

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH

BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 375/CHD/2022

निर्धारण वर्ष / Assessment Year : 2017-18

M/s Sham Jewellers, SCO: 168-169, Sector 34A, Chandigarh	बनाम	The Dy. Commissioner of Income Tax, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AANFS 4372 C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 315/CHD/2022

निर्धारण वर्ष / Assessment Year : 2017-18

M/s Sham Fashion Mall, SCO: 168-169, Sector 34A, Chandigarh	बनाम	The Dy. Commissioner of Income Tax, Central Circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: ABCFS 0250 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Sh. Tej Mohan Singh, Adv.

राजस्व की ओर से/ Revenue by : Sh. Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 20.07.2022

उद्घोषणा की तारीख/Date of Pronouncement : 22.08.2022

आदेश/Order

Per Sudhanshu Srivastava, Judicial Member:

The above captioned appeals are preferred by the assesseees against the orders of the Ld. Commissioner of Income Tax Appeals [CIT(A)] as per the following details:-

S.No.	ITA No.	A.Y.	CIT(A) order dated
1	375/Chd/2022	2017-18	28.02.2022
2	315/Chd/2022	2017-18	28.01.2022

2.0 Since both the appeals belong to the same group of cases and have identical issues, they were heard together and are now being disposed off by this common order for the sake of convenience.

3.0 The brief facts of the case in ITA No. 375/Chd/2022 are that the assessee, M/s Sham Jewellers is a Partnership Firm engaged in the business of manufacturing of Gold and Diamond jewellery. There are four partners in the firm namely S/Sh Ghansham Dass, Harinder Singh, Davinder Singh and Gagandeep Khurana. A search and seizure action u/s 132(1) of the Income Tax Act, 1961 [in short 'the Act'] was carried at the business and residential premises of M/s Sham Fashion Group of cases on 15.09.2016 and the assessee

firm was also covered in the said search.. The assessee filed the return of income for assessment year 2017-18 i.e. the captioned assessment year declaring total income at Rs. 10,86,80,430/- under the head 'income from business or profession'. The case was selected for compulsory scrutiny being the assessment year relevant to the previous year in which search was conducted.

3.1 As per the assessment order, during the course of search, physical inventory of the stock lying at the premises of the assessee firm was prepared by the Registered Valuer of the Income Tax Department in the presence of the Partner of the Firm Shri Gagandeep Khurana and two witnesses. In such physical verification, the inventory of the stock was found as under:-

1.	<i>Stock found at S.C.O. 170-171, 34A, Chandigarh</i>	<i>Rs. 94,12,43,403/-</i>
2	<i>Stock found at S.C.O. 16801679(3rd Floor) 34A</i>	<i>Rs. 10,03,12,875/-</i>
	<i>Stock lying with the Karigars / gold smiths</i>	<i>Rs. 1,,45,77,471/-</i>
4	<i>Total</i>	<i>Rs. 10,61,,33,549/-</i>

3.2 As per the assessment order, this physical inventory of stock was approved by Shri Gagandeep Khurana, the Partner. Further, the statement of Shri Gagandeep Khurana was recorded u/s 132 (4) of the Act and as per the assessment order, in the aforesaid statement, Shri Gagandeep Khurana had admitted that the assessee firm was not maintaining any stock register or inventory. Therefore, the Assessing Officer (AO), proceeded to re-cast the Trading Account of the assessee by applying the Average Gross Profit Rate of three preceding assessment years which came to 11.34 %. As per this calculation, the value of closing stock was computed at Rs. 87,19,51,341/-. The AO further observed that since the stock as per the physical stock taking was valued at Rs. 1,05,61,33,543/- and the value of stock as per the re-cast trading account was Rs. 87,19,51,342/-, the assessee had excess physical stock of Rs. 18,41,82,207/- as on the date of search i.e. 15.09.2016. The AO further noted in the assessment order that the Partner Shri Gagandeep Khurana was confronted with this discrepancy in stock and the same was duly accepted by

the Partner in the statement recorded us 132 (4) of the Act.

3.3 Subsequently, the assessee firm surrendered Rs. 14 crores on account of discrepancy in stock after discussion with another partner Shri Harinder Singh.

3.4 It has been further noted in the assessment order that the assessee firm had also surrendered an amount of Rs. 3 crores to cover other Miscellaneous discrepancies found in the books of accounts and seized documents.

3.5 The AO further noted in the assessment order that in the Trading Account filed with the copy of the Income Tax Return, the assessee firm showed an amount of Rs. 14 crores on the credit side as stock surrendered at the time of search and also debited an amount of Rs. 7,24,21,955/- on account of difference in stock valuation. As per the AO, the assessee had, thus, only disclosed an amount of Rs. 6,75,78,045/- on account of excess stock in the return of income as against the

amount of Rs. 18,41,82,207/-, which was held to be stock in excess as per the re-cast trading account.

3.6 The AO also observed that the other surrender of Rs. 3 crores was also shown in the Profit and Loss account on the credit side by showing it as income surrendered other than stock but further an amount of Rs. 2 crores had been debited to the Profit and Loss account on account of difference in the valuation as per loose sheets. As per the AO, thus, only an amount of Rs. 1 crore was effectively disclosed in the Profit and Loss account.

3.7 The assessee was asked to explain the differences as mentioned above and was also required by the AO to show cause as to why the provisions of section 115BBE not be invoked.

3.8 In response to the query and the Show Cause Notice issued by the AO, the assessee filed detailed submissions challenging the valuation of stock and submitted that the said valuation had been incorrectly made because when the assessee was maintaining regular books of account and the same books of account were available and were

made up to date on the date of search, the action of the Department in recasting the Trading Account by applying the gross profit rate was incorrect. It was also submitted by the assessee before the AO that the rate applied for valuation of stock was the market rate, whereas, the stock, as per books, was being valued by the assessee on cost price basis. It was also submitted before the AO that if the difference in weight of gold jewellery as per the search and as per the books of account was worked out, the same would be approximately 3 Kilograms and, therefore, the market value of only that stock needed to be considered for surrender. Thereafter, the assessee submitted detailed working before the AO wherein it was submitted that the actual excess stock as per the workings of the assessee would only be to the tune of Rs. 1,85,05,232/- and no further.

3.9 However, these contentions of the assessee were not accepted by the AO and he held that the valuation done at the time of search by the Registered Valuer was correct and the Excess Stock as per the re-cast Trading account i.e. Rs. 18,41,82,207/- only was correct and,

therefore, the difference of Rs. 11,66,04,162/- [Rs. 18,41,82,207 minus (-) 675,78,045] was to be added to the income of the assessee and taxed at the rate of 60% as per the provisions of section 115BBE of the Act.

3.10 In the assessment order, it is further mentioned that during the course of search, a lot of “Kaccha” bills were found and when the partner Shri Gagandeep Khurana was required to explain the same, he, in his statement recorded 132(4) of the Act, accepted that such ‘Kaccha’ bills had not been accounted for in the books of account of the assessee. It was noted by the AO that sales amounting to Rs. 3,54,02,358/- were made through these ‘Kaccha’ bills and also expenditure amounting to Rs. 43,35,102/- was made through these ‘Kaccha’ bills. Thereafter, the AO proceeded to make an addition of Rs. 2,54,02,358/- being unaccounted income after giving the assessee the benefit of Rs. 1 crore which had already been shown as surrendered by the assessee in the return of income. The AO also made a further addition of Rs. 43,35,102/- being expenditure incurred outside the books of account. The AO also held that the tax at the

rate of 60% u/s 115BBE was to be charged on such unaccounted expenditure.

3.11 Further, as during the course of search, cash of Rs. 13,89,870/- was found from the business premises of M/s Sham Jewellers and whereas, as per the books of account, the cash balance on 15.09.2016 was only Rs. 3,49,080/-, and further since as per the AO, Shri Gagandeep Khuarna had failed to provide any explanation with regard to the excess cash found to the tune of Rs. 10,40,000/-, the AO proceeded to add this amount of Rs. 10,40,000/- to the income of the assessee as 'undisclosed income' u/s 69A of the Act and also held that tax was to be charged @ 60% in terms of the provisions of section 115BBE of the Act.

3.12 The assessment was completed at an income of Rs. 25,72,88,050/-.

3.13 Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority who allowed part relief to the assessee by upholding addition of Rs. 2,41,91,512/- as against the addition of Rs.

11,66,04,162/- on account of valuation of jewellery in respect of the stock found at the time of search. The Ld. CIT(A) also upheld part addition in respect of alleged unaccounted sales and expenditure by upholding addition of Rs. 73,90,025/- as against addition of Rs. 2,54,02,358/- made by the AO. The Ld. CIT(A) also went on to uphold the addition of Rs. 1,40,000/- made by the AO on account of excess cash found during the course of search.

3.14 The Ld. CIT(A) also upheld the invocation of provisions of section 115BBE of the Act.

3.15 Aggrieved, with the order of the Ld. CIT(A), the assessee has now approached this Tribunal, challenging the impugned order by raising the following grounds of appeal:-

- 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding an addition of Rs.2,41,91,512/- as against Rs.11,66,04,162/ made on account of valuation of jewellery of alleged excess stock found at the time of search in utter disregard of the explanations rendered during the course of proceedings which is arbitrary and unjustified.*

2. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the assessee firm was not maintaining a stock register which is an incorrect finding of fact in as much as it has been categorically stated during the course of recording of statement of partner Sh. Gagandeep Khurana that stock register is maintained on computer which is up to date and as such concluding that there is no stock register is arbitrary and unjustified.*
3. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the valuation of stock inventory by applying average GP rate as against stock available as per stock register which is arbitrary and unjustified.*
4. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the inventory prepared by the Valuer was not prepared applying uniform rates for various categories of gold relying on some letter filed by the Assessing Officer during the course of Appellate Proceedings which is factually incorrect and as such the finding is arbitrary and unjustified.*
5. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the addition made and confirmed to the extent of Rs.2,41,91,512/- was to be assessed as deemed income u/s 69 of the Act as unaccounted investment in stock which is arbitrary and unjustified.*
6. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in law as well as on facts in upholding an addition of Rs.73,90,025/- as*

against Rs.2,54,02,358/ made on account alleged unaccounted sale and expense bills found at the time of search in utter disregard of the explanations rendered during the course of proceedings which is arbitrary and unjustified.

7. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding an addition of Rs.10,40,000/- made on account of excess cash applying the provisions of Section 69A of the Act which is arbitrary and unjustified.*
8. *That the Ld. CIT(A) has erred in upholding to applying the judgment of Hon'ble Punjab & Haryana High Court in the case of Kim Pharma, which has been distinguished in later judgments and also in that judgement, the stock and receivables have been held to be business income and only cash has been) treated as deemed income u/s 68 and hence that judgment is not applicable at all.*
9. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the charging of tax at 60% applying the provisions of Section 115 BBE which are not applicable in the instant case and as such the order passed is arbitrary and unjustified.*
10. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the source and nature of income on account of various unexplained transactions have remained unidentified, unknown, unexplained and undisclosed which is factually incorrect in as much as the only source of income of the assessee firm is business and the search team as well as the*

Assessing Officer has not found any other source of income which would bring the unaccounted receipts within the ambit of deemed income.

11. That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.

4.0 The Ld. Authorized Representative submitted that ground Nos. 1 to 5 are related to the addition of Rs. 2,41,91,512/- sustained by the Ld. CIT(A) on account of alleged unaccounted investment in stock. It was submitted that the entire addition on account of difference in valuation of stock has been made firstly on the premise that Shri Gagandeep Khurana, the Partner of the Firm, had accepted in the statement recorded u/s 132(4) of the Act that no stock register has been maintained by the assessee firm. It was submitted that this conclusion has been wrongly drawn by the AO and confirmed by the Ld. CIT(A) as both the lower authorities have not given any importance to the reply to question No.6 of the said statement. Our attention was drawn to Question No.6 in this statement recorded, wherein Shri Gagandeep Khurana was specifically asked whether the assessee firm was maintaining any stock register and if

yes, then where and in which form? It was submitted that in response, Shri Gagandeep Khurana had replied that the stock was being maintained on computer and the same was up-to-date. It was submitted that this question and the reply thereto was very vital to the issue as to whether the assessee firm was maintaining any stock register or not but the lower authorities have completely ignored the same and have proceeded to make the impugned addition. The Ld.AR submitted that Shri Gagandeep Khurna had also replied in answer to question No 24 and explained that the assessee firm was maintaining weight wise stock of inventory. It was further submitted that the Print out of inventory of closing stock, as taken from the computer, was duly annexed with the statement of Shri Gagandeep Khurana and had been duly countersigned by the Dy. Director (Investigation) of the Income Tax Department and is placed at pages 104 to 111 of the paper book. It was submitted that as per this inventory, it was clear that the assessee was maintaining proper records of sales and purchases as well as of stock.

4.1 Referring to the said inventory, it was pointed out that the value of the stock as per the books of account was Rs. 94,76,47,602/- as against Rs. 1,05,61,33,543/- valued by the Department's Valuer on the date of search. It was submitted that the difference has arisen due to the method of valuation. The Ld. AR submitted that the approved Valuer had first counted the stock item-wise, the number of pieces of a particular item without specifying the weight of each item and had then converted the same into gross weight and net weight of stones etc. and had, thereafter, applied the Gold Rate whereas, the assessee valued the stock on weight basis and had applied the average cost of purchase prevailing during the year. It was submitted that the main reason for difference was that the Valuer had valued the entire stock at the current market rate at the time of search and had not made any distinction between stock existing in books and stock found existing outside books.

4.2 The Ld. AR further submitted that, the Department had erred in recasting the trading account only on the basis of gross profit rate for the last three years and in

calculating the value of Rs. 87,19,51,342/- which was far from the actual figures because the books of account showed the value of stock at Rs.94,76,47,602/-.

4.3 The Ld. AR further submitted that the assessee had surrendered an amount of Rs. 17 crores in the statement recorded u/s 132(4) of the Act being Rs. 14 crores on account of various discrepancies pointed out and found in stock and further Rs. 3 crores on account of miscellaneous discrepancies found in the books of account but the assessee, while submitting the return, rectified the value of surrendered amount by valuing the stock found as appearing in the books of account by applying the average rate of cost of acquisition or net releasable value whichever is lower, and the excess stock found during the course of search by applying the market rate prevalent on the date of search by the assessee. It was submitted that on the other hand, the Departmental Valuer had applied the market rate on the date of search on the entire stock existing at the time of search. It was submitted that this error in calculation was duly pointed out during the course of assessment

proceedings and also before the Ld. CIT(A) but the same was completely disregarded and the Department simply relied on the statement of the Partner and took it as sacrosanct ignoring the factual aspect.

4.4 The Ld. AR submitted that after the reconciliation of records, it came to light that the Department had, thus, calculated the value of closing stock in excess to the tune of Rs. 7,24,21,955/-. The Ld. AR submitted that the weight of stock, as valued by the Department, was not in dispute and what was being disputed was only the rate of gold for working out the value of closing stock. The Ld. AR submitted that the Departmental Valuer had valued the stock by converting the entire stock into gross rate and net weight of gold which was precisely the method the assessee was also following. It was submitted that the assessee had been following the FIFO method and was applying the average rate of gold during the year which worked out to Rs. 26,749/- per 10 grams whereas, the Departmental Valuer had valued the stock at Rs. 30,930/- per 10 grams being the market value on 15.09.2016 for the entire stock.

4.5 The Ld. AR drew our attention to a Chart depicting the total weight of gold jewellery as per the books of account and the inventory compiled on date of search. The same is being reproduced herein under for ready reference:-

As per Books			As per Physical Inventory during search			
Sr No.	Description of item	Weight	Description of item	Weight	Difference	Comments
01	24 ct. Gold	1742.551 gms	24 ct. Gold	276.16 gms	1466.391	Converted into gold jewellery of 22 ct. weighing 1576.76 gms
02	22 ct. old gold jewellery	3162.205 gms	22 ct. old gold jewellery	2412.950	749.255 gms	Converted into new 22 ct. gold jewellery of 749.255 gms
03	22 ct. Gold Jewellery	206091.169 gms	22 ct. Gold Jewellery	208164.540 gms	-252.644 gms after adjustment taking into consideration the conversion of 24 ct. gold into jewellery and 22 ct. old gold jewellery into new 22 ct. gold jewellery - 749.255 gms	The difference in weight of 22 ct. old jewellery has been worked out by considering that 1466.391 gms of 24 ct. gold was converted into 1576.76 gms of 22 ct gold jewellery and old gold of 749.25 gms was converted into new gold jewellery weighing 749.25 gms
04	14 ct. /18 ct gold	61620.112 gms	14 ct. /18 ct gold	64753.822 gms	3133.710 gms	Excess amount of value surrendered as income Rs.7054733/-
05	Diamond	12400.350 Kt.	Diamond	12849.16	448.810 Kt.	Accepted at Rs. Rs.57752570/-
06	a) Misc. Items - Victorian jewellery, b) mala and stones, c) Silver coins	Rs.365820/- for Victorian items Rs.399820/- for mala and stones Nil	a) Misc. Items - Victorian jewellery, b) mala and stones, c) Silver coins	Nil for Victorian items Rs. 846734/- for mala and stones Rs.92625/-	-365820/- For Victorian items Rs.446914 for mala and stones Rs.92625/-	

4.6 The Ld. AR, referring to the above chart, submitted that the excess stock of gold found at the time of search amounts to 3725 grams and excess value of diamond has been worked out at Rs. 5,77,52,570/- which is not in dispute. The Ld. AR submitted that, therefore, the assessee proceeded to re-compute the valuation of closing stock and the difference between the assessee's calculation and the Department's calculation amounted to Rs. 7,24,21,955/- as against the surrender of Rs. 14 crores towards surrender of excess stock which was debited to the Profit and Loss account so as to show the correct value of surrender and to pay the tax due on correct income. The Ld. AR submitted that, therefore, the addition of Rs. 11,66,04,162/- on account of difference in stock and sustained by the Ld. CIT(A) to the tune of Rs. 2,41,91,512/- was completely incorrect. The Ld. AR submitted that the Ld. CIT(A) has erred in upholding this addition by applying the gross profit rate, although, the stock details were available in the stock register maintained on the computer.

4.7 It was further submitted that the assessee is a manufacturer and seller of Gold and Diamond Jewellery and the assessee has been consistently being following the Average Cost Price method for the valuation of closing stock for the last many assessment years and the same was being regularly accepted by the Department. It was submitted that there was a survey in the premises of the assessee during Financial Year 2009-10 and in the assessment proceedings for A.Y. 2010-11, the valuation of stock by the assessee was duly accepted by the Department. Our attention was drawn to the copy of the assessment order for assessment year 2010-11 in support of this contention.

4.8 The Ld. AR reiterated that the correct method of valuing the excess stock on the date of search would have been to value only the excess stock at the prevailing market price and to value the rest of the stock at the average cost price as adopted by the assessee throughout. It was submitted that, thus, the method adopted for valuation of entire stock at the current market rate was bad in law. It was submitted that the

value of the excess stock of Rs. 6,75,78,045/-, as declared by the assessee in its return of income, may be accepted as the correct disclosure for the purpose of imposition of tax.

4.9 To demonstrate that the assessee had been regularly following the average cost method for the purpose of valuation of stock, the Ld. AR drew our attention to the copy of the audit reports for various assessment years placed in the paper book and also to the copy of the assessment orders from A.Y. 2011-12 till 2016-17 wherein, the same method of valuation stands accepted.

4.10 The Ld. AR further submitted that there was no question of retracting the surrender but the assessee cannot be expected to pay tax on such undisclosed income which has not been correctly computed and every assessee has the right to pay tax only on that income which is correct and no further. It was submitted that at the time of search, the Partner Shri Gagandeep Khurana, had accepted to the surrender as

at the time of search there was tremendous pressure on the assessee and Shri Gagandeep Khurana, being the junior most and the new Partner of the Firm did not have complete knowledge of the intricacies of the valuation of stock which made him offer surrender at the amount which was more than double the undisclosed investment made by the assessee in stock of jewellery.

4.11 The Ld. AR relied on numerous orders of the Tribunal to buttress his argument that the method of accounting regularly followed by the assessee is required to be adopted even in search cases.

4.12 The Ld. AR further submitted that ground No.6 of the appeal challenges the action of the Ld. CIT(A) in upholding the addition of Rs. 73,90,025/- as against addition Rs. 2,54,02,358/- made by the AO on account of unaccounted sales of Rs. 3,54,02,358/- and expenses bills found at the time of search. The Ld.AR submitted that during the course of search the assessee firm had surrendered an amount of Rs. 3 crores in respect of miscellaneous discrepancies found in the books of

account and seized documents but while filing the return of income, on making a detailed working, the surrender value was recalculated at Rs. 1 crore which was duly disclosed in the return of income and the assessee had submitted a detailed reply to the AO giving point wise explanations in respect of each and every entry and loose papers found during the course of search. It was submitted that copy of this reply has also been placed in the paper book at pages 11 to 16. Referring to the said replies filed before the AO, the Ld. AR submitted that a perusal of the above replies would show that the assessee firm has given elaborate explanation in respect of each and every entry and each and every loose document found at the time of search but such explanation were simply brushed aside by the AO and he chose to go by the surrender made by the Partner of the firm and did not even consider the explanations of the assessee. It was further submitted that the lower authorities had grossly erred in adding the entire alleged unaccounted sales as income of the assessee, whereas, it is trite law that in the case of unaccounted sales, it is

only the gross profit which can be added to the income of the assessee. It was further submitted that at most, besides the application of GP rate, the peak of the investment only could be added and not the entire sales. The Ld. AR drew our attention to a calculation submitted by the assessee before the lower authorities and placed at pages 14 & 15 of the paper book and submitted that the profit on undisclosed sales works out to Rs. 40,14,627/- by applying the gross profit rate of 11.34% and if further items at S.No. 5, 6 and 9 are added to it, the total addition which could be made would come to Rs. 61,91,180/- which would be covered by the surrender of Rs. 1 crore already made.

4.14 The said Chart is being reproduced herein under:-

<i>Detail of Income generated out of books</i>				
<i>S.No.</i>	<i>Name of Party/Ann. No./Page No.</i>	<i>Nature of Transaction</i>	<i>Amount of Unaccounted Sale</i>	<i>Gross Profit being @ 11.34% of unaccounted sale</i>
<i>1</i>	<i>Party B-4, Annex. A-2, Page 1 to 88</i>	<i>Locker Advance as per slips found in locker at Sham Jewellers treated as unaccounted Sales</i>	<i>5,094,200.00</i>	<i>577,682.00</i>

2	Party B-1, Annex. A-1, (P. 22, 37 to 41 and P. 43 to 45)	Locker Advance as per slips found in locker at Sham Jewellers treated as unaccounted Sales	242,000.00	27,443.00
3	Party B-1, Ann. A-1, Recorded on various loose papers from P. 1 to 55	Unaccounted Sale	13,687,950.00	1,552,214.00
4	Party B-1, Annex. A-1, (P. 21 to 22 and P. 28)	Unaccounted Sale	117,690.00	13,346.00
5	Party B-1, Ann. A-1, P. 30	Investment in stock for sale through courier	2,150,000.00	2,150,000.00
6	Party B-1, Ann. A-9, P. 1 to 11	Unaccounted Sale	2,477,515.00	280,950.00
7	Party B-1, Ann. A-13, P. 3	Difference in Cash in hand	16,053.00	16,053.00
8	Party B-4, Annex. A-1, P. 1 to 3	Unaccounted Sale	7,038,520.00	798,168.00
9	Party B-4, Annex. A-1, P. 4 to 7	Unaccounted Sale	4,389,390.00	497,757.00
10	Party B-4, Annex. A-1, P. 8 to 113	Unaccounted Sale	1,401,740.00	158,957.00
11	Party B-4, Annex. A-3, P. 1 to 93	Unaccounted Sale	937,300.00	106,290.00
12	Party B-4, Annex. A-3, P. 1 to 93	Labour received	12,320.00	12,320.00
Total			6,191,180.00	

4.15 In respect of ground No. 7 of the appeal, the Ld. AR submitted that this ground challenges the action of the Ld. CIT(A) in upholding the addition of Rs. 10,40,000/- made on account of excess cash found during the course of search. In this regard, it was submitted that since the assessee had admitted to have made unaccounted sales and thereby having generated cash and the assessee already having declared Rs. 1 crore towards miscellaneous discrepancies, the amount of Rs. 10,40,000/- was to be sub-sumed in such

surrender and if this amount is added to the income of the assessee again, the same would tantamount to double taxation.

4.16 With respect to ground Nos. 8 & 9 of the assessee's appeal, it was submitted that these grounds challenge the invocation of provisions of section 115BBE of the Act. It was submitted that the invocation of provisions of 115BBE of the Act in the case of excess stock found during the course of search was an incorrect application of law in as much as the income surrendered on account to excess stock is in the nature of business income of the assessee and the same relates to the business of the assessee only. The Ld.AR submitted that the excess stock has been purchased only from the unaccounted business receipts of the assessee and it is not the case of the Department that the assessee has some other source of income which would have generated income for the purpose of investment in stock. It was submitted that, therefore, the income as declared under the head of business income should be accepted and the same should not be treated as deemed income under sections

68 or 69 of the Act and, therefore, the provisions of section 115BBE would not apply in the case of the assessee.

4.17 Similarly, with respect to the act of invoking the provisions of section 115BBE of the Act with regard to the unaccounted sales, the Ld. AR submitted that the surrendered income of Rs. 1 crore again was in the nature of business income of the assessee as, admittedly, and, undisputedly, the assessee had no other source of income. The Ld. AR further submitted that as far as the issue of invocation of provisions of 115BBE of the Act vis-a-vis cash found during the course of search is concerned, such excess cash found was also sourced from the business income of the assessee and, therefore, the question of attracting provisions of section 115BBE would not arise in this case also. The Ld. AR also placed reliance on numerous judicial precedents in support of the contention that provisions of section 115BBE would not be attracted in cases where no new source of income has been discovered during the course of search.

4.18 The Ld. AR prayed that the assessee's appeal deserves to be allowed.

5.0 In response to the arguments of the Ld. AR, the Ld. CIT DR vehemently assailed the contention of the Ld. AR that the assessee was not retracting from the surrender but was only recalculating the surrendered amount. It was submitted that once the assessee has agreed to surrender a particular amount, it cannot be permitted to withdraw the same without making a proper retraction under the garb of recalculation. It was submitted that although the assessee is terming the reduced figures as recalculation, it in fact is retraction of the surrendered amount which is not permissible in the eyes of law.

5.1 Regarding the contention of the Ld. AR that the assessee had been regularly maintaining quantitative details, he drew our attention to the copy of the Audit Report for the impugned year and submitted that the Audit Report also does not mention any quantitative details with respect to either sales or purchases or stock

and, therefore, the contention of the Ld. AR that quantitative details were regularly being maintained was in fact, incorrect. It was submitted that under the column of 'books of account maintained' in the Audit Report, Stock Register has not been mentioned and, therefore, the claim of the assessee regarding maintenance of quantitative details was incorrect.

5.2 The Ld. CIT DR also referred to the statement of Shri Gagandeep Khurana, the Partner of the firm, recorded during the course of search, wherein, in answer to Question No.12, the partner had replied that stock register is not being maintained.

5.3 The Ld. CIT DR further submitted that what the assessee had been maintaining would not qualify under the definition of stock register and even if the same is taken to be a Stock Register, the same was full of defects. The Ld. CIT DR further argued that in spite of the various contentions raised by the Ld. AR, the undisputed fact remains that there was discrepancy in stock which was detected during the course of search

and the assessee had also made surrender in respect of the difference in stock and, thus, the reliance on stock details, as being maintained by the assessee, was not acceptable. Referring to the itemized list of stock, it was submitted that this list also has discrepancies in as much as the same does not tally either with the books of account or with the physical stock. The Ld. CIT DR submitted that the Ld. CIT(A) has already granted substantial relief in this regard and no further relief is called for.

5.4 The Ld. AR also supported the action of the AO in applying the GP rate and submitted that the AO had no option but to adopt the GP rate for the simple reason that the stock details were not trustworthy. The Ld. CIT DR, referring to the surrender by the Partner of the Firm, submitted that Shri Gagandeep Khurana, in the capacity of the partnership firm, was competent enough to make the surrender and the same at a later stage cannot be retracted under the garb of recalculation by saying that the said partner did not have any knowledge about the intricacies of business or that the said

statement had been extracted under any kind of coercion.

5.5 With respect to the assessee's arguments on non application of provisions of section 115BBE of the Act, the Ld. CIT DR submitted that the AO had duly recorded his satisfaction that the provisions of section 115BBE were attracted on the facts of the case. He also relied on numerous judgements to support the AO's view that provisions of section 115BBE were applicable to the facts of the case.

6.0 In respect of the assessee's appeal in the case of M/s Sham Fashion Mall (ITA No. 315/Chd/2022), the Ld. AR submitted that in this case, subsequent to the search, the return of income had been filed declaring total income of Rs. 41,43,83,890/- under the head 'income from business or profession' and 'income from other sources'. The Ld. AR further submitted that vide assessment order dated 18.12.2018, the AO had accepted the returned income and the only issue in dispute was the action of the AO in invoking the

provisions of section 115BBE and thereby charging tax at the rate of 60% on the income disclosed by the assessee. The Ld. AR further submitted that the assessee's appeal against the said invocation of provisions of section 115BBE of the Act were dismissed by the Ld. CIT(A) and now the assessee has approached this Tribunal challenging the invocation of provisions of section 115BBE of the Act.

7.0 For the sake of completeness, the grounds raised by the assessee in ITA No. 315/Chd/2022 are also being reproduced herein under;-

- 1. That the Ld. Commissioner of Income Tax(A) has erred in upholding the assessed income at Rs.4,14,83,890 143(3) r.w.s. 153B(1)(b) of the Income Tax Act, against the same returned income at Rs.4,14,83,890/- which is arbitrary and unjustified.*
- 2. That the Commissioner of Income Tax(Appeals) has erred in upholding the charging of tax @ 60% on the income disclosed by the assessee at Rs. 1,87,04,016/ applying the provisions of Section 115BBE of the Income Tax Act which is arbitrary and unjustified.*

3. *That the Ld. Commissioner of Income tax (Appeals) has failed to appreciate that the assessee had been carrying on the business of readymade dress material and other related items and 'excess stock of Rs. 1,87,04,016/- as found was of the same nature of stock and, thus, the same could not be charged to tax u/s 115BBE as the nature and source of such excess stock has clearly been demonstrated at the time of search and the assessee was not found to be carrying out any other business activity.*
4. *That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the charging of tax @ 60% inadvertently offered during the course of search as 'income from other sources which was in fact Business income' treating the same to be deemed income under section 69 of the Act which is arbitrary and unjustified.*
5. *That the Ld. Commissioner of Income Tax (Appeals) has erred in observing and holding that the source and nature on account of investment in stock in trade has remained unidentified, unknown, unexplained and undisclosed, therefore such income on account of such undisclosed assets cannot be covered as income under the heads specified u/s 14 of the Act*

which is contrary to the facts of the appellant and as such the order passed is arbitrary and unjustified.

6. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in inferring that since the source and nature on account of investment in stock in trade has remained unidentified, unknown, unexplained and undisclosed, therefore such income on account of such undisclosed assets cannot be covered as income under the head 'business' or 'Income from other sources' but deemed income under section 69 of the Act which observation is incorrect and as the order passed is arbitrary and unjustified.*
7. *That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the detailed submissions in the correct perspective submitted during the course of appellate proceedings by the assessee which is arbitrary and unjustified.*
8. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
9. *That the order of the Ld. CIT (A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.”*

8.0 The Ld. AR submitted that his arguments against the invocation of provisions of section 115BBE would be the same as have been argued by him in the appeal of Sham Jewellers in ITA No. 375/Chd/2022 and for the sake of brevity, the same were not being repeated.

9.0 The Ld. CIT DR also submitted that his response to the arguments of the assessee vis-a-vis invocation of the provisions of section 115BBE would also be identical in this case and the same were not being repeated for the sake of brevity.

10.0 Having heard both the parties, we now proceed to adjudicate both the captioned appeals before us, as under:-

10.1 First, we take up the appeal bearing ITA No. 375/Chd/2022 in the case of Sham Jewellers.

10.2 In this appeal, the assessee, in ground Nos. 1 to 5, has challenged the sustenance of addition of Rs. 2,41,91,512/- in respect of valuation of stock as on the date of search. In this regard, the Ld. AR has submitted

that this valuation of stock is based only on the statement of one of the partners of the assessee firm Shri Gagandeep Khurana who had answered in the negative to a query regarding maintenance of stock register. However, as Ld. AR has pointed out, the AO has chosen to quote this answer in the assessment order but has completely ignored answer to question No.6 in the same statement wherein Shri Gagandeep Khurana had replied that the stock register was being maintained in computer and the same was up-to-date. The Ld. AR has also pointed out to Question No. 24 of the same statement, wherein Shri Gagandeep Khurana had stated that the firm cannot provide item wise stock as the same is maintained on the basis of weight only. Thus, the Ld. AR has pointed out that the statement of Shri Gagandeep Khurana has been reproduced by the AO on a selective basis to suit the ends of the Department ignoring the fact that Shri Gagandeep Khurana had replied in the affirmative regarding the maintenance of the stock register which was being maintained on a computer system and provided weight-wise details and further and

which, as per the statement of Shri Gagandeep Khurana, was up to date on the date of search. In the light of these facts, we agree with the contention of the Ld. AR that the statement of Shri Gagandeep Khurana has not been used by the AO in a proper manner but rather in a selective manner only which cannot be accepted and upheld by us. This selective use of the statement by the AO was further taken as a ground to reject the books of account and apply the average gross profit rate for the purpose of valuation of closing stock and, subsequently, for the purpose of calculation of difference in the valuation of such closing stock. It is very much apparent from the assessment order that after quoting extensively from the statement of Shri Gagandeep Khurana, the AO held that in view of such statement, the assessee was not maintaining any kind of stock details and, therefore, the only course left open for him was to adopt the average gross profit rate of 11.34% and he, therefore, re-casted the trading account of the assessee by arriving at the valuation of closing stock at Rs. 87,19,51,341/-.

10.3 Further, on his issue, on appeal, the Ld. CIT(A) held that in order to work out the value of physical stock found, as on the date of search, it would be appropriate to reduce the same by the gross profit margin i.e. 11.34% as has been worked out by the AO and by applying such formula, the Ld. CIT(A) worked out the value of stock as on the date of search on cost basis at Rs. 94,85,66,148/- . The Ld. CIT(A) further held that the value of closing stock as per the books of account, as on the date of search, on the basis of trading account, came to Rs. 86,61,43,338/- at cost basis resulting in excess stock of Rs. 8,24,22,810/- at cost basis. The Ld. CIT(A), thereafter, increased the value of excess stock at Rs. 8,24,22,810/- by the average gross profit rate of 11.34 % and concluded that the undisclosed investment in stock would work out to Rs. 9,17,69,557/-. Since the assessee had already disclosed Rs. 6,75,78,045/- in the return of income, the balance of Rs. 2,41,91,512/- (Rs. 9,17,69,557/- minus Rs. 6,75,78,045/-) was held as being sustainable u/s 69 of the Act on account of excess stock.

10.4 The Ld. AR has pointed out a basic fallacy in the working adopted by the Department vis-a-vis the valuation of closing stock as on the date of search. It has been pointed out by the Ld. AR that the Departmental Valuer had adopted the market value for the entire stock while making the valuation of the stock on the date of search whereas the right course would have been to adopt the average cost price (being followed by the assessee) in respect of the stock as per the books of account and only the excess stock should have been valued at market price. The Ld. AR has demonstrated with evidence that the methodology of following the Average Cost Price for valuation of stock has regularly been followed by the assessee and he has pointed out to the assessment orders passed u/s 143(3) of the Act for assessment years 2011-12 to 2016-17 wherein, no addition has been made vis-a-vis valuation of stock. It has been argued by the Ld. AR that the method of valuation has been regularly followed by the assessee and has also been regularly accepted by the Department. This contention of the Ld. AR has not been disputed in

as much as even the Ld. CIT(A) has mentioned this fact that no adverse inference had been drawn on the issue of valuation of stock in the assessment orders for assessment years 2011-12 to 2016-17. The Ld. CIT(A) has also observed that the AO should have considered this aspect also while computing the valuation of stock as on the date of search.

10.5 Thus, looking into the past history of the assessee and the fact of the Department having accepted the method of valuation of closing stock in earlier assessment years, as aforesaid, we also accept this contention of the assessee that the method of valuation which has been demonstrated by the assessee to have been regularly followed by the assessee should not have been disturbed either by the Departmental Valuer or by the AO even if they were dealing with a search case where excess stock has been found during the course of physical verification of stock. Therefore, we discard the methodology adopted by the Department firstly of rejecting the books of account on a wrong premise that the assessee was not maintaining any stock details,

secondly that the assessee's trading account had to be re-cast to compute the value of stock as per books and thirdly that the entire stock of the assessee should be valued at market price. We also discard the methodology of the Ld. CIT(A) in re-working the valuation of closing stock by not taking the average cost price although accepting that the assessee had been regularly following the same.

10.6 In our considered view, even if this was a search case, the AO could not have introduced his own system of valuation of stock especially because the assessee had taken great pains to explain before the AO that the method of valuation, as adopted by the Departmental Valuer, was incorrect. A perusal of the assessment order would show that the AO has not given any cogent reason for not accepting this explanation of the assessee but has simply chosen to go by the valuation as made by the Valuer. In our considered view, this disregard to the explanation of the assessee was not warranted. The AO did not give due credence to the fact that the assessee's regular system of accounting and valuation of stock was

based on Average Cost Method and that there was nothing before the AO which would warrant that such method should be changed while valuing the closing stock as on the date of search. Thus, the action of the Valuer in adopting the market value as on the date of search for the entire physical stock existing at that point of time is indeed fallacious and cannot be upheld.

10.7 That the AO could not have legally modified the method of valuation of stock is fortified in favour of the assessee by judgement of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Sant Ram Mangat Ram reported in 195 CTR 345 wherein the Hon'ble Punjab & Haryana High Court held as under:-

“It is the admitted position that from the inception of its business, the assessee had continuously adopted the same method of valuation of the closing stock and no objection was raised by the Department in any of the previous years. Rather, the competent authority accepted the method adopted by the assessee and accordingly, made assessment. This being the position, we do not find any valid ground to accept the argument of Shri Bindal that the

method adopted by the assessee for valuation of the stock was legally impermissible and on that account the additions made by the Inspecting Assistant Commissioner should be restored. In United Commercial Bank v CIT (1999) 240 ITR 3544, their Lordships of the Supreme Court held that the method which was consistently followed by the appellant-bank for valuing the stock-in-trade could not be rejected by the assessing authority in a particular case.

10.8 We agree with the contention of the Ld.AR that the correct way to value the stock as on the date of search was to apply average cost in case of the stock which was existing physically as per the books of account and to apply the market value as on the date of search in respect of excess stock found during the physical inventorisation of stock for the simple reason that the dates on which such excess stock had been acquired by the assessee were not ascertainable and, therefore, the best method to value unaccounted excess stock was to value them at current market value.

10.9 As far as contention of the Ld. CIT DR regarding non-maintenance of stock records by the assessee is concerned, it is seen that although the Department has vehemently been taking the ground that the stock records have not been maintained by the assessee, the fact remains that the inventory as on the date of search and as printed from the computer records has been annexed to the statement of Shri Gagandeep Khurana and has been duly signed by the Deputy Director (Investigation) of the Income Tax Department. So it cannot be said that no record vis-à-vis stock existed. Therefore, this contention of the Ld. CIT DR has no merit.

10.10 Therefore, on an overall view of the facts of the case, we are of the considered view, that the action of the AO in recasting the trading account by taking the average GP rate for the purpose of valuation of inventory cannot be upheld for the simple reason that the stock records, though not maintained item wise, were available weight-wise and if the stock details were available on computer, in weight, there was no cogent reason for the

AO to discard the same and proceed to apply the Average Gross Profit Rate, more so, because the assessee has been regularly following the method of valuation of stock for the past many years which even stands affirmed by the Ld. CIT(A). For this reason itself, the action of the Ld. CIT(A) in part confirming the impugned addition also cannot be upheld because, although, the Ld. CIT(A) has tried to rectify some of the mistakes committed by the AO in the valuation of stock (discussed at length by the Ld. CIT(A) in the impugned order), the Ld. CIT(A) himself, after discarding the working of the AO, went back to applying the Average Gross Profit Rate of 11.34%. Since we have already rejected the action of the AO in applying the average GP rate of 11.34%, similar action of the Ld. CIT(A) in adopting this percentage of 11.34% also cannot be upheld.

10.11 As far as the contention of the Ld. CIT DR that “the assessee cannot be permitted to retract the surrendered amount” is concerned, it is our considered view, that the assessee has not retracted the statement and has even partly honoured it. However, the assessee

has every right to present correct facts in light of the material and evidence available and if the tax payer is being saddled with tax which is not legally imposable, the tax-payer has every right to contest it and also seek appropriate relief. Thus, in our considered view, the assessee cannot be to forced to pay tax on such undisclosed income which has been computed incorrectly although the assessee might have made a surrender at the time of search.

10.12 The Ld. AR has pointed out to a working of the actual taxable difference in valuation of stock and the same is placed at page 186 of the paper book. Looking into the overall facts and circumstances of the case and in view of our discussion on the aforesaid issue, we agree with the working submitted by the Ld. AR regarding the difference in valuation of stock and we direct that the addition to the extent of Rs. 6,75,78,045/- only (which is as per the admittance itself of the assessee) is liable to be sustained. It is ordered accordingly. The working is being reproduced herein under for a ready reference:-

Difference in Valuation of Stock as on 14.09.2016		
24kt, Old Gold and 22kt Gold		
24kt Gold as Per Books	1742.551	
24kt Gold as Per I.T. Search	276.16	
Diff.	1466.391	
24kt Converted In Jewellery		
Old Gold as Per Books	1576.760	
Old Gold as Per I.T. Search	3162.205	
Diff.	749.255	
Old Gold Converted In Jewellery		
22kt Gold as Per Books	206091.169	
24kt Converted In Jewellery	1576.76	
Old Gold Converted In Jewellery	749.255	
Total	208417.184	
22kt Gold as Per I.T. Search	208164.540	
Diff.	-252.644	
unaccounted 22kt Gold Jewellery with Goldsmith for repair	583.970	
unaccounted 22kt Gold Jewellery with Goldsmith for repair	188.370	
Sub Total	519.696	
		-675819
		1659446
		535284
		1518911
14kt & 18kt Gold		
14kt & 18kt Gold as Per Books	61620.112	
14kt & 18kt Gold as Per I.T. Search	64753.822	
Diff.	3133.710	
unaccounted 18kt Gold Jewellery with Goldsmith for repair	71.810	
Sub Total	3205.520	
		7054733
		166960
		7221693
		846734
Mala & Stones As I.T. Search	846734	
		846734
Silver Coins As Per Search	92625	
		92625
Diamond		
Diamond as Per Books	12400.350	
Diamond as Per I.T. Search	12849.16	
Diff.	448.81	
unaccounted Diamond with Goldsmith for repair	7.860	
Sub Total	456.670	
		57752570
		145512
		57898082
		67578045
Grand Total		

Accordingly, ground Nos. 1 to 5 of the appeal stand allowed.

10.13 Ground No.6 is against the sustenance of addition to the tune of Rs. 73,90,025/- as against addition of Rs. 2,54,02,358/- made by the AO in respect of unaccounted sales and expenditure bills found during the time of search. It is seen that the AO had added the entire amount of unaccounted sales to the income of the assessee and Ld. CIT(A) has held that only unaccounted profit earned on such undisclosed sales by applying the

GP rate of 11.34% (amounting to Rs. 40,14,627/-) was taxable and was to be further increased by the unaccounted peak investment made in the purchase for such sales. The Ld. CIT(A) worked out the reasonable peak for investment in purchase at Rs. 1,33,75,358/- but deleted the separate addition of Rs. 43,35,102/- in respect of bills relating to expenditure. Thus, in effect, the Ld. CIT(A) sustained an addition of Rs. 1,73,90,025/- and after giving benefit of surrender of Rs. 1 crore on this account upheld the net addition of Rs. 73,90,025/-.

10.14 Before us, although, the Ld. AR has not disputed the basic approach of the Ld. CIT(A) in this regard, but he has disputed the working of the Ld. CIT(A) with respect to the peak credit and has pointed out that if the peak is to be included and also the gross profit at the rate of 11.34% is to be considered, the total would come to Rs. 61,91,180/- only and not Rs. 1,73,90,025/- as has been worked out by the Ld. CIT(A). In this regard, he had pointed out to page Nos. 14 and 15 of the paper book wherein, the working of peak has been

demonstrated in tabular form. The same has already been reproduced at para 4.15 of the order.

10.15 We have gone through this working as submitted by the Ld. AR as well as the supporting documents and we agree that the amount of addition to be made i.e. gross profit at the rate of 11.34% (Rs. 40,14,667) is correct but the peak of investment has indeed been incorrectly computed by the Ld. CIT(A). The same comes to Rs. 21,78,373/- only and the amount which is liable to be added on this account comes to Rs. 6,191,180/- as has been submitted by the Ld. AR. Therefore, we hold that the sustenance of addition of Rs. 73,90,025/- after giving benefit of surrender of Rs. 1 crore is factually incorrect and the addition on this account would only be to the tune of Rs. 61,91,180/- which is to be included in the surrender of Rs. 1 crore and no further addition is required to be made. Therefore, the order of the Ld. CIT(A) stands modified to that extent and ground No. 6 of the assessee's appeal stand partly allowed.

10.16 Ground No.7 challenges the action of the Ld. CIT(A) in upholding the addition of Rs. 10,40,000/- on account of excess cash found during the course of search and we agree with the contention of the Ld. AR that this amount is also to be included in the surrender of Rs. 1 Crore made by the assessee with respect of miscellaneous discrepancies found in the books of account and therefore, no separate addition needs to be made on this account. Thus, ground No.7 of the assessee's appeal also stands allowed.

10.17 Ground Nos. 8 & 9 challenge the action of the lower authorities in applying the provisions of section 115BBE and thereby charging tax at the rate of 60%. The main thrust of the arguments of the Ld. AR has been that all the additions made or sustained relate only to the business income of the assessee and that nowhere in the assessment order has it been alleged that some other source of income had been detected which gave rise to additional income. It is seen that during the course of assessment proceedings, the various explanations submitted by the assessee have duly mentioned that the

surrendered income was derived from the business. A perusal of the assessment order would also show that nowhere in the body of the assessment order, the AO has even contradicted this explanation of the assessee. The AO has not brought on record any iota of evidence to demonstrate that the assessee had any other source of income except income from business and, therefore, it is our considered view that deeming such income under the provisions of sections 68 or 69 would not hold good. In our view, in such a situation, the AO could not have legally and validly resorted to taxing the income of the assessee at the rate of 60% in terms of provisions of section 115BBE of the Act.

10.18 The Hon'ble Andhra Pradesh High Court in the case of Principal Commissioner of Income Tax Vs. Deccan Jewellers Ltd. reported in (2021) 438 ITR 131 (AP) held that where the assessee was engaged in the business of Gold and Diamond jewellery and Silver articles and during the search and seizure operation u/s 132, excess stock was found to be declared and the assessee had submitted that excess stock was result of

suppression of profit from business over the years and the same had not been kept identified separately and the AO had duly considered and accepted the assessee's explanation that investment in excess stock was to be treated as business income, the revisional powers invoked by the Principal Commissioner u/s 263 of the Act were not correct in the eyes of law.

10.19 The ITAT Chandigarh Bench in the case of Famina Knit Fabs Vs. ACIT reported in (2019) 176 ITD 246 (Chd-Trib) has held that, wherein during the course of survey, a surrender was made by the assessee on account of debtors / receivables which was based on a diary found during the course of survey and the Revenue had accepted that the surrender was on account of receivables, it followed that the debtors were generated from the sales made by the assessee during the course of carrying on the business of the assessee which was not recorded in the books of the assessee. The Coordinate Bench of the ITAT went on to further hold that though the said income was not recorded in the books of the assessee but the source of the same stood duly explained

by the assessee as being from the business of the assessee and even otherwise no other source of income of the assessee was on record either disclosed by the assessee or unearthed by the Revenue. The Bench further held that the preponderance of probability, therefore, is that the debtors were sourced from the business of the assessee. Therefore, there was no question of treating it as deemed income from undisclosed sources u/s 69, 69A, 69B, or 69C of the Act and the same was held to be in the nature of business income of the assessee.

10.20 Thus, as in the present case, where the source of investment or expenditure is clearly identifiable and the alleged undisclosed asset has no independent existence of its own or there is no separate physical identity of such investment or expenditure, then, first, what is to be taxed is the undisclosed business receipt invested in unidentifiable unaccounted asset and only on failure can it be considered to be taxed u/s 69 of the Act and further where once such investment or expenditure is brought within the purview of tax as undeclared

business receipt, then taxing it further as deemed income u/s 69 would be completely out of place.

10.21 Similar view was taken by the Coordinate Bench of ITAT Ahmedabad in the case of Chokshi Hiralal Maganlal Vs. DCIT reported in 131 TTJ 1 (Ahd.)

10.22 It is also seen that the Ld. CIT(A) has relied on the judgement of the Hon'ble Punjab & Haryana High Court in the case of Kim Pharma Ltd. Vs. CIT in ITA No. 106 of 2011 (O&M) and the Ld. CIT DR has also quoted the same in his arguments before us. However, after going through the aforesaid judgement of the Hon'ble Punjab & Haryana High Court, it is seen that in that particular case, the only issue was with regard to the cash surrendered at the time of survey and no other income. The cash found could not be related to the already disclosed and accepted source of income of the assessee and, therefore, the Hon'ble Punjab & Haryana High Court held that such surrendered cash was to be treated as deemed income u/s 69 of the Act. However, in the present case before us, the assessee has only one

source of income i.e. business income and nowhere has it been brought on record that the assessee had any other source of income except business income and, therefore, we respectfully state that judgement of the Hon'ble Punjab and Haryana High Court in the case of Kim Pharma Pvt. Ltd (supra) would not apply on the facts of the present case.

10.23 Accordingly, keeping in view the various judicial precedents as cited above and respectfully following the same, we hold that the AO could not have legally invoked the provisions of section 115BBE of the Act in the present case and further the Ld. CIT(A) was also not legally correct in upholding of the application of provisions of section 115BBE of the Act. Accordingly, ground Nos. 8 and 9 are also allowed.

10.24 Ground Nos. 10 and 11 are general in nature and require no separate adjudication.

11.0 In the result, ITA No.375/Chd/2022 in the case of Sham Jewellers stands allowed.

12.0 In ITA No. 315/Chd/2022, in the case of Sham Fashion Mall, the only issue before us is the challenge to the provisions of section 115BBE by the AO and its sustenance by the Ld. CIT(A). In this case the returned income has been accepted by the AO. We have also gone through the assessment order as well as the order of the Ld. CIT(A) and it is seen that nowhere in the orders of both the lower authorities is there any fact brought on record or even a whisper of any allegation against the assessee that the assessee had any other source of income except income from business and income from other source. There is no iota of evidence to even suggest that the lower authorities had unearthed any other source of income of the assessee except under the heads of income declared by the assessee in the return of income. Therefore, in absence of any such evidence of any other undisclosed source of income of the assessee having been detected by the tax authorities, we are afraid that the invocation of provisions of section 115BBE will not hold good in the present case as well. The detailed reasons and observations in this regard

have already been incorporated in Para 10.17 to 10.23 of this order in the case of M/s Sham Jewellers wherein also we have rejected the action of the Income Tax Authorities in applying the provisions of section 115BBE of the Act. Likewise, on identical facts and on identical reasoning and law, we allow the grounds of the assessee in the present appeal also and hold that the application of provisions of section 115BBE of the Act in the case of M/s Sham Fashion Mall was bad in law and the same cannot be sustained.

13.0 In the result, ITA No. 315/Chd/2022 also stands allowed.

14.0 In the final result, both the appeals of the assessee stand allowed.

Order pronounced on 22.08.2022

Sd/-
(N. K. SAINI)
Vice President
Dated : 22.08.2022
“आर.के.”

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

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, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR,
ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar