

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 No. 112 /JP/2020
निर्धारण वर्ष /Assessment Year : 2017-18

Sh. Jitendra Kumar Agarwal 1756, Telipada, SMS Highway Jaipur	बनाम Vs.	Dy. Commissioner of Income-Tax Central Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEDPA 0732 L		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 181/JP/2020
निर्धारण वर्ष /Assessment Year : 2017-18

Dy. Commissioner of Income- Tax Central Circle-02, Jaipur	बनाम Vs.	Sh. Jitendra Kumar Agarwal 1756, Telipada, SMS Highway Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AEDPA 0732 L		
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 (Add. CIT)

सुनवाई की तारीख / Date of Hearing : 14/03/2023

उद्घोषणा की तारीख / Date of Pronouncement: 07/06/2023

आदेश / ORDER

PER BENCH:

These are two cross 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 2017-18, 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 same assessment year filed by the revenue and assessee on the separate grounds raised by them in their appeal, we have heard both the cases together and passing the order together as the issues involved are interconnected having the same assessment year. The grounds of appeal taken by the assessee in ITA No. 112/JP/2020 for A.Y 2017-18 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.

2. On the facts and the circumstances of the case and in law, the Id. CIT(A) has erred in arbitrarily estimating Gross Profit Rate of 7.84% on the declared turnover of the assessee as against the Gross profit Rate of 7.44% declared by the assessee as per the audited books of account and thus the consequent addition of Rs.3,80,491/- upheld, deserves to be deleted.

3. 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 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.

4. On the facts and the circumstances of the case and in law, the Id. CIT(A) has further erred in sustaining the additions to the extent of 52,91,769/- and Rs.38,650/- made on account of alleged unaccounted profit from alleged unaccounted sales u/s 68 of the Act, whereas only unexplained cash credit entries found noted in the books of accounts can be added u/s 68. Therefore, the additions so made by invoking incorrect provisions of the Act is bad in law and deserves to be deleted in toto.

5. On the facts and the circumstances of the case and in law the Id. CIT(A) had erred in rejecting the plea of the assessee that various loose papers found and seized during the course of search u/s 132 related to the goods sent on approval basis, and do not in any way reflect actual sales effected by the assessee, thus such observation of the Id. CIT(A) deserves to be excluded and ignored and the consequent amount of sales and resultant profit assumed in the hands of the assessee deserves to be deleted.

5.1 On the facts and the circumstances of the case and in law, the Id. CIT(A) has grossly erred in concurring with the findings of the AO that various seized papers reflected undisclosed sales made by the assessee amounting to Rs.6,74,97,053/- by ignoring the facts that the analysis of the Id. AO suffered from various discrepancies and were flawed.

5.2 That the Id. CIT(A) has further erred in estimating the income earned on such alleged undisclosed sales of Rs.6,74,97,053/- by erroneously applying the estimated GP rate as against the NP rate of 4.84% declared by the assessee, as various expenditures would obviously be required for earning such alleged income, and admittedly some of which were also found noted in the seized documents being unrecorded. Therefore, the addition of Rs.52,91,769/- is bad in law and deserves to be deleted.

5.3 That the Id. CIT(A) has further erred in ignoring the fact that estimation of income is to be made by applying NP rate and not GP rate. The addition of Rs.52,91,769/ on the basis of GP rate therefore is bad in law and deserves to be deleted.

6. On the facts and the circumstances of the case and in law, the Id. CIT(A) has grossly erred in rejecting the assessee's plea that the shortage of gold jewellery observed during the course of search on physical verification of stock at the business premises of the assessee to the extent of 13484.519 grams, was on account of goods being sent on approval to various customers.

7. On the facts and the circumstances of the case and in law the Id. CIT(A) has erred in sustaining the addition of Rs.38,650/- on account of silver ornaments found at the assessee's residence during the course of search by arbitrarily holding the same to be in excess and unexplained.

8. 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. Whereas the grounds of the appeal taken by the revenue in appeal No. 181/JPR/2020 for assessment year 2017-18 reads as follows:

1. The Ld. CIT(A) has erred in law and on facts (Independently & severally) in granting relief to the assessee ".

2. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the trading addition of Rs. 37,28,523/- by holding that the AO adopted different approach in estimating the GP in case of assessee and his sister concern M/s Royal Jewellers whereas in both the cases same approach has been adopted wherein average GP of past years has been considered which has been reached to finality"?

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the trading addition of Rs. 37,28,523/- without appreciating the fact the assessment for AY 2009-10 & 2010-11 have been reached finality as no proceedings was pending during the course of assessment proceeding and the GP of these year is considerable to estimate the GP for the period AY 2011-12 to 2017-18 and the GP rate was rightly estimated @ 23.54% by AO for the year AY 2017-18"

4 On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in estimating the GP at 7.84% against the GP estimated by AO at 23.54% without appreciating the fact that books of accounts has been rejected and the GP declared by the assessee cannot be considered for estimation of the GP."

5 On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred In estimating the GP at 7.84% against the GP estimated by AO at 23.54% without appreciating the fact that the Hon'ble ITAT Jaipur set aside the case of the

assessee for AY 2013-14 directing the AO to estimate the GP on the basis of past history of the assessee which has attempt the finality."

6. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 7,44,28,261/- in spite of the fact that out of total sales of Rs. 9,75,86,794/- made during 365 days sales aggregating to Rs. 7,85,42,879/- made in just 8 days (1st Nov. to 8th November, 2016) and sales of Rs. 1,90,43,915/- were made by the assessee in balance 357 days. This shows the irregular pattern of sales during 8 days just before demonetization started and on demonetization declaration on 08.11.2016. The cash sales pattern of the preceding 2 year with current year cash sales pattern is also surprising. Viz. in the month of November assessee usually made cash sales of 4% to 8% as appearing in the financial year 2014-15 and 2015-16 but in the year of 2016-17, the cash sales in November rose to 93.99%

7. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs 7,44,28,261 / in spite of the fact that prior demonetization the bills were issued with complete details of the sold jewelry items as well as customers and the bills issued on 08.11.2018 do not contain such details."

8. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 7,44,28,261 - in spite of the fact that all the sale invoices Issued on 08.11.2016 were in same handwriting viz. a person issued almost 428 invoices in his own handwriting in a single day. If it is presumed that, the person issuing invoices worked continuously for 12 hours without any rest and tea/refreshment break and it usually take 5 minutes per invoice to be issued, he could make maximum issue 144 invoices (5*12*12)."

9. On the facts and circumstances of the case and in law, the Ld. CITTA) has erred in deleting the addition of Rs. 7,44,28,261/- made on account of undisclosed income induced in the garb of cash sales in spite of the fact that cash sales invoices issued on 08.11.2016 invoices as much as 359 were ranged between 1,50,000/- and Rs. 1,99,800/- Neither a single invoice exceeded Rs. 2 lacs nor any sales were made between 01.11.2016 and 08.11.2016."

10. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 7,46,04.862/- made u/s 68 of the Act without appreciating the fact that during the course of assessment proceedings assessee has refused the ownership of seized papers /documents. However, the ownership was duly established at Para No. 8.3 of assessment order. Since the assessee did

not own up the papers during assessment proceedings and he failed to explain the transaction noted on the same. Accordingly, the Id. AO has rightly added Rs. 7,46,04,862/- u/s 68 of the Income Tax Act, 1961"

11. Without prejudice to ground no. 9. on the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in giving relief of Rs. 71,07,809/- from Rs.7,46,04,862/- which was held double addition by Ld. CIT(A) on account of duplicate pages seized during search, addition on account of goods purchase considered sales: the amounts on these heads are Rs.31,21,008/- and Rs. 39,86,801/- respectively without appreciating the fact that the assessee did not own up the seized papers and transaction noted on the same and he failed to explain the same with his regular books of account. The Id. CIT(A) further accepted the version of the assessee without providing the opportunity by calling for a remand report"

12. Without prejudice to ground no. 9, on the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in sustaining the addition to the extent of Rs.52,91,769/- out of addition of Rs. 7,46,04,862/- by applying GP rate of 7.84 on balance addition Rs. 6,74,97,053/- (7,46,04,862-6,74,97,053) in spite of the fact that the addition of Rs. 7,46,04,862/- made u/s 68 of the Income Tax Act on account of failure on the port of assessee to explain the transaction noted in seized paper under grab of sale which are part of unaccounted books of accounts maintained by the assessee and same is unexplained cash credit u/s 68 of the 1.T. Act"

13. On the facts and the in circumstances of the case and in law the Ld, CIT(A) has erred deleting the addition of Rs. 1,17,31,098/- by holding that out of 17566 grams of gold. jewellery weighing 4081.481 grams belonging to the appellant being lying there on approval basis and remaining 13484.519 gm shortage of stock and consequent presumed sale is included in the unaccounted sales reflected in the various seized documents which have been quantified at Rs. 6,74,97,053/- and it was further held that making a separate addition on this issue will lead to double addition in spite of the fact that a partner of M/s Royal Jeweller Shri Manoj Kumar Khandelwal in the statement U/S 132(4) admitted that excess stock of Gold Items weighing 4667.901 gram is undisclosed investment in M/s Royal Jewellers and same was offered for taxation as the undisclosed investment of the firm for FY 2016-17."

14. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 36,25,023/- on account of unaccounted sale of excess stock of silver, diamond and precious stones by giving telescoping with

unaccounted income of Rs. 5291769/- through unaccounted sales confirmed by him in spite of the fact the assessee failed to furnish any evidence of purchase of jewellery and diamond items and in absence of the same it cannot be determined whether the unaccounted income generated through unaccounted sale was available to utilized the same"

15. "On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in giving benefit of CBDT Circular in respect of studded diamond in gold and silver amounting to Rs. 1200621/- apart from gold jewellery. In spite of the fact that CBDT do not speak about silver and diamond jewellery?"

16. "On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 90,373/- on account of foreign currency by giving telescoping with unaccounted income of Rs. 5291769/- through unaccounted sales confirmed by him in spite of the fact as the assessee failed to establish the date of purchase of foreign currency and in absence of the same it cannot be determined whether the unaccounted income generated through unaccounted sale was being utilized to purchase the same."

17. 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 various additions as the assessee failed to explain various transaction and documents seized during search as he disowned these papers.

18. 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 a search and seizure action u/s 132 of the Income Tax Act, 1961 [here in after referred as " 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-02, Jaipur by

the Commissioner of Income Tax, Jaipur-01. Notice under section 142(2) of the Act dated 29.01.2018 was issued and served upon the assessee on 30.01.2018. Information and details pertaining to the case of the assessee relevant to assessment of his income were called for u/s 142(1) of the Act by means of a questionnaire and/or Order Sheet Entries wherever deemed fit. In response to the above referred notice(s) AR attended the hearing fixed in the case and furnished information and/or details called for. The information so furnished was examined on a test-check basis and placed on record. The assessee primarily derives its income from House property and income under the head Business.

4.1 During the course of 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 6.1 to 6.6. In para 6.6.1 the Id. AO also noted that several other defects were noticed in books of the assessee. Such as the assessee has not submitted any documents w.r.t. the movement of goods from his place

to the job workers place, neither did he submitted any invoice raised by the job worker not did he provided any details as to how the job work charges was calculated to corresponding jewellery item. The Id. AO also noted that on perusal of the inventory register of 2010-11 titles as "GOLD 24 CT" it appears that until 30.09.2010 assessee issued voucher no. I-02, I-03, I-05 and I-06 but while receiving back assessee received R-02, R-03, R-04, R-05 and R-06. Thus, it appears that the assessee has received back additionally gold vide voucher no. R-04 which was not sent as per records so the assessee received the gold additional which remained unexplained and unverified. Based on such errors observed by the assessing officer he noted that the inventory registers casted by the assessee are full of errors, without any basis and thus cannot be relied upon. Further the common discrepancies discussed in forgoing paras and out of books purchase, sale and expenditure revealed from the documents seized during the course of search proceedings, it was held that the books of accounts maintained by the assessee for A. Y. 2011-12 do not reveal the true income of the assessee. Therefore, the books of accounts rejected u/s. 145(3) of the Act for A. Y. 2011-12.

4.2 Since the books of accounts are rejected for A.Y 2011-12 and the result of closing stock of this year cannot be true but same will be bearing on next year due to reason that the closing stock of AY 2011-12 will be opening stock of 2012-13. Hence the books for AY 2012-13 are also cannot be relied upon. Further, considering the common discrepancies as discussed above and unaccounted sale, purchase and expenditure of AY 2012-13 revealed in the documents seized, it is held that books of accounts maintained by the assessee for AY 2012-13 do not reveal the true income of the assessee. Therefore, the books of accounts are being rejected u/s 145(3) of the act for AY 2012-13.

4.3 In addition to above reasons discussed for rejection of books of accounts for A. Y. 2011-12 and 2012-13 the following reasons are liable to reject the books of accounts for A.Y. 2013-14 to 2017-18. The assessment for AY 2013-14 was completed u/s 143(3) of the act on 22.03.2016 wherein the AO made findings that the 24CT gold weighing to 8538.46 gm was not included in valuation of closing stock and made addition of Rs. 24997878/- on account of unexplained investment of 24 ct gold weighing 8538.46.

4.3.1 Being aggrieved, the assessee preferred appeal before CIT (A) wherein CIT(A) vide deciding the appeal no. 636/2015-16 dated 30-03-2017 observed that 24ct gold weighing to 8538.60 has been recorded in stock register but the value of the same was not taken to books of accounts while valuing its closing stock. Accordingly, the CIT(A) held that books of accounts maintained by the assessee do not reveal true income of the assessee and rejected u/s 145(3) of the IT act and restricted the addition to Rs. 2,49,97,878/-.The CIT(A) also made observation that closing stock of this year will be opening stock of next year which will be bearing on closing stock of next year as well and subsequent year's opening stock and so on.

4.3.2 The assessee further appeal to Hon'ble ITAT and Hon'ble ITAT vide its order ITA no.322/JP/2017 dated 28.03.2018 up held the rejection of books of accounts by CIT(A) u/s 145(3) of the act and set aside the case to AO for determination of avg. G.P. of last five years which has attained finality and compare it with declared G.P.

4.3.3 In view of the above it is evident that the books of accounts of the assessee for AY 2013-14 was rejected by CIT (A) u/s 145(3) after finding that books do not reveals true income of the assessee. which was upheld

by Hon'ble ITAT Jaipur. Now when books of accounts for AY 2013-14 has been rejected then this will also effect trading result of subsequent years as closing stock of this year will be opening stock of next year and will be bearing on closing stock of that year. The closing stock of next year will be bearing on closing stock of that as well and subsequent year's opening stock and so on. Therefore the books of accounts for AY 2014-15 to 2017-18 is also liable to be rejected as they do not reveal true income of the assessee in these years also.

The Id. AO further noted that for A. Y. 2017-18 many other discrepancies have been found in addition to what has been discussed above, such as

- a) Abnormal wastage shown in gold jewellery business
- b) Variation in stock of Gold, Silver, Diamonds and Stones / Beads found during search/survey and books

Based on these observations, as the books of accounts for A. Y. 2013-14 has already rejected by CIT(A) u/s. 145(3), the books of accounts for A. Y. 2014-15 to 2017-18 also rejected u/s. 145(3) of the Act. In the year 2013-14 the ITAT directed to apply the GP after determination of Average GP of last 5 years in the light of the ratio of Hon'ble Rajasthan High Court that the best

guide in case of fair estimation is past history of the assessee. Based on these finding the Id. AO has finally estimated GP ratio as tabulated here in below:

s.no.	AY	GP declared by the assessee	Estimated GP%	Turnover declared in ITR	Trading addition D-C*E
A	B	C	D	E	F
1	2011-12	15.09%	20.00%	50912321	2499795
2	2012-13	25.49%	30.00%	23536310	1061488
3	2013-14	7.92%	22.50%	50713609	7394044
4	2014-15	7.95%	22.50%	55211608	8033289
5	2015-16	7.98%	23.95%	24627761	3933053
6	2016-17	7.93%	23.79%	36691565	5819282
7	2017-18	7.44%	23.54%	23158533*	3728523

*However, looking to the fact during the year under assessee has induced his undisclosed income in books under the grab of cash sale, as discussed in, out of the total turnover of Rs. 9,75,86,794/- the bogus turnover to the extent of Rs. 7,44,28,261/- is deducted and on balance turnover of Rs. 2,31,58,533/- GP rate of 23.54 % is applied, resulting in trading addition of Rs. 37,28,523/- made in the income of the assessee for the year under consideration.

4.4 The assessing officer has observed that the assessee has deposited cash aggregating to Rs. 7.44 cr in his bank account in demonetized currency notes. Based on the records produced assessing officer noted that the unreasonableness and filmy manner in which the assessee claimed that the cash so deposited represent cash sales of assessee unacceptable. He further observed that the cash so deposited is nothing but the undisclosed income of the assessee earned from undisclosed sources and shown by the assessee under the grab of cash sales by tailoring sales invoices to make an eye wash. Therefore, the undisclosed income of the assessee which he induced in books under the grab of cash sales during pre-demonetization period is added as unexplained cash credit u/s. 68 of the Act and resultantly addition of Rs. 7,44,28,261/- made to the income of the assessee and taxed at the rate of 60 % as per provision of section 115BBE of the Act.

4.5 In the search conducted/ survey action on various premises of the assessee on 28.07.2016 huge number of incriminating details and documents were found / inventoried / seized / impounded. Based on that record the assessee was asked to explain the details and documents so

found vide show cause notice dated 11.09.2018. The assessee filed a detailed reply dated 26.11.2018. After considering the reply of the assessee the assessing officer noted that the assessee has been found to be indulged in out of books sale as well as purchase and other expenditure including job work etc., the assessee has not come up with the documentary evidence to establish nexus between unaccounted purchase and sales. Therefore, the benefit of the peak cannot be allowed to the assessee and he found it justifiable to consider the whole unaccounted sale as his cash credit u/s. 68 of the Act and accordingly an addition of Rs. 7,46,04,862/- was made to the returned income of the assessee.

4.6 During the course of survey proceeding at business premises of M/s. Garg Jeweller at shop 222, Johari Bazar, Jaipur Physical verification of stock was taken on 29-07-2016 by registered valuer and the stock of summary of the same was taken. Based on the observation of the assessing officer and explanation of the assessee the assessing officer derived difference as and the same is reiterated here in below

Sr. No.	Item	Weight (in grams) as per books	Weight (in grams) as per valuation report	Difference	Valuation	Remark
1	Gold all items	60116.360	42550.940	-17566	49834742/-	The rate of 24 CT gold was Rs. 30950/- on the date of survey. Therefore the rate for 22 Ct will be computed Rs. 2837/- per gram for gold ornament
2	Silver	126866.290	152297.000	+25430.710	1144350/-	The rate for silver item was at Rs. 45000/- per Kg.
3	Diamond	193.410 CT	41.80 CT	+151.61 CT	2425760/-	Rs. 16000/- per CT on date of survey (668800*41.80)
4	Semi-precious and precious stones	PS	-	12085.5 CT	54913/-	

From these table Id. AO observed that gold item was found short by Rs. 4,98,34,742/- which is unaccounted sale of the assessee and accordingly applying the GP rate at 23.54% made the addition of Rs. 1,17,31,098/-. Further the stock of silver, diamond and precious and semi-precious stone are also found excess of Rs. 11,44,350/-, Rs. 24,25,760/- and Rs. 54,913/- respectively which is unaccounted investment of the assessee. Therefore, a sum of Rs. 36,25,023/- added to the total income of the assessee.

4.7 During the course of search jewellery found from the residence of the assessee and the assessee was asked to explain the source of jewellery. The assessee filed the explanation after considering the assessing officer considered jewellery weighing 938.660 gram in the case of Jitendrakumar Agarwal and Smt. Pooja Agarwal and their children as per CBDT circular

dated 11.05.1994. As the circular speaks only about the gold jewellery in possession of the assessee but there is no mention of silver jewellery and diamond in the whole instruction. Therefore, silver jewellery for Rs. 3,41,361/- and diamond of Rs. 8,59,260/- totaling to Rs. 12,00,621/- made in the hands of the assessee.

4.8 During the course of search various foreign currency worth were found and after considering the explanation of the assessee currency worth Rs. 90,373/- was considered as considered as unexplained and added to the income of the assessee.

4.9 Thus, against the returned income of Rs. 48,55,300/- made by the assessee the assessing officer has finally assessed the income of the assessee at Rs. 17,42,64,060/-. The summary of the additions made by the assessing officer is reiterated here in below:

S. No.	Nature of Additions/ disallowance	Amount (in Rs.)
1.	Trading addition by applying the GP rate of 23.54%	37,28,523/-
2.	Cash deposited in bank account after demonetization considered as undisclosed income	7,44,28,261/-
3.	Undisclosed cash sales	7,46,04,862/-
4.	Difference in stock	1,17,31,098/-
5.	Excess stock of stones	36,25,023/-
6.	Jewellery found at home	12,00,621/-
7.	Unexplained foreign currency	90,373/-
Total Additions		16,94,08,761/-

5. As the assessee aggrieved from the order of the assessing officer he 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.

6. 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 assessee is an individual, running a sole proprietary business of manufacturing and trading in gold/silver/diamond and studded jewellery from 222, Johri Bazar, Jaipur and residing at 1756, Telipada, SMS Highway, Jaipur. A search and seizure action u/s 132 of the Income Tax Act, 1961 (*herein after referred to as the act*) was carried out by the Income Tax department at the business and residential premises of the appellant and also at the business premises of all its sister concerns and his business associates on 28/07/2016. During the course of search various loose papers/ documents were seized besides the seizure of cash, valuables etc. Also the statements of the appellant, his family members, business associates and employees were recorded. Subsequent to the search, in response to notices u/s 153A returns of income for the six assessment years falling immediately preceding the year of search were filed declaring Total Income at Rs. 48,55,300/-. 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 by making following additions:

S. No.	Nature of Additions/ disallowance	Amount (in Rs.)
1.	Trading addition by applying the GP rate of 23.54%	37,28,523/-
2.	Cash deposited in bank account after demonetization considered as undisclosed income	7,44,28,261/-
3.	Undisclosed cash sales	7,46,04,862/-
4.	Difference in stock	1,17,31,098/-
5.	Excess stock of stones	36,25,023/-
6.	Jewellery found at home	12,00,621/-
7.	Unexplained foreign currency	90,373/-
Total Additions		16,94,08,761/-

Aggrieved of the additions so made, assessee preferred appeal before Id. CIT(A), which was partly allowed. Assessee has preferred present appeal against additions sustained by Id. CIT(A), whereas department is in appeal in respect of relief granted by Id. CIT(A).

Assessee's ground of appeal no. 1 & 2 and departmental ground of appeal No. 2 to 5:

In ground of appeal no. 1, the appellant has challenged the action of the Id. AO in invoking the provisions of section 145(3).

In ground of appeal no. 2, assessee has challenged the part of trading addition of Rs. 3,80,491/- upheld by Id.CIT(A) by applying the GP rate of 7.84% on arbitrary basis, whereas in ground of appeal no. 2 to 5 of departmental appeal, relief of part of trading addition allowed has been challenged. Since, all the grounds of appeal are interrelated, the same are dealt with together for the sake of convenience.

Brief facts in respect of this ground of appeal are 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 thus he rejected the books of accounts by invoking the provisions of section 145(3) of the Act. After rejection, the income was estimated by applying the GP rate of 23.54% for the year under appeal arbitrarily as against 7.44% declared by the appellant and consequently huge trading additions to the tune of Rs.37,28,523/-were made, which was reduced by Id. CIT(A) to Rs.3,80,491/- by applying GP rate of 7.84%.

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.

In this regard it is further 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 course of 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. The inventory registers were not reliable as the same did not contain the details of alloys used in manufacturing of gold jewellery;
5. Goods sent on approval were unverifiable/ not properly recorded;
6. Rejection of books of accounts was firstly made in AY 2011-12 and in subsequent years the books were rejected for the sole reason that as he (Id. AO) invoked the provisions of section 145(3) in AY 2011-12;
7. Loss reported due to wastage was abnormal;
8. Variation in stock found during search/survey and books.

In respect of the above allegations made by the Id. AO, it was submitted before Id.CIT(A) that:

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 upto the date of search. After the search also stock register was regularly maintained. 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 seem 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 (*Submitted vide letter dated 11.08.2018*) and Id. AO based on the same has alleged that they were prepared solely for the submission before him. The Id. AO's allegation that the stock registers of the appellant firm 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 methods as mentioned by the appellant in its Tax Audit report and as submitted during the course of assessment proceedings are 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 (**APB 60**), 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”.
- (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:. 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 a portion of the ITR form titled 'Other Information (optional in a case not liable for audit under section 44AB)'. It contains a table with the following data:

iii. Total (54(i)d + 54(ii)d)		54	0
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 the appellant had been asked to submit the method of valuation of stock adopted by it, along with relevant documents in support of the valuation under query no. 14 of the letter dated 13.07.2018. 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 manufacturer/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 in para 6.1 at page 2 of the order alleged that the appellant did not maintain stock registers in totality and that the appellant had tailored them for the purpose of assessment proceedings. On the other hand, under para 6.3 the Id. AO has 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 in para 6.1 and para 6.3 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 12 of the assessment order for which separate ground has been taken. This clearly shows that the stock registers were very much in existence even 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 vide para 6.4 has observed that the appellant did not maintain stock register for different types of alloys required in the manufacturing of gold jewellery. In this regards it is submitted that, the Id. AO has failed to closely observe the books of accounts maintained by the appellant in as much as that the appellant does maintain separate stock details of the alloys. In this regards, the observation of the Id. AO is totally misplaced and deserves to be ignored.
5. Under para 6.5 the Id. AO has observed that the goods sent on approval basis were not verifiable. In this regards the appellant submits that in this line of trade, it is a common practice adopted where once client identifies

certain goods, he/she asked the concerned shopkeeper to give it for approval which in most of the cases is returnable on the same day. At this point, an approval memo is prepared for such goods and as and when the final consent is received either sale bill is prepared or after cancelling the approval memo the goods is taken back in stock. No separate entry of such goods sent in approval is made in the stock register. Moreover assessee is doing business on wholesale basis also where goods have been sent to the other retailers for approvals, where same methodology was adopted.

After considering above detailed submission of assessee, Id.CIT(A) though accepted the arguments of assessee, however confirmed the rejection of books on the observation of Id.AO that assessee was making out of books purchases and sales, which again is on incorrect appreciation of facts being incomplete transactions, i.e. goods sent/received on approval has been erroneously treated as out of books purchase and sales.

In this regard, it is submitted that, 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 sale 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.

So far as observations of Id.AO 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 shoes 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.

It is also evident 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.

Further, vide para 6.6.1 to 6.6.4.4 of the assessment order the Id. AO has rejected the books of accounts for A.Y.2011-12 to 2017-18 based on the observations made for A.Y.2011-12 and A.Y.2013-14 by implying that when books of accounts of a particular year are rejected, it automatically impacts all subsequent years and therefore the results of subsequent years are also bound to be rejected. In this regards the appellant submits that when the books of accounts of any particular year are rejected and additions are made by the AO, the books and results of that year then attain finality. Any anomalies observed by the AO are covered by the additions made by him to the assessee's income for that particular year and the books of accounts as such can be carried forward in subsequent years. Under the circumstances, the observation of the Id. AO in this regards is misplaced and deserves to be ignored.

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 trading additions made deserve to be deleted.

Without prejudice to the submissions made on the application of provisions of section 145(3), it is submitted that the Id. AO applied highly unrealistic GP rate of 23.54% and thereby made trading addition of Rs.37,28,523/-, which was reduced to Rs. 3,80,491/- by Id.CIT(A) by applying GP rate of 7.84%. In this regard it is submitted as under:

That Id. AO had applied the average gross profit rate of 23.54% as against the declared GP rate of 7.44% and such an exorbitant GP rate was applied by taking the average of average GP rate of AY 2011-12 to AY2016-17 by ignoring the fact that such GP was at all not comparable nor based on the audited books of accounts of those years. As is evident from the observations of Id. AO at page 11 to 13 in para 6.7.1 & 6.7.2 of the order, he has arrived at the average GP for

each of the years from AY 2011-12 to AY 2016-17 for arriving at the average GP for estimating the appellant's income for AY2017-18.

It is further submitted that the method adopted by the Id.AO for calculating the average GP rate for the year under appeal suffers from serious deficiencies in as much as that he has considered his own estimated GP rates of the past years disregarding the GP rate as per books of account for computing the estimated GP for A.Y.2017-18. It is submitted that for estimating the GP rate for the particular year, the GP rates of the past years where the books of accounts of the assessee have been accepted by the department should be considered. At this juncture the appellant wishes to bring it to your honour's kind attention that the Id. AO while computing the average GP rate for A.Y.2017-18 in the case of appellant's sister concern, M/s Royal Jewellers has directly considered the recorded GP rates of A.Y.2009-10 & 2010-11. This action of the Id. AO, of adopting different methodologies for estimating GP rate of two entities which are a part of the same group over and above the fact that they are also involved in the similar nature of business activity shows that he has been confused throughout the course of proceedings before him. Such an action of the Id.AO is self-contradictory and also against standard practices which the AO is expected to follow.

In this regard, 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 come from the price escalation and making charges which in no case could be as high as applied by Id.AO at 23.54%. 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, reasonable and honest and should not be arbitrary as has been done in our case where the Id.AO in very casual manner applied his own estimated GP rate of the past years for determining the GP of the year under appeal. 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) Brij Bhushan Lal Parduman 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.

It is further submitted that considering the detailed factual and legal submission made before Id. CIT(A) and after carefully perusing the facts and circumstances, Id.CIT(A) has rightly rejected the AO' action in this regard.

However, Id. CIT(A) has estimated the GP rate at 7.84% (as against the GP rate of 7.44% as per audited books of accounts), being average GP rate of last 5 years including current year and restricted the trading addition to that extent. In this regard, it is submitted that even after rejection of books of accounts the trading results declared by the appellant should be judiciously examined and additions should be made to the returned income only when it is warranted. It is not necessary that in all cases where the books of accounts of the assessee are rejected, an addition to the returned income has to be made. In this regard, the jurisdictional High Court in the case of **CIT vs. Gotam Lime Khanij Udhog 256 ITR 243 (Raj)** held that Section 145 of the Income-tax Act, 1961, only provides the basis on which computation of income is to be made for the purpose of determining the amount of tax. The provision by itself does not deal with addition or deletion to the income. Therefore, mere rejection of, or some deficiency in, the books of account would not mean that it must necessarily lead to additions to the returned income.

In the circumstances, it is humbly prayed that the trading results declared by the assessee should be upheld and additions of Rs. 3,80,491/- confirmed by Id.CIT(A) deserves to be deleted.

Departmental ground of appeal no. 6 to 9:

Under this ground of appeal, the department has challenged the action of the Id.CIT(A) in deleting the addition made by Id.AO on account of cash sales of Rs. 7,44,28,261/-, made during the pre-demonetization period as unexplained cash credit under section 68 of the Act.

Brief facts pertaining to this ground of appeal are that the appellant had deposited cash amounting to Rs.7,44,45,200/- in different bank accounts maintained by him which are described as under:

Bank Name and Account No.	Date of deposit	Amount (Rs.)
Bank of Baroda A/c No. 1150100018582	_____	2,45,000/-
Bank of Baroda A/c No.660520110000318	_____	2,00,00,200/-
Bank of Baroda A/c No. 1150200000308	12, 16, 17, 18 & 19 Nov' 2016	5,42,00,000/-
Total		7,44,45,200/-

The above mentioned amounts were deposited during the demonetization period in SBN of Rs.1000/- and 500/- rupee notes. The immediate source of such cash was explained as the cash available in the cash book maintained in the regular course of business wherein it was the accumulation on account of daily cash sales made by the appellant firm. Out of the total amount so deposited a sum of Rs. 7,44,28,261/- was cash sales made on 08.11.2016 i.e. the day on which demonetization was announced by the Prime Minister.

The appellant submits that, with the announcement of the Hon'ble Prime Minister in respect of demonetization of currency notes of denomination Rs.500/- and Rs.1000/-, there was frenzy amongst people who wanted to convert their SBN into gold. The jewellery stores had remained opened till midnight on 8th of November 2016, in order to tap the high demand from customers, the appellant too had met with the high demand and had made sales amounting to Rs.7,44,28,261/- on 08/11/2016. Since the demonetization was ordered to be effective from the mid night of 8.11.2016 i.e. from 24.00 Hours, thus accepting SBN upto midnight was not against the law.

The Ld. AO has failed to appreciate this abnormal fact and alleged that the amount of cash sales made during the month of November 2016 is asymmetrical and is not comparable with cash sales made in the month of November in the preceding two years. Demonetization, itself was an exceptional historical event which had led to such a high demand of the goods like gold in order to convert the SBN during the intervening period of 8.00 Pm upto the midnight i.e. at 24.00 Hours of 8th November 2016). It is a very well known fact that people had flocked to the shops of jewellers to spend soon-to-be scrapped currency notes with bags full of cash.

The above contention of the appellant is supported by the news article of "The Economic Times" dated 08/12/2016, wherein the Secretary of the India Bullion & Jewellers Association mentioned that the Jewellers had sold 15 tonnes of Gold ornaments and bars worth around Rs.5000 crores on the intervening night of November 8 and 9, 2016 after the government demonetized the Rs.500 and Rs.1000 currency notes (APB 61), which was also unprecedented and historically very high amount.

With regard to non-mentioning the name etc. on the invoices raised during the intervening period on 8.11.2016, it is submitted that the rush during the last hours of 08/11/2016 was so high that noting the personal details of every customer and also filling the complete description of goods sold while preparing the bills was practically not possible. Therefore, the bills issued by the appellant on 08/11/2016 does not bear the complete details of the customers and precise details of the item sold.

Moreover, prior to demonetization the customers were not hesitant in disclosing their names, addresses, contact details, PAN etc. at the time of billing. But after demonetization, the customers were reluctant to disclose their personal particulars at the time of billing unless their purchases crossed the maximum allowable threshold beyond which it is necessarily required to give PAN etc.

The appellant further submits that the Id.AO has failed to appreciate the known truth that after announcement of demonetization on 08.11.2016, people had rushed to spend the SBN available with them to purchases gold and other useful items. The Id. AO has also not brought any material on record to establish that the sale vouchers are bogus nor any evidence indicating that such sales was bogus was found in the entire search and seizure operation conducted not only at the business premises but also residential premises of the partners of the appellant firm. Further, the observations of the Id. AO in respect of the no. of invoices issued by the appellant on 08/11/2016 post demonetization, the appellant submits that such an observation of then Id.AO is illogical and made only with the motive of finding deficiency in the sales made by the appellant. The sales made by the appellant was duly recorded in the books of accounts and was fully vouched and verified and audited by a reputed firm of Chartered Accountants. Further, this sales is duly backed by corresponding purchases and as a result of sales, the stock of the appellant stood reduced. Ld. AO on presumption and assumption basis has disbelieved the genuine sale made by the appellant and treated the same as unexplained cash.

The appellant further submits that, assuming the genuine sales made during the year as unexplained cash credit is bad in law. In the foregoing paras, the appellant has established beyond doubt that the cash sales of Rs.7,44,28,261/- was made in normal course of business during the closing hours of 08/11/2016 and exceptional sales during such a short period is solely due to the announcement of demonetization made by the Hon'ble Prime Minister.

Under the circumstances, assumption of the Id. AO that the sales forming part of the appellant's turnover is unexplained cash credit is without any merit and contrary to the material on record and completely vague.

These facts and circumstances alongwith written submission and documentary evidences were carefully considered by Id. CIT(A) and on appreciating the facts as well as law on the issue, the additions so made was deleted by him.

In view of the above, the appellant humbly prays your honours that Id. CIT(A) has rightly deleted the addition of Rs.7,44,28,261/-, which order of Id./CIT(A) deserves to be upheld.

Assessee's Grounds of Appeal No. 3 to 5.3 and Departmental grounds of appeal No.10 to 12:

While completing assessment, Id.AO had made an exorbitant addition of Rs.7,46,04,862/- u/s 68 of the Act on account of 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. Aggrieved of addition so made, appeal was preferred before Id.CIT(A) who after considering the submission of assessee reduced such alleged unaccounted sales to Rs. Rs.6,74,97,053/- as under:

Particulars	Amount
Addition made on account of unaccounted cash sales	7,46,04,862/-
Less: Duplicate entries	31,21,008/-
Less: Purchases considered Sales	39,86,801/-
	6,74,97,053/-

Further, Id.CIT(A) sustained addition to the tune of Rs.52,91,769/- by applying GP rate of 7.84% on such revised turnover of Rs.6,74,97,053/-.

In these grounds of appeal, assessee has challenged the addition sustained by Id.CIT(A), whereas department has filed appeal against the relief granted to assessee, both the grounds of appeal being interrelated are dealt with together for the sake of convenience:

Brief facts leading to these ground 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's business premises i.e. M/s Garg Jewellers located at 222, Johri Bazar, Jaipur and his residential premises located at 1756, Telipada, SMS Highway, Choura Rasta Jaipur. The papers seized from M/s Garg Jewellers were inventorized as Exhibit D1 to D12 and the papers seized from the appellant's residence were inventorized as Exhibit B1 to B41. The Id. AO after going through the entries found noted in the loose papers and documents at his end issued a detailed show cause notice dated 11/09/2018 (**Compilation of Papers Part 248-**

259) wherein he summarised the seized papers exhibit-wise and presumed the noted entries as unaccounted sales, purchases, expenses and investments made by the appellant (Id. AO has not made any attempt to exclude duplicate and even triplicate entries and there were many other discrepancies also). Based on this show cause the Id. AO proceeded to presume all of them as alleged unaccounted sales and then further proceeded to make addition of such gross amount of sales instead of adding the profit element earned on these alleged sales, which is also summarised at para 10, page no. 42 of the assessment order. The same is reproduced as under for your honour's ready reference:

SCN	Assessment Years							Total
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	
1	1883130	6067378	31522665	2988956	121903066	154250723	22442000	341057918
4	-	-	-	-	-	24565322	947318	25512640
5	-	-	-	-	-	3863989	117119	3981108
6	-	-	-	-	-	85130004	-	85130004
7	-	-	-	-	-	3745397	5503192	9248589
9	-	-	--	415500	353826	4017875	4662778	9449979
10	-	-	-	-	-	1820662	-	1820662
11	-	-	-	-	-	6374778	10264869	16639647
12	-	-	-	-	681913	5229717	3621108	9532738
13	-	-	-	-	-	-	3437759	3437759
14	-	-	-	-	-	-	23608719	23608719
Total	1883130	6067378	31522665	3404456	122938805	288998467	74604862	529419763

At the outset, it is submitted that exorbitant additions as tabulated above were made by the Id.AO by alleging the same as unaccounted sales made during the year. Moreover, such additions in respect of alleged unaccounted sales have been made u/s 68 of the Income Tax Act, 1961.

Ld. CIT(A), sustained the addition equivalent to gross profit rate as against addition of entire alleged unaccounted sales. Assessee has challenged the application of GP rate and requests that NP rate be applied on such alleged unaccounted sales whereas the department has challenged the part addition deleted by Id.CIT(A) as well as action of Id.CIT(A) in holding applicability of section 68 not in accordance with law. All the grounds of appeal being interrelated have been dealt with together for the sake of convenience.

At this juncture, Section 68 of the Income Tax Act, 1961 is 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 addition of Rs.7,46,04,862/-has been made by alleging the same as undisclosed cash sale made during the year under appeal which was based on the entries found noted on the loose papers seized during the course of search. In other words, addition was not made on the basis of any sum 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. Accordingly, exorbitant additions made on account of unaccounted sales by invoking provision of 68 of the Act is legally defective 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. It is thus submitted that any addition of the amount not being a credit entry in the books of accounts cannot be made u/s 68 and Id. CIT(A), after thorough analysis of submission made by assessee, held the observations of Id.AO regarding invocation of section 68 as not tenable. Appellant prays that such decision of Id.CIT(A) deserve to be upheld.

Without Prejudice to the above and on merits the appellant submits the following:

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, an addition

of Rs.7,46,04,862/- was made alleging the same as undisclosed cash sales for A.Y.2017-18 without appreciating 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.7,46,04,862/- 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 @ 60% as per provision of section 115BBE of the I.T.Act."

Moreover, it is seen from the seized records that, alleged unaccounted purchases are also recorded therein and the Id. AO has himself admitted the same. It is further submitted that the seized records itself provides the 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.

Detailed submissions were made before Id. CIT(A) regarding additions made on account of duplicate entries on the basis of replicate pages, on the bases of duplicate entries found on multiple pages, entries in the nature of goods received on approval as unaccounted sales etc., after considering which Id.CIT(A) reduced the sales figure to Rs.6,74,97,053/- and applied GP rate on the same and thus restricted the addition to Rs.52,91,769/-.

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

- (i) Rough noting of the transactions/ events occurring during the whole day.
- (ii) Rough noting of the transactions party-wise.

The Id. AO has 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 failed to closely analyse the papers seized during the course of search and to co-relate them with each other. There are duplications 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.

The appellant therefore, submits that the addition of entire amount of alleged unaccounted sales without appreciating the real nature of the papers seized during the course of search is bad in law.

It is therefore prayed before your honour that Id. CIT(A) has rightly held that entire amount of sales cannot be added to the total income and it is only income component therein, which could be added, however Id. CIT(A) has applied GP rate on such alleged unaccounted sales. It is submitted that 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 Id. AO has himself in the show cause notice dated 11/09/2018 pointed out the details of unaccounted expenses discovered from 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- 10 (**Compilation of papers-I page 57-74**) seized from 1756, Telipada. And Exhibit-1 (**Compilation of papers II pages 106-138**) seized from 222, Johri Bazar.

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.

The appellant therefore submits that, if your honours ultimately decide that after considering our submission in the forthcoming paras, there are still some entries that remain that reflect alleged unaccounted sales and your honours proceed to tax the income in respect of the alleged unaccounted sales, the same can only be done by determining the net profit earned out of such alleged unaccounted sales. Under the circumstances, the net profit ratio is the best available measure to determine the income earned from the alleged sales. The appellant therefore,

prays your honour to kindly restrict the addition in respect of alleged unaccounted sales to the extent of net profit that could have been earned on such alleged sales.

In furtherance to the above, 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 is herewith submitted before your honour for your kind consideration:

Issue: Double additions in respect of replicate pages inventorized under different exhibits

It is submitted that, the loose papers and other documents seized and inventoried by the search officials consist of replica of various pages. The Id. AO without co-relating these pages has made duplicate additions in respect of the replicate pages also.

The detailed working in this respect is submitted at **APB 62-63**.

After considering such working, Id.CIT(A) reduced the amount equivalent to such duplicate entries i.e. Rs.31,21,008/- from alleged unaccounted sales, appellant prays that action of Id. CIT(A) deserve to be upheld.

Issue: Purchases considered as unaccounted sales:

It is submitted that the Id. AO while interpreting the seized papers has erred in considering the goods received on approvals/purchases by the appellant as unaccounted sales. From the papers in respect of which such additions have been made, which are approval memos or the memorandum ledger accounts, it is clearly evident that that the same do not relate to any goods sent on approval/sales made by the appellant as the party name mentioned in the memos and ledgers is that of the appellant. Further, the additions have been duplicated to the extent that, additions both in respect of the approval memos and the memorandum ledger accounts which include the details of the approval memos has been made by the Id. AO.

The detailed working in this respect is submitted at **APB 64-65**, according to which total of such entries of goods received n approval, which has been erroneously considered as unaccounted sales comes to Rs.39,86,801/-. It is submitted that Id.CIT(A) after thorough analysis of such working has granted relief on this issue, appellant prays that such action of Id. CIT(A) deserves to be upheld.

The summary of all the discrepancies have been summarised and presented as under:

Particulars	Amount (Rs.)
Double additions on account of replicate pages	31,21,008/-
Incorrect addition on account of goods received on approval considered as sales	39,86,801/-
Total	71,07,809/-

The entire submissions made in with regard to alleged unaccounted sales could be summarized as under:

1. That necessary credit for the replicate pages should be allowed.
2. That the goods received on approval and considered as unaccounted sale should be treated as receipt of goods.

In the circumstances, it is humbly submitted that the additions made by Id.AO 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 there are duplication/ multiplication of the entries made deserves to be deleted.

In view of above, appellant submits that though no addition on account of undisclosed sales is warranted in the appellant's case, addition if any sustained by your honours should be restricted to the amount of net profit (and not the gross profit) that could have been earned on revised figure of unaccounted sales of Rs.6,74,97,053/- . Moreover, telescoping of this net profit, if any sustained may kindly be allowed against excess stock addition, if any sustained.

It is further submitted that it has long been the settled principle of law that the estimations should be fair and honest 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 caselaws:

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 684Hissaria 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.

Your honour 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 after allowing deduction on account of expenses incurred for earning the unrecorded sales deserves to be taxed and not the entire receipts, therefore the estimation of unexplained income should be substituted by a reasonable and logical net profit rate on Rs.6,74,97,053/- as per the past history of the appellant. It is reiterated that various credits and telescoping as mentioned in earlier paras may be given on this net profit so estimated.

In this regard reliance is placed on the decision of the Hon'ble ITAT, Jaipur bench in the case of M/s Vikas Timber Products (P) Ltd. wherein in ITA No. 53/JP/06, Hon'ble bench has hold 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. ManiklalDey 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.

Assessee's grounds of appeal no. 6 & 7 and Departmental Grounds of Appeal No. 13 to 15 :

All these grounds of appeal relate to additions made by Id.AO in respect of shortage of stock found at business premises of assessee and excess stock of diamond and silver jewellery found at residence of assessee.

Brief facts in respect of these ground of appeal are that, physical stock verification was carried out by the departmental officers during the course of search operation at the business premises of the appellant i.e. M/s Garg Jeweller. On physical verification of stock the following difference was observed by the search officials:

Item	Weight as per books (In gms)	Weight as per valuation report (In gms)	Difference	Valuation
Gold	60116.36	42550.94	-17566	49834742/-
Silver	126866.29	152297.00	+25430.71	1144350/-
Diamond	193.410 CT	41.80 CT	+151.61	2425760/-
Semi-precious and precious stones	PS	-	12085.5CT	54913/-

Further, the search officials had found the following jewellery in the appellant's possession at his residence and alleged the same to be unexplained:

Description	Value
Silver jewellery	Rs.341361/- (i.e. 16875 gms)
Diamonds	Rs.859262/- (as per JF-7)

Detailed submissions were made before Id.CIT(A) in this regard and addition on account of shortage of stock of gold was deleted and part relief was allowed in respect of excess stock of diamond and silver found at business premises as well as residence. In grounds of appeal raised by assessee, the assessee has challenged the action of Id. CIT(A) in:

- not accepting the explanation with regards to 13484.519 gm jewellery (i.e. difference was on account of goods sent on approval), though in value terms telescoping benefit was allowed and no addition was sustained.
- confirming the addition of Rs.38,650/- on account of silver ornaments found at residence of assessee.

Whereas, department has challenged the relief allowed by Id.CIT(A). As all the grounds of appeal are interrelated, the same are dealt with together for the sake of convenience.

1. In respect of the gold jewellery found in short at the premises of M/s Garg Jewellers, it is submitted that there were various pieces of jewellery that had been sent to the customers on approval basis and remained in their possession as on the date of search. As explained in the foregoing paras of this submission, in jewellery business it was a normal and accepted practice to send jewellery to customers on approval basis. The above fact had been explained by the appellant to the search officials as well as to the Id. AO during the course of assessment proceedings and to Id.CIT(A) during appellate proceedings, vide submission **(APB 27-59)**. The appellant reiterates the explanation put forward by him before the lower authorities for your honour's kind consideration:

"...the gold items found in short by 17566 grams which were given to various customers on approval in which the gold jewellery of 4081.481 grams were given for approval to M/s Royal Jewellers and remaining jewellery were given to other customers. Some gold ornaments were kept at home for security purpose. Because the excess new gold ornaments were found at residence for which separate explanation has been given."

The Id. AO has ignored the submission of the appellant and proceeded in the direction of making the additions by alleging the jewellery found in short as unaccounted sales made by the appellant. Ld.AO made addition worth Rs.1,17,31,098/- by applying GP rate of 23.54% on value of such alleged shortage of stock of Rs. 4,98,34,742/- (i.e. 2837 per gram on 17566 gms).

On appeal, Id. CIT(A) accepted the submission of assessee in part, i.e. regarding items weighing around 4081.481 grams, which were sent to the appellant's sister concern M/s Royal Jewellers on approval basis. However, submission regarding balance jewellery, i.e. 13484.519 gms, which was lying with various other customers of the appellant who had taken the jewellery on approval basis and were pending for approval was not accepted.

Further, even though quantitative shortage of stock for 13484.519 gms was not accepted, alternative plea of assessee was accepted that addition worth Rs.6,74,97,053/- was already confirmed on allegation in this case on the basis of loose papers found and seized. Accordingly, Id. CIT(A) rightly deleted addition worth Rs.3,82,55,580/- on account of such alleged shortage of stock of gold (i.e. by applying rate of 2837/- per gram). Relevant findings of Ld. CIT(A) is as below:

"As no separate evidence of sale of such stock outside books of accounts leading to the shortage was found, accordingly it is reasonable and just to held that the shortage of stock and consequent presumed sale is included in the unaccounted sales reflected in various seized documents which have been quantified at Rs.6,74,97,053/-. I am of the view that making a separate addition on this issue will lead to double addition."

Thus, Id. CIT(A) has rightly deleted the addition on account of excess stock, which order deserve to be upheld.

2. In respect of silver, diamonds and precious and semi-precious stones found in excess it was submitted before Id.AO that the registered valuer had erred in calculating the quantities and the values of the same by ignoring the following facts:
 - a. Non-consideration of impurities involved in manufacture of silver jewellery.
 - b. Duplication in measuring the quantity and value of silver utensils.
 - c. Diamond stand included in the value of gold jewellery

It is therefore submitted that the calculation of the registered valuer in this regard is full of errors and therefore addition on account of excess stock deserves to be deleted. However, Id.AO, by grossly ignoring the submission of assessee made addition of Rs.36,25,023/- on account of excess stock of diamond, silver jewellery and precious stones.

During the course of appellate proceedings, it was submitted before Id.CIT(A) that, as the Id. AO has already made separate additions in respect of undisclosed sales and purchases, therefore, no separate additions are warranted on account of excess/ stock found on physical verification when separate additions for unaccounted sales and purchases have already been made in the appellant's case. It was further submitted that as appellant had already surrendered an amount of Rs.3,38,35,315/- towards the excess stock found during the course of survey and had offered the same to tax during AY2015-16. The excess stock found during the course of search was the same that was already surrendered and carried forward by the appellant. In this regards an addition in respect of excess stock again in the current assessment year would lead to double addition which is bad in law.

Ld.CIT(A) after considering the submission of assessee, deleted the addition by observing as under:

"16.2 As regards, excess silver jewellery and diamond so found during the course of search at the business premises,However, I have already confirmed addition on account of unaccounted reflected in the seized document, in absence of any evidence of utilization of this income elsewhere, it will be reasonable and justified to be telescoping effect of unaccounted income due to unaccounted sales with the present addition on account of excess stock of silver jewellery and diamond and therefore this addition for s.36,25,023/- is hereby deleted."

In view of above, it is submitted that Id. CIT(A) has rightly allowed the telescoping benefit, which order deserves to be upheld."

3. In respect of silver and diamonds found at the residential premises of the appellant, it is submitted that the same were received by the appellant and his wife, as gifts from their relatives on various occasions. However, Id.AO did not accept the submission of assessee and made addition of entire value of such silver and diamond Rs.12,00,621/-. Even no benefit was allowed as per CBDT

instruction (which allows maximum of gold jewellery that can be held by each member in family) on the incorrect plea taken by Id. AO that instructing circular talks about gold jewellery only. Though it was observed by Id. AO that looking to the family members 1350 gms of gold jewellery was allowable, but Id. AO ignored the fact same jewellery would naturally have diamonds and the weight of overall gold in only gold jewellery and diamond studded jewellery is only 938.600 grams and equivalent value of difference between 1350 gms and 938.660 gms could reasonably be invested by assessee in diamond and silver items.

On appeal, Id. CIT(A) allowed part relief observing as under:

“.....I have considered the argument of Id.AR from perusal of Annexure JF-7, it is noticed that there are some jewellery which are of gold only and there are others which are having diamond studded in the gold. I agree with the argument of Id.AR that naturally there would be some jewellery having diamond also and same may be considered to have been reasonably acquired by the family. Similarly as per the customs and traditions, the silver jewellery is also possessed by the value of jewellery considered to be acquired and thus explained cannot exceed in the instant case to the value of 1350 gms of the gold which is considered allowable by the Id.AO as per the CBDT institutions. Since gold and diamond studded gold jewellery found was having weight of gold only 938.660 gms as against 1350 gms considered as explained, the value of difference being 411.340 gm comes to Rs.11,61,971/- by taking rate of gold at Rs.2837/- per gram as taken by the AO. The value of studded diamond and also the silver jewellery come to Rs.8,59,260/-+ Rs.3,41,361/-= Rs.12,00,621/-. Accordingly, the excess amount of silver ornament comes to rs.38,650/-(12,00,621-11,61,971/-) which is held as unexplained. Therefor, addition to the extent of Rs.38,650/- is confirmed and balance addition is hereby deleted.”

In view of above, it is submitted that Id.CIT(A) has rightly allowed relief on proper and pragmatic interpretation of CBDT Circular, which order of Id.CIT(A) deserves to be upheld.

With regards to balance addition of Rs.38,650/- confirmed by Id.CIT(A) it is again submitted that such jewellery is received by family members as gift on various occasions and deserve to be allowed.

Departmental Ground of Appeal No. 16:

Under this ground of appeal the department has challenged the action of the Id. CIT(A) in deleting addition of Rs.90,373/- made by Id.AO on account of foreign currency found in possession of the appellant.

Brief facts in respect of this ground of appeal are that, during the course of search proceedings foreign currency in the following denominations was found at the business premises of the appellant:

S. No.	Currency	Amount in foreign currency	Exchange Rate	Amount (Rs.)
1	Pound	10	89.04	890.4
2	Euro	630	80.09	50456.7
3	Dollar(Hong Kong)	400	8.97	3588
4	HSBC	4500	0	4500
5	UAE (Dirham)	5	19.13	95.65
6	Dollar (Singapore)	487	51.19	24929.53
7	USD	200	70.00	14000.00
TOTAL				98461.00

During the course of search and also during the course of assessment proceedings the appellant had sufficiently with supporting evidence explained the source of the foreign currency found in his possession. The Id. AO after considering the appellant's submission had observed the following:

"The foreign currency of Hongkong and UA found from possession of the assessee is reasonable considering their travel to these countries. However, balance foreign currency to the extent of Rs.90373/- remain unexplained which is added back to the total income of assessee u/s 68 of the I.T. act and taxed as per provisions of section 115BBE of the I.T.Act."

On appeal, Id.CIT(A) deleted the addition by allowing telescoping benefit out of income confirmed towards unaccounted sales.

In this regard, it is submitted that the addition made by the Id. AO in respect of the foreign currency u/s 68 of the Act by alleging the same as unexplained cash credit is totally misplaced. Invocation of provision of 68 suffer from a legal defect and deserve to be deleted on this legal ground even without going into the merits of this ground.

Without prejudice to the above it is submitted that the foreign currency in denomination of Pounds, Euros, Singapore dollars and US dollar were received by the appellant in consideration of some stray sales made to various foreign tourists that visited his store at Johri Bazar and shown keen interest in buying jewellery over a period of time and these foreign currency notes were kept preserved as hobby. This fact had been explained by the appellant even during the course of search vide his answer to question no. 30 recorded at his shop.

It is submitted that the appellant's jewellery store is a very renowned store located at the most prime location in Johri Bazar. Further, Jaipur city is a tourism rich city which attracts thousands of foreign tourists every year. The Id. AO has failed to appreciate this fact and the submission of the appellant and has made an addition of Rs.90,373/- on account of these foreign currency notes. Such an action of the Id. AO is unjustified and deserves to be ignored.

The appellant therefore prays your honour to kindly delete the addition of Rs.90,373/- made u/s 68 of the Act on account of alleged unexplained cash credit.

Departmental Ground of Appeal No.17:

Under this ground of appeal, department has challenged action of Id.CIT(A) in not upholding invocation of provisions of section 115BBE of the Act.

Brief facts leading to this ground of appeal are that Id. AO has invoked the provisions of section 115BBE of the act for the purpose of taxing the following additions made to the returned income of the appellant, and thereby taxed such alleged additions @ 60%.

Particulars	Amount (Rs.)
Alleged undisclosed cash sales	7,46,04,862/-
Alleged undisclosed income induced under the garb of cash sales during pre-demonetization period	7,44,28,261/-
Alleged difference in stock	36,25,023/-
Alleged unexplained jewellery found at appellant's Residence	12,00,621/-
Alleged unexplained foreign currency	90,373/-

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 income on which the provisions of section 68 or 69C 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.

In view of above, it is submitted that Id.CIT(A) has rightly decided the issue in favour of assessee and assessee requests that such order of Id. CIT(A) deserves to be upheld.

6.1 The Id. AR of the assessee heavily relied upon the written submission and submitted that while calculating the profit the average of 5 years cannot be applied the decision of the ITAT was for a particular year in the case of the assessee and shall not apply in the subsequent year. As regards the cash deposited in the bank account is the proceeds of the sale made by the assessee and revenue has not disputed the sales. The sale is duly accounted and suffer the indirect tax and is already offered in the indirect tax return filed by the assessee, revenue has not challenged the availability of the stock for which the sales is made.

7. The Id. DR representing the revenue submitted his written submission and the same is reiterated here in below:-

“1. Trading Addition: The Id. CIT(A) has confirmed rejection of books of account, but has applied the average G.P rate of 5 years including the G.P. rate of year under consideration. The Id. CIT(A) has remarked that approach of the A.O. has not been consistent, but the facts suggest that his decision on this issue is full of contradictions because of the following facts-

(i) The Id. CIT (A) has himself enhanced the G.P rate in the appellate orders of the preceding years. Therefore, he should have at least taken the G.P. rate adopted by him for taking the average, instead of declared G.P. rate of the appellant which he himself has found to be incorrect.

ii. The inclusion of the G.P. rate of the current year is never taken into consideration for estimating the G.P rate of current year after rejecting books of account.

iii. The hon'ble ITAT vide their order in appeal no. 322/JP/2017 in assessee's own case has held that for the purposes of taking average G.P rate, the finally determined G.P. rate of previous five years should be taken into account. The Id. CIT(A) has overlooked the yardstick given by the hon'ble ITAT in assessee's own case.

The A.O. had correctly applied the rates of AY 2009-10 AND 2010-11, as assessments in these years had attained finality during the course of the impugned assessment proceedings.

In view of the above facts, the order of the Id. CIT(A) may kindly be set- aside and that of the A.O. may kindly be confirmed.

2. Introduction of unaccounted money in the garb of cash sales during the demonetization period:

The assessee had deposited cash aggregating to Rs. 7.44 Crore in the demonetized currency notes. The assessee was required to explain the source of such cash deposit. It was noted by the AO that the assessee had declared cash sale of Rs. 7,44,28,261 on 08.11.2016. The AO has treated the alleged sale of Rs. 7,44,28,261 on 08.11.2016 as bogus sale. The issue has been discussed and analysed in detail by the AO in the assessment order(P 14-18), wherein it has been stated that as many as 422 invoices were issued in the limited time available on the night of 08.11.2016 after announcement of demonetisation of Rs 500 and Rs. 1000 currency notes by the Hon'ble Prime Minister at 8 PM. He has also stated that the details of the purchaser as well as jewellery sold were not stated on these invoices, whereas prior to 08.11.2016, such details were mentioned in the invoices issued by the assessee. He has also compared the cash sale pattern of the year under consideration with earlier years. The Id. CIT(A) has deleted the addition IP 14-19 of CIT(A) order] by relying upon the books of accounts of the assessee, by ignoring his own order about upholding of rejection of books of accounts of the assessee u/s 145(3) of the Act in the same appellate order. Besides, the books of accounts and sale invoices issued by the assessee, which are solely under the control and management of the assessee, no other independent evidence has been filed by the assessee to establish genuineness of huge sale of jewellery on the night of 08.11.2016.

2.1 On page 19 of the impugned order, it has been stated by the Id. CIT(A) that "Moreover in the entire search and seizure operation conducted not only at business

premises of the group but also at the residential premises of the partners, no any evidence was found reflecting or indicating that such cash sales were bogus." This finding of the Id, CIT(A) is perverse as it is not based on correct facts. It may be mentioned that the search was conducted on 28.07.2016 i.c. prior to the date of demonetization and thus, where was the question of unearthing such evidences during the course of search on 28.07.2016.

2.2 In the case of Sreelekha Banerjee Vs CIT [1963] 49 ITR 112 (SC), the issue before the Hon'ble Apex Court was the addition made by the AO on account of conversion of high denomination notes, wherein it has been observed by the Hon'ble Court that:

"It seems to us that the correct approach to questions of this kind in this. If there is an entry in the account books of the assessee which shows the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money is and to prove that it does not bear the nature of income. The department is not at this stage required to prove anything. It can ask the assessee to bring any books of account or other documents or evidence pertinent to the explanation if one is furnished and examine the evidence and the explanation. If the explanation shows that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. If, however, the explanation is unconvincing and one which deserves to be rejected, the department can reject it and draw the inference that the amount represents income either from the sources already disclosed by the assessee or from some undisclosed source. The department does not then proceed on no evidence, because the fact that there was receipt of money is itself evidence against the assessee. There is thus, prima facie, evidence against the assessee which he fails to rebut, and being unrebutted, that evidence can be used against him by holding that it was a receipt of an income nature. The very words "an undisclosed source" show that the disclosure must come from the assessee and not from the department. In cases of high denomination notes, where the business and the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of a particular sum in high denomination notes, the assessee prima facie discharges his initial burden when he proves the balance, and that it might reasonably have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. It is within the range of these principles that such cases have to be decided. We do not think that the Allahabad view puts no

burden upon the assessee and throws the entire burden on the department. The case itself does not bear this out. If it does, then, it is not the right view,"

2.3 It has been mentioned earlier that neither the names of the buyers nor the details of jewellery were mentioned in the sale invoice issued by the assessee. It may be mentioned that in the case of *Zaveri Diamonds v. CIT* [2012] 25 taxmann.com 552 (SC), the Hon'ble Apex Court has dismissed the SLP filed by the assessee after hearing the case and affirmed the findings of Hon'ble High Court of Punjab & Haryana wherein it has been held that the assessee firm had not disclosed names of persons to whom jewellery had been sold and also no evidence had been furnished by assessee to establish that cash deposited in its bank account was in lieu of sales made of Jewellery, addition made to assessee's income on account of unverifiable sales was justified.

2.4 In the case of *Sudhir Kumar Sharma (HUF) v. CIT* [2016] 69 taxmann.com 219 (SC), Hon'ble Apex Court has dismissed SLP filed by the assessee against High Court's ruling that where assessee had failed to give list of persons who advanced cash to him along with their confirmation in respect of huge amount of cash deposited in its bank account, Assessing Officer was justified in adding said amount to assessee's taxable income under section 68.

2.5 In the case of *Ravinder Kumar v. ITO* [2020] 118 taxmann.com 166 (Delhi), it has been held by the Hon'ble High Court of Delhi that where assessee had failed to produce any material to authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee.

2.6 It is humbly submitted that neither the assessee has controverted the analysis and findings of the AO, relating to sale of jewellery by the assessee on the night of 08.11.2016, as stated in the assessment order nor the Id. CIT(A) has stated a word against these findings of the AO and thus, these findings of the AO remain uncontroverted. It is pertinent to mention that the assessee and its sister concern M/s Royal Jewellers also claimed to make huge cash sales on 08.11.2016. Another group concern of the assessee namely, M/s Shreenath Corporation, which deals in bullion, share the common premises and both the entities have claimed to make sale of jewellery/bullion in cash on that night of 08.11.2016. The Id. CIT(A) has totally ignored whether the said premise was large enough to accommodate so many customers of both the firms on that night.

2.7 It is humbly submitted that the order of Id. CIT(A) is perverse as he has ignored all the relevant facts, reliance is placed on the judgement in the case of *CIT vs Ajay Kapoor* [2013] 36 taxmann.com 513 (Delhi), which is reproduced as under:

14. Perversity, in the present case, is occasioned due to two reasons: firstly, by wrongly placing onus on the revenue though the facts were in personal knowledge of the assessee, and secondly, by ignoring the admission of the respondent that they had indulged in unaccounted sales of Rs 9.7 crores. In spite of admission and the seized document, it has been observed that there was no material with the revenue to prima facie justify any addition towards unrecorded investment in stock. Allegations, in the present case, are not based upon weighing of evidence but for altogether a wrong decision. The decision suffers from vice of irrationality, rendering it infirm in law. In *Municipal Committee, Hoshiarpur v. Punjab SEB* [2010] 13 SCC 216 it has been held that:

"28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated (Vide *Bharatha Matha v. R.Vijaya Renganathan* [2010] 11 SCC 483: AIR 2010 SC 2685)"

15. Earlier in *Dhirajlal Girdharilal v. CIT* [1954] 26 ITR 736 (SC) it was observed:

"...if the Court of fact, whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arise....

.....It is well established that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises."

16. In *CIT v. Daulat Ram Rawat Mull* [1973] 87 ITR 349 it has been held that onus of proving what is apparent is not real is on the party who claims it to be so. There should be direct nexus between the conclusions of fact arrived at, or inferred, and the primary

facts upon which the conclusion is based. When irrelevant consideration and extraneous materials form the substratum of an order, or the authority has proceeded in a wrong presumption which is erroneous in law, as in the present case, question of law arises and when the said contention is found to be correct, then the order is perverse. A factual decision is perverse when it is without any evidence or when the factual decision in view of the fact on record, cannot be reasonably entertained. Finding based upon surmises conjectures or suspicion or when they are not rationally possible have to be struck down, In CIT v SP. Jain [1973] 87 ITR 370 (SC), it has been observed that a factual conclusion is regarded as perverse when no person duly instructed or acting judicially could upon the record before him, have reached the conclusion arrived at by the Tribunal/authority

2.8 In view of the above and looking to the facts and circumstances of the case, it is humbly submitted that the Id. CIT(A) was not justified in deleting the addition made by the AO on account of cash deposit in old demonetized notes claiming the same to be received on account of cash sale of jewellery on the night of 08.11.2016.

3. Undisclosed sales worked out by the A.O. on the basis of the seized material and added u/s 68/1158BE of the Act: During the assessment proceedings, the AO has issued a show cause notice to the assessee, wherein he had required the assessee to explain the entries recorded on various annexures of the seized material and has proposed additions therein. In response, the assessee declined to submit any reply on 9 out of 15 queries stating that the documents were not found from his premises and are not in his handwriting

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 28 to 43 of the assessment order. 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. 7,46,04,862 and unrecorded purchases at Rs. 73,23,783 on the basis of the seized material. The AO did not allow the benefit of peak credit theory as nexus between purchases and sales were not proved by the assessee. Further, the AO has made addition of Rs. 7,46,04,862 on account of unrecorded sales u/s 68 of the Act. The AO has not made any separate addition for purchases as the sale amount includes cost component also.

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 reduced the amount of

unrecorded sales to Rs. 6,74,97,053. Thus, finally, the Id. CIT(A) after applying the GP rate of 7.84%, has upheld the addition to the tune of Rs 52,91,769.

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 AO. 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

35 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 5 years including the G.P. rate for year under consideration. This estimation of CP 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 co terminus i.e. the CIT(A) can do what the AO can do. It is humbly submitted that in its written submissions before the Id. CIT(A) as appearing at last para on page no. 22 of the impugned order, 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. 73,23,783 were also made by the assessee in this year 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.

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.

4.4 Shortage of stock in the case of Garg Jewellers Prop. Shri Jitendra Kumar Agarwal for AY 2017- 18

9. During the course of search at the business premises of M/s Garg Jewellers, the stock found was inventoried and valued by the approved valuer. It was found that the gold jewellery stock to the extent of 17566 grams was short in comparison with the recorded stock. During the assessment proceedings, it has been stated by the assessee that the same (short stock) has been sent on approval to various customers including stock of 4081 grams to M/s Royal Jewellers. However, no documentary evidence was either seized during the course of search nor filed by the assessee during the assessment/appellate proceedings to support the same. Consequently, the AO has treated this short stock valued at Rs. 4.29 Crore as sales outside the books of accounts and has made trading addition of Rs. 1.17 Crore thereof by applying GP rate of 23.54%.

9.1 In the appellate order, the Id. CIT(A) has accepted the contention of the assessee that the stock to the tune of 4081 grams was sent to M/s Royal Jewellers on approval basis without any supporting document. In fact, the Id. CIT(A) has ignored the statement of Shri Manoj Kumar Khandelwal, recorded on oath u/s 132(4) of the Act during the course of search, wherein he has offered a sum of Rs. 1.40 Crore on account of unexplained investment in excess stock of gold jewellery (4667 grams). Further, the Id. CIT(A) has held that since unrecorded sales on the basis of seized material to the tune of Rs. 6.74 Crore was upheld by him and no evidence of sale of such stock outside the books of account leading to shortage was found during the course of search. Consequently, he presumed that the shortage of stock included in the unaccounted sales on the basis of seized material i.e. the short stock valued at Rs. 3.82 Crore is a part of unaccounted sales of Rs. 6.74 Crore on the basis of seized material and it leads to double addition and the addition was deleted.

9.2 The Id. CIT(A) has given the above finding without any supporting document which may establish nexus between the sales outside the books of accounts as per the seized material and shortage of stock. The arguments in relation to stock alleged to be sent to M/s Royal Jewellers has already been stated in the earlier part, hence, for the sake of brevity, the same is not repeated here. It would be worthwhile to again reproduce, submission of the assessee, as made before the Id. CIT(A) last para on Page 22 of id. CIT(A) order) as under

"Moreover, it is seen from the seized records that allegedly unaccounted purchases are recorded therein and the Id. AO 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,"

9.3 Thus, in the above submission, it has clearly been admitted by the assessee that recorded purchases were not used for making unrecorded sale as per the seized material. However, it appears that this part of the submission of the assessee has escaped the attention of Id. CIT(A) while giving the benefit of telescoping, as submitted earlier that too without any supporting material.

Excess stock of Diamond/jewellery

10. The Id. CIT(A) has upheld the addition of Rs. 36.25 lac on account of excess stock of diamond/jewellery but, again, has given the benefit of telescoping against the unrecorded sales without establishing any nexus between them. It is reiterated that the

onus is on the assessee and not on the department to establish onus between unrecorded sales as per seized material and excess stock, which has not been done in the instant case.

Excess jewellery at residence

11. As per Id. CIT(A), as per CBDT Circular, the gold jewellery to the extent of 1350 grams is presumed to be explained looking to the number of family members. Since, only 938 of gold jewellery was found during the course of search, it was held by the Id. CIT(A) that the value of gold jewellery to the extent of 411 grams (1350-938) valued at Rs. 11.61 lakh is to be further treated as explained and can be adjusted against value of diamond studded gold and silver jewellery valued at Rs. 12 lakh and consequently, he has sustained the addition of Rs. 38,650/- (12,00,000-11,61,000). The logic of the Id. CIT(A) for deleting the addition is based on irrelevant facts and is perverse as the same is not based on any material fact but based only on assumption and presumption. It is therefore submitted that the addition deleted by the Id. CIT(A) may please be restored.

Application of the provisions of section 115BBE of the Act 12. The A.O has made the following additions under various sections warranting application of section 115BBE of the Act-

Particular	Amount (Rs.)	Relevant section under which addition has been made by the AO
Undisclosed cash sales	7,46,04,862	68
Cash deposits during demonetization period	7,44,28,261	68
Difference in stock	36,25,023	69C
Unexplained jewellery at residence	12,00,621	69
Unexplained foreign currency	90,373	68

The Id. CIT(A) has observed in page 51 &52 of the order that the major addition was on account of unaccounted sales and other additions have been effectively deleted or substantially reduced. Regarding undisclosed sales, it has been observed that as the unaccounted sales was not recorded by the assessee in books of account, and therefore, since there was no credit entry in books of account, the provisions of section 68 are not attracted.

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-

"&. 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 w.ef. 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 additions made by the A.O u/s 68, 69 and 69C may kindly be restored."

7.1 Further, in this appeal the Id. DR representing the revenue submitted synopsis of additions deleted/sustained in the case of Sh. Jitendra Agarwal in A.Y 2017-18 which is reproduced here in below:-

AY	Additions by A.O	Amount	Decision of Id. CIT(A)
2017-18	1. Trading addition	37,28,523 (GP rate 23.54%)	1. Ave. GP rate of 7.84% applied. Average arrived at after taking into account the G.P. rates of 5 years including the current year. Addition of Rs. 3,80,491 confirmed.
	2. Cash sales in demonetization period added u/s 68/115BBE	7,44,28,261	2. Deleted the addition
	3. Undisclosed sales u/s 68/115BBE	7,46,04,862	3. Undisclosed sales of Rs. 71,07,809 required to be deducted balance undisclosed sales of Rs. 6.74 Cr. sustained, but GP rate (ave.) 7.84% applied and addition of Rs. 52,91,769 confirmed.
	4. Difference in stock (Shortage of stock of gold	1,17,31,098	4. Shortage of stock and consequential unaccounted sales of Rs. 6.74 cr. Hence, no separate addition is required.
	5. Excess stock of silver, diamond, precious stone u/s 69C/115BBE	36,35,023	5. Addition confirmed in principle, but telescoping allowed. Hence, entire addition deleted.
	6. Unexplained gold jewellery at residence u/s 69/115BBE	12,00,621	6. Excess amount of silver ornaments of Rs. 38,650/- confirmed, balance addition deleted.
	7. Unexplained foreign currency u/s 68/115BBE	98,461	7. Addition confirmed in principle but telescoping allowed, therefore, entire addition deleted.

7.2 In addition to the written submission so filed the Id. DR appearing for the revenue submitted compilation of cast law(s), the list of case laws relied upon are as under:-

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

7.3 In addition to the above submission the Id. DR heard at length who has relied on the findings of the assessing officer and submitted that how assessee can deal with the 422 customers as the number of invoices for the sale from where the cash of Rs. 7 cr received. He has also submitted that Id. CIT(A) has relied upon the sales, based on the books which has already been rejected by him so his findings is contradictory. Based on the findings recorded by the assessing officer he supported the order of the assessing officer.

8. We have heard the rival contentions and perused the material placed on record and gone through findings of the lower authorities recorded in their orders as well as gone through the various judicial rulings placed before us by both the parties to drive home their contentions. Brief facts of the case are that appellant is an individual running sole proprietary business of manufacturing and trading of jewellery including studded jewellery from 222, Johari Bazar, Jaipur and residing at 1756, Telipada, SMS Highway, Jaipur. 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 the appellant were covered under search. While search operations cash, valuables and various loose papers / documents related to the group persons / concerns were found and seized. Since, the case of the assessee covered under search notice u/s. 153A of the Act was issued to the assessee and in response to the notice u/s 153A, the appellant filed its return of income at Rs. 48,55,300/- and assessment was completed u/s 143(3) r.w.s. 153A by Id. AO by making following additions:

S. No.	Nature of Additions/ disallowance	Amount (in Rs.)
1.	Trading addition by applying the GP rate of 23.54%	37,28,523/-
2.	Cash deposited in bank account after demonetization considered as undisclosed income	7,44,28,261/-

3.	Undisclosed cash sales	7,46,04,862/-
4.	Difference in stock	1,17,31,098/-
5.	Excess stock of stones	36,25,023/-
6.	Jewellery found at home	12,00,621/-
7.	Unexplained foreign currency	90,373/-
Total Additions		16,94,08,761/-

8.1 Against the above order of the assessment the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) and the same was considered partly. The details of additions made by the Id. AO and consequential effect after the order of the Id. CIT(A) is summarized as under to decide this cross appeal of the assessee and revenue for the assessment year 2017-18.

AY	Additions by AO	Amount	Decision of Id. CIT(A)
2017-18	Trading Addition	37,28,523 (GP rate 23.54%)	Ave. GP rate of 7.84% applied. Average arrived at after taking into account the GP rates of 5 years including the current year. Addition of Rs. 3,80,491 confirmed.
	Cash sales in demonetization period added u/s 68 / 115BBE	7,44,28,261	Deleted the addition
	Undisclosed sales u/s 68 / 115BBE	7,46,04,862	Undisclosed sales of Rs. 71,07,809 required to be deducted balance undisclosed sales of Rs. 6.74 Cr. Sustained, but GP rate (ave.) 7.84% applied and addition of Rs. 52,91,769 confirmed
	Difference in stock (Shortage of stock of gold)	1,17,31,098	Shortage of stock and consequential unaccounted sales is covered under undisclosed sales of Rs. 6.74 Cr. Hence, no separate addition is required.
	Excess stock of silver, diamond, precious and semi precious stone u/s 69C / 115BBE	36,35,023	Addition confirmed in principle, but telescoping allowed. Hence, entire addition deleted.
	Unexplained gold jewellery at residence u/s 69 / 115BBE	12,00,621	Excess amount of silver ornaments of Rs. 38,650 confirmed, balance addition deleted.
	Unexplained Foreign Currency u/s 68 / 115BBE	98,461	Addition confirmed in principle but telescoping allowed, therefore, entire addition deleted.

9. Based on these set of facts and after hearing arguments of both the litigants now we proceed to deal with the grounds taken by each litigant and finding of the bench are given here in below paras.

Assessee's ground No. 1 & 2 and departmental ground No. 2 to 5:

10. Assessee's grounds of appeal No. 1 and 2 are in relation to rejection of books of accounts u/s 145(3) and estimation of GP rate and consequently sustaining part of the trading addition by the Id. CIT(A). The Id. AO in its order 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). On this grounds of appeal 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. We have perused the material on record on the issue under consideration. It will be better to reproduce the operative 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 and discussed this issue in detail in the appeal order for A.Y. 2017-18 in the case of appellant. The relevant operative part of the order of Ld. CIT(A) for A.Y. 2017-18 is reiterated here in below :

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. 37,28,523/- by applying G.P. rate of 23.54%.*
- 5.2 *Brief facts related to the issue under consideration is that appellant is engaged in business of manufacturing and trading of jewellery at principal place of business at 222, Johari Bazar, Jaipur in the proprietorship concern in the name and style as M/s Garg Jewellers. Search and seizure action was carried out by the Income Tax Department at the business premises of the appellant firm and also at the residential premises of its owner at 1756, Telipada, SMS Highway, Chaura Rasta, Jaipur 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 section 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-d-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 Form 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. At para 6.3 of the assessment order, the AO has given table related to the gold jewellery received which are entered in the stock register and tried to contend that the appellant is recording different purity of the gold ornament on the same page and thus these jewellery form part of common stock item from which it is not possible to ascertain the quantity of jewellery of different purity. The Ld. AR has explained that the table so reproduced by the Ld. AR is in relation to keeping control over the gold ornament given to the karigars and their corresponding quantity received back from them of particular purity. It is only for this control that against voucher for receipt No., the weight of 20 ct. gold so given to the karigar is mentioned and afterward the jewellery received from the karigar with its weight and purity is mentioned, so that the proper check-in control can be maintained because the gold jewellery of different purity will obviously have different weight even in respect of same quantity of 24 ct. gold given to the karigar. The Ld. AR further explained that observation of Ld. AO that from this record it is not possible to identify the quantity of gold jewellery of different purity, is misplaced since for every lot received from the karigar, the gold weight alongwith it's purity is mentioned in the stock register and thus total weight of gold jewellery of particular purity can be very well deduced from the stock register.

5.3 *On perusal of the above observations of the AO, their explanation given by the Ld. AR as above cannot 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 section 145(3) is justified and same is upheld.*

We have carefully perused the finding of the Id. CIT(A) and submissions/arguments advanced by both the parties to support their contentions. Considering the detailed reasoned finding of Id. CIT(A) on so called defects noticed by Id. AO, the explanation given by Id. AR cannot be thrown away. However, as the appellant involved in purchase and sales outside books of accounts which is evident from the various loose papers seized during search, the rejection of books of accounts so made by the AO and so upheld by the Id. CIT(A) for the year under consideration also, is found to be reasoned one and we see no reason to deviate from the detailed finding of the Id. CIT(A) so far it relates to the rejection of the books of account is concerned. Thus, grounds so taken by the Id. AR on this issue for the year under appeal i.e. A.Y. 2017-18 are rejected.

10.1 Now coming to the estimation of GP, the Id. CIT DR has supported the order of Id. AO wherein he has estimated the GP of 23.95%, 23.79%

and 24.54% respectively for AY 2015-16, 2016-17 & 2017-18 by apparently taking the average GP rate of last five years. On the other hand, the Id. AR has submitted that GP so estimated by Id. AO is totally based on incorrect appreciation of facts and accordingly no cognizance can be given to the same and further submitted that the Id. CIT(A) though appreciated the submission made by the assessee but only partly by estimating the GP rate and thereby Id. AR submitted to accept the trading results shown by the appellant. On this issue We have considered the argument of both the sides and also perused the order of the lower authorities. Before we deal with the issue on hand it would be better to note the relevant operative part of the order of Id. CIT(A) for AY 2017-18 on the issue and the same is reiterated here in below:

6. *Now, coming to the estimation of the GP, it is seen that Ld. AO has estimated the GP rate at 23.54% as against the GP rate of 7.44% declared by the appellant. The Ld. AO has taken the GP of preceding two years i.e. A.Y. 2009-10 and 2010-11 for estimating the GP for AY 2011-12. Thereafter for estimating the GP of AY 2012-13 the Ld. AO has taken the GP rate of preceding three years and thereafter for AY 2013-14, GP rate of preceding four years was taken. However, in the case of sister concern namely M/s Royal Jewellers, the Ld. AO has taken average GP of AY 2009-10 and AY 2010-11 and applied it on all the subsequent years. Thus approach of the AO is not consistent even in the firms of same group. Another important point is that by taking average GP rate for preceding years, the GP for AY 2012-13 comes to 20% as per the AO's own working. However, the GP rate shown by the appellant was 25.49% and thus was better than the AO's working. However, the Ld. AO has increased it to 30% without any basis and only on his whims and fancies. The GP rate for the other years have been estimated by the Ld. AO by considering these exorbitant GP rates for these earlier years and accordingly these are also liable to be rejected. I have found the argument of the Ld. AR to be correct on this issue. It is seen that different approach has been taken by the Ld. AO in the present case and case of M/s*

Royal Jewellers, a sister concern of the appellant. It is also a fact that as per AO's working, the GP for AY 2012-13 came to 20% but the AO has without any basis increased to 30% and thereafter has worked out GP for other years on the basis of these enhanced GP rates. In view of these facts GP rates so estimated by the AO is not found to be reasonable and is therefore rejected. The GP rate of AY 2017-18 is estimated by taking the average GP rate of five years including current year i.e. of AY 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 which are 7.92%, 7.95%, 7.98%, 7.93 and 7.44%, which comes to 7.84%. Similarly, GP rate of AY 2015-16 and 2016-17 is also estimated by taking the average GP of five years which comes to 12.88% and 11.45% respectively.

- 6.2 *Therefore the Gross Profit for AY 2017-18 taken on full turnover in view of the discussion made in the subsequent grounds of appeal (as against the reduced turnover taken by the AO) comes to Rs. 75,37,970/- against the gross profit shown by the appellant of Rs. 71,57,479/-. Thus addition of Rs. 3,80,491/- is hereby confirmed and balance addition is deleted.*

The bench noted that from the arguments of the Id. AR that the Id. AO has first estimated the GP rate for AY 2012-13 by taking the average of last three years, which comes to 20% and then instead of taking this 20% same has been increased to 30% without any basis or advancing any reasons of doing so. The bench also noted that the appellant has on its own declared GP @ 25.49% and the average of last three years GP comes 20% then estimating the GP @ 30% is totally unjustifiable. We also note that same GP of 30% for AY 2012-13 has been considered in subsequent years while arriving at the average GP of earlier five years and thereby estimation of GP rate of the year under consideration and earlier years by the AO suffers without any basis and without advancing any reasons for doing so. The Id. CIT(A) after considering the arguments of the Id. AR of the assessee taken cognizance of these apparent grievance of the assessee and corrected the

error and/or defects pointed out. It is seen that Id. CIT(A) has given the finding for estimating the GP rate for AY 2017-18 by taking the average GP rate of five years including current year which comes to 7.84% and the same has been calculated based on the direction of the ITAT in ITA No. 322/JP/2017 and revenue did not file any objection as to why and on what basis the estimation made by the Id. CIT(A) is erroneous and not based on the set of facts already on record. On the same basis the Id. CIT(A) has estimated the GP for AY 2015-16 and 2016-17 also. We are of the opinion that the order of Id. CIT(A) of estimating the GP rate is a reasoned one and does not require any substitution of the GP rate by us. Accordingly, on the issue of estimation of GP rate arguments of revenue and also of the appellant are rejected and the order of Id. CIT(A) is not interfered with so far as the issue of rejection of books of accounts and estimation of the GP rate applied by him.

Departmental Ground No. 6 to 9:

11. Under these grounds of appeal, the revenue has challenged the action of Id. CIT(A) in deleting the addition made by Id. AO by considering the cash sale of Rs. 7,44,28,261/- made during the pre-demonetization period as unexplained cash credit u/s 68 of I.T. Act.

11.1 Brief facts pertaining to these grounds of appeal are that appellant had deposited cash amounting to Rs. 7,44,45,200/- in its three bank accounts maintained with Bank of Baroda during the demonetization period in the form of SBN of Rs. 1,000/- and Rs. 500/-. The immediate source of cash was explained as accumulated cash available as per the cash book maintained in the regular course of business. However, the AO noticed that accumulated cash of the assessee include cash generated from cash sales of Rs. 7,44,28,261/- made on 08.11.2016. The Id. AO was of the view that cash sales shown in November, 2016 is exceptionally high and accordingly presumed that these cash sales are not real sales. The Id. AR has furnished detailed explanation on this issue stating that demonetization of SBN of Rs. 500/- and 1,000/- was declared by Hon'ble Prime Minister at 8.00 PM on 08.11.2016 and it is an open fact that immediately after the announcement, common public decided to liquidate their savings in the form of the gold and were scared whether the new notes will be made available or not and so as to save their saving people were gather in crowd outside the jewelers stores soon after the demonetization announced. The felt that the SBN note in their possession flocked to the Jewellers to purchase jewellery in exchange of these notes and accordingly huge sales were made by the jewellers on the 8th November 2016, which was

obviously unprecedented and this news were in newspaper published with the photos. The Id. AR stated that this exceptionally high sales so made on 08.11.2016 was also reported in Economic Times wherein the Secretary of Indian Bullion and Jewellers Association mentioned that jewellers has sold as much as 15 tons of gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8, 2016 after the announcement of demonetization. The Id. CIT(A) has considered the various arguments including the argument of Id. AR that sales in the month of November and December is generally high due to marriage and festive season and sales taken for both the months together is not exceptionally high vis-à-vis earlier two years. The Id. DR did not controvert this factual finding of the Id. CIT(A). The relevant part where in the Id. CIT(A) has recorded his finding is reiterated here in below:

9. *This ground is against the addition of Rs. 7,44,28,261/- made by the AO by treating the cash sale made on 08.11.2016 as bogus. Brief facts related to the issue are that AO noticed that the appellant has deposited cash of Rs. 7,44,45,200/- in its bank accounts in the demonetized currency notes (SBN i.e. Old Rs. 500 and Rs. 1000 notes). The appellant has explained it to be out of cash sale made by the appellant on 08.11.2016 and also in the earlier period. AO tried to analyze the cash sale vis-à-vis cash sales in the earlier years and had also observed that the cash sale so shown in November, 2016 is exceptionally high vis-à-vis total cash sale in FY 2016-17 and accordingly observed that these cash sales are not real sales and the assessee has tried to introduce his own unaccounted money in the garb of cash sales and therefore made addition of aforesaid amount of Rs. 7,44,28,261/-. The Id. AR has furnished detailed explanation on this issue. The crux of the explanation is that the demonetization of Rs. 500/- and 1000/- note was declared by the Hon'ble Prime Minister at 8.00 PM on 08.11.2016 and it is an open fact that immediately after the announcement, all the various persons having soon to be demonetized notes almost flocked to the Jewellers to*

*purchase the jewellery in exchange of these notes. There was an article in the Economics Times wherein the secretary of Indian Bullion and Jewellers Association mentioned that Jewellers had sold as much as 15 ton of gold ornaments and bars worth around Rs. 5000 crores on the intervening night of November 8 and 9, 2016 after the announcement of demonetization. Moreover the appellant has stated that considering these to be the festive month and also marriage month, there would normally be increase in the purchase of jewellery in a month of November. Further, after the spread of the news of demonetization the general public had purchased the jewellery not only for the wedding in the immediate vicinity but also for wedding and functions in late November or December and also even otherwise for future use in functions, which has led to exceptional increase in the sale. And due to this heavy purchase in November for the purpose of utilizing the demonetized notes, the purchases in the month of December, 2016 has been very low. However, the purchase for both the months taken together is not exceptionally high and the increase is mainly due to total increase in turnover and the specific reason of demonetization. It was further submitted that sales made by the appellant was fully vouched and verified and are duly recorded in the books of accounts, which were also audited. **Further the sales are duly backed by purchases and opening stock available with the appellant and after these sales the stock of the appellant was correspondingly got reduced.** On being enquired by me about the stock position just before and after the date of announcement of demonetization, the Ld. AR of the appellant explained that appellant firm had **got sufficient stock as per the books of accounts as on 07.11.2016 i.e. just prior to the date of announcement of demonetization and it was around 48 Kg. (to be precise 48.261 Kg.) and even after these sales made on 08.11.2016, the stock of as much as about 24.468 Kg.** remained with the appellant firm on 09.11.2016. Ld. AR has drawn my attention to the fact that on one hand the appellant has established the authenticity of its sale so made on 08.11.2016 as mentioned above while on the other hand Ld. AO has not brought any material on record to establish that these sales are bogus. Moreover in the entire search and seizure operation conducted not only at the business premises of the group but also at the residential premises of the proprietor and even other persons of the group, no any evidence was found reflecting or indicating that such cash sales were bogus. On perusal of the details it has been noticed by me that though apparently cash sales made in November 2016 seems to be on higher side vis-à-vis earlier years, however it is a fact that November and December are mainly festive and marriage months, the sales during these months is generally higher vis-à-vis the other months of the year. Further it is a fact that due to announcement of demonetization of Rupees 500 and 1000 currency notes at 8.00 PM by the Hon'ble Prime Minister, the general people at large had flocked to the jewelers shop for purchase of jewellery for not only for immediate wedding in the family but also for weddings and functions in late November or December or even afterwards, against these soon to be demonetized notes. Moreover, the Ld. AR has rightly pointed out that on one hand the sales shown by the*

appellant are fully backed with voucher and duly recorded in the books of accounts and also in the stock register while on other hand the Ld. AO has not brought any material on record to establish that these sales are bogus. Accordingly the action of the AO in treating these sales as bogus and adding the amount relatable to these cash sales as unaccounted income is not justified and consequently the addition so made amounting to Rs. 7,44,28,261/-is hereby deleted.

11.2 The bench noted the rival contentions and finding of the Id. CIT(A) who granted relief to the assessee after making the verification so as to whether the assessee has available stock with the assessee on that day and it was found that the assessee is in possession of sufficient stock so as to make those sales on 08.11.2016. The Id. CIT(A) has also considered the arguments of the Id. AR of the assessee that on one hand sales shown by the appellant are fully backed by the sales invoice and the relevant entries as recorded in the stock register whereas on other hand Id. AO has not brought out any material on record to rebut these evidences. We are of the considered view that even though the books were rejected but the evidence so available in the books cannot be thrown away. The Id. CIT(A) to support the grounds so raised cited the case of Shreelekha Benarjee Vs. CIT 49 ITR 112 (SC) wherein addition was made by AO on account of conversion of high denomination notes. We have perused the observation of the Hon'ble Court as also mentioned by Id. CIT DR. It is seen from the observation that before the department rejects any evidence of the assessee, it must either show an inherent weakness in the explanation or

rebut it by putting to the assessee some information or evidence which it has in his possession. The department cannot by merely rejecting unreasonably a explanation based on the evidence supported by the assessee convert good proof into no proof. In the present case of the appellant the department has not rebutted the evidence of sale available on record by furnishing any contrary information or evidences. The Id. AO has presumed these sales to be bogus without bringing anything on record and the only reason advances was the sales recorded is exceptionally high cash sales on 08.11.2016. However, inference of bogus sales so drawn by Id. AO only on the basis of one peculiar fact of high sale is not justified, more so when the appellant has properly explained the reasons of such high sale on 08.11.2016. Thus the aforesaid decision referred by Id. CIT DR rather indirectly supports the case of appellant.

11.3 The CIT DR has also cited another case of Zaveri Diamond Vs. CIT (2012) 25 taxmann.com 552 (SC) and has stated that Hon'ble Apex Court has dismissed the SLP and thus affirmed the finding of Hon'ble Punjab and Haryana High Court. Attention was drawn by Id. AR that facts of this case are quite distinguishable from the facts of appellant case. In the afore-cited case, it is seen that AO confronted the parties who have made sales to the

firm, wherein they have admitted that no actual sale of jewellery have been made by them to the firm. Secondly, in the sales bill there were even no names of the alleged purchasers. In the cited case there was huge cash deposit of Rs. 16.28 crore in the bank account of the firm in a short period of about a month. There was no 'safe' to keep the jewellery in safe custody and the assessee was not even owning any weighing scale or 'Dharamkanta' which is very much required for weighing the jewellery. However in the instant case of the appellant the cash sales bills were having complete name of the persons buying the jewellery and most of the bills have addresses too. In spite of all these information already available on record no statement of single person recorded in the instant case of appellant denying that they have not actually purchased the jewellery. We have perused the relevant record and found the submission of the Id. AR to be correct that this cited case of Zaveri Diamonds is quite distinguishable from the instant case of appellant. In another case of Sudhir Kumar Sharma HUF cited by Id. CIT DR, it is seen that assessee has shown to have received cash loans for explaining huge cash deposit in its bank account and failed to furnish confirmation of alleged lenders. Thus facts of the aforesaid cited case are also different as in the case of appellant no such cash loan have been shown; and similar is the position with other

cited cases. The Id. CIT DR has also referred to the case of CIT Vs. Ajay Kapoor regarding perversity. The Id. AR stated that facts of this case are quite different in as much as that in this case there was admission of the controlling person and further there were seized documents reflecting unrecorded investment in the stock and even then appeal of the assessee was allowed by ignoring these very vital evidences. It was explained by Id. AR that in the instant case of appellant, there is neither admission on the present issue of sale during pre-demonetization period nor any seized document related to the issue was found, though obviously because of the reason that search was conducted in the group on 28.07.2016, prior to the demonetization period.

11.4 We have considered and perused these decisions and found that facts of these cited cases by the CIT DR are different and distinguishable and thereby ratio of these cases are not applicable in the instant case of the appellant. Considering the facts and in the circumstances of the case and going through the written submissions of both sides as well as order of Id. CIT(A), we are of the considered view that the relief granted by the Id. CIT(A) is after verifying all the aspects of the matter and based on the discussed made here in above we see no reason to interfere with the order of Id. CIT(A) deleting the addition of Rs. 7,44,28,261/- made by the AO. Accordingly, grounds related to this issue taken by revenue are rejected.

Assessee's ground No. 3 to 5.3 & Departmental ground No. 10 to 12:

12. In these grounds of appeal, the appellant has challenged the action of Id. CIT(A) in ignoring the fact that there were various discrepancies in the analysis of seized papers made by the AO and applied the GP rate on alleged unaccounted sales instead of NP rate, by ignoring the submission of appellant that various expenditure would obviously be required for earning such alleged income. Other ground taken by Id. AR is that Id. AO has made the addition of unaccounted sales u/s 68 of IT Act which is legally defective and contrary to the settled legal position that addition u/s 68 can only be made in respect of credit entry in the books of accounts for which assessee fails to explain. Thereby it was submitted by Id. AR that entire addition made as profit on alleged unaccounted u/s 68 sales be deleted. The Id. CIT DR in its written submission argued that explanatory sheets so furnished before the Id. CIT(A) by the Id. AR are basically additional evidences and CIT(A) erred in passing the order without giving opportunity to the Id. AO. The CIT DR also submitted that it appears that Id. CIT(A) had verified only some of the explanatory sheets on test check basis and accepted all the entries without verifying the same. It was also submitted that power of CIT(A) being coterminous with AO the investment in unaccounted purchases should have been quantified and added, as the

AO did not add the unaccounted purchases of Rs. 73,23,783/- as these were less than the sales which has already been added by AO.

12.1 Brief facts related to these grounds of appeal are that Id. AO noted the details from various seized documents, grossed them up without any verification regarding duplicate entries etc. and then presumed them to be unaccounted sales and thereby made the addition of the entire amount of unaccounted sale. The Id. AR has given elaborate submissions before the Id. CIT(A) and has submitted that there are multiple notings made about same transaction, some of the notings are rough notings, some notings of purchases have been considered by the Id. AO as sales, some of the notings / transactions are recorded in the books which have also been considered by Id. AO as unaccounted, approval slips and rough estimate slips considered as sales and Id. AO not correlated or linked the entries found noted in various annexures with each other, which are repetitive / duplicate or even triplicate and Id. AO has made addition in casual manner by mechanically taking all the entries and grossing them up. The Id. CIT(A) has perused and verified various entries wherever Id. AR has pointed out duplication, triplication or entries being recorded in the books or entries pertaining to purchases being considered as sales by the AO. The Id.

CIT(A) after closely perusing all the various details has given its finding and accepted the argument of the Id. AR wherever these were found acceptable to him. 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 has mainly argued that assessee has explained various entries of these seized documents through explanatory sheets and these should have been considered by Id. CIT(A) as additional evidence and thereby opportunity to the Id. AO should have been given to rebut the same.

12.2 We have considered the rival submissions as well as perused relevant observations recorded in the order of AO and of Id. CIT(A). As it is noticed that the unaccounted sale so estimated by Id. AO for AY 2017-18 Rs. 7,46,04,862/- and Id. AO has added the gross amount of unaccounted sale itself as the unaccounted income, which is quite unjustified and is not in accordance with the settled law on this issue. Even in the assessment year in the first round of litigation no allegation the ITAT has directed to apply the GP this order of the ITAT has not been challenged by the revenue. From the perusal of the order of Id. CIT(A) it is seen that Id. AR has submitted the working or summary of the various notings as found

noted in the seized documents which are being already on record of AO and these very notings have been used by the Id. AO in its show cause notice and also thereafter while making addition in the assessment order. It is only 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 has just taken all these notings from the Show Cause Notice (SCN) together and grossed them up. These comparisons or putting the notings in proper prospective have been made by Id. AR and same was furnished before the Id. CIT(A) by way of explanatory sheets. Accordingly, these cannot be said to be the additional evidences but it is a systematic presentation of the same set of facts already on record of the assessing officer. The bench noted that Id. CIT(A) at many places, has explicitly mentioned the details given in the working sheet as well as the corresponding relevant details of the show cause notice of the AO. The Id. CIT(A) has mentioned that document seized from residence of Shri Jitendra Kumar Agarwal has been referred as Exhibit B-1 to B-41 by Id. AR and document seized from business premises of the appellant at 222, Johari Bazar are referred as Exhibit D-1 to D-12 in order to have exclusiveness in the naming and avoiding confusion of intermixing of reference to the particular document required from particular premises. At

para 12, 12.2, 12.3 and 12.4 of the order of Id. CIT(A), he has specifically discussed as to how the entries given on various pages of show cause notice of the AO have been taken in the working sheet furnished by the Id. AR and how entries on two different pages of the exhibit are exactly similar, which is also clear from chart as per Annexure-3 furnished by the Id. AR and reproduced by the Id. CIT(A) at para 12.2. For the sake of clarity, all these paras are reproduced:-

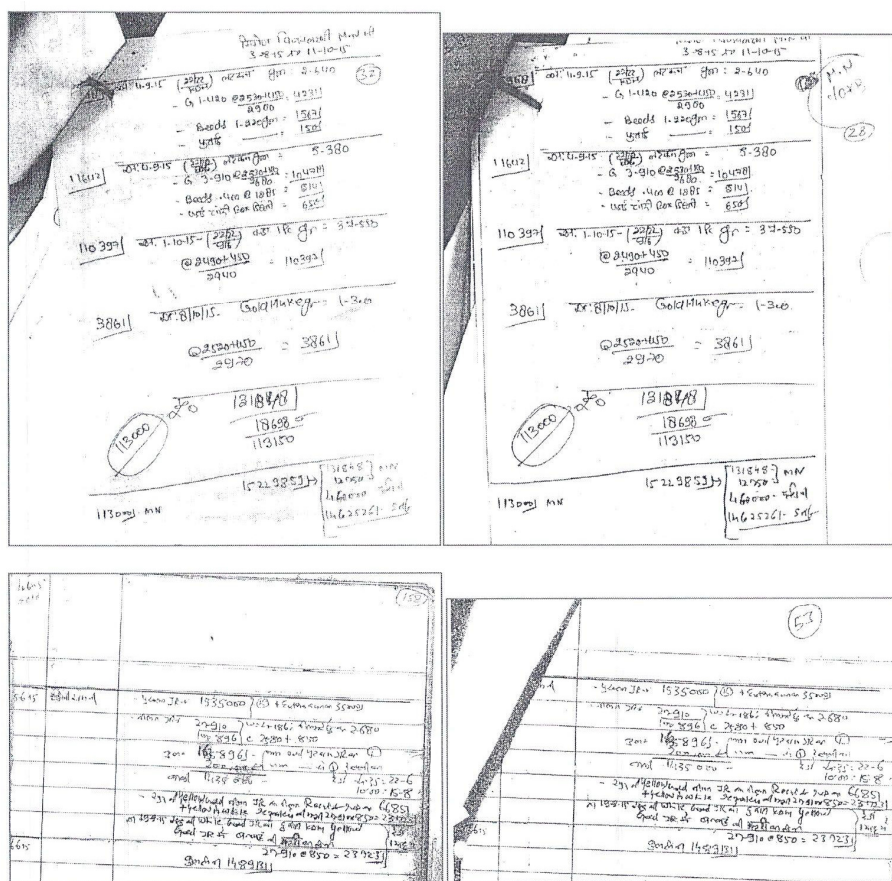
12. *This ground is against the addition of Rs. 7,46,04,862/- made by the AO u/s 68 of the I.T. Act by treating various entries in the seized loose papers and documents as unaccounted sales and adding the gross sale itself as unaccounted income. Brief facts related to this ground are that during the course of search carried out on 28.07.2016 various loose papers and documents were seized from business premises of appellant located at 222, Johari Bazar, Jaipur and also at residential premises located at 1756, Telipada, Chaura Rasta, Jaipur. The loose papers and documents seized from M/s Garg Jewellers were inventorized at Annexure AS Exhibit 1 to 12, which are hereinafter referred as Exhibit D-1 to D-12 and loose papers and documents seized from the residence are hereinafter referred as B-1 to B-41. 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. 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. Without prejudice it is quite evident that these cannot be held to be sale and at the worst to the appellant these can be treated as purchases and therefore, has to be excluded from the sales. These have also been added by the Ld. AO.*
- 12.2 *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 and / or may be due to some purchases wrongly considered as sales. The AR of the appellant has furnished annexures 3 and 4 showing such details, which are enclosed as part of the written submission.

Chart as per Annexure 3 is reproduced below:

Exhibit No.	Pg No.	APB	SCN page	Addition (Rs.)	Description	A.Y	Head of addition	Exhibit No.	Pg No.	APB	SCN	Addition (Rs.)	Description	Year of addition	Head of addition	Amount of deletion (Lower of the two) (Rs.)
B12	28	83	6	1,52,29,859		16-17	Unacc sale	B12	32	81	6	1,52,29,859		16-17	Unacc sale	1,52,29,859
D1	58	108	7	3,17,836	gold sale	15-16	Unacc	D8	140	193	11	6,32,123	sale	15-16	Unacc	3,17,836

each page i.e. Rs. 1,52,29,859/- twice. Taking another highest amount, it is seen that page No. 53 of Exhibit D-1 and page No. 158 of Exhibit D-8 (referred by AO at SCN page 7 and 11 respectively) contained exactly similar entries and rather these are photocopies of each other but Ld. AO has added entries on both the pages (though for page 53 of D-1, AO has taken Rs. 14,89,131/- and for page 158 of D-8, the Ld. AO has anyhow taken Rs. 16,35,896/-). Similar is the position in relation to various other seized pages referred in this Annexure 3. I have carefully perused the relevant pages of show cause notice and relevant seized pages from the paper book so submitted by the appellant. It is seen by me that the first entry of the chart referring to page 28 and 32 of Exhibit B-12, it is clear that both the pages are exactly similar, whereas Ld. AO has added amount of Rs. 1,52,29,859/- twice. For the sake of convenience, both these pages and also both pages of next highest amount entry i.e. page 53 of D-1 and page 158 of D-8 are scanned and are being put side by side as below:-



12.4 From perusal of aforesaid sets of seized pages, it is quite evident that one page is photocopy of the other. I have perused the other seized pages also and found that the AO has made double addition with reference to these pages and therefore at least one of the addition out of each of two is required to be deleted. Total additions which are held to be deleted for AY 2017-18

comes to Rs. 31,21,008/- and for AY 2015-16 and 2016-17, this amount held to be deleted comes to Rs. 3,53,826/- and Rs. 1,84,14,307/- respectively.

12.3 Similarly, CIT(A) has also reproduced annexure 4 so submitted by Id. AR before him. It is seen that the Id. CIT(A) has discussed the entries in this chart as per annexure 4 at para 12.5 and 13. These are reproduced below for the sake of clarity:-

Chart as per Annexure 4 so submitted by Ld. AR is reproduced below:

Exhibit No.	Pg No.	APB	SCN page	Addition (Rs.)	Head of addition	A.Y	Exhibit No.	Pg No.	APB	SCN pg	Addition (Rs.)	Head of addition	A.Y	Remarks	Deletion on account of duplication	Deletion because the same is unaccounted purchase/ purchase return
B13	1	95	6	2,27,55,874	Unacc Sales	17-18	B13	2	94	6	39,88,944	Unacc Sales	16-17	Page no. 1 is memo for goods received on approval. Page no. 2 is the summary of appellant's account in the vendor's books.the details of memo on page 1 are included in the account summary on page no 2	2,27,55,874	39,88,944
B-10	3	73	4	23,096	Unacc sale	17-18	B13	2	94	6	39,88,944	Unacc Sales	16-17	Page no. 3 of Exhibit B-10 is memo for goods received on approval. Page no. 2 of Exhibit B-13 is the summary of appellant's account in the vendor's books.the details of memo on page 3 of exhibit B-10 are included in the account summary on page no 2 of Exhibit B-13	23,096	
B-10	4	72	4	2,45,339	Unacc sale	17-18	B13	2	94	6	39,88,944	Unacc Sales	16-17	Page no. 4 of Exhibit B-10 is memo for goods received on approval. Page no. 2 of Exhibit B-13 is the summary of appellant's account in the vendor's books.the details of memo on page 4 of exhibit B-10 are included	2,45,339	

there was typographical mistake in the first entry where the figure '2' has been doubly typed and the correct figure is Rs. 27,55,874/- and accordingly the amount related to double addition for AY 2017-18 will be actually Rs. 39,86,801/-, instead of the amount mentioned in the chart. Accordingly the Ld. AR submitted the revised chart. I have carefully considered the explanations of the Ld. AR and perused the chart as per Annexure 4 as well as the relevant seized pages. It is seen from perusal of page 2 of Exhibit B-13, that the AO has taken the gross amount which included the opening and closing balance also of the account of the appellant with some vendor. Apart from it, instead of adding the amount related to four transactions which are appearing on page 2 of B-13, the AO has added the running balance of those days. Apart from it, on perusal of this page, alongwith page No. 3, 4 and 5 of Exhibit B-10 and also page No. 6 of Exhibit B-13, it is seen that at page 3, 4 and 5, there are approval memos and these have been summarized at page 6 of B-13 in handwritten manner with slight changes in the amount due to discount and these entries have finally gone on page 2 of B-13. Similarly is the position in relation to the page 3, 4, 4A and 5 of Exhibit B-13 which are basically duplicate approval memos (except page No. 3) of page 3, 4 and 5 of Exhibit B-10, which has been perused by me. Page 3 of B-13 contained details of gold jewellery returned to the vendor which is also reflected on page 2 of exhibit B-13. All these details have been verified by me and found to be correct. Now coming to the argument of the Ld. AR that these are approval memo, same is hereby rejected in view of the fact that precise details of gold weight alongwith purity of gold and amount etc. have been mentioned in the bill form on page 3, 4 and 5 of B-10 and accordingly these are held to be purchases made by the appellant. The fact that these are purchases is also evident on perusal of page 1 and page 2 of Exhibit B-13 wherein these, pages reflect the ledger account of the appellant concerned in some vendor's book.

13. *Accordingly, an amount of Rs. 39,86,801/- is required to be deducted out of the total sales estimated by the AO on account of duplication in AY 2017-18. Moreover the amount of Rs. 39,88,944/- as per page 2 of B-13 has been considered by the AO incorrectly as sales whereas actually it is found to be purchase as discussed herein above and accordingly this amount is further required to be excluded from sales estimated by the AO. Since the AO has added this amount in AY 2016-17, same is required to be excluded in AY 2016-17. Further on account of duplication of entries an amount of Rs. 4,37,824/- is held excludable from sales treated by AO for AY 2016-17. Thus total exclusion / deduction out of the sales in AY 2016-17 comes to Rs. 44,26,768/- as given in brief in the chart. There are various other sales which are reflected on various pages are being made by the appellant for which addition of the profit embedded in them is going to be confirmed by me in the present order and accordingly no separate treatment is required for these purchases. Therefore in brief, out of the total sales of Rs. 7,46,04,862/- estimated by the Ld. AO, an amount of Rs. 71,07,809/- is required to be*

straightaway deducted and the additional sales amounting to Rs. 6,74,97,053/- is held to be confirmed.

The bench noted from the order of the Id. CIT(A) that he has in the body of order has even juxtaposed the corresponding pages of show cause notice so as to make the issue very clear and unambiguous. At other places in the order of Id. CIT(A) specific details as per seized documents and working sheet details have been reproduced this makes the clear the conclusion that he arrived while dealing with the appeal of the assessee. Based on these facts we are not in agreement with the arguments of the Id. CIT DR that these sheets are in the nature of the additional evidences and therefore the arguments of the Id. CIT DR on these issues are rejected because in this appeal the Id. AO through Id. CIT DR has not pointed any specific entry or transaction which might have been incorrectly considered or interpreted by the Id. CIT(A). As the Id. AO was having the time from the receipt of the order till the hearing of the this appeal took place so we see no reason to deviate from the detailed speaking finding recorded by the Id. CIT(A) on this issue. So far as the contentions of the 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 appeal order as discussed herein above.

12.4 As regards the merits of reduction of the sale amount by the Id. CIT(A) is concerned, at the outset at the cost of repetition it is seen that Id. CIT DR has not pointed out any single instance where the CIT(A) has incorrectly allowed reduction / exclusion of the amount while working of total unaccounted sales. Moreover, on perusal of the order of Id. CIT(A) and also the explanatory sheet furnished at APB 62-63 before us, it is seen that same amounts have been mentioned at two different pages of the various exhibits and accordingly finding of deletion of sale amount so given by the Id. CIT(A) at para 12.4 of his order being Rs. 31,21,008/- for AY 2017-18 is held to be correct and does not require any interference. Similarly, from perusal of order of Id. CIT(A) more particularly para 12.5 and 13 along with chart as per annexure 4 of the Id. AR so reproduced by the Id. CIT(A) which has also been submitted before us as APB 64-65, we see no reason to differ with the finding of Id. CIT(A) regarding reducing the amount of the sale by Rs. 39,86,801/- in AY 2017-18 by way of purchases being considered by the Id. AO as sales. Thus, we do not see any infirmity on these items and thereby concur with the order of Id. CIT(A) in respect of

deletion of various additions related to sales. To be very precise order of Id. CIT(A) directing following addition to be deleted in AY 2017-18, as mentioned in written submission of Id. AR, does not require any interference.

Particulars	Amount
Double additions on account of replicate pages	31,21,008/-
Incorrect addition on account of goods received on approval considered as sales	39,86,801/-
Total	71,07,809/-

12.5 Now coming to the other argument of Id. CIT DR about investment in unaccounted purchases not considered by Id. CIT(A) the attention of the bench was drawn by Id. AR of the appellant that unaccounted sale receipts are the sources for making unaccounted purchases and this being a cycle, generally no unaccounted investment is separately required to be added. As regards, initial investment in the year under consideration is concerned, it was submitted by Id. AR that unaccounted income in the preceding year so going to be sustained would be quite enough to take care of initial investment during the year under consideration and similar will be the position for preceding year. It was explained that in AY 2017-18 unaccounted purchases of Rs. 73,23,783/- has been noticed by the Id. AO and Id. CIT(A) has further given finding that purchases totaling Rs. 39,86,801/- have been included by the Id. AO in the sales. Accordingly,

total purchases would be about Rs. 113 lakh spread over the period of 12 months of the year. On the other hand unaccounted sales so confirmed by the Id. CIT(A) are to the tune of Rs. 6,74,97,053/- and the unaccounted sale receipts would take care of the unaccounted investment in purchases. Moreover initial investment during the year under consideration can be very well taken care of by the addition of profit of Rs. 2,31,11,086/- on unaccounted sale of Rs. 20,18,43,551/- so confirmed by Id. CIT(A) in period relevant to AY 2016-17. Moreover in AY 2015-16 also, the appellant has offered Rs. 3,38,35,315/- as additional income during the course of survey which would take care of initial investment in AY 2016-17 and also in AY 2015-16 itself.

12.6 We have considered the argument of the Id. CIT DR and also of the Id. AR of the assessee. It is seen that unaccounted purchases so estimated by the Id. AO is about Rs. 73.2 lakh and further Id. AO included purchases of about Rs. 39.8 lakh in the sales which have been noticed by the Id. CIT(A) to which we have also concurred. Accordingly, unaccounted purchases for the year under consideration so noticed from the seized documents comes to about Rs. 113 lakh as against which unaccounted sales upheld by us for the year under consideration are Rs. 6,74,97,053/-.

Accordingly, we are in agreement with the argument of the Id. AR of the assessee that unaccounted investment in purchases would be out of unaccounted sales receipts and the initial investment during the year under consideration would be out of the sales receipts of Rs. 20.18 crore in the preceding year (i.e. AY 2016-17) on which profit of Rs. 2,31,11,086/- has been held to be sustained by us. We have also seen that in AY 2015-16, the assessee has offered Rs. 3,38,35,315/- as additional income found during the course of survey. Accordingly, we see no infirmity in the order of Id. CIT(A) on this issue of not making addition on account of investment in purchases, at his own instance, though no separate addition has been made by the Id. AO related to these purchases. Thus, we see no reason to interfere with the finding of Id. CIT(A) on the various issues under consideration. Accordingly, grounds of appeal so taken by the revenue are rejected.

12.7 Now coming to the argument taken up by Id. AR about addition of profit on unaccounted sale incorrectly made u/s 68 and thereby need to be fully deleted, we are of the view that though the unaccounted sale are not entered in the books of accounts by its very nature and thus legally speaking provisions of section 68 could not have been invoked for making

the such addition, as section 68 can be invoked in respect of any credit entry in the books of accounts for which assessee fails to explain the nature and source. However, undisputedly these are unaccounted sales on which unaccounted profit has been earned by the appellant and obviously same is required to be added as estimated income while determining the total undisclosed income of the appellant pursuant to the search assessment. Thus merely on a highly technical issue of undisclosed profit not covered u/s 68, the argument of appellant is not accepted for fully deleting the addition.

12.8 Another argument taken by the Id. AR is 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 notings related to expenses were also found in the seized documents and accordingly the net profit be considered as income instead of gross profit considered as income by Id. CIT(A). 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 appellant has brought out very miniscule details of expenses and has not given the specific details from each of the seized pages wherein these expenses might have been mentioned, if any. Moreover, he has not exactly specified with supporting details that these are not recorded in the books, to support its argument and to counter the normal practice as mentioned above. Accordingly, argument of the appellant is hereby rejected and application of GP rate on unaccounted sales so directed by the Id. CIT(A) is upheld.

12.9 Next issue is regarding application of GP rate on unaccounted sales. We have already discussed this issue in the earlier para of this order and we have held that estimation of GP rate so made by Id. CIT(A) does not require any substitution from our side and accordingly as the Id. CIT(A) has applied those GP rates of the relevant years on the unaccounted sales for working out the profit, same is found to be quite reasonable by us and not interfered with. In brief, grounds so taken by the revenue and also by the appellant on these issues are rejected.

Assessee's ground No. 6 & 7 and Departmental ground No. 13 to 15:

13. All these grounds of appeal relate to additions made by Id. AO in respect of shortage of stock found at the business premises of the assessee and excess stock of diamond and silver jewellery found at the business premises as well as diamond and silver jewellery found at the residence of the assessee, treated as unexplained by the Id. AO.

13.1 Brief facts in respect of these ground of appeal are that on physical stock verification carried out by the departmental officers during the course of search operation at the business premises of the appellant i.e. M/s Garg Jeweller, the following difference was observed by the search officials:

Item	Weight as per books (In gms)	Weight as per valuation report (In gms)	Difference	Valuation
Gold	60116.36	42550.94	-17566	49834742/-
Silver	126866.29	152297.00	+25430.71	1144350/-
Diamond	193.410 CT	41.80 CT	+151.61	2425760/-
Semi-precious and precious stones	PS	-	12085.5CT	54913/-

Further, the search officials had found the following jewellery in the appellant's possession at his residence and alleged the same to be unexplained:

Description	Value
Silver jewellery	Rs.341361/- (i.e. 16875 gms)
Diamonds	Rs.859262/- (as per JF-7)

13.2 Detailed submissions were made before Id.CIT(A) by Id. AR in this regard and addition on account of shortage of stock of gold was reduced as well as part relief was allowed in respect of diamond and silver jewellery found at residence of the appellant. In grounds of appeal raised by assessee before us, the assessee has challenged the action of Id. CIT(A) in:

- not accepting the explanation with regards to 13484.519 gm jewellery (i.e. difference was on account of goods sent on approval), though in value terms telescoping benefit was allowed and no addition was sustained.
- confirming the addition of Rs.38,650/- on account of silver ornaments found at residence of assessee.

Whereas, department has challenged the relief allowed by Id. CIT(A). As all the grounds of appeal are interrelated, the same are dealt with together for the sake of convenience.

13.3 In respect of the gold jewellery found in short at the business premises of M/s Garg Jewellers, Id. AR has taken specific argument that jewellery weighing 4081.481 gms. was given for approval to M/s Royal

Jewellers and the general argument about remaining jewellery being given on approval to the customers and it is submitted that there were various pieces of jewellery that had been sent to the customers on approval basis and remained in their possession as on the date of search. In jewellery business it was a normal and accepted practice to send jewellery to customers on approval basis. The above fact had also been explained by the appellant to the search officials as well as to the Id. AO during the course of assessment proceedings and to Id.CIT(A) during appellate proceedings. The Id. AO has ignored the submission of the appellant and proceeded in the direction of making the additions by alleging the jewellery found in short as unaccounted sales made by the appellant. Ld.AO made addition worth Rs.1,17,31,098/- by applying GP rate of 23.54% on value of such alleged shortage of stock of Rs. 4,98,34,742/- (i.e. 2837 per gram on 17566 gms). On appeal, Id. CIT(A) accepted the submission of assessee in part, i.e. regarding items weighing around 4081.481 grams, which were sent to the appellant's sister concern M/s Royal Jewellers on approval basis. However, submission regarding balance jewellery, i.e. 13484.519 gms, which was claimed to be lying with various other customers of the appellant who had taken the jewellery on approval basis and were pending for approval was not accepted.

13.4 Further, even though quantitative shortage of stock for 13484.519 gms. was not accepted, alternative plea of assessee was accepted that addition worth of profit on unaccounted sale of Rs.6,74,97,053/- was already confirmed in this case on the basis of loose papers found and seized. Accordingly, Id. CIT(A) held that separate addition of profit on such alleged shortage of stock of gold of Rs. 3,82,55,580/- (i.e. by applying rate of 2837/- per gram) would tantamount to double addition.

13.5 As regards, excess silver jewellery and diamond found at the business premises, Id. CIT(A) did not accept the argument of Id. AR of approved valuer's estimate being incorrect, as no specific instance was pointed out by Id. AR. Therefore addition of Rs. 36,25,023/- was upheld in isolation. However Id. CIT(A) accepted the argument of the appellant that substantial addition on account of unaccounted sales have been made and most part of which has been confirmed by him, therefore in absence of any evidence of utilization of this income by way of unaccounted sales, elsewhere, he has given the finding that it will be reasonable and justified to give telescopic effect of unaccounted income due to unaccounted sales with the present addition on account of excess stock of silver jewellery and

diamond. Thereby the Id. CIT(A) finally deleted the addition of Rs. 36,25,023/-.

13.6 In respect of jewellery and ornaments and silver, diamonds and precious and semi-precious stones found in excess at residence is concerned, Id. AO separately discussed gold jewellery weighing 938 gms. and as 1350 gms. jewellery is considered to be reasonable as per the CBDT circular, no addition was made for gold jewellery. However, the jewellery of diamond and precious and semi-precious stone being studded on gold was considered separately by the Id. AO and the value of same was added. The Id. CIT(A) accepted the argument of the Id. AR that the diamond and precious and semi precious jewellery are normally studded in gold or silver and these are part of the jewellery in general. Accordingly, Id. CIT(A) has considered the availability of jewellery as reasonable on the basis of CBDT circular and included all types of jewellery while giving credit of reasonable acquisition of jewellery by any family. Accordingly, addition so made by the Id. AO was reduced and was sustained to the extent of Rs. 38,650/-. For this excess jewellery, argument taken by the AR being general was not accepted by the Id. CIT(A). In appeal before us, the Id. AR has taken same arguments as taken before the Id. CIT(A) and requested

for deleting the remaining addition and has also given detailed submission about the additions so deleted by Id. CIT(A) being reasonable and justified. On the other hand, Id. CIT DR has supported the order of Id. AO. It was submitted that considering the diamond studded jewellery and silver jewellery and adjusting it against the reasonable acquisition considered on the basis of CBDT circular is just based on assumption and presumption. Moreover, telescoping benefit so given without the assessee establishing the nexus may also be not allowed, as submitted by Id. CIT DR.

13.7 We have carefully perused the order of both the lower authorities and gone through the facts and relevant record. As regards, shortage of stock in the case of appellant is concerned, in the appeal before us of another group concern namely M/s Royal Jewellers, it was found that there was excess stock. The Id. CIT(A) in the case of M/s Royal Jewellers has accepted the argument of the Id. AR that jewellery to the extent of 4081.481 gms. was received on approval from M/s Garg Jewellers [Proprietor Shri Jitendra Kumar Agarwal] and addition of excess stock to that extent was deleted in the case of M/s Royal Jewellers. On going through the facts and in the circumstances of the case in the appeal before us in the case of M/s Royal Jewellers, we have upheld the finding of Id.

CIT(A). Accordingly, in the instant case of the appellant shortage of the jewellery at the business premises so found explainable to the extent of 4081.481 gms. by the Id. CIT(A) is considered to be reasonable and justified by us and no interference is called for. Remaining shortage of stock of jewellery was attempted to be explained by the Id. AR by taking general argument that these are also given on approval to the different customers but as neither the names of the different specific customers nor the quantity with each of them was mentioned the Id. CIT(A) has not accepted the argument. On the basis of above reasoning, we are also not inclined to accept the argument of the Id. AR regarding shortage of balance stock of jewellery. The shortage of stock of jewellery valuing Rs. 3,82,55,580/- has been reasonably presumed by the Id. AO to be due to sale made outside books of accounts, to which we also agree. However, Id. CIT(A) has noticed that appellant has made various sales outside books of accounts so found reflected in the seized document and which has been confirmed to the extent of Rs. 6,74,97,053/-. As no separate evidence of sale of such stock leading to the shortage of stock was found during the course of search, accordingly CIT(A) held it reasonable that shortage of stock is on account of sales which obviously are included and reflected in the various seized documents and Id. CIT(A) has given finding that making

a separate addition is not needed as it will lead to double addition. The argument of the Id. AR about the remaining shortage of stock of jewellery being given on approval is general and not based on specific details of persons and the quantity with each of the person. Accordingly same is rejected. The shortage of stock of jewellery so determined by Id. CIT(A) at Rs. 3,82,55,580/- is upheld. We also agree with the finding of Id. CIT(A) that such shortage of stock is due to sales not reflected in the books and these will be part of the unaccounted sales so noticed in the seized documents which are totaling to Rs. 6,74,97,053/-. Accordingly, we are also of the considered view that no separate addition on account of profit on sale of stock leading to shortage of stock is needed as these sales would be part of unaccounted sales so reflected in the seized documents, which are quite normal and accordingly making separate addition on this issue would tantamount to double addition.

13.8 Now coming to the excess silver jewellery and diamond found at the business premises, we are not inclined to accept the argument of Id. AR of approved valuer's being incorrect which is unsupported by specific instances and reasoning therefore finding of Id. CIT(A) and also of AO of investment in excess silver jewellery and diamond at the business premises amounting to Rs. 36,25,023/- is upheld. However, the argument

of the Id. AR that addition on account of profit on unaccounted sales have been partly confirmed by the Id. CIT(A) and if also confirmed by your honour, then telescoping benefit be allowed. On consideration of the facts by us, it is seen that we have partly confirmed the profit on unaccounted sales in the earlier paras of this order and accordingly in absence of evidence of investment of such profit elsewhere, the argument of Id. AR of investment in such excess silver jewellery and diamond found at the business premises being out of such profit is quite reasonable and justified. Accordingly, we upheld the finding of CIT(A) in this regard.

13.9 At last taking up the issue of the gold jewellery, gold jewellery studded with diamond and precious stone and silver jewellery found at the residence, as already mentioned the Id. AO has only considered the quantity of gold jewellery only weighing 938 gms. to be reasonably acquired by the Indian family as per CBDT circular, which comes to 1350 gms. and added the value of diamond studded gold jewellery, silver jewellery etc. as unexplained investment. The Id. CIT(A) has considered the value of total jewellery and then allowed the credit of value of 1350 gms. of gold jewellery which is considered reasonable as per the CBDT circular, thereby reducing the addition to the extent of Rs. 38,650/-. We

have considered the facts and the legal position on this issue. It is seen that CBDT instruction on this issue has been held to be the guideline by the various tribunals and the high courts. It is a common practice in the traditional Indian families for gradually acquiring gold jewellery as well as gold jewellery studded with diamond or precious, semi-precious stones. Accordingly, applying the CBDT Instruction only to the gold jewellery and leaving aside the gold jewellery studded with diamond or precious and semi-precious stones would not be justified. Considering these facts we find the order of Id. CIT(A) on this issue is reasoned one and does not require any interference. Simultaneously we reject the argument of Id. AR of deleting the addition of balance excess jewellery also.

Departmental ground No. 16:

14. Under this ground of appeal the department has challenged the action of the Id. CIT(A) in deleting addition of Rs.90,373/- made by Id.AO on account of foreign currency found in possession of the appellant in the search proceedings. The details of the same is as under :

S. No.	Currency	Amount in foreign currency	Exchange Rate	Amount (Rs.)
1	Pound	10	89.04	890.4
2	Euro	630	80.09	50456.7
3	Dollar(Hong Kong)	400	8.97	3588

4	HSBC	4500	0	4500
5	UAE (Dirham)	5	19.13	95.65
6	Dollar (Singapore)	487	51.19	24929.53
7	USD	200	70.00	14000.00
TOTAL				98461.00

During the course of search and also during the course of assessment proceedings the assessee with supporting evidence explained the source of the foreign currency found in his possession. The Id. AO after considering the appellant's submission had observed the following:

“The foreign currency of Hongkong and UA found from possession of the assessee is reasonable considering their travel to these countries. However, balance foreign currency to the extent of Rs.90373/- remain unexplained which is added back to the total income of assessee u/s 68 of the I.T. act and taxed as per provisions of section 115BBE of the I.T.Act.”

On appeal, Id.CIT(A) deleted the addition by allowing telescoping benefit out of income confirmed towards unaccounted sales.

14.1 In this regard, it is submitted that the addition made by the Id. AO in respect of the foreign currency u/s 68 of the Act by alleging the same as unexplained cash credit is totally misplaced. Invocation of provision of 68 suffer from a legal defect and deserve to be deleted on this legal ground even without going into the merits of this ground.

14.2 Without prejudice to the above it is submitted that the foreign currency in denomination of Pounds, Euros, Singapore dollars and US dollar were received by the appellant in consideration of some stray sales made to various foreign tourists that visited his store at Johri Bazar and shown keen interest in buying jewellery over a period of time and these foreign currency notes were kept preserved as hobby. This fact had been explained by the appellant even during search vide his answer to question no. 30 recorded at his shop. It is submitted that the appellant's jewellery store is a very renowned store located at the most prime location in Johri Bazar. Further, Jaipur city is a tourism rich city which attracts thousands of foreign tourists every year. The Id. AO has failed to appreciate this fact and the submission of the appellant and has made an addition of Rs.90,373/- on account of these foreign currency notes. The Id. CIT(A) has already deleted the addition based on the submission made by the assessee and in the absence of any specific submission from the revenue we do not find any merits in the grounds of the revenue and thus we confirm the finding of the Id. CIT(A) on this issue. Therefore, this ground no. 16 raised by the revenue stands dismissed.

Departmental ground No. 17:

15. 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 of Id. AR, the Id. CIT(A) has decided the issue broadly in favour of the assessee. The department is in appeal on this issue. The Id. CIT DR has submitted that Id. AO has invoked the provisions of section 68 on the addition on account of undisclosed cash sale, undisclosed cash deposits in bank related to cash sale during pre-demonetization period. Since these additions had been made by Id. AO u/s 68, provisions of section 115BBE has been invoked by Id. AO. The finding of the Id. CIT(A) is 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 consequently provisions of section 115BBE so invoked by the Id. AO is not justified. 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 and stated that 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 other condition is that

assessee offers no explanation or explanation is found unsatisfactory. There have been ample number of decisions of various High Courts and also the Apex Court on this issue. It is a settled legal position. The courts have held that for any addition to be made u/s 68 of I.T. Act, 1961, the essential prerequisite is that 'there should be any sum found credited in the books of accounts of the assessee'. Since undisclosed cash sale and unexplained foreign currency is not recorded in the books of accounts, therefore provisions of section 68 cannot be invoked while making the additions. Undisclosed cash deposit in the bank is also not a credit entry in the books of assessee. Accordingly, it was submitted by the Id. AR that decision of Id. CIT(A) may be accepted and ground of the revenue may be rejected. In this regard, Id. CIT DR has cited the decision in the case of Hazi Nazeer Hussain (Delhi Bench third member decision). The Id. AR submitted that facts of the case cited by Id. CIT DR are different in as much as that case is concerned. 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 persons crediting the ledger account. Accordingly, it was held that failure on the part of the assessee to make credit entry in the respective accounts would not entitle the assessee to claim that no account is credited. Thus ratio-decendi of above cited case is not applicable in the

instant case of the assessee. The Id. AR of the assessee also submitted that in any case addition so made by Id. AO in respect of undisclosed cash deposits in bank related to cash sales during pre-demonetization period has been deleted and addition in respect of cash sale has been reduced by Id. CIT(A) and for remaining additions appeal is pending before the Hon'ble Bench which will surely and hopefully would be reduced to NIL and accordingly there will not be any occasion for invocation of provision of section 115BBE on any substantial amount of addition after telescoping and considering the legal position as submitted above.

15.1 We have considered the rival submissions on this issue and also gone through the facts of the case. As discussed here in above 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 as discussed in detail in this order in the earlier paras. The addition on account of unaccounted cash sales have been reduced and addition of undisclosed cash deposit in bank related to cash sales during pre-demonetization period has been fully deleted by Id. CIT(A) for which we had also given our concurrence as per earlier paras of this order. The unexplained foreign currency is also not found recorded in the books of accounts and the same is also not covered u/s 68 of I.T. Act,

1961 and even on this issue we have concurred the finding of the Id. CIT(A). 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 except of unrecorded sale 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 section 115BBE, as the addition of unrecorded sales and unexplained foreign currency 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 is dismissed and that of the revenue is also stands dismissed.

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

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/06/2023

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

***Ganesh Kumar**

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

1. The Appellant- Shri Jitendra Kumar Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 112 & 181/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar