brief are that a search operation under section 132 of the Income Tax Act, 1961 (hereinafter referred to Act) was conducted in Kalaneedhi group of cases on 12/04/2017. Thereafter a notice under section 153A of the Act was issued to the assessee on 30/10/2017. In response to the said notice the assessee filed its return of income on 29/11/2017 declaring an income of Rs. 22,52,980/-. During the course of assessment proceedings the A.O. noticed that the assessee had deposited Rs. 2,90,20,000/- during post demonetization in its CC Account and that during the course of

search, books of accounts and sale bills books relating to demonetization period and pre demonetization period were verified which revealed that the assessee was maintaining its books of account in the computer of its Accountant. The A.O. further observed that on examination of digital data it was noticed that there were two sets of books of accounts i.e. one in the computer of Accountant and another in the Pen Drive of the Accountant. On comparison of both the accounts it was found that there was difference in the sales figures for the month of October, 2016 as cash sales were increased in one set of books of accounts. The statement of Accountant was recorded during the course of search wherein it was admitted that he had changed the sale figures of October, 2016 by increasing cash sales after demonetization to generate cash in hands in books of accounts. The A.O. vide questionnaire dt. 21/12/2018 asked the assessee to furnish documentary evidence regarding source of cash deposit in its bank accounts. The assessee filed reply on 04/03/2019 which had been discussed by A.O. at page 2 to 4 of the assessment order dt. 27/03/2019 and is reproduced verbatim as under:

i) The first reason cited by the assessee is that the increase in sales in the month of October due to exhibition by the assessee for marketing of Gold and Kundan jewellery. The assessee also filed a pamphlet to support his submission. However, during search no such pamphlet was found. Further, the main partner of the assessee Sh. Kamal Aggarwal in his statement recorded during the course of search/survey had no where mentioned about any such exhibition or sale. The relevant question by the authorized officer and answer by Sh. Kamal Aggarwal is reproduced as under ;

"Q.23 Perusal of the balance sheet of the previous year reveals that cash in hand as on 31.03.2016 is Rs. 33,639/- and as per the cash book for the period 01.04.2016 till 31.03.2017. Also reveals the similar picture upto October, 2016. Please explain the high cash in hand from 03.10.2016 upto 08.11.2016. Is it normal practice to have such a high cash in hand in excess of Rs. 2 crore when you are also having ODI limit with the bank. Please also clarify where this cash was kept?"

Ans. From 03.10.2016 onwards, difference festivals like Navratras, Dushehra and Diwali was occurred and celebrated and the cash was kept at the premise."

ii) The other explanation of the assessee is that cash deposited was as per books of accounts and verifiable from the sale bills. This plea of the assessee is also not acceptable as the sales were found to be inflated later on by entering back dated bills.

iii) The assessee also stated that the statement of Sh. Naveen Goyal do not have evidentiary value as the same was recorded at the back of the assessee and is without corroboration. This plea of the assessee is also not convincing as the statement of Sh. Naveen Goyal was ouiy confronted with Sh. Kamal Aggarwal in his statement recorded u/s 132(4) and the relevant part of the statement is reproduced as under:

"Q 4 I am showing you the statement of Sh. Naveen Goyal S/o Sh. Tara Chand, Patiala, your part time Accountant, taken u/s 131 of the IT. Act, 19861 in the camp office at 123-C, Model Town, Patiala on 12.04.2017 wherein he has submitted that after demonetization on 08.11.2016 he had modified and change the actual books of accounts of your business concerns M/s Kalaneedhi Jewellers LLP, Bhupindra Road, Patiala by modifying the cash sales in the month of October, 2016 and November, 2016 ending 08.11,2016 by an amount of Rs. 2.90 crores (Approx.). He further submitted that the said modification was done on your directions on 10.11,2016 on the basis of sales bills provided by you which were back dated to generate cash in hand of Aprox. 2.90 crores \on 08.11.2016- In the notes of old currency of Rs.500/1000. In this regard, you are show caused to explain why it should not be concluded that the cash in hand as on 08.11,2016 in your books is bogus and has been created to facilitate the deposit of your unaccounted cash by camouflaging the same as cash sales of M/s Kalaneedhi Jewellers LLP, Patiala in the month of November, 2016 ending 08.11.2016

Ans. I have read the statement of Sh. Naveen Goyat, our part time Accountant, however I do not agree with his statement in this regard."

The above statement of Sh. Kamal Aggarwal shows that the statement of Sh. Naveen Goyal was duly confronted with him and except disagreeing he could not say anything.

iv) The other contention of the assessee that he was not aware of the books of accounts maintained by the accountant and did not have any access to the data maintained by the accountant is also not acceptable as the Accountant was maintaining books of account on the basis of vouchers and sale bills provided by the assessee. The correctness of the books of accounts is primarily the responsibility of the assessee and he cannot be absolved of this responsibility.

5.1 The A.O. did not find merit in the aforesaid reply of the assessee and observed that the books of accounts of the assessee were not correct and complete and did not depict the real statement of affairs. He asked the assessee to show cause as to why the books of accounts may not be rejected under section 145(3) of the Act and the assessment may not be completed in

the manner provided under section 144 of the Act by observing in para 5 of the impugned order as under:

2. A search u/s 132 was conducted in your case and during the course of search various documents were impounded and relevant extract of computer data was taken. During the course of assessment proceedings, the following discrepancies have been noticed in the books of accounts:

i) Two sets of books of accounts have been found in the Pen Drive and Computer in possession of accountant working with your firm. On comparison of sale account for the period 01.10.2016 to 31.10.2016 there is huge difference in the cash sale. As per one set total sales for the period 01.10.2016 to 31.10.2016 have been shown at Rs.4,08,33,912/- and as per another set of account books sales for the same period have been shown at Rs. 1,42,19,678/-. The major difference in sales is on account of sales shown as per bill book Sr. No. 1 to 50, 51 to 100 and 101 to 150. These bill books are not as per the running Serial number which is 435 onwards for this period. Further, accountant Sh. Naveen Goyal in his statement recorded during the course of search confirmed that he has changed the sale figures by increasing cash sales after demonetization to increase the cash in hand. Copy of statement of Sh. Naveen Goyal is enclosed.

ii) During this period you have shown investment on the construction of showroom as per your books of accounts at Rs. 73,06,405/-. The issue of cost of construction was referred to Valuation Call of the Income Tax Department by the. DDIT(inv.). As per Valuation report a copy of which has already been provided to you. the total cost of construction has been worked out at Rs. 1,32,24,900/- and Investment on construction during the A.Y. 2017-18 has been estimated at Rs. 92,92,400/- whereas you have shown lesser amount in your books of accounts. On verification of seized/impounded documents during the course of search/survey, it has been noticed that the following bills of material in respect of construction of showroom has not been shown in the construction account as per your books of accounts.

S.No.	Annexure No. and page No.	Date	Name of the Party	Amount
1	A-4 Page-104	16.12.2016	Kulwinder Iron Store	2,06,768/-
2	A-4 page -103	24.03.2017	Thakur Steels	22,400/-

Further, the construction has stated to be carried out through contractor Sh.Kesar Singh and payments in cash have shown to be made to Sh. Kesar Singh against receipts issued by Sh. Kesar Singh. These receipts were confronted with Sh. Kesar Singh and Sh. Kesar Singh in his statement denied to have issued any such receipts. He further stated that he is an illiterate person and he never got printed any receipt book (copy of statement Sh. Kesar Singh is enclosed). This shows that

the receipts are not genuine and the actual investment have not been recorded in the regular books of accounts.

3 In view of the above facts the books of account maintained by you are not correct and complete, as such do not depict the real and true statement of affairs. I therefore, propose to reject the same u/s 145(3) of the Income Tax Act and assessment is proposed to be completed in the manner provided u/s 144 of the Income Tax Act.

4. During the demonetization period, you have deposited Rs. Rs.2,90,20,000/- in CC limit account No.65183224280. Vide questionnaire dated 21.12.2018, you were required to produce documentary evidence with regard to the sources of cash deposit Rs.2,90,20,000/-The explanation filed by you is not convincing as such do not justify the cash deposit of Rs.2,90,20,000/-. As discussed above, your books of account do not depict the true state of affairs and sales have been inflated by showing cash sales in back dates i.e. October, 2016. I therefore propose to make appropriate addition on account of in-genuine sales entered after demonetization in back dates.

5. As discussed in para 2 (ii) above, the cost of construction of showroom shown by you in your books of account is not correct, I therefore, propose to make additions on account unexplained investment in construction of the showroom by taking into consideration the valuation report of the departmental valuer and explanation filed by you.

5.2 In response the assessee furnished the reply which read as under:

"With reference to your notice No..../pta/2018-19/1907. dt. 07/03/2019, we are to submit as under –

1. As regards point no 1 - Point Missing in Questionner

2.

(i) As regards point no 2 (i) - As regards the billing for Sr. No. 1-50, 51-100 and 101-150 correctly said the bills are not in serial number because the regular Sr. No. is 435 and the serial number 1-50, 51-100 and 101-150 come before 435, resultingly this cannot be said to be in Sr Numbers. The bills have been issued and accounted/recorded/disclosed I declared in the books that's why the bills have been found and the provisions of section 44AA requires the maintenance of books of account which has been done. The increase in sales relating to kundan to be excluded from gold (exhibition) and various other market related forces resulted into increase in sales, which required bills to be issued and this maintenance & issuance of the bills is required even by the department. While the sales were increasing as explained above then for the need of the time there were certain bill books which were pending (and relates to studded Jewellery itself - please note {S} mentioned on impugned bill book impounded

signifying Studded jewellery) to be completed (1-50, 51-100 and 101-150) hence the same were used. Even further, no provision of law requires that the bill books need to be in a chronological order. The provision of law requires transactions to be accounted, recorded, disclosed, declared and which is a fact as has been done acceptedly by the assessee.

In addition to our previous reply Dated 25/02/2019 point No.1. It is again brought to your notice Assessee has been maintaining different bill books for different variety of jewellery like one for gold, diamond stud jewellery, silver jewellery etc all beginning from Sr. No. 1 to 50 and onwards every financial year, it is further clarified that kundan jewellery / studded jewellery as per our past practice sold on gross weight basis i.e without reducing the weight of such stone/kundan and during the exhibition period the said weight was reduced and thus the high boost to sales of such jewellery.

(ii) As regards point no. 2(ii) – In addition to our reply dated 25/02/2019 point No. 5 and other explanatory chart, the comparative investment on construction chart below which clearly shows the variation in %age each year. The difference are attributable to difference between actual expenditure with estimated expense on yearly basis. %age of completion on yearly basis by DVO is a work of mere estimation while in totality the after making requisite corrections the differences are within permissible limits under law.

(iii) In addition to our reply dated 25/02/2019, point No 5, as regards point 104 of Annexure-3 which has been submitted vide point No 56 However the stand of the assessee is clear that the construction was undertaken by Sh Kesar Singh (Contractor) on cum-material basis and there can be all eventuality that certain bills would have been issued by the various suppliers to Kesar Singh who had been working for different persons and these bills due to some error would have been titled favouring the assessee and in the pleading of the assessee it is submitted that merely some supplier, writing the name of the assessee does not signify that the bill is of the assessee and there is none such bill to be understood of the assessee which is pending to be accounted for. Additionally the bills were called at times from Sh. Kesar Singh such that to avoid any supplier directly coming to assessee for receiving the payment through Sh Kesar Singh (Contractor) was undertaking work on cum-material basis thus to avoidance to the payment duplication.

3. Regarding Section 145(3), it is submitted that the assessee has maintained the books of accounts with the supporting vouchers and necessary evidences, however there is a difference of opinion in the view point qua this process of maintaining books of accounts and additionally it is submitted that the 1st notice for starting of the assessment proceedings was received on dated 13/12/2018 and thereafter the assessee has submitted number of replies and additionally visited number of times in person to explain the written replies. Resultingly the completion of assessment u/s 144 is an unwarranted action ad devoid of merits.

4. Regarding the cash deposit in cash credit limit account No. 65183224280. The detailed explanation has already been furnished on dated 25/02/2019 along with present reply (Supra) of Pg. 1-4 and the said explanation of 16 Pages is enclosed.

5. It is humbly submitted that with the aforesaid facts and circumstances explaining everything, it does not call for any addition and in the respectful pleading the prayer is to kindly vacated such an action.

5.3 The A.O. however did not find merit in the submission of the assessee and made the addition of Rs. 2,19,85,395/- by observing in para 5.2 and 5.3 of the assessment order as under:

5.2 The above reply of the assessee has been considered and discussed in the following paras.

a) In para 1, the assessee admitted that the bills representing serial No, 1-50, 51-100 and 101-150 are not as per regular series. However, the other contentions of the assessee are not acceptable as there may not be any specific rules for using bills books in chronological order but certainly these are the guiding factors while analyzing the sanctity of two datas. Apparently, these bill books which were out of series were not found entered in a particular set of books of accounts. Further, the accountant of the assessee admitted that these bills were entered on a later date to inflate cash in hand. The other contention of the assessee that there is fall in the Gross Profit ratio in respect of sales made during 01.10,2016 to 08.11.2016 showing that old jewellery was sold is not relevant as its admitted fact that demonetization was announced on 08.11.2016 and sales for the past period were inflated to generate cash in hands in the books as on 08.11.2016. Further, the statement of accountant Sh. Naveen Goyal was again confronted with the assessee and the assessee has failed to offer any comments on the statement of Sh. Naveen goyal.

b) In para 2, the assessee has furnished year-wise chart of investment in the construction of building which is being discussed in the subsequent paras.

c) In para 3, the assessee has contended that the books of accounts were duly maintained and supported by vouchers is not acceptable as the two sets of books of accounts were found with different sale figures. Further, the receipts issued by Sh. Kesar Singh in respect, of construction were not found to be genuine.

5.3 In view of above facts, discrepancies pointed out above, statement of Sh. Kesar Singh and Sh. Naveen Goyal which have not been contradicted by the assessee, the books of the accounts of the assessee are not reliable and do not depict a real and true statement of affairs, therefore these are being rejected u/s 145(3) of the Income Tax Act. Assessment is being completed subject to the following observations:

A. Addition on account of cash deposited during demonetization

During demonetization the assessee had deposited Rs. 2,90,20,000/- in its CC Account with State Bank of Patiala. During the course of assessment proceedings,

data taken on pen drive and Hard disc of accountant's computer were operated in the presence of assessee and printout of sales account and various other accounts were taken. A comparison of the sale account for the month of October, 2016 as taken from pen drive and as taken from hard disc revealed that bills from Serial number_ 15 to-147 totaling Rs. 2,19,85,385/- have not been entered in one set of books. These bills were prepared and entered after demonetization i.e. 08.11,2016 and shown to have issued in the month of October, 2016 back dated to increase cash in hand as on 08.11.2016 for justifying cash deposit of Rs. 2,90,20,000/- in its bank account. This fact was admitted by the accountant of the assessee who stated that the sales of the month of the October were changed after demonetization. The assessee could never rebut the statement of accountant which was confronted during search as well as during assessment proceedings.

The argument of the assessee that there is a general increase in the sales in-the month of October is also not supported by his own books. A comparison of the sales for the month of October for the last three years and one subsequent year is reproduced as under:

Sl.No.	A.Y.	Gross sales for the entire year*	Sales in the month of October	Sales in October as %age to total sales
1	2015-16	95696563	10744407	11.23
2	2016-17	108023492	6982352	6.46
3	2017-18	134330096	42929708	32
4	2018-19	194497580	13446874	6.91

*These figures are of gross sales without considering sales return

The above chart shows that the assessee has shown 32% of the annual sales in October, 2016 whereas maximum percentage of sales in October in other years is 11.23% i.e. in A.Y. 2015-16. Thus the percentage of sales in October to total annual sales is exceptionally high in the A.Y. 2017-18.

In view of above discussions, facts, perusal of both sets of books of accounts, statement of accountant and contents of the bill books shows that the assessee has inflated its cash in hand as on 08.11.2016 to the extent of Rs.2,19,85,395/- by issuing back dated bills to meet the cash in hand requirement of cash deposited in bank account. Accordingly, an addition of Rs. 2,19,85,395/- is being made as unexplained money u/s 69A of the Income Tax Act and charged to tax u/s 115BBE of the Income Tax Act. Penalty proceedings u/s 271AAB are being initiated on this undisclosed income.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and furnished the written submissions which are incorporated in para 3 of the impugned order and read as under:

""Sub: Written Submission in the case of M/s. Kalaneedhi Jewellers LLP, House No. 123C, Model Town, Patiala in Appeal No. CIT(A), Ludhiana- 5/10033/2019-20 for the Assft. Year 2017-18, PAN: AALFK4800D

This is an appeal filed by the assessee raising various grounds of appeal and sub and stance of the grounds of appeal is that the Ld. Assessing Officer had made an addition of Rs. 2,19,85,395/- on account of alleged inflated cash in hand, which had been deposited in the regular bank account of assessee as unexplained money u/s 69A of the Income Tax Act, 1961.

2. The 2nd addition relates to the addition of Rs.7,96,905/- on account of difference in the cost of construction and on proportionate addition made on account of investment in the show room over and above the amount which has been debited in the books of accounts of the assessee.

Facts in Brief

3. It is submitted that the assessee is a Limited liability partnership firm constituted, which was constituted on 17.08.2011 and is engaged in the business of resale of jewellery, diamond and other related items. The assessee is maintaining regular books of accounts and such books of accounts are being audited year after year and the return of income of the partnership concern have been filed on the basis of such audited books of accounts. There has been no dispute in respect of assessments of the earlier years and the assessee's book result have been accepted year after year on the basis of 'stock tally' of different items of jewellery and said stock register have been maintained right from the date of start of business. During the earlier years, there has been no dispute of any nature, whatsoever, and the book results of the assessee have been accepted by the department.

4. For the year under consideration, the return of income was filed an income of Rs. 22,52,980/- and the assessment have been framed by the Assessing Officer by making the above two additions, which have been challenged by us and the income have been assessed by the Assessing Officer at Rs. 2,27,82,300/- vide order, dated 27.03.2019.

5. We have attached the statement of facts along with Form No. 35 before your goodself and while ground No. 1 is general in nature and ground No. 2,3,& 4 relate to the addition of Rs. 2,19,85,395/- on account of cash deposit during demonetization , presuming the same as 'inflated cash in hand' and such addition is based on conjectures and surmises and hence the addition made is against the facts and circumstances of the case.

6. It is submitted that year after year, the assessee has been filing the returns by drawing year-wise trading account of each item of Gold and Diamond jewellery and other related items including silver, Gem Stone, Moti beds etc. as per copy of the Trading Account placed in the Paper Book at pages 5 to 6. The same record has been maintained since the inception of the business and in this year also, same type of record has been maintained and no defects at all have been pointed out by the Assessing Officer on such quantitative tally.

7. Even in the Tax Audit report for the year under consideration, there is Annexure-I, which has been attached at page 27 of the Paper Book. The quantitative summary of Gold and diamond have been given by mentioning the

opening stock, purchases and sales during the year under consideration and closing stock and this detail is being filed year after year.

8. It is submitted that there was search and seizure operations on the assessee's premises on 12.04.2017 and during the course of search, no excess cash was found and neither any cash was seized and nor any excess stock of gold and diamond jewellery and other items was found to be incorrect. Copy of the Assessment order for Asstt. Year 2018-19 i.e. the year of search, in which, only negligible addition was made is placed in the paper book at pages 28 to 33. This is evident from the fact that, no addition on account of cash or excess jewellery of the partnership concern has been made while framing the assessment. Even in respect of audited books of accounts, no doubt/suspicion have been made in respect of books of accounts maintained and neither any discrepancy with regard to any expense or purchase have been doubted.

Therefore, the addition as made by the Assessing Officer in this case on account of 'alleged inflated cash', which have been deposited in the bank and is as per books of accounts, may, please, be deleted and also alleged difference in the valuation of investment in the Show-Room.

9. **Addition of Rs. 2,19,85,395/- on account of inflated cash in hand.**

As already submitted that the assessee is maintaining audited books of accounts and year after year at the time of filing the return of income, in the Tax Audit Report, the complete quantitative detail of various items of Gold, Diamond and other related jewellery have been given and which form the part and parcel of the books of accounts. For the year under consideration, the Tax Audit Report alongwith Balance Sheet is attached at page 1 to 27 of the Paper Book and against which, no discrepancy have been pointed out/noticed by the Assessing Officer during the course of assessment proceedings.

10. In fact, the assessee is maintaining day to day 'stock register' of each and every item dealt in by the assessee, which takes into consideration the opening stock, purchases, sales and closing stock on each day of each of each item of gold and diamond jewellery and other related items. The said stock register was produced during the course of assessment proceedings and no defects or any other omission with regard to the purchases and sales have been pointed out in such detailed 'stock register' maintained on day to day basis. Sample copy of such stock register is enclosed at Paper Book pages 34 to 36.

11. All the purchases are from identifiable parties and majorly all the payments for the purchases have been made through normal banking channels and nothing has been doubted about such purchases. Thus, all the purchases are fully vouched. The sales are also fully vouched but majorly, the sales are made in cash, due to the nature of trade and some of the sales are on account of online transactions like debit card, credit card, cheques and 'pay you money' etc. In every bill of purchase and sale, quantity and description of the item purchased or sold has been given in full form.

12. Thus, there is no finding of the Assessing Officer that any item of purchase and sale are not verifiable and even during the course of search, none of the loose papers have been found, from where any inference could be drawn that there has been certain purchases and sale outside the books of accounts and even the copy of the assessment order would prove the above fact.

13. It is beyond doubt that the Assessee was having sufficient stock of Jewellery, Bullion, diamond etc. and the same was duly accounted for in the books of accounts for the year under consideration. The entire sales were made from the regular stock in hand of the Assessee. So, under such circumstance, the sales cannot be doubted. The items are sold and from which cash has been received by the Assessee and the same stands deposited in the Bank accounts of the Assessee itself during the demonetization period. In other words, it is only a case, wherein the existing stock in hand as available with the Assessee is sold for cash. Hence, it is a case, wherein the stock is out and in return is cash is in, which stands deposited in the bank account and the same is disclosed in the books of accounts of the Assessee. The books of accounts of the Assessee are further duly audited by a Chartered Accountant. Thus, there is no scope of any default on the part of the Assessee.

14. Assessee furnished all the requisite details with supporting documents and necessary evidences while responding to notices and questionnaires. The explanation furnished that there has been completely accounted, recorded, disclosed and declared purchases having reconciliation closing stock which has been carried forward with effect from A.Y 2012-13 to 31.03.2018 and, thereafter, brought forward as on 01.04.2018 for which the returns filed u/s 139(1) reveal the complete integrated reconciliation of all the purchases and sales from retrospect to the subsequent period. Complete purchase details, sales details, stock summary from period 01.04.2015 to 30.06.2017 were submitted before AO, wherein the same have been accepted as such, during the assessment being an accepted fact on record. Please refer to chart in para 35, page 21 of this submissions.

15. During assessment proceedings u/s 153A, assessee had deposited Rs. 2,90,20,000/- during post demonetization in its cash credit account. AO order **[dt. 31.03.2017 Pg. 2 Para 3 and Pg 10 Para A]** alleged that assessee maintained 2 sets of books of accounts i.e. 1) in the computer of accountant and 2) in the Pen drive of the accountant. On comparison of both the accounts, there was difference in the sales account for the month of October, 2016 that bills from serial number 15 to 147 totalling Rs 2,19,85,285/- allegedly have not been entered in one set of books. The statement of accountant was recorded during the course of search and he admitted that he has changed the sale figures of October 2016 by increasing cash sales after demonetization to generate cash in hands in books of accounts.

16. In this regard, it is submitted that assessee maintained 2 set of books is totally incorrect 1) as the books found at accountant's computer was found from accountant's house and not found during the course of the search carried out in the premises of the assessee. 2) assessee's books complete in all respect has been found in pen drive at accountant's house, which has been taken by him from accounts maintained at Laptop. Thus, the incomplete books were not found during the course of search at assessee's premises, but found from accountant's house which were not in the possession or control of assessee. Thus, addition could not have been made in the hands of the assessee for such alleged difference in sales entered in books.

17. Further, AO failed to bring on record any cogent material to establish that assessee has done any cash sales after demonetization to generate cash in hands in books of accounts. Further, as is a matter of knowledge to common

man in Patiala that all Jewellery shops were closed for 2 days after demonetization on night of 8th November, 2016. Further, assessee's shop have been closed at 8.00 p.m on 8th November, 2016 as done usually on other days.

18. As regard AO's objection regarding increase in sales in the month of October 2016. In this regard please refer to chart below, it is submitted that increase in sales in the month of October 2016 was due to exhibition held by the assessee for marketing of Gold & Kundan Jewellery. Assessee submitted pamphlet to support the submission (Refer page No.37 of Paper Book). The cash deposited in bank were as per books of accounts and same can be verifiable from sale bills. Further, AO overlooked that sales of 1 month in every year is drastically higher than sales of all other months in a year as every year assessee held exhibition to clear the old stock/old designs. Jewellery business has a pattern, where it is a fast changing market & customers require new and changing pattern with new designs, so in order to introduce new designs stock, old design jewellery is required to be cleared first which by clearing the old stocks the assessee get working capital for business to replace old designs and with new stock. The following is the chart showing higher sales in the month of exhibition in earlier years and in this year:-

Year and month of exhibition	March, 2014	July, 2015	October, 2016
Turnover of the month of exhibition	10865654.00	19271320.00	40833914.00
Turnover of the previous month	5053901.00	8829268.00	25069156.00
Difference of Turnover	5811753.00	10442052.00	15764758.00
% increase in sales in the month of exhibition as compared to previous month	114.99%	118.26%	62.88%

Assessee has held exhibition every year and in said months, sales were exorbitantly higher than other than months of the year, hence the trend of similarity and consistently conducting the said sales. Further in October 2016 for the reason that alongwith exhibition, there was festival season in October 2016 & during that period as per Hindu Tradition, people usually purchase gold ornaments in higher quantity. Rather in the year consideration the %age increase in sales were lower than the previous years increase. AO overlooked the submission of assessee & made the addition without any incriminating material found during search.

19. It is submitted herewith that, though, there is statement of Sh. Naveen Goyal Accountant of the assessee, who have stated about certain alleged manipulation in the actual books of assessee as per alleged direction of the partner and, which, he has stated under coercion and pressure and Sh. Kamal Aggarwal, partner had clearly denied it during the course of search as mentioned in the assessment order itself above para 4.

20. It is also submitted that our Accountant is part time Accountant and comes twice in a week and, whatever, the sales or purchases or other expenses are to be recorded, he records the same in his computer, which exclusively belongs to him and he is absolute owner of the same and the said computer was not found from the premises of the assessee and it was brought from the residence of the

Accountant and it is a fact and cannot be denied. The said Sh. Naveen Goyal had been working not only with us, but various other jewelers also and in his computer at the desk top, not only there is data of our concern, but there is data of other business concerns also, for which, Sh. Naveen Goyal has been working on part time basis and, therefore, to link the alleged from data of the computer of Accountant of other parties also, which was found from his residence and made the basis of making the addition in the assessee's hand is wholly mis-conceived.

21. It is submitted that, whatever, correct data pertains to us that has already been found from the computer of Accountant is as per our regular books of accounts and which have been found and seized by the department during the course of search and also the correct sales for the month of October 2016 on account of exhibition has been found to be recorded in the computer of Accountant. Thus, the Assessing Officer's objection that the statement of accountant was recorded during the course of search & he admitted that he has changed the sale figures of October 2016, by increasing cash sales after demonetization to generate cash in hands in books of accounts. In this regard, it is submitted that there is no admission by the assessee (Sh. Kamal Aggarwal) qua the statement of Sh Naveen Goyal (Accountant) given at the time of search that assessee (Sh Kamal Aggarwal) directed the accountant to change the sale figures of October 2016. AO merely relied upon statement of accountant, which was recorded behind the back of assessee during the course of search and even cross examination of accountant was not provided during assessment proceedings despite various verbal requests to call and summon the accountant resulting in misuse and abuse to the procedure of law at the hands of the Department. Assessee as already submitted above, the reason for increase in sales during October 2016, which was attributable to exhibition by the assessee for marketing of Gold and Kundan Jewellery. Thus, cash deposited during demonetization was as per books and verifiable from sale bills. Further, AO at Pg. 4 Para top has just brushed aside the request of assessee for cross examination of Sh. Naveen Goyal, Accountant by saying that statement of Sh. Kamal Aggarwal shows that the statement of Sh. Naveen Goyal was duly confronted with him & except disagreeing he could not say anything.

22. As regards AO's objection regarding bill books not in serial number, it is submitted that the billing books for Sr No 1-50, 51-100 and 101-150 correctly said, the bills are not in Serial Number, because the regular Sr No is 435 and the serial Number 1-50, 51-100 and 101-150 come before 435, resultantly this cannot be said to be in Serial Numbers. The bills have been issued and accounted/recorded/disclosed/declared in the books & that's why the bills have been found and the Provisions of Section 44AA requires the maintenance of books of account which has been done. The increase in sales relating to Kundan is to be excluded from Gold (Exhibition) and various other market related forces resulted into increase in sales, which required bills to be issued and this maintenance & issuance of the bills is required even by the department. While the sales were increasing as explained above then for the need of the time there were certain bill books which were pending (and relates to studded Jewellery itself – please note "(S)" mentioned on impugned bill book impounded signifying (Studded jewellery) to be completed (1-50, 51-100 and 101-150) hence the same were used. Even, further none provision of law requires that the bill books need to be in a chronological order, though, the provision of law requires transactions to

be accounted, recorded, disclosed, declared and, which, is a fact as has been done acceptedly by the assessee. Further, assessee has been maintaining different bill books for different variety of jewellery, like one for gold, diamond studded jewellery, silver jewellery etc. all beginning from Sr No. 1 to 50 and onwards every financial year, it is further clarified that Kundan Jewellery / Studded Jewellery as per the past practice sold on gross weight basis i.e. without reducing the weight of such Stone/Kundan and during the exhibition period the said weight was reduced and thus the high boost to sales of such jewellery. The normal GP was 12% for the F.Y 2016-17 and while the GP for the period 01/10/2016 to 08/11/2016 was at 7.5% (sales Rs 5,21,38,526 and GP Rs 39,10,050). The fall in GP was to clear the dead stock of stone and kundan studded jewellery and the following chart proves the consistent practice as prevalent during the past years:-

The Sales, GP & NP Rate Chart for AY 2012-13 to AY 2017-18 is as under:-

A.Y.	Sales amount (Rs.)	Gross Profit Amount (Rs.)	Earnings before Intt. And salary to partners (EBIPS)	EBISP /Sales	Gross Profit Rate	Net Profit Amount (Rs.)	Net Profit Rate	Tax paid
2012-13	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
2013-14	13306600.00	2077895.00	1582830.14	11.90%	15.62%	22830.00	0.18%	1,47,897/-
2014-15	30432382.00	5058084.00	2584508.15	8.49%	16.62%	521970.00	1.72%	2,30,152/-
2015-16	94655149.00	12752813.40	6251917.36	6.60%	13.47%	2381815.00	2.51%	7,35,982/-
2016-17	106848155	13595400	6930321	6.49%	12.72%	542651.00	0.51%	5,13,885/-
2017-18	12,83,62,906	15676038	8064631	6.28%	12.21%	2017448.00	1.57%	6,96,171/-

23. It is hereby submitted that Data from Accountant, Naveen Goyal, cannot be regarded as evidence and as it do not qualify for being termed as Information admissible under Evidence Act 1872 and the Information Technology Act, 2000:-

PROVISIONS AS PER EVIDENCE ACT 1872	RELEVANCE IN PRESENT CASE
(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over	Here Two important aspects – 1. "...Computer was used regularly to store ...information..." Here the alleged computer storage/data is not regularly used /fed as is evident from the fact that the alleged data is grossly incomplete in every respect (information is fed upto 30/10/2016 only and that too incomplete and, therefore, cannot give

<p>that period by the person having lawful control over the use of the computer;</p>	<p>correct picture hence cannot be termed as Information.</p> <p>2. "...having Lawful Control" here alleged computer is a Desktop which is the personal property of Naveen Goyal, the Accountant, and is kept by him at his residence for his personal use. Assessee has no Knowledge or/and control, whatsoever over the personal property of the accountant and it was in the exclusive knowledge, control, possession and usage of Naveen Goyal, Accountant. The accountant was maintaining books in his Laptop, which was regularly brought to the premises of the Assessee and all books of accounts were updated thereon and the updated data is stored and secured back in Pen Drive which only is Authentic. Data stored without assessee's knowledge has authenticity and hence cannot be termed as information and is not admissible.</p>
<p>b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities</p>	<p>The assessee's books which were complete in all respect has been found in pen drive which was in possession of accountant and was initially handed over to search party at accountant's house, which have been taken by him from the accounts maintained in the Laptop regularly updated in the premises of the Assessee, hence only these records are relevant and authentic because even otherwise as per the Provisions of Law this pen Drive was fed into the computer in the ordinary course of the said activities.</p> <p>Note: your attention is also bought the fact that the impugned computer system itself contained three different sets of data all containing incorrect/ incomplete data in every aspect.</p>
<p>(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and</p>	<p>The impugned computer system found from Naveen Goyal, Accountant was not operating properly during various periods under question and was being regularly got repaired from unorganized sector with inappropriate non-professional manner which can directly affect the electronic records or the accuracy of its contents the said fact is substantiated with the bills of repairs from unorganized sector vendors showing the repairs.</p>
<p>(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.</p>	<p>The Desktop at the house of accountant do not contain any complete set of books and have no authenticity or Assessee's rightful data, which can be considered to have been fed in the ordinary course of the business of the assessee. The information contained in the seized records/HDD (Hard Disk Drive) cannot gives any inference by presumption that such information was being fed into the computer in the ordinary course of the said activities because the whole argument is based on</p>

	<i>the evidence seized and retained while records and enquiry as mandated in accordance with the Provisions of Evidence Act r.w Information and Technology Act have not been taken to logical end by in accordance with the procedure of law</i>
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(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

<i>(a) by a combination of computers operating over that period; or</i>	<i>There is none such case set up that Naveen Goyal, Accountant's computer is the one upon which activities regularly carried on over that period was regularly performed by computers which were in combination with the computer of the assessee and even none such finding returned in the impugned order.</i>
<i>(b) by different computers operating in succession over that period or</i>	<i>None Deppt. case set up that different computers namely Naveen Goyal, Accountant's and that of Assessee operating in succession`</i>
<i>(c) by different combinations of computers operating in succession over that period; or</i>	<i>None Depptl case set up that computers namely Naveen Goyal, Accountant's and that of Assessee constitutes a combination of different combinations of computers operating in succession</i>
<i>(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.</i>	<i>Be it that computer of Naveen Goyal, Accountant's and that of Assessee be treated as a single computer then in such a case the reliance has to be placed upon the authentic evidence recording all transaction in all respects as confirmed on statement recorded during search of the assessee and such a statement itself is an evidence of authenticity</i>

6.1 As regards to the reliance placed by the A.O. upon the statement of Shri Naveen Goyal, Accountant it was stated that there was no relationship of Agent-Principal amongst the assessee and Naveen Goyal as required by the provisions of the Contract Act, 1872 and neither had any such relationship being

established in the case set up by the A.O. It was stated that no express or implied authority was given by the assessee to Shri Naveen Goyal for changing / altering the transactions and that the assessee as a principal be it so had not ratified the acts of accountant and had refused the knowledge / authority of such acts. It was stated that Shri Naveen Goyal, Accountant was writing accounts for various persons in Patiala and it was not known neither brought on record as to the recording of his statement was doctored / coercion and under what circumstances it had been given by him. It was submitted that it was not known as to why and how Shri Naveen Goyal maintained two sets of data with what purposes, since no such onus was discharged by the A.O. for arriving at a finding to that extent. Therefore the statement of Shri Naveen Goyal was not sustainable in law particularly when no opportunity was given to cross examine. The reliance was placed on the following case laws:

- Prakash Chand Mehta vs CIT (2008) 301 ITR 134 (M.P)
- Andaman Timber Industries reported in 281 CTR 241 (SC)

6.2 It was further submitted that the A.O. invoked the provisions of Section 69A of the Act in the absence of any corroborative evidence even when the assessee had explained the nature and source of cash deposits in the bank account and that nowhere in the assessment order, the A.O. had mentioned that he was not satisfied with the explanation offered to him since no deficiency was raised by him with regard to the said deposited cash. It was stated that the assessee deposited cash amounting to Rs. 2,90,20,000/- during the demonetization period out of cash sale proceeds and cash balance available which could have been reconciled from the cash books, PVAT Returns filed with the Trade & Taxes Department and P&L Account for the relevant assessment year. It was stated that the addition under section 69A of the Act could have only been made when the assessee was found to be in possession of money, bullion, jewellery etc. not recorded in his books of account and evidently there

was nothing in possession of the A.O. to show that assessee had any other source of income from which it had earned such exorbitant income and further whatever amount had been disputed was duly recorded in the books of account. Therefore by merely suspecting the amount deposited in the bank account during demonetization period could not have been the basis of making the addition under section 69A of the Act. Reliance was placed on the following case laws:

- Chuharmal vs CIT (1988) 172 ITR 250 (SC)
- Dhakeshwari Cotton Mills; SC in 87 ITR 349 (SC)
- Shaw and Bros. vs. CIT (1959) 37 ITR 271 (SC)
- CIT vs Kamdhenu Steel and Alloys Ltd. 248 CTR 33 (Del.)
- Infomediary India (P) Ltd. and Ors. Vs CIT 206 Taxman 254
- CIT vs. Smt. P. K. Noorjahan 237 ITR 570 (SC)

6.3 It was stated before the Ld. CIT(A) that the A.O. had not disputed, the entire purchase and sales of the assessee, books of accounts, cash memo, purchase details, confirmations, bank statements, expenses, parties from whom the purchase and to whom sales were made but he merely on assumption or presumption or surmises or conjectures had made and addition in the hands of the assessee without discharging the burden of the Department to prove the correctness of such additions. Reliance was placed on the following case laws:

- K.P. Varghese vs ITO (1981) 7 Taxman 13 (SC)
- A.S. Sivan Pillai vs. CIT (1958) 34 ITR 328 (Madras)
- Roshan Di Hatti vs CIT 107 ITR 938 (SC),
- CIT vs Value Capital Services Ltd 307 ITR 334 (Del.),
- CIT vs Real Time Marketing (P) Ltd 306 ITR 35 (Del.) ,
- CIT vs **Kamdhenu Steel and Alloys Ltd.** 248 CTR 33 (Del.)

6.4 It was also submitted that the amount deposited in the bank account was out of sale of jewellery which had been held by the assessee as stock in trade and since the deposits in the bank account were out of sale of stock therefore the stock of the assessee has depleted and the cash has come in respect of stock, such sales had been disclosed in the trading account against the purchase which had not been doubted, neither the opening and closing stock had been doubted. Therefore, nothing could have been doubted when the source of cash was well explained and was shown in the bank account. However the addition was made only on the basis of statement of account at back of the assessee without establishing any motive on the part of the assessee and without disturbing the closing stock as on 31/03/2017 which had been arrived at after reducing the sale in quantity of stock in trade. The reliance was placed on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs. Akshit Kumar reported in 197 DTR 121.

6.5 It was stated that the assessment order would reveal that primarily all the transactions had been accepted except the minor discrepancy /defect of Rs. 1,01,869/- and Rs. 28,498/-. It was further submitted that during the year under consideration the assessee had gross turnover of Rs. 12.83 Crores and that the assessee's business was a going regular partnership concern caring on the jewellery business for the past 70 years. The assessee furnished the financial statement for nine years i.e; from A.Y. 2012-13 to 2020-21 which read as under:

No.	Asstt Year	Year Ending	Date of filing Return	Opening Stock	Purchases	Sales	Closing Stock	Gross Profit	Date of Tax Audit Us/44AB
1	2012-13	31.03.2012	09/05/2012						NA
2	2013-14	31.03.2013	09/09/2013	0.00	11228705.00	13306600.00	0.00	2077895.00	14/08/2013
3	2014-15	31.03.2014	20/09/2014	0.00	48875848.00	30432382.00	23501550.00	5058084.00	20/09/2014
4	2015-16	31.03.2015	17/09/2015	23501550.00	99190453.00	94655149.00	40789667.40	12752813.40	14/07/2015
5	2016-17	31.03.2016	16/06/2016	40789667.40	96205593.00	106848155.00	43742505.00	13595399.60	06/11/2016
6	2017-18	31.03.2017	27/09/2017	43742505.00	105610568.00	128362906.50	36666205.00	15676038.50	09/05/2017
7	2018-19	31.03.2018	10/08/2018	36666205.00	175200943.79	194497580.00	34733316.00	17363747.21	21/09/2018
8	2019-20	31.03.2019	29/10/2019	34733316.00	131543735.37	147401553.00	37037121.00	18161622.63	29/10/2019
9	2020-21	31.03.2020	12/11/2020	37037121.00	104283107.47	126557701.00	27892768.00	13130240.53	07/11/2020

6.6 It was stated that stock records had been maintained for each and every item separately & the value of each items was available individually in the stock as per the regularly employed method of accounting & method of valuation. It was also stated that the stock record was being furnished for the period ending up to 31/03/2020 such as to integrate and substantiate the authenticity for the genuinely conducted transactions of the sales by the assessee while the same are being doubted on presumptions by the department. Alternatively it was submitted that when the A.O. has rejected the books of account under section 145(3) of the Act then the addition under section 69A of the Act amounting to Rs. 2,19,85,395/- and making separate addition under the different provisions of the Act was totally unjustified and due to the said addition the A.O. has resulted in unrealistic net profit rate i.e; 18.7%. It was also stated that even if the A.O. was not satisfied about the correctness or completeness of the account then the assessment could have been framed in the manner provided under section 144 of the Act. It was stated that the A.O. rejected the books of account under section 145(3) of the Act only on the basis of statement of Shri Naveen Goyal, Accountant, whose testimony could not have been relied upon and that no defect was pointed out in purchase and sales, opening stock, closing stock, expenses as debited in the books of account. Therefore, the making of addition on account of deposit of cash which was duly accounted for in the books of account was against the facts and circumstances of the case. The reliance was placed on the following case laws:

- CIT-II vs. Amarjit Singh Bajwa (2013) 84 CCH 198 (P&H)
- Lalchand Bhagat Ambica Ram vs CIT [1959] 37 ITR 288 (SC)
- Mehta Parikh & Co. vs CIT [1956] 30 ITR 181 (SC)
- ACIT vs. Roop Chand Tharani (2012) 66 DTR 104 (Chhattisgarh)
- CIT vs. Paradise Holidays (2010) 325 ITR 13 (Del)
- CIT vs. Smt. Poonam Rani (2010) 326 ITR 223 (Del)

- *CIT vs. Om Overseas (2009) 315 ITR 185 (P&H)*
- *CIT vs. Ludhiana Steel Rolling Mills (2007) 295 ITR 111(P&H)*
- *CIT Vs K.C. Malhotra 164 Taxman 101 (P&H)*
- *Eland International (P) Ltd. V/s Deputy Commissioner of Income Tax as reported in 124 TTJ 0554 (DEL-TRIB)*
- *CIT vs. Jaora Flour and Foods (P) Ltd. as reported in 33 taxmann.com 566 (M.P)*
- *CIT vs. Sudeep Goenka as reported in 29 taxmann.com 402 (All)*
- *Pr. CIT Vs Dilip Kumar Swami as reported in 106 taxmann.com 59(Raj)*
- *ITO Vs Sh. Pavan Kumar Bhagatram Sharma (ITAT Ahm)*
- *Kishore Jeram Bhai Khaniya Prop. M/s Poonam Enterprises Vs ITO, in ITA No. 1220/Del/2011 (ITAT Del)*
- *CIT vs Devi Prasad Vishwnath Prasad (1969) 72 ITR 194 (SC)*
- *CIT vs. Durga Prasad More (1969) 72 ITR 807 (SC)*
- *Smt. HarshilaChordiavs ITO (2008) 298 ITR 349 (Raj)*
- *M/s Heera Steel Limited vs. ITO (2005) 4 ITJ 437 (Nag)*
- *CIT vs. Ghai Lime Stone Co. (1983) 144 ITR 140(MP)*
- *R.B. Jessaram Fatehchand (Sugar Dept.) v. CIT reported at [1970] 75 ITR 33 (BOM.)*
- *M. Durai Raj v. CIT [1972] 83 ITR 484 (Kerala)*
- *M/s Asian Consolidated Industries Limited vs ITO in ITA No. 4873/Del/1998 order dated 05.10.2018 (Del Bench)*
- *ITO vs. M/s Sunny Jewellery House in ITA No. 196/Chd/2014 order dated 06.05.2016 (ITAT Chd)*
- *ACIT vs. M/s Kewal Singh in ITA No. 664/Chd/2016 order dated 08.02.2017 (ITAT Chd)*
- *Hon'ble Delhi ITAT in the case of ITO v. Jethu Ram Prem Chand reported at [2001] 114 Taxman 219 (Delhi)(Mag.)*
- *NITISHA SILK MILLS (P.) LTD. v. ITO [IT Appeal No. 896 (Ahd.) of 2011, dated 20-7-2012 (ITAT Ahd)*
- *M/s Singhal Exim Pvt. Ltd. v. ITO ITA No. 6520/Del/2018 decided by ITAT Delhi on 12.04.2019*
- *CIT vs. Kailash Jewellery House in ITA 613/2010 dated 09.04.2010 (Del)*
- *Bansal Rice Mills vs ITO in [2002] 120 Taxman 155 (Chd Trib.) (TM)*
- *CIT vs. Vishal Exports Overseas Ltd. in ITA No.2471 Of 2009 dated 03/07/2012 (GUJ HC)*

6.7 The assessee summarized the submissions before the Ld. CIT(A) in the following words:

Therefore, to conclude the issue, on the basis of above facts and judicial pronouncements, it is submitted that the addition as made by the AO u/s 69A of the Act r.w.s. 115BBE of the Act is against the facts of the case on the following issues; sales have been accepted as per the trading account filed by the assessee and there is no new unexplained credit/investment since there is available stock with the assessee and the opening stock, purchases, sales, closing sock have been accepted and assessed from ay 2012-13 to AY 2018-19 , thus, on account of the reduction of stocks, the sale proceeds have been recorded in the regular books of accounts and the profit embedded in such sale proceeds have also been offered to tax and taxed accordingly, by the Assessing Officer and, therefore, the Ld. Assessing Officer has grossly erred in making the addition of alleged unexplained cash credit, which amounts to double addition :-

- ❖ The assessee maintains proper books of accounts that are audited by the Chartered Accountant u/s 44AB of the Act.
- ❖ All the sales, purchases, stock are recorded in the books of accounts and the same have not been doubted by the AO.
- ❖ The sales are being accepted by the Sales tax department.
- ❖ The books of accounts, maintained by assessee and book results arriving out of them have also been accepted by the AO without pin pointing any specific defect.
- ❖ The cash sales made by the assessee have been credited in the books of accounts duly accepted by the AO and therefore, once the book results are accepted by the AO, the sales out of which those book results have been arrived cannot be doubted, otherwise it would amount to double taxation.
- ❖ The identity and genuineness of the parties to whom cash sales have been made is also proved to the AO via filing their name, address and PAN number.
- ❖ Comparison of amount of cash sale with the earlier years is not proper as every year has its business and business opportunities and therefore, the amount of cash sales is not at all comparable to previous years. Sudden spurt or sudden downfall in sales is not totally dependent upon the business trends in the market and the assessee being a business man would always be in the favour of increasing his sales either on cash basis or credit.
Addition so made by the AO deeming the impugned cash deposits arising out of accounted cash sales as unexplained cash credits merely on the basis surmises & conjectures is fallacious and deserves to be deleted.

6.8 It was also submitted before the CIT(A) that the A.O. without taking into consideration the VAT Return, which were also on record, made the addition. It was stated that while one Government Authority had accepted that the sales and purchases were genuine then the another Government Authority should

have sustainable reasoning to reject such purchases and sales. However the A.O. made the addition without doubting the genuineness of purchase and consequent sale transactions as well as closing stock. It was further submitted that the A.O. wrongly invoked the provisions of Section 115BBE which came into effect on 15/12/2016 ignoring the settled law that for the law to be applicable for the A.Y. 2017-18 the same must have been passed before 01/04/2016 and not during the year. The reliance was placed on the following case laws:

- *CIT(Central)-I vs. Vatika Township Private Limited. (2014) 367 ITR 466 (SC)*
- *CIT vs. Scindia Steam Navigation (1961) 42 ITR 589 (SC)*
- *Karimtharuvu Tea Estate Ltd. vs. State Of Kerala (1966) 60 ITR 0262 (SC)*
- *STO v. Oriental Coal Corporation [1998] 68 STC 398 ; [1988] (Suppl.) SCC 308, (SC)*
- *CIT vs. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45 (Delhi),*
- *DIT vs. Medical Trust of the Seventh Day Adventists [2017] 84 taxmann.com 202 (Madras HC)*
- *Jayam and company vs. Assistant Commissioner &Ors., (2016) 15 SCC 125*
- *Loknathgoenka [2019] 109 taxmann.com 203 (Patna) (FB)*
- *Govind Das and others Vs ITO and Another 1976 (1) SCC 906*

6.9 The assessee again furnished the written submissions before the Ld. CIT(A), which have been incorporated in para 3.1 of the impugned order and read as under:

Sub: Written submission in the case of M/s. Kalaneedhi Jewellers LLP, House No. 123C, Model Town, Patiala PAN:AALFK4800D for the Asstt. Year 2017-18 in Appeal No. CIT(A), Ludhiana-5/10033/2019-20

We have to submit that we have already filed the submissions in the above j said case and in continuation to that it may be submitted further as under:

a) The Ld. Assessing Officer has made the whole case on the basis of certain data, recovered from the accountant's residence only wherein, there was certain alleged manipulation in the value of cash sales from 01.10.2016 to 31.10.2016. We have already submitted that such data were not found from the premises of the assessee, but the data was taken from the computer of the accountant from his residence and, as such, the assessee cannot be held liable for the same. We rely on the submission already made to your good self.

b) It may be stated, without prejudice, to the submissions already made in our earlier submissions and for the sake of argument that even if, the data recovered from the residence of the accountant, which is being alleged as the 'changed data', even then, no addition is called for, because as per the 'inflated data of sales' which is being alleged by the department, there is a sufficient stock of the gold and the other items and from that, it is proved beyond any iota of doubt, that the assessee had sufficient stock of gold and other items and against which, the cash has been recovered by way of sales and the profit on such sales have been disclosed and accepted by the Assessing Officer. We are submitting herewith the stock tally from 01.10.2016 to 31.10.2016 for the period, for which, data was recovered from the residence of the accountant, which will prove that there is no shortage of stock and neither any case of 'unexplained money' introduced in the books of accounts can be made. The cash has been generated out of the sale of the gold stock, diamond jewellery etc. and, thus, on one hand, the stock of gold has reduced and against which the stock of gold in quantity in the books has depleted and the resultant profit disclosed in the books of accounts and which has been accepted by the AO. The detail, which is being marked as Annexure-A is self-explanatory which is a copy of the stock register of all the items of gold and diamond jewellery of all qualities from 01.10.2016 to 31.10.2016, i.e., for the period for which, charge had been made against me.

c) As already stated, in our earlier submissions to your goodself, that we are maintaining day to day stock register in respect of each & every item of different qualities of gold i.e., 24 Carrot, 22 Carrot, Silver, Stone, Diamond 18 Carrot, Gold in diamond 18 Carrot, Diamond 14 Carrot. In order to substantiate that we had sufficient stock of above said items on the date of the alleged inflation in sales made by the assessee, we have submitting herewith, the details of such sales date-wise from 01.10.2016 to 31.10.2016 in respect of each item of the above said gold and diamond jewellery including silver jewellery, stone and that list, is being marked as Annexure-A and from that your goodself would notice that there is a sufficient stock of such items of gold and diamond jewellery as on the date, when the sales have been made. This proves our contention that the stock has depleted and resultant cash has come into the books of account, against such sales as recorded in the books and, therefore, it is a conclusive evidence that it is not a case of 'unexplained money' and rather, it is the exchange of one asset i.e., gold and diamond jewellery against the cash, which is reflected in the regular books of accounts.

d) The Ld. Assessing Officer while passing the order u/s 143(3), has while computing the income had adopted at page no. 13 para no. 6 of the assessment order, the income returned and, then the addition have been made. Therefore, the Ld. Assessing Officer has accepted the sales as per the alleged inflated figure of sales as per books of accounts and, therefore, the profit embedded on such transactions on sales have already been disclosed in the Audited Trading and Profit & Loss account and, taxed by the Assessing Officer. Thus, no separate addition on account of further credit can be made.

6.10 The reliance was placed on the decision of the ITAT Vishakhapatnam Bench in the case of M/s Hirapanna Jeweller Vs. ACIT, Central Circle-I,

Vishakhapatnam in ITA No. 253/Viz/2020. The reliance was also placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. K.C. Malhotra reported in 164 Taxman 101 (P&H).

6.11 The assessee also furnished a Chart of total sales as per the books of accounts of the assessee's partnership firm giving the total sales both by way of cash/credit as reflected before the changes as being alleged by the Department and the total sales as per alleged inflated figures of sale and the difference worked out in the following manner:

Chart of total sales as per books of accounts and as per the data seized from the residence of accountant

Opening Balance	Sale Before Change of data	After Change of data	Difference
01-10-2016	367920.00	1202564	834644.00
02-10-2016	328519.00	848029	519510.00
03-10-2016	207611.00	376782	169171.00
04-10-2016	664779.00	1260796	596017.00
05-10-2016	1383186.00	2173339	790153.00
06-10-2016	1084138.00	2373924	1289786.00
07-10-2016	466669.00	1036190	569521.00
08-10-2016	11964.00	1146332	1134368.00
09-10-2016	0.00	295028	295028.00
10-10-2016	619827.00	1519284	899457.00
11-10-2016	271251.00	888552	617301.00
12-10-2016	779889.00	1328558	548669.00
13-10-2016	18000.00	564643	546643.00
14-10-2016	43425.00	820301	776876.00
15-10-2016	30500.00	551336	520836.00
16-10-2016	633825.00	1160623	526798.00
17-10-2016	398920.00	912397	513477.00
18-10-2016	29006.00	471506	442500.00
19-10-2016	1046325.00	1067987	21662.00
20-10-2016	844580.00	1409538	564958.00
21-10-2016	544005.00	809596	265591.00
22-10-2016	51130.00	51130	0.00
23-10-2016	744783.00	1321489	576706.00
24-10-2016	1285578.00	2103653	818075.00
25-10-2016	1307491.00	1619256	311765.00
26-10-2016	822051.00	1123725	301674.00
27-10-2016	76916.00	404118	327202.00
28-10-2016	1691321.00	4639284	2947963.00
29-10-2016	13000.00	2057776	2044776.00
Grand Total	15766609.00	35537736	19771127.00

From the above chart, if we go by the allegation of the department, there is inflation in the sales from 1-10.2016 to 29.10.2016, for which the data was found from the computer of Accountant and it has been alleged that sales have been inflated by Rs. 1,97,71,127/-. This increase in the sales is not on account of any unexplained money introduced into the books of accounts of the assessee, but

against this, extra sales as being alleged, the stock of different varieties of Gold, Diamond or Silver was sold and the stock as per books have depleted, which is proved from the day today stock register from 1.10.2016 to 29.10.2016, where the stocks equivalent to the value of gold and other items have reduced, which is being attached herewith Annexure "A". Thus, it is not a case of unexplained money as being alleged.

6.12 The assessee also furnished the Chart showing the credit/cash sales before alleged inflation in cash sale and after alleged inflation which read as under:

Chart showing the credit/cash sales before alleged inflation in cash sales

Before Updation					After Updation				
Date	Cash	Advance	Bank Trf	Grand Total	Date	Cash	Advance	Bank Trf	Total
1-Oct-16	187920		180000	367920	1-Oct-16	1022564		180000	1202564
2-Oct-16	137519		191000	328519	2-Oct-16	657029		191000	848029
3-Oct-16	101887		105724	207611	3-Oct-16	271058		105724	376782
4-Oct-16	579240		85539	664779	4-Oct-16	1175257		85539	1260796
5-Oct-16	1383186		0	1383186	5-Oct-16	2168339		5000	2173339
6-Oct-16	990189		93949	1084138	6-Oct-16	2279975		93949	2373924
7-Oct-16	388669		78000	466669	7-Oct-16	958190		78000	1036190
8-Oct-16	0		11964	11964	8-Oct-16	1134368		11964	1146332
9-Oct-16	0		0		9-Oct-16	292028		3000	295028
10-Oct-16	619827	10000	0	619827	10-Oct-16	1516484	10000	2800	1519284
11-Oct-16	251251		20000	271251	11-Oct-16	868552		20000	888552
12-Oct-16	779889		0	779889	12-Oct-16	1328558		0	1328558
13-Oct-16	18000		0	18000	13-Oct-16	564643		0	564643
14-Oct-16	33050		10375	43425	14-Oct-16	809926		10375	820301
15-Oct-16	14000		16500	30500	15-Oct-16	534836		16500	551336
16-Oct-16	395625		238200	633825	16-Oct-16	922423		238200	1160623
17-Oct-16	398920		0	398920	17-Oct-16	912397		0	912397
18-Oct-16	21871		7135	29006	18-Oct-16	464371		7135	471506
19-Oct-16	908748		137577	1046325	19-Oct-16	887412		180575	1067987
20-Oct-16	808580	5000	36000	844580	20-Oct-16	1373538	5000	36000	1409538
21-Oct-16	542205		1800	544005	21-Oct-16	807796		1800	809596
22-Oct-16	6130		45000	51130	22-Oct-16	6130		45000	51130
23-Oct-16	429383		315400	744783	23-Oct-16	1006089		315400	1321489
24-Oct-16	1285578		0	1285578	24-Oct-16	2103653		0	2103653
25-Oct-16	1122680		184811	1307491	25-Oct-16	1434445		184811	1619256
26-Oct-16	756451		65600	822051	26-Oct-16	1058125		65600	1123725
27-Oct-16	57016		19900	76916	27-Oct-16	384218		19900	404118
28-Oct-16	983121		708200	1691321	28-Oct-16	3896354		742930	4639284
29-Oct-16	0		13000	13000	29-Oct-16	1894971		162805	2057776
	13200935	15000	2565674	15766609		32733729	15000	2804007	35537736

6.13 The assessee also furnished a Chart showing day to day cash in hand from 01/10/2016 to 31/10/2016 as per the data found from the computer of the accountant from his residence (before alleged inflation in sales) which read as under:

(Day to day cash-in-hand before alleged inflation in Sales)

	Transactions		Closing Balance
	Debit (Cash against sales)	Credit (Total outgoing) including bank deposits	
Opening Balance			513497.60
01-10-2016	187920.00	350000.00	351417.60
02-10-2016	137519.00	-	488936.60
03-10-2016	101887.00	14404.00	576419.60
04-10-2016	579240.00	100000.00	1055659.60
05-10-2016	1383186.00	2000000.00	438845.60
06-10-2016	990189.00	400000.00	1029034.60
07-10-2016	388669.00	1002360.00	415343.60
08-10-2016	-	-	415343.60
09-10-2016	-	1582	413761.60
10-10-2016	629827.00	1000000.00	43588.60
11-10-2016	251251.00	-	294839.60
12-10-2016	779889.00	250000.00	824728.60
13-10-2016	18000.00	220000.00	622728.60
14-10-2016	33050.00	230000.00	425778.60
15-10-2016	14000.00	220000.00	219778.60
16-10-2016	395625.00	6566.00	608837.60
17-10-2016	398920.00	425000.00	582757.60
18-10-2016	21871.00	200000.00	404628.60
19-10-2016	908748.00	-	1313376.60
20-10-2016	813580.00	1001500.00	1125456.60
21-10-2016	542205.00	800000.00	867661.60
22-10-2016	6130.00	-	873791.60
23-10-2016	429383.00		1303174.60
24-10-2016	1285578.00	1500250.00	1088502.60
25-10-2016	1122680.00	1217008.00	994174.60
26-10-2016	756451.00	1016575.00	734050.60
27-10-2016	57016.00	-	791066.60
28-10-2016	983121.00	150000	1624187.60
29-10-2016	-	715000.00	909187.60
Grand Total	13215935.00	12820245.00	909187.60
Average	426320.48	413556.29	730820.47

6.14 On the basis of the aforesaid Chart it was stated that there was regular cash in hand and it was not a case of shortage of cash in hand meaning

thereby that the alleged inflated cash sales had not been utilized anywhere else upto 08/11/2016 and when the assessee had sufficient stock which had been converted into cash and the said cash had been deposited afterwards in the regular bank accounts of the assessee after 08/11/2016 and such cash had been generated out of depletion of stock of gold, no case could have been made out of unexplained money having been introduced in the books of accounts of the assessee. The assessee also furnished a Chart showing day to day cash in hand after alleged inflation in sales to prove that such increase in cash had not been utilized anywhere which read as under:

Chart showing day to day cash-in-hand after alleged inflation in sales to prove that such increase in cash has not been utilized anywhere.

Kalaneedhi Jewellers LLP			
1-Oct-2016 to 15-Nov-2016			
Particulars	Transactions		Closing
	Debit/Out of cash sales	Credit/Out of flow of cash)	Balance
<i>Opening Balance</i>			443097.60 Dr
10/1/2016	1022564.00	350000.00	1115661.60 Dr
10/2/2016	657029.00		1772690.60 Dr
10/3/2016	271058.00	14404.00	2029344.60 Dr
10/4/2016	1175257.00	100000.00	3104601.60 Dr
10/5/2016	2168339.00	2005800.00	3267140.60 Dr
10/6/2016	2279975.00	400000.00	5147115.60 Dr
10/7/2016	958190.00	1000860.00	5104445.60 Dr
10/8/2016	1134368.00		6238813.60 Dr
10/9/2016	292028.00	1582.00	6529259.60 Dr
10/10/2016	1526484.00	1000000.00	7055743.60 Dr
10/11/2016	868552.00		7924295.60 Dr
10/12/2016	1328558.00	250000.00	9002853.60 Dr
10/13/2016	564643.00	220000.00	9347496.60 Dr
10/14/2016	809926.00	230000.00	9927422.60 Dr
10/15/2016	534836.00	220000.00	10242258.60 Dr
10/16/2016	922423.00		11164681.60 Dr
10/17/2016	912397.00	431566.00	11645512.60 Dr
10/18/2016	464371.00	200890.00	11908993.60 Dr
10/19/2016	887412.00		12796405.60 Dr
10/20/2016	1378538.00	1001500.00	13173443.60 Dr
10/21/2016	807796.00	800000.00	13181239.60 Dr

10/22/2016	6130.00		13187369.60 Dr
10/23/2016	1006089.00		14193458.60 Dr
10/24/2016	2103653.00	1500250.00	14796861.60 Dr
10/25/2016	1434445.00	1217008.00	15014298.60 Dr
10/26/2016	1058125.00	1016575.00	15055848.60 Dr
10/27/2016	384218.00		15440066.60 Dr
10/28/2016	3896354.00	150000.00	19186420.60 Dr
10/29/2016	1894971.00	717540.00	20363851.60 Dr
10/30/2016	5806872.00		26170723.60 Dr
10/31/2016	1148716.00	145620.00	27173819.60 Dr
11/1/2016	193078.00	3200000.00	24166897.60 Dr
11/2/2016	250602.00		24417499.60 Dr
11/3/2016	874212.00		25291711.60 Dr
11/4/2016	29227.00	535000.00	24785938.60 Dr
11/5/2016	2184689.00	1630730.00	25339897.60 Dr
11/6/2016	1304031.00		26643928.60 Dr
11/7/2016	1049208.00	1170000.00	26523136.60 Dr
11/8/2016	2520150.00	10500.00	29032786.60 Dr
11/9/2016			29032786.60 Dr
11/10/2016		9500000.00	19532786.60 Dr
11/11/2016		3501500.00	16031286.60 Dr
11/12/2016		9000790.00	7030496.60 Dr
11/13/2016		7029168.00	1328.60 Dr
11/14/2016			1328.60 Dr
11/15/2016	126394.00	18309.00	109413.60 Dr
Grand Total	48235908.00	48569592.00	109413.60 Dr
Average	1048606.70	1055860.70	13482681.82 Dr

6.15 The Assessee also furnished position of day to day cash in hand as per regular books of account from 01/09/2016 to 31/12/2016 which read as under:

<i>Daily Cash Balance</i>			
Kalaneedhi Jewellers LLP 2016-17			
Particulars	1-Sep-2016 to 31-Dec-2016		
	Transactions		Closing
	Debit	Credit	Balance
<i>Opening Balance</i>			393484.60 Dr
9/1/2016	8204.00	176500.00	225188.60 Dr
9/2/2016	458350.00	5165.00	678373.60 Dr
9/3/2016	7496.00	180000.00	505869.60 Dr
9/4/2016	8000.00		513869.60 Dr
9/5/2016	5130.00	2480.00	516519.60 Dr
9/6/2016	238687.00	1800.00	753406.60 Dr
9/7/2016	61402.00	17668.00	797140.60 Dr

9/8/2016	307610.00	1019305.00	8544 5.60 Dr
9/9/2016	77983.00		163428.60 Dr
9/10/2016	14550.00	16212.00	161766.60 Dr
9/11/2016	253812.00		415578.60 Dr
9/12/2016	367994.00	680.00	782892.60 Dr
9/13/2016	9929.00		792821.60 Dr
9/14/2016	106073.00	12035.00	886859.60 Dr
9/15/2016	20179.00		907038.60 Dr
9/16/2016	189038.00	350.00	1095726.60 Dr
9/17/2016	54683.00		1150409.60 Dr
9/18/2016	90190.00		1240599.60 Dr
9/19/2016	90800.00	740.00	1330659.60 Dr
9/20/2016	222406.00		1553065.60 Dr
9/21/2016	163665.00	1500500.00	2162.30.60 Dr
9/22/2016	315788.00		532018.60 Dr
9/23/2016	679928.00	1017465.00	194481.60 Dr
9/24/2016	39033.00	1650.00	231864.60 Dr
9/25/2016	103229.00		335093.60 Dr
9/26/2016	258742.00	300000.00	293835.60 Dr
9/27/2016	585986.00	710.00	879111.60 Dr
9/28/2016	501571.00		1380682.60 Dr
9/29/2016	256021.00	1119251.00	517452.60 Dr
9/30/2016	40425.00	114780.00	443097.60 Dr
10/1/2016	1022564.00	350000.00	1115661.60 Dr
10/2/2016	657029.00		1772690.60 Dr
10/3/2016	271058.00	14404.00	2029344.60 Dr
10/4/2016	1175257.00	100000.00	3104601.60 Dr
10/5/2016	2168339.00	2005800.00	3267140.60 Dr
10/6/2016	2279975.00	400000.00	5147115.60 Dr
10/7/2016	958190.00	1000860.00	5104445.60 Dr
10/8/2016	1134368.00		6238813.60 Dr
10/9/2016	292028.00	1582.00	6529259.60 Dr
10/10/2016	1526484.00	1000000.00	7055743.60 Dr
10/11/2016	868552.00		7924295.60 Dr
10/12/2016	1328558.00	250000.00	9002853.60 Dr
10/13/2016	564643.00	220000.00	9347496.60 Dr
10/14/2016	809926.00	230000.00	9927422.60 Dr
10/15/2016	534836.00	220000.00	10242258.60 Di-
10/16/2016	922423.00		11 164681.60 Dr
10/17/2016	912397.00	431566.00	11645512.60 Dr
10/18/2016	464371.00	200890.00	11908993.60 Dr
10/19/2016	887412.00		12796405.60 Dr
10/20/2016	1378538.00	1001500.00	1317344.3.60 Dr

10/21/2016	807796.00	800000.00	13181239.60 Dr
10/22/2016	6130.00		13187369.60 Dr
10/23/2016	1006089.00		14193458.60 Dr
10/24/2016	2103653.00	1500250.00	14796861.60 Dr
10/25/2016	1434445.00	1217008.00	15014298.60 Dr
10/26/2016	1058125.00	1016575.00	15055848.60 Dr
10/27/2016	384218.00		15440066.60 Dr
10/28/2016	3896354.00	150000.00	19186420.60 Dr
10/29/2016	1894971.00	717540.00	20363851.60 Dr
10/30/2016	5806872.00		26170723.60 Dr
10/31/2016	1148716.00	145620.00	27173819.60 Dr
11/1/2016	193078.00	3200000.00	24166897.60 Dr
11/2/2016	250602.00		24417499.60 Dr
11/3/2016	874212.00		25291711.60 Dr
11/4/2016	29227.00	535000.00	24785938.60 Dr
11/5/2016	2184689.00	1630730.00	25339897.60 Dr
11/6/2016	1304031.00		26643928.60 Dr
11/7/2016	1049208.00	1170000.00	26523136.60 Dr
11/8/2016	2520150.00	10500.00	29032786.60 Dr
11/9/2016			29032786.60 Dr
11/10/2016		9500000.00	19532786.60 Dr
11/11/2016		3501500.00	16031286.60 Dr
11/12/2016		9000790.00	7030496.60 Dr
11/13/2016		7029168.00	1328.60 Dr
11/14/2016			1328.60 Dr
11/15/2016	126394.00	18309.00	109413.60 Dr
11/16/2016			109413.60 Dr
11/17/2016		54224.00	55189.60 Dr
11/18/2016		28737.00	26452.60 Dr
11/19/2016		14256.00	12196.60 Dr
11/20/2016	2573.00		14769.60 Dr
11/21/2016	8092.00		22861.60 Dr
11/22/2016		1351.00	21510.60 Dr
11/23/2016			21510.60 Dr
11/24/2016		3200.00	18310.60 Dr
11/25/2016			18310.60 Dr
11/26/2016		16819.00	1491.60 Dr

11/27/2016	34548.00	2623.00	33416.60 Dr
11/28/2016	11506.00		44922.60 Dr
11/29/2016		10000.00	34922.60 Dr
11/30/2016			34922.60 Dr
12/1/2016		30985.00	3937.60 Dr
12/2/2016	16158.00	17808.00	2287.60 Dr
12/3/2016	21608.00		23895.60 Dr
12/4/2016	66820.00	16500.00	74215.60 Dr
12/5/2016	8114.00	11000.00	71329.60 Dr
12/6/2016		26797.00	44532.60 Dr
12/7/2016	21951.00	19444.00	47039.60 Dr
12/8/2016		18776.00	28263.60 Dr
12/9/2016	21123.00		49386.60 Dr
12/10/2016		16240.00	33146.60 Dr
12/11/2016	354.00	1800.00	31700.60 Dr
12/12/2016		24054.00	7646.60 Dr
12/13/2016	467.00		8113.60 Dr
12/14/2016	5882.00	780.00	13215.60 Dr
12/15/2016	16772.00		29987.60 Dr
12/16/2016	151.00	1500.00	28638.60 Dr
12/17/2016	3024.00		31662.60 Dr
12/18/2016	15467.00		47129.60 Dr
12/19/2016	137A2.00		60871.60 Dr
12/20/2016	65121.00	86276.00	39716.60 Dr
12/21/2016	2091.00	18506.00	23301.60 Dr
12/22/2016	156298.00	17952.00	161647.60 Dr
12/23/2016	3300.00	1000.00	163947.60 Dr
12/24/2016	16000.00		179947.60 Dr
12/25/2016	37152.00	23000.00	194099.60 Dr
12/26/2016	18785.00		212884.60 Dr
12/27/2016	40208.00		253092.60 Dr
12/28/2016	55671.00	15000.00	293763.60 Dr
12/29/2016			293763.60 Dr
12/30/2016	14122.00		307885.60 Dr
12/31/2016		90.00	307795.60 Dr
Grand Total	54449912.00	54535601.00	307795.60 Dr

6.16 On the basis of the aforesaid Chart the assessee submitted to the Ld. CIT(A) that there was always a sufficient debit cash in the books of account of the assessee and such sales as per the alleged changed figure of cash sales on the higher side had been reflected in the trading account of the assessee. Thus the resultant profit had been disclosed therein and accepted by the Department. It was further submitted that the cash in hand had always been in the books of the assessee and not utilized anywhere thus no adverse view could have been drawn. It was contended that the sales as well as stock figure as on 01/04/2016 and 31/03/2017 had been accepted and that the cash in hand had not been utilized anywhere till 08/11/2016 and thereafter whatever cash had been deposited it was as per regular books of accounts.

6.17 It was contended that the entries of the sales for the month of October 2016 showing higher sale had been recorded in the regular books of account and there was no interpolation in the regular books of accounts therefore the rejection of books of accounts by the A.O. under section 145(3) was not correct.

6.18 It was stated that vide reply dt. 15/03/2019 it was submitted to the A.O. that the assessee had been maintaining different bill book for different varieties of jewellery and also there was no law that the sale bill books need to be in chronological order, though the provisions of law required transactions to be accounted, recorded, disclosed and declared in the regular books of accounts which had been done by the assessee. It was stated that the increase in the sale was on account of sales during the exhibition which had been held during the Financial Year. It was further stated that the computer of accountant was not found from the business premises of the assessee but from his residential premises and as such no authenticity could have been attached to data of sales recorded in the computer of the accountant. It was also stated that the regular books of accounts of the assessee contained the correct figures and besides that may be submitted for the sake of arguments that by way of such

alleged enhanced sales, the stock of assessee had reduced in respect of all the items of jewellery as per copy of stock register, therefore, it was not a case of unexplained money introduced in the books of account of the assessee. And that the enhanced sales had been reflected in the audited books of account of the assessee and the credit of such sales had been made to the "Sales Account" and correspondingly the stock equivalent to the value of such Gold and other items had been reduced. It was pointed out that there was a search and seizure operation at the business premises of the assessee on 12/04/2017, and no case of excess or shortage of stock had been made by the Department, only a difference of Rs. 1,01,000/- that too on account of certain negligible difference in weight was made which proved the fact that no case of unexplained money could be made against the assessee, because if the allegation of the A.O that no sales had been made out, as per the regular books of account then there would have been a case of excess stock as on the date of search. The assessee furnished the copy of assessment order passed under section 143(3) of the Act for the succeeding assessment year to prove the aforesaid contention. It was submitted that findings of the A.O. on the rejection of books of accounts were contradictory because he had accepted the sale as per regular books of account and on the basis of which the net profit had been disclosed in the audited set of account therefore the rejection of books of account was against factual facts.

6.19 It was further submitted that the percentage of cash sales to the total sales was always very high and in some months it was to the extent of 95% in the preceding as well as succeeding years which proves the modus operandi of the business that majority of the cash transaction took place in this trade, in support of above contention the assessee furnished the details of the sale vs. cash details for the various years in the following manner:

Sales v/s Cash Details 2014-15

Month	Sales	Cash Against Sales	% Cash Sales
April	11105543.00	10532864.00	95%
May	4920266.00	3719576.00	76%
June	6292287.00	5592314.00	89%
July	6458206.00	5396146.00	84%
August	7565869.00	6211400.00	82%
September	5506455.00	4004296.00	73%
October	10744407.00	7676823.00	71%
November	7470736.00	5833701.00	78%
December	10245197.00	7017142.00	68%
January	10876502.00	8666653.00	80%
February	7415973.00	5982199.00	81%
March	7095122.00	5672334.00	80%
Grand Total	95696563.00	76305448.00	80%

Sales v/s Cash Details 2015-16			
Month	Sales	Cash Against Sales	% Cash Sales
April	7560726.00	6746693.00	89%
May	5913220.00	5487812.00	93%
June	8980841.00	8397141.00	94%
July	20172085.88	18774868.00	93%
August	13474363.00	9161264.00	68%
September	8885597.00	6775062.00	76%
October	6982352.00	5665287.00	81%
November	8271571.00	7364251.00	89%
December	7638645.00	6110171.00	80%
January	8389091.00	6473865.00	77%
February	11283964.00-	9110371.00	81%
March	471036.00	93036.00	20%
Grand Total	108023491.88	90159821.00	83%

Sales v/s Cash Details 2016-17			
Month	Sales	Cash Against Sales	% Cash Sales
April	6629677.00	5645641.00	85%
May	3340867.00	2643931.00	79%
June	5501348.00	3515923.00	64%
July	7691291.00	7091306.00	92%
August	7313951.00	5909411.00	81%
September	25370388.00	5536904.00	22%
October	42929708.00	39704317.00	92%
November	11163855.00	8588310.00	77%
December	4565242.00	620381.00	13%
January	1010534.00	650877.00	64%
February	3436338.50	182473.00	5%

March	10751656.00	4899456.00	46%
Grand Total	129774855.50	84988930.00	65%

Sales v/s Cash Details 2017-18			
Month	Sales	Cash Against Sales	% Cash Sales
April	16406491.00	11382486.00	69%
May	21290036.00	18681197.00	88%
June	17891 150.00	15760359.00	88%
July	10022226.00	8434959.00	94%
August	8084439.00	5654085.00	70%
September	40331140.00	3578041.00	9%
October	13850392.00	8920572.00	64%
November	15100221.00	11207419.00	74%
December	16581172.00	11263548.00	68%
January	12915814.00	9293082.00	72%
February	14334960.00	11410311.00	80%
March	10498677.00	6125536.00	58%
Grand Total	197306718.00	122711595.00	62%

Sales v/s Cash Details 2018-19			
Month	Sales	Cash Against Sales	% Cash Sales
April	12454660.00	9274155.00	74%
May	12362411.00	10328056.00	84%
June	6239045.00	5291284.00	85%
July	12862652.00	10646669.00	83%
August	14728663.00	12465220.00	85%
September	10762958.00	7502980.00	70%
October	8507424.00	5406747.00	64%
November	14828803.00	10493761.00	71%
December	9411290.00	7255015.00	77%
January	14405567.00	9886476.00	69%
February	14467692.00	8892631.00	61%
March	20792348.00	14724127.00	71%
Grand Total	151823513.00	112167121.00	74%

6.20 On the basis of the aforesaid chart it was stated that there were cash sales to the tune of 94% during the F.Y. 2015-16 when there was no demonetization and even on an average more than 80% cash sales were there in different years because of the nature of trade and thus, no adverse view

could have been taken of such sales during the F.Y. 2016-17 relevant to the A.Y. under consideration.

6.21 It was stated that the assessee furnished the audited sets of balance sheet and audit report for the A.Y. 2014-15 to 2017-18 and the total sales as well as the G.P. earned was as under:

ASSTT. YEAR	SALES	GROSS PROFIT	PERCENTAGE
2014-15	3,04,32,382.00	50,58,084.00	16.62%
2015-16	9,46,55,149.00	1,27,52,813.00	13.47%
2016-17	10,68,48,155.00	1,35,95,400.00	12.72%
2017-18	12,83,62,906.50	1,56,76,038.50	12.21%

6.22 It was submitted that the book result had been accepted all along and small variation in G.P was on account of gold rates which were variable in nature and purchase and sales rate were fixed which were known to all, thus no adverse view could have been taken by the A.O. It was contended that during the course of search at the residential premises and survey at shop, no excess stock had been found by the Department and only negligible difference in the value to the tune of Rs. 1,01,869/- was pointed out for which addition had been made and that when during the course of survey / search operation neither shortage nor excess of stock was there as the actual purchases and sales had been made by the assessee. It was stated that the assessee had been maintaining day to day stock register in quantity as well as value and it was not a case of unexplained money and the enhanced sales for the month of October 2016 as being alleged have been recorded in the "regular audited books of account" and purchases had not been doubted by the A.O. the alleged enhanced sales had been accepted by the A.O because as per the computation of income the net profit as per the P&L account had been taken and the A.O. had made further addition, accordingly it was the case of double addition which deserves to be deleted as the addition had been made against the facts and circumstances on the basis of surmises and conjectures. The

reliance was placed on the judgment of the Hon'ble' Apex Court in the case of CIT Vs. Laxminarain Badridas reported in 5 ITR 170 (PC).

6.23 The Ld. CIT(A) after considering the submissions of the assessee allowed the relief of Rs 15,00,000/- and sustained the addition of Rs. 2,04,85,395/- by observing in para 4.1 of the impugned order as under:

*"4.1 **Ground of Appeal No. 1** relates to addition of Rs.2,19,85,395/- on account of cash deposited in the bank account of the assessee. The AO has mentioned that a search u/s 132 was conducted in the case on 12.04.2017 and in response to notice u/s 153A, the assessee filed return on 29.11.2017 declaring total income of Rs. 22,52,980/-. Thereafter statutory notices were issued and the AR attended the proceedings. It is further mentioned by the AO that the assessee deposited Rs. 2,90,20,000/- during post demonetization in its CC account. During the search, it was noticed that the assessee is maintaining its books of account on the computer of its Accountant and on examination of digital data, it was noticed that there were two sets of books of account i.e. one on the computer of the Accountant and another in the Pen Drive of the Accountant. As per AO, on comparison of both the accounts, it was noticed that there was huge difference in sale figures for the month of October, 2016 as cash sale was increase in one set of books of account. The statement of the Accountant was recorded during the course of search and he admitted that he has changed the sale figures of October, 2016 by increasing cash sale after demonetization to generate cash-in-hand in the books of account. It is mentioned by the AO that vide questionnaire dated'21.12.2018, the assessee was asked to furnish documentary evidence regarding source of cash deposit of Rs. 2,90,20,000/- in its bank account. The assessee filed reply which is discussed in the assessment order whereby the first reason stated by the assessee for increase in sale in the month of October was stated to be exhibition by the assessee for marketing Gold and Kundan Jewellery. The assessee also filed pamphlets in support, however as per AO, during search no such pamphlets were found and the main partner Sh. Kamal Aggarwal did not mention about any such exhibition or sale in his statement. The other argument of the assessee was that the cash deposit was as per book but this plea was not accepted by the AO as the sales were inflated later on by entering back dated bills. The assessee further pleaded that the statement of Sh. Naveen Goyal did not have any evidentiary value as the same were recorded at the back of the assessee. This plea was also not found convincing as the statement of Sh. Naveen Goyal was duly confronted to Sh. Kamal Aggarwal during his statement recorded u/s 132(4) and the AO reproduced the relevant part of the statement of Sh. Kamal Aggarwal in the assessment order. The other contended of the assessee that it was not aware of the books maintained by the Accountant and did not have access to data, was also not acceptable by the AO who observed that the Accountant was maintaining books of account on the basis of vouchers and sale bills provided by the assessee and that correctness of the books of account is primary the responsibility of the assessee and it cannot be absolved of this responsibility. The AO mentions about the discrepancies in the construction account and was of the view that books of account of the assessee are not correct and complete and do not depict the real statement of affairs. As such a*

show cause notice was issued on 07.03.2019 as to why the books of account may not be rejected u/s 145(3) and assessment may be completed as provided u/s 144. The show cause notice is reproduced in the assessment order where it was mentioned that two sets of books of account have been found where there is a huge difference in cash sales; as per one set total sales for the period 01.10.2019 to 31.10.2016 have been shown at Rs. 4,08,33,912/- and as per another set the sale for the same period have been shown at Rs. 1,42,19,678/-. The major difference is on account of bill books which are not as per running serial number and further the Accountant Sh. Naveen Goyal in his statement confirmed that he has changed the sale figure by increasing the cash sales after demonetization to increase the cash-in-hand. Regarding the construction of show room it was mentioned that the investment as per book was at Rs. 73,06,405/- as against the valuation report of the DVO who worked out the cost of the construction at Rs. 1,32,24,900/- . Also on verification of the document found during the course of search/survey, it has been noticed that certain bills have not been recorded in the construction account in the books. Also payment in cash shown to be made to Sh. Kesar Singh have been denied by him which shows that receipts are not genuine and actual investment have not been recorded in the regular books of account. It was mentioned by the AO that in view of the above facts, books maintained by the assessee are not correct & complete and does not depict the real true state of affairs and proposed to reject the same u/s 145(3) and - assessment to be completed as provided u/s 144. It was further mentioned that during demonetization the assessee deposited Rs. 2,90,20,000/- in its CC account and was required to produced documentary evidence with regard to source of cash deposit and proposed to make appropriate addition on account of 'non-genuine' sales entered after demonetization, in back dates. It was also proposed to make addition on account of unexplained investment in construction of the show room of the basis of valuation report of the Departmental Valuation Officer. The reply filed on 15.03.2019 is reproduced in the assessment order where the assessee accepted the fact of bills not being in serial and it was argued that there is no provision of law requiring that the sale bill book need to be in chronological order though the law required transaction to be accounted, recorded, disclosed, declared, which has been done by the assessee. It was argued that the assessee maintained different bill book for different variety of jewellery. Regarding the difference in cost of construction, it was submitted that the same was attributable to actual expenditure with estimated expenses on yearly basis and the difference are within permissible limit under law. Regarding Kesar Singh, contractor, it was submitted the construction was done by him on cum- material basis and that certain bills would have been issued by suppliers to Kesar Singh titled favoring the assessee which does not signifies that the bill is of the assessee. Regarding section 145(3) it was submitted that assessee has maintained books of account with supporting vouchers and completion of assessment u/s 144 is unwarranted. Regarding cash deposit, it was argued that the detail reply has been submitted and it does not call for any addition. The reply of the assessee was considered and discussed by the AO stating that the assessee admitted that the bills representing serial number 1-50, 51-100 and 101-150 are not as per regular series and apparently these bill books, which are out of series, were not found entered in a particular set of account. Further the Accountant of the assessee admitted that these bills were entered on a later date to inflate the cash-in-hands and the statement of the accountant Sh. Naveen Goyal was again confronted to the assessee. The contention that books

of account were duly maintained and supported by vouchers was not acceptable as two set of books of account were found with different sale figures. In view of the above discrepancies the books of the account of the assessee was not found reliable by the AO as these does not depict a real & true statement of affairs, therefore these were "rejected u/s 145(3). And the assessment was made by making addition on account of cash deposit during demonetization (Rs. 2,19,85,395/-) and unexplained investment in construction at Rs. 7,96,905/-. On the issue of addition on account of cash deposit during demonetization the AO mentioned that assessee deposited Rs. 2,90,20,000/- in CC account. During assessment, data -taken from Pen Drive and hard disk of accountant computer were operated and comparison of sale for the month of October, 2016 revealed that bills from Sr. No. 15 to 147 totaling Rs. 2,19,85,385/- have not been entered in one set of book. As per the AO, these bills were prepared and entered after demonetization on 08.11.2016 and shown to have been issued in the month of October, 2016 i.e. back dated to increase the cash-in-hand as on 08.11.2016, for justifying cash deposit of Rs. 2,90,20,000/- in its bank account. This fact was admitted by the accountant and assessee could never rebut the statement of the Accountant which was confronted during search as well as during assessment proceedings. The arguments of the assessee about general increase in sales in October is not supported by his own books and comparative figures of sales are tabulated by the AO in the assessment order which shows 32% of the annual sales in October, 2016 as compared to maximum percentage of 11.23 in assessment year 2015-16. The AO concluded that on perusal of both set of books of account, statement of the accountant and content of the bill books, shows that assessee has inflated its cash-in-hand as on 08.11.2016 to the extent of Rs. 2,19,85,395/-. Accordingly, an addition of this amount of Rs. 2,19,85,395/- was made as unexplained money u/s 69A of the Income Tax Act, 1961 to the income of the assessee, to be charged to tax u/s 115BBE.

The facts of the case, basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR in this issue submitted that the assessee is maintaining regular books of account which are being audited year after year and return is filled on the basis of such audited books. It is also submitted that in the tax audit report complete quantitative details of various items of gold, diamonds and other jewellery have been given. As per AR, assessee is maintaining day to day stock register of each and every item dealt by it and such register was produced during the assessment and no defect or any omission with regard to purchasing and sales have been pointed out by the AO. As per the AR, all purchases are from identifiable parties and majorly all payments for purchase are through banking channels, all purchases and sales are fully vouched and there is no finding of the AO that any item of purchase and sale are not verifiable and even during the course of search none of the loose papers indicate such things. The AR argued that the assessee was having sufficient stock of jewellery bullion, diamond etc. and the same were duly accounted for in the books of account, the entire sales were made from regular stock in hand, hence it is a case where stock is out and cash comes in which stands deposited in the bank account and the same is disclosed in the books of account of the assessee. It is also submitted that during the course of search no excess cash was found neither any cash was seized nor any excess stock of gold, diamonds jewellery and other items were found. The assessee

deposited Rs. 2,90,20,000/- during demonetization and the AO alleged that the assessee maintain two sets of books of account. As per AR, this is totally incorrect and the books found at Accountant's computer were at Accountant's house and not found during the search at the premises of the assessee and assessee's complete books were found in the Pen Drive at Accountant's house and argued that addition could not have been made in the hand of the assessee for the alleged difference in sales entered in the books. Regarding increase sale in the month of October, 2016, the AR submitted that this was due to exhibition held by the assessee. The AR argued that cash deposited in the bank was as per books of account and the same can be verified from the sale bills and submitted that every year there is higher sale due to clearing of old stock/old design. Regarding the statement of Naveen Goyal, the AR submitted that he has stated certain alleged manipulation in the actual books of the assessee as per direction of partner, may be under coercion/pressure but Sh. Kamal Aggarwal, partner has clearly denied it during the statement at the time of search. It is also argued that the Accountant was only a part time accountant and his computer has data of other assessees also. Regarding the bill books not being in serial number, the AR reiterated the arguments which were taken before the AO at the time of assessment. The AR also argued that statement of the Accountant was recorded at the back of the assessee and even cross examination of the Accountant was not provided during assessment proceedings. The AR also referred to the Evidence Act, 1872 and Information Technology Act, 2000 to argue that the data from the Accountant Sh. Naveen Goyal cannot be regarded as evidence. A reference was also made to the provision of Section 69A and the AR argued that the same is not applicable to the fact of the assessee as the assessee has explained the nature & source of cash deposit in the bank account. The AR further argued that no addition u/s 69A can be made in the absence of corroborative evidence and tax liability cannot be fastened without cogent evidence and the burden was on the department to prove the correctness of the addition and suspicion cannot be the basis of addition. As per AR the amount deposited in the bank is out of sale of jewellery which has been held by the assessee as stock-in-trade and since the deposit in the bank are out of sale of stock, the stock depleted and cash came in. It is also argued that each and every detail was provided to the AO along with the details of the opening stock, closing stock etc. and argued that the addition has been made on suspicion and surmises. The AR referred to the various case laws regarding the demonetization and submitted that the stock records were kept on day to day basis. It is alternatively also argued that the AO made addition by rejecting the books and which has resulted in unrealistic higher net profit. Regarding the rejection of the books of accounts, the AR has argued that the same has been done on the basis of statement of the accountant whose testimony cannot be relied upon. The AR referred to various case laws relating to the demonetization in support of his contention and argued that the books should be accepted unless some evidence is found to the contrary, it was further Submitted that the action of the AO in adding the cash sales amount to double #C\$iti0n since, such sales have also been reflected in the books of accounts of the ass'essee and, thus it would amount to double addition and placed reliance on certain case laws. It is also argued that the AO without taking into consideration the VAT returns has made the additions. Regarding the applicability of Section 115BBE, the AR argued that the said provision was introduced to only curb the practice of laundering of unaccounted and unexplained money by taking advantage of basic exemption

limit. It is argued that provision of this section has been applied by the AO at the rate of tax which came into effect on 15.12.2016. However, a perusal of the section shows that the change was inserted with retrospective effect from 01.04.2017. Hence, the arguments of the AR are not found acceptable. In the second submission, the AR has argued that without prejudice, if the data recovered from the residence of the Accountant is considered then also no addition is called for because there is sufficient stock of gold and other items, which proved beyond doubt that cash has been recovered by way of sales and profit on such sales have been disclosed by the assessee and accepted by the AO. The AR argued that from the stock tally, there was no shortage of stock. As per the AR, the AO while computing the income has taken the returned income and then the addition has been made, which as per the AR means that the AO has accepted the sales as per alleged inflated figure of sales and therefore, the profit embedded on such transactions on sales have already been disclosed and no separate addition on account of further credit can be made. For this, the AR placed reliance on various case laws. As per the AR, the assessee has sufficient cash in hand for depositing in the bank account and to meet other expenses by taking data of cash sales as per the data seized from the residence of the Accountant and the data as per the regular books of account and argued that there is no negative cash balance at all. The AR argued that when the sale & stock figures have been accepted, then no case of unexplained money can be made out as per the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Akshit Kumar. Regarding the rejection of books, it is submitted that the detailed reply was filed to the AO in response to the show-cause issued in this regard. As per the AR, the enhanced sales have been reflected in the Audited books of the assessee and on one hand the credit of such sales have been made to the sales account and correspondingly the stock items have been reduced. It is also mentioned that at the time of search, no excess or shortage of stock was found and only a difference of Rs. 1,01,000/- was calculated that too on account of certain difference in weight. Lastly, it was submitted that percentage of cash sales to the total sales is very high and in some months, it is to the extent of 95% and the book result have been accepted all along and small variation in GP is on account of gold rate. The above arguments of the AR have been considered but not found fully convincing. The argument of the AR regarding the statement by Sh. Naveen Goyal, Accountant given under coercion/pressure is not found tenable since there is nothing of this sort on records. Sh. Naveen Goyal, Accountant has never alleged any coercion/pressure from the department for given such statement. In fact, the two sets of books of account were found from his possession and when asked to explain, he admitted that he has changed sale figures of October, 2016 by increasing cash sales after demonetization to generate cash-in-hand in the books of account and he further submitted that the said modification was done on the direction of partner on 10.11.2016 on the basis of sales bills provided to him which were back dated, to generate cash-in-hand of approximately 2.90 Cr. on 08.11.2016. Therefore, all other argument of the AR that the books are audited or that the purchase and sales are accountant for becomes irrelevant when it is seen that bogus cash sale have been entered on the basis of back-dated bills by the accountant as per the direction of the partners. Another fact indicating manipulation and back dating of cash sales is that the sale bill books were not in serial and the AO has rightly mentioned that these bills books, which were out of serial, were not found entered in a particular set of books of account and although there may not any specific rule for using bill

books in chronological order but certainly these are the guiding factor while analyzing the sanctity of two data. The arguments about recording the statements of the accountant at the back of the assessee and opportunity for cross examination is also not tenable and here it is relevant to mention that the AO has clearly written in the assessment order that the statement of the accountant was confronted to Sh. Kamal Aggarwal at the time of his statement recorded u/s 132(4) and reproduced the relevant Question No. 4 in the assessment order. It is also important to note that the assessee has also filed return on the basis of data found from the possession of the Accountant. The Accountant is an employee of the assessee and by providing the statement to the assessee, the requirement of the law has been fulfilled. If the assessee wanted any rebuttal in this regard, it was free to produce the Accountant as assessee's witness and got his statement recorded before the AO at the time of assessment. No such step has been taken by the assessee to produce and examine the Accountant as its witness and therefore the statement of the accountant recorded at the time of search when his residence was also covered simultaneously alongwith the assessee has to be accepted as such to be true & correct. Hence, this argument of the AR is found without merit. The argument about the application of Section 69A is also not found acceptable as the assessee was found to be the owner of unexplained money deposited in the bank account of the assessee and the explanation offered by the assessee tuned out to be false/manipulated. The addition has not been made merely on suspicion and rather the AO made the addition on the basis of facts and documents found during the course of search and unearth as a result of search. The argument about the deposit in bank being out of sale of stock fades away in the light of the fact that as per the statement of the accountant, the cash sales were entered after demonetization on the basis of back dated bills as per the directions of the -partner. The argument of the AR regarding rejecting of books solely on the basis the statement of the accountant is not found correct because the AO has mentioned that some of the bills relating to the construction activities were also not found entered in the books and therefore on the basis of the documents found during the search, the books were unreliable and hence rightly rejected. Therefore, in view of the above discussion and facts on record including the facts mentioned by the AO in the assessment order, the AO was right in making the addition on account of back-dated bills entered in the books after demonetization to create cash-in-hand.

However, the argument about double addition on the profit earned on the sales corresponding to the amount of Rs. 2,19,85,395/- added as unexplained cash has some merits. It is seen that the AO after rejecting the books of accounts, made certain additions to the returned income of Rs. 22,52,980/-, which' (returned income of Rs. 22,52,980/-) includes the profit earned on the back dated sales of Rs. 2,19,85,395/- also. When the sum of Rs. 2,19,85,395/- is not considered as part of the sales and added directly to the income of the assessee u/s 69A, then this figure is to be subtracted from the sales shown by the assessee and the corresponding profit on this sale should also be reduced from the gross profit and the income declared by the assessee in the return of income at Rs. 22,52,980/-. The assessee has shown turnover of Rs. 12,83,62,907/- with gross profit of Rs. 1,55,76,039/- declaring a GP rate of 12.21% and the gross profit on the bogus sales of Rs. 2,19,85,395/- comes to Rs. 26,84,416/-. The assessee has declared net profit @ 1.57% and the net profit on the sales of Rs. 2,19,85,395/- comes to Rs. 3,45,170/-. Some of the expenses are fixed expenses not dependent

on turnover, however the other expenses relates to the turnover of the assessee and hence, keeping in view the overall facts of the case, the assessee is entitled for relief on this account and ends of justice would be met, if a relief of Rs. 15 lacs is allowed on account of profit corresponding to the back dated sales of Rs. 2,19,85,395/- which have been separately added by the AO to the returned income of the assessee in the assessment order.

To sum-up, out of total addition of Rs. 2,19,85,395/- made by the AO on this point, the appellant gets relief of Rs. 15,00,000/- and the addition to the extent of balance amount of Rs. 2,04,85,395/- is upheld.

Accordingly, this ground of appeal is partly allowed.

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the cash was deposited in the regular bank account out of the accounted sales recorded in the regular books of account disclosed to the department and that no doubt had been raised by the Department for the opening stock, purchases and closing stock as on 31/03/2017. It was submitted that no difference in the stock of any variety in quantity of gold and other items was noticed by the department at the time of search which took place on 12/04/2017. The reference was made to page no. 226 to 234 of the assessee's compilation, emphasis was made to page no. 228 para 3, and it was stated that though certain difference had been noticed during the search but after making the necessary clarification the addition of Rs. 1,01,869/- only had been made which was negligible by taking into consideration the fact that the closing stock as on 31/03/2017 had been to the tune of Rs. 3,66,66,205/-, the addition work out to 0.27% only which was of no significance at all. It was stated that if, in the regular books of accounts opening stock as on 01/04/2016, purchases & sales during the year 2016-17 and the closing stock as on 31/03/2017 were accepted then no adverse inference could have been drawn.

8.1 It was submitted that the assessee was engaged in the business of trading of Gold, Silver and Diamond jewellery & Moti etc. for the past many years and

was being assessed to tax, the returns of income were filed on the basis of audited books of accounts year after year wherein no major addition had been made either in the past or in the subsequent assessment year. It was stated that the assessee had engaged a part time accountant Shri Naveen Goyal who had also been working for other parties, from his residence, one computer and one pen drive was found from his possession which was taken into custody. In the said computer there was difference in sales figures of October 2016 only as compared to the sale figures recorded in the pen drive. The AO asked about the source of cash deposits amounting to Rs. 2,90,20,000/- in the bank account of the assessee for which explanation was given that the cash deposited was on account of exhibition sale held in October 2016 and regular sales during the festive season for which pamphlet was furnished, copy of which is placed at page no. 189 of the paper book but the AO had not agreed since no pamphlet was found during the course of search. However, if no such evidence was found in the form of pamphlet, it could not be said that no exhibition was held. It was contended that the AO had referred to the statement of Shri Naveen Goyal, the part time accountant recorded during the course of search in which it had been stated by him that he had enhanced the sales in the books of accounts of gold items from 01/10/2016 to 29/10/2016 out of the available stocks as per the instruction of the management and the said statement was confronted to Shri Kamal Aggarwal one of the partner who had not agreed to the statement of Shri Naveen Goyal therefore the AO issued a show cause notice and made the addition of Rs. 2,19,85,395/- on the basis of cash sales reflected in the sale bills.

8.2 It was further submitted that the assessee maintained date wise stock register in respect of different items of gold and diamond jewellery which is placed at page no. 39 to 167 of the assessee's paper book. It as reiterated that no defect had been found by the AO in respect of stock as on 31/03/2016 or on 12/04/2017 i.e; on the date of search which was very close to 31/03/2017.

8.3 It was submitted that all the purchases were from identifiable parties and the payments had been made through normal banking channels, there was no evidence of purchases or sales outside the books of accounts as is evident from the assessment order for the year under consideration and the succeeding assessment years. It was emphasized that all the sales had been made out of the regular stock of the assessee as per the books of account and there was no unexplained money was found in the books of accounts of the assessee on the one hand there was decrease of stock in lieu of that, the cash had been received from the customer which had duly been recorded in the regular books of accounts of the assessee.

8.4 As regards to the alleged difference in the cash sales from 01/10/2016 to 29/10/2016, it was stated that correct books of accounts had been found from the assessee's premises and it was only from the residential premises of the part time accountant, certain sale difference in the electronic record of the Accountant's Computer for the month of October 2016 had been found but not from the assessee's premises. It was stated that the accountant had been working for many other parties and that the AO had not allowed the cross examination of the part time accountant while making the arbitrary addition. It was submitted that the assessee held exhibition every year and the sales were normally higher in certain month specially in the month of October 2016 due to the festive season as lot of festivals fell during that time like Diwali, Bhaiya Duj, Dhanteras, Karva Chauth etc.

8.5 As regards to the statement of the part time accountant was concerned, it was stated that the said accountant came twice in a week and no reliance could have been placed on his statement since the computer belonged to him only and he was working as a part time accountant with many other parties, even there was no admission by partner Shri Kamal Aggarwal relating to the

statement of Shri Naveen Goyal as had been mentioned by the Ld. CIT(A) at page no. 7 para 19 & 21 of the impugned order.

8.6 It was submitted that the cash was deposited during the post demonetization period as per the books of accounts and was verifiable from the sale bills which were found to be recorded in the regular books of account and there was no requirement to follow that bill books need to be in chronological order, though the provisions of law require transaction to be accounted for in the books of account. It was submitted that the separate bill books were maintained for different items of the jewellery as well as for exhibition and that the AO in para 5.2 of his order had agreed that there was no rule for keeping bill books in chronological order, therefore, no adverse view could have been drawn on this basis that the bill books were not in chronological order. It was stated that no opportunity for cross examination of Shri Naveen Goyal, the then part time Accountant was given for the statement recorded at the back of the assessee, therefore the addition on the basis of the said statement was not justified. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Andaman Timber Inds. Vs. CIT reported in 281 CTR 241.

8.7 It was submitted that when the stock was available in the form of opening & purchases then it was very difficult to hold that the sales made by the assessee were not out of the available stock and could not have been treated as unexplained. It was stated that it had not been a case of the department that complete stock tally was not there, therefore no addition could have been made even when cash was deposited out of the sales during the demonetization period. The reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of Agson Global Pvt. Ltd. Vs. PCIT in ITA No. 68/2021 order dt. 19/01/2022. Reliance was also placed on the decision of ITAT Vishakhapatnam Bench in case of Hirapanna Jewellers Vs. ACIT reported in 128

taxmann.com 291, copies of the same were furnished which are placed on record.

8.8 It was further submitted that since the sales proceeds had already been accounted for in the trading account and the said deposits in Bank Account were out of the sales and complete stock tally was there. Reliance was placed on the following case laws:

- *Andaman Timber Industries vs. CIT* reported in Civil Appeal No. 4228 of 2006 dated 2nd of September, 2015 reported in 127 DTR 0241 (SC).
- *Dhakeshwari Cotton Mills* reported in 26 ITR 0775 (SC)
- *Pr. CIT vs. Akshit Kumar* in ITA No. 348 of 2019 as reported in 197 DTR 121 (Del)
- *CIT vs. Poonam Rani (2010)* 326 ITR 223 (Del HC)
- *CIT vs. Om Overseas* 315 ITR 185 (P & H HC)
- Judgment of Hon'ble Jurisdictional Punjab & Haryana High Court as reported in 164 Taxman 101 (P & H) in the case of K. C. Malhotra
- Judgment in the case of Vinod Chadha reported in 73 [taxmann.com](#) 118 (Delhi Trib.)
- *Eland International (P) Ltd. vs. DCIT* as reported in 124 TTJ 0554 (Delhi Trib.)
- *CIT vs. Sudeep Goenka* as reported in 29 [taxmann.com](#) 402 (All)
- *Agson Global Pvt. Ltd. vs. PCIT (Central)-3, New Delhi* in ITA No. 68/2021 & CM No. 9319/2021 dated 19.01.2022 (Del HC)
- *Bansal Rice Mills vs. ITO* reported in 78ITD 326 (2001) Chd
- *Laxmi Rice Mills V/s. CIT* reported in 97 ITR 258 (Pat)
- *Dewas Soya Ltd., Ujjain vs. Income Tax (Appeal No. 336/Ind/2012)* order dt. 31/10/2012 (ITAT Indore)
- *Smt. Harshila Chordia vs. ITO (2008)* 298 ITR 349 (Raj)
- *R. B. Jesaram Fatehchand (Sugar Dept.) vs. CIT* Reported at (1970) 75 ITR 33 (Bom.)
- *M. Durai Raj vs. CIT* reported at [1972] 83 ITR 484 (Kerala)
- *Ms. Sunny Jewellery House vs. ITO* in ITA No. 196/Chd/2014 dated 06.05.2016 (ITAT Chd)
- *ITO vs. Jethu Ram Prem Chand* reported at [2001] 114 Taxman 219 (Delhi) (Mag.)
- *CIT vs. Vishal Exports Overseas Ltd.* in ITA No. 2471 of 2009 dated 03.07.2012 (Guj)
- *CIT (Central)-1 vs. Vatika Township Private Limited (2014)* 367 ITR 466 (SC)

8.8 It was submitted that in assessee's case duplicate set of books of accounts had not been found but only two sale records from 01/10/2016 to 29/10/2016 were found in the computer and pen drive of the part time Accountant and the explanation was given to the Ld. CIT(A) by furnishing a chart (copy of which is placed at page no. 188 of the assessee's compilation in order) to substantiate that there had been depletion in the stock of various items of jewellery specially 22 Kt. of Gold resultantly the stock as per books of accounts had depleted and the sales of such accounted stock had been reflected in the books of accounts and the resultant stock had been disclosed in the trading account which had been carried forward to the next years and was declared to the VAT Department also which had been accepted as well. The reference was made to page nos. 235 to 243 (which are the copies of VAT Returns) of the assessee's compilation. It was further stated that even if, for the sake of argument, the sales are taken as per sale record in the computer of the accountant then also there was no shortage of cash in hand which is evident from the Chart, copy of which is reproduced in page no. 59 to 60 of the assessment order. Therefore action of the AO in invoking the provisions of section 145(3) of the Act was not correct.

8.9 It was stated that the explanation was given to the Ld. CIT(A) that percentage of cash sale in the earlier years was in the range of 94% to 95% in the F.Y. 2014-15 and 2015-16 when there was no demonetization period and even during the year under consideration it was at 92% in the month of July which matched to the cash sales in October 2016 to the tune of 94%. It was submitted that the Ld. CIT(A) was not justified in observing that the provisions of section 69A of the Act were applicable in assessee's case as the addition had been made on suspicion and only on the basis of statement of accountant. It was stated that no unexplained money was found and the assessee was in a position to explain the source of the amount recorded in the books of account

and the amount deposited in the bank account was out of the sales of stock available with the assessee then the provisions of Section 69 of the Act were not applicable. Therefore the Ld. CIT(A) was not justified in sustaining the addition after giving a relief of Rs. 15,00,000/- only.

8.10 It was stated that even if the books of account are to be rejected for the sake of arguments, a reasonable view has to be taken considering the facts and not an arbitrary view is to be taken. It was also stated that in the present case, the findings of the Ld. CIT(A) are contradictory in the sense that on the one hand he had accepted that it is a case of double addition but he had ignored the fact that not only the profit had been declared and offered in the books but the entire sales of Rs. 2,19,85,395/- was recorded in the regular books of accounts and the stock had gone down after the sales. The reliance was placed on the judgment of the Hon'ble Apex Court in the case of CIT Vs. Lakshminarayan Badri Dass reported at 5 ITR 170.

9. In his rival submissions the Ld. CIT DR reiterated the observations of the authorities below in their respective orders and strongly supported the orders passed by them. It was further submitted that the assessee deposited the cash in bank only after the incident of demonetization and that two sets of books were found from the accountant in computer as well as pen drive during the course of search which took place at his residence. It was also submitted that the accountant had given the statement on the basis of which only the AO made the addition after confronting the statement of the accountant to the partner of the assessee. It was further submitted that in the preceding as well as succeeding years, sales in the month of October was not at such a high figure as had been shown in the year under consideration. Therefore the addition on the basis of the statement of the accountant as well as by rejecting the books of account u/s 145(3) of the Act, was rightly made by the AO, and since other set of books

was found, the findings given by the Ld. CIT(A) were not contradictory as alleged by the Ld. Counsel for the assessee.

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is noticed that the AO made the addition of Rs. 2,19,85,395/- on account of cash deposited, claimed to be out of the sales which were accounted for in the regular books of accounts during the year relevant to the assessment year under consideration. The said addition was made for the reasons that during the course of search at the residential premises of one Shri Naveen Goyal (who was engaged as a part time Accountant with the assessee) entries relating to the assessee were found in his computer as well as pen drive. However when the entries in computer were compared with that of pen drive there was difference in the sales figures of October 2016. When the matter was taken to the Ld. CIT(A) the relief of Rs. 15,00,000/- was allowed by observing that the net profit of 1.57% had been declared by the assessee in the books of account and that the profit had already been disclosed on the sales of Rs. 2,19,85,395/-, which was added by the AO. In the present case it is noticed that the assessee was maintaining the sales bills which were recorded in the regular books of accounts maintained in regular course of business by the assessee who was also maintaining the stock register and no discrepancy was found in the quantitative tally in the stock register, the sales shown by the assessee amounting to Rs. 2,19,85,395/- was added by the AO, the quantity relating to the said sales was reduced in the stock register from the opening stock as well as purchases made during the year under consideration. In the instant case when there was a search at the premises of the assessee on 12/04/2017 no discrepancy in respect of cash or stock was found which is evident from page no. 227 to 234 of the assessee's compilation which is the copy of the assessment order dt. 27/03/2019 for the succeeding assessment year 2018-19 wherein the addition of Rs. 1,01,869/- only

was made on account of difference in the stock in various items, which was negligible. The assessee was also filing regular returns with the VAT Department copies of which are placed at page no. 235 to 243 of the assessee's compilation, in those VAT Returns also no difference/defect was pointed out which clearly shows that the stock available with the assessee in the form of opening stock and purchases has been accepted by the Department as well as the VAT Department. In our opinion the amount received by the assessee from the customer after selling the goods/ jewellery out of the accepted stock (opening stock and purchases) cannot be considered as the income outside the books of accounts.

10.1 In the present case the Department has not brought any material on record to substantiate that the amount received by the assessee by selling the jewellery / goods out of the opening stock and the purchases was utilized elsewhere and not for depositing in the Bank Account.

10.2 In the instant case the opening stock, purchases and the closing stock has not been doubted, no inflated purchases were found or suppressed sales were noticed during the course of search held on 12/04/2017 i.e; just after the closing year relevant to the assessment year under consideration. It is also not a case that the assessee was not selling the stock/jewellery through exhibition which is clear from the figures given in para 18 of the impugned order which revealed that the percentage increase in sales in the month of exhibition as compared to the preceding month was 114.99% and 118.26% in the month of March 2014 and July 2015 respectively while in the year under consideration the percentage increase was only 62.88% in the month of October 2016. The assessee explained before the Ld. CIT(A) and furnished the chart for various assessment years which had been reproduced at page no. 65 to 67 of the impugned order, in the said chart it has been shown that the cash sales in the month of October 2016 i.e; period under consideration was 92% while in the preceding year it was 95% in

April 2014, 93% in May 2015, 94% in June 2015, 93% in July 2015, 92% in July 2016. So it is not a case that in the month of October 2016 only the cash sales were more. It is also noticed that the cash sales in October 2016 was the same as was in July 2016, therefore, it cannot be said that the assessee made more sales in cash during the period just before demonetization in the month October 2016, rather the cash sales were more in different months of the preceding year where there was no demonetization. It is also noticed that the GP rate shown by the assessee for the year under consideration was 12.21% which was comparable with the preceding year 2016-17 at 12.72% which shows that there was a small decline in the GP rate for the year under consideration in comparison to the earlier year, however in the assessment year 2014-15 and 2015-16 the G.P. rate was at 16.62% and 13.47% respectively which shows that there was a consistent declining trend in the G.P. rate which occurred due to increase in the sales which were at Rs. 3.04 crores, Rs. 9.46 crores, Rs. 10.68 crores and Rs. 12.83 crores for the A.Y. 2014-15, 2015-16, 2016-17 and 2017-18 respectively which also shows that due to increase in turnover the G.P rate declined, so, it cannot be said that the cash sales made by the assessee during the pre demonetization period i.e; October 2016 resulted in extraordinary fall in the G.P. rate.

10.3 In the instant case the assessee maintained the proper books of account in regular course of business which were duly audited by the independent Chartered Accountant under section 44AB of the Act, all the sales & purchases and stocks were recorded in the books of account which had not been doubted by the AO. The sales shown by the assessee had been accepted by VAT/ Sales Tax Department, the book result shown by the assessee were in the same line as had been accepted by the Department in the preceding years, the cash sales made by the assessee had been credited in the books of account and reduction in the stock has not been doubted, even during the course of search just after the closing of the year under consideration, neither

excess nor shortage of stock was found in the stock register maintained by the assessee, the identity of the purchasers to whom cash sales had been made was disclosed in the sale bills where the name, address and PAN was mentioned. It is also not a case that there was sudden spurt in the sale only in the month of October 2016 as the chart furnished by the assessee before the Ld. CIT(A) clearly revealed that the cash sales were on higher side in another months of different preceding years. The AO made the addition on the basis of difference in the cash sales from 01/10/2016 to 29/10/2016, only on this basis that the said difference was there in the computer and the pen-drive found from the residential premises of the part time accountant of the assessee but no opportunity to cross examine the said accountant was given to the assessee and moreover, no specific defect was pointed out in the proper books of account maintained by the assessee in the regular course of business and nothing is brought on record to substantiate that the sales from 01/10/2016 to 29/10/2016 were not made, out of the existing stock available with the assessee. In the present case the assessee explained that the exhibitions were held in every year and the sales were normally higher in certain month and that in the month of October 2016 the cash sales was on the higher side as lots of festivals like Diwali, Dhanteras, Bhaiya Duj and Karwa Chauth etc. fell in that period. The said explanation cannot be brushed aside considering the trend of the society in India wherein people make the purchases of jewellery during the festive season.

10.4 On a similar issue the ITAT Chandigarh Third Member Bench in the case of *Bansal Rice Mills Vs. ITO (supra)* held that “ *since the sales proceeds have already been accounted for in the trading account no addition could be sustained even if the said deposits could be treated as bogus sales as complete stock tally was there*”.

10.5 In the present case also the assessee was maintaining complete stock tally, the sales were recorded in the regular books of accounts and the amount was deposited in the bank account out of the sale proceeds, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

10.6 On a similar issue their Lordship of the Hon'ble Delhi High Court vide recent judgment pronounced on 19/01/2022 in the cases of Pr. CIT(Centra)-3 vs. M/s Agson Global Pvt. Ltd. In ITA No. 68-73/2021 observed in para 18 to 18.9 as under:

18. Before we conclude let us deal with the submissions advanced by Mr Sharma in the context of the three issues discussed. The submission made by Mr Sharma that because there was a huge variation in the share premium i.e., the rate at which share premium was paid by the investor entities and the rate at which it was sold, and therefore addition concerning amount received as share capital/ share premium, should be sustained, is not tenable. The answer, to our minds, lies in what has been held by the Tribunal, which is, that at the end of the day it was found that it was the assessee's own money, which had been routed through the investor entities. As indicated above, as a matter of fact, in AY 2012-2013, addition on this account was sought to be made by the A.O., which was deleted by CIT(A) in appeal. The revenue, for reasons best known, did not carry the matter in appeal.

18.1. We agree with the Tribunal, as observed above, that since no incriminating material was found qua AYs 2012-2013 to 2014-2015 vis-avis share capital/share premium, the addition under Section 68 could not have been made, apart from the fact that the revenue was unable to dislodge the conclusion arrived by the Tribunal that the money invested in the assessee was the assessee's own money.

18.2. Insofar as the submission made by Mr Sharma that, one Mr Praveen Agarwal i.e., the purported accommodation entry provider had denied making any investment in the assessee, and, therefore, it was a factor that the Tribunal ought to have taken into account, is a submission which fails to appreciate the following facts:

(i) That Mr Praveen Aggarwal's statement was recorded in a separate search action on 12.11.2012; which, as is obvious from the record, occurred before the search action that was carried out vis-a-vis the assessee on 21.03.2017.

(ii) Share capital was received from three companies controlled by Mr Praveen Agarwal i.e., Abhilasha Exports Pvt. Ltd., Subhshree Hirise Pvt. Ltd. and Pushpanjali Commotrade Pvt. Ltd. in AY 2012-2013.

(iii) The total amount, which the assessee received, as share capital/share premium in AY 2012-2013 amounted to Rs.48.20 crores, which included monies received from the aforementioned three companies controlled by Mr Praveen Agarwal.

(iv) These transactions were examined by the A.O. in A.Y.2012-2013, and an assessment order dated 24.03.2015 was passed under Section 143(3) of the Act whereby, the addition of Rs. 18.50 crores was made by the A.O. under Section 68 of the Act, as unexplained credits. As indicated above, in appeal, the CIT(A), by an order dated 31.03.2016, set aside the deletion and, while doing so, observed that due confirmations were received from investor entities against notices issued to them under Section 133(6) of the Act.

(v) The revenue did not point to any part of the record which would show that the statement made by Mr Praveen Agarwal was furnished to the assessee and was allowed to cross-examine or rebut the statement. Since the assessee was not allowed to cross-examine or rebut the statement made by Mr Praveen Agarwal, the said statement could not be used against the assessee. Furthermore, there is no ground taken in the appeal which makes any such assertion.

(vi) The failure on the part of the revenue to demonstrate from the record that the aforesaid person i.e., Mr Praveen Agarwal was examined by the A.O. in the assessment proceedings concerning the assessee. Nothing was shown to us, which could establish that the A.O. conducted an independent enquiry to test the veracity of the statement made by Mr Praveen Agarwal.

18.3. Therefore, given the aforesaid circumstances, we are of the view that no cognizance can be taken of the statement made by Mr Praveen Agarwal.

18.4. As regards Mr Sharma's contention that although the Tribunal has relied upon the deviation report in support of certain conclusions arrived at by it, it has ignored certain other parts of the deviation report. For instance, reference is made to the fact that the deviation report prepared by the A.O. concluded that the assessee had introduced unaccounted cash to the extent of Rs.99.04 crores, which is liable to be added to its total income for AY 2017-2018. We have already discussed this aspect at length in the earlier part of the judgment. Suffice it to reiterate that the assessee's explanation that the banks had advised deposit of money in tranches, does not appear to be unreasonable.

18.5. Besides this, as noticed above, the Tribunal, after a detailed analysis, has concluded that the cash deposits made post demonetization were in line with the cash deposits made in the earlier years, against corresponding cash sales.

18.6 As regards the other observations made in the deviation report on which Mr Sharma has placed reliance i.e., that addition on account of share premium should be made under Section 68 of the Act, in cases where money was not sourced from the assessee is answered by the Tribunal after noticing the fact that investments from unrelated parties were received only in AY 2012-2013. The addition made by the A.O. for AY 2012-2013, as observed above, was deleted by CIT(A) in the assessee's appeal. It would be relevant to note that, insofar as

related parties were concerned, the deviation report clearly stated in paragraphs 3(iii) to (ix) that the ultimate source of money was the assessee itself. As a matter of fact, the observation made by the A.O., in paragraph 3(ix) of the deviation report, was different from what was understood by the revenue:

"ix) As the source of share capital/premium can be traced directly to the bank account of the assessee company and there is no cash movement, addition of entire share capital/premium of Rs, 365.28 Crs is not justifiable and may lead to allegation of high pitch assessment. Only where there is no direct trail of money being sourced from the bank account of the assessee, the introduced share capital/premium needs to be added to the income of the assessee."

18.7. Concededly, the Tribunal, in its analysis, has adverted to the trail of money (which is something we have noticed above), and, therefore, its conclusion that it was not unexplained credit, and thus, not liable to be added under Section 68 of the Act to the income of the assessee, cannot be disturbed.

18.8. Insofar as the submission of Mr Sharma that the deviation report adverts to rejection of books of accounts and refers to the shortage of stock amounting to Rs.450 crores, is concerned, the same has already been alluded to by us, and, therefore, needs no further elaboration.

18.9 Likewise, the aspect concerning cash deposits made post demonetization and bogus purchases/sales have also been discussed hereinabove at length.

10.7 In the present case also as we have already pointed out in the former part of this order that the AO made the addition on the basis of the statement of Shri Naveen Goyal, the then part time accountant of the assessee but no opportunity to cross examine to rebut the statement made by Shri Naveen Goyal was allowed to the assessee and moreover nothing was brought on record to substantiate that cash obtained by the assessee from the sales which reduced the stock of the assessee was utilized elsewhere and that the cash sales made during the month of October 2016 were in the line of the cash sales in earlier years and was equal to the sales in the Month of July 2016, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

10.8 Similarly the Hon'ble Patna High Court in the case of Lakshmi Rice Mills Vs. CIT (1974) 97 ITR 0258 (supra) held as under:

"It is a fundamental principle governing the taxation of any undisclosed income or secreted profits that the income or the profits as such must find sufficient

explanation at the hands of the assessee. If the balance at hand on the relevant date is sufficient to cover the value of the high denomination notes subsequently demonetised and even more, in the absence of any finding that the books of account of the assessee were not genuine, the source of income is well disclosed and it cannot amount to any secreted profits within the meaning of the law. What has to be disclosed and established is the source of the income or the receipt of money, not the source of the receipt of the high denomination notes which were legal tender at the relevant time."

10.9 In the present case also the sales made by the assessee to cover the cash deposited in the bank post demonetization, was sufficient source of the cash deposited i.e; the sales from the existing stock available with the assessee and was well explained, therefore, the addition made by the AO and sustained by the Ld. CIT(A) was not justified.

10.10 On a similar issue the Hon'ble Delhi High Court in the case of PCIT Vs. Akshit Kumar (supra) held as under:

"Enquiry under Section 133B which has been strongly relied upon by Revenue, was conducted in Financial Year 2016-17 i.e. post closure of the business. The ITAT has juxtaposed the same against the other relevant material on record. The crucial factor that prevailed upon the ITAT to decide the case in favour of the Assessee was the history of the case. The ITAT went by the trading account in the earlier years viz. opening stock, purchase and sales, closing stock, gross profits and assessment made by the Department in AY 2007-08 when assessment was framed under Section 143(3)/147. The ITAT observed that since the entire books of account had been scrutinised and the Assessee's income had been accepted, it also means that the entire opening stock, sales and closing stock made during the year stood accepted. Additionally, in respect of AY 2012-13 also, Assessee's trading activities were subjected to detailed scrutiny under Section 143(3). In the said year, the AO had rejected the trading result and even enhanced the GP rate and made an addition in the trading account. The ITAT thus held that in respect of AY 2012-13 the opening and closing stock and trading accounts including sales has not been disturbed. In these circumstances, the ITAT observed that in the impugned AY 2014-15, the audited balance-sheet reflected an opening stock of Rs. 19,53,29,660/- which stood accepted by the Department either under the scrutiny proceedings or by not selecting the return for scrutiny or by not taking any action to disturb such returned income. In these circumstances, it was held that the quantum figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Assessee. In view of these facts, the sales made by the Assessee out of its opening stock were not treated as unexplained income, to be taxed as income from other sources. It thus manifests that the ITAT has taken into consideration the entire material placed on record including the report of the AO. The ITAT has applied the rule of consistency and rejected the enquiry made by the AO in the relevant assessment year. No doubt principles of res judicata are not applicable to the Income-Tax proceedings however, it is equally well settled law that rule of consistency is a well- established and recognised principle applicable to the

Income-Tax proceedings. Pertinently, the Assessee had closed his business in July, 2015 after selling all the stocks and the survey carried out at a later stage would not have strong evidentiary value. Besides, all these aspects are completely factual in nature and we are unable to find any perversity in the impugned order. The factual findings recorded by the Income-Tax authorities, have been examined by the last fact-finding authority i.e. the IT AT. In absence of any perversity in the impugned order, court is not inclined to entertain the present appeal, which urges questions of law that are entirely resting on findings of fact. Therefore no question of law, much less substantial question of law, arises for consideration. Accordingly, the appeal stands dismissed."

10.11 In the present case also the opening stock, purchases & sales and closing stock, declared by the assessee has not been doubted, the sales were made by the assessee out of the opening stock and purchases and the resultant closing stock has been accepted, the sales had not been disturbed either by the AO or by the sales tax / VAT Department and even there was no difference in the quantum figures of the stock at the time of search on 12/04/2017, therefore, the sales made by the assessee out of the existing stock were sufficient to explain the deposit of cash (obtained from realization of the sales) in the bank account and cannot be treated as undisclosed income of the assessee.

10.12 On an identical issue the Coordinate Bench of the ITAT Visakhapatnam Bench in the case of ACIT, Central Circle-1, Visakhapatnam Vs. Hirapanna Jewellers [2021] 128 taxmann.com 291 (supra) held as under:

7. We have heard both the parties and perused the material placed on record. In the instant case, the assessee has admitted the receipts as sales and offered for taxation. The assessing officer made the addition u/s 68 as unexplained cash credit of the same amount which was accounted in the books as sales. In this regard, it is worthwhile to look into section 68 which reads as under:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

From the perusal of section 68, the sum found credited in the books of accounts for which the assessee offers no explanation, the said sum is deemed to be income of the assessee. In the instant case the assessee had explained the source as sales, produced the sale bills and admitted the same as revenue receipt. The assessee is engaged in the jewellery business and maintaining the

regular stock registers. Both the DDTT (Inv.) and the AO have conducted the surveys on different dates, independently and no difference was found in the stock register or the stocks of the assessee.

Purchases, sales and the Stock are interlinked and inseparable. Every purchase increases the stock and every sale decreases the stock. To disbelieve the sales either the assessee should not have the sufficient stocks in their possession or there must be defects in the stock registers/stocks. Once there is no defect in the purchases and sales and the same are matching with inflow and the outflow of stock, there is no reason to disbelieve the sales. The assessing officer accepted the sales and the stocks. He has not disturbed the closing stock which has direct nexus with the sales. The movement of stock is directly linked to the purchase and the sales. Audit report u/s 44AB, the financial statements furnished in paper book clearly shows the reduction of stock position and matching with the sales which goes to say that the cash generated represent the sales. The assessee has furnished the trading account, P& L account in page No. 7 of paper book and we observe that the reduction of stock is matching with the corresponding sales and the assessee has not declared the exorbitant profits. Though certain suspicious features were noticed by the AO as well as the DDIT (Inv.), both the authorities did not find any defects in the books of accounts and trading account, P&L account and the financial statements and failed to disprove the condition of the assessee. Suspicion however strong it may be, it should not be decided against the assessee without disproving the sales with tangible evidence.

7.2 In the instant case the assessee has established the sales with the bills and representing outgo of stocks. The sales were duly accounted for in the books of accounts and there were no abnormal profits. In spite of conducting the survey the AO did not find any defects in sales and the stock. Therefore we do not find any reason to suspect the sales merely because of some routine observation of suspicious nature such as making sales of 270 bills in the span of 4 hours, non availability of KYC documents for sales, non writing of tag of the jewellery to the sale bills, non-availability of CCTV footage for huge rush of public etc. The contention of the assessee that due to demonetization, the public became panic and the cash available with them in old denomination notes becomes illegal from 9-11-2016 and made the investment in jewellery, thereby thronged the jewellery shops appear to be reasonable and supported by the newspaper clippings such as The Tribune, The Hindu etc. It is observed from the newspaper clippings that there was undue rush in various jewellery shops immediately after announcement of demonetization through the country.

10.13 In the present case also the cash deposited post demonetization by the assessee was out of the cash sales which had been accepted by the Sales Tax / VAT Department and not doubted by the AO, there was sufficient stock available with the assessee to make cash sales and there was festive season in the month of October 2016 prior to the making of the cash deposit in the bank account out of the sales. So, respectfully following the aforesaid referred to

orders by the various Hon'ble High Courts and the Coordinate Benches of the ITAT, we are of the view that the impugned addition made by the AO and sustained by the Ld. CIT(A) was not justified, accordingly the same is deleted.

11. Vide Ground No. 9 and 10 the grievance of the assessee relates to the confirmation of addition of Rs. 7,96,905/- made by the AO on account of unexplained investment in the construction of the showroom.

12. The facts relating to this issue in brief are that during the course of assessment proceedings the AO confronted the assessee with the difference in the cost of construction as estimated by the departmental valuer and as shown by the assessee in the books of account. The AO pointed out that the departmental valuer had estimated the total cost of construction of the showroom at Rs. 1,32,24,900/- whereas the assessee had shown the same at Rs. 96,07,636/-. The AO mentioned that the assessee had filed detailed reply which had been discussed as under:

"The assessee in its reply stated that the difference of opinion amongst the valuation taken by the DVO, the timing of valuation the rates applied and extent of supervision involved.

This objection of the assessee is not acceptable as the DVO being a technical officer and valuation has been prepared by after taking care of all the factors as stated by the assessee.

2. The assessee has further filed detail of other expenditure which were not considered by the DVO while working out the difference. The assessee stated that total investment as per its books comes to Rs. 11233334/ as certain items of electric and furnishes were shown under different head in the books of accounts. After considering the details and evidence filed by the assessee the total investment as shown by the assessee at Rs. 1,12,33,334/-is accepted.

3. The assessee further stated that the DVO has given benefit of self supervision @ 3.75% whereas it should be given @ 10%. The contention of the assessee is not acceptable as the assessee has not carried out the construction under his supervision but as per his own version the contract was given to Sh. Kesar Singh for completing civil work including the cost of material. As such the benefit of 3.75% has rightly been given by the DVO and no further benefit on this issue is called for."

12.1 The AO also considered the bifurcation of the investment in the books of account and made the addition of Rs. 7,96,905/- by observing as under:

S.No.	A.Y.	Smt. Charu Aggarwal (in Rs.)	M/s Kalaneedhi Jewellers LLP(in Rs.)	Total (in Rs.)
1	2016-17	2219509	Nil	2219509
2	2017-18	4054857	3005700	7060557
3	2018-19	Nil	1953268	1953268

The total investment in the A.Y. 2017-18 and 2018-19 by Smt. Charu Aggarwal and M/s Kalaneedhi Jewellers LLP comes to Rs. 90,13,825/- as against Rs. 1,08,85,800/- estimated by the departmental valuer. In the A.Y. 2018-19, the investment shown by the assessee is more than the estimated by the departmental valuer whereas in the A.Y. 2017-18, the investment shown by the assessee is less than the estimated by the departmental valuer. However, considering the overall difference in two years, the total difference comes to Rs. 18,71,975/- which is being added in the hands of Smt. Charu Aggarwal and M/s Kalaneedhi Jewellers in the proportion of investment shown by them and is worked out as under:

A. Investment shown by Smt. Charu Aggarwal in A.Y. 2017-18	Rs. 4054857/-
B. Investment shown by M/s Kalaneedhi Jewellers LLP in A.Y. 2017-18	Rs. 3005700/-
C. Total investment shown by Smt. Charu Aggarwal and M/s Kalaneedhi Jewellers LLP	Rs. 7060557/-
Total difference as per valuation report	Rs. 1871975/-
Difference relatable to Smt. Charu Aggarwal	$\frac{1871975 * 4054857}{7060557} =$ Rs. 1075070/-
Difference relatable to M/s Kalaneedhi Jewellers LLP	$\frac{1871975 * 3005700}{7060557} =$ Rs. 796905/-

Accordingly, an addition of Rs. 7,96,905/- is being made in the hands of M/s Kalaneedhi Jewellers as unexplained investment in the construction of showroom u/s 69B of the Income Tax and charged to tax u/s 115BBE of the Income Penalty proceedings u/s 271AAB are being initiated on this undisclosed income.

{Addition of Rs. 7,96,905/-}

13. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted that the assessee was maintaining books of account with supporting vouchers therefore the assessment made under section 144 of the Act was unwarranted. It was further submitted that the difference in the valuation was mainly due to the opinion amongst the valuation taken by the DVO, the time of valuation, rate applied and extent of supervision involved. It was stated that the assessee got its books audited and the AO had not identified any mistake / omission in those records and no material was found warranting reference to

the DVO. It was further submitted that the difference in the value of construction was on account of difference of opinion, benchmark of quality, declared value in the books and as calculated by the department. It was further stated that the DVO applied CPWD rate which were higher as compared to the local rates for the property situated at Patiala and that the benefit of supervision @10% had not been allowed.

13.1 The Ld. CIT(A) after considering the submissions of the assessee observed that the AO had clearly mentioned that the bills which were found during the course of search / survey were not recorded in the books of account and such details were tabulated in the show cause notice dt. 07/03/2019 which had been reproduced in the assessment order therefore the contention of the assessee that the reference to the DVO was to be made only if some material had been found during the course of search was not tenable, since some of the bills in respect of purchase of construction material were found and seized during the course of search / seizure which were not entered in the books of account and the contractor Shri Kesar Singh in his statement before the DDIT(investigation)denied to have issued receipts which the assessee claimed to have been issued by him therefore the reliance placed by the assessee on the various judicial pronouncements was without merit.

13.2 As regards to the issue relating to the benefit of self supervision the Ld. CIT(A) observed that the AO in the assessment order had mentioned that as per the assessee's own version the contract was given to Shri Kesar Singh for completing civil work including cost of material therefore the claim of the assessee that the CPWD rates were to be applied was not acceptable because the assessee had not accounted for all the bills in the books of accounts and hence the value reflected in the books of account towards cost of construction was not reliable and that the DVO being a technical Officer prepared the valuation after taking care of all the factors which were stated by the assessee,

therefore, the AO was right in making the addition proportionate to the assessee's share on the basis of the difference calculated between the cost of construction arrived at by the DVO and as shown by the assessee after rejecting the books of accounts. He accordingly sustained the addition of Rs. 7,96,905/-.

14. Now the assessee is in appeal.

15. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the valuation officer had given benefit of only 3.75% for self supervision and the Ld. CIT(A) had mentioned that for the civil work one contractor Shri Kesar Singh was engaged and since other works were carried out under self supervision by engaging the labour manually, the benefit ranging from 10 to 15% on account of self supervision should have been allowed.

15.1 It was further submitted that the valuation officer had applied the CPWD rates rather than local PWD rates and as a matter of record the CPWD rates were higher by 20% than the PWD rates, therefore, the PWD rates should have been applied. The reliance was placed on the judgment of Hon'ble Apex Court in the case of Sunita Mansingha reported at 393 ITR 513.

It was contended that the valuation was a matter of opinion only which varied from person to person and the assessee had cited various judgments where the difference between the Government valuer and the cost declared by the assessee was within the range of 10%, the difference should have been ignored.

15.2 It was submitted that if the above contention of the assessee were to be accepted then there would remain no difference in the valuation. Considering the rates of the CPWD having been applied and further benefit of 3.75% only was allowed for self supervision instead of 10%, therefore, no addition was called

for and the Ld. CIT(A) was not justified in sustaining the addition made by the AO. The reliance was placed on the following case laws:

- *Honest Group of Hotels Pvt. Ltd. Vs. CIT*[2002] 123 Taxman 464(J&K): [2002] 177 CTR 0232
- *Suresh C. Mehta, Mumbai Vs. ITO* [2013] 144 ITD 427 (Mum. Trib)
- *John Fowler (India) Pvt. Ltd. Vs. DCIT I.T.A No. 7545/Mum/2014*(Mum Trib)
- *Sita Baikhetan Vs. ITO* (2016) 181 TTJ 0549: (2016) 142 DTR 0122: (2016) 050 ITR (Trib)0196(Jaipur-Trib)
- *Surendra S. Gupta Vs. ACIT*(2018) 170 ITD 732 (Mum Trib)
- *Rahul Constructions Vs. DCIT*(Pune Trib. Bench B) (2010) 38 DTR 19(Pune)(Trib)
- *Krishna Enterprises Vs. ACIT*(2017) 146 DTR 73(Mum Trib)
- *ITO Vs. LGW Limited* (Kol. Trib) (ITA No. 267/Kol/2013 dt. 07/10/2015

15.3 The Ld. Counsel for the assessee submitted that there was no justification in sustaining the addition made by the AO on account of valuation of the property as such the provisions of Section 115BBE were not applicable. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of Sunita Mansingha reported at 393 ITR 121.

16. In his rival submissions the Ld. CIT DR strongly supported the orders of the authorities below and reiterated the observations made in their respective orders.

17. We have considered the submissions of both the parties and perused the material available on the record. In the present case the AO referred the matter of valuation to the DVO relating to the construction of the showroom for which amount was spent by the assessee firm and Smt. Charu Aggarwal. The AO came to conclusion that there was difference in the valuation to the tune of Rs. 18,71,975/- and accordingly addition of Rs. 7,96,905/- was made in the hands of the assessee, the remaining addition of Rs.10,75,070/- was made in the hands of other co-owner namely Smt. Charu Aggarwal.

17.1 In the present case the assessee asked for the benefit of 10 to 15% on account of self supervision but the valuation officer had given a benefit of only 3.75% and even the valuation officer applied the CPWD rates instead of local PWD rates. The CPWD rates were higher than the PWD rates. As regard to the application of the rates while valuing the property the Hon'ble Apex Court in the case of Smt. Sunita Mansingha reported at 393 ITR 121 held as under:

“ (ii) That, however, in view of the finding recorded by the Tribunal that it was a settled principle of law that in place of the Central Public Works Department rates, the local Public Works Department rates were to be applied and adopted to determine the cost of construction there was no good ground to interfere with the decision of the High Court on the merits.”

17.2 We therefore keeping in view the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case are of the view that the Valuation Officer ought to have applied the local PWD rates instead of CPWD rates which were on the higher side.

17.3 In the present case it is also noticed that the total investment in the building was to the tune of Rs. 1,12,33,334/- which is evident from Sub Para 2 of para B at page no. 11 of the assessment order dt. 27/03/2019 and the DVO estimated the total cost of construction of showroom at Rs. 1,32,24,900/- . Finally the AO came to the conclusion that overall difference in the A.Y. 2017-18 and 2018-19 was at Rs. 18,71,975/-. The DVO while working out the valuation of the showroom had given benefits of self supervision @ 3.75% which the assessee claimed at 10% and if the PWD rates are applied instead of CPWD rates and the benefit @10% is given for self supervision the difference in the valuation as worked out by the DVO and shown by the assessee in the books of account would be less than 10%. In those circumstances no addition should have been made since valuation is a matter of opinion / estimation.

17.4 On the similar issue, various Benches of the ITAT has taken a consistent view that when the difference in valuation shown by the assessee and

estimated by the DVO is less than 10% then the AO was not justified in substantiating the valuation determined by the DVO for the cost shown by the assessee. The aforesaid view is supported by the decision of the various coordinate Benches of the ITAT in the following cases on the similar issue:

- *Honest Group of Hotels Pvt. Ltd. Vs. CIT*[2002] 123 Taxman 464(J&K); [2002] 177 CTR 0232
- *Suresh C. Mehta, Mumbai Vs. ITO* [2013] 144 ITR 427 (Mum. Trib)
- *John Fowler (India) Pvt. Ltd. Vs. DCIT I.T.A No. 7545/Mum/2014*(Mum Trib)
- *Sita Baikhetan Vs. ITO* (2016) 181 TTJ 0549; (2016) 142 DTR 0122; (2016) 050 ITR (Trib)0196(Jaipur-Trib)
- *Surendra S. Gupta Vs. ACIT*(2018) 170 ITD 732 (Mum Trib)
- *Rahul Constructions Vs. DCIT*(Pune Trib. Bench B) (2010) 38 DTR(Pune)(Trib) 19
- *Krishna Enterprises Vs. ACIT*(2017) 146 DTR 73(Mum Trib)
- *ITO Vs. LGW Limited* (Kol. Trib) (ITA No. 267/Kol/2013 dt. 07/10/2015

17.5 We therefore considering the totality of the facts as discussed here in above and by keeping in view the judicial precedence in the aforesaid referred to cases, delete the impugned addition made by the AO and sustained by the Ld. CIT(A) on account of difference in the valuation as determined by the DVO and shown by the assessee in its regular books of account.

18. Now we will take up the appeal of the another assessee i.e; Smt. Charu Aggarwal, Patiala in ITA No. 310/Chd/2021 wherein following grounds has been raised:

1. *That the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana ahs erred in confirming the addition of Rs. 10,75,070/- on account of alleged 'unexplained investment' on the construction of 'Show Room'.*
2. *That notwithstanding the above said ground of appeal, the CIT(A) has erred in confirming the action of the Assessing Officer for reference to the Valuation Cell of the construction of shop and has not followed the various judgments as filed before him.]*
3. *That the addition has been confirmed against the facts and circumstances of the case.*
4. *That the appellant craves leave to add or amend the grounds of appeal before the appeal if finally heard or disposed off.*

From the aforesaid grounds it is gathered that the only grievance of the assessee relates to the confirmation of the addition amounting to Rs. 10,75,070/-

on account of difference in cost of construction shown by the assessee and as determined by the Valuation Officer. The identical issue, we have disposed off in the former part of this order while deciding the appeal in ITA No. 311/Chd/2021 in case of M/s Kalaneedhi Jewellers LLP who is the co-owner in the same property. Therefore, our findings given in the former part of this order relating to this issue shall apply mutatis mutandis. In that view of the matter the impugned addition made by the AO and sustained by the Ld. CIT(A) on account of difference in valuation of the showroom owned by the assessee alongwith another co-owner M/s Kalaneedhi Jeweller LLP, is delted.

19. In the result, appeals of both the assesses are allowed.

(Order pronounced in the open Court on 25/03/2022)

Sd/-

सुधांशु श्रीवास्तव
(SUDHANSHU SRIVASTAVA)
न्यायिक सदस्य/ JUDICIAL MEMBER
AG
Date: 25/03/2022

Sd/-

एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar