

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA Nos.113 to 115/JP/2020
निर्धारण वर्ष/Assessment Years :2014-15 to 2016-17

M/s Royal Jewellers, 1756, Telipara, Chaura Rasta, Jaipur	बनाम Vs.	The Dy. Commissioner of Income-tax, Central Circle-02, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAEFR 6642 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos.174 to 176/JP/2020
निर्धारण वर्ष/Assessment Years :2014-15 to 2016-17

The Dy. Commissioner of Income- tax, Central Circle-02, Jaipur	बनाम Vs.	M/s Royal Jewellers, 1756, Telipara, Chaura Rasta, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAEFR 6642 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Manish Agarwal (CA)
राजस्व की ओर से / Revenue by: Sh. Sanjay Dhariwal (CIT) &
Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 07/06/2023

आदेश / ORDER

PER BENCH:

These are six appeals filed by the assessee and revenue and are directed against the order of the Id. Commissioner of Income Tax

(Appeals)-4, Jaipur [hereinafter referred to as (Id. CIT(A))] dated 08.11.2019 for the Assessment Years 2014-15 to 2016-17, which in turn arise out of an order passed by DCIT, Central Circle-2, Jaipur passed u/s. 143 (3) r.w.s. 153A of the Income Tax Act, 1961 [here in after referred to act "Act"] on 26.12.2018.

2. Since, these cross appeals relate one assessee involving the three different assessment year filed by the revenue and assessee on the separate grounds raised by them in their appeal, we have heard these six appeals together and passing the order together as the issues involved are interconnected. As the issues raised by both the parties are similar, we are taking the assessment year 2014-15 as lead case for assessee in ITA No. 113/JPR/2020 and for revenue in ITA no. 174/JPR/2020.

3. The grounds of appeal taken by the assessee in ITA No. 113/JPR/2020 for assessment year 2014-15 are as under:

1. On the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in sustaining the rejection of books of accounts under section 145(3) of the Act on the basis of documents seized during the course of search that either did not relate to the assessee at all or were rough/dump pages.

2. On the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in ignoring the fact that there were various discrepancies in the analysis of the seized papers made by the Id. AO, leading to addition of Rs. 4,75,61,276/-

made by the Id. AO either on presumptions or on incorrect appreciation of facts. Under the circumstances, the additions made u/s 143(3) r.w.s. 153A deserves to be deleted.

2.1. That the Id. CIT(A) has further erred in rejecting the assessee's plea that the papers found and seized during the course of search and inventorized as page nos. 19 to 21 of Exhibit-A11 were rough/dump papers by arbitrarily assuming that the same were related to the assessee firm group, despite of agreeing that various details mentioned on the impugned papers did not coincide with the actual details in respect of the assessee group.

2.2. Without prejudice to the above, the Id. CIT(A) has further erred in rejecting the assessee's plea that the income surrendered during the course of survey in AY 2015-16 should be set-off with the alleged undisclosed profit estimated for the year under appeal as the income offered during AY 2015-16 pertained to that year and also preceding assessment years.

3. The appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing the appeal."

3.1 Whereas the grounds of the appeal taken by the revenue in appeal No. 174/JPR/2020 for assessment year 2014-15 reads as follows:

"1.TheLdCIT(A) has erred in law and on facts (independently & severally) in granting relief to the assessee".

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting of Rs. 69,58,855/- in spite of the fact the Ld. AO rightly applied GP rate of 24.14% as the assessment for AY 2009-10 & 2010-11 have been reached finality as noproceedings was pending during the course of assessment proceeding".

3. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting of Rs. 69,58,855/- in spite of the fact that book of account of for AY 2012-13 to 2016-17 were rejected and same was upheld by the Id. CIT(A) himself. Hence, GP declaring by the assessee in audit report remains not reliable".

4. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting of Rs. 69,58,855/- in spite of the fact the Id. AO followed the direction of the Hon'ble ITAT in the case of the assessee group concern i.e. Jitendra Kumar Agarwal for AY 2013-14 wherein the case was set aside with direction to estimate the GP at last 5 years which has attained finality whereas the case for AY 2011-12 to 2017-18 has not been attained finality being subject to assessment u/s 153A of the Act. Hence, AO has correctly taken GP for the AY 2009-10 & 2010-11 which has been reached at finality as no proceeding was pending."

5. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting of Rs. 1,29,52,423/- in spite of the fact that during the course of assessment proceedings assessee has refused the ownership of seized papers /documents. However, the ownership was duly established in assessment order. Since the assessee did not own the papers during assessment proceedings, hence, he failed to explain the transaction noted on the same. Accordingly, the Id. AO has rightly added Rs. 4,75,61,276/- u/s 68 of the Income Tax Act, 1961 and provisions of section 115BBE squarely applicable in this case?"

6. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that noting on page no. 19, 20 & 21 Exhibit-11. Annexure-AS are gross profit of group concerns i.e. assessee firm, M/s Shree Nath Corporation, M/s Garg Jewellers without appreciating the fact that these page contains details of only two partners whereas in case of M/s Shree Nath Corporation there are three partners and M/s Garg Jeweller is a proprietary concern?"

7. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that noting on page no. 19, 20 & 21 Exhibit-11, Annexure-AS are gross profit without appreciating the fact that at the page no. 19 it has been clearly noted as net profit?"

8. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that noting on page no. 19, 20 & 21 Exhibit-11, Annexure-AS also includes accounted income of group concern without appreciating the fact that assessee firm did not owned up this page stating that these papers appear to be balance sheet of some jewellery in term of quantity of gold which left by outside the party?"

9. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 1,29,52,423/- by way of rectification order without

appreciating the fact that the Ld. CIT(A) has confirmed the addition in original appellate order which cannot be considered as mistake apparent from record?"

10. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not upholding the invocation of provisions of section 115BBE of the Income Tax Act, 1961 in respect of unaccounted sales of Rs. 4,75,61,276/- as the assessee failed to explain the transaction as per provision of 68 of the Act "?

11. "That the Appellant craves to add, amend, alter or forgo any ground(s) of appeal either before or at the time hearing of the appeal".

4. The fact as culled out from the records is that the a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Chandra Prakash Agarwal Group on 28-07-2016 of which the Assessee is one of the members covered u/s 132. The jurisdiction over the case was assigned to Central Circle - 2, Jaipur by the Commissioner of Income Tax, Jaipur-1, Jaipur by means of an Order u/s 127 of the Act circulated vide CIT-I/ITO(Hqrs)/JPR/u/s127/2016-17/2328 dated 01-12-2016. Notice under section 153A of the Act dated 06-03-2017 was issued and served upon the Assessee on 09-03-2017 requiring to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 15 days of the service of the said notice. In response to the said notice(s), a return declaring an income of Rs. 10,03,290/- was filed by the Assessee on 07-04-2017. In the return of income originally filed by the Assessee u/s 139(1) of the Act on 08-09-2014

an income of Rs. 10,03,290/- was declared. However, in the return of income filed in response to notice u/s 153A of the Act no undisclosed income pertaining to the relevant year has been declared by the Assessee. The assessee is a partnership firm engaged in business of manufacturing and trading of gold jewellery. The proceedings of assessment of income were commenced by issue of notice u/s 143(2) of the Act on 18-09-2017, and notice u/s 142(1) dated 13-07-2018, and 20-07-2018 were also issued to the assessee and information and details pertaining to the case relevant to assessment of its income were called by means of a questionnaire.

5. The assessee vide letter dated 27.07.2018 has objected the issuance of notice u/s 153A for the assessment year 2014-15 stating that in the course of search action neither any incriminating documents or undisclosed income was found nor any surrender was made for aforesaid periods and assessment for above period is complete assessment and no proceedings are pending. Therefore, there is no need of assessment to be referred u/s 153A and notice issued u/s 153A deserved to be quashed. The letter has been duly considered and the objections raised by assessee against the initiation of proceedings u/s 153A of IT act have not been found tenable.

Because the provision of section 153A(1)(b) of the Act categorically says that the assessing officer shall issue the notice u/s 153A of the Act for six assessment years immediately preceding the assessment year relevant to the previous years in which search is conducted or requisition is made. Further, the objection raised by the assessee is contrary to his own submission wherein he has objected the issuance of notice u/s 153A of the IT Act itself stating that *“the notice issued u/s 153A deserve to be quashed”* after relying on pronouncement of Hon’ble High Court in case of *Kabul Chawala* but in this case itself it was held by the Hon’ble court that

“Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.”

Hence the objection of the assessee is baseless and the issuance of notice under section 153A of the act is as per the law.

6. During assessment proceeding various defects in the books of account of the assessee were found for A. Y. 2011-12 to 2017-18. The assessing officer has recorded his finding on the aspect of the inventory register, valuation method adopted, maintaining the mix stock of 22 kt, 20 kt and 18 kt, records related to alloys, records related to goods sent on

approval for which the Id. AO has made his observation in detailed in para 8(i) to 8(v). Further in para 8(vi) the Id. AO also noted that during the course of search some documents found and seized which has been inventorized as Annexure-AS, Exhibit-11, page 19,208 21. The copy of page 19 was also found from residence of another partner Smt Pooja Agarwal, at 1756, Telepada, SMS Highway, Jaipur which has been seized and inventorized as page no. 1 of Annexure-A, Exhibit-10. These pages contain details of handwritten balance sheet for FY 2013-14 and FY 2015-16. These pages also contains details of opening of FY 2014-15. On perusal of these it is found that it is a parallel balance sheet of the firm which is maintained in form of metal i.e. 24 CT gold. On these paper name of both the partner has been written in cord word i.e. 'GJ & MJ. The abbreviation of these are Garg Jeweller and Manoj Khandelwal respectively. The Garg Jeweller is the prop. Concern of Shri Jitendra Kumar Agarwal who is a husband of 2nd partner of the firm Smt. Pooja Agarwal. These pages contain details of net profit, distribution of profit between the partners, rate of the gold on the date of preparation of balance sheet, opening balance of partners, cash in hand and cash in bank etc. all these details have been found mentioned in these pages in 24CT gold. For example at page no. 19 cash amounting to Rs 320816/- has been converted in to 112.570 gm of 24 CT GOLD by dividing

Rs. 2850 which is the rate of 24 CT gold as on 30.03.2016. Further, one of the partner Shri Manoj Kumar Khandelwal was confronted with these paper during the course of recording of statement wherein he acknowledged these paper as stock valuation of M/s Royal Jewellers as on 31-03-2014 or 31-03-2016. From these papers it is evident that these pages contain details of unaccounted net profit of the firm and the assessee firm has been indulged in out of books sale and purchase. Although the assessee has denied this pages during the proceeding but the same has been unaccounted balance sheet of the assessee firm.

7. In view of the above discrepancies, a parallel undisclosed balance sheet maintained by the assessee and out of books purchase, sale and expenditure revealed from the documents seized during the course of search proceeding. it is held that books of accounts maintained by the assessee do not reveal the true income of the assessee. Although the parallel undisclosed balance sheet is for FY 2013-14, 2015-16 but from the details of the opening stock of partner GJ (Garg jewelers) and MK (Manojkumarkhandelwal) at 91280.140 and 23096.120 gm 24CT gold in the parallel balance sheet of FY 2013-14 it is evident that the parallel undisclosed balance sheet was also exist prior to FY 2013-14 as well which

includes AY 2011-12 to 2013-14, Similarly, the closing balance of AY 2016-17 is bearing on opening balance of AY 2017-18 and was in exist under preparation but could not be completed due to search action on 28.07.2016. In view of the whole discussion and facts brought on record, it is held that books of accounts maintained by the assessee do not reveal true income of the assessee for AY 2011-12 to 2017-18. Therefore, the books of accounts of the assessee for AY 2011-12 to 2017-18 is are being rejected u/s 145(3) of the act.

8. Since, in the instance case books of accounts are rejected, the Id. AO noted that keeping in view of various jurisprudence holding that the past history is the best guiding factor to determine taxable profit in cases where books of accounts are rejected. Accordingly, the assessee was asked vide note sheet entry dated 10-12-2018 to furnish G.P. rate of 5 previous years prior to AY 2011-12 which has been attained finality. But the assessee furnished the G.P. for AY 2011-12 to AY 2017-18 reasons best known to the assessee. In these circumstances to find out the G.P. prior to the AY 2011-12 to 2017-18 an effort was made and on perusal of working copy of hard disk found and seized at 1756, Telipada SMS "Highway, ChouraRasta, Jaipur and inventoried as Annexure-AS, Exhibit-24 it is gathered that G.P.

for the AY 2010-11 and AY 2009-10 was 21.11% and 27.17% respectively. However, G.P. for AY prior to AY 2009-10 could not be gathered. In the given circumstances there is no other alternatives available but to considered the G.P. for AY 2009-10 and AY 2010-11 for determination of G.P for AY 2011-12 and onwards. Therefore, the average GP for AY 2009-10 & AY 2010-11 is come to 24.14% which is applied to AY 2011-12 to 2017- 18. Accordingly, trading addition for AY 2011-12 to 2017-18 is computed as under:-

s.no	AY	GP	Estimated GP%	Turnover declared in ITR	Trading addition (D-C)*E
A	B	C	D	E	F
1	2011-12	11.51%	24.14%	28269535	3570442
2	2012-13	9.08%	24.14%	38096579	5737344
3	2013-14	9.21%	24.14%	47425310	7080598
4	2014-15	9.60%	24.14%	47860076	6958855
5	2015-16	9.64%	24.14%	53522361	7760742
6	2016-17	7.93%	24.14%	72126335	11691678
7	2017-18	7.86%	24.14%	74581156	12141812

In view of the discussion trading addition of Rs. 69,58,855/- is hereby made after applying the GP as mentioned in above table.

9. During the course of search some documents found and seized which has been inventorized as Annexure-AS, Exhibit-11, page 19, 20 & 21. The copy of page 19 was also found form residence of another partner Smt Pooja Agarwal, at 1756, Telepada, SMS Highway, Jaipur which has been

seized and inventorized as page no. 1 of Annexure-A, Exhibit-10. These page contain details of handwritten balance sheet for FY 2013-14 and FY 2015-16. These pages also contains details of opening of FY 2014-15. On perusal of these it is found that it is a parallel balance sheet of the firm which is maintained in form of metal i.e. 24 CT gold. On these paper name of both the partner has been written in cord word i.e. 'GJ' & 'MJ'. The abbreviation of these are Garg Jeweller and Manoj Khandelwal respectively The Garg Jeweller is the prop. Concern of Shri Jitendra Kumar Agarwal who is a husband nd of 2 partner of the firm Smt. Pooja Agarwal. These pages contain details of net profit, distribution of profit between the partners, rate of the gold on the date of preparation of balance sheet, opening balance of partners, cash in hand and cash in bank etc. all these details have been found mentioned in these pages in 24CTgold. For example at page no. 19 cash amounting to Rs 320816/- has been converted in to 112.570 gm of 24 CT GOLD by dividing Rs. 2850 which is the rate of 24 CT gold as on 30.03.2016. As it is evident that these pages contain details of unaccounted net profit of the assessee firm which has been recorded in metal i.e. 34CT gold. Accordingly, the assessee was asked to furnish his explanation on these documents vide note sheet entry 03-12-2018. In compliance of the same the assessee furnished his written

submission on 08-12-2018 wherein he categorically denied these documents stating that these pages are not in the handwriting of the assessee, accounted and any employee of the assessee. He further stated that these pages appear to be balance sheet of some jeweller from in term of quantity of gold. The assessee further contended that assessee is not aware the cash balance and bank balance and other details mentioned in these page are not comparable or tallied with the books of assessee firm. The further contended that it appears that these paper left by some outsider part at the premises of the assessee and assessee has no relation of these entry related these paper.

The contention of the assessee is not acceptable for the reasons that

(i) that paper were found from the premises of the one of the partner, Shri Manoj Kumar Khandelwal, at 14, Sunder Nagar, Malivya Nagar, Jaipur and Shri Manoj Kumar Khandelwal was confronted with these paper during the course of recording of statement u/s 132(4) of the I.T. Act, wherein he acknowledged these paper as stock valuation of M/s Royal Jewellers as on 31-03-2014 or 31-03-2016.

Hence, the story put forward by the assessee is are after thought and contrary to the statement of one of the partner Shri Manoj Kumar Khandelwal. Even otherwise also the assessee has failed to explain why

any other person will come to his residential premises with his unaccounted parallel balance sheet and left at residence of the partner. Further the code word written on these page clearly shows the abbreviation of Shri Manoj Khandelwal and Garg Jeweller 'MK' of 'G' which is directly linked with the partner of assessee firm.

(ii) It is worthwhile to mention here that the similar document was also found at residence of other partner Smt. Pooja Agarwal at 1756, Telepada, SMS Highway, Jaipur which has been seized and inventorized as page no. 1 of Annexure-A, Exhibit-10 In these circumstance, for the moment if we accept the plea of the assessee that the some other person has left behind these paper at the residence of one of the partner of Shri Manoj Kumar Agarwal. It is not possible at any stage of imagination that the same person also went to the residence of another partner Smt. Pooja Agarwal and left the same balance sheet also. Hence the plea of the assessee is baseless and unfounded. These papers are unaccounted balance sheet of the firm which were prepared by the partners for their claim on unaccounted profit of the firm.

(iii) Further, on perusal of the cash in bank mentioned in these documents vis-à-vis closing balance in the bank account of the assessee it is found that both are just same in amount

In view of the above discussion, the Id. AO noted that these documents are related to the assessee firm wherein unaccounted net profit has been mentioned for FY 2013-14 and FY 2015-16. Further these page contains detail of opening balance of partner FY 2014-15. From the opening balance of the partner and opening balance of the partner from FY 2015-16 the net profit is also derived in following manner taking the profit ratio between Garg Jeweller and Manoj Khendelwal in the ratio of 58:42.

Opening balance Garg Jewellers for AY 2014-15	100792.390-(A)
Opening balance Garg Jewellers for A.Y 2016-17	107543.940-(B)
Addition/profit earned by Garg Jewellers for A.Y. 2015-16	6751.94-(B-A)

Net profit of Assessee for A.Y. 2015-16 =	$\frac{\text{Profit of the partner Garg Jewellers Total of ratio}}{\text{Ratio of partner}}$
=	$\frac{6751.94*100}{58} = 11641.27 \text{ gram gold}$

58

In view of the whole discussion and the evidence brought on record the Id. AO noted that the assessee was maintaining a parallel balance sheet of the firm wherein unaccounted transaction of the firm were recorded in form of metal i.e. 24CT gold. The net profit recorded on these paper for

AY 2014-15 and AY 2016-17 and net profit derived for AY 2015-16 is tabulated as under:-

A.Y	Net profit in 24CT gold	Rate of 24 CT gold at per gram as on 31 st March of relevant year which is also mentioned on seized document.	Net profit in Rs. (B*C)
A	B	C	D
2014-15	16400.440	2900	4,75,61,276
2015-16	11641.27	2658	3,09,42,496
2016-17	9565.430	2850	2,72,61,475

The column D of the above table shows the undisclosed net profit of the assessee in the respective assessment year as mentioned at column A of the table. The same is unaccounted income of the assessee. Thus a sum of Rs. 4,75,61,276/- is added back to the total income of the assessee u/s 68 of the I.T. Act for AY 2014-15 and taxed @ 30% as per provision of 115BBE of the I.T. Act.

10. As the assessee aggrieved from the aforesaid finding recorded in the order of the assessing officer they preferred an appeal before the Commissioner of Income Tax, Appeals-4, Jaipur. As the appeal of the assessee was partly allowed Assessee preferred appeal against additions sustained by Id. CIT(A), whereas department is in appeal in respect of relief granted by Id. CIT(A). The finding of the Id. CIT(A) is dealt with while dealing with the grounds of both revenue and assessee. Before us while

hearing both the learned DR and the AR vehemently supported the order of the authorities below as favorable to them.

11. To support the grounds of appeal raised by the assessee and to deal with the grounds of the appeal of the revenue the Id. AR appearing on behalf of the assessee has placed his combined written submission which is extracted in below;

“Brief facts of the case are that the appellant is a partnership firm engaged in the business of manufacturing and trading of jewellery having its principal place of business at 1756, Telipada, SMS Highway, Jaipur. The place of business of the appellant firm is commonly used by the appellant’s sister concern “M/s Shrinath Corporation” which is solely engaged in wholesale trading of bullion. Admittedly, as submitted above, though both the concerns are sharing common premises for their business activities but the nature of business is all-together different.

A search and seizure action u/s 132 of the Income Tax Act, 1961 (*herein after referred to as the act*) was carried out on 28/07/2016 by the Income Tax department on CP Garg group of which the appellant is one of the member and as a result its business premises and residential premises of its partners were also searched. During the course of search various loose papers/ documents were seized besides the seizure of cash, valuables etc. from various places including from the business premises of the appellant. Besides the statements of the partners of the assessee firm, their family members and employees were also recorded.

Subsequent to the search, in response to notices u/s 153A / 139(1) returns of income for the following years were filed declaring Total Income as under:

Sl. No.	Assessment Year	Date of filing Return of Income	Total Income	APB
4.	2014-15	07-04-2017	10,03,290/-	5
5.	2015-16	08-04-2017	3,27,91,120/-	2
6.	2016-17	08-04-2017	14,25,330/-	5

The Id. Assessing Officer (*herein after referred to as the "Id. AO"*) completed the assessments u/s 143(3) r.w.s. 153A of the Act and made various additions which are tabulated as under:

Assessment Year	Trading addition by applying the GP Rate	GP Rate	Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet	115BBE invoked	Unaccounted Cash Sales
2014-15	69,58,855/-	24.14%	4,75,61,276/-	Yes	NIL
2015-16	77,60,742/-	24.14%	3,09,42,496/-	Yes	2,68,920/-
2016-17	1,16,91,678/-	24.14%	2,72,61,475/-	Yes	2,19,09,882/-

Aggrieved of the additions made by Id. AO, assessee preferred appeal before Id. CIT(A), which were partly allowed. Decision of Id. CIT(A) on various issues is summarized as under:

A.Y. 2014-15:

- GP rate declared by assessee, i.e. 9.6% was accepted and Trading Addition of Rs.69,58,855/- was deleted in full.
- Addition of Rs.4,75,61,276/- made by Id. AO on account of Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet stood confirmed.

A.Y. 2015-16:

- GP rate declared by assessee, i.e. 9.64% was accepted and Trading Addition of Rs.69,58,855/- was deleted in full.
- Addition of Rs.3,09,42,496 made by Id.AO on account of Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet was confirmed. However, eventually telescoping benefit was allowed for the reason that assessee had already offered additional income worth Rs.3,27,67,115/- as a result of survey conducted at its premises on 09.12.2014.
- GP rate of 9.64% was applied on Addition of Rs.2,68,920/- made by Id.AO on account of unrecorded sales computed on the basis of loose papers found, and thus addition was restricted to Rs.26,031/-.

A.Y. 2016-17:

- GP rate of 9.06% was applied as against 7.93% declared by assessee. Accordingly, Trading Addition was restricted to Rs.8,12,514/-.
- Addition of Rs.2,72,61,475/- made by Id.AO on account of Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet was reduced to Rs.1,50,55,435/- after deducting the gross profits already declared by all the group concerns including the assessee firm (i.e. Garg Jewellers, Royal Jewellers and Shrinath Corporation) in the

regular books of account for A.Y. 2016-17, as entries of all group concerns were found noted in alleged parallel Balance sheet of the group.

- GP rate of 9.06% was applied on Sales confirmed as unrecorded, i.e. Rs. Rs.3,41,539/- (after considering detailed working regarding repetitive additions and thereby excluding them) out of sales of Rs. 2,19,09,882/- presumed by AO as unrecorded and thus addition was restricted to 30,944/-.

Thus, assessee has preferred present appeals in respect of additions sustained by Id.CIT(A), whereas department has preferred appeals against the relief granted by Id.CIT(A).

With this background, ground-wise submission is made as under:

Assessee's Ground of Appeal No. 1 for A.Y. 2014-15 & 2015-16 and GOA 1 & 3 for A.Y. 2016-17 and Departmental Grounds of Appeal No. 2 to 4 for A.Y. 2014-15 to 2016-17:

In Ground of Appeal No. 1 (for all the years), assessee has challenged the action of Id. CIT(A) in confirming the application of provisions of section 145(3).

GOA 3 of assessee (for A.Y. 2016-17) and departmental Grounds of appeal No. 2 to 4 (for A Y 2014-15 to 2016-17) relate to Trading Additions made by Id. AO and partly deleted by Id. CIT(A).

Since, all these grounds of appeal are interrelated, the same are dealt with together for the sake of convenience:

In this regard it is submitted that, as submitted above, during the course of search conducted by the Income Tax Department at the business premises of the appellant on 28/07/2016 various loose papers/ documents were seized by the department. Relying upon the entries found noted in such seized papers, Id. AO alleged that the trading results declared by the appellant are not verifiable and he thus rejected the books of accounts after invoking the provisions of section 145(3) of the Act. After rejection, the income was estimated by applying the GP rate of 24.14% arbitrarily as against respective GP rates declared by the appellant for various years and consequently huge trading additions were made.

Ld. CIT(A) found GP rates declared by assessee as reasonable (i.e. 9.06% and 9.64% for A.Y. 2014-15 and 2015-16 respectively), whereas for A.Y. 2016-17 Trading addition was restricted to Rs.8,12,514/- by applying GP rate of 9.06% as against 7.93% declared by assessee.

At the outset, it is submitted that the basis for rejection of books of accounts maintained by the appellant in regular course of business were not at all borne out from the seized material, rather Id. AO on his whims and fancies has invoked the provisions of section 145(3) and further made trading addition.

In this regard it is submitted that following reasons were given by the Id. AO for rejection of books of accounts maintained by the appellant in regular course:

1. Inventory registers submitted during the course of assessment proceedings are tailored documents prepared for the sake of assessment proceedings;
2. Inconsistency in the method of valuation of stock mentioned in the Tax Audit Report as compared to the submission made during the assessment proceedings;
3. Stock registers are not maintained on the basis of purity of gold i.e. quantity was not stated in carats thus its further classification in purity wise stock register is not verifiable;
4. Goods sent on approval were unverifiable/ not properly recorded; and,
5. The appellant had also indulged in out of books purchases and sales.

In this regard it is submitted that the reasons cited by the Id. AO are completely irrelevant for assessment years 2014-15 to 2016-17 and he has invoked the provision of section 145(3) in these assessment years solely on the basis of the observations made in AY 2017-18. The point wise explanation to the reasons so recorded before applying the provisions of section 145(3) is tendered herewith:

1. The appellant consistently maintains stock registers on computer and such records were available at the time of search and as per the knowledge of the appellant, the same was part of the seized records. Therefore, the observations of the Id. AO that the stock registers were prepared afterwards only for the purpose of assessment proceedings is without any basis and it seems that such observations were made without referring to the seized material; thus such observations deserves to be ignored and excluded. During the course of assessment proceedings the relevant extracts of the computerized stock registers maintained by the appellant were submitted before the Id. AO for A.Y.2017-18 and Id. AO based on the same has alleged for A.Y. 2014-15 to A.Y. 2016-17 also that they were prepared solely for the submission before him. As regards stock register for period relevant to A.Y. 2017-18 is concerned, it is clear that stock register for the period after the date of search i.e. after 27.07.2016 was obviously with the assessee firm maintained in regular course. Thus, the Id. AO's allegation that the stock registers of the appellant firm for A.Y.2014-15 to A.Y. 2016-17 are tailored documents casted for

the sake of assessment is wholly based on conjectures and surmises and not on facts and hence deserves to be ignored.

2. With regard to the method of valuation of inventory, the appellant submits that the method as mentioned by the appellant in its Tax Audit report and as submitted during the course of assessment proceedings is not contrary to each other as alleged by Id. AO, but are complimentary to each other, which is explained as under:

(i) Under clause 14(a) of the FORM 3CD, the auditor has reported the method of valuation of closing stock employed in the previous year as “Finished goods cost or NRV, whichever is lower”.

A.Y.	APB
2014-15	13
2015-16	9
2016-17	12

(ii) Clause 4 of schedule Other Information of the ITR, allows the assessee to only select one method of valuation of stock out of the predefined methods. The three predefined method provided in the ITR form are: i. Cost or market rates whichever is less, ii) cost & iii) market rate. The appellant had therefore, selected and submitted its method of valuation of stock as cost or market rate whichever is less, it being the most relevant to the method actually followed by the appellant. The relevant portion of the ITR is reproduced herewith for your ready reference:

The screenshot shows the 'Other Information' section of an ITR form. It includes a table with the following data:

Other Information (optional in a case not liable for audit under section 44AB)			
1	Method of accounting employed in the previous year	1	Mercantile
2	Is there any change in method of accounting	2	No
3	Effect on the profit because of deviation, if any, as per Income Computation Disclosure Standards notified under section 145(2) [column 11(iii) of Schedule ICDS]	3	0
4	Method of valuation of closing stock employed in the previous year		
a	Raw Material (if at cost or market rates whichever is less write 1, if at cost write 2, if at market rate write 3)	4a	1
b	Finished goods (if at cost or market rates whichever is less write 1, if at cost write 2, if at market rate write 3)	4b	1

Page 12

- (iii) During the assessment proceedings for A.Y. 2017-18 the appellant was asked to submit the method of valuation of stock adopted by it. In reply assessee submitted the same as weighted average method which was for the purpose of weighing the goods and as in the case of the assessee being a trader in jewellery also neither FIFO nor LIFO method could be adopted thus the weighted average method is taken as basis. However, for determining the cost thereon, the cost or market price whichever is less is applied to work out the value as on the end of the year, which is an accepted method.

It is therefore, submitted that the method of valuation of stock adopted by the appellant during the year under appeal was "lower of cost or NRV", wherein the cost of the goods was calculated by adopting the weighted average method. Therefore, the observation of the Id.AO that contrary stand is taken by the appellant in the assessment proceedings as compared to the method of valuation mentioned in the Return of income and the Tax Audit Report, is totally misplaced and without proper appreciation of facts available on record. It is submitted that these observations are not tenable and deserve to be ignored and excluded and therefore findings of the Id.AO of rejection of books of accounts needs to be reversed.

3. The Id. AO further alleged that the appellant did not maintain stock registers in totality and that the appellant had tailored them for the purpose of assessment proceedings. However, in the assessment orders itself, Id. AO further observed that the appellant did maintain stock registers as per the purity of gold, but the same were not maintained properly.

The appellant submits that the Id. AO's observation are self-contradictory, as on the one hand he has altogether rejected the stock register by alleging that the same was prepared during the course of assessment proceedings and on the other hand he had tried to make frivolous allegations in respect of the entries contained therein. In this manner, the Id. AO has created unnecessary confusion in respect of the stock registers which is maintained by the assessee on consistent basis in the regular course of business. The fact that the assessee is maintaining the stock register is also fortified from the observations of the search team that there were differences in the stock as per physical verification and as per stock register maintained and finally certain additions have also been made by the Id. AO in the hands of the appellant as per para 9 of the assessment order of A.Y.2017-18. This clearly shows that the stock registers were very much in existence even as on the day of search. It was only on comparison of physical stock taken by the

department during the search with the stock reflected by the appellant in its books of accounts (i.e. stock register), it was concluded that the appellant was in possession of excess stock.

The appellant therefore, submits that this allegation of the Id. AO also deserves to be ignored and excluded.

4. The Id. AO further alleged that the goods sent on approval basis were not verifiable. In this regards the appellant submits that in jewellery business it is a common practice that clients selected the goods on approval basis which in most of the cases is returnable within few days. Moreover assessee is doing business on wholesale basis also where goods have been sent to the other retailers for approvals, these goods are also sent on returnable basis for few days. Under such circumstances the goods sent on approval are noted down on slips to keep a record of the goods sent on approval which stood cancelled when the goods have been returned. In case goods are not returned, necessary control / stock is tallied on the basis of these approval memos. Actual sales bills are raised and sales has been recorded in the books of accounts only once the goods are approved by the customers. The appellant had devised a simple methodology/system of stock keeping, by recording the goods sent on approval on the "approval slips" and recording only the final sales in the stock registers. Such a methodology/ system was adopted in order to distinguish actual sales from the goods sent on approval basis and is an accepted method of accounting which was never doubted by the department in earlier years also where the assessment stood completed u/s 143(3) as a consequence to the survey carried out at the business premises of the assessee u/s 133A where such practice was also noticed earlier during survey by the department.

The above practice was also elaborately explained by Shri Manoj Khandelwal (Partner) to the search officials in his statements recorded u/s 132(4) during the course of search. The same is available as a part of statement of Shri Manoj Khandelwal recorded at his residence in Sundar Nagar on 31/07/2016 (Answer to question No.29)(*APB 50 of A. Y. 2014-15*).

The Id. AO has further observed that the appellant should have recorded the goods sent on approval basis in respective stock items as inward and outward, otherwise the availability of that particular stock item remained unverified. In this regards, the appellant reiterates that the appellant did keep a record of the inward and outward movement of the stock items sent on approval basis by issuing approval slips. Therefore, on any given day the actual stock of the appellant firm can easily be

determined by reducing stock items for which approval slips had been issued from the stock available in the books. Further it is settled proposition of law that AO cannot walk into the shoe of the businessman and it is the businessman right to do his business in the manner which is convenient to him and from which the proper income could be deduced. AO cannot direct the businessman to act in a particular manner when the Act does not have any such kind of provisions. This contention of the appellant is supported by the following judicial pronouncements:

SA Builders 288 ITR 1(SC):

Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case.

This clearly shows that the observation of the Id. AO is mechanical and without application of mind. Moreover, the Id. AO has failed to pin point any specific incident or day wherein verification of stock was not possible.

In view of the above, the appellant submits that the above observation of the Id. AO is merely based on assumption and is unwarranted and may please be ignored and excluded.

5. The Id. AO has lastly alleged that assessee is doing business outside the books of accounts also. Such an observation was made by the Id. AO is on the basis of loose papers found during the course of search. The appellant submits that the papers relied upon by the Id. AO was not a parallel Balance Sheet but the rough details of stock and other estimates noted down by the partner of the appellant firm. These details, after corrections ultimately stand included in the regular books of accounts of appellant firm.

The appellant submits that rejection of books of accounts on the basis of some rough estimates made for the administrative purpose of the partners is unjustified. Further, holding such rough estimates as a parallel unaccounted balance sheet is merely based on presumption.

Under these circumstances it is humbly prayed that invocation of the provisions of section 145(3) and consequent rejection of books of accounts is against the principles of natural justice and the additions made deserve to be deleted.

With regard to the application of 24.14% GP rate applied in all the years which was reduced by Ld. CIT(A) substantially, it is submitted that the Id. AO had applied the

average gross profit rate of 24.14% (i.e. average of A.Y. 2009-10 and 2010-11 when the gold prices were very less) as against the declared GP rates declared by assessee, by ignoring the fact that such GP was not at all comparable nor based on the audited books of accounts of those years. As is evident from the observations of Id. AO in Assessment order, he has taken the figures of GP of A.Y 2009-10 & 2010-11 from the data found in computer hard disc seized during the course of search.

In this regard it is further submitted that the AO has applied average GP rate of A.Y. 2009-10 & 2010-11 in A.Y. 2017-18 assessment order and based on it same rate was applied in A.Y. 2014-15 to A.Y. 2016-17 also which is after the expiry of more than 4 years and such approach is not at all appropriate and looking to the facts of the case is contrary to the settled proposition of law. The results of A.Y.2009-10 (8 years old) and 2010-11(7 years old) are not comparable with results of A.Y. 2017-18 and for also with A.Y. 2014-15 to A.Y. 2016-17 as the volume of sales in these earlier years was very low as compared with the turnover of subsequent years. Moreover, the market conditions in those years were altogether different and certain other major factors which existed at that point of time have substantially been changed with the passage of time. By considering all these various factors, it has been held by various courts including the jurisdiction High Court that for estimating the income, past two or three years profit history is to be considered only. Further, the economic and other circumstances affecting the volume of sales and the profits earned during the A.Y.2009-10 and 2010-11 widely vary from the circumstances prevailing during the year under appeal such as the price of commodity i.e. gold and market demand which are most effecting factor in this regard. Reliance is placed on the following decisions:

316 ITR 125 (2009) CIT Vs. Inani Marbles Pvt. Ltd. (Raj.)

Accounting – Rejection of accounts – Application of gross profit rate – Tribunal justified in applying gross profit rate of prior year – Income Tax Act, 1961, s. 145.

For the assessment year 2000-01 , the Assessing Officer rejected the assessee's books of account for valid reasons and invoked the provisions of section 145 of the Income-tax Act, 1961, and made assessment by applying the gross profit rate of 15 per cent. on the sales disclosed by the assessee. The Tribunal held that in the absence of any change in the factual position normally the profit rate declared and accepted in the preceding year, constitutes a good basis for working out the gross profit. Accordingly, since in the earlier year the gross profit rate declared and accepted was 2.51 per cent. the same rate would be applicable for the year in question. On appeal to the High Court"

The trading results declared in the past six years is tabulated as under:

A.Y.	Turnover	GP ratio
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		declared
2017-18	8,15,83,283/-	7.86%
2016-17	7,21,26,335/-	7.93%
2015-16	5,35,22,361/-	9.64%
2014-15	4,78,60,076/-	9.60%
2013-14	4,74,25,310/-	9.21%
2012-13	3,80,96,579/-	9.08%
2011-12	2,82,69,535/-	11.51%

It is further submitted that assessee's turnover has increased multi-fold in the six years whereas the gross profit has not reduced substantially. It is further evident that the turnover of the appellant has increased gradually and the gross profit rate has slightly reduced. This is due to the fact that the appellant had been emphasizing on increasing its turnover and customer base. The gross profit rate of A.Y.2014-15 was 9.6% with the turnover of around 4.78 crores as against nearly the same gross profit rate of 9.64% in A.Y.2015-16 with a turnover of 5.35crores. Similarly, the gross profit rate in A.Y.2016-17 was 7.93 % with a turnover of around 7.21crores which marginally reduced to 7.86% in A.Y.2017-18 with a turnover of 8.15 crores.

So far as A.Y. 2014-15 and 2015-16 are concerned, it is submitted that GP rate is 9.60% and 9.64% which is better than the GP rate of preceding two years which is 9.21% and 9.08% despite the fact that turnover has increased in A.Y. 2014-15 & 2015-16. Moreover, in A.Y. 2017-18 Id. CIT(A) has applied the GP rate of 9.06% whereas GP of these two years @ 9.60% and 9.65% is better. Considering these facts and overall position, the Id. CIT(A) has rightly accepted the results declared by assessee for these two years and therefore trading addition has been deleted.

For A.Y. 2016-17 also Id. CIT(A) has rejected the view of Id. AO but has not also accepted submission of assessee as Trading Addition has been partly confirmed and GP rate of 9.06% is applied as against 7.93% as declared.

From the above it is clear beyond doubt that the financial results of the appellant firm have a constant trend of increasing turnover and thereby a slight reduction in the GP rate over the years. Therefore, the results declared by the appellant deserve to be accepted in all the three years including A.Y. 2016-17.

Without prejudice and in addition to above, it is further submitted that it is a fact that in Jewellery business rate of gold is decided by open market and moreover the same is known to all the customers. Thus no one can charge the price of gold more than the market price and margin comes from the price escalation and making charges which in no case could be as high as applied by Id.AO at 24.14%. It is settled proposition of law

that once the books are rejected, only recourse available with an AO is to estimate the income. In that situation it is the duty of AO that such estimations should be fair and honest and should not be arbitrary as has been done in our case where the Id. AO in very casual manner applied the GP rate pertaining to the year which is as old as 8 years. In this regard reliance is placed on the following.

5 ITR 170 (PC) CIT V/s LaxminarainBadridas:

The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make what he honestly believes to be fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must necessarily be guesswork in the matter, it must be honest guesswork. In that sense, too, the assessment must be, to some extent, arbitrary.

60 ITR 239 (SC) State of Kerala V/s Velukutty:

The limits of the power are implicit in the expression 'best of his judgment'. Judgment is a faculty to decide matters with wisdom truly and legally. Judgement does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guesswork in a 'best judgement assessment', it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case.

115 ITR 524 (SC) BrijBhushanLalParduman Kumar, etc. V/s CIT, Haryana, Himachal Pradesh and New Delhi-III:

That the authority making a best judgement assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.

126 ITR 48 Yadu Hari Dalmia V/s CIT, Delhi (Central):

Income from undisclosed sources – Expenditure not accounted for – Can be estimated and treated as income from undisclosed sources – Correctness of estimate is question of fact and degree – Absence of direct evidence does not preclude assessment by inference and estimate – Duty of ITO to make exhaustive enquiries and gather some material as basis – Estimate without details may not be accepted Income Tax Act, 1961, ss. 68, 68, 69A, 69B, 69C.

94 ITR 644 J.S. Parkar V/s V.B. Palekar (Bom.):

So far as section 68 is concerned, the works used are “where any sum is found credited in the books of the assessee” Section 69 speaks of “whether the assessee has made investment” Section 69A postulates “whether in any financial year the assessee is found to be owner of any money, bullion, jewellery or other valuable article.” In my view, the phraseology used in the three sections goes to show that before the provisions of either of these three sections can be invoked, the condition precedent as to a credit entry, an investment having been factually made and the assessee having been found to be the owner of any money, bullion, etc. must be conclusively established on evidence.

As submitted above, in the case of assessee when estimation is made by the Id.AO, it is his duty to make honest and fair estimation which he failed to do. Ld. CIT(A) has rightly accepted the GP declared by the assessee in AY 2014-15 and 2015-16 considering that GP rate in these two years is better than GP rate of 9.06% applied by Id. CIT(A) in A.Y. 2017-18 and also better than in preceding two years i.e. A.Y. 2012-13 & A.Y. 2013-14. However, in A.Y. 2016-17 Id. CIT(A) has applied GP of 9.06 resulting into confirmation of trading addition of Rs. 8,12,514/-. While upholding the GP rate of 9.06% Id. CIT(A) followed the GP estimated for AY 2017-18 as basis. From the trading results as tabulated above, it is evident that in AY 2016-17 the turnover has increased from Rs. 5.35 crores of A.Y. 2015-16 to Rs. 7.21 crores which could be possible only by reducing the Gross profit margin. Thus the GP declared in AY 2016-17 also deserves to be accepted and the addition upheld by Id. CIT(A) deserves to be deleted.

In the circumstances, it is humbly prayed that the trading results declared by the assessee should be accepted as such for all the three Assessment Years, i.e. 2014-15 to 2016-17.

Issue of Undisclosed profit based on Exhibit-11 pages 19 to 21(PB Volume I Part I pages 165-167)

Asstt. Year	Assessee's Grounds of Appeal	Department Grounds of appeal
2014-15	2 to 2.2	5 to 9
2015-16	2 to 2.1	5 to 7
2016-17	4 to 4.2	5 to 8

Brief facts in respect of this ground of appeal are that, various loose papers and documents were found and seized during the course of search from the appellant firm's premises. Out of these, loose papers found, seized and inventorized as Exhibit A-11, page nos. 19-21 (Common paper book Volume I Part I pages 165-167), contained

certain hand written figures of stock and other financial details. The Id. AO, alleged these papers as parallel Balance Sheet maintained by the appellant firm for F.Y. 2013-14 and 2015-16. Accordingly, Id. AO made additions by alleging figures mentioned in those papers as undisclosed net profit for A.Y. 2014-15 and 2016-17 and further computed undisclosed profit for A.Y. 2015-16 (though no figures were mentioned pertaining to A.Y. 2015-16) on his own assumptions and presumptions, which is unrealistic and illogical. The same have been made in a mechanical manner and are absolutely contrary to the fact on record and purely on the basis of assumption that the loose papers found and seized during the course of search reflect the unaccounted transaction of the appellant.

Ld. CIT(A) though had held that the papers contain the financial transactions but it is not for the assessee only but for the entire group and also confirmed the working of the Id. AO made to work out the profit for AY 2015-16. Accordingly he upheld the additions for all the years and allowed the benefit of telescoping of profits declared during the course of survey carried out in AY 2015-16. The total addition made and upheld is tabulated as under:

Assessment Year	Addition made by Id.AO	Deleted by Id.CIT(A)	Sustained
2014-15	4,75,61,276/-	Nil	4,75,61,276/-
2015-16	3,09,42,496/-	3,09,42,496/-	NIL
2016-17	2,72,61,475/-	1,22,06,040/-	1,5055,435/-

Besides this Id. AO made the additions in respect of alleged unaccounted net profit u/s 68 of the Income Tax Act, 1961 and further invoked section 115BBE on such additions. Ld. CIT(A) has held the invocation of section 69 and 115BBE as invalid and ordered accordingly.

Against the confirmation of the additions on account of alleged undisclosed profits assessee is in appeal before the hon'ble bench and department is in appeal against the additions deleted by Id. CIT(A).

With regard to the action of the Id. AO in making the addition by invoking the provision of Section 68 of the Income Tax Act, 1961, it is submitted as under:

The provisions as contained in section 68 are reproduced herewith for your honours ready reference:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer,

satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

From the perusal of the provisions of the law, it is evident that the Act has laid down two fundamental criteria for considering an income as cash credits u/s 68 :

- a. There has to be a credit entry in the books of accounts of the assessee,
- b. The credit entry remains unexplained on the part of the assessee or the explanation offered by the assessee is not up to the satisfaction of the AO.

In the appellant's case the additions on allegation of Undisclosed Net profit has been made by alleging the same as undisclosed net profit for the years under appeal which were based on the entries found noted on the loose papers seized during the course of search. Therefore, the Id.AO himself is of the view that the alleged amounts have not been credited/ disclosed in the books of accounts of the appellant. Under the circumstances, the addition made by the Id. AO u/s 68, fails the very first criteria of there being a credit entry in the books of accounts laid down under the Act.

In view of the above, the exorbitant additions made in all the three Assessment year are legally defective and thus bad in law. The appellant therefore, humbly prayed that such illogical and mechanical additions of alleged unaccounted profits made u/s 68 by the Id. AO is bad in law and contrary to the settled legal position by the courts that addition u/s 68 can only be made when there is a credit entry in the books of accounts and the assessee fails to explain that credit entry and thus any addition of the amount not being a credit entry in the books of accounts deserves to be deleted. Therefore this addition of alleged unaccounted profits so made by the Id. AO u/s 68 deserves to be deleted.

The appellant therefore prays that additions are not sustainable on this legal ground without even going into the merits of the addition considering the facts and legal position on the issue that section 68 is not applicable.

In the circumstances it is humbly prayed that entire additions made and upheld by Id. CIT(A) towards the alleged undisclosed profit deserves to be deleted.

Invocation of provisions of section 115BBE:

Departmental ground of appeal 10 for A.Y. 2014-15, GOA No. 8 for A.Y. 2015-16 and GOA 10 for A.Y. 2016-17

Facts pertaining to the grounds of appeal are that after making additions u/s 68 towards the alleged undisclosed profits found noted in the parallel Balance Sheet, Id.AO had invoked provisions of section 115BBE for the purpose of taxing of the additions made as well as on account of alleged Unaccounted Sales computed on the basis of loose papers found as a result of search. On appeal, Id. CIT(A) held that none of the additions were in the nature of cash credit and thus provisions of section 115BBE were not attracted.

Under these grounds of appeal the department has challenged the action of the Id. AO of invoking the provisions of section 115BBE of the Act, for determining the tax payable by the appellant on the arbitrary and exorbitantly high additions made by him.

At the outset it is submitted that invocation of the provisions of section 115BBE in the appellant's case is bad in law, and therefore the Id. AO's observation is this regard needs to be ignored.

The provisions of section 115BBE of the act are reproduced hereunder for your honour's ready reference:

"Tax on income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

115BBE. [(1) Where the total income of an assessee,—

- (a) includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139; or*
- (b) determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, if such income is not covered under clause (a),
the income-tax payable shall be the aggregate of—*

- (i) *the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent; and*
- (ii) *the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).]*

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) [and clause (b)] of sub-section (1)."

It is evident from the plain reading of heading of section 115BBE itself that the provisions of this section are applicable only to incomes referred to in section 68, 69, 69A, 69B, 69C or 69D, and as submitted supra, the additions made by the Id.AO are on account of alleged undisclosed sales and undisclosed net profit on which the provisions of section 68 itself are not at all applicable.

Consequently, when the income itself fails to fall under the relevant sections as prescribed by the Act (i.e. section 68, 69, 69A, 69B, 69C or 69D), its taxability cannot be determined in terms of section 115BBE.

Under the circumstances, the appellant prays that Id.CIT(A) has rightly held that provisions of section 115BBE are not applicable and such order deserves to be upheld.

Without prejudice to our legal submission made above, it is submitted that during the course of search, Shri Manoj Khandelwal, partner in his statement recorded u/s 132(4) in reply to question No.30 (PB A.Y. 2016-17 pages 73-74) had categorically stated that these papers contain the stock position which was treated as parallel Balance Sheet by Id. AO. While making such allegations, Id. AO has ignored vital fact that in the said papers only some assets on a particular day have been noted and the balances of other assets and liabilities as appearing in audited Balance Sheets are not appearing, therefore, the same at the most could be treated as statement of current assets as on a particular day which was probably made to work out the total stock position of entire group.

As submitted above, the assessee is one of the concern of CP Garg group which is having following concerns:

1. M/s Royal Jewellers (Appellant)
2. M/s Shrinath Corporation (A sister concern)
3. M/s Garg Jewellers (A sister concern)

All the three firms are managed by two families first, Shri Chandra Prakash Garg family and other is Shri Manoj Khandelwal family. Both the families jointly / individually carried business of bullion and Gold / Silver studded / Plain jewellery on wholesale and retail basis in above three firms and as on a particular day made statement of total stock available with these firms. This further gets support from the fact that the said paper contained Bank balances of M/s Shrinath Corporation and M/s Royal Jewellers, thus, this paper cannot be treated as belonging to assessee firm only.

It is reiterated that the details contained in these pages do not pertain unaccounted transaction but pertain to information that has been duly included in the books of accounts maintained on regular basis and thus are a part of the declared financial results for the year for all the firms managed and run by the group.

With the above submission it is clear beyond doubt that the Id. AO has made a very aggressive/ high pitched assessment by ignoring the material available on record and by making unreal presumption and assumptions based on conjectures and surmises.

It is further submitted that in the case of the M/s Garg Jewellers (Prop. Shri Jitendra Agarwal, husband of one of the partner), certain entries have been treated as undisclosed sales and addition towards the profit from such sales have been made by the Id. AO. Besides in the case of appellant also additions towards alleged undisclosed sales have been made. It is thus submitted that additions towards the net profits as found noted in the so called alleged Balance Sheet would tantamount to double addition for AY 2014-15 to 2016-17 in the hands of the assessee as the said papers related to the activities of the entire group including the appellant also and further additions for profit from undisclosed sales has already been made in the case of group / sister concern. It is therefore, submitted that the addition, if any, finally sustained by the hon'ble bench, towards these alleged parallel Balance Sheets, necessary credit of the additions already made in the hands of assessee and other group concerns on account of profits from undisclosed sales be allowed. However, Id. CIT(A) has failed to appreciate the same and not allowed the credits of the same.

Besides the above it was also submitted that a survey action u/s 133A of the Act was also carried out by the department on 09/12/2014 at the business premises of the assessee and other sister concerns stated above. As a result of the survey action the appellant had surrendered a sum of Rs.3,16,10,463/- (excess stock of Rs. 1,66,42,592/- , cash found of Rs. 2,67,871/- and unrecorded debtors of Rs. 1,47,00,000/-) during the course of survey and had offered the same to tax during AY 2015-16 and due taxes were paid. Further, the amounts surrendered and offered to tax by the appellant's sister

concerns on account of excess stock and other as a result of survey action was as under:

M/s Garg Jewellers: Rs. 3,38,35,315/-

M/s Shrinath Corporation: Rs.3,94,67,426/-

The accumulation of the excess stock, cash found and advance for land is the result of the income earned from the alleged undisclosed transactions carried out by various concerns of the assessee group in the year under appeal and also in preceding assessment year and relevant entries of the same were found noted in the loose papers found during the course of search from the possession of the assessee / his family members. Since the assessee has already paid the due taxes on such additional income as a result of survey any further addition towards the net profit based on the alleged parallel Balance Sheet would tantamount to double addition. It was also submitted before Id.CIT(A) that these papers are not the parallel Balance sheet, rather it includes the balances appearing in the regular Balance sheet and as such in the event any addition towards the alleged profit is to be made, necessary credit of the profits declared by all the firms should be allowed. However, Id. CIT(A) has allowed relief to the extent of profits declared by assessee and its two sister concerns, i.e .M.sShrinath Corporation and M/s Garg Jewellers (entries of whose were recorded on those papers) in A.Y. 2016-17 and allowed telescoping of income surrendered during Survey in A.Y. 2015-16 (i.e. year of survey) and uphold the additions made in AY 2014-15.

Ld. CIT(A) has also failed to appreciate the fact that addition on account of undisclosed profit need further reduction by the of Trading Addition i.e.Rs.8,12,514/- for A.Y. 2016-17 pursuant to rejection of books of accounts and further additions sustained on account of alleged unaccounted net profits on the sales alleged as unaccounted for, i.e.:

Assessment Year	Addition sustained on account of Undisclosed Sales
2015-16	26031/- on sales of Rs.2,68,920/-
2016-17	Rs.30,944/- on sales of Rs.8,12,514/-

In light of the above facts the appellant submits the following:

That the said papers represent some assets on a particular day and the balances of other assets and liabilities as appearing in audited Balance Sheets are not appearing, therefore, the same at the most could be treated as statement of current assets as on a particular day which was probably made to work out the total stock position of entire group and therefore no addition should be made on the basis of such papers.

Thus, submission made is summarized as under:

1. It is submitted that details noted on pages 19-21 (Common paper book Volume I Part I pages 165-167), consists details of entire group i.e. all the three firms (M/s Royal Jewellers and its sister concerns M.s Shrinath Corporation and Garg Jewellers) and not the assessee alone. Moreover, as stated above, assessee reiterates that pages 19-21 do not represent parallel balance sheet and rather contain memorandum entries on some particular day where only the balances of trading asset i.e. gold, gold jewellery etc. and also the bank balances were mentioned for administrative purposes. This fact is prima facie evident from the perusal of these pages itself, which contain details of stock only and no other physical assets nor trade debtors/trade creditors are found noted on the same.

Assessee's plea regarding entries found noted on these pages pertaining to the entire group is also evident from the fact that in the narratives for the cash in bank (as mentioned in alleged parallel balance sheet) , apart from bank details of the assessee, bank details of sister concern are also mentioned on these two pages namely ICICI Bank and BOB. These are bank accounts of Shreenath Corporation.

Moreover, under the sub head 'Metal' against the item silver 14.859 Kg.(Common paper book Volume I Part I page167,) has been deducted on page 19 which is basically inter-se transfer between the firms of the group, which also clearly reflect that these memorandum details are not only for the assessee firm but are for the entire group.

It is further submitted that on these pages, the profit has been stated to be divided between 'GJ and `MJ in the ratio of 58% and 42% whereas in the appellant firm, the profit sharing is 50% - 50% between the two partners namely Pooja Agarwal and Manoj Khandelwal. It is noteworthy that the names mentioned in brief in these pages itself do not in any way match with the names of partners of the assessee firm. Thus the documents do not in any manner reflect the profit of the appellant firm only as alleged by the Ld. AO.

2. It is submitted that if version of Id.AO is accepted that these pages 19-21 represent Parallel balance sheet (and as explained above, entries found noted on these pages pertain to entire group), alleged profit shown in the same can by no stretch of imagination be treated as over and above the profits declared by assessee. Rather, at the most profit declared in such alleged balance sheet may be treated as Total profit (i.e. declared in regular books of accounts and unaccounted, if any) of entire group. Hence separate additions of alleged undisclosed profits from undisclosed transactions is not warranted to the extent

of balance addition on account of alleged parallel Balance Sheet of the group, otherwise it would tantamount to double additions.

3. It is further submitted that as these pages alleged as parallel balance sheet do not contain any detail of expenses whatsoever neither direct nor indirect or administrative expenses. Also, no details of creditors and debtors are noted thereon. Your honours would appreciate that incurring of expenses is inevitable for running any business and therefore at the most amount alleged as profit can be treated as gross profit and not the Net Profit and accordingly if any addition on account of these pages is to be made, the credit of declared gross profits of each of the three firms in its regular returns needs to be given.
4. It is further submitted that the credit for the additional undisclosed income offered as a result of survey on which due taxes have already been paid may please be allowed for all the firms, as the alleged parallel balance sheets would reflect total actual profit of the various concerns of the group and accordingly would obviously include additional profit, additional stock etc. disclosed during the course of survey.
5. Further the survey was carried out in FY 2014-15 relevant to AY 2015-16 wherein the additional income to the tune of Rs. 10.00 crores was admitted which included excess stock, cash etc. It is a matter of common knowledge that such excess stock could not have been acquired out of current year's additional income and it is but naturally purchased/acquired out of the accumulation of additional income of previous years also. Therefore set off out of Rs 10 crore additional income declared in survey may also be given for the additional income proposed to be added as per alleged parallel Balance Sheet not only for AY 2015-16 but also for thus no addition should be made for A.Y. 2014-15 .
6. Without prejudice to above, it is submitted that credit of Trading Addition and other additions on account of profits from the alleged undisclosed sales found noted in the seized document and finally sustained by the hon'ble bench in other grounds of appeal may please be allowed towards the addition on account of alleged parallel balance sheet.
7. It is further submitted that credit of Trading Additions and other additions on account of profits from the alleged undisclosed sales found noted in the seized documents and finally sustained by the Hon'ble bench in the other cases of the group Concern namely M/s Shreenath Corporation, M/s Garg Jewellers (Prop.

Jitendra Agrawal) and C.P. Agrawal may please be allowed towards the addition on account of alleged parallel balance sheet.

Addition on account of Unaccounted Sales:

Asstt. Year	Assessee's Grounds of Appeal	Department Grounds of appeal
2015-16	4 to 4.1	7
2016-17	5 to 6.1	9

Under these grounds of appeal, appellant has challenged the action of Id. CIT(A) in confirming the GP rate application on additions made by Id. AO u/s 68 of the Act on account of alleged undisclosed cash sales on the basis of entries stated to have been found noted in the loose papers and documents seized during the course of search from the business premises of the appellant and also from the residence of its partners by alleging the same as pertaining to the appellant.

Brief facts leading to these grounds of appeal are that, during the course of search carried out u/s 132 on 28.07.2016 various loose papers and other documents were seized from the appellant firm's business premises and residences of its partners. The papers so seized from the business place at 1756, Telipada, SMS Highway, Choura Rasta were inventorised as Annexure-AS Exhibit 1 to 24 and the papers seized from the residence of Shri Manoj Khandelwal (partner) at 14, Sunder Nagar, Malviya Nagar, Jaipur were inventorised as Annexure-AS , Exhibit 1 to 15.

Ld. AO after going through the entries found noted in the loose papers and documents at his end has issued a detailed show cause notice to the appellant (Common paper book Volume I Part I pages 1-65) and further made a summary in Assessment order wherein he has presumed unaccounted sales and purchases and also quantified the details of alleged unaccounted sales and purchases. The same is reproduced as under for your honour's ready reference:

SCN	Common PB Volume I Part I	Document reference	Paper book reference	Relevant assessment year	Quantum which the assessee was to explain
			Seized/ impounded from:1756 Telipada SMS Highway Choura Rasta, Jaipur		
7	8-14	Exhibit 8 Page 1 to 22	PB Volume I Part I 102-136	2017-18	Cash Advances/ sales Rs.19,46,02,422
9	16-17	Exhibit 10 Page 1 to 42	PB Volume II Part I 726-767	2017-18	Sales Rs.16,13,340
10	17-19	Exhibit 11 Page 1 to 67		2017-18	Sales Rs.17,96,771
11	19-20	Exhibit 12 Page 1 to 23	PB Volume II Part I 768-791	2017-18	Sales Rs.8,54,223
12	20-22	Exhibit 13 Page 1 to 84	PB Volume II Part I 792-876	2017-18	Sales Rs.4,87,66,873

ITA Nos. 113 to 115 & others/JP/2020
M/s Royal Jewellers vs. DCIT

13	22-23	Exhibit 14 Page 1 to 57	PB Volume I Part I 181-273	2017-18	Purchases Rs.39,10,00,109 Sales Rs.35,86,772
14	23-29	Exhibit 15 Page 1 to 45	PB Volume I Part I 274-317	2017-18 2016-17	Purchases Rs.1,46,00,618 Sales Rs.6,09,10,865 Expenditure Rs.2,54,242 Sales Rs.1,24,000
15	29-31	Exhibit 16 Page 1 to 56	PB Volume II Part I 877-934	2017-18	Sales Rs.1,11,44,666 Expenditure Rs.2,45,480
16	31	Exhibit 17 Page 1 to 7	PB Volume II Part I 935-942	2017-18	Sales Rs.3,84,939
17	31-32	Exhibit 18 Page 1 to 14	PB Volume II Part I 943-957	2017-18	Sales Rs.6,52,767
18	32-33	Exhibit 19 Page 1 to 23	PB Volume II Part I 958-981	2017-18	Sales Rs.91,15,392
19	33-34	Exhibit 20 Page 1 to 76	PB Volume II Part I 982-1059	2017-18	Sales Rs.59,73,109
20	35-36	Exhibit 21 Page 1 to 21	PB Volume II Part II 1060-1108	2017-18	Sales Rs.30,85,618
21	37	Exhibit 22 Page 1 to 6	PB Volume II Part II 1109-1115	2017-18	Sales Rs.4,85,255
			Seized/ impounded from:14, Sunder Nagar, Malviya Nagar, Jaipur		
22	36-40	Exhibit 1 Page 2 to 54	PB Volume I Part I 318-394	2017-18 2017-18 2016-17	Purchases Rs.1,47,45,598 Sales Rs.6,74,60,630 Sales Rs.3,20,660
23	40-41	Exhibit 2 Page 2 to 40	PB Volume II Part II 1116-1124	2017-18 2017-18	Purchases Rs.21,51,562 Sales Rs.37,46,680
24	41-43	Exhibit 3 Page 1 to 40	PB Volume II Part II 1125-1131	2017-18 2017-18	Purchases Rs.1,64,04,000 Sales Rs.1,52,97,549
25	43-49	Exhibit 8 Page 1 to 65	PB Volume II Part II 1132-1297	2017-18	Sales Rs.4,87,98,454
26	49-58	Exhibit 9 Page 1 to 195	PB Volume II Part II 1298-1493	2017-18	Sales Rs.9,47,12,278
27	58-64	Exhibit 10 Page 1 to 36	PB Volume II Part II 587-725	2017-18 2016-17 2015-16	Sales Rs.2,35,50,916 Sales Rs.28,200 Sales Rs.2,68,920
28	64	Exhibit 11 Page 15 to 38	PB Volume I Part I 137-180	2016-17 2017-18	Sales Rs.1,48,64,897 Sales Rs.49,75,325

From the above it is deduced that the following additions have been made by the Id. AO in respect of A.Y.2015-16 and 2016-17, out of which after considering the duplications and other facts as pointed out by assessee and found correct by Ld. CIT(A), Ld CIT(A) held following amount as unaccounted sales (as per column 4 of table below) and then Id CIT(A) determined the gross profit on these sales(as per column 5 of table below) which was held to be added to the income of the assessee:

A.Y. 2015-16:

Exhibit No.	Amount of addition (Rs.)	Remarks	Undisclosed Sales confirmed by Id. CIT(A)	Addition sustained by Id.CIT(A) by applying GP rate
Exhibit A-10	2,68,920	Unaccounted Sales	2,68,920/-	26,031/-

A.Y. 2016-17

Exhibit No.	Amount of addition (Rs.)	Remarks	Undisclosed Sales confirmed by Id.	Addition finally sustained by
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			CIT(A)	Id.CIT(A) by applying GP rate
Exhibit C-6	65,72,125/-	Unaccounted Sales	NIL	-
Exhibit C-15	1,24,000/-	Unaccounted Sales	NIL	-
Exhibit A-1	3,20,660/-	Unaccounted Sales	NIL	-
Exhibit A-10	28,200/-	Unaccounted Sales	28,200/-	
Exhibit A-11	1,48,64,897/-	Unaccounted Sales	3,13,339/-	
TOTAL	2,19,09,882/-		3,41,539/-	30,944/-

At the outset it is submitted that Undisclosed Sales of assessee has been computed by Id. AO in a mechanical manner and are absolutely contrary to the fact on record. As evident from the AO's observation, the additions in respect of alleged unaccounted sales have been made u/s 68 of the Income Tax Act, 1961. A detailed submission is made in ground No. 3 above, which may please be considered.

With regard to the additions made by the Id.AO, the appellant submits that the necessary explanations with reference to the above mentioned seized papers was submitted by the assessee during the course of assessment proceedings however, the Ld. AO without appreciating the same or without verifying the same proceeded in arbitrary manner. Resultantly, additions of entire undisclosed cash sales were made without considering the settled legal proposition that the entire cash sales cannot be added as the income, and doing so is against the principles of accountancy and even not in accordance with the law. It was the net profit so earned on account of alleged unaccounted cash sales, which should have been considered by the AO for making the additions. The Id. AO's observation in this regard is reproduced herewith for your honour's ready reference:

"In view of the above discussion and fact brought on record it is evident the assessee has been found to be indulged in out of books sale as well as purchase and other expenditure including job work etc. Since the assessee has not come up with the documentary evidence to establish nexus between unaccounted purchase and unaccounted sale. Therefore, the benefit of peak cannot be allowed to the assessee. In these circumstances it will be justifiable to consider the whole unaccounted sale as his cash credit u/s 68 of the I.T. Act. As the sale amount also includes the cost component i.e. purchase and other expenses, therefore no separate addition on account of unaccounted purchase and expenditure is require to be made. Accordingly, addition of Rs.2,68,920/- on account of undisclosed cash sale is hereby made to the total income of the assessee u/s 68 of the I.T. Act and taxed @ 30% as per provision of section 115BBE of the I.T. Act."

Further, it is submitted that the entire additions have been made by Id.AO on the basis of entries found noted in the seized documents found as a result of search from the

business premises of the assessee firm and also from the residential premises of its partners by alleging the same as undisclosed sale which actually were basically the rough notings. The notings as appearing in the loose papers are of the following nature:

- i. Certain loose papers contained the summary of daily stock position taken by the partner (Shri Manoj Khandelwal) or in his absence by any employee at the end of the day.
- ii. Rough noting of the transactions/ events occurring during the whole day by one of the employee in absence of the partner.
- iii. Rough noting of the transactions/ events occurring during the whole day by the partner himself at the end of the day which also include the entries stated in (ii) above.
- iv. Noting of trades booked and trades executed in respect of bullion trading of M/s Shrinath Corporation, a sister concern having same place of business.
- v. Approval slips issued for goods sent out on approval basis.
- vi. Rough estimates of the selling price of articles of jewellery made to quote the selling price to the customers who walk in to the store.

The Id. AO has miserably failed to properly co-relate, link the entries found noted in various annexures with each other which are repetitive / duplicate / triplicate or in some case no final transaction took place and has made additions in casual manner by mechanically adopting a straight jacket formula/ methodology.

The Id. AO has further failed to closely analyse the papers seized during the course of search and to co-relate them with each other. There are duplications/triplications in respect of additions made by the Id. AO wherein the additions in respect of a single transaction noted in different papers has been made twice/ thrice without appreciating the fact that some pages containing same entries were seized in two different exhibits and actually denote/relate to a single transaction.

On appeal, Id. CIT(A) has verified each individual entry of alleged unaccounted for sale and after excluding the duplicate entries found noted in various papers vis-à-vis show cause notice reduced the quantum of alleged unaccounted sale and also held that GP rate on such alleged balance Undisclosed Sales (after excluding duplicate / triplicate and matching entries) should be added and not the entire amount of such sales.

With this background, it is submitted that it is seen from the seized records itself that, alleged unaccounted purchases and expenses are also recorded therein and the Id. AO has himself admitted the same. It is further submitted that the seized records itself contain details and also some link to alleged unaccounted sales and unaccounted purchases. Moreover, it is not a case where these alleged unaccounted sales could

have been made from recorded purchases as recorded purchases and sales are reflected in the stock register and quantitative tally is maintained. Hence, the plea taken by the Id. AO for making addition of entire sale amount is totally flimsy and untenable. Accordingly, it is submitted that Id. CIT(A) has rightly held that sales cannot be added as income but only profit embedded in these sales need to be added and he directed to add Gross Profit amount on such sale (though assessee submits before your honour that net profit amount as per N.P. rate may be added as submitted in forthcoming paras).

The appellant submits that Id. AO has determined the amounts of unaccounted sales, unaccounted purchase and unaccounted expenses. Therefore, if any addition on account of alleged unaccounted sale is to be made, then it could have been of net profit earned on account of these sales. It is mentioned here that the seized records itself contain the alleged unaccounted purchases and also expenses which are not recorded in the books of accounts. These are the part of the same papers/documents and it is settled law that papers/documents should be read as a whole.

The appellant submits that Income tax is a tax on income, wherein income means the net income earned by an assessee after reducing the expenses incurred in earning such income.

The Id. AO has himself in the show cause notice dated 01/10/2018 (Common paper book Volume I Part I pages 1-65) pointed out the details of unaccounted expenses found noted in the loose papers seized during the course of search. In this regard the appellant submits that various expenses relating to the unrecorded sales had also remained unrecorded in the books of accounts. The details of some of the expenses are available as a part of Exhibit- 15 and Exhibit-16 seized from 1756, Telipada (Common paper book Volume I Part I pages 274-317).

The appellant reiterates that Income tax is the tax on income and not a tax on sales and the real income of the appellant can be determined only after reducing the related expenses from the amount of sales. It is, therefore, humbly submitted that in the event your honours still proceed to confirm addition of profit on alleged unaccounted sale based on the entries found noted in the loose papers, such addition may be restricted to the net profit earned on the alleged unaccounted sales.

It is further submitted that it has been the settled principle of law that the estimations should be fair and reasonable and should be based on some scientific method. Further all the receipts found noted in the loose papers cannot be held as the income more specially in the peculiar facts and circumstances of the case where the expenses

against such income are also found recorded in the loose papers, therefore, most reasonable and logical profit should be estimated.

Such method of computation of income is an accepted method as the papers found as a result of search should be read as a whole and the entries of expenses as well as receipts cannot be considered in isolation rather it has to be worked out by giving full coherence for working of the additional income based on such papers / documents.

Reliance is placed on following case laws:

253 ITR 454 (Guj.) Glass Lines Equipments Co. Ltd. V/s CIT:

Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document.

22 TW 684 Hissaria Brothers V/s ACIT (Jpr.):

Held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it.

21 Tax World 213 Lal Chand Agarwal V/s ACIT (Jpr):

In no case AO can be allowed to consider a part of a particular document as true being favorable revenue and other part of the very document as false since that is favorable to assessee - Duality of the approach of AO is not fair.

The hon'ble bench may kindly appreciate that no income can be earned without incurrance of the reasonable and genuine expenditure and therefore Income Tax Act itself contains various provisions for allowing expenses incurred for earning income. In fact even under presumptive taxation regime, only a percentage of turnover (fixed on the basis of normal profit rate that a businessman can make under normal circumstances) and not the entire turnover is taxed. Such scheme is absolutely logical in view of the fact that the payments made for resources utilized for earning income, whether in the form of purchases or other services would be income of the recipients and thus would be taxable in their hands. Therefore, if an assessee is taxed in respect of such alleged unaccounted sales, the same would be illegal under the Income Tax Act, 1961 and it is only the real income which can be taxed not the gross receipts.

In view of above, it is requested that only net profit on the unrecorded sales deserves to be taxed and not the entire receipts, therefore the estimation of addition of income may be reduced by Hon'ble bench by directing to adopt a reasonable and logical net profit rate on such sale as per the past history of the appellant.

In this regard reliance is placed on the decision of the Hon'ble ITAT, Jaipur bench in the case of M/s M/s Vikas Timber Products (P) Ltd. wherein in ITSSA No. 53/JP/06, Hon'ble bench has held that in the case of unaccounted sales income is to be estimated by applying a reasonable Net profit rate.

Also reliance is placed on the following judicial pronouncements:

CIT Vs. President Industries 225 ITR 47 (SC):
Entire sales cannot be taxed only profits could be added.

ITO Vs Somsons & Co. 148 TAXMAN 21 (Asr., ITAT):
Estimation of profit – AO cannot estimate income which do not bear any relationship with the past history of the case.

ITO, Ward 45(3), Kolkata Vs. Maniklal Dey ITA No. 2436/Kol/2016 (ITAT-Kol):
Turnover includes cost or purchases and gross profit. Only gross profit can be termed as the income of the appellant. The action of the AO for adding entire turnover is baseless.

Surinder Pal Verma Vs. ACIT 89 ITD 129 (Chd. TM)
When unrecorded sales were noted during the survey or otherwise only the normal G.P. could be applied. It would be patently illegal to add the entire sales as income of the assessee.

Further, the Id. AO has made addition on account of alleged net profit found noted in the some papers by considering them to the alleged parallel Balance sheet of the entire group, which is separately challenged in earlier ground. However, if any addition of profit on the basis of alleged parallel balance sheet is sustained by Hon'ble bench, then this alleged balance sheet would obviously include profit on these unaccounted sale found in these loose papers as same is the summary of position of profit of the group for entire years. Accordingly, it is submitted that addition of profit on these unaccounted sale must to be merged with addition of profit based on alleged parallel balance sheet and no separate addition is warranted otherwise it would read to double additions. It is submitted that Id. CIT(A), after going through the facts of the case in detail has rightly accepted the argument of assessee on this issue and ordered accordingly, Hon'ble bench is requested to reject the appeal of Deptt. On this issue considering the submissions and facts and circumstances of the case as well as legal position on the issue.

The appellant reiterates that the Id. AO has erroneously quantified the amount of alleged unaccounted sales without closely analyzing the papers seized during the course of search. There are various discrepancies and duplications in the amount estimated by the Id.AO.

The detailed and exhibit wise/ issue wise explanation of the discrepancies observed by the appellant in the amount calculated by the Id.AO on account of alleged unaccounted sales from the seized papers was submitted before Id.CIT(A) who after closely verifying each individual entry deleted the duplicate/triplicate entries. The same is submitted before your honour for your kind consideration:

A.Y. 2015-16

Exhibit A-10 (Seized from 14, Sundar Nagar, Malviya Nagar)(Rs.2,68,920/-) (APB 587-725 Compilation of Papers Volume I Part II)

The appellant submits that the additions in respect of all the papers seized and inventorized under Exhibit A-10 have already been made by the Id. AO in A.Y.2017-18, wherein a total addition of Rs.2,35,50,916/- has been made taking into account all the papers contained in the said exhibit. Therefore, no separate addition is warranted in the year under appeal i.e. A.Y. 2015-16.

Under the circumstances, it is humbly prayed before your honour that addition of Rs.2,68,920/- should out rightly be deleted as the same is already included in the additions made for A.Y.2017-18.

A.Y. 2016-17

Exhibit A-1 (APB 318-394 Compilation of Papers Volume I Part I) and A-11 (APB 137-180 Compilation of Papers Volume I Part I) (Seized from 14, Sundar Nagar, Malviya Nagar)(Rs.1,48,64,897/-)

Issue: Additions made on the basis of bills that have already been accounted for in the books of accounts maintained by the appellant:

The Id. AO has made an addition of Rs.3,20,660/- and Rs.1,48,64,897/- by alleging the same as unaccounted sales based on the entries found noted in the loose papers found during the course of search and inventoried as Exhibit A-1 and A-11 respectively.

In this regard, it is submitted that additions in relation to Exhibit A-11 are mentioned on page No. 64 (para 28) of show cause notice (Common paper book Volume I Part I page 64) wherein the Ld. AO has mentioned that page No. 15, 16, 17 and 18 of Exhibit A-11 contained the details of sale wherein handwritten sale bills are found, totaling to Rs. 1,45,51,558/-. Similarly on page No. 51, 52, 53 & 54 of Exhibit A-1 there are handwritten

sale bills totaling to Rs. 3,20,660/- (as per page 40 of SCN, i.e. (Common paper book Volume I Part I page 40) which have also been treated by Ld. AO as unaccounted sales without verifying both these details from the books of accounts. In this regard, it is submitted that the three bills seized as per page 15, 17 & 18 of Exhibit A-11 are the sale bills issued to Rukmani Jewellers Pvt. Ltd. (Common paper book Volume I Part I pages 168-169 & 171) and bill at page 16 is issued to Shri Durga Jewellers (Common paper book Volume I Part I pages 170). These bills so seized are having Bill No. also and all the four bills are entered into regular books of accounts. These sales are duly entered in the ledger account of gold ornament sales, the (APB 78). Similarly other four bills seized as per page 51 to 54 of Exhibit A-1. (Common paper book Volume I Part I pages 319-322) are also recorded in books of accounts. It is thus submitted that sales so reflected in the aforesaid seized documents have been properly recorded in the books of accounts and are also reflected in the ledger account of the gold ornament sales. The names of the purchaser parties so mentioned on the seized documents is same as reflected in the regular books of accounts. The complete details of the invoices and their reconciliation with the regular books of accounts of the appellant is enclosed at APB 78-86. In the said chart a reference of the seized papers is made to the sale as per books of accounts as appearing in the regular books of accounts of assessee. Whereas, the Id. AO has failed to reconcile the sale invoices with the books of accounts of the appellant and erroneously presumed the same to be unaccounted.

After going through the submission and perusing the notings on the respective seized documents [as is also clear from the order of Id.CIT(A)], Id.CIT(A) has rightly excluded them as part of unaccounted sale and deleted the addition. Hon'ble bench is requested to reject the appeal of Department on this issue.

In view of the above, it is humbly prayed before your honours that the addition of Rs.1,48,72,218/- comprising of addition of Rs.3,20,660/- made under Exhibit A-1 and Rs.1,45,51,558/- made under Exhibit A-11 may please be directed to be deleted.

Exhibit A-10 (APB 587-725 Compilation of Papers Volume I Part II)
(Seized from 14, Sundar Nagar, Malviya Nagar) (Rs.28,200/-)

Issue: Rough noting alleged as unaccounted sales:

During the course of search various loose papers were found and seized by the search officials most of them contained rough notings. One of such pages seized and inventorized as page no.76 of Exhibit A-10 contains notings of some estimates given to some walk-in customer named Gudiyaji. The Id. AO without appreciating the fact that the slip merely contains certain rough estimate, has presumed the same to be unaccounted sale made by the appellant.

In view of the above, the appellant prays your honour to kindly confirm the deletion of addition of Rs.28,200/- made by Id. CIT(A) and reject the appeal of Deptt. On this issue alleging the same as unaccounted sale on the basis of some rough notings.

Exhibit C-6 (Seized from 1756, Telipada) (Rs.65,72,125)

Issue: Gold issued to karigars alleged as unaccounted sales

The Id. AO vide point no. (f) on page no. 17 of the assessment order for AY 2016-17, observed that the appellant has not recorded the gold issued to the following two karigars in the books of accounts maintained by it, though the payment towards labour charges made to these karigars has been done through account payee cheques and the TDS on the same has been duly deducted:

Pg no	Name of the party	V. No.	Date	Weight (In grams)	Making rate per gram (In Rs.)	Total making charges (In Rs.)
7	M/s Jagdish Prasad Kamal Kumar Soni	157	23.03.2015	1080.520	80	86521
8	M/s Ganpati Ornaments	158	23.03.2015	1184.73	80	94778
				2266.25		

At the outset it is submitted that on one hand the Id. AO vide point no. (vii), page no. 6 of the assessment order rejected the books of accounts maintained by the appellant and thereby estimated the profit earned by it by applying the GP rate. On the other hand the Id. AO has placed reliance of the same set of books of accounts and assumed that the gold issued to some of the karigars has not been recorded in these books of accounts.

Therefore, the observations of the Id. AO are self contradictory in as much as the fact that he has selectively as per his own sweet will placed reliance of the books of accounts maintained by the appellant to make various unwarranted addition when in the very beginning he has rejected these books by citing one of the reasons as non maintenance of proper stock registers.

Under the circumstances, the observations of the Id. AO are vitiated and the additions made on the basis of such observations deserve to be deleted.

Alternatively and without prejudice to the above, the appellant further submits the following:

It is submitted that the issue of gold for manufacturing of jewellery to the above named parties and the receipt of manufactured jewellery back has been duly recorded in the books of accounts maintained by the appellant. The appellant had issued gold to the above mentioned karigars for manufacture of jewellery, during March, 2015. The making charges for the same had been duly recorded at the time of issue of gold to the

karigars but the appellant firm's accountant had mistakenly missed out to record the same in the stock registers. This mistake had occurred due to the reason that, gold had been issued during the last week of March, 2015 and in the haste of finalizing and closing the books of accounts for the year ended on 31.03.2015, the accountant missed out to record transaction in the stock register.

It was only while finalizing the books of accounts for the immediately subsequent F.Y. i.e. 2015-16, that the accountant realized his mistake and therefore the error was immediately rectified by making the required entries in the books of accounts during February, 2016. Therefore, the gold issued to these karigars have ultimately been recorded in the books of accounts by passing necessary entries before finalizing the books of accounts for the year under appeal i.e. A.Y.2016-17. The copies of the stock journal reflecting the transfer of gold to the karigars and the receipt of jewellery from them is enclosed herewith at APB 87-90.

Ld. CIT(A) after carefully considering the submissions and the factual position as emanating from records has rightly deleted the addition of Rs.65,72,125/-. Hon'ble bench is requested to kindly uphold the order of Id.CIT(A) in this regard.

Exhibit C-15 (Compilation of Papers Volume I Part I) seized from 1756, Telipada)
(Rs.1,24,000/-)

Issue: Payment received from Sanjay Beeyani towards sales made to him alleged as unaccounted sales:

The appellant submits that on the basis loose papers found, seized and inventorized as page no. 31B of Exhibit C-15, the Id. AO has made an addition of Rs.1,24,000/-by alleging the same as unaccounted sales. In this regard, the appellant submits that the entries noted on this page are the details of cheques received from one party named Sanjay Beeyani towards sale of gold bar and gold ornaments. The details of payment received from Sanjay Beeyani is as under:

Date	Particulars	Amount (Rs.)	In whose books of accounts recorded	Cheque No./ Bank details	Remarks
07.01.16	Sale of gold bar	44,000/-	M/s Shrinath Corporation	Direct transfer received in ICICI bank account no.0631on 11.01.2016	Does not relate to the appellant. Moreover, it has been duly accounted for in books of M/s Shrinath Corporation
25.07.16	Sale of gold ornaments	80,000/-	M/s Royal Jewellers	Direct transfer received in Bol account no. 0317on 27.07.2016	Relates to A.Y.2017-18. Moreover, it has been duly accounted for in the books of accounts of the appellant.
TOTAL		1,24,000/-			

The relevant bank statements and the ledger account of Sanjay Beeyani in the books of accounts of the appellant as well as in the books of M/s Shrinath Corporation is enclosed at APB 91-94.

It is further submitted that notings on page No. 31B of Exhibit C-15 (Compilation of Papers Volume I Part I page 289) on the basis of which addition is made itself contain date, amount and name of one party namely Sanjay Beeyani. From perusal of page 31B, it is evident that firstly against the entry of Rs. 44,000/- name M/s Shrinath Corporation is mentioned with date as 07.01.2016 and moreover the same is found recorded in the books of M/s Shrinath Corporation (APB 91-92). . Regarding entry of Rs. 80,000/-, it is submitted that same is related to transaction on 25.07.2016, which would obviously not pertain to AY 2016-17 but pertains to AY 2017-18. Moreover same is found reflected in the books of accounts and the money was received by direct transfer in the Bank of India A/c No. xxxxxx0317 on 27.07.2016. The relevant bank statement and ledger account of Sanjay Beeyani in the books of accounts of appellant as well as in the books of accounts of M/s Shrinath Corporation is at APB 93-94.

From the above, it is evident that the addition of Rs.1,24,000/- made by the Id. AO is not warranted as the same is already fully accounted. Ld.CIT(A) has deleted the addition after considering the facts on record. The appellant therefore, prays your honours to kindly uphold the order of Id. CIT(A).

With the above submissions on various discrepancies in the order of the Id. AO, if the credit claimed in the aforesaid paras is considered, the deletion out of the total addition made by treating the entries as unaccounted sales would be as under:

S. No.	Particulars/ nature of addition	Amount	APB
1	Invoices already accounted for assumed as unaccounted sales Exhibit A1 Exhibit A11	3,20,660/- [Deleted by Id.CIT(A)] 1,48,64,897/- (Rs. 1,45,51,558/- deleted by CIT(A))	78-86
2	Rough notings assumed as unaccounted sales (Exhibit A-10)	28,200/- [confirmed by CIT(A)]	587-725 Compilation of Paper Volume I Part II
3	Payments received towards accounted sales assumed as unaccounted (Exhibit C-15)	1,24,000/--[deleted by CIT(A)]	91-94
4	Gold issued to karigars for manufacture of jewellery, assumed as unaccounted sales (Exhibit 'C-6')	65,72,125/-[deleted by CIT(A)]	87-90

TOTAL	2,15,96,543/-
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In respect of the balancing addition of Rs.3,12,339/- out of total addition on account of alleged unaccounted sales, made under Exhibit A-11 (page no. 24)(APB 161 Compilation of Papers Volume I Part I) it is submitted that the same related to sale of some diamond jewellery to a customer. It is reiterated that the appellant is a dealer of gold jewellery. It was only on one instance on request of a customer that diamond jewellery was 1st purchased by the appellant on one hand and immediately sold to the customer who requested for it. The appellant had made negligible amount of profit on sale of such diamond jewellery. In view of the above, the appellant had not recorded this transaction in its books of accounts as the same did not relate to its regular business and moreover no/negligible profit was earned on it.

The appellant therefore, requests the hon'ble bench to kindly delete the addition of Rs.3,13,339/- made by alleging the same as unaccounted sales.

Without prejudice to the above, and alternatively if the hon'ble bench is of the view that the sales of Rs.3,13,339/- is unaccounted sales, it is requested that only the net profit earned on such transaction may be brought to tax. Therefore, the appellant requests your honour to restrict the addition in respect of sale of diamond jewellery to the amount of net profit earned on sale of such jewellery. Further, the net profit from such alleged sales may be treated as part of total undisclosed profit finally worked out by your goodself while adjudicating ground no. 3 above.

It is submitted before your honours that in Exhibit C-13 itself there are not only slips of 'approval' but there are other slips on which 'rough estimate' is mentioned. It was further submitted that in other exhibits namely C-17, C-18, C-19, etc. and also in exhibit A-8, A-9 and A-10, there are various slips on which 'rough estimate' is mentioned and moreover there are still other slips. It was submitted that the other slips on which nothing at the top is mentioned, has not been disputed or agitated in absence of any concrete and foolproof evidence with the appellant. Similarly the appellant is also not very seriously agitating the slips on the top of which 'rough estimate' is mentioned, though as the name suggest these are only rough estimates. However as it is difficult to furnish positive evidence regarding these not being sale, the issue is agitated on the basis of written submission only. However as regards approval slips are concerned, it is very much clear that these are not unaccounted sales and these may be excluded from sale. Moreover many of these slips are related to goods received on approval. It is therefore requested before your honours that these can by no stretch of imagination be the sales and that additions on the basis of these approval slips so made by treating them as unaccounted sales deserves to be deleted.

In the circumstances, it is humbly submitted that the addition to the extent of Rs.2,15,68,343/- made on arbitrary basis without appreciating the actual nature of the transaction pertaining to entry contained in the loose papers so referred and also without appreciating the fact that the entries have already been recorded in the books of accounts have been rightly deleted by Id. CIT(A) and appeal of Deptt. May kindly be rejected on deletion of these additions by Id. CIT(A). Moreover as submitted above, balance addition of profit on balance unaccounted sale of Rs. 3,41,539/- as sustained by Id. CIT(A) may also be deleted in view of the submissions above.”

11.1 The Id. AR of the assessee also submitted that the Id. CIT(A) has taken a considered view in accepting that two pages seized being the parrel balance sheet of the group concerns of the assessee. As these pages contained the entire transactions, he has allowed the relief and confirmed the addition which are not covered by these loose papers. The Id. AR of the assessee relying on the reply of the show cause notice submitted that the as asked by the AO submitted explanations and CIT(A) has considered the explanation of the assessee and has accorded the relief with a detailed finding on merits. The Id. AR of the assessee also submitted and clarified that before the Id. CIT(A) there was no additional evidence produced but only the reconciliation and detailed explanation based on the records were submitted and the Id. CIT(A) based on the explanation has given the relief considering the duplicate entries and thus the order of the Id. CIT(A)

granting the relief is well founded and based on the detailed reasoning on facts already on record.

12. The Id DR is heard who has relied on the findings of the lower authorities as favorable and has also filed the written submission and the same is reiterated here in below :

Written submission for A. Y. 2014-15 to A. Y. 2016-17

“1. Tradition Additions: The following trading additions were made by AO in this case-

A.Y	G. P rate Declared by assessee	GP rate applied by AO	Trading Addition	GP rate adopted by Id. CIT(A)
2014-15	9.60%	24.14%	69,58,855	9.60%
2015-16	9.64%	24.14%	77,60,742	9.64%
2016-17	7.93%	24.14%	1,16,91,678	9.06%

The AO has given the reasons of adoption of GP rate of 24.14% in para 8 of the orders of respective years. It is to be noted that in the case of Shri Jitendra Agarwal, who is key member of the group, the Hon'ble ITAT in ITA No. 322/JP/2017 for A.Y. 2013-14 has directed the AO case also the AO had asked the assessee to furnish GP rate of 5 years prior to A.Y. 2011-12 which had attained finality. However, the assessee did not provide the finally determined GP rates of 5 years prior to A.Y. 2011-12, but it provided GP rates for A.Y. 2011-12 to A.Y. 2017-18, the years which were to be assessed by the AO u/s 153A of the Act pursuant to the search operation. Therefore, the AO tried to find out the GP rate prior to A.Y. 2011-12 on his own and found out that in annexure AS-24, the GP rate for A.Y. 2010-11 and A.Y. 2009-10 was available in the seized hard disk. As per the seized material GP rate for A.Y. 2010-11 was 21.11% and for A.Y. 2009-10 it was 27.17%. GP for A.Y. prior to A.Y. 2009-10 could not be traced by the AO. Hence, the AO took the average GP rate for A.Y. 2009-10 and 2010-11. Which came out to 24.14% and this rate has been adopted by the AO for A.Y. 2011-12 to A.Y. 2017-18.

The Ld. CIT(A) in his orders has confirmed the rejection of books of accounts but has not confirmed the GP rate adopted by the AD. The Ld. CIT(A) has accepted the GP rate of 9.6% shown by the assessee in A.Y. 2014-15 and 9.64% shown by the assessee in A.Y. 2015-16. The Ld. CIT(A) has slightly increased the GP rate shown by the assessee

from 7.86% to 9.06% in A.Y 2016-17. While deleting the trading additions, the LA CIT(A) has not given any cogent reasons for doing so and has made very generalized observation that turnover and facts and circumstances would change in 6/7 years, therefore, the GP rates of A.Y. 2009-10 and A. Y 2010-11 cannot be a yard stick.

It is submitted that the Ld. CIT(A) has himself accepted various defects in the books of accounts of the assessee and has upheld the rejection of the same. Therefore, it was incumbent upon the Ld. CIT(A) to explain that how the incomplete and defective books of accounts of the assessee had shown true and correct profits. The Ld. CIT(A) has failed to do so and therefore, the trading additions made by the AO should be confirmed, as the A.O. had correctly applied the rates of AY 2009-10 and 2010-11, since not these years had attained finality during the course of the impugned assessment proceedings...

2. Undisclosed net profit shown in the seized parallel balance sheet: During the course of search at the residence in the case of one of the partners of the firm Sh. Manoj Khandelwal, page no.19,20 and 21 were seized vide annexure- AS-11. The copy of page no 10 was also found from the residence of another partner of the firm Smt. Pooja Agrawal, which was seized vide page no. 1 of Ann. A-10.

Page 19 is the parallel handwritten balance-sheet for FY 2015-16 and page 20 is the handwritten parallel balance-sheet of FV 2013-14. Net profit has been shown in grams of gold in these balance-sheets. When confronted by the A.O., the partner of the assessee firm disowned the papers and argued that someone has left the paper at his residence. But, the A.O. in his order has conclusively proved that pages belong to the assessee firm on the basis of many evidences including the bank balances shown in the parallel balance-sheets which exactly match with the actual balance-sheets

The A.O. has worked out the net profits of three years by converting quantity of gold in monetary terms by taking gold rates as per the seized record for A.Y. 2014-15 and A. Y. 2016- 17. The AO has worked out the net profit for A.Y. 2015-16 as under: Opening balance Garg Jewellers for A.Y. 2014-15) Opening balance Garg Jewellers for A.Y. 2016-17 as under:-

Opening balance Garg Jewellers for AY 2014-15	100792.390-(A)
Opening balance Garg Jewellers for A.Y 2016-17	107543.940-(B)
Addition/profit earned by Garg Jewellers for A.Y. 2015-16	6751.94-(B-A)

Net profit of Assessee for A.Y. 2015-16 = Profit of the partner Garg Jewellers Total of ratio

Ratio of partner

$$= \frac{6751.94 \times 100}{100} = 11641.27 \text{ gram gold}$$

58

It is to be noted that profit sharing ratio in the firm between Garg Jewellers and Shri Manoj Khandelwal as per seized paper is 58:42. Thus, the undisclosed net profit calculated by the AO for three years is tabulated as under:-

A.Y	Net profit in 24CT gold	Rate of 24 CT gold at per gram as on 31 st March of relevant year which is also mentioned on seized document.	Net profit in Rs. (B*C)
A	B	C	D
2014-15	16400.440	2900	4,75,61,276
2015-16	11641.27	2658	3,09,42,496
2016-17	9565.430	2850	2,72,61,475

The Ld. CIT(A) has confirmed the entire addition made by the AG for A.Y. 2014-15 in para 10 of the order dated 08.11.2019. However, in order us 154 of the Act dated 09.12.2019, the Ld. CIT(A) has restricted the addition made by the AO to Rs.3,4608,856 and deleted the balance addition of Rs. 1,29,52,421. The Ld. CIT(A) in the said order has accepted the argument to the essence that during the year under consideration the declared profit of three concerns of the appellant group was as under:-

Assessable entity	Gross Profit
Royal Jewellers	45,92,568.00
Shreenath Corporation	39,70,488.00
Garg Jewellers	43,89,367.00
Total	1,29,52,423.00

As per as the findings of the Ld. CIT(A) on this issue for A.Y. 2015-16 is concerned, he has confirmed the addition made by the AO in principle, but has given the benefit of the disclosure by the assessee during the course of survey u/s 133A dated 09.12.2014. The relevant para of the order of Ld. CIT(A) is produced hereunder

“Regarding very high net profit shown during the year 2015-16 by the various group concerns, the Ld. AR submitted that a survey action u/s 133A was carried out by the department on 09.12.2014 at the business premises of the appellant and the sister concerns. As a result of survey, the appellant himself surrendered a sum of Rs.3,16,10,463- and had offered the same to tax during AY 2015-16. The same is evident from the computation filed with the return of income filed with the Ld. CIT. Accordingly, the net profit so shown has increased and tax has been paid on such increased profits/income. Similarly in the position in respect of other two concerns of the appellant group the AR has submitted that this surrender made during the course of survey in period relevant to A.Y. 2015-16 more specifically related to excess stock and cash found is relatable to accumulated profit of period relevant to A.Y. 2015-16 and

preceding year. Accordingly, any addition which might be satained in A.Y 2015-16 and preceding years may be set off against the additional income already offered in A.Y 2015-16 after the survey uction. It is seen by me that the profit so reflected in the seized document now found during the course of search related in the year under consideration Le A.Y. 2015-16 so deduced by the Ld 40 is R3,09,42,496/- This is the total profit (ie, unaccounted and accounted both) of the group concerns. However, it is seen that the appellant only has shown net profit of Rs 3,27,67,115/-in period relevant to A.Y 2015-16, apart from the profit shown by other two concerns which is also broadly in the same range as specifically mentioned above. In view of these facts no separate addition on account of the aforesaid profit of Rs 3,09.42.496- is required to be made in A.Y. 2015-16 Therefore, the addition of Rs.3,09.42.496- is hereby deleted. The ground is allowed for statistical purposes.”

The Ld. CIT(A) in his order for A.Y. 2016-17 has confirmed addition of Rs.1,50,55,435/-out of total addition of Rs.2,72,61,475/- made by the AO and gave relief of Rs.1,22,06,040/- on account of disclosed profits of the three concerns as under-

1. M/s Royal Jewellers	= 57,22,132.00
2. M/s Shreenath Corporation	= 35,75,778.00
3. M/s Garg Jewellers	= <u>29,08,130.00</u>
	1,22,06,040.00

The findings of the Ld. CIT(A) are against the facts and also not legally tenable. The partner of the assessee firm Shri Manoj Kumar Khandelwal in his statement a's 13214) of the Act has admitted that the figures mentioned in the parallel balance sheets are stock valuation of M/s Royal Jewellers for the period ending on 31.03.2014 and 31.03.2016. The relevant extracts of the said statement has been reproduced by the AO on page 11 of the assessment order. It is submitted that a copy of balance sheet was also recovered from the residential premises of other partner Smt. Pooja Agarwal, who, alio in ber statement recorded u/s 132(4) of the Act has concurred with the statement of Shri Manoj Kumar Khandelwal. It may be mentioned that these statements made u/s 132(4) of the Act have not been retracted either by the partners of by the firm.

2.1 During the appellate proceedings, it has been submitted by the assessee that these balance sheets were dumb documents and if these were to be relied upon, then these should be considered as Memorandum Accounts of the group as a whole consisting of 3 entities Le Garg Jewellers. Royal Jewellers and Shri Nath Jewellers and the profit declared therein should be reduced from the gross profit declared by these 3 entities in their audited Profit & Loss account. In the appellate order, the lid. CIT(A) has accepted

the said contention of the assessee without any documentary evidence and has given substantial relief to the assessee.

2.2 It may be mentioned that the Id. CIT(A) has totally ignored the statements of partners of the assessee firm as recorded on oath u/s 132(4) of the Act, which has great evidentiary value and cannot be brushed aside lightly as submitted earlier. In fact, the Id. CIT(A) has not stated why these statements could not be relied upon for making the additions as made by the AO especially looking to the fact that neither these were retracted by the assessee firm nor by the partners

2.3 Further, this new plea of Memorandum Accounts has been raised by the assessee for the first time before the Id. CIT(A), which has not only been admitted by the id. CIT(A) but accepted also without giving any opportunity of being heard to the AO, which is against the principle of natural justice

2.4 These documents contain name of the banks and balances therein on the cut off dates, which are matching with the bank details of the assessee firm as appearing in its audited balance sheets (PB1540 & 1589). It may be mentioned that these balance sheets were recovered from the residential premises of both partners of the assessee firm and in their statements recorded on oath u/s 132(4), they have admitted that these are stock valuation of M/s Royal Jewellers, the assessee firm. Thus, it is humbly submitted that these documents are not dumb documents and these belonged to the assessee firm only. It would be appropriate to reproduce provisions of section 132(4A) of the Act as under:

"Where any books of account, other documents, money, bullion jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other article or thing belong or belongs to such person: valuable

(ii) that the contents of such books of account and other documents are true"

2.5 Thus, in view of section 132(4A), it is presumed that these balance sheets belonged to the assessee and the contents thereof are true. Though the presumption is rebuttable but the same is to be rebutted with documentary evidences, which has not been done by the assessee. Further, in these documents net profit earned has been worked out, on the basis of which the AO has made the addition thereof. It is therefore

humbly submitted that the addition made by the AO on the basis of the seized parallel balance sheets may please be restored.

2.6 Without prejudice to the above, it has been held by the Id. CIT(A) that these parallel balance sheets belong to the group as a whole consisting of 3 concerns, which is contrary to the fact as in the said balance sheets, bank accounts of only M/s Royal Jewellers and Shreenath Jewellers are reflected as appearing in their audited balance sheets. The finding of the Id. CIT(A) that seized pages show the profit sharing between two families is perverse and completely based on conjectures and surmises. There is no entry in seized material which indicate that it is profit sharing between two families. Further, none of the partners or Sh Jitendra Agrawal has claimed so during their statements u/s 132(4) of the Act. The Id. CIT(A) has again reached the far-fetched conclusion without any evidence that profit shown in the seized papers is gross profit, and not net profit despite the fact that 'net profit' is written in the seized papers. Thus, the Id. CIT(A) has completely overlooked the provisions of section 132(4A) of the Act. There are only two official partners of Royal Jewellers-Sh. Manoj Khandelwal and Smt. Pooja Agarwal. The profit sharing ratio in the seized balance-sheet (58:42) is almost equal to the official ratio of 50:50, but not exactly the same because the seized balance-sheet gives the figures of net profits of undisclosed transactions, which may be shared between two partners in different ratio, which is in the special knowledge of two partners only and onus is not on the Department to prove this fact in view of the provisions of section 106 of the Evidence Act. No bank account of Garg Jewellers is reflected in the seized balance-sheet and premises of Garg Jewellers is different from premises of the assessee firm. Garg Jewellers is a proprietary concern of Sh. Jitendra Agrawal. Thus, by no stretch of imagination, figures of profits of Garg Jewellers may be included in the seized balance- sheets. At the cost of repetition, it is again submitted that bank accounts of Garg Jewellers do not find any mention in the seized balance-sheet.

2.7 Thus, these facts, establish, beyond doubt that these balance sheets do not pertain to M/s Garg Jewellers as admitted by the Id. CIT(A) and that too without giving an opportunity of being heard to the AO. Further, the Id. CIT(A) has given set off the declared gross profits of these 3 entities and has substantially reduced the addition made by the AO. It appears that the Id. CIT(A) has presumed that the net profit shown in the seized balance sheets includes the gross profit declared by these firms, without any basis or documentary evidence. It appears that the contention of the assessee has been accepted by the Id. CIF(A) on its face value without any evidence on record on the basis of assumptions and presumptions.

2.8 Without further prejudice to the above, it is submitted that allowing the relief to the assessee in AY 2014-15 omaccount of disclosed profits of three concerns in order u/s

154 of the Act is against the provisions of the Act, as there was no mistake apparent from record. Whether the seized balance-sheets contained the disclosed profits or not and whether the said balance-sheets contained the disclosed profits of one concern, two concerns or three concerns was not a mistake apparent from record. The order of Id. CIT(A) is against the judgement of the hon'ble Supreme Court in the case T.S.Balram, ITO v Volkart Bros., 82 ITR 50. The hon'ble Supreme Court has observed in this case that-

"A mistake apparent from record must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from record:"

The hon'ble Delhi Tribunal in the case of District Excise Officer v ITO, 66 ITD 168 has held that-

"...One of the meanings given for the word 'mistake' is that is an omission made not by design but mischance and a 'mistake apparent is a mistake that is manifest, plain or obvious, a mistake that can be realized without a debate or dissertation. The expression 'apparent on the other hand refers to something which is obvious, conspicuous and self-evident. Accordingly, mistake apparent from records" would necessarily mean obvious error which is incapable of argument or debate."

It is clear from the above judicial pronouncements that section 154 covers only apparent mistakes and not the 'mistake' which can be established by a long process of reasoning. The issue decided by the Id CIT(A) was highly debatable issue, as has been discussed at length in the foregoing paragraphs. Therefore, the findings of the Id. CIT(A) in order as 154 of the Act are perverse and liable to be set aside.

3. Undisclosed sales added by the AO on the basis of seized material- The assessing officer has made the following addition on account of undisclosed sales which has been worked on the basis of these seized documents and has been discussed at length in the assessment orders-

<u>A.Y</u>	<u>Undisclosed</u>
2015-16	2,68,920
2016-17	2,19,09,682

During the course of search, huge numbers of incriminating documents were seized/impounded. The AO vide show cause notice dated 01.10.2018 had confronted the details of sales, purchases/expenses along with the amounts mentioned in the

seized pages to the assessee. The assessee gave a casual and general reply and stated that the notings are only estimates and nothing else. It further submitted that in order to avoid litigation and purchase peace of mind it can only offer 0.25% NP rate application on estimated sales of Rs. 45,00,00,000/- for bullion trading.

3.1 Thus, it is evident from the above reply that the assessee did not explain even a single entry recorded on any of these seized documents and has thus prevented the AO for making deep probe in the matter. The issue has been discussed in detail from page 15 to 19 of the assessment order of AY 2016-17. In the absence of any explanation from the assessee about these entries on the seized material, the AO has worked out the unrecorded sales at Rs. 2,68,920 for A.Y. 2015-16 and Rs.2,19,09,882/- for A.Y. 2016-17. Total unrecorded sales for all years have been worked out at Rs.62,33,96,525/- and total unrecorded purchases and expenses have been worked out at Rs.43,94,01,609/-. The AO did not allow the benefit of peak credit theory as nexus between purchases and sales were not proved by the assessee. However, the AO observed sales amount also includes the cost component i.e. purchase and other expenses therefore, he did not make any separate addition for unaccounted purchases and expenses. Further, the AO has made addition on account of unrecorded sales u/s 68 of the Act.

3.2 However, during the appellate proceedings, as could be seen from the impugned appellate order, assessee has explained various entries written on these seized documents through a number of explanatory sheets (additional evidences) which were filed for the first time before the Id. CIT(A). These explanatory sheets have been admitted by the Id. CIT(A) and consequently, the Id. CIT(A) has significantly reduced the amount of unrecorded sales to Rs. 3,41,539/- against the undisclosed sales of Rs.2,19,09,882/- worked out by the AO in A.Y. 2016-17. Thus, addition to the extent of Rs.2,15,68,343/- has been deleted by the Ld. CIT(A) for A.Y. 2016-17 considering the claim of duplication, entries being recorded on books of accounts and other issues without giving any opportunity to AO to verify the claims of the assessee which did not furnish any such details and explanation before the AO. The Ld. CIT(A) has also held that only profit rate can be applied on the undisclosed sales. He has further held that assessee is eligible for telescoping for this amount against the addition confirmed on account of undisclosed profits shown in the parallel balance sheet.

3.3 It is humbly submitted that the Id. CIT(A) has neither sought comments of the AO nor had given any opportunity of being heard to the AO, which is against the principle of natural justice. This action of the Id. CIT(A) is in complete violation of Rule 46A of the IT Rules for admission of additional evidences.

3.4 Further, it appears that number of sheets explaining entries recorded on the seized material have been filed before the Id. CIT(A) and the Id. CIT(A) has verified only some of them on test check basis and accepted all the entries on the relevant seized material without verifying himself or without getting the same verified by the AQ. This approach of Id. CIT(A) is not acceptable as in a search cases, each and every entry recorded on the seized documents has to be verified. It is, therefore, humbly submitted that the Id. CIT(A) was not justified in reducing the quantum of unrecorded sales as recorded on the seized documents.

3.5 In the assessment order, the AO has made addition of total amount of undisclosed sales, as recorded in the seized documents. However, the Id. CIT(A) has not only reduced the quantum of such sales but also applied average of declared GP rate of the 3 years immediately preceding the year under consideration. This estimation of GP rate is not acceptable as it is against the direction of the Hon'ble Tribunal as stated earlier.

4. Without prejudice to the above, it may be mentioned that the powers of CIT(A) and AO are coterminous. the CIT(A) can do what the AO can do. It is humbly submitted that in its written submissions before the Id. CIT(A), it has been submitted by the assessee before Id. CIT(A) that:

"Moreover, it is seen from the seized records that allegedly unaccounted purchases are recorded therein and the Id 40 has himself admitted the same. It is further submitted that the seized records itself provide the link to the alleged unaccounted sales and unaccounted purchases. Moreover, it is not a case where these alleged unaccounted sales would have been made from recorded purchases as recorded purchase and sales are reflected in the stock register and quantitative tally is maintained. Hence, plea taken by the Id. 40 for making addition of entire sale amount is totally flimsy and untenable."

4.1 It is humbly submitted that the Id. CIT(A) has totally ignored about investment in purchase of jewellery for making unrecorded sales as some investment is required even for doing unaccounted business especially looking to the specific admission of the assessee that unrecorded sales were not made out of the recorded stock. Further, it may be mentioned that as per the seized documents, unrecorded purchases to the tune of Rs. 43.94 Crore were also made by the assessee and the AO has not made any separate addition for these unrecorded purchases. Therefore, the amount of unrecorded purchases should have been added by the Id. CIT(A) while applying the GP rate. Further, it may be mentioned that no nexus has been proved by the assessee between the unrecorded purchases and unrecorded sales and thus benefit of peak theory should not be allowed to the assessee.

4.2 It may be mentioned that in the case of CIT vs Ajay Kapoor [2013] 36 taxmann.com 513 (Delhi), documents seized from the premises of the assessee disclosed unaccounted sale of Rs. 9.73 Crore and unaccounted purchases of Rs. 4.5 Crore. On the basis of these documents, the AO has made addition of Rs. 4.50 Crore for undisclosed purchases and profit of Rs. 5.23 Crore as profit on these unrecorded sales, being the difference between figures of unrecorded sale and unrecorded purchases. On appeal, the Id. CIT(A) reduced the addition on account of undisclosed sales by taking G.P. and has deleted the addition for investment in unaccounted purchases. The Tribunal confirmed the order of the Id. CIT(A). The order of Id. CIT(A) was upheld by Hon'ble Tribunal. On revenue appeal, it has been held by the Hon'ble High Court of Delhi as under

"However, on the next issue whether any addition should have been made on account of unaccounted investment, the reasoning and logic given by the Tribunal cannot be comprehended. It was recorded that the assessee did not maintain day-to-day stock record/register and, therefore, it cannot be said that unrecorded sales could not have been of accounted stock, which was later on replenished from the sale proceeds of unrecorded sales. Thus, the assessee had not made any investment for the unrecorded transactions. It is held that no evidence of unaccounted investment was found at the time of search. Once the stock register was not there as recorded by the Tribunal in its order, the said finding itself apparently is contradictory." [Para 11]

"The finding that no incriminating document regarding investment was found is contradictory because the Tribunal has accepted and admitted that the assessee had himself confirmed that he had made sales outside the books of account, which were unaccounted sales. Thereafter, it was for the assessee to explain and state the source funds for conducting and entering into the said transaction. Plea of the assessee that existing or available investment in the books was sufficient, has to be made good with material and proof by the assessee. The assessee had to explain that purchases recorded in the books were sufficient after adjustment of the recorded sales. In cases of unaccounted sales and purchases, all documents may not be available and certain amount of guess work is always required as noticed earlier, but a realistic and common sense approach is required "[Para 11]

"The finding recorded by the Tribunal that proof of unaccounted purchases did not prima facie indicate or show that unaccounted investment was made, as there was other apparent evidence to the contrary is also not acceptable. Onus, in such cases, is on the assessee to show that unaccounted investment was made out of accounted stock. There cannot be any assumption or presumption

that unaccounted sales must be from accounted purchases Unaccounted sales may result and can contribute towards the investment, but there has to be initial investment. Profits and income earned are also used for personal needs and are taken out of business." [Para 11]

"The Tribunal did not deal with the second issue in right perspective by placing the onus on the revenue to explain the source of investment made by the assessee though there were unaccounted sale transactions. It has ignored relevant and material facts and has gone on a tangent without examining the real issue and the controversy, Le., whether the assessee explained the source of funds required for making investment to have such turnover as the unaccounted sales. Therefore, this part of the order is perverse and cannot be accepted." [Para 13]

4.3 Thus, the facts of the instant case under consideration are better than the case of Ajay Kapoor as in the instant case, the assessee itself admitted that the unrecorded sales were not made out of the disclosed stock, as entered into its books of accounts, which has been totally ignored by the Id. CIT(A) while applying the GP rate and also overlooking the fact that no separate addition was not made by the AO on account of unrecorded purchases.

4.4 In view of the above, it is humbly submitted that the decision of Id. CIT(A) on this issue may be set aside and the order of the AO i.e. addition of entire amount of unrecorded sales made by AO may be restored.

5. Application of the Provisions of Section 68 of the Act: The A.O. has invoked the provisions of section 68 of the Act on additions on account of profit disclosed in the parallel balance-sheet and undisclosed sales worked out by the A.O. on the basis of the seized material.

The Id. CIT(A) has taken the issue so casually, which is clear from his findings in case of various assesses in various years. He has used a generic statement that major addition is on account of unaccounted sales. In this case in the impugned years, the major addition was on account of parallel balance-sheet, which the Id. CIT(A) has not even bothered to discuss in the relevant para of the respective years in which the said issue is adjudicated. Further, the finding of the Id. CIT(A) that since there was no credit entry in books of account, therefore, no addition can be made. This finding is against the orders of the higher judicial form, i.e., ITAT.

The finding of the Id. CIT(A) is too technical, overlooking the substance of the transactions. In fact, the co-ordinate benches have held that addition u/s 68 can be made on the basis of seized papers. In the case of Haji Nazir Hussain v ITO, 91 ITD 42 ITAT, Delhi Bench (THIRD MEMBER), it was held that section 68 can be applied in case of impounded papers and the benefit cannot be given to the assessee to take undue advantage of its own lapses citing the reason that sum was not credited in books of account. The hon ble third member held that-

"8. After considering the rival submissions I am not inclined to accept the arguments of Mr. Sharma. There is no dispute that the provisions of section 68 are applicable only when any sum is found credited in the books of an assessee maintained by him. However, books of account do not mean cash book only. It would mean complete record which a businessman is required to maintain to record his day to day transactions. According to the well settled principles of accountancy, each transaction is required to be treated under two heads-under one head, debit entry is made while under the other hand, credit entry is to be made. For example, if money is received from 'K' then cash account is to be debited and account of 'K' is to be credited by the same amount. For the same reason if any sum is introduced in the books by the assessee from his own sources then cash account is debited while assessee's own account has to be credited. Cash book is nothing but the cash account which is debited if money is received and is credited if money is spent or invested by the assessee. In such cases, corresponding credit or debit entries are to be made by assessee in respect accounts. If such entries are not made, the accounts of assessee would not tally. Therefore, failure on the part of assessee to make credit entry in the respective account would not entitle the assessee to claim that no account is credited (sic). The assessee cannot be allowed to take undue advantage of his own lapses/mistakes. Therefore, in my humble opinion, whenever any money is received by assessee and is entered in cash book it can be said that sum is credited in the books of assessee even though corresponding credit entry in the ledger account may be made subsequently. If the contention of assessee is accepted then it would amount to circumvent the provisions of section 68 which would further amount to allow the dishonest assessee to bring the unaccounted money in the books without paying any tax. Such construction of the provisions, in my considered opinion, is not permitted."

Further, the Hon'ble Jodhpur Bench in the case of Jas Raj Dhoka v ITO, 29 SOT 66 has held that-

"19. In the appellant's case, it has been admitted that amounts recorded in the names of these persons are loans which have been utilized for repaying business loans of the assessee without recording the same in the regular books of account; it, therefore,

follows that the appellant had an intention to keep a record of loans so taken by him where he made entries thereof in the diary found and impounded from his business premises. Such a diary having account of assessee's transactions shall be his "books", for the purpose of section 68 of the Act. We, therefore, do not subscribe to the view canvassed by the appellant and having confirmed the conclusion reached by learned CIT(A) in that regard find no merit in the ground in appeal raised by the appellant on that count as well. The credit so raised from seven such persons, therefore, has rightly been deemed as appellant's income. The ground in appeal, therefore, stands partly allowed for statistical purposes only."

It has been again held by the Hon'ble Jodhpur Bench in the case of Anil Kumar Tantia v ITO, 40 taxmann.com 333 that-

"...4.3 We have gone through the assessment records, order of the CIT(A) as well as the written submission. First of all, we have to look into the definition of books of account as per s. 2(124) of the Act introduced wef 1st June, 2001. It means ledger, day book cash books and other books which are kept in the written form or as printout of data stored in floppy disc etc. In the common parlance the definition of books of account is the place where all the final information relating to a person or business are collected. The legal meaning as per Oxford Advanced Learner Dictionary, the books of accounts means the written records of final affairs of a firm. The (loose paper seized and compiled by the assessee is definitely a books of account therefore, it cannot be said that the compilation of business affair's prepared from the seized documents is not books of account, although not maintained in regular course of business."

It is clear from the above judicial pronouncements that seized papers can be considered as books of account, if these papers reflect the business transactions of the assessee. If assessee does not make entries in regular books of account and makes entries in certain diaries/ loose papers to evade the taxes, then the assessee cannot take the argument that section 68 cannot be invoked, as no credit entry has been made in the books of account. Acceptance of such an interpretation will defeat the intention of the Legislature and will promote the cause of tax-evaders at the expense of the honest taxpayers. Hence, the Id. CIT(A) has overlooked the pith and substance of the provisions of section 68 and has adopted a hyper technical approach against the intentions of the Legislature, negating the purposive interpretation. Therefore, the view taken by the Id. CIT(A) may kindly be set-aside and the addition made by the A.O u/s 68 may kindly be restored.

12.1 In addition the Id. DR appearing for revenue also submitted compilation of following case law(s):-

S. No.	Description of the case	Page No.
1	[1963] 49 ITR 112 (SC) Sreelekh Banerjee vs. CIT	1-10
2	[2012] 25 taxmann.com 552 (SC) Zaveri Diamonds vs. CIT	11-12
3	[2016] 69 taxmann.com 219 (SC) Sudhir Kumar Sharma (HUF)	13-14
4	[2020] 118 taxmann.com 166 (Delhi) Ravinder Kumar vs. ITO	15-20
5	[2013] 36 taxmann.com 513 (Delhi) Commissioner of Income-tax vs. Ajay Kapoor	21-29
6	[2019] 106 taxmann.com 128 (SC) Bannalal Jat Constructions (P.) Ltd., vs. Assistant Commissioner of Income-tax	30-40
7	Ravi Mathur & Others (D.S. Appeal No. 67/2002 & others) 13.05.2016	41-56
8	PCIT vs. Shri Roshan Lal Sanchti, D.B. ITA No. 47/2018 dated 30.10.2018 Rajasthan High Court.	57-74
9	[2017] 82 taxmann.com 315 (Mumbai- Trib.) Ms. Chhaya P. Gangar vs. Deputy Commissioner of Income-tax	75-95
10	[2017] 88 taxmann.com 700 (Patna) Dr. Gauri Shankar Prasad vs. Income-tax Appellate Tribunal, Patna	96-102

12.2 The Id. DR also filed the compilation of following case laws to support the contentions in addition the paper book filed:-

S. No.	Particulars	Page No.
27	Copy of judgment of Hon'ble Allahabad High Court in the case of S. D. Traders v. CIT in appeal no. 159 of 2016	1803-1808
28	Copy of judgment of Hon'ble Supreme Court in the case of Sirpur Paper Mills Td. Vs. CWT reported in 1970 AIR 1520	1809-1810
29	Gist of various case laws on cash deposits made during Demonetization	1811-1813
30	Copy of decision of Hon'ble Delhi ITAT in the case of Atish Singla vs. ITO in ITA No. 1185/Del/2021	1814-1818
31	Copy of decision of Hon'ble Vishakhapatnam ITAT in the case of ACIT vs. M/s Hirapanna Jewellers in ITA No. 253/viz/2020 and CO No. 02/Viz/2021.	1819-1827
32	Copy of decision of Hon'ble Jaipur ITAT in the case of M/s SMS AAMW Tollways Pvt. Ltd. vs. DCIT in ITA No. 538/JP/19 and 631/JP/19	1828-1831

12.3 In continuation the Id. DR also submitted the written submission and case laws as summarized here in below:

S. No.	Description of the case	Page No.
1	Synopsis and written submission	1-11

2	T.S. Balaram, Income-tax Officer v. Volkart Brothers [1971] 82 ITR 50 (SC)	12-16
3.	District Excise Officer v. Income-tax Officer [1998] 066 ITD 0168 (Delhi.)	17-25

12.4 Further, in this appeal the Id. DR appearing for the revenue submitted synopsis of additions made in the case of Royal Jewellers which is reiterated as under:-

AY	Additions by AO	Amount	Decision of Id. CIT(A)
2014-15	1. Trading addition	69,58,855	1. Upheld the rejection of books of account, the deleted the entire trading addition observing that GP rate of 9.6% shown by the assessee is reasonable.
	2. Addition on a/c of seized parallel B/S	4,75,61,276	2. Confirmed the entire addition, but did not uphold the applicability of section 68/115BBE of the Act. However, allowed relief of combined disclosed profits of Rs. 1,29,52,423 of three concerns in order u/s 154 dated 09.12.19.
2015-16	1. Trading addition	77,60,742	1. Upheld the rejection of books of account, but deleted the entire trading addition observing that GP rate shown by assessee is reasonable.
	2. Addition on a/c of seized parallel B/S	3,09,42,496	2. Confirmed the entire addition in principle but observed that no separate

	3. Undisclosed cash sales u/s 68	2,68,920	<p>addition is required to be made, as disclosed profits of the assessee was more than the profit shown in the parallel B/S. Did not uphold the applicability of section 68/115BBE of the Act.</p> <p>3. Confirmed quantum of undisclosed sales, but held that GP on undisclosed sales of Rs. 2,68,920 amounting to Rs. 26,031 is required to be added. Balance addition deleted. Did not uphold the applicability of section 68/115BBE of the Act.</p>
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2016-17	1. Trading addition	1,16,91,678	1. Upheld the rejection of books of account and restricted the trading addition to Rs. 8,12,514 applying G.P. rate of 9.06%.
	2. Undisclosed sales u/s 68/115BBE	2,72,61,475	2. Relief of Rs. 1,22,06,040 was allowed citing the disclosed profits of three concerns, balance addition of Rs. 1,50,55,435 was confirmed.
	3. Undisclosed sales u/s 68 of the Act	2,19,09,682	3. Provided relief of Rs. 2,15,68,343 and applied GP rate of 9.06% on remaining undisclosed sales of Rs. 3,41,359 giving rise to addition of Rs. 30,944, but did not make any separate addition, as the same was covered in addition confirmed on account of parallel B/S figures. Thus, entire addition was deleted.

12.5 In addition to the above written submission the Id. DR also submitted that in the assessment proceeding the assessee has not submitted any details on the seized material and Id. AO thus, based on the material available with him made the additions. In the proceeding before the Id. CIT(A), assessee given explanation for all the papers and has explained these entries of the seized material for which the Id. AO was not confronted as CIT(A) has not provided any opportunity of being heard to the Id. AO. As

the Id. AO was not confronted properly the contentions raised and considered by the Id. CIT(A) needs verification on the part of the Id. AO and therefore, the submission made by the Id. CIT(A) needs verification and therefore he prayed that the matter may be remanded back to the file of AO for verification of the contention raised for explaining the consolidated balance sheet found during the search. The Id. DR further argued that the assessee did not explain even one entry recorded on the seized record on any of the seized material. The assessee did not deem it fit to see original seized material. The Id. DR as regards the considering the GP rate submitted that the Id. CIT(A) has not considered the source of purchase. In support Id. DR relied on the judgement of CIT Vs. Ajay Kappor 36 taxmann.com 513(Delhi) where in the court has ordered to tax the initial investment. As regards the applicability of section 68 he heavily relied upon the written submission and also submitted the case of Haji Nazir Hussain Vs. ITO 91 ITD 42. The Id. DR submitted that the assessee did not explain as to how the survey disclosure relates to loose paper and the assessee did offer the correct income.

13. In the rejoinder the Id. AR of the assessee submitted that the Id. CIT(A) has also issued to the notices to the Id. AO. He has not presented

his case before the Id. CIT(A) and now the Id. DR cannot take a plea that the Id. AO was not given equal opportunity of being heard. The submission made by way reconciliation is nothing but the presentation of the material already on record. The Id. AO has not filed anything contrary in spite of the time available by the filling of appeal and hearing of appeals so as to contend that the finding of the Id. CIT(A) is on incorrect perusal of the facts of the case. In that absence it is nothing but the denial of justice to the assessee from the bench. The case of law cited are on different facts and are not applicable to the present case.

14. We have considered the rival contentions, perused the material available on record and gone through findings of the lower authorities recorded in their respective orders as well as gone through the various judicial rulings placed before us by both the parties to drive home their contentions. Brief facts pertaining to the case are that appellant is a partnership firm engaged in the business of manufacturing and trading of jewellery having its principal place of business at 1756, Telipada, SMS Highway, Jaipur. This place of business of the appellant firm is also used by appellant's sister concern namely "M/s Shrinath Corporation", which is solely engaged in wholesale trading of bullion and thus though both the

concerns are sharing common place for their business activity but nature of business is altogether different. A search and seizure action u/s 132 of I.T. Act was carried out on 28.07.2016 by Income Tax Department on C.P. Garg Group, of which appellant is one of the constituent and business premises as well as residential premises of its partners were also searched. During search cash, valuables and various loose papers / documents related to the group persons / concerns were found and seized. In response to the notice u/s 153A, the appellant filed its return of income and assessment was completed u/s 143(3) r.w.s. 153A by Id. AO by making various additions.

15. Aggrieved with the additions made by Id. AO, the assessee preferred appeal before Id. CIT(A) who deleted various additions and sustained some of the additions. The decision of the Id. CIT(A) on various issues is summarized as under:-

A.Y. 2014-15:

- GP rate declared by assessee, i.e. 9.6% was accepted and Trading Addition of Rs.69,58,855/- was deleted in full.
- Addition of Rs.4,75,61,276/- made by Id. AO on account of Undisclosed Net Profit based on alleged Parallel Balance Sheet mistakenly confirmed

as per last line of relevant part of order but in the body of order deduction of recorded profit of group concerns was allowed as was allowed in AY 2016-17. Therefore, on making request u/s 154, mistake was rectified by Id. CIT(A).

A.Y. 2015-16:

- GP rate declared by assessee, i.e. 9.64% was accepted and Trading Addition of Rs.69,58,855/- was deleted in full.
- Addition of Rs.3,09,42,496 made by Id.AO on account of Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet was confirmed. However, eventually telescoping benefit was allowed because assessee had already offered additional income worth Rs.3,27,67,115/- as a result of survey conducted at its premises on 09.12.2014.
- GP rate of 9.64% was applied on Addition of Rs.2,68,920/- made by Id.AO on account of unrecorded sales computed based on loose papers found, and thus addition was restricted to Rs.26,031/-.

A.Y. 2016-17:

- GP rate of 9.06% was applied as against 7.93% declared by assessee. Accordingly, Trading Addition was restricted to Rs.8,12,514/-.
- Addition of Rs.2,72,61,475/- made by Id.AO on account of Undisclosed Net Profit on the basis of alleged Parallel Balance Sheet was reduced to

Rs.1,50,55,435/- after deducting the gross profits already declared by all the group concerns including the assessee firm (i.e. Garg Jewellers, Royal Jewellers and Shrinath Corporation) in the regular books of account for A.Y. 2016-17, as entries of all group concerns were found noted in alleged parallel Balance sheet of the group.

- GP rate of 9.06% was applied on Sales confirmed as unrecorded, i.e. Rs. Rs.3,41,539/- (after considering detailed working regarding repetitive additions and thereby excluding them) out of sales of Rs. 2,19,09,882/- presumed by AO as unrecorded and added in toto incorrectly presuming the sales as income. Thus addition was restricted to 30,944/-.

Thus, assessee has preferred present appeals in respect of additions sustained by Id.CIT(A), whereas revenue also aggrieved from the order of Id. CIT(A) preferred appeals.

16. With this background, ground-wise discussion is made herein below in subsequent paras.

Assessee's Ground of Appeal No. 1 for A.Y. 2014-15 & 2015-16 and GOA 1 & 3 for A.Y. 2016-17 and Departmental Grounds of Appeal No. 2 to 4 for A.Y. 2014-15 to 2016-17:

17. In Ground of Appeal No. 1 (for all the years), assessee has challenged the action of Id. CIT(A) in confirming the application of provisions of section 145(3). GOA 3 of assessee (for A.Y. 2016-17) and departmental Grounds of appeal No. 2 to 4 (for A Y 2014-15 to 2016-17) relate to Trading Additions made by Id. AO and partly deleted by Id. CIT(A). Since, all these grounds of appeal are interrelated, the same are dealt with together for the sake of convenience.

17.1 Brief facts related to issue of rejection of books of accounts and trading additions are that during the course of search carried out by Income Tax Department at business and residential premises of the group inter-alia including appellant various loose papers and documents were seized. The Id. AO in its order has mentioned various issues mainly emanating from regular books of accounts treated by him to be the defects in the books of accounts and Id. AO has also mentioned that during the course of search, entries in the various loose papers were found reflecting unaccounted sales of the appellant and accordingly books of accounts were rejected by applying provision of section 145(3) and Id. AO then applied the GP rate of 24.14% across all the three years under consideration in the present

appeals and also in A.Y. 2011-12 to 2013-14, considering the GP rate of as back as the A.Y. 2009-10 & 2010-11. The Id. AR mainly argued before the Id. CIT(A) and also before us that so called defects mentioned by Id. AO in its order are not actually any defect, as explained in detail in the written submission and accordingly rejection of books of accounts so done by Id. AO is not justified. On the other hand, CIT DR relied upon the order of Id. AO and of Id. CIT(A) on this issue. As regards applying the G.P. rate of 24.14% by Id. AO, the Id. AR has vehemently submitted that the Id. AO has taken the average GP of A.Y. 2009-10 & 2010-11 while estimating the GP rate for A.Y. 2017-18 which rates are about 7 – 8 years back and Id. AO has applied the same GP rate of 24.14% in A.Y. 2014-15, 2015-16 & 2016-17 also. The action of Id. AO is totally unjustified. Id. AR has submitted that Id. CIT(A) after considering the factual position and the legal position on the issue under consideration has applied the GP rate in A.Y. 2017-18 at 9.06% by taking the average GP rate of last three years. Thereafter, considering the GP rate declared by the appellant, the Id. CIT(A) partly confirmed the addition in A.Y. 2016-17 where the GP rate declared was 7.93% and deleted the addition in A.Y. 2014-15 & 2015-16 as the GP rate was slightly higher than the GP rate of 9.06% estimated by Id. CIT(A). It was submitted by the Id. AR that even no addition is called for in A.Y. 2016-

17 as the slight fall in GP rate is on account of increase in turnover and various other factors. On the other hand, the CIT DR submitted that Id. CIT(A) has upheld the rejection of books of accounts and accordingly trading addition made by AO should have been confirmed by Id. CIT(A).

17.2 We have perused the material on record on the issue under consideration and also gone through the finding of the lower authorities. It will be better to reproduce the operating part of the order of Id. CIT(A) who has also considered the contents of AO's order as well as the submissions of Id. AR. It is seen that Id. CIT(A) has discussed this issue in detailed in the appeal order for A.Y. 2017-18 in the case of appellant and in these three years i.e. A.Y. 2014-15, 2015-16 & 2016-17, he has mentioned that facts and circumstances being same, therefore, decision of A.Y. 2017-18 wherein rejection of books of accounts have been confirmed and GP rate of 9.06% has been applied, is considered to be applicable in these years also. The relevant operating part of the order of Ld. CIT(A) for A.Y. 2017-18 is as under:

5. *I have considered the submissions of Ld. AR and perused the assessment order. Ground of appeal No. 1 is general in nature and it supports the other grounds taken by the appellant and hence does not require any separate adjudication. Ground of appeal No. 2 is against the action of AO of invoking provisions of section 145(3) and thereafter making trading addition of Rs. 1,21,41,813/- by applying G.P. rate of 24.14%.*

5.2 *Brief facts related to the issue under consideration is that appellant, a partnership firm, is engaged in business of manufacturing and trading of jewellery at principal place of business at 1756, Telipada, SMS Highway, Chaura Rasta, Jaipur, wherein business of appellant's sister concern namely M/s Shrinath Corporation is also carried out which is engaged in business of trading of bullion. Search and seizure action was carried out by the Income Tax Department at the business premises of the appellant firm and the residential premises of its partners on 28.07.2016 and various loose papers / documents were seized besides cash and valuables etc. The AO has mentioned many points in the assessment order treating them as defects in the maintenance of the books of accounts by the appellant in order to support its finding of rejection of books of accounts u/s 145(3). The AR of the appellant has given point-wise reply of various observation made by the AO in respect of invocation of provision of sec. 145(3). The Ld. AO has mentioned that the stock register was prepared afterward by the appellant only for the purpose of assessment proceedings. The Ld. AR has, among other, stated that the stock register was very much available at the time of search itself, as the search team, after going through the stock register, has determined the excess stock after comparing it with the physical stock found during the course of search. The other point mentioned by the Ld. AO is that the appellant has taken contradictory stand regarding method of valuation of stock in tax audit report vis-à-vis in the return of income (ITR). The Ld. AR has very elaborately and specifically explained in its written submission that the information so given at these two places about the valuation was not contradictory but was in fact complimentary to each other. In Faun 3CD the method of valuation of closing stock has been mentioned as "finished goods cost or NRV, whichever is lower". It was explained by the Ld. AR that in clause iv of schedule of other information in the ITR regarding method of valuation of stock, there are drop-down menu which specifies i) cost or market rate whichever is less, ii) cost and iii) market rate. So the assessee has choice to fill-up or to specify only one out of the aforesaid three. The appellant has selected its method of valuation of stock as i) cost or market rate whichever is less, which being the most relevant method actually followed by the appellant. The Ld. AO has also observed about different answer given by the appellant during assessment proceedings regarding method of valuation of stock. The Ld. AR has explained that in the reply during assessment proceedings it was submitted that weighted average method is followed for valuation. It was submitted that the assessee being trader in jewellery, neither FIFO nor LIFO method could be adopted and thereby weighted average method is taken as basis for determining cost of finished goods and thereafter "cost or market price whichever is less", is applied to finally work out the value of closing stock. Thus there is no contradiction in the details so given regarding valuation of stock at various places. Ld. AO has further observed that goods sent on approval are not recorded in the stock register and only approval slips are prepared and thus*

goods sent on approval are not fully verifiable on a given day. The Ld. AR has explained in his submission that it's a common practice in the jewellery trade that goods are given on approval on many a times and the appellant prepares the approval slips for the same to keep a record of the goods sent on approval. When the goods are returned, the approval slip is crossed or if the goods are finally sold, then same is entered in the stock register. Thus at any given day the details of stock as well as details of goods sent on approval is clearly identifiable and ascertainable. On perusal of the above observations of the AO, their explanation given by the Ld. AR as above cannot to be said to be not acceptable. However the other observation of the Ld. AO that appellant has been involved in purchase and sales outside books of accounts which was evident from the various loose papers seized during the course of search, has no convincing explanation from the side of Ld. AR. It is seen by me from perusal of the assessment order that the AO has found out various instances of unaccounted sales and also the purchases for which there is no convincing explanation from the side of Ld. AR. Considering these facts, I am of the view that finding of the AO of rejection of books of accounts and invocation of the provision of sec. 145(3) is justified and same is upheld.

17.3 As regards, GP rate so estimated by CIT(A) is concerned, the finding of CIT(A) is as below, as per para 5.3 of CIT(A)'s order for A.Y. 2017-18:-

5.3 *Now, coming to the estimation of the GP, it is seen that Ld. AO has estimated the GP rate at 24.10% as against the GP rate of 7.86% declared by the appellant. The Ld. AO has taken the average GP rate of AY 2009-10 & 2010-11 and has applied it to AY 2017-18. The Ld. AR has strongly objected to application of GP rate of more than 7 — 8 years back on the ground that business methodology, nature of customers, choice of customers etc. had gone a sea-change from 7 — 8 years back to the time relevant to AY 2017-18. Moreover during that period the turnover of the business was very meagre and concentration was for better profit margin. Over the years, the assessee has changed his focus and had been emphasizing on increasing its turnover and the customer base even at the cost of reduction in profit margin. It was submitted by the Ld. AR that if at all, if it is required to estimate the profit, then results of past three years may be taken as a guiding factor for estimation of the profit with suitable reduction in GP rate due to increase in turnover over the period. I have considered the argument of Ld. AR and perused the relevant part of the assessment order. It is seen that Ld. AO has applied the average GP of AY 2009-10 and 2010-11 in the assessment year 2017-18. It is also correct that the turnover at that time was comparatively quite less and moreover the facts and circumstances including the nature of business and other factors would obviously get changed over a period of as*

much as 7 — 8 years. Hence the AO was not justified in applying the GP rate of AY 2009-10 & 2010-11 in the year under consideration. I feel it proper to apply the average GP rate of preceding three years in the year under consideration and then factoring it suitably for increase in turnover. It is also justified as the turnover in AY 2017-18 is comparable to the preceding three years, obviously with an increasing trend. It is seen that in preceding three years i.e. AY 2016-17, 2015-16 and 2014-15, the GP rate was 7.93%, 9.64% and 9.60%. Average of the three aforesaid years comes to 9.06% and accordingly G.P. rate of 9.06% is directed to be applied in AY 2017-18 on total recorded turnover of the assessee. The gross profit shown in the books is Rs. 63,92,429/- and the gross profit on applying GP rate of 9.06% comes to Rs. 73,91,445/-. Therefore the trading addition is restricted to Rs. 9,99,016/- and balance addition is hereby deleted.

17.4 The operating part of CIT(A) order for AY 2016-17 in relation to GP rate is also reproduced for the sake of convenience, as under:-

7. *Now, coming to the estimation of the GP, it is seen that Ld. AO has estimated the GP rate at 24.10% as against the GP rate of 7.86% declared by the appellant. The Ld. AO has taken the average GP rate of AY 2009-10 & 2010-11 and has applied it to AY 2016-17, as was applied by him in AY2017-18. The Ld. AR has strongly objected to application of GP rate of more than 6 — 7 years back on the ground that variation in gold rate, business methodology, nature of customers, choice of customers etc. had gone a sea-change from 6 — 7 years back to the time relevant to AY 2016-17. Moreover during that period the turnover of the business was meagre and concentration was for better profit margin. Over the years, the assessee has changed his focus and had been emphasizing on increasing its turnover and the customer base even at the cost of reduction in profit margin. It was submitted by the Ld. AR that if at all, it is required to estimate the profit then results of past three years may be taken as a guiding factor for estimation of the profit with suitable reduction in GP rate due to increase in turnover over the period.*
- 7.2 *I have considered the argument of Ld. AR and perused the relevant part of the assessment order. It is seen that Ld. AO has applied the average GP of AY 2009-10 and 2010-11 in the assessment year 2017-18 and same rate was applied in the year under appeal also i.e. AY 2016-17. It is also correct that the turnover at that time was comparatively quite less and moreover the facts and circumstances including the nature of business and other factors would obviously get changed over a period of as much as 6 — 7 years. Hence the AO was not justified in applying the GP rate of AY 2009-10 & 2010-11 in the year under consideration. In the appeal order for AY 2017-18, I have considered the GP rate of 9.06% to be justified and reasonable considering the GP rate of the earlier three years. As the turnover in AY 2016-17 is more or less same with normal*

variation ,GP rate of 9.06% is held reasonable for the year under consideration also. The gross profit shown in the books is Rs. 57,22,132/- and the gross profit on applying GP rate of 9.06% comes to Rs. 65,34,646/-. Therefore the trading addition is restricted to Rs. 8,12,514/- and balance addition is hereby deleted. The ground is partly allowed.

17.5 CIT(A)'s finding for AY 2014-15 & 2015-16 is on similar lines as being done in AY 2016-17. As regards, rejection of books of accounts is concerned, we do not find any fault in the finding of the Id. CIT(A) wherein he has considered many instances of unaccounted sales have been noticed in the seized documents which is not disputed and accordingly we see no reason to differ with the decision of CIT(A) on this issue. Accordingly appeal of the assessee on this issue is rejected.

17.6 As regards, application of GP rate is concerned, we agree with the view and finding of Id. CIT(A) that applying the GP rate of A.Y. 2009-10 & 2010-11 in A.Y. 2017-18 and also in A.Yrs. 2014-15 to 2016-17 is not prudent considering that there would naturally be vast difference in the facts and circumstances in the span of 7 – 8 years or so and moreover it is undisputedly seen that turnover in those years (i.e. AY 2009-10 & 2010-11) were less. Considering overall facts and circumstances, we notice that finding of Id. CIT(A) on the issue of GP rate is fair, reasoned and we see no reason to interfere with such finding of facts. As regards, argument of Id.

CIT DR is concerned, that since books have been rejected trading addition made by AO should be confirmed, it is useful to refer to the decision of Hon'ble Rajasthan High Court in the case of Gotan Lime Khanij Udyog 256 ITR 243 (Raj.) wherein Hon'ble Court has held that it is not necessary that in every case of rejection of books of accounts, trading addition has to be necessarily made. Thus, argument of Id. CIT DR is not accepted on this issue. On the other hand, the argument of Id. AR of deleting the addition partly confirmed by Id. CIT(A) in A.Y. 2016-17 is also devoid of any merit and accordingly same is also rejected.

17.7 In brief, Ground of appeal No. 1 for A.Y. 2014-15 to 2016-17 of the assessee is rejected. Similarly, Ground of appeal No. 3 of assessee for A.Y. 2016-17 is also rejected. Ground of appeal No. 2 to 4 of Revenue for A.Y. 2014-15 to 2016-17 is also rejected.

18. **Assessee's Ground of appeal No. 2 to 2.2 and Departmental Ground of appeal No. 5 to 9 for A.Y. 2014-15** relate to issue of undisclosed profit based on page 19 to 21 of Exhibit-11. On same issue additions have been made which have been partly deleted and partly confirmed in A.Y. 2015-16 and 2016-17 also for which various grounds

taken by appellant and revenue are tabulated here in below for the sake of clarity:

Asstt. Year	Assessee's Grounds of Appeal	Department Grounds of appeal
2014-15	2 to 2.2	5 to 9
2015-16	2 to 2.1	5 to 7
2016-17	4 to 4.2	5 to 8

18.1 Brief facts related to these aforesaid grounds of appeal are that among the various loose papers and documents found and seized during the course of search from the appellant business premises, Id. AO referred page No. 19 to 21 of Exhibit A-11 and presumed it as the parallel Balance Sheet maintained by the appellant firm for F.Y. 2013-14 and 2015-16. Accordingly, Id. AO made addition by alleging figures mentioned in those papers as undisclosed net profit for A.Y. 2014-15 and A.Y. 2016-17. Ld. AO further worked out undisclosed profit for A.Y. 2015-16, though no figures pertaining to A.Y. 2015-16 were mentioned on these loose papers. Accordingly, Id. AO made addition of these profits in the case of appellant. The Id. AR submitted before the Id. CIT(A) and before us that these are rough noting's on some particular day (which is also not known) and do not in any way reflect the net profit so taken by the Id. AO. Moreover, in any

case even these rough noting's are not only related to the appellant firm but are related to the entire group as a whole which is quite evident from word 'GJ' which refers to M/s Garg Jewellers and word 'MJ'(Manoj Kumar Khandelwal) and moreover the purported profit has been divided in the ratio of 58% and 42% between 'GJ' and 'MJ'. Moreover apart from bank details of the appellant, bank details of sister concerns are also mentioned in those two pages namely ICICI Bank and BOB. On these pages the bank accounts of M/s Shrinath Corporation, the sister concern also noted. The Id. CIT(A) has considered the submission of the Id. AR in the background of the contents and observation of Id. AO on this issue and has held that these papers do reflect the summary of total gross profit of entire group as a whole and cannot be considered merely as rough noting's. Moreover, noting's on these papers reflect total gross profit (including recorded and unrecorded) as noting's are related to recorded bank balances also and other relevant details recorded in the books. Before us no new facts were placed and therefore it is imperative to note the operative portion of the order of Id. CIT(A) in A.Y. 2016-17 where this issue has been discussed in detail by the Id. CIT(A):-

10. *This ground is against the addition of Rs. 2,72,61,475/- made by the AO u 68 of the I.T. Act by treating the entries found in loose papers seized as Exhibit A-11 and estimating from it the net profit earned by the appellant. Brief facts in respect of this ground are that during the course of search carried out on*

28.07.2016 various loose papers and documents were seized which inter-alia included page 19 to 21 of Exhibit A-11. As per the AO, these pages reflect balance sheet of the appellant for F.Y. 2015-16 and also for F.Y. 2013-14. The Ld. AO has co-related the entries of this page with the bank balances and has observed that as on 31.03.2016 the bank balances shown in the Bank of India and also in Oriental Bank of Commerce of the appellant are tallying with the bank balances shown on page 19 of Exhibit A-11. Similarly, bank balances of the above two banks shown on another page i.e. page No. 20 which as per the AO is the balance sheet as on 31.03.2014, is also tallying with the bank balances as on 31.03.2014 of the appellant firm. Accordingly the figure shown against net profit as on 31.03.2014 being 16,400.440 was considered as net profit for AY 2014-15 and figure of 9665.430 was considered as net profit for AY 2016-17. The AO has deducted the opening balance for AY 2014-15 (as per AO it was 100,792.390) from opening balance from AY 2016-17 (as per AO it was 107,543.940) and came out with a figure of 6751.94 which was treated by the AO as profit for AY 2015-16. These figures were considered as equivalent gold weight and same were multiplied by rate of the gold as on 31st March of the relevant year and thereby the AO estimated the profit for the aforesaid three years.

10.2 Before me, it was submitted that firstly, without going into merits, it is seen that the addition of the so called unaccounted profit has been made by the Ld. AO u/s 68 of I.T. Act, which is clearly untenable. It is settled law that any addition made u/s 68 has to first and foremost be the credit entry in the books of accounts and if such credit entries is not explained to the satisfaction of the AO, then same can be added u/s 68. In the instant case, the aforesaid entries and also the amount considered by the AO as profit, are not entered in the regular books of accounts, as per the AO's observation itself and obviously there is no question of these being the credit entries in the books of accounts. Accordingly, the addition so made by Ld. AO u/s 68 in relation to the aforesaid amount, is totally contrary to the provisions of the law and therefore deserves to be deleted, even without going into the merits. Ld. AR has further submitted that in fact these entries are memorandum entries on some particular day where only the balances of trading asset i.e. gold, gold jewellery etc. and also the bank balances were mentioned for administrative purposes and moreover same are not only for the appellant concern but these are the memorandum details of the entire group which includes firm M/s Shreenath Corporation and proprietary concern M/s Garg Jewelers. The argument that these are memorandum entries is further fortified from the fact that these two pages only contained the details of stock and these pages do not reflect the other physical assets of various concerns of the group, also do not include trade debtors and trade creditors, also do not include loan creditors. Thus it was submitted that these pages are dumb documents and no reliance should be placed on them. It was further submitted that in these pages the profit has been stated to be divided between 'GT and `Mr in the ratio of 58% and 42% whereas in the appellant firm, the profit sharing is 50%

- 50% between the two partners namely Pooja Agarwal and Manoj Khandelwal. Thus the name mentioned in brief in these pages do not in any way match with the names of partners of the appellant firm. Thus the documents do not in any manner reflect the profit of the appellant firm as alleged by the Ld. AO and therefore the addition so made by the Ld. AO on the basis of these two pages, which do not belong to the appellant firm, deserves to be deleted.

10.3 It was further submitted that these two pages may be memorandum pages showing some details of the group in its entirety. The same is evident from the fact that in the narratives for the cash in bank, apart from bank details of the appellant firm, bank details of sister concern are also mentioned on these two pages namely ICICI Bank and BOB. These are bank accounts of Shreenath Corporation. Moreover, under the sub head 'Metal' against the item silver 14.859 Kg. has been deducted on page 19 which is basically inter-se transfer between the firms of the group, which also clearly reflect that these memorandum details are not only for the appellant firm but are for the entire group. It was also submitted that the so called profit so mentioned in these two pages has just been estimated on the basis of stock and cash balances and therefore even this memorandum profit cannot be the net profit but has to be the memorandum gross profit. It has been further submitted by the Ld. AR that this memorandum gross profit of the group would obviously be inclusive of the recorded profit of all the three concerns of the group. Therefore it was submitted that if at all the argument are not accepted by me, then due credit for the gross profit shown by all the 3 concerns in the books of account should be given.

11. I have considered the arguments of the Ld. AR and perused the relevant material. On perusal of these two pages, it is seen that on one page, details as on 31.03.2014 and on other page details as on 31.03.2016 are mentioned. The stock position as well as cash in hand and cash as per bank is also mentioned on the right hand side. The AO has clearly stated that bank balances of two banks shown here are the bank balances of appellant firm. On the left hand side, opening balances in the name of two persons namely 'Garg' and 'MJ' are mentioned along with net profit. These details are in the gold equivalent weight in gram. Thus argument of the Ld. AR that these pages are dumb documents is not acceptable and is therefore rejected. However I agree with the other argument of the Ld. AR that these pages are memorandum pages showing the position of the group as such and not of the appellant only, considering the fact that apart from two banks mentioned by the AO, there are details of two more banks on these pages namely ICICI and BOB and these bank balances are of another concern of the group namely M/s Shreenath Corporation. Moreover, argument of the Ld. AR of inter-se transfer of silver between the group concerns is plausible. Moreover it is also clear that in the appellant firm the two partners have 50% - 50% profit sharing whereas here on these two pages profit sharing is 58% and

42% which is between the two families (i.e. sub-groups) of the entire group. As the details of expenses and also the sundry creditors and sundry debtors as well as loan creditors are not mentioned in these two pages, obviously the profits so shown here would obviously not be the net profit and therefore it is reasonable to hold that these pages reflect the gross profit of the group. In view of the above, I agree with the argument of the Ld. AR that while making addition, the gross profit of the various concerns already reflected in the books on which due taxes have already been paid, need to be deducted out of this total gross profit reflected in these two pages. In the period relevant to A.Y. 2016-17, the following gross profit has been shown by the three concerns of the group;

<i>1. M/s Royal Jewellers</i>	<i>57,22,132.00</i>
<i>2. M/s Shreenath Corporation</i>	<i>35,75,778.00</i>
<i>3. M/s Garg Jewellers</i>	<i>29,08,130.00</i>
	<i>1,22,06,040.00</i>

11.2 Accordingly in brief, it is held that these two pages reflect the total gross profit as on 31.03.2014 and as on 31.03.2016 of the entire group (including unaccounted and accounted both) and AO has properly deducted the profit for period ending 31.03.2015 (i.e. AY 2015-16). As the aforesaid gross profit has already been reflected in the books of accounts of the various concerns of the group, the same is required to be deducted and therefore the balance addition comes to Rs. 1,50,55,435/- in AY 2016-17 and same is upheld. The ground is partly allowed.

18.2 To counter the finding of the Id. CIT(A), Id. CIT DR submitted that these pages belong to the appellant firm only and not to the entire group and has referred to the statement of Shri Manoj Kumar Khandelwal, the partner of the appellant firm which has been concurred by another partner Smt. Pooja Agarwal. Against it, Id. AR has submitted that partnership firm of the appellant is having two partners Shri Manoj Kumar Khandelwal and Smt. Pooja Agarwal having 50% : 50% partnership. In these two pages neither the name of Pooja Agarwal is finding place nor the profit has been divided on 50% : 50% basis. Moreover, on one hand AO has taken support

from the bank account of the appellant firm mentioned in these two pages but is ignoring the fact that two more bank accounts are also mentioned and have been included namely ICICI Bank and BOB. These bank accounts are undisputedly of M/s. Shreenath Corporation. Moreover, the profit has been divided in the ratio of 58% : 42% between 'GJ' and 'MJ'. The word 'GJ' refers to M/s Garg Jewellers. Thus, business activities of M/s Shreenath Corporation and Garg Jewellers are also included in these pages.

18.3 We have considered the rival arguments and perused the relevant loose papers along with the finding of the lower authorities on the issue raised before us. The bench noted that name of Pooja Agarwal is not mentioned in these pages. Moreover, the profit sharing is not 50% : 50% as in the case of appellant firm. Further, bank account of M/s. Shreenath Corporation have also been mentioned and included in these pages. Profit sharing has been shown between 'GJ' and 'MJ', wherein word 'GJ' refers to 'Garg Jewellers'. Accordingly, notings on these pages would have to be given more credence vis-à-vis a statement as the contents of statement are not matching with the notings on these pages. Thus, based on these analysis of facts agree with the finding of Id. CIT(A) that these

pages reflect the profit details of entire group (i.e. of three concerns) and not only of appellant firm. Another argument of CIT DR regarding net profit and not the gross profit reflected on these pages is concerned, Id. CIT(A) has given finding that on these pages neither details of expenses nor details of sundry creditors, sundry debtors or loan creditors are mentioned thus obviously profit shown here would not be the net profit and therefore it is reasonable to hold that these pages reflect gross profit of the group. On perusal of these documents and going through the argument of both the sides, we see that the finding so given by Id. CIT(A) is based on the analysis of the loose material and other material already on record and thus we see that the finding of the Id. CIT(A) is reasoned one. Before us both the party did not demonstrate as to why the said detailed finding of the Id. CIT(A) is incorrect and also not find any faults on the facts noted by the Id. CIT(A). Thus, we see no reasons to deviate from the finding of the Id. CIT(A) which is based on the facts and after considering the noting's on the seized records. The Id. CIT DR has also objected to the deduction of recorded profit of three firms of the group from the profit shown in these pages in AY 2014-15 u/s 154 of the IT Act, 1961 by the Id. CIT(A). Attention was drawn by Id. AR that Id. CIT(A) has discussed this issue also in A.Y. 2014-15 (though main discussion is in the appeal order for A.Y. 2016-17)

and has given its categorical finding that deduction of recorded profit of the group firms is to be given. However, inadvertently in the last line the Id. CIT(A) mentioned the entire addition as sustained. Accordingly, on being pointed out by the AR of the appellant, the Id. CIT(A) passed order u/s 154 rectifying the above apparent mistake. Though this issue of 154 by CIT(A) is not subject matter of present appeal, but since the CIT DR has raised it and the issue is interlinked, we thought it fit to peruse the records more particularly order of Id. CIT(A) under appeal and found the argument of the Id. AR as correct on this issue and accordingly argument of CIT DR is rejected on this issue.

18.4 Thus, in sum and substance we are of the view that the order of the Id. CIT(A) is after careful perusal of the seized material, records produced before him and AO and the finding given by the Id. CIT(A) is reasoned one and we see no reason to differ with the finding of the Id. CIT(A) on the issue in the absence of any arguments finding any fault in the order of the Id. CIT(A). As regards the finding that these pages do reflect total profits of the entire group (both accounted and unaccounted) for that we note that the Id. CIT(A) has considered all the aspect of the loose paper and record in terms of the books and bank statements made available recording the facts relied

upon to arrive at the conclusion by him and we see not error of facts or on law in the action of Id. CIT(A) in reducing the recorded profit of the group and considering the balance amount for the purpose of addition related to this issue which is fair finding of the Id. CIT(A). Based on these facts in AY 2016-17, this amount of addition has been reduced to Rs. 1,50,55,435/-, in AY 2015-16, addition of Rs. 3,09,42,496/- was made by the Id. AO. However considering that survey action was carried out in the period relevant to A.Y. 2015-16 wherein the appellant had already offered additional income worth of Rs.3,27,67,115/- and paid tax thereon, ultimate net addition was rightly reduced to NIL as the assessee has already disclosed more income. In AY 2014-15, as mentioned in brief above, after reducing the recorded profit of the group concerns of Rs. 1,29,52,423/- net addition of Rs. 3,46,08,856/- remains. The Id. AR of the assessee before the bench vehemently argued that in period relevant to AY 2015-16, survey u/s 133A was carried out by the department on 09.12.2014 at the business premises of assessee and sister concerns and as a result of survey appellant and other group concerns declared additional income of more than Rs. 10 crore, as below:-

Royal Jewellers	:	Rs. 3,16,10,463/-
Garg Jewellers	:	Rs. 3,38,35,315/-

Shreenath Corporation : Rs. 3,94,67,426/-
Rs. 10,49,13,204/-

18.5 This surrender was on account of excess stock found, excess cash found and advance given for land and these were obviously out of the excess income earned from the unrecorded transactions carried out by the business concerns of the assessee group not only in the year of survey but also in the preceding assessment years and relevant entries of the same have now been found noted in the loose paper found during search loose paper found. It was submitted by the Id. AR that Id. CIT(A) though rightly considered the submission of the assessee and has given deduction / telescoping benefit between the profit so declared in AY 2015-16 and addition on the basis of memorandum noting's on these pages, but not allowed the benefit of this telescopic of surrendered income after survey in AY 2015-16 from the addition made in AY 2014-15 on the basis of memorandum noting's by deducting profit of AY 2014-15. The Id. AR further pointed out and argued vehemently that obviously excess stock so found on the date of survey and advances so given were out of accumulated unrecorded profit on account of unrecorded transactions not only of the year under consideration but of the prior year also, though

evidence for the same could not be collected by the survey team at that time, and thereby whole surrender was made in AY 2015-16 only. However, the aforesaid argument is fortified with the noting's and details of excess profit earned in AY 2014-15 also, which would obviously be converted into excess stock and also would have been used for giving advance in subsequent years, for which the surrender was made during the course of survey. Thus, the prayer of the Id. AR to provide telescoping benefit in respect of addition made in AY 2014-15 from the surrender of additional income so made by the group concerns in AY 2015-16 and similar benefit of telescoping out of addition made in AY 2016-17 also from the surrender so made in AY 2015-16.

18.6 On this issue we gone through the findings of the lower authorities, argument of the both the parties. We note that it is undisputed that survey action was carried out in the group concerns and excess stock, excess cash and advances given were noticed, which obviously would be due to excess income earned outside books of accounts from the unrecorded business activities. Incidentally, at the time of survey no such evidence of unrecorded transactions or of the total profit earned in any of the year till the date of survey was found. Accordingly in view of absence of the

documents and details about the period of earning of unaccounted income, which ultimately reflected into excess stock and use for advances. Such excess stock, excess cash etc. were obviously offered for taxation in the year in which survey was carried out i.e. A.Y. 2015-16 and this fact is not disputed by the revenue also. Now, while searching the noting's of total profit earned by the group concerns in totality were found and / or deduced which have been for AY 2014-15, 2015-16 & 2016-17, the excess stock, the excess cash and the advances so noticed in the group concerns would obviously be out of unaccounted income earned in period relevant to AY 2014-15 and 2015-16. We also note that in absence of any contrary evidence of utilization of such unaccounted profit / income elsewhere, and in the survey also in absence of specific date so found during survey, these had been offered for taxation in the survey year i.e. AY 2015-16. Based on these non-controverted facts and considering the aforesaid facts and circumstances and evidence placed on argued and argued we partly agree with the argument of the Id. AR that benefit of telescoping from the income surrendered during the course of survey in AY 2015-16 cannot be denied for the addition of unrecorded profit so made in AY 2014-15. However, at the same time we reject the argument of the Id. AR that such benefit should also be given for the unaccounted transactions and consequent profit

earned in AY 2016-17 also, out of the income surrendered during survey in AY 2015-16, as unaccounted profit so earned in AY 2016-17 is obviously after the surrender of income so made in AY 2015-16. Therefore, unaccounted profit so reflected in these noting's for AY 2014-15 (after reducing the recorded profit) amounting to Rs. 3,46,08,856/- of the group concerns in total is directed to be adjusted against the additional income so surrendered during the survey action in AY 2015-16 by the group concerns totaling to Rs. 10,49,13,204/-, subject to the condition that the adjustment should not exceed the total amount offered for taxation in AY 2015-16 on account of survey. The Id. AR of the assessee submitted that out of the income so surrendered set off be allowed in AY 2015-16 as detailed here in below :-

Royal Jewellers	:	Rs. 3,09,68,527/-
Garg Jewellers	:	<u>Rs. 1,57,13,610/-</u>
		Rs. 4,66,82,137/-

Thus, balance available for set off is Rs. 5,82,31,067/-.

18.7 The Id. AR has submitted that the facts of the case of Garg Jewelers are also same for which appeals are pending before the Bench and has

been heard. It was submitted that considering these facts full adjustment of addition of Rs. 3,46,08,856/- on account of excess income of AY 2014-15 based on noting's may be ordered by the Hon'ble Bench. Considering the aforesaid facts and circumstances this balance addition of Rs. 3,46,08,856/- of AY 2014-15 based on noting's of parallel balance sheet is directed to be adjusted against the excess income offered by the group concerns for tax during the course of survey carried out in the period relevant to AY 2015-16.

18.8 In brief, grounds of appeal on these issues so taken by the revenue are rejected for all the three years under consideration and grounds of appeal of assessee are partly allowed as discussed above.

19. Assessee's ground of appeal No. 4 to 4.1 and departmental ground of appeal No. 7 for A.Y. 2015-16 related to addition on account of unaccounted sales. On the same issue, **assessee and department has respectively taken grounds of appeal No. 5 to 6.1 and grounds of appeal No. 9 for A.Y. 2016-17.**

19.1 Brief facts related to these grounds of appeal are that Id. AO noted from the details from various seized documents and presumed them to be unaccounted sales and thereby made the addition of the entire amount of unaccounted sale. The Id. AR has given elaborate and detailed submissions before the Id. CIT(A). The Id. AR also submitted that there are multiple noting's made about same transactions, some of the noting's are rough noting's, some noting's of purchases have been considered by the Id. AO as sales, some of the noting's / transactions are recorded in the books which have also been considered by Id. AO as unaccounted sale, there are approval slips also sent for customer selection and rough estimate slips considered as sales. The Id. AR submitted that the Id. AO has not taken care to correlate or link the entries found noted in various annexures with each other, which are repetitive / duplicate or even triplicate entries. He also submitted that the Id. AO has made addition in casual manner by mechanically taking all the entries. The Id. CIT(A) on careful perusal of contentions and after going through the various reconciliation chart perused and verified entries wherever Id. AR has pointed out on account of duplication, triplication or entries being recorded in the books or entries pertaining to appellant's sister concerns (of bullion, which business is handled by M/s Shreenath Corporation) and transaction of purchase

recorded as sales. The Id. CIT(A) after closely perusing the details has given specific finding accepting the argument of the Id. AR wherever these were acceptable to him, excluded the transactions of bullion in the appellant's case and simultaneously ordered it to be added in the case of M/s Shreenath Corporation and actually added therein.

19.2 The Id. CIT DR in its submission has not been able to point out any entry or any transaction which have been incorrectly considered by Id. CIT(A). The Id. CIT DR merely argued that assessee has explained various entries of these seized documents through explanatory sheets and these should have been considered by Id. CIT(A) and he considered this presentation as additional evidence and thereby submitted that on these aspects of the matter opportunity to the Id. AO should have been given to rebut the same.

19.3 On these aspects we have gone through the submission of both the parties, perused the orders of the lower authorities and oral arguments made before us. We note that unaccounted sale so estimated by Id. AO for AY 2015-16 and 2016-17 is respectively Rs. 2,68,920/- and Rs. 2,19,09,682/- and Id. AO has added the gross amount of unaccounted sale itself as the unaccounted income, which is quite unjustified as per the

settled law on this issue. Now coming to the other issues on merits, it is better to reproduce the operative part of the CIT(A) order of A.Y. 2016-17 from para 14 to 15.2 which reiterated here in below:-

14. *This ground is against the addition of Rs. 2,19,09,882/- made by the AO u/s 68 of the I.T. Act by treating various entries in the seized loose papers and documents as unaccounted sales and adding the gross sale itself as unaccounted income. Brief facts related to this ground are that during the course of search carried out on 28.07.2016 various loose papers and documents were seized from business premises at Telipada, Chaura Rasta (Annexure AS Exhibit 1 to 24) and also from residence of partner Shri Manoj Khandelwal situated at 14, Sunder Nagar, Malviya Nagar, Jaipur (Annexure AS, Exhibit 1 to 15). The Ld. AR has furnished detailed and specific submission on facts and also on legal issue and has vehemently argued that highly exorbitant additions have been made in very mechanical manner by just going through the figures and assuming them as sales or purchases written on various pages without making an effort that most of such pages are having duplicate / double entries. It was submitted that rough notings of the transaction / events occurring during the day are made by one of the employee in absence of partner and afterward rough noting of the transactions / events are made by partner himself at the end of the day which will obviously include entries made by the employee. The Ld. AO has added entries on both these pages separately, leading to double addition. Similarly many a times, in respect of Bullion Trading done in the case of Shrinath Corporation, a sister concern having same place of business, the entries have been made at the time of booking the trade / deal and at some other page the entry has again been made when the trade / deal is partly / fully executed. The Ld. AO has added these entries at both the times, again leading to double addition. At some of the pages rough estimates of the selling price of jewellery are mentioned to appraise the prospective customer about the final amount of the jewellery intending to be purchased by him and such rough estimates have also been added. Similarly various goods have been sent on approval as mentioned on the approval slips and these have not been converted into final sales. These have also been added by the Ld. AO.*
- 14.2 *Apart from these types of duplications, it was also submitted that on bare perusal of the entries in the loose papers, it becomes clear that many entries are related to bullion sale and purchase. It is evident that the appellant firm is not dealing in bullion and is only dealing in jewellery and hence these entries do not pertain to the appellant firm and therefore these are required to be straightaway excluded from the addition in the hands of the appellant firm.*

- 14.3 In the written submission, the appellant has given the details of such additions which are straightaway required to be excluded, which may be due to duplication or may be due to opening balances also considered as part of the sale of that day and some purchases wrongly considered as sales. The AR of the appellant has furnished various annexures showing such details. These are discussed as below:-
- 14.4 As already mentioned the loose papers and documents were seized from business premises and also from residence of partners and these have been inventorized in Annexure AS of the respective place of search. In order to avoid confusion between the exhibit seized from one place vis-à-vis exhibit seized from other place having same number, the Ld. AR has specified the various exhibit seized from the business premises of the appellant firm namely 1756, Telipada, Chaura Rasta Jaipur as exhibit C-1 to C-24 for the sake of clarity. Similarly the document seized from 14, Sunder Nagar, Malviya Nagar, Jaipur i.e. residence of Shri Manoj Khandelwal inventorized as Annexure 'AS' Exhibit 1 to 15 has been referred as Exhibit A-1 to A-15 by the Ld. AR.

The Ld. AR has submitted that in the show cause notice issues related to all the assessment years covered under search were taken up by the Ld. AO, however the relevant additions for AY 2016-17 are as below:

Exhibit No.	Amount of Addition (Rs.)	Remarks
Exhibit C-6	65,72,125/-	Unaccounted Sales
Exhibit C-15	1,24,000/-	Unaccounted Sales
Exhibit A-1	3,20,660/-	Unaccounted Sales
Exhibit A-10	28,200/-	Unaccounted Sales
Exhibit A-11	1,48,64,897/-	Unaccounted Sales
Total	2,19,09,882/-	

- 14.5 The Ld. AR has explained that additions in relation to Exhibit A-11 are mentioned on page No. 64 (para 28) of show cause notice wherein the Ld. AO has mentioned that page No. 15, 16, 17 and 18 of Exhibit A-11 contained the details of sale wherein handwritten sale bills are found, totaling to Rs. 1,45,51,558/-. Similarly on page No. 51, 52, 53 & 54 of Exhibit A-1 there are handwritten sale bills totaling to Rs. 3,20,660/- (as per page 40 of SCN) which have also been treated by Ld. AO as unaccounted sales without verifying both these details from the books of accounts. The Ld. AR has explained that the three bills seized as per page 15, 17 & 18 of Exhibit A-11 are the sale bills issued to Rukmani Jewellers Pvt. Ltd. and bill at page 16 is issued to Shri Durga Jewellers. These bills so seized are having Bill No. also and all the four bills are entered into regular books of accounts. These sales are duly entered in the ledger account of gold ornament sales, the copy of same is enclosed as Annexure 3 to the written submission. The relevant copies of the original invoices issued from the tally software have also been enclosed by the Ld. AR. Similar is the position in

relation to other four bills seized as per page 51 to 54 of Exhibit A-1. I have closely perused these details as well as explanation of the Ld. AR. It is quite clear that the sales so reflected in the aforesaid seized documents have been properly recorded in the books of accounts and are also reflected in the ledger account of the gold ornament sales. The names of the purchaser parties so mentioned on the seized documents is same as reflected in the regular books of accounts. Accordingly the explanation of the Ld. AR is found to be correct and addition to the extent of Rs. 1,45,51,558/- out of addition of Rs. 1,48,64,897/- related to Exhibit A-11 is hereby deleted. Similarly addition of Rs. 3,20,660/- related to Exhibit A-1 is also deleted, thereby total amount of Rs. 1,48,72,218/- is hereby deleted.

Exhibit A 10

Argument taken by the Ld. AR in relation to addition as per Exhibit A-10 is concerned, it was submitted that the relevant page 76 of Exhibit A-10 contains notings of some estimate given to some walk-in customer named as Gudiya Ji. The Ld. AO has added the same without appreciating that it is merely a rough estimate. I do not agree with the argument taken by the Ld. AR on this issue. As already discussed in appeal order for AY 2017-18, such rough estimates have been found to be relatable to the sales made by the appellant. Therefore, the addition of Rs. 28,200/- is sustained.

Exhibit C 6

In relation to addition of Rs. 65,72,125/- related to Exhibit C-6, the Ld. AO has observed that gold was issued to two Karigars namely Shri Jagdish Prasad Kamal Kumar Soni and M/s Ganpati Ornaments and after getting the jewellery manufactured from them, the labour charge payments were also done through cheque and TDS was also made. However, the corresponding issue of gold and thereafter receipt of gold ornament from these two karigars have not been entered in the books of accounts. Accordingly AO presumed that gold weighing 2266.25 gms has been sold by the appellant outside books of accounts and made the addition of Rs. 65,72,125/-. Ld. AR has submitted that it is a matter of fact that the gold weighing above quantity was given to these two karigars and after receiving the jewellery, the labour payments were done to them through account payee' cheque. The TDS was also deducted. However, inadvertently entry was not made in the stock register at the time of issue of gold to them and correspondingly entry was also not made in the stock register at the time of receipt of gold ornament in the last week of March, 2015, being in the haste of finalizing and closing of the books of accounts for the year ended on 31.03.2015. It was only when the books of accounts of the immediately assessment year was about to be finalized then the error was noticed and same was immediately rectified by passing the required entries in the books of accounts during February, 2016. It was further submitted that it is not at all a case of unaccounted sales. Moreover, due to non entry of issue of gold to the Karigar and also subsequent receipt of gold ornament from the Karigar, the stock position of the appellant firm remained unaffected and unaltered as far as total quantity of gold

(equivalent to 24 ct gold) is concerned. I have carefully considered the argument and explanation given by Ld. AR. It is a matter of fact that the appellant firm has paid for the job work done by the Karigar for converting gold into the ornaments through account payee cheque and due TDS was also deducted. In fact it is only on the basis of these details so found by the AO that AO on the reverse presumed that since these impugned gold ornament have been made, these might have been sold outside books of accounts. Such extrapolation that too without any corroborative evidence is not justified more particularly when the expenses on manufacturing have already been shown by the appellant in the books of accounts. If the intention of the appellant was not to account for these details then as a normal practice the appellant would have not paid making charges to the karigars through cheques and would have paid them in cash and not entered these job charges in the books of accounts. That being not so, the consequent presumption so made by the Ld. AO is slightly farfetched and is hereby rejected. I am of the firm opinion that this addition is not called for and accordingly same is hereby deleted.

Exhibit C 15

Regarding addition of Rs. 1,24,000/- related to Exhibit C-15, the Ld. AR has mentioned that same has been done on the basis of notings on page No. 31B of Exhibit C-15 wherein date, amount and name of one party namely Sanjay Beeyaniare mentioned. The appellant has submitted that firstly against the entry of Rs. 44,000/- name M/s Shrinath Corporation is mentioned with date as 07.01.2016 and Ld. AR further submitted that same is found recorded in the books of M/s Shrinath Corporation. Regarding entry of Rs. 80,000/-, it was submitted that same is related to transaction on 25.07.2016, which would obviously not pertain to AY 2016-17 but pertains to AY 2017-18. Moreover same is found reflected in the books of accounts and the money was received by direct transfer in the Bank of India A/c No. xxxxxx0317 on 27.07.2016. The relevant bank statement and ledger account of Sanjay Beeyani in the books of accounts of appellant as well as in the books of accounts of M/s Shrinath Corporation was enclosed as annexure 5 to the written submission. I have perused the relevant seized document and also the other details as per above. Date and name of the firm are mentioned in the seized document and the appellant has furnished the details of these being entered in the regular books of accounts, which is found to be correct. Accordingly addition of Rs. 1,24,000/- is hereby deleted.

In brief the addition of the extent of Rs. 2,15,68,343/- is hereby deleted and unaccounted sales sustained comes to Rs. 3,41,539/-.

15. *As already discussed in the appeal order for AY 2017-18, only the profit element embedded in the unaccounted sales is required to be added in the total income of the appellant. Accordingly in view of my finding in AY 2017-18 in relation to the percentage of profit element embedded in the unaccounted sales, same profit rate is applied in the year under consideration also and addition to the extent of Rs. 30,944/- is hereby confirmed subject to the following observation.*

15.2 *The Ld. AR has requested that in any case if some of the additions are confirmed, then telescoping benefit may kindly be provided. It was argued that if some addition in relation to two pages seized allegedly reflecting profits of the entire group, is sustained by rejecting the arguments and explanation of the Ld. AR, then other additions, if any sustained more particularly related to trading addition and income from alleged unaccounted sales, should be telescoped with the addition, if any, in relation to two seized pages. It was explained that any unaccounted profit due to alleged unaccounted sale would obviously be reflected in the total memorandum working of the profit of the group and accordingly the separate addition due to unaccounted profit on unaccounted sale, if made in any of the three concerns, would tantamount to double addition. Similarly trading addition, if any, finally sustained and held to be added separately in various concerns of the group over and above the addition on account of alleged total profit of the group, then same would also amount to double addition. I have carefully considered the argument of the Ld. AR. It is seen that in the earlier paras, I had held that the profit so reflected in those seized two pages is actually the profit of the group concerns and these cannot be regarded as rough or memorandum notings having no value, as tried to be contended by the Ld. AR. However, as these are held to reflect the total actual profit of the group, any addition so made on the basis of other stray seized documents found during the course of search in respect of the profit would obviously tantamount to double addition. Similar is the position in relation to the trading addition so sustained by me in this appeal order. Accordingly both the aforesaid additions are held to be merged with the addition in relation to the profits of the group reflected in those two seized papers. AO is accordingly directed to give proper effect. Moreover, similar additions made in two sister concerns of the appellant group are held to be merged in the aforesaid addition related to group profit and therefore required to be deducted out of the above.*

19.4 From the perusal of the order of Id. CIT(A) it is seen that Id. AR submitted the working or summary of the various notings as found noted in the seized document. It is not disputed that the reconciliation is not based on the material already on record and it is also not in dispute that these very notings have been used by the Id. AO in its show cause notice given to the assessee and thereafter while making addition in the assessment order. The only observation of the Id. DR that these different notings on

different seized pages have been compared with each other or perused carefully as against the mechanical way in which the Id. AO taken all these noting's together from the Show Cause Notice (SCN) and grossed them up. These comparisons or putting the noting's in proper prospective have been made by Id. AR and furnished before the Id. CIT(A) by way of explanatory sheets. We are also agreed on the contention of the assessee that Id. AO through Id. DR till the final hearing of the case which is going on various dates has not controverted by filling any submission that the finding of the Id. CIT(A) is not correct on merits or on facts analyzed by him. Accordingly, we are also of the view that these cannot be said to be the additional evidences in strict sense. Even the bench also noted that the Id. DR is repeatedly submitted that these sheets are of the nature of additional evidence but not been able to pin point before us by the Id. AO through Id. CIT DR any specific entry or transaction which might have been incorrectly considered by Id. CIT(A), though the detailed order of Id. CIT(A) was already available before the Id. AO since the date on which AO received the CIT(A) order. Argument of Id. CIT DR that it appears to him that Id. CIT(A) has verified only some of the entries on test check basis does not hold any leg to stand, as on perusal of order of Id. CIT(A) it is seen by us that he has considered all the various entries having bearing over the

income and also mentioned them elaborately in operative part of his order. We have noticed from the table given at para 14.4 of Id. CIT(A) order that total unrecorded sales so assumed by Id. AO are in relation to Exhibit A-1, A-10 and A-11 and also C-6 and C-15. The Id. CIT(A) has mentioned that document seized from Sunder Nagar, Malviya Nagar residence of Shri Manoj Kumar Khandelwal has been referred as Exhibit A-1 to A-15 by Id. AR and document seized from business premises of the appellant firm i.e. Telipada, Chaura Rasta are referred as Exhibit C-1 to C-24. The Id. CIT(A) has not only discussed about the entries of bigger amount found in A-11 totalling to Rs. 1,48,64,897/- but has also discussed the entry of having small value for an amount of Rs. 28,200/- of Exhibit A-10 and has rejected the argument of Id. AR wherever it was not found correct or convincing by Id. CIT(A). Thus, argument of Id. CIT DR is rejected on these issues and we hold that these sheets are not in the nature of additional evidence and the relief has correctly been granted by the Id. CIT(A).

19.5 On the other hand, the Id. AR has requested for deletion of addition of Rs. 3,12,339/- so confirmed by the Id. CIT(A) related to Exhibit A-11, which as per the Id. AR was related to sale of some diamond jewellery to a known customer on friendly basis by purchasing it from the market and not earning

any profit out of it. The argument of the Id. AR is not supported by any details and moreover in any case profit would naturally be earned and as has already held by Id. CIT(A) that only profit embedded in the sales is to be added and not the entire sales, to which we concur, embedded profit in the aforesaid transaction needs to be considered for addition. Thus, argument of the Id. AR is rejected so far it relates to this issue is concerned. The Id. AR of the assessee raised another argument submitting that Id. CIT(A) has erred in applying the GP rate on unaccounted sales. It was submitted that various expenses have to be incurred by the appellant for conducting these unaccounted transactions also and some noting's related to expenses were also found in the seized documents and accordingly the net profit may kindly be ordered to be considered as income instead of gross profit considered as income by Id. CIT(A). On this issue we have considered the argument of the Id. AR. We are not inclined to accept the argument of the Id. AR that net profit rate should be considered as income, as generally the establishment expenses and other expenses are booked by the normal businessman in its books of accounts fully. Moreover, the Id. AR of the assessee has not brought out specific details of expenses under the various heads found noticed in the seized document and not recorded in the books, to support its argument and to

counter the normal practice generally followed. Accordingly, argument of the assessee is not convincingly and are hereby rejected and on this issue also we see no reason to interfere with the finding of Id. CIT(A) on the issues under consideration. Accordingly, grounds of appeal so taken by the revenue are rejected for both the years and grounds of appeal so taken by the assessee is also rejected as above.

20. Departmental Ground No. 10 for AY 2014-15 & 2016-17 and Ground No. 8 for AY 2015-16:

20.1 Brief facts related to this issue are that Id. AO has invoked the provision of section 115BBE on various additions so made by him. After considering the submissions and arguments made before the Id. CIT(A), he has decided the issue broadly in favour of assessee. Revenue is in appeal on this issue. To support the ground so raised the Id. CIT DR has submitted that Id. AO has invoked the provisions of section 68 on the addition on account of profit disclosed in the parallel balance sheet and undisclosed sales worked out by AO based on seized material and since these additions had been made u/s 68 provisions of section 115BBE rightly been invoked by the AO. The finding of the Id. CIT(A) that these additions are not

based on any credit entry found in the books of accounts and accordingly provisions of section 68 so invoked by Id. AO for making these additions is not justified and accordingly provisions of section 115BBE so invoked by the Id. AO is not justified. The Id. CIT DR has cited the decision in the case of Hazi Nazeer Hussain (Delhi Bench third member). It has been submitted by the Id. AR before the Id. CIT(A) and also before us that provisions of section 68 are quite clear and unambiguous in this regard. Section 68 starts with phrase "*where any sum is found credited in the books of an assessee maintained for any previous year, and assessee offers no explanation*". Thus, the prerequisite of making any addition u/s 68 is that the said sum should be found credited in the books of accounts of an assessee so maintained and the second condition is that assessee offers no explanation or explanation is found unsatisfactory. There are number of decisions of various High Courts and also of the Apex Court on this issue and it is a settled legal position. The Id. AR submitted that facts of the case cited by Id. CIT DR are different in as much as that in that case money so received has been entered in the cash book but it has not been entered in the ledger account of the respective person crediting the ledger account. Accordingly, it was held that failure on the part of the assessee to make credit entry in the respective account would not entitle the assessee to

claim that no account is credited. Without prejudice to above, it was also submitted by Id. AR that in any case various additions so made by Id. AO in respect of unaccounted sale and alleged parallel balance sheet have been deleted by Id. CIT(A). Considering the facts of the case and since the basis of addition is not recorded in the books, the requirement of section 68 not fulfilled consequent thereupon the charging the tax in accordance with the provision of section 115BBE is not as per the scheme of the Act.

20.2 We have considered the rival submissions on this issue and also gone through the facts of the case. We note that most of the addition so made by Id. AO u/s 68 have been held to be deleted by the Id. CIT(A) for which we concur the finding of the Id. CIT(A) as discussed in detail in this order in the earlier paras. Addition related to alleged parallel balance sheet in AY 2014-15 has been deleted by us in the present appeal order. Telescoping of other addition as provided by Id. CIT(A) has been found to be reasonable by us also and has not been interfered with. Accordingly, we agree with the submission of Id. AR that there is no addition remaining out of the additions so made by Id. AO u/s 68 and therefore, invocation of provisions of section 115BBE does not subsists in the facts of the present case under consideration. Moreover, considering the facts and in the

circumstances of the present case under consideration and legal position on this issue we are of view that AO is not justified in invoking the provision of section 115BBE, as the addition so made by him are not covered within the provisions of section 68 of I.T. Act, 1961. Accordingly, Departmental Ground of appeal on this issue is rejected.

In the result, appeal of the assessee in ITA No. 114/JPR/2020 & 115/JPR/2020 stands dismissed whereas appeal in ITA No. 113/JPR/2020 is partly allowed and that of the appeal of the revenue in all the three years also stands dismissed.

Order pronounced in the open court on 07/06/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/06/2023

*Ganesh Kumar

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

1. The Appellant- M/s Royal Jewellers, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA Nos. 113 to 115& 174 to 176 /JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar