

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.449/Asr/2019  
Assessment Year: 2017-18**

Sh. Ram Pal Gupta, 121 A/D,Gandhi Nagar , Jammu. [PAN: ABYPG6940J] <b>(Appellant)</b>	<b>Vs.</b>	Dy. CIT, Central Circle, Jammu.  <b>(Respondent)</b>
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**I.T.A. No.476/Asr/2019  
Assessment Year: 2017-18**

Dy. CIT, Central Circle, Jammu. <b>(Appellant)</b>	<b>Vs.</b>	Sh. Ram Pal Gupta, 121 A/D,Gandhi Nagar , Jammu. [PAN: ABYPG6940J] <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh.R. K. Gupta, CA.</b>
<b>Respondent by</b>	<b>Sh. Rohit Mehra, CIT. DR</b>

<b>Date of Hearing</b>	<b>20.10.2022</b>
<b>Date of Pronouncement</b>	<b>15.11.2022</b>

**ORDER**

**Per: Per Bench**

Both instant appeals of the assessee and revenue are directed against the order of the Id. Commissioner of Income Tax(Appeals)-5, Ludhiana,[in brevity the

CIT(A)] bearing appeal No. 109/IT/CIT(A)-5/Ldh/2018-19, date of order 29.04.2019 the order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Central Circle, Jammu, (in brevity the AO) order passed u/s 143(3) of the Act order dated 30.12.2018. Accordingly ground of the appeal of the revenue bearing ITA No. 476/Asr/2019 is reproduced as under:

*“1(a). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting an addition of Rs.25,38,000/- out of total addition of Rs. 28,70,000/- by not appreciating the fact that the 1Kg Gold Bar found from the possession of the assessee during Search & Seizure proceedings was a foreign made Gold Bar and assessee failed to explain the source of his investment.*

*1(b). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that cost of Jewellery/Bullion mentioned is Schedule AL of his returns of income for the A.Yrs. 2013-14 to 2015-16 was not explained by the assessee vis a vis the value of Gold at market rate during the relevant assessment year nor could he explain the value of Gold at cost price.*

*1(c). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that Notification No.347 (E) dated 20.05.1973 backed by Instruction No. 1916 dated 11.05.1994 is applicable only in the case of Jewellery/Ornaments and not in case of bullion found from the possession of assessee during the search proceedings.*

*2(a). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 18,00,000/- on account of unexplained cash, as assessee had miserably failed to furnish any evidence in support of his claim that an amount of Rs. 15,09,343/- was received by his daughter-in-law from his deceased wife at the time of her death.*

*2(b). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee only on the ground that mere possession of New Currency Notes after conversion of old demonetized Currency Notes does not render the cash as explained cash.*

*3. Whether on the facts and circumstances of the case and in law, the Ld.*

*CIT(A) has erred in allowing the appeal of the assessee while deleting an addition of Rs.32,55,984/- out of total addition of*

*Rs. 43,54,000/- on account of difference in closing stock found during the course of the Search & Seizure proceedings.*

*4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs.69,637/- on account of items of on the contentions of the assessee that those items were of small size without appreciating the fact that the items included many items which cannot be considered as small items.*

*5(a). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 1,87,02,000/- on account of cash deposited in bank account during the period of demonetization by ignoring the fact that assessee has reflected unreasonably high sales in cash during the period immediately prior to demonetization unmatched with sales history during the earlier periods.*

*5(b). Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,87,02,000/- on account of cash deposited in bank account during the period of demonetization without appreciating the contents of the documents relied upon by him while allowing relief.*

*6. The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.”*

2. The ground of the assessee is reproduced as under:

*“1. That the worthy CIT (A) is not justified in confirming part addition of Rs. 3,32,000/-out of the total addition of Rs.28,70,000/- made on account of jewellery/bullion found during the course of survey proceedings.*

*2 That the worthy CIT(A) is not justified in confirming part addition of Rs. 10,89,016/- out of total addition of Rs.44,23,637/- on account of difference in stock.*

*3. That the appellant craves, leaves to alter, amend and add to substitute any ground of appeal before or at the time of hearing.”*

3. First, we discuss the ITA No. 449/Asr/2019. The brief fact of the case is that the appellant is a proprietor of M/s Royal Technologies and Trader of Computers Laptop Including Accessories and Spare Parts. The return was filed for A.Y. 2017-18 with a total income of Rs.1,28,44,540/-. A survey was conducted u/s 131(1A) on the business premises of the assessee on 19.01.2017. The appellant was unable to present during survey due to his illness and was in Delhi for his treatment. The assessment was completed u/s 143(3) and addition was made in different heads. Aggrieved assessee filed an appeal before the Id. CIT(A) but the Id. CIT(A) had

partly allowed the appeal of the assessee. Only in point of addition of jewellery and bullion and in difference of stock were partly upheld.

4. Being aggrieved by the order of the Id. CIT(A) both revenue and assessee had filed appeal before us.

5. At the outset, we are simultaneously adjudicating both the appeals of the revenue and the assessee.

Ground no. 1 of the revenue. The Id. CIT DR first pointed out that the excess gold was found which is undeclared during the time of survey and the addition was made amount of Rs.28,70,000/-. The assessee filed the appeal before the Id. CIT(A) and the appellate authority has taken the following observation which is extracted here as below:

*“The AR has argued that the AO was not justified in rejecting the claim of cash as per books of accounts of M/s. Prime Computers Ltd., the proprietary concern of Sh. Rajesh Gupta who has been filing the return from last so many years and huge amount of cash were deposited in financial year 2010-11 (Rs. 2,49,84,000/-), 2011-12 (Rs. 2,74,62,520/-), 2012-13 (Rs. 6,41,59,136/-), 2013-14 (Rs. 24,87,537/-), 2014-15 (Rs. 14,74,325/-) and 2015-16 (Rs. 9,44,120/-). The AR has referred to the returns of income filed by Sh. Rajesh Gupta and filed the*

*copy of the cash ledger account showing balance of Rs. 4,15,963/- as on 19th January, 2017. On the basis of the documents filed and in view of the facts that Sh. Rajesh Gupta was a regular Income Tax assessee who has been depositing huge amounts of cash in the bank account during the preceding years also, the cash balance as per the books of accounts of M/s. Prime Computers is to be taken as explained. The AO has not rejected the books of accounts of Sh. Rajesh Gupta. The arguments on this point are found acceptable. As regards, the cash-in-hand of Rs. 15,09,349/- in the possession of Sh. Madhu Gupta after the death of her mother-in-law, the AR has argued that she was a regular income tax assessee who expired on 29.10.2015 and thereafter the household cash passed on to Smt. Madhu Gupta. It is also submitted that the assessee has shown a cash of Rs. 19,95,650/- as 'cash other than business cash' in his return for assessment year 2015-16 and as per the AR, there cannot be any stronger evidence than this to justify the cash found at the time of search. The AR has filed the copy of the income tax return of the assessee for assessment year 2015-16 and the relevant part is reproduced in para 3.1 (at page 19). The AO has rejected the explanation about cash received from the wife of the assessee Late Smt. Rama Kant Gupta by the daughter-in-law of the assessee by observing that no documentary proof for the same has been filed. It is illogical to expect that the old lady Smt. Rama Kant Gupta will call her*

*daughter-in-law and prepare a document duly signed by her and handover the cash to her daughter-in-law along with such documents before dying. Therefore, to expect documentary evidence in support of the contention that the cash in possession of Smt. Rama Kant Gupta at the time of her death, passed over to Smt. Madhu Gupta after her (Smt. Rama Kant Gupta) death is most absurd. It is but natural that after the death of Smt. Rama Kant Gupta, such cash would be passed on/ handled by her daughter-in-law, Smt. Madhu Gupta the only adult female member in the family. It is difficult to comprehend as to the documentary proof for such transfer at the time or after the death of Smt. Rama Kant Gupta. It is a tradition and generally no documentation is done and the eldest surviving female member of the household automatically takeover the responsibility which were earlier performed by the deceased. And most importantly the assessee has already disclosed a cash of Rs. 19,59,650/- (as non business cash) in his return filed before the date of search. There is further merit in the argument of the AR that the AO has given benefit of past savings only in respect of Sh. Rajesh Gupta and Smt. Madhu Gupta whereas no benefit in respect of past savings of the assessee has been given. The other basis taken by the AO for rejecting the contention of the assessee were various notifications issued by the RBI after demonetization. Here it is relevant to mention that at the time of search, no demonetized currency notes were found. Therefore,*

*whatever cash-in-hand was available with the assessee before demonetization got converted by the assessee. How he converted the old demonetized currency notes into new currency notes of Rs. 2,000/- can be a matter of debate but the fact of the matter is that no old demonetized currency of Rs. 1000 and Rs. 500 denomination were found or seized during the search and hence it has to be presumed that all of them were converted by the assessee into new currency notes of Rs. 2000/- or Rs. 500/- may be through legal means or in violation of RBI notification etc. but this will not make the cash found in new denomination of Rs. 2000/- as unaccounted or justify making addition of the same in the hands of the assessee since the assessee has declared this much of cash in hands 'other than the business cash' in the returns filed before the date of search. The assessee is entitled for the benefit of personal cash declared by him in his returns of income filed before the date of search since this has to be considered as disclosed cash. Under the facts and the circumstances of the case and in view of the documents filed by the AR during the appellate proceedings, the addition of Rs. 18,00,000/- made by the AO is not found sustainable and hence deleted.*

*There is merit in the contention of the appellant that his statement was not recorded at the time of search and the declaration made by Sh. Rajesh Gupta u/s 132(4) who was an*

*employee in assessee's concern is not binding on the assessee, especially in view of the fact that the assessee retracted from the declaration made by Sh. Rajesh Gupta through a letter filed on the very next day before the DDIT (Inv.), Jammu explaining all the points on which declaration was made by Sh. Rajesh Gupta u/s 132(4). The presumption u/s 292C is a rebuttable presumption and the AR has argued that the assessee has successfully rebutted the presumption. Even the AO has made addition of Rs. 18 lacs only as against surrender of Rs. 30 lacs taken during the search u/s 132(4). Thus, the declaration made by the Sh. Rajesh Gupta has not been accepted as such or relied upon by the AO. This also strengthens the arguments of the AR on this point. On the basis of facts and documents filed on behalf of the assessee, the contention of the AR is found acceptable. Accordingly, this ground of appeal is allowed.”*

5.1 The Id. Counsel submitted a paper book with brief note which is kept in the record. The Id. Counsel explained that the assessee is eligible to maintain the jewellery under the **CBDT Notification No. 347(E), dated 20.05.1978 backed by Instruction No. 1916 dated 11<sup>th</sup> May, 1994**. As per this Notification “the person not assessed to the wealth tax can retain gold jewellery and ornaments to the extent of 500 grams per married lady, 250 grams per an unmarried lady and 100 grams per male member of the family should not be seized”. Accordingly,

the assessee's wife Late Smt. Rama Kanta Gupta, son, Sh. Rajesh Gupta & daughter in law Smt. Madhu Gupta total gold was calculated 1200 gms under possession. Further, the assessee's wife was died on 29.10.2015 and all her gold ornaments are also in the hands of the family.

The Id. Counsel further replied that the assessee declared the gold in the return of income in historic value amount of Rs. 9 lacs which was declared in his return for A.Y. 2013-14, **APB Pages 36 to 60**. The assessee is now 89 years of age for the A.Y. 2017-18, so, this gold is acquired in his marriage at the age of 25 years. Accordingly, this value is actually covered the current value of gold ornaments. As per this return of income the assessee also declared the gold for A.Y. 2014-15 the proof which is enclosed in **APB pages 61 to 90**.

6. We heard the rival submission and considered the documents available in the record. We find there is no infirmity in the order of the Id. CIT(A). The assessee is covered his gold ornaments which was declared in return of income in the 'Schedule -AL'. The Id. CIT-Dr was unable to bring any contrary fact against the submission of assessee. The assessee declared the gold in his return of income & also covered by the departmental circular. So, the entire addition made by the Id. AO amount of Rs.28,70,000/- is liable to be quashed.

6.1 The Id. CIT(A) has confirmed only the addition Rs.3,32,000/- which was agitated by the assessee in the cross appeal. The issue is already discussed above. We find there is no reason for the addition of Rs.3,32,000/-. So, the same amount is also deleted.

7. Ground no-2 of Revenue. The Id. CIT DR first agitated the issue related deletion of addition amount of Rs.18 lac. During the seizure action cash amounting to Rs.46,17,980/- was found in the premises of the assessee and after the reconciliation with the cash book Rs.59,650/- un-reconciled and after deducting the cash in hand Rs.19,25,313/-. The Id. AO accepted the amount of Rs.1,25,313/- from past saving and balance Rs.18 lac was considered as unexplained money in the hands of the assessee and added as deemed income of the assessee u/s 69A amounting to Rs.18 lac with the total income of the assessee.

7.1 The Id. Counsel relied on the order of the Id.CIT(A) the relevant para is extracted below:

*“The AR has argued that the AO was not justified in rejecting the claim of cash as per books of accounts of M/s. Prime Computers Ltd., the proprietary concern of Sh. Rajesh Gupta who has been filing the return from last so many years and huge amount of cash were deposited in financial year 2010-11 (Rs. 2,49,84,000/-), 2011-12 (Rs. 2,74,62,520/-), 2012-13 (Rs. 6,41,59,136/-), 2013-14 (Rs. 24,87,537/-), 2014-15 (Rs.*

14,74,325/-) and 2015-16 (Rs. 9,44,120/-). The AR has referred to the returns of income filed by Sh. Rajesh Gupta and filed the copy of the cash ledger account showing balance of Rs. 4,15,963/- as on 19th January, 2017. On the basis of the documents filed and in view of the facts that Sh. Rajesh Gupta was a regular Income Tax assessee who has been depositing huge amounts of cash in the bank account during the preceding years also, the cash balance as per the books of accounts of M/s. Prime Computers is to be taken as explained. The AO has not rejected the books of accounts of Sh. Rajesh Gupta. The arguments on this point are found acceptable. As regards, the cash-in-hand of Rs. 15,09,349/- in the possession of Sh. Madhu Gupta after the death of her mother-in-law, the AR has argued that she was a regular income tax assessee who expired on 29.10.2015 and thereafter the household cash passed on to Smt. Madhu Gupta. It is also submitted that the assessee has shown a cash of Rs. 19,95,650/- as 'cash other than business cash' in his return for assessment year 2015-16 and as per the AR, there cannot be any stronger evidence than this to justify the cash found at the time of search. The AR has filed the copy of the income tax return of the assessee for assessment year 2015-16 and the relevant part is reproduced in para 3.1 (at page 19). The AO has rejected the explanation about cash received from the wife of the assessee Late Smt. Rama Kant Gupta by the daughter-in-law of the assessee by observing that no

*documentary proof for the same has been filed. It is illogical to expect that the old lady Smt. Rama Kant Gupta will call her daughter-in-law and prepare a document duly signed by her and handover the cash to her daughter-in-law along with such documents before dying. Therefore, to expect documentary evidence in support of the contention that the cash in possession of Smt. Rama Kant Gupta at the time of her death, passed over to Smt. Madhu Gupta after her (Smt. Rama Kant Gupta) death is most absurd. It is but natural that after the death of Smt. Rama Kant Gupta, such cash would be passed on/handled by her daughter-in-law, Smt. Madhu Gupta the only adult female member in the family. It is difficult to comprehend as to the documentary proof for such transfer at the time or after the death of Smt. Rama Kant Gupta. It is a tradition and generally no documentation is done and the eldest surviving female member of the household automatically takeover the responsibility which were earlier performed by the deceased. And most importantly the assessee has already disclosed a cash of Rs. 19,59,650/- (as non business cash) in his return filed before the date of search. There is further merit in the argument of the AR that the AO has given benefit of past savings only in respect of Sh. Rajesh Gupta and Smt. Madhu Gupta whereas no benefit in respect of past savings of the assessee has been given. The other basis taken by the AO for rejecting the contention of the assessee were various notifications issued by the RBI after*

*demonetization. Here it is relevant to mention that at the time of search, no demonetized currency notes were found. Therefore, whatever cash-in-hand was available with the assessee before demonetization got converted by the assessee. How he converted the old, demonetized currency notes into new currency notes of Rs. 2,000/- can be a matter of debate but the fact of the matter is that no old demonetized currency of Rs. 1000 and Rs. 500 denomination were found or seized during the search and hence it has to be presumed that all of them were converted by the assessee into new currency notes of Rs. 2000/- or Rs. 500/- may be through legal means or in violation of RBI notification etc. but this will not make the cash found in new denomination of Rs. 2000/- as unaccounted or justify making addition of the same in the hands of the assessee since the assessee has declared this much of cash in hands 'other than the business cash' in the returns filed before the date of search. The assessee is entitled for the benefit of personal cash declared by him in his returns of income filed before the date of search since this has to be considered as disclosed cash. Under the facts and the circumstances of the case and in view of the documents filed by the AR during the appellate proceedings, the addition of Rs. 18,00,000/- made by the AO is not found sustainable and hence deleted.*

*There is merit in the contention of the appellant that his statement was not recorded at the time of search and the declaration made by Sh. Rajesh Gupta u/s 132(4) who was an employee in assessee's concern is not binding on the assessee, especially in view of the fact that the assessee retracted from the declaration made by Sh. Rajesh Gupta through a letter filed on the very next day before the DDIT (Inv.), Jammu explaining all the points on which declaration was made by Sh. Rajesh Gupta u/s 132(4). The presumption u/s 292C is a rebuttable presumption and the AR has argued that the assessee has successfully rebutted the presumption. Even the AO has made addition of Rs. 18 lacs only as against surrender of Rs. 30 lacs taken during the search u/s 132(4). Thus, the declaration made by the Sh. Rajesh Gupta has not been accepted as such or relied upon by the AO. This also strengthens the arguments of the AR on this point. On the basis of facts and documents filed on behalf of the assessee, the contention of the AR is found acceptable. Accordingly, this ground of appeal is allowed.”*

7.2 The Id. Counsel further argued that the cash amount of Rs.19,59,650/- was already declared in the assessee's return of income for the A.Y. 2015-16 which is enclosed in **APB, Pages 91 to 120**. This amount Rs.19,59,650/- was acquired cash balance from the family saving which was also declared in the return of income. During the F.Y. 16-17 the turnover of business of assessee

is amount of Rs.24 crore. The assessee had sufficient cash balance in the books of accounts. So, there is no question of undisclosed cash in the hands of the assessee.

8. We heard the rival submission and relied on the documents available in the record. The assessee already declared the cash balance which is related to household savings in the return of income in '**Schedule –AL**' which was filed u/s 139(1). Before the revenue authorities the assessee had explained the cash balance. The Id. CIT-Dr was unable to bring any contrary fact against the submission of assessee. We find no infirmity in the order of the Id. CIT(A). Accordingly, the addition amount of Rs.18 lac is deleted.

9. Ground No.3 of Revenue. The Id. CIT DR first pointed out that during survey there is a stock discrepancy of the valuation of the goods specially the laptop is duly un-reconciled and found excess during the physical verification in survey. As per the assessment order the assessee declared the stock Rs.3,08,37,484/- as against the value arrived Rs.3,50,86,411/-. So the difference of the valuation of stock Rs.43,54,000/- was added back with the total income of the assessee.

9.1. The Id. Counsel first relied on the order of the Id. CIT(A) the relevant para is extracted as below:

*“The facts of the case, the basis of addition made by the A.O., arguments of the AR during the course of assessment as well as appellate proceedings have been considered. The AR has argued that immediately after search/survey, a detailed chart was furnished to the DDIT pointing out the mistake committed by the departmental team. The AR gave a chart showing the item-wise valuation as done by the search/survey team and the amount as per purchase bill which shows that the total value of stock found was Rs. 3,08,37,484/- as against value arrived at Rs. 3,50,86,411/- by the survey team. The AR has stated that the apparent mistake committed were that the MRP stands applied to the stock instead of the purchase price; defective units were counted; sold stock but lying at the premises was counted and other difference in VAT and counting. The AR further submitted that out of valuation of Laptops at Rs. 57,17,882/- the AO gave credit for demo laptops for Rs. 1,67,416/- as against actual value of Rs. 11,08,664/-, for defective laptops the credit of Rs. 8,34,360/- was given as against eligible credit of Rs. 12,54,280/-. In respect of laptops sold to M/s. Asia IT Solutions, as per the AR, the actual cost was Rs. 4,38,571/- against which credit given by the AO was Rs. 3,68,100/- only. After reducing the 5% VAT on local purchases, the difference was calculated by the AR at Rs. 10,89,016/- which was claimed on account of*

*counting error by the team. It is argued that the purchases are through proper channel and recorded in the books of accounts and cannot be said to be unaccounted. There is some merit in this argument of the AR since the assessee was dealing in branded items which has can be purchased from the authorized source only and has to be sold against proper bill. A perusal of the assessment order shows that the AO has calculated excess stock mainly on account of value of laptops at Rs. 57,17,820/-. This has been explained by the AR with respect to the demo laptops, defective laptops and sales made to M/s. Asia IT Solutions. However, even after the accounting for the value of demo, defective, sold laptops and VAT adjustment etc. by the AR, there is a difference of Rs. 10,89,016/- which has not been satisfactorily explained by the AR (and the same was the position before the AO also). The AR has tried to explain this as difference on account of counting by the departmental team. However, the fact is that even the appellant has accepted this difference during the assessment proceedings. Therefore, the addition to the extent of Rs. 10,89,016/- on account of difference in stock is found sustainable and hence confirmed. Regarding the addition of Rs. 69,637/-, the AR submitted that the shortage was on account of small items which have been exchanged after sale of fresh computers. It is also argued*

*that certain items are so small that there was pilferage by staff. It is also argued that even the counting of small items lying haphazardly cannot be confirmed as genuine. The argument of the AR regarding the pilferage of small items and counting of these items lying in haphazard way, appears to be realistic. Therefore, the addition of Rs. 69,637/- is deleted. There is merit in the contention of the assessee that his statement was not recorded at the time of search and the declaration made by Sh. Rajesh Gupta u/s 132(4) who was an employee in assessee's concern is not binding on the assessee, especially in view of the fact that the assessee retracted from the declaration made by Sh. Rajesh Gupta through a letter filed on the very next day before the DDIT (Inv.), Jammu explaining all the points on which declaration was made by Sh. Rajesh Gupta u/s 132(4). The presumption u/s 292C is a rebuttable presumption and the AR has argued that the assessee has successfully rebutted the presumption. On the basis of facts and documents filed on behalf of the assessee, this contention of the AR is found acceptable.*

*Therefore, to sum-up, the addition on account of difference in stock to the extent of Rs. 10,89,016/- is confirmed and appellant gets relief of the balance amount. Accordingly, these grounds of appeal are partly allowed.”*

9.2. In support of the assessee's own claim, the Id. Counsel first filed a reconciliation which is annexed in **APB page 151**. The reconciliation is reproduced as below:

Total Value as above	Rs 30837484.00
Less :- Defective Units ( Detail as per Annexure 'A')	Rs 1254280.00
Less :- Stock Sold Vide Bill No RT/VI/01861 dated 16 Jan 2017 to M/s Asian IT Solutions Ground Floor Polo Plaza Srinagar But goods lifted from premises on 21-01-2017 Net of VAT ( evidence enclosed	Rs 562380.00
Less :- Goods return by M/S Adil Enterprises Karan Nagar Srinagar Net of Vat as per Annexure 'C'	Rs 438571.00
Less 5 % vat of local purchase detail enclosed as per Annexure 'D'	Rs 389543.00
Other Differences ( as this is a counting by your team whereas our stock are as per books)	Rs 1089016.00
Net Stock	Rs 27103694.00

9.3. The Id. Counsel further argued that during hearing before ITAT the item and stock-wise statement and details of goods return, un-dispatched stock was submitted in **APB page no. 148 to 330**. The Id. Counsel specifically mentioned that there is no difference in between quantity and item of stock which was produced before the revenue authorities. Only, the difference in the valuation of the stock related to laptops. The purchased bills with tax invoice are also annexed from **APB pages 152 to 198** as proof determining the valuation of stock. The difference of some laptops of 233

numbers is only related to the gift item and the demo sample which were also reconciled (paragraph 9.2.).

9.4. The Id. Counsel mentioned that during the appeal hearing, the appellate authority allowed the difference of the stock but only Rs.10,89,016/- was upheld. There is no discrepancy in the item and quantity. The valuations are duly backed by the purchase value. So, the entire stock difference is liable to be rejected.

10. We heard the rival submission considered the documents available in the record. Perusal of the above documents the assessee filed the reconciliation and the evidence related basis of valuation. The valuation of stock is based on cost & market price whichever is lower. The stock of goods cannot be valued suo moto without any basis. The reconciliation was accepted by the Id. CIT(A), no discrepancy was found in the number of item of the stock. The Id. CIT-Dr was unable to bring any contrary fact against the submission of assessee. Accordingly, the addition made by the Id. AO is quashed and the balance addition which was up-held by the Id. CIT(A) is also liable to be deleted.

11. Ground no-4 of Revenue. The Id. CIT DR confirmed that as per the order of the Id. AO, the assessee deposited huge cash in the bank account of the

assessee during the demonetisation period especially after 08.11.2016. Accordingly, the addition of Rs.1,87,02,000/- was made as cash deposited in old currency in the bank account during the demonetisation period. The addition was made u/s 69 of the Act.

11.1. The Id. Counsel fully relied on the order of the Id. CIT(A) the relevant para of Id. CIT (A) is extracted as below:

*On the basis of this, the AR has argued that as per pages no. 38 & 39 of Annexure A-14, sales were carried out by through salesperson for which the bills were issued in October and November, 2016 and this fact was duly communicated to DDIT (Inv.), Jammu explaining the seized document. As per the AR, it is thus clear that the document seized at the time of search itself indicate that sales were made in October and November 2016 and same have been recorded in the books of accounts of the assessee. On the basis of the facts mentioned by the AR and the documents relied upon by him, his argument appears acceptable. Under the facts and the circumstance of the case, the addition of Rs. 1,87,02,000/- made by the AO is not found sustainable and hence deleted.*

11.2. The Id. Counsel further argued that it is pertinent to state that, when the sales have been duly accounted for in the books of accounts against the stocks in hand and which has been duly verified. Then how can be the cash received on account of sales, be treated as unexplained cash in the hands of the appellant. The Ld. A.O is very much unjustified in comparing the cash sales during the month of October 2016 and up to 8th November 2016 with the average cash sales of the previous months. The addition was fully on basis of comparison. The Id. AO also stated in his order in the last lines of Para 5.1 of his order that even in the year 2015-16 in august 2015 the cash in hand as per books was Rs. 7,03,9438/-. In August 16 also, the Ld. AO verified that cash in hand in books was amount of Rs. 20,65,556. Even when demonetization period was over the cash in hand duly verified and accepted is at Rs 28,45,667/. Lastly when sales are around Rs 24 Crores in a financial year, then to object the old sales through employees and recovered due to pressure of demonetization that to less than the figure of Rs 2 crore for the period from 1-10-2016 to 8-11-2016 is absolutely unjustified. If sales in a year are Rs 24 Crores then average sales per month has to be Rs 2 Crores. Once again, it is pertinent to state that sales cannot be in doubt, stocks stand verified then how can cash sales be unjustified by which stocks to that extent

stands reduced. If the books of accounts are incorrect, then AO should have brought certain instances of mistakes. Everywhere the AO's actions are presumptive and on his own whims and fancies.

Finally, counter evidence, the VAT returns (**ENCLOSURE- 8**: copies of VAT returns) are enclosed with written submission **APB Page 334-342** which is evidence for sale. These returns are not in doubt and are duly matching with the books of accounts.

Thus, this action of Ld. A.O. in treating the cash deposited as unexplained cash receipts and further unexplained investment of the assessee in bank account u/s 69A of the Income Tax Act, 1961 is purely contrary to facts. It is prayed that this unjustified action and wrong addition of Rs. 1,87,02,000/- may also please be deleted.

12. We heard the rival submission and relied on the documents available in the record. The entire addition was made on basis of human probability and assumption. The ld. AO made a percentage on aggregate sale and cash sale from September 2015 & in October 2016. The ratio in between aggregate sale and aggregate cash sale was 50% and in November 2016, 36.14%. On basis of that assumption the addition was made. During investigation the DDIT, Jammu as not found any discrepancies in the stock number and item. The

huge difference of the cash can be generated only by sale of goods. But in factual matrix the Id. AO was unable to proof the deposit of cash during demonetisation was from undeclared source. We do not find any infirmity in the order of the Id. CIT(A), accordingly, the addition made by the Id. AO amount to Rs.1,87,02,000/- is liable to be quashed.

13. Accordingly, the revenue ground nos. 1 to 5 are dismissed.

14. Ground no. 6 is general in nature.

15. The assessee's ground no. 1 and 2 are allowed.

16. In the result, the appeal bearing **ITA No. 476/Asr/2019** is dismissed and bearing **ITA No. 449/Asr/2019** is allowed.

**Order pronounced in the open court on 15.11.2022**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order