

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, HON'BLE ACCOUNTNAT MEMBER
(Physical Court Hearing)**

Sl. No.	ITA No.	Asst. Year	Name of Appellant	Name of Respondent
1.	30/SRT/2022	2017-18	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C	The DCIT, Central Circle -2, Surat.
2.	51/SRT/2022	2017-18	The DCIT, Central Circle-2, Surat.	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C
3.	303/SRT/2022	2013-14	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C	The ACIT, Central Circle-2, Surat.
4.	304/SRT/2022	2014-15	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C	The ACIT, Central Circle-2, Surat.
5.	305/SRT/2022	2015-16	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C	The ACIT, Central Circle-2, Surat.
6.	306/SRT/2022	2016-17	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C	The ACIT, Central Circle-2, Surat.
7.	312/SRT/2022	2015-16	The ACIT, Central Circle-2, Surat.	Dagina Jewellers India (P) Ltd., Upper Ground Floor, 2-23, Abhinandan AC Market, Ghod Dod Road, Surat - 395007. PAN: AABCD9702C

Date of Hearing:	12/04/2023
Date of Pronouncement:	27/04/2023
Appellant by:	Shri Kiran K. Shah, CA
Respondent by:	Shri Ashok B. Koli, CIT(DR) and Shri Vinod Kumar, Sr. DR

आदेश / ORDER

PER DR. A. L. SAINI, AM:

This is bunch of seven appeals, consisting five appeals filed by the Assessee and two appeals filed by the Revenue pertaining, to the different assessment years, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3)/ 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”].

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.51/SRT/2022 for assessment year 2017-18, have been taken into consideration for deciding the above appeals *en masse*.

3. Although, appeals filed by the Assessee, and Revenue contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Assessee and Revenue. We find that most of the grounds raised by the Assessee and Revenue, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of the assessee, as well as Revenue. With this background, we summarize and concise the grounds raised by the Assessee and Revenue, as follows:

4. (a) Summarized and Concise ground of appeals for ITA No.51/SRT/2022 for AY.2017-18 (Revenue appeal), are as follows:

(i) Ground No.1 & 2: CIT(A) erred in deleting the addition of Rs.2,85,00,000/- on account of 5% profit on turnover and give direction to assessing officer for telescoping of income estimated on undisclosed turnover, whereas two sets of books of accounts were maintained by the assessee in computer and assessee admitted that it has not disclosed the turnover to the extent of Rs.57.08 crores.

(ii) Ground No.3: The Ld. CIT(A) erred in restricting the addition of Rs.7,12,00,000/- on account of cash deposited during the demonetization period to

Rs.35,33,091/- without considering the fact that assessee did not explain the source of cash deposited.

(iii) Ground No.4: The CIT(A) erred in directing to tax the investment in undisclosed stock as business income instead to treat the same as undisclosed investment.

(b) Summarized and Concise ground of appeals for ITA No.30/SRT/2022, AY.2017-18(assessee's appeal) are as follows:

(i) Ground no.1: Not pressed by the assessee.

(ii) Ground No.2: CIT(A) erred in assuming addition on account of excess stock found during the survey proceedings to the extent of Rs.4,67,19,066/- as discussed in para 6.3.1 and 6.3.2 of the appeal order.

(c) Summarized and Concise ground of appeals for ITA No.312/SRT/2022 for AY.2015-16 (Revenue's appeal) is as follows:

(i) Ground No. 1 & 2: The CIT(A) erred in restricting the addition of Rs.3,22,83,495/- made on account of undisclosed turnover to the extent of Rs.1,44,08,782/- by estimating the net profit @ 0.2% on sale of bullion and 2.5% on sale of jewellery by not considering the facts that the director of assessee company himself admitted that two sets of books of accounts are being maintained which were stated in hard disc in computer and the assessee company itself also admitted that it has not disclosed the turnover to the extent of Rs.53.62 crores.

(ii) Ground No.3: CIT(A) erred in arriving at estimation of net profit on undisclosed turnover of bullion and jewellery by considering assessee's book results for previous three years, which on the face of facts discovered during survey were not reporting correct income.

(iii) Ground No.4: Without prejudice to ground no.3, CIT(A) erred in estimating net profit on undisclosed turnover instead of Gross Profit on undisclosed turnover.

(d) Summarized and Concise ground of appeals for Assessee's appeals in (i) ITA No.303/SRT/2022 for AY.2013-14, (ii) ITA No.304/SRT/2022 for AY.2014-15, (iii) ITA No. 305/SRT/2022 for AY.2015-16 and (iv) ITA No.306/SRT/2022 for AY.2016-17, are as follows:

(1) CIT(A) erred in not giving telescopic effect of profit earned on trading against income disclosed under PMGKY Scheme for Rs.5 crores or against excess stock found in the survey proceedings in aY.2017-18, as discussed in para 7.1 of the CIT(A) order.

(2) CIT(A) erred in estimating profit at 2.5% on undisclosed turnover as discussed in para 6 of the CIT(A) order.

5. Now we shall take these summarized and concise grounds of appeals one by one. The summarized and concise ground No.(a) is reproduced below for ready reference as follows:

(a) Summarized and Concise ground of appeals for ITA No.51/SRT/2022 for AY.2017-18 (Revenue's appeal), are as follows:

(i) Ground No.1 & 2: CIT(A) erred in deleting the addition of Rs.2,85,00,000/- on account of 5% profit on turnover and give direction to assessing officer for telescoping of income estimated on undisclosed turnover, whereas two sets of books of accounts were maintained by the assessee in computer and assessee admitted that it has not disclosed the turnover to the extent of Rs.57.08 crores.

(ii) Ground No.3: The Ld. CIT(A) erred in restricting the addition of Rs.7,12,00,000/- on account of cash deposited during the demonetization period to Rs.35,33,091/- without considering the fact that assessee did not explain the source of cash deposited.

(iii) Ground No.4: The CIT(A) erred in directing to tax the investment in undisclosed stock as business income instead to treat the same as undisclosed investment.

6. The relevant material facts, for ground no.(a) (i), as culled out from the material on record, are as follows. The assessee before us is a Private Limited Company and has filed its return of income for assessment year 2017-18 on 31.03.2018, declaring total income of Rs.5,67,49,440/-. The assessee's case was selected for scrutiny assessment, accordingly a notice u/s 143(2) of the Act was issued to the assessee on 16.08.2018 which was duly served on to the assessee. Further, notices u/s 142(1) of the Act were issued from time to time calling for various details. In response to the notices issued, the assessee has filed details before the Assessing Officer. The assessee-company is engaged in the business activity of trading in jewellery / gold bars. In this case a survey proceedings u/s 133A of the Act was carried out by the DDIT (Inv.)-1, Surat on 01/02/2017. During the survey action evidences in respect of excess stock, cash deposits during demonetization period, two different sets of accounts in the computer, shortage of cash etc. were found and impounded. During the course of survey action a hard disc (a data make) of 500 GB capacity containing books of accounts was also found and impounded. The Director of the M/s Dagina Jewellers (I) Pvt Ltd, Shri Ramesh Ganna in his sworn statement recorded on

03.02.2017 confirmed the ownership of this hard disc and admitted in reply to question 6 & 18 of the statement that two sets of books of accounts are being maintained which are stored in this hard disc. From this hard disc a PDF file was extracted named "DG16-17" showing Trial balance for the F.Y. 2016-17, till the date of Survey, (path:-old_D\ORN2008\data \DG1617\020217.zip). This same PDF file was also found during the survey action and duly confronted with the director Shri Kishor Ganna. Shri Kishor Ganna has also placed his signature on the printout of the same which is duly impounded. In this connection a show cause notice was issued to the assessee on 17.10.2019, the relevant portion of which are reproduced as under:

*“Your reference is invite to the Pdf file "DG16-17" showing Trial balance for the F.Y. 16-17, till the date of Survey, extracted from the impounded data i.e. from the 500 GB Hard disk, path:-old_D\ORN2008\data\DG1617\020217.zip. This same PDF file was also found during the survey action and duly confronted with the director Shri Kishor Ganna. Shri Kishor Ganna has also placed his signature on the printout of the same which is duly impounded. A copy of the same is reproduced **in page no.3 of assessment order.***

26.3 As per this trial balance, your company has already booked Sales till 03.02.2017 at Rs. 120,01,39,474/-. The Sales made in the remaining part of February month and March 2017 is not included. Whereas in the Return of Income field by you for the A.Y. 2017-18, you have shown sales of Rs.76,90,71,597/- only. Please submit your reply explaining the difference and also provide the supporting documents on which you had relied upon while furnishing your return of income for the year under consideration. Also please file your explanation as to why the difference of Rs.43,10,67,877/- + Sales made in the month of February and March 2017, should not be considered as suppressed Sale and G.P. thereon should not be added to the total income of the company.”

7. In response to this specific query, the assessee filed its reply vide letter dated 24.12.2019, which is reproduced below:

“Your Goodself has proposed to estimate GP on gross sale of Rs. 120.01/-crores plus sales of February and March, 2017 on the base of records impounded viz. PDF file "DG-16-17" during survey proceedings.

It is submitted that the records of DG-16-17 are not fully correct and there is huge mistake in entering data as well as computer system taking incorrect data and that is why, it shows incorrect turnover and stock. Secondly, there is likely to be sale on jangad which might have been returned later on. So the gross sale of Rs.120.01/- crores is not acceptable.

Without prejudice to the above and in alternative

It is submitted that, as per the above records and the turnover of two months, the aggregate turnover comes to Rs. 133.99/- crores as under.

<i>Turnover upto 03.02.2017 on the date of survey</i>	<i>120.01 crores</i>
<i>Turnover from 04.02.2017 to 31.03.2017</i>	<i>13.98 crores</i>
	<i>133.99 crores</i>
<i>Less : Turnover as per accounts</i>	<i>76.91 crores</i>
<i>Difference in turnover</i>	<i>57.08 crores</i>

At present, it is difficult to bifurcate the turnover in the form of gold bar and in the form of gold jewellery. The margin of profit in the case of gold bar is too low. Considering that the average percentage of profit is assumed at 5% and in that case, profit comes to Rs.2,85,40,000/-.

The assessee has disclosed Rs.5/- crores in PMGKY and Rs. 5/- crores as other income in the books of accounts. The above said deficit in gross profit is covered by the income disclosed and, therefore, no separate addition is called for.”

8. However, the Assessing Officer rejected the contention of the assessee and observed that assessee has not disclosed the turnover to the extent of Rs.57.08 Crores. The contention that the assessee had disclosed Rs. 5/- Crores additional income which covers the profit on unaccounted turnover and hence no addition should be made; was not accepted by the Assessing Officer in view of the fact that the assessee had disclosed Rs.5.0 Crores against excess Stock found during the survey proceedings. Also, the disclosure of Rs.5.0 Crores made under PMGKY was in respect of Cash deposited during the demonetization period. Therefore, both the disclosure were made by the assessee against specific discrepancies noted during the survey proceedings, set off of the same therefore cannot be allowed against profit earned on undisclosed turnover. The explanation filed by the assessee is therefore not valid and not acceptable. Therefore, a sum of Rs.2,85,40,000/- as submitted by the assessee itself, being 5% of gross profit on undisclosed sales was added to the total income of the assessee.

9. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the CIT(A), who has deleted the addition made by Assessing Officer.

10. Aggrieved by the order of Id. CIT(A), the Revenue is in appeal before us.

11. Learned Departmental Representative (Ld. DR) for the Revenue argued that during the course of survey action, a hard disc (a data make) of 500 GB capacity containing books of accounts was also found and impounded. The Director of the M/s Dagina Jewellers (I) Pvt Ltd, Shri Ramesh Ganna in his sworn statement recorded on 03/02/2017 confirmed the ownership of this, hard disc and admitted in reply to question 6 and 18 of the statement that two sets of books of accounts are being maintained which are stored in this hard disc. From this hard disc a PDF file was extracted named "DG16-17" showing Trial balance for the F.Y. 16-17, till the date of Survey, (path:-old_D \ORN2008 \data \DG1617\020217.zip). This same PDF file was also found during the survey action and duly confronted with the director Shri Kishor Ganna. Shri Kishor Ganna has also placed his signature printout of the same which is duly impounded. In this connection show cause notice was issued to the assessee on 17.10.2019 and asked as to why the difference of Rs.43,10,67,877/- and sales made in the month of February and March 2017, should not be considered as suppressed Sale and G.P. thereon should not be added to the total income of the company. On perusal of reply vide letter dated 24.12.2019 of the assessee in response to this specific query, it was found that the explanation filed of the assessee was not valid and not acceptable. On perusal of contention of the assessee, it was noticed that the assessee had admitted that it has not disclosed the turnover to the extent of Rs.57.08 Crores and the assessee had disclosed Rs.5.0 Crores against excess stock found during the survey proceeding. Also, the disclosure of Rs.5.0 Crores made under PMGKY was in respect of Cash deposited during the demonetization period. Therefore, both the disclosure were made by the assessee against specific discrepancies noted during the survey proceedings, set off of the same therefore cannot be allowed against profit earned on undisclosed turnover. Therefore, a sum of Rs.2,85,00,000/- being 5% of gross profit on undisclosed sales was of Rs.57.08 Crores added to the total income of the assessee.

12. On the other hand, Learned Counsel for the assessee defended the order passed by the ld CIT(A).

13. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. The Id CIT(A) observed that there is no dispute that there was a turnover of Rs.57.08 Crore found to be the turnover outside the books of accounts during the survey proceedings. The assessee is also not disputing the gross profit on such turnover worked out by the Assessing Officer of Rs.2,85,40,000/-. The assessee is only requesting that the said gross profit worked out should be considered as part of the declaration made by the assessee of Rs.5 Crores during the course of survey. So, to say, the assessee is asking for telescoping of income earned against the overall declaration made. The Assessing Officer has rejected the plea of the assessee under the pretext that the assessee has made the declaration of R.5 Crore against the excess stock found. In the facts and circumstances of the assessee's case, either source of income needs to be taxed or its application needs to be taxed. If both gets taxed, it would amount to double taxation. In the instant case, the income earned by the assessee is invested in stock of gold bars. The Assessing Officer has not brought anything on record to show that the income earned from undisclosed sales has been invested in any other asset. Therefore, Assessing Officer needs to tax either the income or the application/investment in stock and cannot tax both. Therefore, the Id CIT(A) noted that assessee is entitled for the benefit of telescoping. For this, Id CIT(A) relied on the decision of the jurisdictional High Court in the case of PCIT vs Aliasgar Anwarali Varteji reported in 96 taxmann.com 231 (2018). The decision of the Hon'ble High Court is reproduced below:

“3. We have heard Mrs. Mannu Bhat learned advocate appearing on behalf of the revenue. At the outset, it is required to be noted that the learned Assessing Officer made the addition of Rs.2,27,86,693/- on account of peak of negative cash in the books of account. However, the assessee explained the same and submitted that much negative balance was on account of payment made out of the unaccounted income, and therefore, it was submitted that when the entire unaccounted income found during the search was offered as a part of the overall disclosure, the same cannot be added in the total income as undisclosed investment. It is required to be noted that the learned Tribunal has rightly observed that much negative balance was made on unaccounted income and when necessary entries were made in the books of account, it is bound to result in negative cash balance. We are in complete agreement with the view taken by the learned Tribunal, Considering the aforesaid facts and circumstances of the case and more particularly when the entire unaccounted income, which was found during the search, was offered as

part of overall disclosure, learned Tribunal has rightly held that the assessee shall be entitled to the benefit of telescoping of negative cash balance against the disclosure made. Under the circumstances, the learned Tribunal has rightly allowed the assessee the benefit of telescoping the original disclosure made against the negative balance in the books of accounts. No substantial question of law arises. Under the circumstances, present TAX Appeal deserves to be dismissed and is accordingly dismissed.”

14. During the appellate proceedings, the assessee strongly urged that addition is required to be made either for source of income or for application of income whichever is higher. The assessee further submitted that the estimate of profit on undisclosed turnover is merely source of income and the same was lying in the form of excess stock. The facts of the case according to the assessee are that both the unaccounted turnover and unaccounted stock was found during the survey proceedings and, therefore, the undisclosed income is to be arrived at either considering source of income or investment in undisclosed stock (asset) (application of income) whichever is higher. Hence, Id CIT(A) noted that there is merit in the arguments of the assessee. Higher of source of income-or the investment in asset needs to be taken as the taxable income and it cannot be both. Therefore, Id CIT(A) noted that in the instant case of the assessee, the assessee earned a gross profit of Rs.2.85 crores. This gross profit would be present in the form of cash / stock/ bank deposit or investment. In the case of the assessee, the assessee will presume for a moment that it is present in the form of stock. If excess stock found is say worth Rs.5 Crore, the taxman needs to tax Rs.5 Crore being higher of the source and the application. In this case source is estimated to be Rs. 2.85 Crore but application/Investment is found to be Rs.5 Crore. If we tax both, it will amount to double taxation. Hence, higher of the two if taxed (in this example its Rs.5 Crore), it would be just and correct.

15. Therefore, in the facts and circumstances of assessee's case, the application of income earned is found in excess stock found and also in cash deposited in the bank account. The source of earning is from profit earned on undisclosed turnover and application is in stock and cash deposited in Bank. As cash deposited in bank is being adjudicated separated, the assessing officer is directed to telescope the gross profit estimated on turnover outside the books of accounts against the excess

stock found. In view of the above, the Id CIT(A) directed the assessing officer to give the telescoping effect of income estimated on undisclosed turnover against the undisclosed excess stock of gold jewellery and bars found during the course of survey. Hence separate addition made by the assessing officer of Rs.2.85 Crore was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order passed by Id CIT(A). The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the ground nos. 1 and 2 raised by the Revenue in ITA No.51/SRT/2022 for AY.2017-18.

16. Now, we shall take ground no.3 raised by the Revenue in ITA No.51/SRT/2022 for AY.2017-18, reads as follows:

“(ii) Ground No.3: The Ld. CIT(A) erred in restricting the addition of Rs.7,12,00,000/- on account of cash deposited during the demonetization period to Rs.35,33,091/- without considering the fact that assessee did not explain the source of cash deposited.”

17. Brief facts *qua* ground no.3 are that during the demonetization period, the assessee is found to have deposited cash aggregating to Rs.12,12,00,000/- in the bank with Oriental Bank of Commerce A/c No. 01024011000520. The details of the cash deposits are as under:

DATE	Cash amount deposited in Rs.	Total amount in a day in Rs.
10.11.2016	1,50,00,000	
	3,50,00,000	
	1,50,00,000	6,50,00,000
13.11.2016	1,50,00,000	
	50,00,000	2,00,00,000
14.11.2016	1,85,00,000	1,85,00,000
17.11.2016	20,00,000	
	10,00,000	30,00,000
18.11.2016	18,00,000	
	72,00,000	90,00,000
19.11.2016	27,00,000	27,00,000
21.11.2016	20,00,000	20,00,000
25.11.2016	10,00,000	10,00,000
		12,12,00,000

The assessee claims to have made these cash deposits sourced from the cash sales made prior to demonetization period. In the survey proceedings, it was found that

there was huge irregularity and as per the computer records, the bills were prepared not on the date of sales but on much later dates. The assessee was asked to file its submission to explain the discrepancies noted vide notice dated 17.10.2019. The relevant portion of the notice is reproduced as under:

*“During the year under consideration, particularly **in the demonetization period**, you have made cash deposit of Rs.12.12 Crores in your bank account maintained with Oriental Bank of Commerce. Your reference is invited to Log sheets generated from the computer at your permissions during the survey, in respect of Cash Sales bills. These log sheets were dully impounded during the Survey as per Annexure BF-10 (Total 54 pages, each page signed by Shri Kishor Ganna, director of the company). On perusal of these, it can be seen that Cash Sale bills of November 2016 have been entered in the computer system by giving them prior dates. A copy of log sheet Performa is pasted at page 6 of assessing officer order (Page 54) which clearly gives description such as- Date of entry/modification, Time, Action, User & Voucher date inter-alia other details field.*

30.2 A careful glance reveals that these are several Cash Sales entries, though entered on 09.11.2016, their voucher dates are entered as 20.10.2016 and 21.10.2016 (reference invited to pages 40 to 54 of Annexure BF-10)

30.3 Attention is invited to Page 47-48 (copies pasted below), wherein Cash Sales bills which were entered on 11th & 13th November 2016, whereas the Cash voucher dates are given 28 to 30 October 2016 & 8th Nov. 2016 (1 voucher). It is interesting to note the time of entry captured by the computer systems.

30.4 As can be seen, the Computer system generates time stamp in 24.00 hour format (No AM/PM stamp is there). As many as 25 entries were done past midnight of 12th Nov/ 13th Nov 2016, i.e. in the night/early morning from 00.18 hrs to 01.48 hrs. This clearly means; these entries are not real time entries done at the time of transactions, but done later past midnight when the shop was closed & to allow manipulation/fabrication at the convenience of the Assessee.

30.5 It is pertinent to point out that as per the Performa the "Action" field clearly indicates the action taken as 'Entered' or 'Modified'. In all such entries which were back dated, the action field in marked as 'Entered' implying those entries where done first time on the date mentioned therein, whereas Voucher date (Vchdate) or Sale date is show of earlier period (pre demonetization).

30.6 These anomalies were dully confronted with the director Shri Ramesh Ganna in his statement recorded on 02.02.2017 during Survey action. In his reply to the specific question No. 28 in this regard Shri Ramesh Ganna could not explain the anomaly satisfactorily & party admitted that due to these anomalies he is disclosing Rs.5.00 crores, under PMGKY. However, no explanation offered for explaining remaining Rs. 7.12 crore.

30.7 In view of the above mentioned facts, evidences from digital data & absence of proper explanation by the director when categorically confronted in his statement during survey; it indicates that the alleged Cash Sales which was

claimed to be the source of aggregate Cash deposit of Rs. 12.12 Crores during demonetization period, is not tenable and reliable.

30.8 You are hereby given one more opportunity to explain the source of Cash deposited of Rs.12.12 Crore during demonetization period. You are also required to furnish your reply in view of above mentioned facts and evidences, as to why cash deposited of Rs. 12.12 Crore should not be treated as unexplained credit in your books account.

18. In response to this specific query, regarding cash deposit during demonetization period, the assessee filed written submission vide letter dated 24.12.2019, which is reproduced as under:

“During the demonetization period, there was cash deposit of Rs. 12.12 crores in the bank account. The cash was deposited out of cash sales prior to 09.11.2016. There was cash on hand higher than Rs. 12.12 crores on closing of 08.11.2016 out of which the amount was deposited during the demonetization period.

During the survey proceedings, as per the records impounded, there was sufficient sales in the accounts to prove the deposit of above said cash on hand. The assessee had sufficient cash on hand and sales which is proved by the chart filed herewith. The sales are supported by bills. The assessee has produced the copies of bills and delivery challans for verification. A few sample copies of both are filed.

Your Goodself has relied upon certain computer data wherein it is found that the bill date and the date of bill entered in the computer are different. Your Goodself has presumed that the bill is raised in the dates of earlier period after the demonetization period. It is strongly submitted that, during the diwali time, the shops remains open till late night and the due to inadequate staff, the manual bills were raised and later on, they were entered into the computer after the diwali vacation. It is for this reason, that the date of bill is different than the date of data entry in the computer.

19. The assessee has also filed submission before the Assessing Officer about the issue on cash deposit, vide letter dated 18.12.2019 filed on 26.12.2019, which is reproduced as under:

“Regarding cash deposit during demonetization period - *It is submitted that assessee had deposited Rs. 12.12/- crores during the demonetization period and to that extent it had reduced the quantity in the books of accounts. In order to avoid litigation, the assessee had disclosed Rs. 5/- crores additional income during the year. So far as the balance amount of Rs. 7.12/- crores are concerned, they are out of cash on hand on account of sales, collection of debtors, the earlier balance of cash on hand etc. It is submitted that the doubt was raised merely because the posting date and voucher date are different in the computer data. It is submitted that the computer data was entered later on and that is why there is difference in the date. It is further submitted that the date of posting and the date of transactions were recorded in the similar fashion even after the demonetization*

period. It is submitted that the sales bills were found and inventory was taken in BF-18 (not impounded) and, therefore, it should be assumed that genuine sales.

It is further submitted that there was diwali on 30.10.2016 and prior to that it was a peak season time. After diwali, the accountant and the major staff had gone their native and that is the normal practice in Surat. Thus, the sales which took place between 30.10.2016 to 06.11.2016, the bills could not be prepared in the computer system on the relevant date due to lack of staff and the same were prepared later on and entered also late.

Secondly, there was cash on hand of Rs.26,47,736/- on 14.10.2016 which should also be given credit against deposit of cash during the demonetization period.

Without prejudice to the above and in alternative

In case, Your Goodself make any addition, on account of alleged non-genuine sales, prior to demonetization period against which cash was deposited, than, to that extent, the quantity / value of stock as per account ought to be taken at higher the amount, as according to the revenue, there was no sale. I therefore request Your Goodself to give credit of stock held, not to be sold prior to demonetization period. It is clarified that, my client had reduced the quantity and value of stock by taking into account, sales till the date of survey which includes sales prior to demonetization period.

Explanation on cash deposits in demonetization in the tabular form

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
<i>Cash deposited during the demonetization period</i>		<i>12,12,00,000</i>
<i>Less : Income disclosed in the return of income</i>	<i>5,00,00,000</i>	
<i>Less : Cash on hand as on 14.10.2016</i>	<i>26,47,736</i>	
<i>Less: Genuine cash sales / recovery debtors</i>	<i>6,85,52,264</i>	
		<i>12,12,00,000</i>

20. However, the assessing officer observed that as evidenced by the digital analysis of the data found and impounded, which is duly discussed in detail in the show cause notice dated 18.10.2019, the director of the assessee- company Shri Ramesh Ganna could not adduce proper explanation at the time of survey in respect of anomalies as pointed out relating to difference in the date of bills vis a vis system date as per computer data of those cash bills. The assessee did not file any explanation on the matter even in the post survey proceedings before DDIT(Inv)-1, Surat. Following the law of natural justice, the assessee was once again given an opportunity by assessing officer to forward its explanation in the matter, vide notice u/s 142(1) dated 18.10.2019. The assessing officer observed that despite sufficient time allowed to the assessee, the abnormally high sales in

cash during demonetization could not be properly explained by the assessee. In fact due to this intrinsic weakness relating to supporting evidences, the assessee itself chose to disclose a sum of Rs.5.0 Crores under PMGKY 2016 scheme. This in itself is an admission that the cash deposits in bank account during demonetization were not properly explained and not emanating from alleged cash sales. The cash so deposited (*allegedly from such cash sales*) in bank account is therefore not explained satisfactorily, which is liable to be treated as unexplained cash credit in bank book/Bank statement and may be taxed as income of the year. The contention of the assessee in respect of recovery from debtors and genuine cash sales, is not found to be acceptable in the absence of any supporting evidences filed in respect of recovery from debtors. The cash sales as already discussed above were not found to be satisfactory explained. The contention of the assessee, in respect of having opening cash in hand as on 14.10.2016 of Rs.26,47,736/-, was also not accepted by the Assessing Officer. The assessee has not been able to explain at all as to why cash in hand on this particular date of 14.10.2016 was to be considered or to be given credit for. There is no explanation to why not cash in hand to be considered for the day on which cash was deposited viz. 10.11.2016, 13.11.2016, 14.11.2016 and so on. It is pertinent to note that despite specifically calling for, the Cash Book for the year has not been filed for verification. The submission of the assessee in this regard has no logical basis, thus not acceptable. The assessee has further contended that it may be allowed set off of income of Rs.5.0 Crores disclosed by it in PMGKY. The assessee has also brought on record, a copy of disclosure made under PMGKY of Rs.5.0 Crores. The Assessing Officer agreed with the contention of the assessee and therefore the balance of cash so deposited in bank account of Rs.7,12,00,000/- (Rs.12,12,00,000 - Rs.5,00,00,000 PMGKY) was added to the total income of the assessee for the year u/s 68 of the Act as unexplained cash credit in the books of account. The Assessing Officer also stated that this income is taxed as per provisions of section 115BBE of the Act @ 60%.

21. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly deleted the addition made by the

Assessing Officer. The Id CIT(A), after considering the factual position of the assessee's case held that assessee is entitled to gets relief of Rs.6,76,66,909/- (6,23,35,144 +26,29,991+26,47,736). The Ld CIT(A) also directed the assessing officer to tax the balance amount of Rs.35,33,091/- (7,12,00,000- Rs.6,76,66,909) u/s 68 of the Act. The Id CIT(A) was of the view that balance amount of Rs.35,33,091/- is not generated not from actual sale of jewellery or bullion, therefore, Id CIT(A) directed the assessing officer to tax the amount of Rs.35,33,091/- as per the provisions of section 115BBE of the Act.

22. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us.

23. Learned DR for the Revenue argued that during the demonetization period, the assessee was found to have deposited cash aggregating to Rs.12,12,00,000/- in the bank with Oriental Bank of Commerce A/c No. 01024011000520 on various dates. The assessee claims to have made these cash deposits sourced from the cash sales made prior to demonetization period. In the survey proceedings, it was found that there was huge irregularity and as per the computer records, the bills were prepared not on the date of sales but on much later dates. The assessee was asked to file its submission to explain the discrepancies noted vide notice dated 17.10.2019 and the assessee was also show caused as to why cash deposited of Rs.12.12 Crore should not be treated as unexplained credit. On perusal of submission vide letter dated 24.12.2019 of the assessee, balance of cash so deposited in bank account of Rs.7,12,00,000/- (Rs.12,12,00,000 - Rs.5,00,00,000 Crores PMGKY) after allowing the disclosure made under PMGKY of Rs.5.0 Crores, was added to the total income of the assessee for the year u/s 68 of the I.T. Act as unexplained cash credit in the books of account. Therefore, Id DR contended that addition made by the assessing officer should be upheld.

24. On the other hand, Ld. Counsel for the assessee defended the order passed by the Ld. CIT(A) and pleaded that the addition was made by the assessing officer merely because there was mismatch in dates of bills and dates of data entry in certain bills. It was further submitted that the assessing officer relied upon the page 47 and 48 of the records impounded during the survey proceeding which is

reproduced on page no. 6 and 7 of the assessment order for making the impugned addition. It was also submitted that the assessing officer did not accept the genuine cash sales for entire relevant period merely because the date of sale bills and date of entry in the computer are different on certain sale bills and not all sale bills found. The assessing officer on page no. 14 & 15 of Annexure BF-10 found that the date on voucher was 20.10.2016 & 21.10.2016 and which were entered on computer on 09.11.2016. Similarly, on page no. 47 & 48, it was found that the cash voucher dates were given as 28th to 30th October, 2016 and 8th November, 2016 (one voucher) which were entered on 11th & 13th November, 2016. The assessing officer therefore, assumed that entire cash deposits during the demonetization period, other than the amount disclosed under PMGKY scheme is not on account of genuine sales. assessing officer also did not give credit to the cash on hand while calculating the excess cash over and above the cash as per cash book. It was further pleaded by the Id Counsel that the assessee's business is peculiar in nature, wherein the assessee company sells jewellery / gold bars on counters in shop and most of the sales are in cash. It was further pleaded that this is the position of sales in the case of all the jewelers who sell on counters and the assessee is not an exception. The AR therefore, urged that the receipt and accumulation of cash on hand as per the books of accounts is quite normal and the same ought to be accepted more particularly when books of accounts are not rejected by the assessing officer. The AR submitted that the demonetization started from 12 pm at midnight on 08.11.2016 and it was announced on TV around 9 pm and thereafter there was mad rash to buy gold ornaments /gold bars which went on till 12 pm on 08.11.2016. Further, it was urged that, prior to 08.11.2016, there was Diwali period which is busy season for the jewelers and during the said period they have highest turnover and hence, it was pleaded that there was huge turnover even prior to 08.11.2016.

25. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to

appreciate the controversy and the issue for adjudication. According to the assessing officer, during the course of survey at business premises, it was found that there was mismatch of date of bills and date of entry of the said bills in the computer. The assessing officer further held that the Director of the assessee company Mr. Ramesh Ganna could not adduce proper explanation at the time of survey and no explanation was filed in the post survey proceedings and hence entire amount of Rs.7.20 Crore was added to the total income as undisclosed bank deposits u/s 68 of the Act.

26. The Id CIT(A) examined the mismatch of dates of bills and entry of the bills in the computer. As per the assessing officer, the details of sales were found on page no. 1 to 54 of BF-10 which were impounded during the course of survey and the same has been relied upon by the assessing officer. On verification of the said pages, it was noted by Id CIT(A) that there is no difference in the dates of entry and the dates of bill from page no. 1 to 32. There were such few entries of mismatch on following pages.

<i>Page No.</i>	<i>Difference in dates/bills</i>
33	<i>two bills only</i>
34	<i>six bills only</i>
35	<i>two bills only</i>
37	<i>two bills only</i>
41	<i>two bills only</i>

The Id CIT(A) observed that other pages had mismatch (other than pointed above). For instance, page 36, 38, 39, 40 and page 42 to 54 for had mismatch of all entries. Thus, on verification of the entire sales identified by the assessing officer as bogus sales booked by the assessee on the basis of mismatch of dates of bills vis-a-vis the dates of entry in the computer, there is no such mismatch in several entries whose aggregate sales comes to Rs.6,23,35,144/- (Page no. 143 to 150 of the paper book). Out of the remaining turnover Rs.26,29,991/- has a difference of single day which can be considered normal i.e. sale of earlier day is entered next day. This also in my opinion can be considered as genuine turnover. The remaining turnover which comes to Rs. 5,61,80,827/- is the turnover where the mismatch of dates is much more than one day and the same can be considered as non-genuine turnover

i.e. the turnover is shown by the assessee after the demonetization was announced and no actual sales were effected. Following is the table showing the bifurcation of turnover:

<i>Bifurcation of turnover</i>	<i>Amount</i>
<i>No mismatch (Entry of sale on same day)</i>	<i>6,23,35,144</i>
<i>One day difference (Sale of Day 1 entered on Day 2)</i>	<i>26,29,991</i>
<i>Mismatch with difference more than one day (Difference from 2 days to 15 days)</i>	<i>5,61,80,827</i>
<i>Total</i>	<i>12,11,45,962</i>

27. The assessee argued before Id CIT(A) that the mismatch of turnover as per the above table is Rs.5,61,80,827/- and as the assessee had already disclosed for Rs.5 Crores in the PMGKY scheme, at the most the balance amount of Rs.61,80,827/- could be taken as the actual bogus sales. These aspects should have been considered by the assessing officer instead of treating all the cash deposits as unexplained.

28. Before the Id CIT(A), the assessee also raised the issue about the non-consideration of cash in hand by the assessing officer. The assessee submitted before Id CIT(A) that the cash in hand available as on 14.10.2016 amounting to Rs.26,47,736/- was not given credit to while taxing the amount of deposits in the bank account. The assessee submitted before Id CIT(A) that to explain the deposit of Rs. 12.12 Crore after demonetization in the bank account, the assessee worked backward for about a month and found that after giving credit to the cash deposit of Rs. 12.12 Crore, the opening balance of cash in hand as on 14.10.2016 was Rs.26,47,736/-. Normally it was pleaded that the assessee used to have cash in hand of around Rs. 25 lacs which was evident from the balance sheets of previous 3 years. Therefore, it was submitted that the cash as per the cash book as on 14.10.2016 should be given credit to while calculating the excess cash for taxation. As the currency notes were demonetized, all the cash had to be deposited into the Bank account, which included the normal cash in hand. There is merit in the submission of the assessee that the working of cash in hand which was submitted during assessment proceedings by the assessee should be considered for determining the excess cash to be brought to tax. As assessing officer has not

considered the same, therefore, Id CIT(A) directed the assessing officer to consider the cash in hand of Rs.26,47,726/- for calculation of undisclosed cash deposited into the bank account.

29. The assessee further submitted before the Id CIT(A) that only margin of profit to be taxed on undisclosed turnover and section 68 was wrongly invoked. The assessee, without prejudice to the above and in alternative, argued before Id CIT(A) that if at all addition is called for, there ought to be addition on some margin of profit instead of the entire sales to the extent of cash deposited during the demonetization period. The Id CIT(A) did not accept the plea of the assessee and noted that the cash realized from the alleged sales was deposited in the bank account. It is not a case where turnover outside the books of accounts was detected. The plea of the assessee could have been accepted in the later case and not in the former case as the assessee has deposited the entire cash in the bank account. Therefore, the alternative plea of the assessee was rejected. In view of the above facts, the Id CIT(A) observed that the addition on cash deposit sustained is Rs.61,80,827/- by the cash in hand of Rs.26,47,736/-. The net addition sustained was at Rs.35,33,091/-. The assessee got relief of Rs.6,76,66,909/- (6,23,35,144 + 26,29,991+26,47,736).

30. Therefore, Id CIT(A) directed the assessing officer to tax the said amount of Rs.35,33,091/- (7,12,00,000- Rs.6,76,66,909) u/s 68 of the Act as same was generated not from actual sale of jewellery or bullion, therefore, Id CIT(A) held the claim of sale as bogus as evidenced from entries in computer. Accordingly, the Id CIT(A) directed the assessing officer to tax the amount of Rs.35,33,091/- as per the provisions of section 115BBE of the Act. We do not find any infirmity in the order of Ld. CIT(A), hence ground no.3 of Revenue is dismissed.

31. Ground No.4 raised by the Revenue, in ITA No.51/SRT/2022, is reproduced below:

“Ground No.4: The CIT(A) erred in directing to tax the investment in undisclosed stock as business income instead to treat the same as undisclosed investment.”

32. The Ld. Counsel for the assessee submitted that this is the excess stock found during the course of survey proceeding. Such excess stock relates to business only, therefore it should not be taxed under section 115BBE of the Act, under the head income from other sources. The ld Counsel submitted that an amount of Rs.35,33,091/-, as the addition sustained by ld CIT(A), should be treated unaccounted business sales therefore addition at the rate of 2.5% (which is normal profit of the assessee), may be treated as income of the assessee under the head income from business.

33. On the other hand, Ld. DR for the Revenue contended that it should be taxed under the head income from other sources.

34. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. We note that ld CIT(A) gave relief to the assessee to the tune of Rs.6,76,66,909/- (6,23,35,144 + 26,29,991+26,47,736) and directed the assessing officer to tax the balance amount of Rs.35,33,091/- (7,12,00,000- Rs.6,76,66,909) u/s 68 of the Act read with section 115BBE of the Act. The said balance amount of Rs.35,33,091/- should not be treated differently as compared to Rs.6,76,66,909/-. No doubt amount of Rs.35,33,091/- is an unaccounted business receipt, however it pertains to assessee`s business, therefore it should be taxed at the rate of 2.5% (normal profit rate of assessee). The Ld. CIT(A) also upheld the addition @ 2.5% in assessee`s appeals, in other years. The said excess stock/sale pertains to the assessee`s business. The assessee does not engage in any business except gold and jewellery therefore such excess stock found by survey team was of gold and jewellery, though it is undisclosed, however it is very much related to assessee`s business, hence it should be taxable at the rate of 2.5% under the head business income and not under section 115BBE of the Act.

35. The source of income was explained and is apparently established and hence section 115BBE of the Act, is not applicable for such business receipts. The

provisions of Sections 68 and 69 are not applicable for trading transactions like deposit of cash out of cash sales and excess closing stock. For that reliance can be placed on the judgment of Hon`ble Gujarat High Court in the case of Shilpa Dyeing & Printing Mills Ltd, Tax Appeal No. 290 of 2013, dated 04.04.2013. Therefore, we direct the Assessing Officer to tax the excess stock/sale, if any, under the head business income, (not u/s 115BBE) and amount of Rs.35,33,091/- should be taxed at the rate of 2.5% (normal profit rate of assessee).

36. Thus, ground no.4 raised by the Revenue is dismissed.

37. Summarized and Concise ground of appeals for ITA No.30/SRT/2022, AY.2017-18 (Assessee Appeal) are as follows:

“(i) Ground no.1: The learned CIT(A) grossly in not deleting addition on account of cash deposit to the extent of Rs.35,33,091/- as discussed in para 6 of the appeal order.

(ii) Ground No.2: CIT(A) erred in assuming addition on account of excess stock found during the survey proceedings to the extent of Rs.4,67,19,066/- as discussed in para 6.3.1 and 6.3.2 of the appeal order.”

38. Ground no.1: During the course of hearing, Id Counsel for the assessee informs the Bench that assessee does not wish to press ground No.1 in ITA No.30/SRT/2022, for AY.2017-18, therefore we dismiss ground no.1 as not pressed.

39. Succinct facts qua ground No.2 in ITA No.30/SRT/2022, AY.2017-18 are that this ground relates to quantification of excess stock of Rs.10,00,90,951/- and giving credit to Rs.500,00,000/-, disclosed during the course of survey and subsequently in the return filed. The contention of the assessee before Id CIT(A) was that as per the show cause notice of the assessing officer, the excess stock was Rs.9,90,17,141/-, however, the assessing officer did not make any addition on account of excess stock in the assessment order for the reason that the book stock was already reduced by the assessee by accounting sales of Rs.12.12 crores (cost of sales taken by the assessing officer at Rs.11.54 Crore) which were held to be bogus sales by the assessing officer. The Id CIT(A) noted that as per his finding in ground No.2 of assessee that sales worth Rs.6,49,65,135/- are genuine sales and balance sales of Rs.5,61,80,827/- are only bogus sales, the working of the book

stock needs to be reworked so as to make the adjustment relating to the bogus sales. Here it is important to mention that though assessing officer treated sales worth Rs.12.12 crore as bogus, he did not make any adjustment relating to the cost of sales of the said bogus sales in working of the book stock as on the date of survey. Therefore, Id CIT(A) reworked the book stock after considering his finding in Ground No.2, as under:

<i>Particulars</i>	<i>Amount</i>
<i>Stock as per books of account as on the date of survey after considering the bogus sales of Rs.12.12 Crore as actual sales</i>	27,92,72,849/-
Add: <i>Cost of sales of the turnover considered as bogus as no sales were effected though accounted as such in the books (95% of Rs.5,61,80,827/-</i>	5,33,71,785/-
<i>Actual books stock as on the date of survey</i>	33,26,44,634/-
<i>Stock as per inventory as reduced by the gross profit as considered by assessing officer in the assessment order (45,08,31,885 – 2,14,68,185)</i>	42,93,63,700/-
<i>Excess stock as on the date of survey</i>	9,67,19,066/-
Less: <i>Declaration made during the course of survey towards excess stock (the same was shown in the return as well)</i>	5,00,00,000/-
<i>Excess stock to be brought to tax</i>	4,67,19,066/-

40. During the appellate proceedings, it was pleaded by assessee that there were purchase worth Rs.10,6,18,645/- which were made prior to the date of survey and the stock was already received as on the date of survey, but the same was not given credit to by the assessing officer while working the book stock. It was further submitted that the purchase bills amounting to Rs.59,95,826/- were found during the course of survey and were impounded by the authorized office. There were another set of bills, which were not received as on the date of survey and were received subsequently, for which the payments have been made by account payee cheques. These details especially of second set of bills were submitted by the assessee during appellate proceedings were remanded to the assessing officer for verification. However, assessing officer has not commented about these purchases in the remand report. As far as the first set of bills (worth Rs.59,95,826)

were found during the course of survey and as such should have been considered by the assessing officer. As regards the second set of bills (worth Rs.46,22,819/-) which were not found during the course of survey but the bills are all dated prior to the date of survey and even the stock was claimed to have been received prior to the date of survey. These aspects need to be verified by the assessing officer, as assessing officer has not commented about it in the remand report. Therefore, Id CIT(A) directed the assessing officer that if the claim of the assessee, in respect of the purchases worth Rs.1,06,18,645/- was found to be correct, the same should be given credit to while working the book stock. In case assessing officer is not able to verify the genuineness of the entire claim, the assessing officer may allow only the claim which has been properly verified by him. The excess stock worked above of Rs.4,67,19,066/- shall be reduced to the extent of verified purchases and the same shall be brought to tax as income from business as per findings of Id CIT(A). This way, Id CIT(A) allowed the issue of excess stock above of Rs.4,67,19,066/-, partly for statistical purposes.

41. Before us, Id Counsel contended that Id CIT(A) erred in assuming addition on account of excess stock found during the survey proceedings to the extent of Rs.4,67,19,066/-. To prove his stand, the Id Counsel submitted the reconciliation of figures as follows:

(1).Excess stock as per page 13 of the assessment order	14,90,17,441
Less: Excess stock – suo motu declared and paid tax thereon	<u>5,00,00,000</u>
	9,90,17,441
Less: Cash sales/PMGKY Scheme (sales bill reversed-So Stock increased) (AO has already allowed this issue)	5,00,00,000

Difference	4,90,17,441
	=====
Against this CIT(A) had confirmed addition of Rs. (para 6.3.1/page 11 of CIT(A) order)	Rs.4,67,19,066
Less: Telescopic of last four years	4,13,92,108
A.Y. 2013-14	23,37,604

A.Y. 2014-15	1,19,52,077
A.Y.2015-16	1,44,08,782
A.Y. 2016-17	1,26,93,645

Addition made on reassessment on account of survey	-----
Final difference	53,26,958

Notes:

- 1) The final difference is on account of some purchases which were found and impounded in the survey proceedings but remain to be accounted in the books of account. So purchase goods were received and taken in the inventory but not in the working of stock as per accounts.
- 2) In the inventory, some stocks were found on the date of survey which belongs to the customers who had given for repairing.
- 3) If these issues are considered, then no additions of excess stocks are made.”

42. Therefore, with help of the above reconciliation, Id Counsel submitted that total addition of Rs. 4,13,92,108/- was made by the assessing officer again during the reassessment proceedings, which amounts to double addition. The survey was conducted in the assessment year 2017-18 wherein the assessee has offered *suo-moto* in PMGKY scheme of Rs.5,00,00,000/- on account of excess stock/cash sales for the previous assessment years 2013-14, 2014-15, 2015-16 and 2016-17. Once the assessee has offered in PMGKY scheme of Rs.5,00,00,000/- for these previous assessment years, the assessing officer ought not to have reassessed and estimate the income of the assessee again in reassessment proceedings. In the scrutiny assessment the turnover of the assessee and related income were already taxed, therefore further estimation of profit, (of the preceding previous assessment years viz: 2013-14, 2014-15, 2015-16 and 2016-17) after the assessment year 2017-18 is not justified.

43. For difference of 53,26,958/- in above chart, the Id Counsel contended that this is the stock, on the date of survey which belongs to the customers who had given for repairing the old ornaments and jewellery. The assessee`s main job is to trade in jewellery and to do repairing work of customers` jewellery, hence the same should be deleted.

44. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

45. We have heard both the parties. We note that following previous reassessments were completed after the assessment for the assessment year 2017-18. The assessment year 2017-18 is the assessment year in which survey was conducted.

<i>A.Y. 2013-14</i>	<i>23,37,604</i>	<i>Assessment made on 29.03.2022</i>
<i>A.Y. 2014-15</i>	<i>1,19,52,077</i>	<i>Assessment made on 29.03.2022</i>
<i>A.Y.2015-16</i>	<i>1,44,08,782</i>	<i>Assessment made on 29.03.2022</i>
<i>A.Y. 2016-17</i>	<i>1,26,93,645</i>	<i>Assessment made on 29.03.2022</i>

In assessment year 2017-18, when the survey was conducted, then assessing officer reopened the previous assessment years namely, assessment years viz: 2013-14, 2014-15, 2015-16 and 2016-17 and re-estimated the profit on turnover at the rate of 5%. On appeal, Id CIT(A) reduced profit to 2.5%. We note that assessee has declared cash sales/PMGKY Scheme (sales bill reversed-So Stock increased) at Rs. 5,00,00,000/-, hence the assessee is entitled for telescoping of these previous assessment years which were completed after assessment year 2017-18. Therefore, we direct the assessing officer to grant the telescoping of these previous assessment years viz: 2013-14, 2014-15, 2015-16 and 2016-17.

46. Therefore, Ground No.2 raised by the assessee in ITA No.30/SRT/2022, AY.2017-18 is allowed.

47. We note that for difference of 53,26,958/- in above chart, is on account of repairing the old ornaments and jewellery, which normally came to the assessee from customers for routine repairing in guarantee period. Since the assessee has offered Rs.10,00,00,000/- suo-moto and paid the taxes. Considering the huge turnover of jewellery, repairing work cannot be ruled out. While selling the jewellery, the assessee provided the guarantee to the customers for manufacturing defects. Therefore the difference of 53,26,958/- is on account of jewellery came

to the assessee from their customers for repairing, hence such difference is hereby deleted.

48. The assessee's main job is to trade in jewellery and to do repairing work of customers' jewellery, hence the difference of Rs.53,26,958/- is hereby deleted.

49. Since we have granted the telescoping of these previous assessment years viz: 2013-14, 2014-15, 2015-16 and 2016-17 therefore, assessee's following additions are (appeal-wise) deleted:

A.Y. 2013-14	23,37,604
A.Y. 2014-15	1,19,52,077
A.Y.2015-16	1,44,08,782
A.Y. 2016-17	1,26,93,645

50. Therefore, following summarized and Concise grounds for assessment years 2013-14, 2014-15, 2015-16 and 2016-17, are allowed.

“Summarized and Concise ground of assessee's appeals in (i) ITA No.303/SRT/2022 for AY.2013-14, (ii) ITA No.304/SRT/2022 for AY.2014-15, (iii) ITA No. 305/SRT/2022 for AY.2015-16 and (iv) ITA No.306/SRT/2022 for AY.2016-17, are as follows:

(1) CIT(A) erred in not giving telescopic effect of profit earned on trading against income disclosed under PMGKY Scheme for Rs.5 crores or against excess stock found in the survey proceedings in A.Y.2017-18, as discussed in para 7.1 of the CIT(A) order.

(2) CIT(A) erred in estimating profit at 2.5% on undisclosed turnover as discussed in para 6 of the CIT(A) order.”

51. In the combined result, appeal filed by the assessee in in (i) ITA No.303/SRT/2022 for AY.2013-14, (ii) ITA No.304/SRT/2022 for AY.2014-15, (iii) ITA No. 305/SRT/2022 for AY.2015-16 and (iv) ITA No.306/SRT/2022 for AY.2016-17, are allowed

52. Summarized and Concise ground of appeals for ITA No.312/SRT/2022 for AY.2015-16 (Revenue Appeal) are as follows:

(i) Ground No. 1 & 2: The CIT(A) erred in restricting the addition of Rs.3,22,83,495/- made on account of undisclosed turnover to the extent of Rs.1,44,08,782/- by estimating the net profit @ 0.2% on sale of bullion and 2.5% on sale of jewellery by not considering the facts that the director of assessee company himself admitted that two sets of books of accounts are being maintained which

were stated in hard disc in computer and the assessee company itself also admitted that it has not disclosed the turnover to the extent of Rs.53.62 crores.

(ii) Ground No.3: CIT(A) erred in arriving at estimation of net profit on undisclosed turnover of bullion and jewellery by considering assessee's book results for previous three years, which on the face of facts discovered during survey were not reporting correct income.

(iii) Ground No.4: Without prejudice to ground no.3, CIT(A) erred in estimating net profit on undisclosed turnover instead of Gross Profit on undisclosed turnover.

53. These above grounds of appeal (1 to 4) of Revenue are interconnected therefore we shall take them together.

54. Basic facts have already been narrated by us therefore we do not repeat them. The additions made by assessing officer in all three assessment years are summarized as under:

Assessment years	Income as per ROI	Addition on account of estimation of profit on unrecorded turnover	Total assessed income
2014-15	Rs.65,71,990	Rs.2,68,07,847	Rs.3,33,79,837
2015-16	Rs.62,54,740	Rs.3,22,83,495	Rs.3,85,38,235
2016-17	Rs.50,19,730	Rs.2,73,05,521	Rs.3,23,25,251

55. The Revenue is in appeal before us that addition made by assessing officer at Rs.3,22,83,495/- was restricted by Id CIT(A) to Rs.1,44,08,782/-. The table showing profit restricted by Id CIT(A) for the above assessment years, 2014-15, 2015-16 and 2016-17 are reproduced below:

A.Y	Profit to be sustained on jewellery at 2.5% of the suppressed turnover	Profit to be sustained on bullion at 0.2% of the suppressed turnover	Total addition to be confirmed	Relief granted to the assessee
2014-15	Rs.1,18,25,829/-	Rs.1,26,248/-	Rs.1,19,52,077/-	Rs.1,48,55,770/-
2015-16	Rs.1,42,58,089/-	Rs.1,50,693/-	Rs.1,44,08,782/-	Rs.1,78,74,713/-
2016-17	Rs.1,26,10,243/-	Rs. 83,042/-	Rs.1,26,93,645/-	Rs.1,46,11,876/-

56. The basic facts narrated by Id CIT(A) are that a survey u/s 133A of the Act was carried out by the DDIT(Inv.)-1, Surat on 01.02.2017. During the course of survey action, a hard disc containing books of accounts was found and impounded. The Director of M/s Dagina Jewellers (I) Pvt. Ltd., Shri Ramesh Ganna in his sworn statement recorded on 03.02.2017 confirmed the ownership of the said hard disc and admitted in reply to question 6 & 18 of the statement that two sets of

books of accounts are being maintained which are stores in the said hard disc. It was also admitted that one set of books of accounts contained real data of the business and other set of books of account was prepared for statutory compliances such as filing returns of income. As per the trial balance and other incriminating material found recorded in the hard disc, the assessee had gross sales of Rs.82,88,17,902/- including direct income in the form of labour charges in A.Y 2014-15, whereas in the return of income filed for the said A.Y the assessee has shown gross sales of Rs.29,26,55,967/-. Thus, the gross sales were suppressed to the turn of Rs.53,61,56,935/-. The said suppressed turnover consisted of bullion turnover of Rs.6,31,23,785/- and jewellery turnover of Rs.47,30,33,150/-. Similarly for A.Y 2015-16 the assessee had gross sales of Rs.93,56,06,771/- including direct income in the form of labour chargers in A.Y 2015-16, whereas in the return of income filed for the said A.Y the assessee has shown gross sales of Rs.28,99,36,868/-. Thus, the gross sales were suppressed to the turn of Rs.64,56,69,903/-. The said suppressed turnover consisted of bullion turnover of Rs.7,53,46,333/- and jewellery turnover of Rs.57,03,23,570/-. Similarly for A.Y 2016-17 the assessee had gross sales of Rs.94,26,85,225/- including direct income in the form of labour chargers in A.Y 2016-17, whereas in the return of income filed for the said A.Y the assessee has shown gross sale of Rs.39,65,74,788/-. Thus, the gross sales were suppressed to the tune of Rs.54,61,10,487/-. The said suppressed turnover consisted of bullion turnover of Rs.4,17,00,785/- and jewellery turnover of Rs.50,44,09,702/-. Suppressed gross sales as per the trial balance found recorded in hard disc during the course of survey and the return of income for the different assessment years are summarized as under:

<i>Assessment years</i>	<i>Gross sales as per the trial balance found recorded in the hard disc</i>	<i>Gross sales as per the ROI filed by the assessee</i>	<i>Difference amount</i>
2014-15	Rs.82,88,17,902/-	Rs.29,26,55,967/-	Rs.53,61,56,935/-
2015-16	Rs.93,56,06,771/-	Rs.28,99,36,868/-	Rs.64,56,69,903/-
2016-17	Rs.94,26,85,225/-	Rs.39,65,74,738/-	Rs.54,61,10,487/-

57. From the above chart, it can be seen that assessee had disclosed its gross turnover less by Rs.53,61,56,935/- for A.Y 2014-15, Rs.64,56,69,903/- for A.Y

2015-16 and Rs.54,61,10,487/- for A.Y 2016-17 indicating sales outside the books of accounts. On the basis of such differences/incriminating details found during the course survey, the cases were re-opened by the assessing officer after taking approval from higher authorities and notices u/s 148 were issued on 30.03.2021 for all the 3 AYs. The assessing officer completed the assessments u/s 143(3) r.w.s.147 of the Act on 29.03.2022 for all the 3 assessment years (AYs). The assessing officer made a single addition being estimation of profit on unrecorded/suppressed turnover for A.Y 2014-15 to 2016-17.

58. Aggrieved by the said additions, the assessee carried the matter in appeal before Id CIT(A) and has raised 3 grounds of appeal for each of A.Y 2014-15 to A.Y 2016-17 before Id CIT(A).

59. Before Id CIT(A) the assessee has raised Ground No.1 which is relating to addition of Rs.2,68,07,847/- for A.Y 2014-15, Rs.3,22,83,495/- for A.Y 2015-16 and Rs.2,73,05,521/- for A.Y 2016-17 on account of estimation of profit on unrecorded/suppressed turnover. The assessing officer has taken 5% of the suppressed turnover as estimated profit earned by the assessee and made the above additions in the respective assessment years (A.Ys). Before the assessing officer, the assessee had raised two issues namely:

- (i) The turnover of the bullion and jewellery should be bifurcated as the margin of profit on bullion is too low vis-à-vis jewellery.
- (ii) The estimation of profit should be done as per the profit shown in the accounts during the relevant year.

60. However, the assessing officer did not accept any of the two contentions of the assessee and proceeded to estimate 5% profit on the entire suppressed turnover which was inclusive of bullion turnover.

61. During the appellate proceedings, the assessee has made following submission for A.Y 2014-15. The ground of appeals and the submissions of the assessee for all 3 assessment years were identical and hence submissions for one assessment year was reproduced by Id CIT(A) in his order, which is as follows:

“1) The learned ACIT grossly erred in making addition of Rs.2,68,07,847/- on account of estimate of profit at 5% on undisclosed turnover of Rs.53,61,56,935/- (6,31,23,785) for bullion and 47,26,95,502/- for jewellery) as discussed in para 9 to 11 of the assessment order.

2) The learned ACIT grossly erred in not giving telescopic effect of the profit so estimate against income disclosed under the PMGKY scheme for Rs.5/- crores.

1.1 Estimate of margin of profit – The learned ACIT made huge estimate of profit at 5% on unaccounted turnover of bullion and gold ornaments. The unaccounted turnover was as under:

Bullion	6,31,23,785
Jewellery	47,26,95,502
Total	53,61,56,935

1.2 Margin of profit on trading of bullion is too thin – The assessee strongly urges that the plea of the assessee to assume minor margin of profit say 0.10% on bullion was not accepted. The assessee strongly urges that, in the case of bullion, the margin of profit is very thin and, therefore, there is no reason to make addition at the rate of 5% on unaccounted turnover.

1.3 Margin of profit on jewellery – The assessee further urges that, margin of profit on jewellery on 2.03% in the year under consideration was a combined margin of profit and, therefore, the same ought to be applied for estimate of profit on sale of unaccounted jewellery. The assessee therefore, urges that 2.03% ought to be assumed as margin of profit in the year under consideration.

1.4 The assessee had submitted the working of undisclosed profit at the time of assessment as under:

PARTICULARS	UNACCOUNTED TURNOVER	MARGIN	AMOUNT
BULLION	6,31,23,785	0.10	63,124
JEWELLERY	47,26,95,502	5.00	2,36,34,775
TOTAL			2,36,97,899

The assessee urges that there was bona fide mistake while adopting net margin of profit which was taken including income disclosed in the survey proceedings for A.Y 2013-14. The assessee urges that the actual margin of profit on turnover as per accounts of the current year ought to be considered and in that case, the revised margin of profit is as under:

PARTICULARS	UNACCOUNTED TURNOVER	MARGIN	AMOUNT
BULLION	6,31,23,785	0.10	63,124
JEWELLERY	47,26,95,502	2.03	95,95,719
TOTAL			96,58,843

The assessee urges that the profits on undisclosed turnover for the entire year would be just Rs.96,58,843/- as worked out hereinabove. The assessee strongly urges that, the learned assessing officer simply adopted the margin of profit

estimated in the A.Y 29017-18. The assessee urges that, the major profit on undisclosed turnover was already covered by way of additional amount of stock disclosed for Rs.5 crores inn the A.Y 2017-18 and, therefore, the issue of margin of profit was not disputed.

1.5 The assessee therefore, urges that, the question would arise whether profit earned on undisclosed turnover is liable to tax or not against the claim that the same gets covered by amount disclosed for Rs.5/- crores under PMGKY Scheme.

1.6 The assessee further urges that, so far as income earned during the year is concerned, the same gets covered by cash disclosed under the PMGKY Scheme for Rs.5 crores. The assessee strongly urges that the undisclosed profit was lying in the form of cash and the same was deposited in the bank due to demonetization of currency. The assessee therefore, urges that the credit to the extent of Rs.5/- crores ought to be given against undisclosed profit on unaccounted turnover for the post survey period and the subsequent years.

1.7 The assessee strongly urges that, the unaccounted turnover was found in the survey proceedings carried out on 03.02.2017 for the period from F.Y 2012-13 to 2016-17 and ion that survey proceedings, the assessee had disclosed Rs.5/- crores against cash deposit in the demonetization period. The assessee therefore, urges that there is nexus of income disclosed for Rs.5/- crores and the unaccounted turnover of the business. The assessee urges that deposit of cash in the bank account was application of income but the source was profit on accounted turnover. The assessee therefore, urges that taxing both the source of income and the application of income amounts to double taxation.

1.8 The assessee urges that, during the survey proceedings so far as application of income is concerned, two things were found viz., unexplained cash deposit and excess stock. The assessee therefore, urges that the sources of income viz., unaccounted profit on unaccounted turnover was either in the form of unexplained cash deposit or excess stock. The assessee urges that it had claimed source of income of F.Y 2012-13 to 2016-17 against the cash deposit which was declared under PMGKY Scheme. The assessee urges that the unaccounted profit of F.Y 2016-17 was claimed against excess stock. The assessee therefore, urges that the claim for set off or telescopic needs to be given as both the source of income and application of income ought not to be taxed together to avoid duplication of income.

1.9 The assessee relies on following decisions whereby courts have allowed telescopic of income disclosed or taxed against the application of income in the subsequent years or in the current year.”

62. Before us, Id Counsel for the assessee has made same arguments, as made before Id CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

63. We have heard both the parties. The Id CIT(A) observed that as far as quantification of suppressed turnover is concerned there is no dispute. The dispute is only relating to estimation of profit and not bifurcation of bullion turnover and jewellery turnover. Before Id CIT(A) the assessee submitted that bullion is merely purchased and sold without there being any value addition. So to say, it is merely a trading. Normally the margin of profit in trading of bullion is 0.1% whereas, the jewellery business consists of converting the bullion into jewellery which involves embedding the precious stones/diamonds in the jewellery which involves value addition and thus the margin of profit is higher. Considering the submissions made by the the assessee and after taking into the consideration the margin of profit involved in trading of bullion by examining the similar cases dealing in bullion, the Id CIT(A) agreed with the contention of the assessee that the margin of profit in bullion trading is much less than that of jewellery and hence, the estimation of profit of bullion trading has to be done separately and that of jewellery separately applying separate rates.

64. The assessee has furnished the net profit percentage, before Id CIT(A) for 3 preceding years for each of the impugned assessment years in bullion trading (from A.Y 2014-15) and jewellery separately which is as under:

Table for A.Y 2014-15

<i>A.Y</i>	<i>Percentage net profit as per accounts for bullion trading</i>	<i>Percentage net profit as per accounts for jewellery</i>
<i>2011-12</i>	<i>N.A.</i>	<i>2.91</i>
<i>2012-13</i>	<i>N.A.</i>	<i>1.92</i>
<i>2013-14</i>	<i>N.A.</i>	<i>0.41</i>
<i>Average for three years</i>		<i>1.75</i>

Table for A.Y 2015-16

<i>A.Y</i>	<i>Percentage net profit as per accounts for bullion trading</i>	<i>Percentage net profit as per accounts for jewellery</i>
<i>2012-13</i>	<i>N.A.</i>	<i>1.92</i>
<i>2013-14</i>	<i>N.A.</i>	<i>0.41</i>
<i>2014-15</i>	<i>-0.43</i>	<i>2.38</i>
<i>Average for three years</i>		<i>1.58</i>

Table for A.Y 2016-17

A.Y	Percentage net profit as per accounts for bullion trading	Percentage net profit as per accounts for jewellery
2013-14	N.A.	0.41
2014-15	-0.43	2.38
2015-16	0.162	1.90
Average for three years	-0.134	1.56

65. Above are the three tables showing 3 preceding years average of net profit earned by the assessee on the recorded turnover. The average is in the range of 1.56% to 1.75%. The average of three averages comes to 1.63% as far as the turnover of jewellery is concerned. From the above, Id CIT(A) noted that compared to the average net profit disclosed for these preceding assessment years, the 5% net profit estimated by the AO is on a higher side. Hence, if the net profit is taken at 2.5% of the unrecorded/suppressed turnover of jewellery which is about 0.87% above the average net profit of 1.63% would meet the ends of justice. Similarly, for bullion the assessee has the separate record of only A.Y 2014-15 and 2015-16 where the average net profit is a loss. In absence of the separate details for bullion for all the proceeding assessment years, the prevalent market rate of 0.2% on sale on bullion would be the appropriate net profit rate. Accordingly, Id CIT(A) directed the assessing officer to estimate the net profit at the rate of 2.5% on the suppressed sale of jewellery and 0.2% on suppressed sale of bullion. For the sake of clarity, the additions to be sustained and the relief to the assessee for all the 3 assessment years is as follows:

A.Y	Profit to be sustained on jewellery at 2.5% of the suppressed turnover	Profit to be sustained on bullion at 0.2% of the suppressed turnover	Total addition to be confirmed	Relief granted to the assessee
2014-15	Rs.1,18,25,829/-	Rs.1,26,248/-	Rs.1,19,52,077/-	Rs.1,48,55,770/-
2015-16	Rs.1,42,58,089/-	Rs.1,50,693/-	Rs.1,44,08,782/-	Rs.1,78,74,713/-
2016-17	Rs.1,26,10,243/-	Rs. 83,042/-	Rs.1,26,93,645/-	Rs.1,46,11,876/-

This way, Id CIT(A) allowed the appeal of the assessee for all these 3 assessment years partly. We do not find any infirmity in the above conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in

deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

66. In the result, grounds Nos. 1 to 4 raised by the Revenue are dismissed.

67. In the combined result, appeals filed by the Assessee in (i) ITA No.303/SRT/2022 for AY.2013-14, (ii) ITA No.304/SRT/2022 for AY.2014-15, (iii) ITA No. 305/SRT/2022 for AY.2015-16 and (iv) ITA No.306/SRT/2022 for AY.2016-17 and (v) ITA No.30/SRT/2022 for A.Y. 2017-18 are allowed, whereas appeal filed by the Revenue in ITA No.312/SRT/2022 for A.Y. 2015-16 and ITA No.51/SRT/2022 for A.Y. 2017-18 are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 27/04/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

Surat / दिनांक/ Date: 27/04/2023

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat