

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 376/Mum/2022 (A.Y. 2017-18)**

DCIT, CC-2(1),  
804, 8<sup>th</sup> Floor, Old CGO Building,  
M.K. Road, Mumbai-400057. .... Appellant

Vs.

M/s Raksha Bullion,  
134/136, Moti Building,  
3<sup>rd</sup> Floor, S.M. Street, Zaveri Bazar,  
Mumbai-400002.  
**PAN: AAHFR2224C** ..... Assessee

**C.O. No. 78/Mum/2022 (A.Y. 2017-18)**

M/s Raksha Bullion,  
134/136, Moti Building,  
3<sup>rd</sup> Floor, S.M. Street, Zaveri Bazar,  
Mumbai-400002.  
**PAN: AAHFR2224C** ..... Appellant

Vs.

DCIT, CC-2(1),  
804, 8<sup>th</sup> Floor, Old CGO Building,  
M.K. Road, Mumbai-400057. .... Assessee

Appellant/Revenue by : Sh. Dr. Mahesh Akhade, CIT-DR  
Respondent/Assessee by : Sh. Vimal Punmiya, CA  
Date of hearing : 26/07/2022  
Date of pronouncement : 20/10/2022

**ORDER****PER GAGAN GOYAL, A.M:**

This appeal by the Revenue and C.O. by assessee are directed against the order of Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter referred to as [‘CIT(A)’] dated 07.01.2022 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as [‘the Act’] for the Assessment Year (AY) 2017-18. The assessee has raised the following grounds of appeal:

Grounds of appeal	Tax effect relating to each Ground of appeal ( <i>see note below</i> )
1. Whether on the facts and circumstances of the case and in law, the Ld Pr. CIT(A)-48, Mumbai had erred in deleting the addition of Rs.2,50,00,000/- on account of cash seized on the ground that the substantive addition was made in the hands of the other parties without verifying whether the substantive addition has been accepted by the respective parties or has achieved finality in any appeal.	Rs. 82,50,000/-
2. Whether on the facts and circumstances of the case and in law, the Ld Pr.CIT(A)-48, Mumbai had erred in restricting the addition of Rs.9,13,83,600/- u/s 69A on account of bogus sales to Rs.8,04,176/- viz. 0.88% Rs.9,13,83,600/- of ignoring the fact that it has been established that such amount was in the nature of accommodation entries.	Rs. 5,43,47,654/-
3. Whether on the facts and circumstances of the case and in law, the Ld Pr. CIT(A)-48, Mumbai had erred in restricting the addition of Rs. 1,00,00,000/- u/s 69A on account of bogus sales to Rs.83,600/- viz 0.88% of Rs.95,00,000/- ignoring the fact that it has been established that such amount was in the nature of accommodation entries.	Rs. 56,49,900/-
Total tax effect (see note below)	Rs. 6,82,47,554/-

## 2. The assessee in its C.O. has raised the following grounds of appeal:

Grounds of cross objections		Tax effect relating to each Ground of cross objection (see note below)
1.	On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating profits of Rs.8,04,176/- @ 0.88% (1% 0.12% already shown by the assessee) on alleged bogus sales of Rs.9,05,79,424/- and added the same to the income of assessee.	Rs. 4,82,506/-
2.	On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating profits of Rs.83,600/- @0.88% (1% -0.12% already shown by the assessee) on alleged bogus sales of Rs.95,00,000/- and added the same to the income of assessee.	Rs. 50,160/-
3.		
Total tax effect (see note below)		Rs. 5,32,666/-

3. Brief facts of the case are that the assessee's two premises was surveyed under section 133A of the Act on 12.11.2016 by the DDIT (Inv.) Unit-5(1), Mumbai. The first premises Zaveri Bazar, Mumbai- 400002. The second premise, 27/29, Mehta Mansion, 3<sup>rd</sup> Floor, 3<sup>rd</sup> Agiary Lane, Nasta Gali, Zaveri Bazar, Mumbai-400002 was being used a back office by the assessee and was never disclosed by the assessee in any of the submissions made to any of the Government Department. Subsequently, the survey was converted into Search u/s. 132 of the Act on 13.11.2016 vide warrant No. 12618/13.11.2016 at 27/29, Mehta Mansion, 3<sup>rd</sup> Floor, 3<sup>rd</sup> Agiary Lane, Nasta Gali, Zaveri Bazar, Mumbai-400002.

4. The assessee has filed its return of income electronically on 01.11.2017 declaring a total income of Rs. 6,91,80,180/-. The case was selected for scrutiny under compulsory category. The assessee is engaged in the business of Bullion

trading and during the year under consideration has derived its income from Business. AO completed the assessment under section 143(3) of the Act on 28.12.2018 by determining total income at Rs. 19,56,17,680/-.

5. During the assessment proceedings, the AO made additions on account of unexplained cash seized amounting to Rs. 2.5 Cr. (on protective basis), addition under section 69A of the Act as its unaccounted money amounting to Rs. 9,13,83,600/- and addition under section 69A on account of transaction with Ashit Doshi amounting to Rs. 1 crore. Relevant facts of respective additions, we will discuss here-in-after during the course of discussion about Ld. CIT (A)'s order.

6. Being aggrieved with the order of AO, assessee preferred an appeal before the Ld. CIT (A)-48, Mumbai. Ld. CIT (A) discussed and analyzed all the additions made on case to case basis relying on assessee's submission and supporting evidences put forward by assessee as under:

*(i) During the course of survey, a cash of Rs. 3,16,50,000/- found at his premises out of this Rs. 66,50,000/- belongs to assessee as per books of accounts found by the Income Tax Team and balance of Rs. 2.5 Cr. belong to the following parties:*

<b>Sr.No.</b>	<b>Name of Party</b>	<b>Name of Person</b>	<b>Amount (Rs.)</b>
1.	M/s. Rushubh Jewellers Pvt. Ltd.	Himanshu Joshi	55,00,000
2.	M/s. Swarn Arita Jewellers	DungersinghjiParmar	98,00,000
3.	M/s. Vertical Gold	Santosh Khedekar	97,00,000
		<b>Total</b>	<b>2,40,00,000</b>

During the course of survey action under section 133A, Income Tax Team recorded the statement on oath of abovementioned parties, the relevant extracts of oath statement are as under:

"A. Relevant Extract of Statement of Mr. Himanshu Joshi of M/s. RushabhJewellers Pvt. Ltd.

Q. 12. During the course of survey action u/s. 133A in the case of M/s. Raksha Bullion, you were present at this premise i.e. 27/29, Mehta Mension, 3rd Floor, 3rd Agiary Lane, NastaGali, Zaveri Bazar, Mumbai-400002. Please explain.

Ans. Sir, I have come here to give cash of Rs. 55 Lakh to M/s. Raksha Bullion and to purchase Gold, on direction of Shri Mukesh Bhimani, Director of M/s. RushabhJewellers Pvt. Ltd.

Q. 16. Please provide the detail pertaining to the source of Rs. 55 Lakh of cash that you were carrying?

Ans. Sir the same was given to me by Mr. Mukesh Bhimani in office located at Rushabhjewellers private limited, Bileshwar, Ganesh Gavade road, Mulund (West), Mumbai -80. I am not sure about the source of this cash and same can be provided to you by Mr. Mukesh Bhimani".

B. Relevant Extract of Statement of Mr. Dungsinghji Parmar of M/s. Swarn Sarita Jewellers.

Q. 12. During the course of survey action u/s. 133A in the case of M/s. Raksha Bullion, you along with two of your colleagues Mr. Ronak Chaplot, Mr. Bhirulal were at the premise Le. 27/29, Mehta Mension, 3" Floor, 3Aglary Lane, NastaGali, Zaveri Bazar, Mumbai-400002. Carrying bag containing 98 Lakh rupees. Please explain.

Ans. Sir, I was instructed by Mr. Pankaj Kharwad who manages the said concern to deliver the money in the office of Raksha Bullion. I along with my colleagues Mr. Ronak and Mr. Berulal carried 3 bags each containing 98 Lakhs.

Q. 13. What was the instruction that was given to you while the money is to be delivered?

Ans. Sir, I along with my colleagues were given 98 lakhs and Mr. Pankaj Kharwad gave us the instruction to do so. He gave us the address where the money has to be delivered which was 27/29, Mehta Mansion, 3 floor, 3Agiary lane, Nasta Lane, Zaveri bazaar, Mumbai- 400002"

**C. Relevant Extract of Statement of Mr. Santosh Khedekar of M/s. Vertical Gold.**

"Q.12. During the course of survey action u/s. 133A in the case of M/s. Raksha Bullion, you were present at this premise i.e. 27/29, Mehta Mension, 3<sup>rd</sup> Floor, 3 Agiary Lane, NastaGali, Zaveri Bazar, Mumbai-400002. Please explain.

Ans. Sir, I have come here to give cash of Rs. 97 Lakh to M/s. Raksha Bullion and to purchase Gold, on direction of Shri Kirit Bhai, Owner of Vertical Gold.

Q.13. Do you come at this premises regularly?

Ans. No Sir, this is first time, I came to this premises.

Q.14. How this total work process is performed and who helps you to do this job?

Ans. As directed by my Boss Mr. Kirit Bhai I came with the amount of Rs. 97 Lakh to deliver to the cash to M/s Raksha Bullion at Mehta Mansion and deliver the same to Mr. Shailesh. I came here and met with Mr. Shailesh and deliver the cash to him".

7. During the survey proceedings, the partner of the Firm, Mr. Pravin Sanghvi consistently maintained a stand that the amount of Rs. 2.5 Cr. pertain to the parties mentioned above. Throughout the proceedings, Revenue has not found any deviation in the statement of the parties concerned and the statement of the partner of the assessee firm for reference statement of the partner of the assessee-firm; we are reproducing here-in-below (relevant extracts):

"Q. 29 During the course of survey proceeding u/s 133A of IT Act on 11.11.2016 at your office premises at "27/29, Mehta Mansion, 3<sup>rd</sup> Floor, Naasta Gali, 3<sup>rd</sup> Agyari Lane, Zaveri Bazar, Mumbai", it was found that few persons (whose names are mentioned below) were present in the premise and they were to deliver the cash of various amounts (as mentioned below) for purchasing gold bullion from your firm "M/s Raksha Bullion."

<b>Name of the person</b>	<b>Amount of cash found from them (Rs.)</b>
Santosh Pandurang Khaderkar & Bunty Jain	97,00,000
Himanshu Joshi	55,00,000

<i>Dumparsingh Parmar</i>	<i>98,00,000</i>
<i>Total</i>	<i>2,50,00,000</i>

*These persons have given statement on oath u/s 131 of IT Act dated 11.11.2016 wherein they have submitted on oath that they had come to the premise "27/29, Mehta Mansion, 3 Floor, Naasta Gall 3 Agyari Lane, Zaveri Bazar, Mumbai to deliver the cash. Please state the nature of transaction for which cash was being delivered entered by your firm M/s Raksha Bullion.*

*Ans: Yes sir I admit that these people came in my premise with cash and they came in to purchase bullion with cash and I admit that this was my cash sales to these parties. These are my regular clients and I have their KYC details with me. But these parties came with Begal tender hence I did not execute the transaction.*

*Q.32 As per the statement of the people that were present in that premise, they came there to make purchases from you and as per the statement given by the above mentioned parties those were cash sales to be made and was to be done by illegal tender?*

*Ans. This is the statement done by parties and I have no concern in that purchase".*

*Q. 43 There was cash of Rs.3,16,50,000 found at that premises and as per statement given by Shailesh you gave instructions to collect that cash from various parties.*

*Ans: The cash found at premise belong to the parties and does not belong to me except for Rs.66,50,000. The rest of the cash belongs to the parties. I gave instructions to Swarn Sarita, Vertical Gold and Rushabh Jewellers to bring legal currency to purchase gold".*

*5.4 Thus, your appellant submits that the said Rs.2,50,00,000/- does not belong to the appellant and hence you appellant is under no obligation to explain the source of said Rs.2,50,00,000/- seized by the Income Tax Search team from the business premises Further, the same cannot be treated as undisclosed cash and be added to your appellant's income as the three parties referred herein above have clearly admitted in writing on multiple occasions that the said cash belongs to them and is duly disclosed by them in their books of accounts."*

8. To substantiate its statement assessee submitted a Paper Book (PB) Vol. No.2 dated 21.07.2022 before the Bench wherein the assessment orders of M/s. Rushubh Jewellers Pvt. Ltd., M/s. Swarn Sarita Jewellers and M/s. Vertical Gold vide page no. 247, 219 & 228 respectively. Wherein the amount of Rs. 55 lacs, Rs. 98 lacs and Rs. 97 lacs had already been added under section 68 of the Act. Addition in the case of assessee was done on protective basis which was deleted by the Ld. CIT(A) considering the facts discussed (supra).

9. In the given circumstances, AO himself was not sure, that in whose hands the amount of Rs. 2.5 Cr. should be added, hence, as a matter of precautionary measure, he added the same in the hands of the assessee on protective basis but as discussed the facts in para-8 (supra) even protective assessment in the case of assessee is not tenable. In the light of above, we do not see any reason to interfere in the findings of the Ld. CIT(A) and we are not inclined to disturb Ld. CIT(A)'s order. We confirm the findings of Ld. CIT(A) and dismiss the **Ground No.1 of the Revenue.**

10. Ground No.2 pertains to addition of Rs. 9,13, 83,600/- under section 69A of the Act. This issue is extensively discussed by the AO in his order vide para-4.1 to 4.12 of the Assessment Order.

*“Unexplained money, etc. 69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the*

*bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

*8.15 Thus, section 69A provides that in case an assessee is found to be owner of any money, bullion, jewellery or any other valuable article and same is not recorded in the books of account, it can be considered to be deemed income of the assessee in case he is not able to provide explanation or his explanation is not satisfactory in the opinion of the Assessing Officer. In the instant case the same cannot be applied where the appellant has himself declared the amount of sales transaction in the return of income after duly entering the same in the books of account. If the AO wants to invoke the provision of section 69A, the onus is on the AO to establish that the amount deposited through RTGS are not part of sale consideration. There is nothing in the assessment order to suggest that assessee was in possession of bullion or cash amounting to Rs.9,13,83,600/- which was unexplained."*

11. During the assessment proceedings, AO observed that Sikkim Ferro Alloys Ltd. had made certain bogus purchases from my company Sunrise Metallic India Pvt. Ltd., and therefore, my company Sunrise Metallic India Pvt. Ltd. was supposed to receive payment against the said bogus sales to Sikkim Ferro Alloys Ltd. In turn, I had to pay him Cash for the said amount received in my books. Therefore, to settle the transaction in our books of account, Sikkim Ferro Alloys Ltd made payments to my company Sunrise Metallic India Pvt. Ltd. through RTGS. I transferred the amount so received to my other concern Shree Sai International. Then, as per the instruction of Mr. Kamlesh Kanungo, is main promoter of Sikkim Ferro Alloys Ltd., this amount was transferred from Shree Sai International to M/s. Raksha Bullion.

Further, as per the understanding between Mr. Kanungo and M/s Raksha Bullion, the cash in lieu of such transaction was given by M/s Raksha Bullion to Mr. Kanungo. To account for the amount received by M/s. Raksha Bullion from Sai International, M/s. Raksha Bullion issued a Bogus Sales Bill to Shree Sai International. This Bogus Sales Bill issued by M/s. Raksha Bullion to Shree Sai International also contributed to Bogus Stock of Gold in the Books of Accounts of Shree Sai International."

12. In response to above transaction of the assessee with M/s. Shree Sai International, a factual finding has been recorded by the Ld. CIT(A) as under:

*"8.13 During the appellate proceedings, the Ld. AR has argued that sales made to M/s Shree Sai International has already been offered as income by the: appellant. By treating it again as undisclosed income, will lead to double taxation of the said amount of Rs.9,13,83,600/-. In my view, if the AO consider the impugned sales as bogus and hollow, the logical course of action would be to reduce sales of Rs.9,13,83,600/- from the total turnover of the appellant which is Rs.77,66,98,03,545/- for the year under consideration. The G.P. on the turnover of Rs.9,13,83,600/- should be removed from the trading account. Moreover, once the sales are claimed to be bogus, as done by the AO, either corresponding purchases will be bogus too or there will be an excess stock to that extent. It is already discussed in the assessment order that no such excess stock was found during the course of search and survey proceedings carried out at the two premises of the appellant 12/13<sup>th</sup> Nov., 2016. In such circumstance, the only conclusion one can draw is that the corresponding purchases in the books of accounts of the appellant are also bogus, which is neither established by the A.O. nor the case of the AO. As per the reply to Q, 27, purchases are claimed to be bogus in the books of M/s. Shree Sai International or M/s Sikkim Ferro Alloys Ltd. not in the case of the appellant. In this circumstance, I fail to understand as to how the AO has resorted to the addition of entire sales of Rs. 9,13,83,600/-u/s 69 of the Act, which is already reflected in the books of accounts treating it, as unaccounted money, even without rejecting the books of accounts."*

13. We have gone through the assessment order of M/s. Sikkim Ferro Alloys Ltd. for A.Y. 2017-18 passed by Central Circle-1(4), Mumbai dated 29.12.2019, wherein the amount of sales shown in the books of accounts of the assessee amounting to Rs. 9,13,83,600/- has been considered in the figure of purchase and after rejection of books of accounts, AO applied G.P. rate of 1% on the total sales of M/s. Sikkim Ferro Alloys Ltd. Thus, on the one hand assessee declared sales of Rs. 9,13,83,600/- in its sales and declared appropriate profit over the same and on the other hand, purchases by M/s. Sikkim Ferro Alloys Ltd. is also accepted in their assessment under section 143(3) of the Act.

14. It is pertinent to mention that other than the statement of Shri Anil B. Jain there is no incriminating material found by the Department. We have gone through the order of the AO, order of the Ld. CIT(A), submissions of the assessee and the factual Paper Books filed by the assessee. In our observation, there is no finding in any of the order about short/excess possession of Gold by any of the parties, there is no cash found during survey proceedings at the premises of any of the assessee and **more importantly after selling Gold to M/s. Shree Sai International, there is no cash withdrawal by the assessee.** Allegation of the AO that amount of sales received by the assessee from M/s Shree Sai International had been in turn passed on to M/s. Sikkim Ferro Alloys Ltd. was also not found at any premise of any party.

15. In the given situation assumptions drawn by the AO against the assessee is not sustainable in absence of any corroborative evidence or any statement of any person. As the assessee is established dealer of Bullion having turnover of more than Rs. 7700 Cr., duly reflected the sales made in its Revenues, payment received

through RTGS and proper books of accounts were made available to the AO and AO was not able to find out any deficiency in the books of accounts. Hence, merely on the assumption drawn by the AO cannot be the basis of applying section 69A of the Act in the case of assessee. Otherwise also as discussed (supra) the conditions as prescribed in section 69A of the Act are not fulfilled and applicable in the present case.

16. We do not see any reason to interfere in the factual findings of the Ld. CIT(A) as purchase had already been accepted in the case of other party and assessee has already declared sales in its regular books of accounts which is not under challenge after declaration of accepted G.P. rate. AO was failed to dig out any deficiency in the books of accounts of assessee, moreover with the same modus operandi assessee is carrying on its business since last so many years and results declared by the assessee in the previous years also on the same methodology accepted by the Department. We are not inclined to interfere in the order of Ld. CIT(A). In view of the above, Ground No.2 of the Revenue is dismissed.

17. At the outset, Assessee denies that the transactions of sales made to M/s. Aman Enterprises and M/s Marina Trading belonging to Mr. Ashit B. Doshi are bogus in nature. Assessee submits that their firm is in the business of Gold Bullion Trading and the transaction which they had done with the above referred entities are pure and simple business transactions where gold bullion has been sold against payment received via RTGS in the normal course of business.

18. Assessee submits that the said two entities were introduced to them by Mr. Girish Sakaria residing at 1403/2, Sumer Tower, Love Lane, Byculla, Mumbai-

400010 bearing PAN-AJVPS1040C. Copy of the letter dt. 11/09/2017 filed by Mr. Girish Sakaria with the Initiating Officer Mr. Rahul Sinha appointed under Benami Property Act, to deal with the matter is attached in (Page 136-140 of Paper Book of Volume 1]

19. Assessee further submits that their firm has also given delivery of gold, purchased by the said parties to one Mr. Sanjay Kalbate, employee of Mr. Girish Sakaria, who have also in an affidavit confirmed that the delivery of gold was collected by him from their office on behalf of M/s. Aman Enterprises and M/s. Marina Trading and was handed over to Mr. Kishore Jain along with the Original Invoices. Copy of affidavit of Mr. Sanjay Kalbate is attached in (Page 141-144 of Paper Book of Volume 1]

20. During the course of Assessment proceedings copies of the following documents have been submitted for the transactions done with M/s. Aman Enterprises and M/s. Marina Trading which duly supported the contention, that this is a genuine trade transaction done by Assessee: -

*a) Sales Invoice No. 3104 dated 21/11/2016 for Rs. 60 lacs for Gold Bar 2009.780 gms weight sold to M/s. Aman Trading. (Page 145 of Paper Book of Volume 1)*

*b) Sales Invoice No. 3105 dated 21/11/2016 for Rs. 35 lacs for Gold Bar 1172.370 gms weight sold to M/s. Marina Trading (Page 146 of Paper Book of Volume 1)*

*c) Ledger A/c of M/s. Aman Trading and M/s. Marina Trading for the F.Y. 2016-17 as appearing in Assessee's Books of A/c's. (Page 147-148 of Paper Book of Volume 1)*

*d) Stock Register for the month of November, 2016, wherein the Sales made by Assessee to Aman Trading and Marina Trading is duly reflected on 21/11/2016 and where there is enough stock available with Assessee for making the said Sales. (Page 149-150 of Paper Book of Volume 1)*

*e) Bank Statement of Kotak Mahindra Bank for 11/11/2016 wherein the amount received from M/s Marina Trading and M/s Aman Trading by way of RTGS is duly reflected. Also, clearly it can be seen that no cash has been deposited or withdrawn by Assessee post that transaction. (Page 151-153 of Paper Book of Volume 1]*

21. Assessee further denies that it had any dealings with Mr. Mangilal of Kalbadevi as referred in the Statement of Oath of Mr. Ashit Doshi in reply to Q.17 & Q.18, in the statement recorded by him before the Income tax authorities on 13/11/2016. Copy of the statement of Mr. Ashit Doshi is enclosed in (Page 154-167 of Paper Book of Volume 1). Assessee does not know Mr. Mangilal and have neither at any point of time handed over any cash to him for facilitating any transaction between Assessee's firm and Mr. Ashit B Doshi and his firms M/s Marina Trading and M/s Aman Trading. Copy of the affidavit on Oath submitted by Mr. Mangilal is attached in (Page 168-171 of Paper Book of Volume 1) which is self- explanatory.

22. The Learned Assessing Officer erred in completely ignoring the submissions dated 04/12/2018 (Copy of the Submission is attached in (Page 172-175 of Paper Book of Volume 1), made by Assessee and making an addition of Rs. 100,00,000/- under section 69A and taxed as per the provisions of 115BBE of the Income Tax Act 1961 on account of transaction with Mr. Ashit Doshi thereby taxing the same at the rate of 60 percent as per provision of 115BBE of the Act. Being aggrieved by the additions made, Assessee had filed an appeal before CIT (A).

23. Assessee submits that sales made by it to Marina Trading of Rs.35,00,000/- and Aman Enterprises of Rs. 60,00,000/- belonging to Ashit B Doshi is a sale duly disclosed in Form 231 VAT return filed for the period 1 October 2016 to 31 December 2016 enclosed in Page No.255-261 of Paper Book of Volume 2. The said

sales are reported in audit report under section 61 of the MVAT Act in Form 704 in Annexure J1 wherein sales made to Marina Trading and Aman Enterprises has been duly reflected. The said sales have been highlighted in Form 704 as enclosed in Page No.262-279 Paper Book of Volume 2.

24. On perusal of the Audited Financial Statements you will observe that Assessee has reported total sales of Rs. 77,669,803,545/- which includes the sales made to Marina Trading and Aman Enterprises and hence the same has been offered as income while filing income tax return and hence by making the addition again, the Ld. AO has taxed the same as income twice. Presenting below the reconciliation of sales as per Audit report filed under MVAT and Gujarat VAT Act.

<b>RAKSHA BULLION F.Y. 2016-17</b>	
<b>Reconciliation of Turnover as per Income tax and VAT</b>	
<b>Particulars</b>	<b>Amount (Rs.)</b>
Gold Bar	77,052,394,279
Gold Ornament Jewellery	326,430,287
Gold Coin	82,295,513
Silver	52,800,505
Gold Articles	15,588,2961
Total Sales as per P&L	77,669,803,545
Sales within Maharashtra as per MVAT Audit report	73,018,307,499
Sales outside Maharashtra as per MVAT Audit report 53,271,268 on which CST is paid	52,271,268
Sales of Ahmadabad branch as per GVAT Audit report	4,598,225,073

Total Sales as per VAT Audit report	77,669,803,840
Difference, if any, rounding error	(295)

We have gone through the attached Audit report under section 63 of Gujarat VAT Act, 2003 enclosed in Pages 280-292 of Paper Book Volume 2. Judicial pronouncements relied on are same as mentioned for Ground 2. The Ld. CIT (A) in his order upheld the addition of Rs.83, 600/- (being 0.88% of 95, 00,000/-) and balance addition was deleted on the following grounds:

25. The relevant extract of the CIT (A) order is reproduced as under:

*9.2 It is observed that with respect to addition of Rs.1 crore u/s 69A, the AO has only relied upon the statement of Mr. Ashit B Doshi recorded by the Investigation wing and ignored various documentary evidence submitted before him. As discussed in the preceding paragraphs, invocation of sec 69A is incorrect and cannot be sustained, Since the rationale behind addition of Rs.1 Crore is identical to the facts and rational leading to addition of Rs. 913, 83,600/-, it is held that an ad-hoc addition of 0.88% of relevant sale amount is sufficient to cover any defects or lacuna as pointed by the AO. As stated by in the statement of Mr. Ashit B Doshi, RTGS of Rs.95 lakhs was made to the appellant keeping Rs.5 lakhs as commission income by himself. Hence, the ad-hoc estimation will work out to be Rs.83, 600/- (Rs.95, 00,000/-) which is confirmed and balance addition of Rs. 99, 16,400/- is deleted. Thus, ground of appeal no. 3 is partly allowed.*

26. In view of the above, the Ld. CIT (A) in his order has correctly upheld the addition of Rs.83, 600/- (being 0.88% of 95, 00,000/-) and deleted the balance addition. Without prejudice to the above, Assessee submits that CIT(A) erred in upholding the addition of Rs.83,600/- (being 0.88% of 95,00,000/-) which ought to be deleted on the grounds that transaction of sales made to M/s. Marina Trading and M/s. Aman Enterprises are purely a business transaction and ought not to be treated as bogus. Since the sales are not bogus in the nature the question of

taxing the G.P. margin on the same does not arise since the same is already been included in the turnover of your Assessee.

27. The facts and arguments of Ground No.3 raised by the Revenue are similar to Ground No.2. As we held above that the transition of sales in the books of the assessee are genuine and corroborated by various evidences we relied upon, hence, the addition of Rs. 1 Cr. deleted by Ld. CIT(A) is also sustained in the light of above Ground No.3 of the Revenue is dismissed.

**28. In the result, appeal filed by the Revenue is dismissed.**

**C.O. No. 78/Mum/2022 (A.Y. 2017-18)**

29. Grounds raised by the assessee in the C.O. also has co-relation with Ground No. 2 & 3 raised by the Revenue as discussed (supra). As in the appeal of Revenue, we held transaction of sales as genuine one in the books of assessee, hence, no further addition of Rs. 8,04,176/- and Rs. 83,600/- can be made.

30. We found Ld. CIT (A)'s order erroneous in so far as sustaining addition of Rs. 8,04,176/- and Rs. 83,600/-. As the books of the assessee has been found to be reliable and no defect whatsoever, marked out by the authorities below. Assessee disclosed all the sales transactions in its sales and disclosed income on accepted G.P. rate. No further addition in the case of assessee can be made on two specific sales transactions amounting to Rs. 9,13,83,600/- and Rs. 1 Cr. that is to disturbing accepted G.P. rate of assessee and applying G.P. rate of some other assessee and difference amount is added back on adhoc basis.

31. We found force in the arguments of the assessee and allowed Ground No. 1 & 2 of the C.O. and direct the authorities below to delete the additions made on adhoc basis amounting to Rs. 8,04,176/- and Rs. 83,600/-.

32. In the result, C.O. filed by assessee is allowed.

Order pronounced in the open court on 20<sup>th</sup> day of October, 2022.

Sd/-

(ABY T VARKEY)

JUDICIAL MEMBER

Mumbai, दिनांक / Dated: 20/10/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Assessee.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)  
ITAT, Mumbai