

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. 116 /JP/2020
निर्धारण वर्ष / Assessment Year 2017-18

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

आयकर अपील सं./ITA No. 177 /JP/2020
निर्धारण वर्ष / Assessment Year 2017-18

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

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

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

आदेश / ORDER

PER BENCH:

These are two 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 8.11.2019 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 taken by the assessee M/s Royal Jewellers in ITA No. 116/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 9.06% on the declared turnover of the assessee as against the Gross profit Rate of 7.86% declared by the

assessee as per the audited books of account and thus the consequent addition of Rs.9,99,016/- 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 Rs.1,69,21,149/- and Rs.1,13,46,770/- 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 and inventorized under Exhibits C-13, C-17, C-18, C-19, A-8, A-9 and A-10 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 That the Id. CIT(A) has further erred in presuming that the aforesaid approval memos seized during the course of search that were clearly marked as either "APPROVAL" or "Rough Estimate" amounting to Rs.18,67,67,651/- reflect undisclosed sales made by the assessee by ignoring the facts of the case and the submission made by the assessee.

6. That the Id. CIT(A) has further erred in concurring with the finding of the Id. AO that various seized paper reflected undisclosed sales made by the assessee amounting to Rs.12,52,40,295/- by ignoring the fact that the analysis of the Id. AO suffered from various discrepancies and were flawed.

7. That the Id. CIT(A) has further erred in estimating the income earned on such alleged undisclosed sales of Rs.18,67,67,651/- and Rs.12,52,40,295/- by erroneously applying the estimated GP rate as against the NP rate of 2.1% 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.1,69,21,149/- and Rs.1,13,46,770/- is bad in law and deserves to be deleted.

7.1 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.1,69,21,149/- and Rs.1,13,46,770/- on the basis of GP rate therefore is bad in law and deserves to be deleted.

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. 177/JP/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 in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the trading addition of Rs. 1,11,42,797/- 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 @ 24.14% by AO for the year AY 2017-18”

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in estimating the GP at 9.06 % against the GP estimated by AO at 24.14% 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.”

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 9.06% against the GP estimated by AO at 24.14% without appreciating the fact that the Hon'ble ITAT Jalpur set aside the case of Sh. Jitendra Kumar Agarwal of assessee group 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”

5. 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. 70,02,127/- in spite of the fact that out of total sales of Rs. 8,15,83,283/- made during 365 days sales aggregating to Rs. 70,02,127/- made in just 1 day (8th November, 2016) and sales of Rs. 7,45,81,156/- were made by the assessee in balance 364 days. This shows the irregular patten of sales on declaration of demonetization 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 13% 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 42.05%?”

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. 70,02,127/- in spite of the fact that prior to 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"

7. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 70,02,127/- 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 36 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.

8. On the facts and the in circumstances of the case and in law the Ld. CIT(A) has erred in holding the unaccounted sale to the extent to Rs. 44,97,83,330/- against the unaccounted sale determined by the AO at Rs. 60,12,17,723/- without appreciating the fact that the assessee failed to explain the noting on seized paper with documentary evidence and addition of Rs. 60,12,17,723/ made u/s 68 of the Income Tax Act on account of failure on the part of assessee to explain the transaction noted in seized paper under garb 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 I.T. Act as well as the Ld. CIT(A) allowed assessee's version of reply without calling for remand report.

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. 28,26,79,919/- out of addition of Rs 60,12,17,723/- by applying GP rate of 9.06% on balance undisclosed sale of jewellery Rs. 31,20,07,946/- (44,97,83,330 confirmed on account of undisclosed sale- Rs. 13,77,75,384/- undisclosed sale of bullion held taxable, after applying GP, in the hands of Shreenath Corporation) in spite of the fact that the addition of Rs. 60,12,17,723/- made u/s 68 of the Income Tax Act on account of failure on the part of assessee to explain the transaction noted in seized paper under garb 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 L.T. Act as well as the Ld. CIT(A) allowed assessee's version of reply without calling for remand report ?"

10. 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. 6,88,876/- out of addition of Rs. 60,12,17,723/- and applied GP rate of 0.5% on balance undisclosed sale of bullion Rs. 13,77,75,384/- (44,97,83,330 confirmed on account of undisclosed sale- Rs. 31,20,07,946/- undisclosed sale of jewellery) held taxable in the hands of Shreenath Corporation in spite of the fact that the addition of Rs. 60,12,17,723/- made u/s 68 of the Income Tax Act on account of failure on the part of assessee to explain the transaction noted in seized paper under garb 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 I.T. Act and the assessee is not dealing in bullion as well as the Ld. CIT(A) allowed assessee's version of reply without calling for remand report "

11. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,51,18,854/- made on account of excess stock of gold and silver jewellery by giving telescoping credit of profit an unaccounted sale with unaccounted income of Rs. 28267919/- through unaccounted sales and confirmed by him in spite of the fact the assessee failed to furnish any evidence of purchase of gold and silver jewellery and in absence of the same it cannot be determined whether the unaccounted income generated through unaccounted sale was available to utilized the same for purchase of excess stock of silver and gold jewellery?"

12. 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."

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

4. The fact as culled out from the records is that the a search and seizure action u/s 132 of the Income Tax Act, 1961 ("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Chandra Prakash Agarwal Group on 28-07-2016 of which the Assessee is one of the members covered u/s 132. The jurisdiction over the case was assigned to Central Circle - 2, Jaipur by the Commissioner of Income Tax, Jaipur-1, Jaipur by means of an Order u/s 127 of the Act circulated vide CIT-I/ITO(Hqrs)/JPR/u/s127/2016-17/2328 dated 01-12-2016. The assessee filed a return of income for Previous Year

2016-17 relevant to Assessment Year 2017-18 declaring an income of Rs. 17,18,740/- on 30.09.2017. Notice under section 143(2) of the Act dated 30-01-2018 was issued and served upon the Assessee on 31-01-2018. Information and details pertaining to the case of the assessee relevant to assessment of its 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) attended the hearings 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 issues pertaining to assessment of income were discussed with him and the AR was heard. The assessee is a partnership firm engaged in the business of manufacturing and trading of gold jewellery.

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(i) to 6(v). The Id. AO also noted that during the course of search

some documents found and seized which has been inventorized as Annexure-AS, Exhibit-11, page 19,208 21. The copy of page 19 was also found from residence of another partner Smt Pooja Agarwal, at 1756, Telepada, SMS Highway, Jaipur which has been seized and inventorized as page no. 1 of Annexure-A, Exhibit-10. These page contain details of handwritten balance sheet for FY 2013-14 and FY 2015-16. These pages also contains details of opening of FY 2014-15. On perusal of these it is found that it is a parallel balance sheet of the firm which is maintained in form of metal Le. 24 CT gold. On these paper name of both the partner has been written in cord word i.e. 'GJ' & 'MI. The abbreviation of these are Gargleweller and ManojKhandelwal respectively. The Garg Jeweller is the prop. Concern of Shri Jitendra Kumar Agarwal who is a husband of 2nd partner of the firm Smt. Pooja Agarwal. These pages also contain details of net profit, distribution of profit between the partners, rate of the gold on the date of preparation of balance sheet, opening balance of partners, cash in hand and cash in bank etc. all these details have been found mentioned in these pages in 24CTgold. For example at page no. 19 cash amounting to Rs 320816/- has been converted in to 112.570 gm of 24 CT GOLD by dividing Rs. 2850 which is the rate of 24 CT gold as on 30.03.2016. Further, one of the partner Shri Manoj Kumar Khandelwal was confronted with these

paper during the course of recording of statement wherein he acknowledged these paper as stock valuation of M/s Royal Jewellers as on 31-03-2014 or 31-03-2016. These pages contain details of net profit, distribution of profit between the partners, rate of the gold on the date of preparation of balance sheet, opening balance of partners, cash in hand and cash in bank etc. all these details have been found mentioned in these pages in 24CTgold. For example at page no. 19 cash amounting to Rs 320816/- has been converted in to 112.570 gm of 24 CT GOLD by dividing Rs. 2850 which is the rate of 24 CT gold as on 30.03.2016. As it is evident that these pages contain details of unaccounted net profit of the assessee firm which has been recorded in metal i.e. 34CT gold. Accordingly, the assessee was asked to furnish explanation on these documents vide note sheet entry 03.12.2018. In compliance of the same the assessee furnished his written submission on 08.12.2018

4.2 In view of the discussion in the assessment order the Id. AO based on the various discrepancies, a parallel undisclosed balance sheet maintained by the assessee and out of books purchase, sale and expenditure revealed from the documents seized during the course of search proceeding, it is held that books of accounts maintained by the assessee do not reveal the

true income of the assessee. Although the parallel undisclosed balance sheet is for F. Y. 2013-14 2015-16 but from the details of the opening stock of partner GJ (Garg Jewelers) and MK (Manojkumar Khandelwal) at 91280.140 and 23096.120 gm 24 CT gold in the parallel balance sheet was also exist prior to FY 2013-14 as well which includes AY 2011-12 to 2013-14. Similarly, the closing balance of AY 2016-17 is bearing on opening stock of AY 2017-18 and was in exist under preparation but could not be completed due to search action on 28.07.2016. In view of these discussion assessing officer hold that books of accounts maintained by the assessee do not reveal true income of the assessee for AY 2011-12 to 2017-18. Therefore, the books of accounts of the assessee for AY 2011-12 to 2017-18 rejected u/s. 145(3) of the Act.

4.3 Since, in the instance case books of accounts are rejected as discussed above, therefore keeping in view various jurisprudences holding that part history is the best guiding factor to determining taxable profit in cases where books of accounts are rejected. Accordingly, the assessee was asked vide note sheet entry dated 10-12-2018 to furnish G.P. rate of 5 previous years prior to AY 2011-12 which has been attained finality. But the assessee furnished the G.P. for AY 2011-12 to AY 2017-18 reasons best

known to the assessee. In these circumstances to find out the G.P. prior to the AY 2011-12 to 2017-18 an effort was made and on perusal of working copy of hard disk found and seized at 1756, Telipada SMS Highway, Choura Rasta, Jaipur and inventoried as Annexure-AS, Exhibit-24 it is gathered that G.P. for the AY 2010-11 and AY 2009-10 was 21.11% and 27.17% respectively. However, G.P. for AY prior to AY 2009-10 could not be gathered. In the given circumstances there is no other alternatives available but to considered the G.P. for AY 2009-10 and AY 2010-11 for determination of G.P for AY 2011-12 and onwards. Therefore, the average GP for AY 2009-10 & AY 2010-11 is come to 24.14% which is applied to AY 2011-12 to 2017-18. Accordingly, trading addition for AY 2011-12 to 2017-18 is computed as under:

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

*However, looking to the fact during AY 2017-18 assessee has induced his undisclosed income in books under the grab of cash sale, as discussed in Para 7, out of the total turnover of Rs. 8,15,83,283/- the bogus turnover to

the extent of Rs. 70,02,127/- is deducted and on balance turnover of Rs. 7,45,81,156/- GP rate of 24.14% is applied, resulting in trading addition of Rs. 1,21,41,812/-.

4.4 The assessing officer has observed that the assessee has deposited cash aggregating to Rs. 1,16,00,000/- in his bank account in demonetized currency notes during the demonetization period. In order to verify the source of cash so deposited, assessee was asked to explain the source along with documentary evidences, in response assessee contended that the cash has been deposited out of the sale made by the assessee during the pre-demonetization period. Assessee submitted sales ledger in support of the contention. The details of cash of source as shown by the assessee is as under:

Date	Invoice No.	Total Cash Invoice issued	Amount in INR
01.11.2016	Cash in hand	-	4340533
02.11.2016		2	53000
03.11.2016		1	11400
04.11.2016		1	17885
05.11.2016		3	50250
07.11.2016		1	11890
08.11.2016	412-451	40*	7020127
	Total	48	11505085

The reply filed by the assessee along with the relied upon documents were considered however the same not found accepted by the Id. AO on the following reasons:

- a. Assessee claimed cash sales aggregating to Rs. 70,02,127/- were made by him in single day in the month of November 2016 viz., on 08.11.2016 issuing total 40 invoices.
- b. From the above table it appears that, out of total sales of Rs. 8,15,83,283/- made during 365 days sales, aggregating to Rs. 70,02,127/- were made in just one day thus only sales Rs. 7,45,81,156/- were made by him in 364 days. This shows the irregular sales pattern during 1 day just before demonetization has started.
- c. The cash sales pattern of the assessee of immediately 2 preceding years is also compared which shows that even percentage of month wise cash sales made and total cash sales are compared even for three years the sales made by the assessee in just 1 day of November 2016 seems highly lopsided, viz. in the month of November assessee usually made cash sales of 13% as it appeared in the year 2014-15 & 2015-16 but suddenly in the year 2016-17 the cash sale in November rose to 42.05%.
- d. Even the total sales made by the in the year under consideration and particularly in the month of November 2016 is highly asymmetrical, viz. in the month of November assessee usually made sales below 10% as it appeared in the year 2014-15 & 2015-16 but suddenly in the year 2016-17

the sale in November rose to 31.53% and in month of January it again reached to below 10%.

e. Further, on examination of the sales bills it is found that prior to demonetization the bills were issued with complete details of the sold jewelry items as well as customers. The issued bills contains details of the purity of gold in CT along with weight and full description of the item sold like chain, Sat, Topas etc. The bills were issued full name and address of the person along with mobile numbers. Even on the date of declaration of demonetization i.e. 08.11.2016 bill no was issued to khusbuji showing full address as 40-A Gorbhand Nagar West Jalpur. it appears this bills was issued before declaration of demonetization. However, the bills issued thereafter on 08.11.2018 do not contains such details of the purchaser and only cash has been mentioned. The change in issuance of sales bills is clearly shows that transactions are dubious and details mentioned on the same cannot be verified.

On being asked vide note sheet entry dated 26.11.2018 to furnished full name and address of the person to whom cash sale was made during the period of demonetarization period, the assessee simply submitted that it

was not required as sale was under 2 lacs and there was no such requirement under law. The claim of the assessee is also found to be contrary since the bills issued prior to demonetization contains full details including mobile number even these sale was also below 2 lacs.

f. That out of total 40 cash sale invoices issued on 08.11.2016 invoices as much as 36 were ranged between 1,50,000-1,99,800/-. Further, neither a single invoice exceeded Rs. 2 lacs during 01.11.2016 to 08.11.2016.

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. 70,02,127/- 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 The Id. AO stated that on 28.07.2018 a search and seizure action was conducted on various premises of the assessee where in huge number of incriminating details and documents were found / inventoried / seized / impounded. Therefore, assessee vide show cause notice dated 01.10.2008 asked to explain the details and documents so found / inventoried / seized / impounded. In response the assessee filed written submission on 19.10.2018. The Id. AO noted that the reply of the assessee is not acceptable on account of the following reasons:

“a) The reply of the assessee is vague and general in nature no evidences have been furnished by the assessee in support of his claim.

b) On the sized / impounded documents, as summarized above, complete details with respect to the unaccounted sale made by the assessee is mentioned, viz., date of sale, name of buyer, description of items sold, gross weight and even in some cases the making charges etc. is clearly appearing.

c) In jewellery business the rates of a particular item cannot be fixed, since the item involved in precious metal rate of which is governed though the

international markets. Therefore, the claim of assessee that these are estimates only is baseless.

d) Further, the claim of the assessee that these pages signifies only the amount of advance is to be received in case of order is placed by a customer seems misplaced due to the reason that in the seized/impounded documents name of over 1000 parties is mentioned and it cannot be believed that all such parties are known to assessee (otherwise he would not sell goods on advance payment only to an unknown party) and all of them will pay only advance to assessee and non of the party will make complete payment.

e) Even if the contention is believed it cannot be understood as to what has stopped he assessee from producing such parties before the undersigned for verification.

f) Further, in respect of query no. 5 of show cause based on page no. 1 to 13, Exhibit-6, Annexure-AS is found and seized from 1756, Telepada SMS Highway, Chaura Rasta, Jaipur, which reveals that assessee has issued gold for making ornament to various parties. The assessee furnished that gold was issued out of stock available and labor payment to Karigars was

made by account payee cheques. However, gold issued to Shri Jadish Prasad Kamal Kumar Soni and M/s Ganpati Ornaments weighing at 1081.520 gram and 1184.730 gram respectively were not found in stock register of gold ornaments maintained by the assessee. However, it is found that the payment to labor amounting to Rs. 86521/- and Rs. 94778/- was paid and TDS was deducted.

As the stock issued to above persons is not found recorded in the books of accounts, hence, it is evident that the stock of gold ornaments weighing to 2266.25 gram is unaccounted sale of the assessee which is computes at Rs. 2900/-. In view of the above, the entries noted on these pages reflect the unaccounted transaction of assessee which are not recorded by the assessee in its regular books of accounts. Based on these 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 component i.e. purchase and other expenses, therefore no separate addition on account of unaccounted purchase and expenditure is require to made. Accordingly, addition of Rs. 60,12,17,723/- on account of undisclosed cash sale added to the total income of the assessee u/s 68 of

the I.T. Act and taxed at @ 60% as per provision of section 115BBE of the I.T. Act.

Difference in Stock

4.6 During the course of search proceeding at showroom of M/s Royal Jewellers and M/s Shri Nath Corporation at Shop. 1756, Telepada, SMS Highway, Jaipur physical verification of the stock of was taken on 30-07-2016 by registered valuer and the stock summary of the same is as under:

S. No.	Metal	Description	Gross weight as per physical verification	As per books of the assessee	Difference in weight	Difference in Rs.
1	Gold	Annexure-JF-1	98424.510 gram	93756.609 gram	4667.901 gram	14027042
	Silver	Annexure-JF-3	32.350 kg	-	32.350 Kg	1091812

From the above table is evident that stock of gold items and silver items were found excess by 4667.901 gram and 32.350 kg respectively. Accordingly, assessee was asked to furnish explanation on the stock found and valued by the approved valuer. The assessee has also contended that excess stock by 4081.481-gram was due to receipt of gold item on approval basis from M/s Garg Jewellers which is sister concern of one of the partner Smt. Pooja Agarwal. However, the argument put forward by the assessee also not found acceptable as the assessee has not furnished any evidence

that gold item were receipt on approval basis from M/s Garg Jeweller and were lying in the showroom of the assessee on the date of search. However, contrary to the claim of the assessee Shri Manoj Kumar Khandelwal admitted that that excess stock of gold item 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. Based on these discussion and evidence brought on the record it is evident that excess stock weighing to 4667.901 gram on account of gold item valued at Rs. 1402742/- is undisclosed stock of the firm. Further, in respect of the silver item weighing 32.350 Kg valued at Rs. 1091812/-, the assessee has claimed that these items were kept in the showroom of the assessee for remaking purpose which are ancestral assets of the partners. However, the assessee's claim not found convincing as M/s Royal Jewellers does not have in-house manufacturing facility and the firm sent gold for manufacturing to (various karigar Therefore, there was no reason to kept the silver item having huge. weight of 32 kg at showroom of the assessee. Further, the assessee failed to furnish any detail in respect of quantity of ancestral asset in the hands of the partners namely Shri Manoj Khandewal and Smt. Pooja Agarwal and question arised without the quantification of the silver how the same were divided between the partners

after the remaking as claimed by the assessee. Therefore, the claim of the assessee is an afterthought and does not have any substance. Thus, the silver of 32.350 kg valued at Rs. 1091812/- is also held as unexplained purchase of the assessee firm. Therefore, a sum of Rs. 2494554/- (Rs. 1402742/- plus 1091812/-) is added back to the total income of the assessee u/s 69C of the I.T. Act and taxed as per provision of section 115BBE of the 1.1. Act and taxed at @ 60% as per provision of section 115BBE of the I.T. Act

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 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 in addition to the written submission filed, they have also supplied emphasize on the judicial precedent to support the contentions raised in the written submissions.

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

A search and seizure action u/s 132 of the Income Tax Act, 1961 (*herein after referred to as the act*) was carried out on 28/07/2016 by the Income Tax department on CP Garg group, of which the assessee is one of the member and as a result its business premises and residential premises of its partners were also searched. During the course of search various loose papers/ documents were seized besides the seizure of cash, valuables etc. from various places including from the business premises of the appellant. Besides the statements of the partners of the assessee firm, their family members and employees were also recorded. Subsequent to the search, Return of income was filed on 30.09.2017 declaring total income at Rs. 17,18,740/- (APB 1-4).

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:

1) Trading Addition after invoking 145(3) :	Rs. 1,21,41,812/-
2) Cash Sales during demonetization	Rs.70,02,127/-
3) Addition on allegation of cash sales on the basis of loose papers	Rs.60,12,17,723/-
4) Difference in Stock	Rs. <u>1,51,18,854/-</u>

Aggrieved of the additions made by Id. AO, assessee preferred appeal before Id. CIT(A), which was partly allowed. Assessee preferred appeal against the additions sustained by Id. CIT(A) and department is in appeal against the relief granted by Id. CIT(A), the summary of the same is enclosed as Annexure “1” to the written submission.

The submission on the ground taken by assessee as well as by department is as under:

Assessee's Ground of Appeal No.1 & 2 and Departmental Ground of Appeal No. 2 to 4:

Under these grounds of appeal, assessee has challenged the action of Id.CIT(A) in confirming the action of Id.AO in rejecting books of accounts and part of trading addition confirmed by Id.CIT(A), whereas department has challenged the part of trading addition deleted by Id.CIT(A).

Facts in respect of these grounds 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 24.14% arbitrarily as against 7.86% declared by the appellant and consequently huge trading additions to the tune of Rs.1,21,41,813/- were made. Ld. CIT(A), after considering the submission made by assessee restricted to Trading Addition to Rs.9,99,016/- by applying GP rate of 9.06%

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

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

The point wise explanation to the reasons so recorded before applying the provisions of section 145(3) is rendered herewith:

1. The assessee 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 for the period upto the date of search, was part of the seized

records. As regards stock register for the period after the date of search is concerned, it was maintained in regular course and was available with assessee firm. Therefore, the observations of the Id. AO that the stock registers were prepared afterwards only for the purpose of assessment proceedings is without any basis and it seems that such observations were made without referring to the seized material thus such observations deserve 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. Thus, 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 the method as mentioned by the appellant in its Tax Audit report and as submitted during the course of assessment proceedings is not contrary to each other as alleged by Id. AO, but are complimentary to each other, which is explained as under:
 - (i) Under clause 14(a) of the FORM 3CD (APB 65), 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: i. Cost or market rates whichever is less, ii) cost & iii) market rate. The appellant had therefore, selected and submitted its method of valuation of stock as cost or market rate whichever is less, it being the most relevant to the method actually followed by the appellant. The relevant portion of the ITR is reproduced herewith for your ready reference:

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

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

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

3. The Id. AO further alleged that the appellant did not maintain stock registers in totality and that the appellant had tailored them for the purpose of assessment proceedings. However, in the assessment orders itself, Id. AO further observed

that the appellant did maintain stock registers as per the purity of gold, but the same were not maintained properly.

The appellant submits that the Id. AO's observations 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 a consistent basis in the regular course of business. The fact that the assessee is maintaining the stock register is also fortified from the observations of the search team that there were differences in the stock as per physical verification and as per stock register maintained and finally certain additions have also been made by the Id. AO in the hands of the appellant as per para 9 of the assessment order of A.Y.2017-18. This clearly shows that the stock registers were very much in existence even as on the day of search. It was only on comparison of physical stock taken by the department during the search with the stock reflected by the appellant in its books of accounts (i.e. stock register), it was concluded that the appellant was in possession of excess stock.

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

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

as a consequence to the survey carried out at the business premises of the assessee u/s 133A where such practice was also noticed earlier during survey by the department.

The above practice was also elaborately explained by Shri Manoj Khandelwal (Partner) to the search officials in his statements recorded u/s 132(4) during the course of search. The same is available as a part of statement of Shri Manoj Khandelwal recorded at his residence in Sundar Nagar on 31/07/2016 (Answer to question No.29)(APB 66-73).

The Id. AO has further observed that the appellant should have recorded the goods sent on approval basis in respective stock items as inward and outward, otherwise the availability of that particular stock item remained unverified. In this regards, the appellant reiterates that the appellant did keep a record of the inward and outward movement of the stock items sent on approval basis by issuing approval slips. Therefore, on any given day the actual stock of the appellant firm can easily be determined by reducing stock items for which approval slips had been issued from the stock available in the books. Further it is settled proposition of law that AO cannot walk into the shoe of the businessman and it is the businessman right to do his business in the manner which is convenient to him and from which the proper income could be deduced. AO cannot direct the businessman to act in a particular manner when the Act does not have any such kind of provisions. This contention of the appellant is supported by the following judicial pronouncements:

SA Builders 288 ITR 1(SC):

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

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

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

5. The Id. AO has lastly alleged that assessee is doing business outside the books of accounts also. Such an observation was made by the Id. AO is on the basis of loose papers found during the course of search. The appellant submits that the

papers relied upon by the Id. AO was not a parallel Balance Sheet but the rough details of stock and other estimates noted down by the partner of the appellant firm. These details, after corrections ultimately stand included in the regular books of accounts of appellant firm.

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

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

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

That AO applied highly unrealistic the GP rate of 24.14% (i.e. average GP rate for A.Y. 2009-10 & 2010-11) and thereby made trading addition of Rs.1,21,41,812/- That Id. AO applied the gross profit rate of 24.14% as against the declared GP rate of 7.86% and such an exorbitant GP rate was applied by taking the average GP rate of AY 2009-10 and 2010-11 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 12 in para (viii) of the order, he has taken the figures of GP of A.Y 2009-10 & 2010-11 from the data found in computer hard disc seized during the course of search.

In this regard at the outset it is submitted that the AO has applied average GP rate of A.Y. 2009-10 & 2010-11 in A.Y. 2014-15 and onwards which is after the expiry of more than 4 years and such approach is not at all appropriate and looking to the facts of the case is contrary to the settled proposition of law. The results of A.Y.2009-10 (8 years old) and 2010-11(7 years old) are not comparable as the volume of sales in these years was very low as compared with the turnover of subsequent years. Moreover, the market

conditions in those years were altogether different and certain other major factors which existed at that point of time have substantially been changed with the passage of time. By considering all these various factors, it has been held by various courts including the jurisdiction High Court that for estimating the income, past two or three years profit history is to be considered only. Further, the economic and other circumstances affecting the volume of sales and the profits earned during the A.Y.2009-10 and 2010-11 widely vary from the circumstances prevailing during the year under appeal such as the price of commodity i.e. gold and market demand which are most effecting factor in this regard.

Reliance is placed on the following decisions:

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

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

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

It is further submitted that assessee's turnover has increased in these years whereas the gross profit has not reduced substantially. This is due to the fact that the appellant had been emphasizing on increasing its turnover and increasing its customer base. The gross profit rate in A.Y.2015-16 with a turnover of 5.35crores was 9.64%. The gross profit rate in A.Y.2016-17 was 7.93 % due to increase in turnover to around 7.21crores. Despite of increase in turnover in A.Y. 2017-18 at Rs.8.15 crores, GP rate was reduced only marginally, i.e. to 7.86%. Accordingly, the GP rate shown in A.Y. 2017-18 is fully reasonable and justified and does not require any further increase.

From the above it is clear beyond doubt that the financial results of the appellant firm have a constant trend of increasing turnover and thereby a slight reduction in the GP rate over the years. Therefore, the results declared by the appellant are more than reliable and the observation of the Id.AO is contrary to the evident facts. The assessee therefore, request your honours that books of accounts maintained by the appellant

reflect the true profit on recorded sales assessee and therefore trading results declared deserve to be accepted as such.

Further it is a fact that in Jewellery business rate of gold is decided by open market and moreover the same is known to all the customers. Thus no one can charge the price of gold more than the market price and margin comes from the price escalation and making charges which in no case could be as high as applied by Id.AO at 24.14%. It is settled proposition of law that once the books are rejected, only recourse available with an AO is to estimate the income. In that situation it is the duty of AO that such estimations should be fair and honest and should not be arbitrary as has been done in our case where the Id. AO in very casual manner applied the GP rate pertaining to the year which is as old as 8 years. In this regard reliance is placed on the following.

5 ITR 170 (PC) CIT V/s Laxminarain Badridas:

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.

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

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

In the instant case it must be inquired as to whether there is evidence on the basis of which the taxing authorities could hold that the petitioner had either made the investment in gold or was the owner of the contraband gold. If there is no evidence and such a finding is based only on surmises and conjectures, then the imposition of tax would be without the authority of law and liable to be set aside.

In the circumstances, it is humbly prayed that the trading results declared by the assessee should be upheld and entire trading additions deserve to be deleted.

Without prejudice to the submission that book results shown may be accepted and no trading addition may be made (as submitted herein above), however appellant submits that if at all, trading additions are sustained then trading results of preceding two years and current year may be made the base for estimating the profits for A.Y. 2017-18 and then suitable factoring may be applied on this average GP rate of 8.47%, for increase in turnover. The trading results declared for these years is tabulated as under:

A.Y.	Turnover	GP ratio declared
2017-18	8,15,83,283/-	7.86%
2016-17	7,21,26,335/-	7.93%
2015-16	5,35,22,361/-	9.64%
Average GP rate		8.47%

Assessee's grounds of Appeal No. 3 to 7.1 and Departmental grounds of Appeal No. 8 to 10

These grounds of appeal relate to addition of Rs. 60,12,17,723/- made by Id.AO on allegation of unaccounted cash sales made on the various loose papers found during the course of search. During the course of first appeal, detailed submissions were made before Id.CIT(A) explaining the discrepancies in the additions made, after considering the same, Id. CIT(A) restricted such sales amount to Rs.31,20,07,946/- and applied GP rate of 9.06% [i.e. estimated by Id.CIT(A) while deciding trading addition]declared by assessee) and thus has restricted the addition to Rs. 2,82,67,919/-.

Assessee has challenged the action of Id. CIT(A) in confirming the addition to the tune of GP whereas the department has challenged relief granted by Id.CIT(A).

Brief facts leading to this 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 firm's business premises and residences of its partners. The papers so seized from the business place at 1756, Telipada, SMS Highway, Choura Rasta were inventoried as Annexure-AS Exhibit 1 to 24 and the papers seized from the residence of Shri Manoj Khandelwal (partner) at 14, Sunder Nagar, Malviya Nagar, Jaipur were inventoried as Annexure-AS, Exhibit 1 to 15. The Id. AO after going through the entries found noted in the loose papers and documents at his end made sketchy summary in para 8 at page nos. 16 & 17 of the Assessment order wherein he has presumed unaccounted sales and purchases and also quantified the details of alleged unaccounted sales and purchases. The same is enclosed as Annexure 2 of this submission for your honour's ready reference.

At the outset it is submitted that exorbitant addition of Rs. 60,12,17,723/- made by the Id.AO u/s 68, by alleging unaccounted sales made during the year under appeal, is unrealistic and illogical. The same have been made in casual and mechanical manner and are absolutely contrary to the fact on record.

Taking the legal aspect of the addition, it is submitted that as evident from the AO's order, the additions in respect of alleged unaccounted sales have been made u/s 68 of the Income Tax Act, 1961.

Section 68 of the Income Tax Act, 1961 is reproduced herewith for 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.60,12,17,723/- 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. Therefore, the Id.AO himself is of the view that the alleged amounts have not been credited/ disclosed in the books of accounts of the appellant.

Under the circumstances, the addition made by the Id. AO u/s 68, fails the very first criteria of there being a credit entry in the books of accounts laid down under the Act.

In view of the above, the exorbitant addition of Rs.60,12,17,723/- made u/s 68 of the Act is legally defective and thus bad in law. The appellant therefore, humbly prays that such illogical and mechanical additions of alleged unaccounted sales made by the Id. AO is bad in law and contrary to the settled legal position by the courts that addition u/s 68 can only be made when there is a credit entry in the books of accounts and the assessee fails to explain that credit entry and thus any addition of the amount not being a credit entry in the books of accounts deserves to be deleted. Therefore this addition of alleged unaccounted sales so made by the Id. AO u/s 68 deserves to be deleted.

The appellant therefore prays your honours to out rightly delete the addition of Rs.60,12,17,723/- made u/s 68 of the Act on this legal ground without even going into the merits of the addition.

Without prejudice to the above, the appellant submits that the necessary explanations with reference to the above mentioned seized papers were 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.60,12,17,723/- 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 is the net profit 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 made. Accordingly, addition of Rs.60,12,17,723/- 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 provide 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.

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

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

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

The Id. AO has 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.

Thus, there are duplications/triplications in respect of additions made by the Id. AO wherein the additions in respect of a single transaction noted in different papers has been made twice/ thrice without appreciating the fact that some pages containing same entries were seized in two different exhibits and actually denote/relate to a single transaction.

The appellant therefore, submits that the addition of Rs.60,12,17,723/- made on account 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 the addition so made by the Id.AO be deleted in its entirety.

Alternatively and without prejudice to the above submission of the appellant, it is further submitted as under:

It is submitted 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.

With the above background, exhibit wise/ issue wise submission is made as under:

Before discussing entries in the various loose papers, it is submitted that the loose papers and documents were seized from business premises and also from residence of partners and these have been inventorized as Annexure AS of the respective place of search. In order to avoid confusion between the exhibit seized from one place vis-à-vis exhibit seized from other place having same number, exhibit seized from the business premises of the appellant firm namely 1756, Telipada, Chaura Rasta Jaipur have been named exhibit C-1 to C-24 for the sake of clarity. Similarly, documents seized from residence of partner of assessee firm have been named as Exhibit A-1,A-2 and so on.

Exhibit 8 and 15 (C-8 and 15, seized from 1756, Telipada)

Issue: Entries in Exhibit C- 8 stand incorporated in Exhibit C- 15

The Id. AO has worked out the unaccounted sales/cash advance of Rs.19,46,02,422/- on the basis of Exhibit-8 (PB Volume I Part I 102-136). Further, as per Exhibit-15 (PB Volume I Part I 274-317) total unaccounted sales has been calculated at Rs.6,10,34,865/-.

At the outset it is submitted that the entries in both, Exhibit-8 and 15 are rough noting of the events taken place on a particular day.

This issue is explained in following manner:

All the events taking place during a particular day are noted by the employee as and when the same take place. Thereafter at the end of that particular working day all such transactions are compiled and thereby again noted and reconciled by the partner. Therefore, the transactions occurring on a particular day are recorded twice in two different documents/ pages, both of which have been seized during the course of search and additions have been made by the Id. AO on the basis entries in both the pages/ documents. A close observation of the following pages reveals that these pages relate to the same day and the transactions recorded on these pages are almost the same with minor differences.

Reference of page no. in Exhibit C-8	Compilation of Papers Volume I Part I APB	Reference of page no. in Exhibit C-15	Compilation of Papers Volume I Part I APB
Page no. 21 (27-Jul)	134	Page no. 21 (27-Jul)	299
Page no. 16 (21-Jul)	126	Page no. 18 (21-Jul)	302
Page no. 15 (20-Jul)	124	Page no. 15 (20-Jul)	305
Page no. 17 (22-Jul)	127	Page no. 10 (22-Jul)	310
Page no. 13	121	Page no. 9 (18-Jul)	311

Page no. 18 (23-Jul)	129	Page no. 6 (23-Jul)	314
Page no. 14 (19-Jul)	123	Page no. 1 (19-Jul)	317

From the above table it is evident that the pages seized as a part of Exhibit C-8 and exhibit C-15 relate to the same day.

In this regard, a chart as per Annexure 4 was submitted before Id. CIT(A) reflecting pagewise summary of double addition which is enclosed at APB 75. Also, said chart with revised paper book references of seized papers is enclosed as Annexure 4 of this submission.

Further, elaborate working sheet for each of the above pages of exhibit C 8 vis a vis C 15 was also submitted as sheet 4A to 4G which are enclosed at APB 75-84, and is also enclosed as Annexure 4A to 4G (with revised page references) of this submission.

The final working is as under:

Jewellery	Bullion	Total
18,29,840	3,21,65,083	3,40,04,923

From the details submitted at Annexure 1 & 1A to 1G, it is amply clear that additions to the extent of Rs.3,40,04,923/- made under Exhibit C-8 stand included in Exhibit C-15 and therefore have been duplicated. These additions relate to the same entries for the same day in two different note books/loose papers bunch.

These facts were verified by Id.CIT(A) in detail and were found correct by him which have been discussed at para 11,12 & 13 of the Id.CIT(A) order (page 34 to page 46) and he finally held the working submitted by appellant to be correct. The appellant therefore, prays that addition to the extent of Rs.3,40,04,923/- made on account of unaccounted sales has been rightly deleted by Id.CIT(A) which order of Id.CIT(A) may kindly be upheld.

Exhibit15 (C- 15, seized from 1756, Telipada)

Issue: Entries in Exhibit 15 duplicated

The appellant submits that pages inventoried as per Exhibit-15 contain two types of pages:

- Pages containing rough daily cash book
- Pages containing details of all the transactions occurred during the day

Dates	Page Nos. that are rough cash books	APB	Page Nos. that contain details of all transactions	APB
18-Jul	8	312	9	311
22-Jul	11	309	10	310

18-Jul	14	306	15	315
23-Jul	17	303	18	302
19-Jul	20	300	21	301

The appellant submits that the transaction in respect of which cash was either received or paid have been noted twice, i.e. once on the page when the transaction is noted and secondly on the page wherein cash inflow-outflow is noted.

In respect of pages that contain the cash inflow-outflow, the Id.AO had simply picked up the sum total of the payment side and the closing cash balance and made an addition under the head of unaccounted sale.

The appellant submits that, in respect of pages containing the details of cash flow, two errors have been made by the Id. AO:

- i. The Id. AO has added the total of cash received on a particular day as cash sales or advance for cash sales, plus the opening balance of the day. This practice has been repeated for all these type of pages. Thus, opening cash balance of all the various days have been cumulatively added multiple times (i.e. for the various days available in loose papers) particularly page no. 2,14,17,11,5 & 20 of Exhibit C 15 (i.e. Exhibit 15 seized from Telipada). Same was furnished before Id.CIT(A) as Annexure 5 of written submission (enclosed at APB 85-93). Same is enclosed as Annexure 5 of this written submission (with revised paper book references of seized papers). The total addition made on account of such entries comes to Rs. 1,34,23,481/-, which is unjustified. The addition made by the Id.AO for the entries appearing on each page which comprises of the total cash payments plus the closing cash balance. Therefore, the carried forward cash balance of each day has cumulatively been added by the Id. AO multiple times resulting into multifold addition of cash balance.
- ii. The transactions representing cash inflow and outflows i.e. sales and purchases in the same exhibit have already been included on different pages wherein the transactions are noted, which fact was ignored by Id. AO. Same was furnished before Id.CIT(A) as 2nd chart of Annexure 5, (enclosed at APB 85-93), which is also enclosed as Annexure 5 of this submission (with revised paper book references of seized papers). This has resulted into double addition of Rs. 1,46,82,451/-;
- iii. Further Id. AO has considered certain items of purchases as sales which are tabulated at APB 85-93. This has resulted into addition of Rs. 83,04,167/-; was furnished before Id.CIT(A) as 3rd chart of Annexure 5, (enclosed at APB 85-93), which is also enclosed as Annexure 5 of this written submission (with revised paper book references for seized papers).

Ld. CIT(A) has verified these details very closely and discussed this issue at page 46 to page 62 of his order and found the claim of appellant as correct.

The above fact mentioned by the appellant is explained at APB 85-93 and the final working is tabulated as under:

Particulars	Amount (Rs.)
1. Opening cash balances considered as sales	1,34,23,481
2. Common entries of unaccounted sales	1,46,82,451
3. Purchases, wrongly considered as unaccounted sales	83,04,167
Total	3,64,10,099

From the perusal of the table above and chart at APB 85-93, it is amply clear that additions to the extent of Rs.3,64,10,099/- have been made twice for the entries appearing in loose papers at two or more places or where purchases have been considered as sales. These also include additions related to the same entries in the day book and in the cash book.

The appellant therefore, prays your honours to confirm the order of Id.CIT(A) on this issue and reject the appeal of the department.

Exhibit 8 and 15 (C-8 and 15, seized from 1756, Telipada)

Issue: Entries in respect of bullions in Exhibit 8 stand incorporated in Exhibit 15

The appellant further submits that there are further more double additions on the basis of Exhibit-8 and Exhibit-15, which are discussed as under:

The appellant reiterates that the papers seized as a part of Exhibit-8 & 15 are loose papers which basically contain rough notings of various parties from whom the M/s Shrinath Corporation, sister concern used to purchase and sale bullion (gold), and not the appellant firm. On various dates there are notings when deals were struck for both purchase and sale and weights of such deals was noted on the loose papers of Exhibit-8.

Further, various other pages of Exhibit-8 itself and on some pages of Exhibit-15, contain notings where payments were made against deals of purchase or payment was received against deals of sales or advance payments were received against the orders of bullion. The appellant further submits that the Id. AO has erroneously made additions in respect of alleged unaccounted sales without giving the benefit of alleged unaccounted purchases and unaccounted expenses.

The Id. AO has erroneously made additions on account of unaccounted sales firstly on the basis of rough entries of the weights noted while booking the deals and again on the basis of payments made or received for such notings. The party wise details of such duplicate entries and corresponding additions made by the Id. AO were submitted before Id.CIT(A) as Annexure 6 of written submission(enclosed at APB 94-100) , which are enclosed as Annexure 6 of this written submission. The total of such deals worked out at Rs. 5,35,69,840/-. In addition to this amount, further addition was also made for the deals finally settled at Rs. 5,07,72,315/-. It was submitted before Id.CIT(A) that if at all any unaccounted sales is to be considered, the same may be in relation to the deals which stood finalized at Rs. 5,07,72,315/- and further addition of Rs. 5,35,69,840/- towards proposal should be deleted.

Ld. CIT(A) very carefully perused the entries and details as given in the chart and discussed the issue threadbare at page 65 to 73 of this order and held the argument and claim of appellant to be correct and deleted the addition. Hon'ble bench is requested to confirm the order of Id. CIT(A) and reject the appeal of department on this issue.

Exhibit C-15 and C-10, C-11 & C-12 (seized from 1756, Telipada)

Issue: Exhibit C-10,C-11 and C-12 consists of rough estimate slips in respect of transactions noted in Exhibit C-15:

Exhibit A-1 and Exhibit A-8, A-9 and A-10 (seized from 14, Sundarnagar)

Issue: Exhibit A-8, A-9 and A-10 consists of rough estimate slips in respect of transactions noted in Exhibit A-1:

The appellant makes receipts titled "ROUGH ESTIMATE" for calculating the rough sale price (on estimate basis) of any article when any customer walks in into the store and asks for the estimated price of a piece of jewellery. These receipts have been found during the course of search from premises of the appellant as well as the residence of Partner, Shri Manoj Khandelwal and seized in Exhibits C-10,11,12, & 13 and A-8,9 & 10 respectively.

The receipts of rough estimates when crystallizes into actual sales gets noted by the employee/ partner in the day books maintained by them entries of which were found noted in Exhibits C-15 seized from at the business premises and A-1 seized at the residence of partner.

The Id. AO has made additions on account of unaccounted sales both on the basis of slips of "ROUGH ESTIMATES" and also on the basis of the notings in Exhibit C-15 and

A-1. The complete details of these notings and the receipts to which they relate are enclosed at APB 101-123 and summary is tabulated as under:

Duplication within the exhibits	Amount of duplication (Rs.)	Annexure to WS
Receipts in Exhibit C10 noted in Exhibit C15	5,59,061/-	7A
Receipts in Exhibit C11 noted in Exhibit C15	9,22,471/-	7B
Receipts in Exhibit C12 noted in Exhibit C15	3,13,789/-	7C
Receipts in Exhibit C13 noted in Exhibit C15	2,13,665/-	7D
Receipts in Exhibit A1 noted in Exhibit A8	18,81,781/-	7E
Receipts in Exhibit A1 noted in Exhibit A9	81,73,621/-	7F
Receipts in Exhibit A1 noted in Exhibit A10	8,87,719/-	7E
TOTAL	1,29,52,107/-	

From the above enclosed Annexure it is evident that the additions made by the Id. AO to the extent of Rs.1,29,52,107/- has erroneously been doubly made .

Ld. CIT(A) after going through the seized records and relevant working sheet and the summary chart Ann. 7 & sheet 7A to 7E (enclosed at APB 101-123), which is also enclosed as Annexure 7 of this written submission) found the claim of appellant to be correct and deleted the addition. Same is discussed by him at page 73 to 73 of his order.

The appellant therefore, prays your honours to kindly confirm the decision of Id.CIT(A) in deleting the addition of Rs.1,29,52,107/-, which was made by the Id.AO twice.

Exhibit C13, C17, C18 & C19 (seized from 1756 Telipada) and A8, A9 & A10 (Seized from 14, Sundarnagar)

Issue: Receipts marked "APPROVAL" are not sales effected by the appellant:

It is reiterated that the appellant firm is engaged in trading of gold jewellery, and in jewellery business it is a common practice to send and receive goods on approval basis.

Moreover assessee is doing business on wholesale basis also where goods have been sent to and are also received from the other retailers for approvals and these goods are also returnable. Under such circumstances, the goods sent on approval or received on approval are noted down on slips to keep a record of the goods sent on approval which stand cancelled when the goods are returned. In case goods are not returned, necessary control / stock is tallied on the basis of these approval memos. Actual sales bills are raised and sales is recorded in the books of accounts only after 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 actual sale of goods in the stock registers. Similarly, purchase bills are taken from the parties when it is finally decided to purchase the goods and approvals memo is cancelled.

The Id.AO in the assessment order has failed to understand the proper nature of these approval memos and in arbitrary manner has assumed the same to be sales made by the appellant which has resulted into the an addition of Rs. 18,67,67,651/- being unaccounted sales.

The Exhibit wise details of approval slips assumed/alleged to be unaccounted sales by the Id.AO is at APB 124-178 (also at Annexure 8 of this submission) according to which the total amount of addition made by Id. AO towards alleged unaccounted sales is of Rs. 18,67,67,651/-.

It is reiterated that many approval slips are for goods received on approval from the retailers. Moreover, there are many slips of goods received on approval from karigars. These goods are received from retailers and karigars on sample basis. Some pages of only one Exhibit namely Exhibit-9 are mentioned below wherein name of karigar and goods received on approval is clearly represented.

Exhibit No.	Page No.	Name of Party	Title of receipt	Amount	APB
A9	1	Ajit	APPROVAL	1,80,177/-	586 (Volume I Part II)
A9	1	Vishwajeet	APPROVAL	2,04,571/-	586 (Volume I Part II)
A9	6	Ajit	APPROVAL	1,71,086/-	580(Volume I Part II)
A9	9	Vishwajeet	APPROVAL	49,344/-	576(Volume I Part II)
A9	88	JagannathKarigar	APPROVAL	45,229/-	498(Volume I Part II)
A8	62	Sushant Karigar	APPROVAL	2,369/-	1236(Volume II Part II)
A8	46	Arun Karigar	APPROVAL	88,785/-	1252(Volume II Part II)
A8	21	Ajit Karigar	APPROVAL	48,931/-	1277(Volume II Part II)

(Not an exhaustive list)

It is submitted that such a methodology/ system was adopted in order to distinguish actual sales/purchases from the goods sent/received 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 by the department.

During the course of proceedings before Id. CIT(A), detailed submission was made before Id.CIT(A) in this regard, however the same was not accepted.

It is submitted before your honours that in Exhibit C-13 itself there are not only slips of 'approval' but there are other slips on which 'rough estimate' is mentioned. It was further submitted that in other exhibits namely C-17, C-18, C-19, etc. and also in exhibit A-8, A-9 and A-10, there are various slips on which 'rough estimate' is mentioned and moreover there are still other slips. It was submitted that the other slips on which nothing at the top is mentioned, has not been disputed or agitated in absence of any concrete and foolproof evidence with the appellant. Similarly the appellant is also not very seriously agitating the slips on the top of which 'rough estimate' is mentioned, though as the name suggest these are only rough estimates. However as it is difficult to furnish positive evidence regarding these not being sale, the issue is agitated on the basis of written submission only. However as regards approval slips are concerned, it is very much clear that these are not unaccounted sales and these may be excluded from sale. Moreover many of these slips are related to goods received on approval. It is therefore requested before your honours that these can by no stretch of imagination be the sales and that additions of Rs.18,67,67,651/- on the basis of these approval slips so made by treating them as unaccounted sales deserves to be deleted.

Moreover, it is further submitted that as regards additions based on approval memos is concerned, during the appellate proceedings, exhibit wise/ issue wise explanation of the discrepancies observed by the appellant in the amount calculated by the Id.AO on account of alleged unaccounted sales from the seized papers was submitted before the Id CIT(A). The Id. CIT(A) after making in-dept verification of each individual entry from the seized records has deleted the duplicate/ triplicate/ multiple entries and upheld the gross profit on such alleged remaining undisclosed sales though the same was on "Approval Memos". While doing so, Id. CIT(A) has failed to appreciate the fact the such entries also with regard to the goods sent on approval memos which have been treated as sales by the Id. AO. The assessee explained the nature of such transactions and further explained the circumstances under which the goods has to be sent on approval and in all such cases, sales have been recognized as and when the same is confirmed by the customer, therefore, the amount of goods send on approval cannot be treated as the unaccounted sales of the appellant. However, Id.CIT(A) has failed to appreciate the submission and applied the GP rate on such amount of good send on approval by holding the same as sales.

Exhibit C-16 (seized from 1756, Telipada) and Exhibit A2 (seized from 14, Sunder Nagar)

Issue: Goods received on approval/ purchases erroneously considered as unaccounted sales:

It is submitted that the receipts found, seized and inventoried as a part of Exhibit C16 consist of receipts in respect of goods on approval basis/ purchases of the appellant firm. From the perusal of the papers (APB 877-934 Volume II Part I) it is evident that the same were issued in the name of "Royal", "M/s Royal", "Royal Jewellers" as party name thus they in no case be considered as issued by the appellant. Total of such slips as per Exhibit C16 comes to Rs. 1,11,44,666/- The Id. AO without appreciating the fact the name of the party mentioned in these receipts is that of the appellant has erroneously assumed the same as unaccounted sale made by the appellant.

Similarly additions to the extent of Rs.28,77,504/- on the basis of Exhibit A-2 (*APB-1116-1124 Volume II Part II*) relate to goods on approval basis/ purchase of the appellant firm.

In this regard, it is requested before your honours that this total amount of Rs. 1,40,22,170/- (i.e. Rs.1,11,44,666/- plus Rs. 28,77,504/-) is basically the goods received on approval by the appellant firm / group and cannot at all be considered as unaccounted sale. The appellant therefore, prays your honours to kindly delete the total addition of Rs. 1,40,22,170/- which is inclusive of addition of Rs.1,11,44,666/- made on account of alleged unaccounted sale based on the entries found noted in seized papers via Exhibit C-16 and of Rs.28,77,504/- based on entries found noted in seized papers via Exhibit-A-2.

Ld. CIT(A) closely perused the relevant seized papers and after being satisfied, excluded such sum of Rs.1,40,22,170/- from sales and the same was treated as purchases. Accordingly, it is submitted that decision of Id.CIT(A) on this issue may be upheld.

Exhibit C-22 (Seized from 1756, Telipada)

Issue: Fully accounted

The Id. AO has made an addition of Rs.4,85,255/- by alleging the same as unaccounted sales based on the entries found noted in the loose papers found during the course of search and inventoried as Exhibit C-22. The appellant submits that the invoices that have been alleged as unaccounted sale by the Id. AO are fully accounted for in the regular books of accounts maintained by the appellant. The Id. AO has failed to

reconcile the sale invoices with the books of accounts of the appellant and erroneously presumed the same to be unaccounted.

The complete details of the invoices and their reconciliation with the regular books of accounts of the appellant is enclosed at APB 179 (also at Annexure 9 of this submission). In the said chart a reference of the seized paper is made to the sale as per books of accounts as appearing in the regular books of accounts of assessee.

In view of the above, it is humbly prayed before your honour that the addition of Rs.4,85,255/- may please be directed to be deleted.

With the above submission on various discrepancies in the order of Id. AO on account of duplication/ multiplication of addition or by non-considering the entries found noted in the seized papers in their true sense, it is submitted that Id.CIT(A) after considering the submission of assessee on seized papers with specific charts, deleted the addition to the tune of Rs. 15,14,34,394/-, details of which are as under (APB 183-184):

S. No.	Particulars/ nature of addition	Amount
1.	Addition for duplicate entries of alleged unaccounted sales of jewellery	1,65,38,922.00
2.	Addition for duplicate entries of alleged unaccounted sales of Bullions	9,86,60,399.00
3.	Addition of by taking opening balance every time	1,34,23,481.00
4.	Addition for recorded sales	4,85,255.00
5.	Purchases considered as sales	2,23,26,337.00
Total		15,14,34,394.00

Appellant prays that decision of Id.CIT(A) to the extent of deletions made of Rs. 15,14,34,394/- deserves to be upheld and departmental appeal on these issues be rejected.

It is further submitted that our submission on addition based on approval memo may kindly be considered and amount of Rs.18,67,67,651/- treated by Id.CIT(A) as Sales be ignored as these are actually not the sales but the goods given only on approval.

Exhibit C-14 (seized from 1756, Telipada)

Issue: Stock taken on various days considered as unaccounted purchases for the day:

The Id. AO has made a total addition of Rs. 36,96,73,788/- on account of unaccounted purchases from the papers seized and inventorized as a part of Exhibit-C14. The appellant submits that the such notings have been alleged as purchase transactions by the Id. AO are in fact the rough stock sheets of the appellant firm. As submitted above, the appellant firm had a practice of reconciling all the transactions and the closing stock at the end of every working day. The detailed explanation of each paper considered as

alleged unaccounted purchases by the Id.AO as furnished in Annexure 10 of written submission before Id.CIT(A) is enclosed at APB 180-182 , which is also being furnished as Annexure 10 of this submission. From perusal of the said chart it is amply clear that the Id. AO has made multiple mistakes while treating them as unaccounted purchases of the appellant firm.

Kind attention of your honours is invited to page No. 15 dt. 15/07 (APB 255 Common PB Vo. I Part I), page No. 17 dt. 18/07 (APB 253 Common Paper Book Volume I Part I), page 20 dt. 19/07 (APB 247 Common Paper Book Volume I Part I), page 31 dt. 20/07 (APB 229 Common Paper Book Volume I Part I), page 9A dt. 21/07 (APB 265 Common Paper Book Volume I Part I), page 41 dt. 22/07 (APB 211 Common Paper Book Volume I Part I), page 40 dt. 25/07 (APB 213 Common Paper Book Volume I Part I), page 55 dt. 27/07 (APB 186 Common Paper Book Volume I Part I) and page 57 (APB 182 Common Paper Book Volume I Part I). It is submitted that the bare perusal of these pages together at one go clearly reveals that the entries so mentioned therein which have gross weight and net weight of various items, are obviously related to some memorandum stock taking.

It is submitted that the Ld. AO has considered the details mentioned on each page as unaccounted purchase without realizing that details mentioned on one page is exactly tallying with the details available on second page for example on page 15 and 17 of C-14 (except slight difference of about 3 gms. in the last item named as IR' in its gross weight and also in net weight). Similarly all items of page 17 match with page 20 except difference of about 9-34 ms. in gross weight and net weight against one entry 'Bali' and even in the total gross and net weight there is just difference of 0.36 gms. between these two pages. Similar in the position vis-a-vis other pages where only slight decrease or increase in one of the item is reflected and accordingly the total memorandum stock position of certain items on that particular day is found slightly varying by about 1 to 10 gms. Moreover, Id.AO has mas acted so casually that he has considered gross weight of memorandum stock on particular date as purchase and again the net weight of the memorandum stock on that day itself has also been considered as purchase. These papers relate to 9 different dates and after adding the gross weight and net weight of memorandum stock and applying the rate of gold, the Ld. AO has presumed the purchase of around 4 crore and odd for each day and thereby considered the total unaccounted purchases to be Rs. 36,23,07,788/-. Similarly some further entries were found noted on these pages which were actually related to number of bangles, however the Ld. AO has considered them also to be purchase and accordingly he has further added Rs. 73.66 lakhs. As seen from the details these entries are also related to the stock of number of bangle on different dates.

After considering such submission made by assessee and perusing the working sheets furnished as well as the relevant seized papers, Id.CIT(A) deleted the addition of Rs. 36,96,73,788/- made on this account. It is requested that decision of Id. CIT(A) on this issue may please be confirmed.

Departmental grounds of Appeal No. 5 to 7:

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.70,02,127/-, 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.1,16,00,000/- in its bank account No. 660520110000367 with Bank of India 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 of daily cash sales made by the appellant firm. Out of the total amount so deposited a sum of Rs. 70,20,127/- 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 of the customers and had made sales amounting to Rs.70,02,127/- on 08/11/2016 after the PM's announcement. Since the demonetization was ordered to be effective from the mid night of 8.11.2016 i.e. from 24.00 hrs. 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 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 (when declaration was made by the Hon'ble (PM) upto the midnight i.e. 24.00 hrs 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 74), which was also unprecedented and historically very high amount.

The sale of ornaments had subsequently for the rest of the month of November and December 2016 had seen a dry spell as the people had purchased jewellery in demonetized currency during the closing hours of 8th November itself not only for the wedding in immediate vicinity but also for weddings and functions in late November or December and also even otherwise for future use.

Month	Cash sales (Rs.) (2014)	Cash sales (Rs.) (2015)	Cash sales (Rs.) (2016)
November	40,54,336/-	38,02,974/-	71,66,362/-
December	21,51,055/-	33,09,027/-	1,70,482/-
	62,05,391/-	71,12,001/-	73,36,844/-

From the above table, it is evident that the sales made by the appellant during the wedding and festive months of November and December of 2016 was in parity with the sales made in these two months in preceding years and there is usual increase which is due to overall increase in business/ turnover of the firm during the year.

At this juncture attention of your honours is invited to the comparison of cash sales as percentage of total turnover of November,2016 with such percentage for the month of November of earlier years, which is tabulated as under:

Particulars	November 2014	November 2015	November 2016
Cash turnover	40,54,336/-	38,02,974/-	71,66,362/-
Total turnover for F.Y	5,35,22,361/-	7,21,26,335/-	8,15,83,283/-
%age	7.57%	5.27%	8.78%

From the perusal of above, it is seen that there is no increase of cash sales, whatever increase is there, it is because of unprecedented announcement of demonetization.

Besides the earlier submission it is further submitted that the month of November and December being the festive and wedding season, sales/cash sales are usually higher than other months. Accordingly, cash sales during the month of November 2016 is higher than other months. Moreover, cash sales figures of November and December for these years are tabulated below to reflect that cash sales during festive and wedding season months of November and December in 2016 is not exceptionally high vis-à-vis earlier two years.

Particulars	November & December 2014	November & December 2015	November & December 2016
Cash turnover	62,05,391/-	71,12,001/-	73,36,844/-
Total turnover for F.Y	5,35,22,361/-	7,21,26,335/-	8,15,83,283/-
%age	11.59%	9.86%	8.99%

From the above table it is evident that there was a marginal increase in cash sales as compared with the sales made in earlier years in the month of November and December. The major reason for this being, the panic and haste amongst the people who intended to off-load the soon-to-be demonetized currency notes (SBN) which was acceptable currency till mid night by purchasing gold ornaments. The appellant had received multiple calls from people who were immediately wanting to purchase ornaments soon after the PM's announcement. Under the circumstances, treating high volume of cash sales made by the appellant during the last few hours of 08/11/2016 as unreasonable or flimsy, is not justified more particularly when all the sales are backed by sale invoices and assessee had sufficient stock as per the stock register maintained by him and produced before authorities.

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 he is necessarily required to give PAN etc.

The appellant further submits that the 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. 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.70,02,127/- 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 PM.

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.

In view of the above, the appellant firm humbly prays that addition of Rs.70,02,127/- made by the AO by presuming cash sales during pre-demonetization period as undisclosed cash of the assessee which is totally contrary to the facts and the evidence on record and Id.CIT(A) has rightly deleted the addition and such deserve to be upheld.

Departmental Ground of Appeal No. 11;

In this ground of appeal, department has challenged the action of Id. CIT(A) in deleting the addition of Rs.1,51,18,854/- made by Id.AO on account of excess stock of gold and silver jewellery by giving telescoping credit of profit on unaccounted sales with unaccounted income of Rs.2,82,67,919/- through unaccounted sales and confirmed by him.

Brief facts in respect of this ground of appeal are that, physical stock verification was carried out by the departmental officers during the course of search operation. Excess stock of gold to the extent of 4667.901 gms. and excess stock of silver to the extent of 32.35Kgs was alleged during such examination/ verification.

It was submitted before Id. CIT(A) that the difference in stock observed by the search officials was due to the errors in calculating the gross and the net weights of the items of jewellery by the valuation officer. Further, some of the jewellery found at the premises of the appellant was not the property of the appellant as the same related to goods received on approval basis. *(Detailed explanation are submitted in the following paras)*

Further, the silver articles found during the course of search were the ancestral property of the partners of the appellant firm and had been in their families for generation.

Neither the appellant firm nor its partners had incurred any expenditure for acquisition of these silver articles.

From the above, it is established beyond doubt that the stock alleged as being found in excess during the course of search does not relate to any expenditure incurred by the appellant.

Without prejudice to the above, it was submitted that such alleged excess stock found during the course of search, was indeed not the property of the appellant. These goods were actually received from "M/s Garg Jewellers" [a concern wherein the husband of one of the partner (Smt. Pooja Agarwal) is the proprietor], on approval basis. As submitted in the foregoing paras, in jewellery business it is a common practice to send and receive goods on approval basis. Under these situation, the inward and outward movement of goods is recorded on rough slips and such movement of goods is not entered into the stock registers. Actual sale or purchase is booked only once the goods are approved by the customer.

It was on account of the above practice that the goods received on approval from M/s Garg Jewellers were not recorded/ entered into the regular books of accounts. These goods though in physical possession of the appellant, did not form a part of its stock as the actual purchase in this respect had not taken place. This fact was also submitted during the course of assessment proceedings also which was not accepted by the Id. AO by observing that the same is as afterthought. While observing so Id. AO has failed to appreciate the fact that in the case of Garg Jewellers, there was shortage of stock.

Therefore, the stock of gold ornaments to the extent of 4667.901gms found during the course of search, cannot be at any stretch be considered as a part of appellant's excess stock.

In the circumstances, it was submitted that the addition to the extent of Rs.1,40,27,042/- made by alleging excessive stock of 4667.901 gms gold Jewellery deserves to be deleted as in the case of M/s Garg Jewellers the same has been treated as the unaccounted sale and thus double additions have been made for the same.

With regard to alleged excess stock of silver of 32.35kgs found during the course of search, it is submitted that the same were the ancestral property of the partners of the appellant firm. This had been explained to the search officials during the course of search by Shri Manoj Khandelwal in his statements recorded during the course of search and was also submitted during the course of assessment proceedings.

Without prejudice to the above, it was submitted that the physical stock valuation carried out by the departmental officers was erroneous and done without considering the minute details that are to be borne in mind while taking the stock of gold jewellery and other gold articles.

The registered valuer while valuing the physical stock has failed to correctly bifurcate the gross and the net weights of the gold jewellery. It is submitted that gold jewellery and other articles contains various studded stones, kundan, chapdi, beads and cotton threads whose weights are to be reduced from the gross weight of the jewellery and articles. This fact was even explained by Shri Manoj Khandelwal to the departmental officers during the course of search operation. Further, the value of each article is to be determined based on the purity of gold i.e. 22ct, 20ct, 18ct etc. Also the making charges for each article differs from each other on the basis of the intricacy of the work involved in making a particular article of jewellery. The valuation done by the registered valuer does not bear consideration to these facts.

Further, the registered valuer has valued the alleged excessive stock on the basis of the market price of gold prevailing as on the date of search. As submitted in the foregoing paras of this submission, the method of valuation of stock consistently followed by the appellant was "Lower of Cost or NRV", where the cost is determined on weighted average basis. Under the circumstances, valuing the items of stock at market value is bad in law.

Ld. CIT(A) agreed with the submission of assessee partly, however deleted the addition by allowing telescoping credit of profit on unaccounted sales vis a vis the addition on account of excess stock.

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

Departmental Ground of Appeal No. 12:

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

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%.

Alleged undisclosed cash sales

Rs. 60,12,17,723/-

Alleged undisclosed income induced under the grab of cash sales during pre-demonetization period	Rs.	70,02,127/-
Alleged difference in stock	Rs.	24,94,554/-

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 in 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.

Under the circumstances, the appellant prays that Id.CIT(A) has rightly deleted the invocation of provisions of section 115BBE.”

7. The Id. DR representing the revenue submitted his written submission against the assessee appeal and also to support the grounds of appeal raised by the revenue, the same is reiterated here in below:-

“1. During the course of assessment proceedings, various discrepancies were noticed by the AO in the records maintained by the assessee, which has been discussed in detail in the assessment order. The AO has also observed that various documents seized during the course of search revealed large scale unrecorded transaction of sales as well purchases. Consequently, the AO has rejected the books of accounts u/s 145(3) of the Act. Further, the AO has reduced the turnover to the extent of Rs. 70.02 lakh declared by the assessee by treating sales made on the night of 08.11.2016 Le, the day on which demonetization of high currency notes of Rs 500 and Rs 1000 was declared by the Hon'ble Prime Minister at 8 PM as bogus sale. The assessee has deposited corresponding amount in cash in old demonetized currency notes in its bank accounts. The AO has estimated the GP rate for the year under consideration by taking the average of available determined GP rates for AY 2009-10 and 2010-11. Consequently, the AO has applied average GP rate of 24.14% on the reduced turnover of Rs. 7.45 Crore and made trading addition of Rs. 1.21 Crore thereof.

1.1 In the impugned appellate order, the Id. CIT(A) has upheld the rejection of books of accounts of the assessee u/s 145(3) of the Act. However, the Id. CIT(A) has taken the turnover as declared by the assessee in its ROI as he has held that sale treated as bogus by the AO was genuine sale. The Id. CIT(A) has deleted the addition made by the AO on account of bogus sales (to be discussed in detail in another ground of appeal). Further, the Id. CIT(A) has taken the average GP rate of 9.06% as average of GP rates declared by the assessee for AY 2014-15, 2015-16 and 2016-17 and accordingly, by applying the same, has reduced the trading addition to Rs. 9.99 lakh only.

1.2 It is humbly submitted that this estimation of GP rate is against the direction of the Hon'ble Tribunal in the case of the Shri Jitendra Kumar Agarwal, Jaipur Vs ACIT, Jaipur in ITA No. 322/JP/2017, (a key member of the group) for AY 2013-14, wherein, it has been directed by the Hon'ble Tribunal to take average GP rate of finally determined GP rate of previous 5 years and not the declared GP rate. It would be appropriate to reproduce hereunder the findings of the Hon'ble Tribunal as under:

"10. Now, when the books of accounts have been rejected, then a fair estimate of income is required to be made in the instant case. It is a settled legal proposition that in a best judgment assessment, there is always a certain degree of guess work involved and though arbitrariness cannot be avoided in such estimates, the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case. It is with reference to these principles that the question raised before us will have to be considered and looking at it from that point of view, the real question is what should be reasonable rate of profit which assessee would have earned on the total turnover declared turnover of Rs 5.07.13.609 as well as unaccounted turnover as represented by 8538.46 gm of 24 ct gold valued at Rs 2,49,97,878- The Hon'ble Rajasthan High Court in similar cases have held that the best guide in case of fair estimation is past history of the assessee and directed to apply last five years average for the purposes of determination of fair estimation of profits. Applying the same in the instant case, average of last five years GP rate and which has attained finality, being indicative of the manufacturing results, should be considered for determining the average G.P rate. The matter is accordingly set-aside to the file of the AO for the limited purposes of determination of average G.P of last five years, compare it with declared G.P and determine the adjustment taking into consideration the above discussions.

1.3 Thus, in view of the above order of Hon'ble Tribunal, which is binding on Id. CIT(A), it is humbly submitted that the average of finally determined GP rate is to be taken and not the average GP rate as taken by the Id. CIT(A).

Undisclosed income introduced in books under the garb of cash sale during demonetization period

2 The assessee had deposited cash aggregating to Rs. 1.16 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. 70.02 lakh on 08.11.2016. The AO has treated the alleged sale of Rs. 70.02 lakh on 08.11.2016 as bogus sale. The issue has been discussed and analysed in detail by the AO in the assessment order/P 13-16), wherein it has been stated that as many as 40 invoices (422 invoices issued in the case of Jitendra Kumar Agarwal) 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 purchasers 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 16-19 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 18 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.e. prior to the date of demonetization and thus, there was no 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 un rebutted, 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) 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 Garg 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. It would not be out of place to mention here that these invoices were below Rs. 2 lac. Further, it is evident from the sale register of M/s Shreenath Corporation that bullion was shown to be sold in quantities of approximately 60 grams or so in a number of cases. Since M/s Shreenath Corporation was dealing in bullion, the moot point is that whether it was having so many pieces of bullion of approximately 60 grams or so on the said date or whether, these pieces were cut from the gold bars, which requires time (which was not available).

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 a 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. S.P. 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 demonetised notes claiming the same to be received on account of cash sale of jewellery on the night of 08.11.2016.

Addition on account of unrecorded sales of Rs. 60.12 Crore on the basis of seized material made by the AO, which has been restricted to GP addition on reduced quantum of unrecorded sales by Ld. CIT(A)

3. During the assessment proceedings, the AO has issued a show cause notice to the assessee, wherein he has required the assessee to explain the entries recorded on various annexures of the seized material and has proposed additions therein. In response, the assessee has submitted as under:

"The detailed mentioned in Query No. 7, 8 to 28 is rough noting, estimates and the amount of advance is to be received in case of order is placed by a customer. These noting are only estimates and noting else. In some figures rates are quoted."

Assessee also submitted that "to avoid litigation and purchase peace of mind we offer of NP rate application on estimates sales of Rs. 45,00,00,000/- for bullion trading On this amount we are ready to pay tax. The NPGP rate in bullion trade of gold is not more than 25% in any case. So we are ready to pay the due tax accordingly in the hands of the firm"

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 16 to 20 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. 60.12 Crore and unrecorded purchases at Rs. 43.94 Crore 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. 60.12 Crore 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 significantly reduced the

amount of unrecorded sales to Rs. 44.97 Crore. The Id. CIT(A) has also held that since sale to the extent of Rs. 13.77 Crore was on account of bullion, therefore, same is to be considered in the case of M/s Shreenath Corporation, a group concern of the assessee. Thus, finally, the Id. CIT(A) determined unrecorded sales of jewellery at Rs. 31.20 Crore and after applying the GP rate of 9.06%, addition to the tune of Rs. 2.82 Crore was sustained.

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

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

4 Without prejudice to the above, it may be mentioned that the powers of CIT(A) and AO are 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. 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 are reflected in the stock register and quantitative tally is maintained. Hence, plea taken by the Id AO for making addition of entire sale amount is totally flimsy and untenable"

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

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

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

"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 111

"The finding recorded by the Tribunal that proof of unaccounted purchases did not prima facie indicate or show that unaccounted investment was made, as there was other apparent evidence to the contrary is also not acceptable. Onus, in such cases, is on the assessee to show that unaccounted investment was made out of accounted stock. There cannot be any assumption or presumption that unaccounted sales must be from accounted purchases. Unaccounted sales may result and can contribute towards the investment, but there has to be initial investment. Profits and income earned are also used for personal needs and are taken out of business" [Para 11]

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

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

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

Excess stock:

5 During the course of search at the business premises of Royal Jewellers, excess stock of gold of 4667 grams valued at Rs. 1.40 Crore and silver of 32 kgs valued at Rs. 10.91 lakh was found. In his statement recorded on oath u/s 132(4) of the Act, Shri Manoj Kumar Khandelwal, partner of the assessee firm, as reproduced on page 22 of the assessment order, declared the above excess stock of gold and silver as undisclosed stock and has offered the same as undisclosed investment of the firm. The same was also concurred by the other partner Smt Pooja Agrawal, in her statement recorded u/s 132(4) of the Act. It may be mentioned that these statements recorded u/s 132(4) have not been retracted by the partners or by the firm M/s Royal Jewellers. However, in the ROI, the assessee has not declared the income on account of investment in unexplained excess stock of gold and silver found during the course of search.

5.1 During the assessment proceedings, it has been stated by the assessee that excess stock of gold jewellery found during the course of search, was received by it from its sister concern M/s Garg Jewellers (wherein shortage of stock was found) on approval basis. The said explanation has not been accepted by the AO, in the absence of any documentary evidence and in view of the statements of the partners recorded on oath u/s 132(4) of the Act, which have not been retracted either by them or by the firm. However, in the impugned appellate order, the Id. CIT(A) has accepted the said contention of the assessee that the excess gold jewellery found during the search was received by it from its group concern M/s Garg Jewellers on approval basis without any documentary evidence to support such findings. The Id. CIT(A) has totally ignored statements of partners recorded on oath u/s 132(4) of the Act, which have strong evidentiary value and cannot be brushed aside in a casual manner. In fact, the Id. CIT(A) has not stated why the statements of partners of assessee firm, recorded on oath u/s 132(4), could not be relied upon for making such addition. There is nothing on record which may indicate that the said disclosure was obtained by the departmental officer by exerting any force or undue pressure or coercion. Further, the Id. AR has not brought on record any documentary evidence seized during the course of search from the various business or residential premises of the assessee or its group concerns including that of M/s Garg Jewellers, which can substantiate its claim that the excess stock of gold jewellery was received by it on approval from M/s Garg Jewellers. It appears that the Id. CIT(A) has based his order on the presumption that shortage of stock in one firm explains the excess stock of another firm, which is based on surmises and conjectures. The Id. CIT(A) has totally ignored the presumption against the assessee u/s 132(4A) of the Act i.e. in a search case, the assessee is presumed to be the owner of such excess gold and silver jewellery and onus is upon the assessee to rebut that presumption with supporting documentary evidences, which the assessee has failed miserably in the instant case under consideration before the Hon'ble Tribunal.

5.2 The Hon'ble Rajasthan High Court vide its order dated 13-5-2016 in the case of Ravi Mathur & Others (D.B Appeal No. 67/2002 & others) has laid down the following proposition in law in respect of retraction of statement recorded under section 132 (4) of the Act

"15. In our view, the statements recorded under Section 132 (4) have great evidentiary value and it cannot be discarded at in the instant case by the Tribunal in a summary or in a cryptic manner. Statements recorded under Section 132 (4) cannot be discarded by simply observing that the assessee retracted the statements. One has to come to a definite finding as to the manner in which retraction takes place. On perusal of the facts noticed hereinbefore, we have noticed that while the statements were recorded at the time of search on 9-11-1995 and onwards but retraction is almost after an year and that too when the assessment proceedings were being taken up in November 1996 We may observe that retraction should be made as soon as possible and immediately after such a statement has been recorded, either by filing a complaint to the higher officials or otherwise brought to the notice of the higher officials, either by way of a duly sworn affidavit or statements supported by convincing evidence through which an assessee could demonstrate that the statements initially recorded were under pressure/coercion and factually incorrect. In our view, retraction after a sufficient long gap or point of time, as in the instant case, loses its significance and is an afterthought. Once statements have been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording of statements under Section 132 (4), are true and correct and brings out the correct picture, as by that time the assessee is uninfluenced by external agencies Thus, whenever an assessee pleads that the statements have been obtained forcefully by coercion/undue influence without material/contrary to the material, then it should be supported by strong evidence which we have observed hereinbefore. Once a statement is recorded under Section 132 (4), such a statement can be used as a strong evidence against the assessee in assessing the income, the burden lies on the assessee to establish that the admission made in the statements are incorrect/wrong and that burden has to be discharged by an assessee at the earliest point of time."

5.2.1 In the above referred judgement in para 15.2, it has been observed by the Hon'ble High Court that in the case of Raj Kumar Sodhani v. The CIT (D.BITA No. 15/2015 decided on 28-4-2016), it has taken this very view that retraction after a sufficient long gap loses its sanctity.

5.3 It may be mentioned that in D.B. ITA No.140/2018 in the case of M/s Bannalal Jat Constructions Pvt. Ltd. Vs ACIT, the Hon'ble High Court of Rajasthan vide its judgement dated 31.08.2018 has held that

The reliability, importance and sanctity of admission made during search could be refuted only by cogent and convincing evidence. It was further held that there is no gainsay the fact that admission made during the search can be disputed by the assessee and at the same time however it is equally well settled that the statement made voluntarily by the assessee could form the basis of assessment. Mere fact that the assessee retracted the statement at later point of time could not make the statement unacceptable. The burden lay on the assessee to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by a strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definite evidence to come to the conclusion that indicating that there was an element of compulsion for assessee to make such statement. However, a bald assertion to this effect at much belated stage cannot be accepted. The assessee indulged in maintaining transaction on diaries and loose papers which was not permissible in any of the method of accounting. The assessee, while filing the return of income, has not disclosed any undisclosed income and hence, retracted from the admission made by him during the course of search Subsequent retraction from the surrender without having evidence or proof of retraction is not permissible in the eyes of los. The statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction

5.4 It may be mentioned that the SLP filed by the assessee in the above case has been dismissed by the Hon'ble Apex Court as reported in Bannalal Jat Constructions (P) Ltd. Vs CIT [2019] 106 taxmann.com 128 (SC).

5.5 In the case of PCIT Vs Shri Roshan Lal Sancheti, in D. B. ITA No. 47/2018 vide its judgement dated 30.10.2018, the Hon'ble Rajasthan High Court has affirmed its above referred earlier judgement in the case of Banna Lal Jat and held as under

"In view of the law discussed above, it must be held that statement recorded under Section 132(4) of the Act and later confirmed in statement recorded under Section 131 of the Act, cannot be discarded simply by observing that the assessee has retracted the same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of the higher officials by filing duly sworn affidavit or statement supported by convincing evidence. Such a statement

when recorded at two stages cannot be discarded summarily in cryptic manner by observing that the assessee in a belatedly filed affidavit has retracted from his statement. Such retraction is required to be made as soon as possible or immediately after the statement of the assessee was recorded. Duration of time when such retraction is made assumes significance and in the present case retraction has been made by the assessee after almost eight months to be precise, 237 days.

In view of above discussion, we are persuaded to allow the appeal of the revenue which is accordingly allowed. The substantial question of law formulated by this Court vide order dated 10.04.2018 is answered in favour of the revenue and against the assessee in the aforesaid terms."

5.6 Reliance is also placed on the following judicial pronouncements:

1. Bhagirath Aggarwal Vs CIT [2013] 31 taxmann.com 274 (Delhi)
2. CIT Vs O. Abdul Razak [2012] 20 taxmann.com 48 (Ker.)
3. CIT Vs Lekh Raj Dhunna [2012] 20 taxmann.com 554 (Punjab & Haryana)
4. Thiru S. Shyam Kumar Vs ACIT [2018] 99 taxmann.com 39 (Madras),
5. CIT Vs M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi)
6. Ravindra Kumar Verma Vs CIT [2013] 30 taxmann.com 367 (All)
7. Sudharshan P. Amin Vs ACIT [2013] 35 taxmann.com 370 (Gujarat)
8. T. Lakhamshi Ladha & Co. Vs CIT [2016] 73 taxmann.com 117 (Bombay)
9. Manmohansingh Vig Vs DCIT [2006] 6 SOT 18 (MUM.)

5.7 It is therefore, in view of the above judicial pronouncements and looking to the facts of the case, humbly submitted that the addition made by the AO on account of excess stock found during the course of search, as deleted by the Id. CIT(A), may kindly be restored as the facts and circumstances of the case do not warrant such deletion.

Telescoping

6. The Id. CIT(A) has also deleted the addition on account of excess stock of gold and silver by allowing benefit of telescoping by noting that GP additions have been sustained on unrecorded sales and no evidence of any other investment was found. It is humbly stated that unless a nexus between the unrecorded sales and excess stock is proved by the assessee, the benefit of telescoping cannot be allowed. It is humbly submitted that the onus is on the assessee and not on the department to establish such nexus. Reliance is placed on the order of Hon'ble Mumbai Tribunal in the case of Ms. Chhaya P. Gangar v. DCIT [2017] 82 taxmann.com 315 (Mumbai - Trib.), wherein it has been held as under

Section 69 of the Income-tax Act, 1961 Unexplained investments (Telescoping of transactions) - Assessment year 2007-08- Where assessee was not able to establish any nexus between commission income and amount earlier offered to tax, benefit of telescoping could not be given [In favour of revenue](head note)

6.1 In the case of Dr. Gauri Shankar Prasad v. ITAT [2017] 88 taxmann.com 700 (Patna), it has been held by Hon'ble Patna High Court that:

Section 69 of the Income-tax Act, 1961 Unexplained investments (Purchases) - Where assessee had been unable to show before authorities that a particular amount from a particular bank account had been used for purchase of specific property, movable and immovable, there could be no question of any telescoping being permitted [In favour of revenue](head note)

It is therefore, humbly submitted that the benefit of telescoping should not been allowed by the Id. CIT(A) in a casual and cursory manner without establishing the nexus.

7. Application of the provisions of section 68 of the Act: The additions on account of undisclosed sales of Rs. 60.12 crore and cash deposited in demonetization period was added by the A.O u/s 68 of the Act and difference in stock was added u/s 69C of the Act. Consequently the A.O. had applied section 115BBE of the Act and applied the rate of tax at 60%. The Id. CIT(A) has observed in page 99 of the order that the major addition was on account of unaccounted sales and other additions have been effectively deleted. 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-

"...8. After considering the rival submissions I am not inclined to accept the arguments of Mr. Sharma. There is no dispute that the provisions of section 68 are applicable only when any sum is found credited in the books of an assessee maintained by him. However, books of account do not mean cash book only. It would mean complete record which a businessman is required to maintain to record his day to day

transactions. According to the well settled principles of accountancy, each transaction is required to be treated under two heads-under one head, debit entry is made while under the other hand, credit entry is to be made. For example, if money is received from 'K' then cash account is to be debited and account of 'K' is to be credited by the same amount For the same reason if any sum is introduced in the books by the assessee from his own sources then cash account is debited while assessee's own account has to be credited Cash book is nothing but the cash account which is debited if money is received and is credited if money is spent or invested by the assessee. In such cases, corresponding credit or debit entries are to be made by assessee in respect accounts. If such entries are not made, the accounts of assessee would not tally. Therefore, failure on the part of assessee to make credit entry in the respective account would not entitle the assessee to claim that no account is credited (sic). The assessee cannot be allowed to take undue advantage of his own lapsemistakes. Therefore in my humble opinion whenever any money is received by assessee and is entered in cash book it can be said that incrdited 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 provision of sectio would further amount to allow the dishonest assesses to bring the accounted 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 person are loan 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 camassed by the appellant and having confirmed the conclus 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 person, 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, 48 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 2(124) of the Act introduced of It Jun 2001. It means ledger, day book, cash books and other books which are kept in the written form or as printout of data stored in floppy disc etc. In the common parlance the definition of books of account is the place where all the final information relating to a person or business are collected. The legal meaning as per Oxford Advanced Learner Dictionary, the books of accounts means the written records of final affairs of a firm. The (loose paper seized and compiled by the assessee is definitely a books of account therefore, it cannot be said that the compilation of business affair's prepared from the seized documents is not books of account, although not maintained in regular course of business”

It is clear from the above judicial pronouncements that seized papers can be considered as books of account, if these papers reflect the business transactions of the assessee. If assessee does not make entries in regular books of account and makes entries in certain diaries/loose papers to evade the taxes, then the assessee cannot take the argument that section 68 cannot be invoked, as no credit entry has been made in the books of account. Acceptance of such an interpretation will defeat the intention of the Legislature and will promote the cause of tax-evaders at the expense of the honest taxpayers. Hence, the Id. CIT(A) has overlooked the pith and substance of the provisions of section 68 and has adopted a hyper technical approach against the intentions of the Legislature, negating the purposive interpretation Therefore, the view taken by the Id. CIT(A) may kindly be set-aside and the addition made by the A.O u/s 68 and 69C may kindly be restored.”

7.1 The Id. DR also relied upon the following judicial precedent to support the contentions so raised in his arguments the compilation of case law(s) 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

7.2 In support of the arguments Id. DR also filed an another submission and case laws relied upon the same is listed here in below:-

S. No.	Description of the case	Page No.
1	Synopsis and written submission	1-12
2	Haji Nazir Hussain v. Income-tax Officer [2004] 91 ITD 42 (Delhi) (TM)	13-40
3	Jas Raj Dhoka v. Income-tax officer [2009] 29 SOT 66 (Jodhpur) (URO)	41-51
4	Anil Kumar Tantia v. Income-tax Officer [2013] 40 taxmann.com 333 (Jodhpur-Trib.)	52-97

7.3 Further, in this appeal the Id. DR representing the revenue submitted synopsis of additions deleted/sustained in the case of Royal Jewellers in A.Y 2017-18 which is reiterated as under:-

AY	Additions by A.O	Amount	Decision of Id. CIT(A)
2017-18	1. Trading addition	1,21,41,812	1. Upheld the rejection of books of account and restricted the trading addition to Rs. 9,99,016 applying G.P rate of 9.06%
	2. Undisclosed income shown as cash sales during demonetization period, taxed u/s 68/115BBE of the Act	70,02,127	2. Deleted the entire addition
	3. Undisclosed sales u/s 68/115BBE	60,12,17,723	3. Confirmed quantum of undisclosed sales of Rs. 31,20,07,946,

			but restricted the addition by applying GP rate of 9.06% on this amount. Thus, addition of Rs. 2,82,67,919 was confirmed. (Further, quantum of undisclosed sales of Rs. 13,17,75,384 was confirmed in the case of the assessee. G.P rate of 0.5% was applied and addition of Rs. 6,88,876/- was directed to be made in the case of Shantinath Corporation), Applicability of section 68/115BBE was not upheld.
	4. Undisclosed stock u/s 69C	1,51,18,854	4. Addition was deleted.

8. We have considered the rival contentions, perused the material available 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 pertaining to the case are that appellant is a partnership firm engaged in the business of manufacturing and trading of jewellery having its principal place of business at 1756, Telipada, SMS Highway, Jaipur. This place of business of the appellant firm is also used by appellant's sister concern namely "M/s Shrinath Corporation", which is solely engaged in

wholesale trading of bullion and thus though both the concerns are sharing common place for their business activity but nature of business is altogether different. A search and seizure action u/s 132 of I.T. Act was carried out on 28.07.2016 by Income Tax Department on C.P. Garg Group, of which appellant is one of the constituent and business premises as well as residential premises of its partners were also searched. During the course of search cash, valuables and various loose papers / documents related to the group persons / concerns were found and seized. In response to the notice u/s 153A, the appellant filed its return of income and assessment was completed u/s 143(3) r.w.s. 153A by Id. AO by making various additions. Aggrieved with the additions made by Id. AO, the assessee preferred appeal before Id. CIT(A) who deleted various additions and sustained some of the additions. The decision of the Id. CIT(A) on various issues is summarized as under:-

S. No.	Particulars	Addition made	Relief allowed	Addition sustained
1.	Rejection of books of accounts	145(3) confirmed	NIL	-
2.	Trading Addition	1,21,41,812/-	1,11,42,796/-	9,99,016/- (confirmed by applying 9.06% as against 24.14%)
3.	Cash Sales during demonetization	70,02,127/-	70,02,127/-	NIL
4.	Addition on allegation of cash sales on the basis of loose papers	60,12,17,723/-	Sales reduced to 31,20,07,946/-	2,82,67,919/- (i.e. 9.06% of 31,20,07,946/-)
5.	Difference in Stock	1,51,18,854/-	1,51,18,854/- (on account of telescoping from addition at serial no.4 above)	NIL

Thus, assessee has preferred present appeals in respect of additions sustained by Id. CIT(A), whereas department has preferred appeals against the relief granted by Id. CIT(A). With these summarized facts and background now, we proceed to deal with the grounds of appeal so taken by both the parties.

Assessee's Ground of Appeal No. 1 & 2 and Departmental Grounds of Appeal No. 2 to 4:

9. Under these grounds of appeal, the assessee has challenged the action of Id. CIT(A) in confirming the application of provisions of section 145(3) and part of the trading addition confirmed by Id. CIT(A) whereas the department has challenged the part of trading addition deleted by Id. CIT(A). Since, all these grounds of appeal are interrelated of both the parties and therefore, same are dealt with together for the sake of convenience. Brief facts related to issue of rejection of books of accounts and trading addition are that during the course of search carried out by Income Tax Department at business and residential premises of the group inter-alia including assessee, various loose papers and documents were found and seized. The Id. AO in its order has mentioned various issues, mainly emanating from regular books of accounts, treated by him to be the

defects in the books of accounts and Id. AO has also mentioned that during the course of search entries in the various loose papers were found reflecting unaccounted sales of the appellant and accordingly books of accounts were rejected by applying provision of section 145(3). The Id. AO then applied the GP rate of 24.14% in AY 2017-18 and also in various earlier assessment years, considering the GP rate of as back as the A.Y. 2009-10 & 2010-11. The Id. AR mainly argued before the Id. CIT(A) and also before us that so called defects mentioned by Id. AO in its order are not actually any defects, 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, the Id. CIT DR relied upon the order of Id. AO and of Id. CIT(A) on this issue. As regards applying the G.P. rate of 24.14% by Id. AO, the Id. AR has vehemently submitted that the Id. AO has taken the average GP of A.Y. 2009-10 & 2010-11 while estimating the GP rate for A.Y. 2017-18 which rates are about 7 – 8 years back. The action of Id. AO is totally unjustified. The Id. AR has submitted that Id. CIT(A) after considering the factual position and the legal position on the issue under consideration has applied the GP rate in A.Y. 2017-18 by taking the average GP rate of last three years which comes to 9.06%. On the other hand, the CIT DR submitted that Id. CIT(A) has upheld the rejection of

books of accounts and accordingly trading addition made by AO should have been confirmed by Id. CIT(A). It was also submitted that in the case of Shri Jitendra Kumar Agarwal Vs. ACIT, the Hon'ble Tribunal in AY 2013-14 has directed to take average of finally determined GP of last five years and accordingly GP rate so estimated by Id. CIT(A) is not correct.

9.1 We have perused the material on record on the issue under consideration. It will be better to reproduce the operating part of the order of Id. CIT(A) who has also considered the contents of AO's order as well as the submissions of Id. AR. The relevant operating part of the order of Ld. CIT(A) for A.Y. 2017-18 is as under:

5. *I have considered the submissions of Ld. AR and perused the assessment order. Ground of appeal No. 1 is general in nature and it supports the other grounds taken by the appellant and hence does not require any separate adjudication. Ground of appeal No. 2 is against the action of AO of invoking provisions of section 145(3) and thereafter making trading addition of Rs. 1,21,41,813/- by applying G.P. rate of 24.14%.*
- 5.2 *Brief facts related to the issue under consideration is that appellant, a partnership firm, is engaged in business of manufacturing and trading of jewellery at principal place of business at 1756, Telipada, SMS Highway, Chaura Rasta, Jaipur, wherein business of appellant's sister concern namely M/s Shrinath Corporation is also carried out which is engaged in business of trading of bullion. Search and seizure action was carried out by the Income Tax Department at the business premises of the appellant firm and the residential premises of its partners on 28.07.2016 and various loose papers / documents were seized besides cash and valuables etc. The AO has mentioned many points in the assessment order treating them as defects in the maintenance of the books of accounts by the appellant in order to support its finding of rejection of books of accounts u/s 145(3). The AR of the appellant has given point-wise reply of various observation made by the AO*

in respect of invocation of provision of sec. 145(3). The Ld. AO has mentioned that the stock register was prepared afterward by the appellant only for the purpose of assessment proceedings. The Ld. AR has, among other, stated that the stock register was very much available at the time of search itself, as the search team, after going through the stock register, has determined the excess stock after comparing it with the physical stock found during the course of search. The other point mentioned by the Ld. AO is that the appellant has taken contradictory stand regarding method of valuation of stock in tax audit report vis-à-vis in the return of income (ITR). The Ld. AR has very elaborately and specifically explained in its written submission that the information so given at these two places about the valuation was not contradictory but was in fact complimentary to each other. In Faun 3CD the method of valuation of closing stock has been mentioned as "finished goods cost or NRV, whichever is lower". It was explained by the Ld. AR that in clause iv of schedule of other information in the ITR regarding method of valuation of stock, there are drop-down menu which specifies i) cost or market rate whichever is less, ii) cost and iii) market rate. So the assessee has choice to fill-up or to specify only one out of the aforesaid three. The appellant has selected its method of valuation of stock as i) cost or market rate whichever is less, which being the most relevant method actually followed by the appellant. The Ld. AO has also observed about different answer given by the appellant during assessment proceedings regarding method of valuation of stock. The Ld. AR has explained that in the reply during assessment proceedings it was submitted that weighted average method is followed for valuation. It was submitted that the assessee being trader in jewellery, neither FIFO nor LIFO method could be adopted and thereby weighted average method is taken as basis for determining cost of finished goods and thereafter "cost or market price whichever is less", is applied to finally work out the value of closing stock. Thus there is no contradiction in the details so given regarding valuation of stock at various places. Ld. AO has further observed that goods sent on approval are not recorded in the stock register and only approval slips are prepared and thus goods sent on approval are not fully verifiable on a given day. The Ld. AR has explained in his submission that it's a common practice in the jewellery trade that goods are given on approval on many a times and the appellant prepares the approval slips for the same to keep a record of the goods sent on approval. When the goods are returned, the approval slip is crossed or if the goods are finally sold, then same is entered in the stock register. Thus at any given day the details of stock as well as details of goods sent on approval is clearly identifiable and ascertainable. On perusal of the above observations of the AO, their explanation given by the Ld. AR as above cannot to be said to be not acceptable. However the other observation of the Ld. AO that appellant has been involved in purchase and sales outside books of accounts which was evident from the various loose papers seized during the course of search, has no convincing explanation from the side of Ld. AR. It is seen by me from perusal of the assessment order that the AO has found

out various instances of unaccounted sales and also the purchases for which there is no convincing explanation from the side of Ld. AR. Considering these facts, I am of the view that finding of the AO of rejection of books of accounts and invocation of the provision of sec. 145(3) is justified and same is upheld.

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

5.3 *Now, coming to the estimation of the GP, it is seen that Ld. AO has estimated the GP rate at 24.10% as against the GP rate of 7.86% declared by the appellant. The Ld. AO has taken the average GP rate of AY 2009-10 & 2010-11 and has applied it to AY 2017-18. The Ld. AR has strongly objected to application of GP rate of more than 7 — 8 years back on the ground that business methodology, nature of customers, choice of customers etc. had gone a sea-change from 7 — 8 years back to the time relevant to AY 2017-18. Moreover during that period the turnover of the business was very meagre and concentration was for better profit margin. Over the years, the assessee has changed his focus and had been emphasizing on increasing its turnover and the customer base even at the cost of reduction in profit margin. It was submitted by the Ld. AR that if at all, if it is required to estimate the profit, then results of past three years may be taken as a guiding factor for estimation of the profit with suitable reduction in GP rate due to increase in turnover over the period. I have considered the argument of Ld. AR and perused the relevant part of the assessment order. It is seen that Ld. AO has applied the average GP of AY 2009-10 and 2010-11 in the assessment year 2017-18. It is also correct that the turnover at that time was comparatively quite less and moreover the facts and circumstances including the nature of business and other factors would obviously get changed over a period of as much as 7 — 8 years. Hence the AO was not justified in applying the GP rate of AY 2009-10 & 2010-11 in the year under consideration. I feel it proper to apply the average GP rate of preceding three years in the year under consideration and then factoring it suitably for increase in turnover. It is also justified as the turnover in AY 2017-18 is comparable to the preceding three years, obviously with an increasing trend. It is seen that in preceding three years i.e. AY 2016-17, 2015-16 and 2014-15, the GP rate was 7.93%, 9.64% and 9.60%. Average of the three aforesaid years comes to 9.06% and accordingly G.P. rate of 9.06% is directed to be applied in AY 2017-18 on total recorded turnover of the assessee. The gross profit shown in the books is Rs. 63,92,429/- and the gross profit on applying GP rate of 9.06% comes to Rs. 73,91,445/-. Therefore the trading addition is restricted to Rs. 9,99,016/- and balance addition is hereby deleted.*

9.3 As regards, rejection of books of accounts is concerned, we agree with the finding of Id. AO/CIT(A) that considering many instances of defects pointed out in the assessment order, a parallel undisclosed balance sheet maintained by the assessee and out of books purchase, sales and expenditure revealed from the documents seized during the course of search which is not disputed and accordingly we see no reason to differ with the decision of CIT(A) on this issue for the year under consideration. Accordingly appeal of the assessee on this issue is rejected.

9.4 As regards, application of GP rate is concerned, we agree with the view of Id. CIT(A) that applying the GP rate of A.Y. 2009-10 & 2010-11 in A.Y. 2017-18 is not prudent considering that there would naturally be vast difference in the facts and circumstances in the span of 7 – 8 years or so and moreover it is undisputedly seen that turnover in those years (i.e. AY 2009-10 & 2010-11) were less. Hon'ble High Courts including Jurisdictional High Court and other courts in ample number of cases have held it appropriate to estimate the GP rate by taking GP rate of last three years or two years. The Id. CIT(A) in the instant case has taken the GP rate of last three years for estimating the GP rate of AY 2017-18 and therefore, we are of the view that the order of Id. CIT(A) on this issue is reasoned one and

does not require any interference. The decision in the case of Shri Jitendra Kumar Agarwal so referred is on peculiar facts and circumstances of that particular case that too particularly for AY 2013-14 and accordingly same is distinguishable. As regards, argument of Id. CIT DR is concerned, that since books have been rejected trading addition made by AO should be confirmed, it is useful to refer to the decision of Hon'ble Rajasthan High Court in the case of Gotan Lime Khanij Udyog 256 ITR 243 (Raj.) wherein Hon'ble Court has held that it is not necessary that in every case of rejection of books of accounts, trading addition has to be necessarily made. Trading addition has to be made on reasoned and rational basis considering the facts and, in the circumstances, as well as past history of the case. Thus, as discussed above estimation of GP rate so made by AO was found to be not reasonable and not acceptable as per reasons given above. Thus, argument of Id. CIT DR is not accepted on this issue. Moreover the argument of Id. AR of deleting the addition partly confirmed by Id. CIT(A) in A.Y. 2017-18 is also devoid of any merit and accordingly same is also rejected.

9.5 Considering overall facts and circumstances, we notice that finding of Id. CIT(A) on the issue of GP rate is fair, reasonable and we see no reason

to interfere with such finding. In brief, Ground of appeal No. 1 & 2 of the assessee are rejected. Similarly, Ground of appeal No. 2 to 4 of department are also rejected.

Assessee's Ground of appeal No. 3 to 7.1 and Departmental Ground of appeal No. 8 to 10 :

10. These grounds of appeal relate to addition of Rs. 60,12,17,723/- made by Id. AO on the allegation of unaccounted cash sale noticed in the various loose papers found during the course of search. After considering the explanation and submission of Id. AR and also after going through the content of the order of Id. AO, Id. CIT(A) restricted such cash sales to Rs. 44,97,83,330/-. Out of it, Id. CIT(A) held that sales to the tune of Rs. 13,77,75,384/- are of bullion and as the business of the bullion is done by M/s Shreenath Corporation, another group concern, same was directed to be considered in the hands of M/s Shreenath Corporation. Thus, the Id. CIT(A) estimated the GP rate of 9.06% and applying it on the undisclosed sale of Rs. 31,20,07,946/-, the addition was restricted to Rs. 2,82,67,919/-.

10.1 The assessee has challenged the action of Id. CIT(A) in confirming the addition to the tune of GP on these sales which have been still on the

higher side and as per assessee's contention same need to be reduced, whereas the department has challenged relief granted by Id. CIT(A).

10.2 Brief facts related to these grounds of appeal are that Id. AO noted the details from various seized documents and presumed them to be unaccounted sales and thereby made the addition of the entire amount of unaccounted sale. The Id. AR has given elaborate submissions before the Id. CIT(A) and has submitted that there are multiple noting's made about same transaction, some of the noting's are rough noting's, some noting's of purchases have been considered by the Id. AO as sales, some of the noting's / transactions are recorded in the books which have also been considered by Id. AO as unaccounted, approval slips and rough estimate slips considered as sales and Id. AO has not at all 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 appellant's sister concerns (of bullion, which business is handled by M/s Shreenath Corporation) by way of charts. The

Id. CIT(A) after closely perusing the details given its reasoned and detailed finding based on the issue raised in the show cause notice and accepted the argument of the Id. AR that wherever these were acceptable to him, excluded the transactions of bullion in the appellant's case and simultaneously ordered it to be added in the case of M/s Shreenath Corporation and actually added therein. All these finding has given by Id. CIT(A) with all discussion in his order and after recording proper satisfaction of doing so.

10.3 The Id. CIT DR in its submission has not been able to pin point 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.

10.4 We have considered the rival submissions as well as perused relevant part of order of AO and of Id. CIT(A). As is noticed the unaccounted sale so estimated by Id. AO for AY 2017-18 Rs. 60,12,17,723/- and Id. AO has added the gross amount of unaccounted

sale itself as the unaccounted income, which is quite unjustified as per the settled law on this issue. Now coming to the other issues on merits, it is better to reproduce the operative part of the CIT(A) order of A.Y. 2017-18 from para 11 to 20 which is as below:-

11. This ground is against the addition of Rs. 60,12,17,723/- 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.

11.2 Brief facts related to this ground are that during the course of search carried out on 28.07.2016 various loose papers and documents were seized from business premises at Telipada, Chaura Rasta (Annexure AS Exhibit 1 to 24) and also from residence of partner Shri Manoj Khandelwal situated at 14, Sunder Nagar, Malviya Nagar, Jaipur (Annexure AS, Exhibit 1 to 15). The Ld. AR has furnished detailed and specific submission on facts and also on legal issue and has vehemently argued that highly exorbitant additions have been made in very mechanical manner by just going through the figures and assuming them as sales or purchases written on various pages without making an effort that most of such pages are having duplicate / double entries. It was submitted that rough notings of the transaction / events occurring during the day are made by one of the employee in absence of partner and afterward rough noting of the transactions / events are made by partner himself at the end of the day which will obviously include entries made by the employee. The Ld. AO has added entries on both these pages separately, leading to double addition. Similarly many a times, in respect of Bullion Trading done in the case of Shrinath Corporation, a sister concern having same place of business, the entries have been made at the time of booking the trade / deal and at some other page the entry has again been mad when the trade / deal is partly / fully executed. The Ld. AO has added these entries at both the times, again leading to double addition. At some of the pages rough estimates of the selling price of jewellery are mentioned to appraise the prospective customer about the final amount of the jewellery intending to be purchased by him and such rough estimates have also been added. Similarly various goods have been sent on approval as mentioned on the approval slips and these have not been converted into final sales. These have also been added by the Ld. AO.

11.3 Apart from these types of duplications, it was also submitted that on bare perusal of the entries in the loose papers, it becomes clear that many entries are related to bullion sale and purchase. It is evident that the appellant firm is not dealing in bullion and is only dealing in jewellery and hence these entries do not pertain to the appellant firm and therefore these are required to be straightaway excluded from the addition in the hands of the appellant firm.

In the written submission, the appellant has given the details of such additions which are straightaway required to be excluded, which may be due to duplication or may be due to opening balances also considered as part of the sale of that day and some purchases wrongly considered as sales. The AR of the appellant has furnished various annexures showing such details. These are discussed as below:-

11.4 As already mentioned the loose papers and documents were seized from business premises and also from residence of partners and these have been inventorized in Annexure AS of the respective place of search. In order to avoid confusion between the exhibit seized from one place vis-à-vis exhibit seized from other place having same number, the Ld. AR has specified the various exhibit seized from the business premises of the appellant firm namely 1756, Telipada, Chaura Rasta, Jaipur as exhibit C-1 to C-24 for the sake of clarity.

Comparison of exhibit C-8 & C-15

The AR of the appellant has first compared entries in exhibit C-8 with entries in exhibit C-15 (both seized from Telipada and marked as Annexure AS, exhibit 8 and exhibit 15). Ld. AR has given the table in its written submission indicating that entries in 7 pages of exhibit C-8 are matching with the entries in 7 other pages of exhibit C-15. For the sake of ready reference the chart is reproduced below:-

Reference of page no. in Exhibit C-8	Reference of page no. in Exhibit C-15
Page no. 21 (27-Jul)	Page no. 21 (27-Jul)
Page no. 16 (21-Jul)	Page no. 18 (21-Jul)
Page no. 15 (20-Jul)	Page no. 15 (20-Jul)
Page no. 17 (22-Jul)	Page no. 10 (22-Jul)
Page no. 13	Page no. 9 (18-Jul)
Page no. 18 (23-Jul)	Page no. 6 (23-Jul)
Page no. 14 (19-Jul)	Page no. 1 (19-Jul)

Another chart has been given by Ld. AR as Annexure 4 reflecting page-wise summary of double addition, which is as below;

Annexure: 4

Summary of duplication between Exhibit C8 and C15							
Page wise additions as per EXHIBIT-C8		Page wise additions as per EXHIBIT-C15		Additions made in C8 that have also been made in C15, hence to be deleted from C8	Jewellery	Bullion	Elaboration in Working Sheet No.
Page no.	Total additions in respect of the page Amount (Rs.)	Page no.	Total additions in respect of the page Amount (Rs.)				
21	3,780,475	21	2,298,305	2,106,225	138,360	1,967,865	4A
16	3,945,468	18	6,900,505	3,635,693	432,973	3,202,720	4B
15	19,055,267	15	9,855,660	8,055,707	29,100	8,026,607	4C
17	7,362,571	10	8,063,727	6,037,226	402,407	5,624,819	4D
13	11,238,177	9	10,390,049	10,199,026	780,700	9,418,326	4E
18	2,697,225	6	2,750,658	2,625,125	6,300	2,618,825	4F
14	1,345,921	1	1,680,496	1,345,921	40,000	1,305,921	4G
	49,425,104		41,939,400	34,004,923	1,829,840	32,165,083	

12. The Ld. AR has furnished working sheet 4A, 4B to 4G wherein details of various items of particular page of exhibit 8 of Annexure AS of Telipada (referred as C-8) included in the show cause notice (hereinafter referred as SCN) have been taken and these details have been compared with the details taken in the show cause notice from particular page of exhibit 15 of Annexure AS of Telipada (referred as C-15). In the working sheet details in first three columns have been copied from the relevant page of the show cause notice related to Exhibit C-8. The page number of SCN is marked in column 5. These details have been compared with another relevant page of Exhibit C-15 and again details in the first three columns have been copied from the relevant page of show cause notice related to Exhibit C-15 and page No. of SCN is marked in column 5 (last column).

12.2 From perusal of the details given in Annexure 4, it is seen that as per the Ld. AR total double addition as appearing in C-8 and C-15 comes to Rs. 3,40,04,923/-. For this purpose, the AR has submitted 7 working sheets named as Annexure 4A to Annexure 4G. It is verified by me that out of these 7 working sheets, the Annexure 4E has the highest amount of double addition namely Rs. 1,01,99,026/-. In this working sheet entries found page No. 13 of Exhibit C-8 has been compared with page No. 9 of Exhibit C-15. Entries related to page 13 of Exhibit C-8 are mentioned at page 12 of show cause notice (SCN). Similarly entries related to page 9 of Exhibit C-15 are mentioned at page 27 of SCN. For ready reference and clarity of the issue concerned, the scanned copy of the relevant portion of page 12 of SCN has been juxtaposed with page 27 and upper portion of page 28 of the SCN as below:-

	CMS	8450		Cash Advance
13	Tarun	1850000		for (17) & (15)
	Anil Sodhi	4250000		for (27.5) & (15)
	Jitendra	4603		3070 + 1533
		58500		Cash Advance
	Chiranjiv Soni	950		Cash Advance
	Jugnu Soni	495000		Cash Advance
	CA Old	9450		Cash Advance
		276764		91.650 x 99.5% @ 3035/-
	CMP	303500		Cash Advance
	CA Old	66800		Cash Advance
	DAJ	603965		200.00 x 99.5% @ 3035/-
	CMS	1284681		Cash Advance
	Jagannath Ji	182008		59.970 @ 3035/-
	Varsha	150000		Cash Advance
	Samar	667408		221.010 x 99.5% @ 3035/-
	SCM	667408		221.010 x 99.5% @ 3035/-
	Pradeep PVJ 70g*30570	213990		70g @ 30570/-
	Pradeep PVJ 50g*30650	153150		50g @ 30630/-
14	CMP	304000	19-Jul	Cash Advance
	Rukmani	40000		Cash Advance
	SGM	491741		162.570 x 99.5% @ 3040/-
	CMS	49735		Cash Advance
	CMS	245545		Cash Advance
	CMS	14900		Cash Advance
	CMS	200000		Cash Advance
15	Telephone etc expenses	1760	20-Jul	560+200+1000
	CMP	67527		Cash Advance
	Anil	2000000		for (20)
	CMP	122140		Cash Advance
	Dilip Ji	29100		Cash Advance
	Pawan Ji PF	29100		500.00 @ 30550/-
	Tarun Bikaner	2500000		for (15) + (5) + (5)
	CMS	1336940		Cash Advance
	Pawan Ji PF	2000000		for (20)
	Pawan Ji	1527500		500 g @ 30550/-
		3040000		1 kg @ 30400/-
	Anil Ji	611000		200 g @ 30550/-
	Monika	303000		100.00 @ 30300/-
	Mahesh 400*30520	1220800		400 g @ 30520/-

9	18.7	1000		1850000	cash recived from tarun against gold sold	Unaccounted sale
		1500.19		4250000	cash paid to anil against gold pur	Unaccounted purchases
				58500	cash recived against gold sale 8.7. rate diff	Unaccounted sale
				950	cash recived chirmji soni	Unaccounted sale
		4.2		495000	cash recived jugnu soni	Unaccounted sale
				9450	old gold purchased	Unaccounted purchases
		91.65	2900	265785	gold purchsed from varsha	Unaccounted purchases
				150000	cash paid varsha	Unaccounted sale
		100		303500	gold purchased 100*30350	Unaccounted purchases
		27.83		66800	old gold purchased	Unaccounted purchases
		200	2900	580000	gold issued daj	Unaccounted sale
		59.97	2900	173913	gold issued Jagannath kargar	Unaccounted sale
		221.1	2900	641190	gold purchsed from samar delhi	Unaccounted purchases
		420.16		1284681	cash recived 1284681 against gold sale cms	Unaccounted sale
				1100	cash recived nisha baid advance	Unaccounted sale
		48.4		760	old gold purchsed from bhawana 113000 due	Unaccounted purchases

	20.42	2900	59218	old gold purchased from bhawana 47760 due	Unaccounted purchases
	50.57	2900	146653	gold recived from vishavjeet	Unaccounted purchases
	8.81	2900	25549	old gold purchases	Unaccounted purchases
			27000	cash recived from shree kripa johari bajar	Unaccounted sale

Upper portion of page 28 of SCN

12.3 From perusal of above scanned image of relevant portion of SCN, it is seen that on left hand side relevant portion of page 12 of SCN has been taken wherein entries related to page 13 of Exhibit C-8 are mentioned starting with first name Tarun, then Anil Sodhi, then Jitendra etc. These are ending with Pradeep PVJ. On the right half portion page No. 27 of SCN have been reproduced wherein entries on page 9 (mentioned on the top left of this right half scanned image) have been mentioned. The date is also mentioned as 18.7 (i.e. 18.07.2016). On Page 13 of Exhibit C-8, there are total 18 entries and on page 9 of Exhibit C-15 there are 20 entries. On perusal of corresponding entries it is seen that entry related to Tarun, Anil Sodhi, Chiranjeev Soni, Jugnu Soni, CA old, CMP, CA Old, DAJ, CMS, Jagannath Ji, Varsha appearing on page 13 of Exhibit C-8 are again appearing on page 9 of Exhibit C-15 as is clear from the scanned image of relevant portion of aforesaid pages of the exhibit. The Ld. AR has submitted that as many as 14 entries of page No. 13 of Exhibit C-8 are repeating in page 9 of Exhibit C-15 and Ld. AO has added both the entries separately whereas actually these are same. I have gone through these entries as above in the scanned image also and found the claim of the Ld. AR to be correct in respect of 12 entries of page 13 of Ex. C-

8. On being enquired by me, that 8th entry being unnamed on page 13 of C-8 is having amount as 2,76,764/- whereas in page 9 of C-15, this amount is shown is Rs. 2,65,785/- related to gold purchased from Varsha and are thus not exactly same. Similar is the case with 15th entry on page 13 of C-8 in the name of Samar (taken from SCN) which is also having slight difference in the amount. The Ld. AR has submitted and drawn my attention to the relevant page of the seized document i.e. page 13 of C-8 and page 9 of C-15 and has stated that in fact on page 13 of C-8 after the entry in the name of CA old, there is entry whose name was not legible to the Ld AO and that is why in the SCN name has been left blank. It was further explained that against this entry only weight of gold and its purity is mentioned i.e. "91.650 x 99.5" and in fact there is no mention of any amount. The Ld. AO after assuming the rate of pure gold as Rs. 3035/- per gm. has worked out the amount as 276760/- related to this entry of page 13 of C-8. Ld AR has explained that the name is written against this entry and if one closely peruse the entry then the name `Varsha' can be read. Similarly entry of 'gold purchase from Varsha' as per SCN page 27 related to page 9 of C-15 it is seen by me on being pointed out by the Ld. AR that against this entry also only weight of gold and purity of gold as mentioned i.e. "91.650 x 99.5" and actually no any amount is mentioned. However, Ld. AO on page 27 of SCN related to this entry of page 9 of Exhibit C-15 has taken weight as 91.65 gm. and here Ld. AO has taken the rate of gold as Rs. 2900 per gm. Thus slight difference in the amount is only because the slight different rate of the gold taken by the Ld. AO while determining the amount related to this transaction. Ongoing through the particular details as mentioned above, I am fully satisfied that these two entries are also same with only weight and purity of gold mentioned which are exactly same and with same name and the slight difference in the amount is only due to different rates of Gold taken by AO. The Ld. AR has further drawn my attention to the another entry namely of Samar where again in both the loose papers namely page 13 of C-8 and page 9 of C-15 only weight and purity of the gold is mentioned which is "221.010 x 99.5" and in fact the amount has been calculated by the Ld. AO by taking two different rates at two respective places. I agree with the explanation of Ld. AR. Thus it is clear that there is duplication of entries to the extent of Rs. 1,01,99,026/- as per working sheet Annx. 4E furnished by the Ld. AR.

12.4 It is to mention here that in the working sheet so submitted the Ld. AR has taken those entries which are exactly duplicating leading to double addition. The Ld. AR has further submitted that few remaining entries may also be matched with some other entries in some other exhibit either directly or by implication but same may require some more time and hence not attempted in order to avoid prolonged litigation.

For the sake of clarity the working sheet Annexure 4E submitted by the Ld. AR is reproduced here:-

Annexure: 4E

EXIBIT-8					EXIBIT-15				
Page no. 13, Date: (APB-115)					Page no. 9, Date: 18-Jul (APB-304)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no
Tarun	for (17) & (1.5)	1850000	Bullion	12	cash received from tarun against gold sold	Unaccounted sale	1850000	Bullion	27
Anil Sodi	for (27.5) & (15)	4250000	Bullion	12	cash paid to anil against gold pur	Unaccounted purchases	4250000	Bullion	27
	Cash Advance	58500	Jewellery	12	cash received against gold sale 8.7. rate diff	Unaccounted sale	58500	Bullion	27
Chiranjiv Soni	Cash Advance	950	Jewellery	12	cash recived chirnji soni	Unaccounted sale	950	Jewellery	27
Jugnu Soni	Cash Advance	495000	Jewellery	12	cash received jugnu soni	Unaccounted sale	495000	Jewellery	27
CA Old	Cash Advance	9450	Jewellery	12	old gold purchased	Unaccounted purchases	9450	Jewellery	27
	91.650 x 99.5% @ 3035/-	276764	Bullion	12	gold purchased from varsha	Unaccounted purchases	265785	Bullion	27
Varsha	Cash Advance	150000	Bullion	12	cash paid varsha	Unaccounted sale	150000	Bullion	27
CMP	Cash Advance	303500	Bullion	12	gold purchased 100*30350	Unaccounted purchases	303500	Bullion	27
CA Old	Cash Advance	66800	Jewellery	12	old gold purchased	Unaccounted purchases	66800	Jewellery	27
DAJ	200.00 x 99.5% @ 3035/-	603965	Bullion	12	gold issued daj	Unaccounted sale	580000	Bullion	27
Jagannath Ji	59.970 @ 3035/-	182008	Bullion	12	gold issued jagganath karigar	Unaccounted sale	173913	Bullion	27
Samar	221.010 x 99.5% @ 3035/-	667408	Bullion	12	gold purchased from samar delhi	Unaccounted purchases	641190	Bullion	27
CMS	Cash Advance	1284681	Bullion	12	cash received 1284681 against gold sale cms	Unaccounted sale	1284681	Bullion	27
Total additions on page no. 13 (related to duplication)		10199026			Total additions on page no. 9 (related to duplication)		10129769		
Total Duplication		10199026							
Duplication of bullion		9418326							
Duplication of jewellery		780700							

12.5 It has been explained by the Ld. AR that in all the working sheets as in working sheet 4E, only those entries have been taken which are matching in two different pages of exhibits and these are reflecting straightaway double addition and those entries which are not directly matching or require some interpretation has been left with. For the sake of clarity and easy reference other working sheets marked as annexure 4A, 4B, 4C, 4D, 4F and 4G are reproduced below:-

Annexure: 4A

EXIBIT-8					EXIBIT-15				
Page no. 21, Date: 27-Jul (APB-128)					Page no. 21, Date: 27-Jul (APB-292)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN Page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN Page no.
Nidhesh Ji Jain	cash advance	19260	Jewellery	14	Cash received by Nidhesh Ji	Unaccounted sale	19260	Jewellery	24
Pawan ji PF	for 10	1000000	Bullion	14	Cash paid to pawan ji and gold received 503.350 gms	unaccounted purchase in cash	1000000	Bullion	24
Sita Ram Soni	0.686g @ 3060	2100	Jewellery	14	Gold received purity 99.5%	Unaccounted purchase	2001	Bullion	24
Rajendra ji Rasiya	cash advance	80000	Jewellery	14	Cash received by Rajendra ji Rasiya	Unaccounted sale	80000	Jewellery	25
CA old	cash advance	37000	Jewellery	14	Cash paid against old gold prchased 15.47*80%*3000	Unaccounte purchases	37000	Jewellery	25
CA old	cash advance	58250	Bullion	14	Cash received (Unaccounted sale)		58250	Jewellery	25
CMS	cash advance	909615	Bullion	14	Cash received against gold sold 297.47	Unaccounted sale	909615	Jewellery	25
Total additions on page no. 21		2106225			Total additions on page no. 21		2106126		
Total Duplication		2106225			Total additions on page no. 21		2106126		
Duplication of bullion		1967865							
Duplication of jewellery		138360							

Annexure: 4B

EXIBIT-8					EXIBIT-15				
Page no. 16, Date: 21-Jul (APB-120)					Page no. 18, Date: 21-Jul (APB-295)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.
CMP	Cash Advance	311270	Bullion	13	CASH PAID CP AGAINST 102.730*30300	Unaccounted purchase	311272	Bullion	25
Tarun Bikaner	for (8)	800000	Bullion	13	CASH RECEIVED TARUN JI BIKANER 800000+500000 AGANST GOLD SOLD	Unaccounted sale	3625000	Bullion	25
Dilip 31.880*83	31.880 g x 83% @ 3030/-	80173	Jewellery	13	GOLD ISSUED TO DILIP KARIGAR	Unaccounted sale	100514	Jewellery	25

Anil	for (16)	1600000	Bullion	13	GOLD PURCHASED BY ANIL JI	Unaccounted sale	1600000	Bullion	25
Sudhir Ji	for (3)	300000	Bullion	13	CASH RECEIVED SUDHIR JI	Unaccounted sale	300000	Bullion	25
Girraj Ji	Cash Advance	52800	Jewellery	13	CASH RECEIVED BY GIRRIJ THREW RAJKUMAR JI	Unaccounted sale	52800	Jewellery	25
CMS	Cash Advance	61465	Bullion	13	CAS RECEIVED BY CMS AGAINST GOLD SOLD	Unaccounted sale	491450	Bullion	25
CMS	Cash Advance	200085	Bullion	13					
CMS	Cash Advance	77850	Bullion	13					
CMS	Cash Advance	152050	Bullion	13					
Total additions on page no. 16		3635693			Total additions on page no. 18		6481036		
Total Duplication		3635693							
Duplication of bullion		3202720							
Duplication of jewellery		432973							

Annexure: 4C

EXHIBIT-8					EXHIBIT-15				
Page no. 15, Date: 20-Jul (APB-118)					Page no. 15, Date: 20-Jul (APB-298)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.
Dilip Ji	Cash Advance	29100	Jewellery	12	CASH RECEIVED BY DILIP KATTA	Unaccounted sale	29100	Jewellery	25
CMP	Cash Advance	67527	Bullion	12	GOLD PURCHASED BY CMP 22.360*30200	Unaccounted sale	67527	Bullion	25
Anil	for (20)	2000000	Bullion	12	GOLD PURCHASED FROM ANIL 700.170	Unaccounted sale	2000000	Bullion	25
CMP	Cash Advance	122140	Bullion	12	GOLD PURCHASED 40.310	Unaccounted sale	122140	Bullion	26
Pawan Ji PF	for (20)	2000000	Bullion	12	GOLD PURCHASED	Unaccounted sale	2000000	Bullion	26
Tarun Bikaner	for (15) + (5) + (5)	2500000	Bullion	12	CASH RECEIVED BY TARUN JI	Unaccounted sale	2500000	Bullion	26
CMS	Cash Advance	1336940	Bullion	12	GOLD SOLD C MS	Unaccounted sale	1336940	Bullion	26
Total additions on page no. 15		8055707			Total additions on page no. 15		8055707		
Total Duplication		8055707							

Duplication of bullion	8026607						
Duplication of jewellery	29100						

Annexure: 4D

EXIBIT-8					EXIBIT-15				
Page no. 17, Date: 22-Jul (APB-121)					Page no. 10, Date: 22-Jul (APB-303)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.
Tarun Bikaner	for (9) + (19)	2800000	Bullion	13	gold purchased from tarun	Unaccounted purchase	3031000	Bullion	26
Tarun Bikaner	Cash Advance	231000	Bullion	13					
CMP	Cash Advance	634524	Bullion	13	gold purchased	Unaccounted purchase	634524	Bullion	26
CA Old	Cash Advance	183400	Jewellery	13	old gold purchsed	Unaccounted purchase	133000	Jewellery	26
				13	old gold purchsed	Unaccounted purchase	50400	Jewellery	26
	Cash Advance	50000	Bullion	13	cash recived 50000 against gold sold 64.530	Unaccounted sale	50000	Bullion	26
Deepak Ji	Cash Advance	4500	Jewellery	13	cash received from deepak	Unaccounted sale	4500	Jewellery	26
CMP	Cash Advance	115050	Bullion	13	gold purchased	Unaccounted purchases	115050	Bullion	26
KKB	for (9.5)	950000	Bullion	13	cash paid to kkb 950000 against 1000 gm gold purchsed	Unaccounted purchases	950000	Bullion	26
Vishwajeet 10.500*77	10.500 x 77% @ 3030/-	24497	Jewellery	13	gold issued vishvajeet	Unaccounted sale		Jewellery	27
CA Old	Cash Advance	10890	Jewellery	13	old gold purchsed	Unaccounted purchases	10890	Jewellery	27
CA Old	Cash Advance	129120	Jewellery	13	old gold purchase	Unaccounted purchases	129120	Jewellery	27
CMP	Cash Advance	6080	Bullion	13	gold purchsed	Unaccounted purchases	6080	Bullion	27
CMP	Cash Advance	10000	Bullion	13	gold purchsed	Unaccounted purchases	10000	Bullion	27
CMS	Cash Advance	309100	Bullion	13	gold sold in cash c m s	Unaccounted sale	888165	Bullion	27
CMS	Cash Advance	99910	Bullion	13					
CMS	Cash Advance	99880	Bullion	13					

CMS	Cash Advance	153000	Bullion	13					
CMS	Cash Advance	199715	Bullion	13					
CMS	Cash Advance	26560	Bullion	13					
Total additions on page no. 17		6037226			Total additions on page no. 10		6012729		
Total Duplication		6037226							
Duplication of bullion		5624819							
Duplication of jewellery		402407							

Annexure: 4F

EXIBIT-8					EXIBIT-15				
Page no. 18, Date: 23-Jul (APB-123)					Page no. 6, Date: 23-Jul (APB-307)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.
Chiku Ji	40.500 x 99.5% @ 3050/-	122905	Bullion	13	purchase of gold	Unaccounted purchase	117450	Bullion	28
KKB	Cash Advance	2050000	Bullion	13	cash paid kkb	Unaccounted sale	2050000	Bullion	28
CA	36.00 @ 3050/-	109800	Bullion	13	cash paid against old gold purchased	Unaccounted Purchase	36000	Bullion	28
Ref	Cash Advance	6300	Jewellery	13	italian chai purched	Unaccounted purchase	6300	Jewellery	28
Dabale	100.200 @ 3050/-	305610	Bullion	13	gold sold s g m threw vinod	Unaccounted sale	290580	Bullion	28
CMS	Cash Advance	30510	Bullion	13	cash recived against gold sale c m s	Unaccounted sale	30510	Bullion	28
Total additions on page no. 18		2625125			Total additions on page no. 6		2530840		
Total Duplication		2625125							
Duplication of bullion		2618825							
Duplication of jewellery		6300							

Annexure: 4G

EXIBIT-8					EXIBIT-15				
Page no. 14, Date: 19-Jul (APB-117)					Page no. 1, Date: 19-Jul (APB-310)				
Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.	Description	Addition made on account of	Amount (Rs.)	Nature of item	SCN page no.
Rukmani	Cash Advance	40000	Jewellery	12	cash received from rukmani	Unaccounted sale	40000	Jewellery	28
CMP	Cash Advance	304000	Bullion	12	cash paid against gold sale 100 gm	Unaccounted sale	304000	Bullion	28
SGM	162.570 x 99.5% @ 3040/-	491741	Bullion	12	gold sold s g m	Unaccounted sale	471453	Bullion	28

CMS	Cash Advance	49735	Bullion	12	cash received against gold sale c m s	Unaccounted sale	510230	Bullion	29
CMS	Cash Advance	245545	Bullion	12					
CMS	Cash Advance	14900	Bullion	12					
CMS	Cash Advance	200000	Bullion	12					
Total additions on page no. 14		1345921			Total additions on page no. 1		1325683		
Total Duplication		1345921							
Duplication of bullion		1305921							
Duplication of jewellery		40000							

Total addition in respect of the above pages of Exhibit-8 made by the AO	34,004,923
Bullion addition	32,165,083
Jewellery addition	1,829,840
Additions that have also been made under Exhibit 15 (Duplication)	34,004,923
Bullion duplication	
Jewellery duplication	

13. As seen from these annexures, it is clearly noticed that dates are also mentioned at the top of the relevant page of the exhibit and these pages so compared by the Ld. AR are actually related to the same date. As the Ld. AO has made addition of these amounts by taking the amounts from different pages of Exhibit C-8 and again added the amount by taking the amounts from different pages of Exhibit C-15, the request of AR that such double additions may please be straightaway deleted, is acceptable and accordingly addition to the extent of Rs. 3,40,04,923/- being double addition among few pages of exhibit C-8 and C-15 as per annexure 4 above submitted by the Ld. AR is hereby deleted. Ld. AR has submitted that in Exhibit C-8 i.e. exhibit 8 of Annexure AS of Telipada, the Ld. AO has added all the amount by considering them to be 'cash advance / sale' without actually identifying whether it is actually sale or actually the purchase and hence the addition may be directly reduced from exhibit C-8 as in Exhibit C-15, the Ld. AO has considered some purchases also apart from the sales.

13.2 The Ld. AR has simultaneously also submitted as per these chart itself that most of the entries are related to transaction of bullion and this is emanating from the perusal of the description of entry itself. Coming back to same Exhibit 4E for the purpose of example, it is very much clear that entry related to Tarun on page 13 of C-8 for Rs. 18,50,000/- is in respect of Bullion. Similarly next entry of Anil Sodhi of Rs. 42,50,000/- is also of Bullion. Similarly entry of Varsha Soni of weight 91.650 gm. with 99.5% purity is also of bullion, as can be understood easily. Accordingly in these working sheets the entries have also been segregated between bullion and jewellery. It was submitted that as the appellant was doing business of jewellery only, the addition related to transactions of jewellery that too only of the net profit earned out of these transactions, may only be considered.

Reconciliation of annexure A-5

The Ld. AR has furnished another annexure namely A-5, wherein following three types of entries have been identified:

i) While estimating the sale the Ld. AO has taken the gross total of the entries in respect of cash inflow on various pages which included the opening balance of the cash of that day and thus excessive amount has been taken by the Ld. AO. These few pages are page 2, page 5, page 8, page 11, page 14, page 17 and page 20 of exhibit C-15 (i.e. exhibit 15 of Annx. AS seized from Telipada). The Ld. AR has explained that these pages are basically memorandum pages of cash inflow and outflow during the day, also depicting the opening and the closing cash balances. Thus AR argued that at the maximum only the cash inflow can be considered as sale, though in some cases it may also be the loan received for some business purpose which needs to be returned and as such same will not be part of sale. The AR has submitted the summary of these pages as per first chart / table of Annexure 5 and has mentioned that total of such addition which has been taken by even including the opening cash balance of the day comes to Rs. 1,34,23,481/-. The relevant first chart of annexure 5 is reproduced below;

Annexure: 5						
1. Opening balances of cash taken as sales in Exhibit C-15 (seized from 1756, Telipada)						
Date	Exhibit page no.	SCN page no.	APB	Addition made in respect of this page	Opening cash balance included in the addition made	Working Sheet No.
18-Jul	8	28	305	6,341,035	23,88,030	5A
19-Jul	2	28	312	2,263,016	15,58,970	5B
20-Jul	14	26	299	6,104,070	19,58,235	5C
21-Jul	17	25	296	4,555,835	19,11,580	5D
22-Jul	11	26	302	6,994,975	26,44,480	5E
23-Jul	5	28	308	3,836,565	35,26,522	5F
27-Jul	20	25	293	3,205,152	18,23,694	5G
Total excluding opening balance of 18-Jul					1,34,23,481	

13.3 The Ld. AR has also furnished working sheet in respect of each of these pages named as Annexure 5A to 5G. The Ld. AR has drawn my attention to the relevant seized pages as per paper book page No. APB 293, 296, 299, 302, 305, 308, 312 and has submitted that the very nature of entries on these pages clearly reflect that the opening balance is also mentioned on the top and below it specific details of cash inflow has been mentioned and in the end total has been done. Thereafter on right side details of cash outflow and the closing balance of the day is also mentioned. On perusal of these pages, the contention of the Ld. AR is found to be correct. However it is seen that on some pages the opening balance is not very clearly visible and only last three digits or last four digits are visible at some places. The Ld. AR has submitted that the photocopy of the seized document so submitted before me as APB was out of the photocopy provided by the department and at some places all figures of the opening balance may not be visible but at least last four or five digits are visible. Accordingly the Ld. AR has furnished the detailed cash flow seized of these pages as reflected from the

seized pages itself by way of working sheet named as 5A to 5G and from these sheets total of the cash inflow has been arrived, which only need to be considered and if the same is deducted out of the gross total (taken by the AO as addition), the balance figure is matching with opening cash balance as mentioned on these pages. Another important factor pointed out by Ld. AR was that this opening cash balance so mentioned on the page which is arrived at from the cash flow working is also tallying with a closing balance so shown on another page related to preceding day. For sake of easy reference and clarity working sheets namely 5A to 5G are reproduced below:-

Page no. 8 (18-Jul) (APB-305)							Page no.9 (18-Jul) (APB-304)						
Receipts/ Sales	Nature of receipts	Payments/ Purchase	Nature of payment	Ref	SCN page no.		Description	Addition made on account of	Amount (Rs.)	Ref	SC N Pa ge no.	Nature of item	Remarks
Opening cash balance	2388030												
	22,350		330		28								
	10,500		185		28								
	950		240	4	28		cash received chirnji soni	Unaccounte d sale	950	4	27		Common entries for unaccounte d sales
	35,820		4,250,000	Bullion	2	28	cash paid to anil against gold pur	Unaccounte d purchases	4,250,000	2	27	Bullion	
	17,200		9,450		6	28	old gold purchased	Unaccounte d purchases	9,450	6	27		
	1,000		800		28								
	982		150,000	Bullion	7	28	cash paid varsha	Unaccounte d sale	150,000	7	27	Bullion	Purchase considered as sales
	8,300		303,500	Bullion	8	28	gold purchased 100*30350	Unaccounte d purchases	303,500	8	27	Bullion	
	500		66,800		9	28	old gold	Unaccou nted	66,800	9	27		

Annexure: 5A

	2,100				28				
Total sales/ Receipts	3,953,246					Unaccounted sales included on page no.8	3,867,231		
Total of opening bal + receipts	6,341,276					Common entries of Unaccounted sales	3,717,231		
Total payments			4,782,065			Purchases, wrongly considered as Unaccounted sales	150,000		
Closing balance			1,558,970			Unaccounted sales included on page no.8 related to jewellery	524,050		
Addition made by AO			6,341,035			Unaccounted sales included on page no. 8 related to bullions	3,193,181		

Annexure: 5B

Page no. 2 (19-Jul)						
	Receipts/Sales	Nature of receipts	Payments/Purchase	Nature of payment	Ref	SCN page no.
Opening cash balance	1,558,970					
	6,250		41			28
	18,380		304,000	Bullion	2	28
	7,736		740		4	28
	7,800					28
	4,494					28
	4,590					28
	2,300					28
	9,760					28

Page no.1 (19-Jul) (APB-310)						
Description	Addition made on account of	Amount (Rs.)	Ref	SCN page no.	Nature of item	Remarks
cash paid against gold sale 100 gm	Unaccounted sale	304,000	2	28	Bullion	Purchases considered as sales
exp	Unaccounted expenses	740	4	28		

	7,290					28
	16,920					28
	1,000					28
	760					28
	6,950				5	28
	7,972					28
	32,000					28
	19,730					28
	40,000				1	28
	510,230	Bullion			3	28
Total sales/receipts	704,162					
Total of opening bal + receipts	2,263,132					
Total payments			304,781			
Closing balance			1,958,235			
Addition made by AO			2,263,016			

gold received from sushant	Unaccounted purchase	6,960			5	29	Sales considered as purchases
cash received from rukmani	Unaccounted sale	40,000			1	28	Common entries for unaccounted sales
cash received against gold sale c m s	Unaccounted sale	510,230			3	29	Bullion Common entries for unaccounted sales
Unaccounted Sales included on page. 2		854,230					
Common entries of Unaccounted sales		550,230					
Purchases, wrongly considered as Unaccounted sales		304,000					
Unaccounted Sales included on page. 2 related to jewellery		40,000					
Unaccounted Sales included on page. 2 related to bullion		510,230					

Annexure: 5C

Page no. 14 (20-Jul) (APB-299)						SCN page
Receipts/Sales	Nature of receipt	Payments/Purch	Nature of paym	Ref		

Page no.15 (20-Jul) (APB-298)						Nature of item	Remarks
Description	Addition made on	Amount	Ref	SCN page			

		pts	ase	ent		no.
Opening cash balance	1,958,235					
	2,066		115			26
	23,200		90			26
	110		165			26
	640		93			26
	24,349		67,527	Bullion	2	26
	5,034		2,000,000	Bullion	3	26
	930		122,140	Bullion	4	26
	47,180		2,000,000	Bullion	5	26
	18,526		2,360		8	26
	50					26
	8,330					26
	799					26
	13,700					26
	29,100				1	26
	2,500,000	Bullion			6	26

	account of	(Rs.)		no.		
GOLD PURCHASED BY CMP 22.360*30200	Unaccounted sale	67,527	2	25	Bullion	Purchases considered as sales
GOLD PURCHASED FROM ANIL 700.170	Unaccounted sale	2,000,000	3	25	Bullion	Purchases considered as sales
GOLD PURCHASED 40.310	Unaccounted sale	122,140	4	26	Bullion	Purchases considered as sales
GOLD PURCHASED	Unaccounted sale	2,000,000	5	26	Bullion	Purchases considered as sales
cash exp	Unaccounted expenses	2,360	8	26		Purchases considered as sales
CASH RECEIVED BY DILIP KATTA	Unaccounted sale	29,100	1	25		Common entries for unaccounted sales
CASH RECEIVED BY	Unaccounted	2,500,000	6	26	Bullion	Common entries for unaccounted

	1,336,940	Bullion			7	26
	1,000				9	26
	10,000				10	26
	124,000					26
Total sales/receipts	4,145,954					
Total of opening bal + receipts	6,104,189					
Total payments			4,192,490			
Closing balance			1,911,580			
Addition made by AO			6,104,070			

TARUN JI	sale					sales
GOLD SOLD CMS	Unaccounted sale	1,336,940	7	26	Bullion	Common entries for unaccounted sales
sashi ji	Unaccounted sale	1,000	9	26		Common entries for unaccounted sales
hanuman sahadh 9829550605	Unaccounted sale	10,000	10	26		Common entries for unaccounted sales
Unaccounted Sales included on page. 14		8,066,707				
Common entries of Unaccounted sales		3,877,040				
Purchases, wrongly considered as Unaccounted sales		4,189,667				
Unaccounted Sales included on page. 14 related to jewellery		40,100				
Unaccounted Sales included on page. 14 related to bullion		3,836,940				

Annexure: 5D

Page no. 17 (21-Jul) (APB-296)						SCN page no.
Receipts/Sales	Nature of receipts	Payments/Purchase	Nature of payment	Ref		
Opening cash balance	1,911,580					

Page no.18 (21-Jul) (APB-295)						Remarks
Description	Addition made on account of	Amount (Rs.)	Ref	SCN page no.	Nature of item	

	6,900	311,270	Bullion	1	25
	1,630	1,60,000	Bullion	2	25
	21,000	25			25
	21,912	60			25
	150,000				25
	16,300				25
	23,000				25
	35,500				25
	950				25
	61,500				25
	117,000				25
	4,640				25
	4,500				25
	1,500				25
	17,860				25
	5,953				25
	9,480				25
	1,30,000	Bullion		3	25
	30,000	Bullion		4	25
	52,800			5	25

CASH PAID CP AGAINST 102.730*30300	Unaccounted purchase	311,272	1	25	Bullion	
GOLD PURCHASED BY ANIL JI	Unaccounted sale	1,60,000	2	25	Bullion	Purchases considered as sales
CASH RECEIVED TARUN JI BIKANER 800000+500000 AGANST GOLD SOLD	Unaccounted sale	3,62,500	3	25	Bullion	Common entries for unaccounted sales
CASH RECEIVED SUDHIR JI	Unaccounted sale	300,000	4	25	Bullion	Common entries for unaccounted sales
CASH RECIVED BY GIRRIJ THREW	Unaccounted sale	52,800	5	25		Common entries for unaccounted sales

	300			6	25
	491,450	Bullion		7	25
Total sales/receipts	2,644,175				
Total of opening bal + receipts	4,555,755				
Total payments			1,911,355		
Closing balance			2,644,480		
Addition made			4,555,835		

RAJKUMAR JI						
REPAING RECEIVED BY COSTUMER	Unaccounted sale	3,000	6	25		Common entries for unaccounted sales
CAS RECEIVED BY CMS AGAINST GOLD SOLD	Unaccounted sale	491,450	7	25	Bullion	Common entries for unaccounted sales
Sales included on page. 17		6,072,250				
Common entries of Unaccounted Sales		4,472,250				
Purchases, wrongly considered as Unaccounted sales		1,600,000				
Sales included on page. 17 related to jewellery		55,800				
Sales included on page. 17 related to bullion		4,416,450				

Annexure: 5E

Page no. 11 (22-Jul) (APB-302)						
	Receipts/ Sales	Nature of receipts	Payments/ Purchase	Nature of payment	Ref	SCN page no.
Opening cash balance	2644480					
	28000		4150			26
	850		290			26
	45500		634524	Bullion	1	26
	11350		13300		2	26

Page no.10 (22-Jul) (APB-303)						
Description	Addition made on account of	Amount (Rs.)	Ref	SCN page no.	Nature of item	Remarks
gold purchased	Unaccounted purchase	634524	1	26	Bullion	
old gold purchase	Unaccounted	13300	2	26		

		0			
	6800	50400		3	26
	4363	11500	Bullion	6	26
	16000	95000	Bullion	7	26
	74550	10890		8	26
	350	129120		9	26
	22700	6080		10	26
	25000	10000	Bullion	11	26
	19600	49			26
	2200	140000	Bullion	13	26
	3850	24900		14	26
	68800				26
	19100				26

d	purchase	0			
old gold purchased	Unaccounted purchase	50400	3	26	
gold purchased	Unaccounted purchases	115000	6	26	Bullion
cash paid to kkb 950000 against 1000 gm gold purchased	Unaccounted purchases	950000	7	26	Bullion
old gold purchased	Unaccounted purchases	10890	8	27	
old gold purchase	Unaccounted purchases	129120	9	27	
gold purchased	Unaccounted purchases	6080	10	27	
gold purchased	Unaccounted purchases	10000	11	27	Bullion
gold purchased from anil	Unaccounted purchases	140000	13	27	Bullion
old gold purchased	Unaccounted purchases	24900	14	27	

	303100	Bullion			15	26
	50000	Bullion			4	26
	4500				5	26
	888165	Bullion			12	26
	110					26
	16250					26
	11630					26
Total sales/receipts	4350668					
Total of opening bal + receipts	6995048					
Total payments			3468453			
Closing balance			3526522			
Addition made			6994975			

gold purchased from tarun	Unaccounted purchase	3031000	15	26	Bullion	Sales considered as purchase
cash received 50000 against gold sold 64.530	Unaccounted sale	50000	4	26	Bullion	Common entries for unaccounted sales
cash received from deepak	Unaccounted sale	4500	5	26		Common entries for unaccounted sales
gold sold in cash cms	Unaccounted sale	888165	12	27	Bullion	Common entries for unaccounted sales
Sales included on page. 11		942665				
		942665				
		0				
Sales included on page. 11 relating to jewellery		4500				
Sales included on page. 11 related to bullion		938165				

Annexure: 5F

Page no. 5 (23-Jul) (APB-308)						SCN page no.
Receipts/Sales	Nature of receipts	Payments/Purchase	Nature of payment	Ref		

Page no.6 (23-Jul) (APB-307)						Remarks
Description	Addition made on account of	Amount (Rs.)	Ref	SCN page no.	Nature of item	

Opening cash balance	352652 2				
	1218		1500		28
	9000		20500 00	Bullion n	1 28
	12090		6300		2 28
	22900		10000		6 28
	22000		685		28
	4500		500		5 28
	300				28
	13000				28
	87000				28
	5100				28
	25400				3 28
	30510			Bullion n	4 28
	72100				28
	5000				28
Total sales/receipts	310118				
Total of opening bal + receipts	383664 0				
Total payments			20689 85		

cash paid kkb	Unaccounted sale	20500 00	1	28	Bullion	Purchases considered as sales
italian chai parched	Unaccounted purchase	6300	2	28		
cash paid c p	Unaccounted sale	10000	6	28		Purchases considered as sales
commission paid	Unaccounted sale	500	5	28		Purchases considered as sales
cash received madhu	Unaccounted sale	25400	3	28		Common entries for unaccounted sales
cash received against gold sale c m s	Unaccounted sale	30510	4	28	Bullion	Common entries for unaccounted sales
Sales included on page. 5		21164 10				
Common entries of Unaccounted Sales		55910				
Purchases, wrongly considered as		20605 00				

Closing balance		1767580		
Addition made		3836565		

Unaccounted sales	
Sales included on page. 5 relating to jewellery	25400
Sales included on page. 5 relating to bullion	30510

Annexure: 5G

Page no. 20 (27-Jul) (APB-293)						
	Receipts/Sales	Nature of receipts	Payments/Purchase	Nature of payment	Ref	SCN page no.
Opening cash balance	1823694					
	1700		706			25
	1607		2104			25
	12360		1000000	Bullion	2	25
	2770		37000		4	25
	53090		860			25
	161400		125			25
	17100					25
	1137					25
	18905					25

Page no. 21 (27-Jul) (APB-292)						
Description	Addition made on account of	Amount (Rs.)	Ref	SCN page no.	Nature of item	Remarks
CASH PAID TO PAWAN JI AND GOLD RECEIVED 503.350 GM	Unaccounted purchases in cash	1000000	2	24	Bullion	
CASH PAID AGAINST OLD GOLD PURCHASED 15.470*80%*3000	Unaccounted purchases	37000	4	25		

14. I have gone through these working sheets and also the relevant pages of the seized documents. Ld. AR has drawn my attention to page 8 of C-15 (APB-305) where closing balance is Rs. 15,58,970/-, which is the opening balance of 19th July and also reflected on page 2 of C-15 related to 19th July. On page 2 of C-15 related to 19th July the closing balance is Rs. 19,58,235/- which is shown as opening balance on page 14 of C-15 related to 20th July. Similar is the position in respect to other pages. Moreover it is also seen by me that the entries of cash inflow can at best be considered as sale and obviously the gross total shown below on the page includes the opening cash balance of the day also. Thus these opening cash balances so taken on different dates as part of the sale by the Ld. AO are required to be excluded.

However on close scrutiny of these pages it was noticed by the undersigned that on page 8 of Exhibit C-15 the opening balance of 18th July is having last six digit as '110380' as per APB 305 whereas in the chart the last six digits are '388030'. The Ld. AR has considered this point. It was also pointed out to him that there is no page related to the entries on 17th July so that the opening balance of 18th July as claimed by the Ld. AR cannot be verified from closing balance of 17th July. However, Ld. AR explained that on going through the entries on seized page 8 of Exhibit C-15, it is seen that in the working sheet 5A, one entry which has been scored off amounting to Rs. 9,600/- has not been taken rightly but inadvertently another entry of Rs. 22,350/- scored off has been included, which has resulted into the aforesaid minor difference in the figure. After excluding entry of Rs. 22,350/- from cash inflow during the day, the total cash receipts will get reduced by this amount and correspondingly as the gross total amount of Rs. 63,41,276/- shown on the page is very legible and confirmed, thereby the opening cash balance will be increased by Rs. 22,350/- and it will actually be Rs. 24,10,380/-. The Ld. AR has pointed out that the last five digits so visible on page 8 are clearly '10380' and thus these are exactly matching with the above actual figure of opening balance of Rs. 24,10,380/-. The explanation so given by the Ld. AR is found to be correct. In brief it is held that Ld. AO has not only taken cash inflow of particular day as sale but also included the opening balances also as sales, which need to be excluded out of the addition. Such total amount comes to Rs. 1,34,23,481/- and same is hereby deleted.

ii) The Ld. AR has submitted second chart in Annexure 5 itself which reflected entries which are common within the pages of Exhibit C-15 itself. For easy reference second chart is reproduced below;

Annexure: 5

2. Statement showing common entries within Exhibit C-15 (seized from 1756, Telipada)

Date	Exhibit page no.	SCN page no.	APB	Common entries of unaccounted sales of Jewellery	Common entries of unaccounted sales of Bullion	Total duplications in respect of unaccounted sales	Working Sheet No.
18-Jul	8 & 9	27-28	304-305	524,050	3,193,181	3,717,231	5A
19-Jul	2 & 1	28-29	310	40,000	510,230	550,230	5B
20-Jul	14 & 15	25-26	298-299	40,100	3,836,940	3,877,040	5C
21-Jul	17 & 18	25	295-296	55,800	4,416,450	4,472,250	5D
22-Jul	11 & 10	26-27	302-303	4500	938165	942665	5E
23-Jul	5 & 6	28	307-308	25400	30510	55910	5F
27-Jul	20 & 21	24-25	292-293	1067125	0	1067125	5G
TOTAL				1,756,975	12,925,476	14,682,451	

14.2 It was explained that page 8 and 9 of Exhibit C-15 both relate to same date i.e. 18th July. Page 8, of C-15, as already discussed herein above contained details of cash inflow and cash outflow during the day. It is seen that the Ld. AO had added these entries and on page 9 of C-15 various entries of page 8 are written in narrative form and probably in some other handwriting by some other person. Such entries which are taken on from page 8 and also from page 9, both belonging to 18th July itself, comes to Rs. 37,17,231/- as mentioned in the above chart. The Ld. AR has also given the entry-wise working of this summary chart showing duplication / double addition in the working sheet namely Annx. 5A to 5G, which have been reproduced above. From perusal of the working sheet, it is seen that Ld. AR has made a column of reference No. on the left half of the sheet containing details / entries of one page and also on the right half of the sheet containing details / entries of other page and has put same reference No. on the left half and right half portion of working sheet against the entries which are matching. As seen from the working sheet, it is clear that the two pages given in the same working sheet are of same date. For example, working sheet named as Annex. 5A is having details of page 8 and page 90 of C-15 and these both pages are for the same day i.e. 18th July. It has been noticed by me that reference No. 1, 3, 4, 5, 10, 11 & 13 mentioned by the Ld. AR on working sheet Annex. 5A relates to common entries on page 8 and page 9, as can also be seen in the working sheet as reproduced above. These seven entries totals upto Rs. 37,17,231/-. In Annex. 5C reference No. 1, 6, 7, 9 & 10 denotes the common entries found on page 14 vis-à-vis page 15 of Exhibit C-15, which totals upto Rs. 38,77,040/-. Similarly in annexure 5D entries having reference No. 3, 4, 5, 6 & 7 are the common entries on page 17 and 18 and total of the same comes to Rs. 44,72,250/-. I have found the similar position in relation to other working sheets, which have also been reproduced above. Thus it is quite clear that there is duplication of the addition on various pages within Exhibit C-15 totaling to Rs. 1,46,82,451/- and same is hereby held to be deleted / excluded from the total addition.

iii) In third chart of Annexure 5, the Ld. AR has submitted the summary of entries on different pages of Exhibit C-15 which have been incorrectly considered by the Ld. AO as sales, whereas actually these are purchases which is clear from the description / narration mentioned against the particular entry.

Annexure: 5

3. Statement showing purchases that have been wrongly considered as sales

Date	Exhibit page no.	SCN page no.	APB	Amounts reflecting purchases as per cash pages but wrongly considered as sales on descriptive pages	Working Sheet No.
18-Jul	8 & 9	27-28	304-305	150,000	5A
19-Jul	2 & 1	28-29	310	304,000	5B
20-Jul	14 & 15	25-26	298-299	4,189,667	5C
21-Jul	17 & 18	25	295-296	1,600,000	5D
22-Jul	11 & 10	26-27	302-303	0	5E
23-Jul	5 & 6	28	307-308	2060500	5F
27-Jul	20 & 21	24-25	292-293	0	5G
TOTAL				8,304,167	

From perusal of the aforesaid summary, it is seen that working sheet named as Annex. 5C is having highest amount totaling to Rs. 41,89,667/-. From perusal of Annex. 5C, it was explained by the Ld. AR that from perusal of page No. 14 of exhibit C-15, it is seen that entry related to Rs. 20 lakh in the name of Anil is among the various entries related to cash outgo i.e. of purchase. Similarly on same page i.e. page 14 of Exhibit C-15, another entries of Rs. 20 lakhs is also among the various entries related to cash outgo which clearly means that it is the purchase made by the group concern and not the sale. Similar the position with entry of Rs. 1,22,140/- which is also for purchase and entry of Rs. 2,360/- in the cash outgo, which is for reference. I have perused the working sheet alongwith seized page in the paper book submitted by the AR of the appellant and found the explanation of the Ld. AR to be correct. Similar is the position in relation to other working sheets namely 5A, 5B, 5D and 5F. Accordingly it is clear that the Ld. AO has taken an amount of Rs. 83,04,167/- as unaccounted sale whereas these are basically purchases and accordingly same is hereby excluded / deleted from the total unaccounted sale.

Issue of unaccounted Bullion sale added in the case of Royal Jewels

The other major issue referred by the Ld. AR in its written submission is that in Exhibit C-8 and C-15 at various places entries related to transaction of bullion are mentioned (which of course do not pertain to the appellant firm). It is the trade practice in the bullion dealing that many times deals for purchase or sale are struck for specific quantity of bullion with prevailing rate and the delivery or sale / purchase is made on some subsequent nearby dates. Accordingly the transaction have been recorded atleast twice, once at the time of striking the deal and other at the time of delivery and taking / giving of money and may be third time if delivery and / or money transaction earlier was in part and not in full. The Ld. AR has furnished party-wise details of such double entries made on different point of time and it was explained that the Ld. AO has added both the entries though actually these double entries relate to single transaction. The party-wise summary sheet reflect the amount of deal with one party and amount of final settlement / delivery with the same and the total of these amounts of deal and settlement comes to

Rs. 5,35,69,840/- and Rs. 5,07,72,315/- respectively. The Ld. AR has also furnished detailed working sheet of each party. For the sake of clarity and easy reference, the Annexure 6 and its sub-annexures are reproduced below:-

Annexure-6

Duplication of deals and settlements for the entries in Exhibit C-8 and C-15		
Name of the party	Deals (Rs.)	Settlement (Rs.)
Anil ji	12,966,500	15,877,600

Tarunji	15,709,200	17,400,250
KKB	4,594,000	6,100,000
Pawan	12,267,200	3,500,000
Gopalji Paragpura	308,000	308,370
Pradeep ji	367,140	367,145
Mahesh Dasani	1,220,800	1,220,950
Yuvrajji	3,087,000	3,200,000
Rajesh Digold	3,050,000	2,798,000
Total	53,569,840	50,772,315

Annexure - AS, Exhibit-8 and exhibit-15

Seized from : 1756, Telipada, SMS highway, Choura Rasta, Jaipur

Party Name: Anil ji							
Details of deals				Details of payment			
EXIBIT-C8				EXIBIT-C15			
Page no. 10B, Date: 14-Jul (APB-112)				Page no. 18, Date: 21/07/2019 (APB-295)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Anil ji	6216000	2Kg @ 31080/- (30455)	Bullion	Gold purchased by Anilji (499.64 gm)	1600000	Unaccounted sale	Bullion
Anil ji	3099500	1 kg @ 30995/- (30420)	Bullion	Page no. 15, Date: 20-Jul (APB-298)			
Page no. 15B, Date: 20-Jul (APB-119)				Gold purchased from Anil (700.17)	2000000	Unaccounted sale	Bullion
Anil ji	611000	200 g @30550/-	Bullion	Page no. 10, Date: 22-Jul (APB-303)			
Pawan ji	3040000	1 kg @30400/-	Bullion	Gold purchased from Anil (500.02)	1400000	Unaccounted purchase	Bullion
				Page no. 9, Date: 18-Jul (APB-304)			
				Cash paid to anil against gold pur (1500.19)	4250000	Unaccounted purchase	Bullion
				Ex. C-8 - Page no. 10, 14-Jul			
				Anil Bordi ka rasta	3050000	(Cash advance)	Bullion

			Anil Bordi ka rasta	3300000	(Cash advance)	Bullion
			Anil	277600	Cash advance	Bullion
Total qty of gold dealings: 4200.00gms	12966500		Total qty of settlement: 4200.02 gms		15877600	

Party name: Tarun Ji							
Details of deals				Details of payment			
EXIBIT-C8				EXIBIT-C15			
Page no.4B, Date: 7-Jul (APB-103)				Page no. 9, Date: 18-Jul (APB-304)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Tarun 500*30450	1522500	500gm @ 3045/-	Bullion	Cash received from Tarun against gold sold (1000gm)	1850000	Unaccounted sale	Bullion
Page no. 10B, Date: 14-Jul (APB-112)				Page no. 10, Date: 22-Jul (APB-303)			
Tarun 1kg * 30480	304800	1kg * 30480	Bullion	Gold purchased from Tarun (1000g)	3031000	Unaccounted purchase	Bullion
Tarun 500g * 30500	1525000	500g * 30500	Bullion	Page no. 15, Date: 20-Jul (APB-298)			
Tarun 500g * 30500	1525000	500g * 30500	Bullion	Cash received by Tarun ji	2500000	Unaccounted sale	Bullion
Tarun 300g * 31020	930600	300g * 31020	Bullion	Page no. 18, Date: 21-Jul (APB-295)			
Tarun 1kg * 30455	3045500	1kg * 30455	Bullion	Cash received Tarunji Bikaner 800000+500000 gainst gold sold (1250.1 g)	3625000	Unaccounted sale	Bullion
Tarun 200g * 30380	607600	200g * 30380	Bullion		1300000		

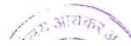
Page no. 15B, Date:20-Jul (APB-119)				EXIBIT-8			
Tarun 800*30500	2440000	800g @ 30500/-	Bullion	Page no. 10, Date: 14-Jul (APB-111)			
Tarun 800*30450	913500	300g @ 30450/-	Bullion	Tarun	750000	Cash advance [1300gms]	Bullion
Tarun 800*30430	912900	300g @ 30430/-	Bullion	Tarun	94250		
Page no 17B, Date: 22-Jul (APB-122)				Page no.12, Date:16-Jul (APB-114)			
Tarun 200* 30555/-	611100	200g @ 30555/-	Bullion	Tarun Bikaner	1000000	for (10)	Bullion
Page no. 19B, Date:25-Jul (APB-125)				Page no. 20, Date:26-Jul (APB-126)			
Tarun	1370700	450g @ 30460/-	Bullion	Tarun Bikaner	2050000	for (15.5)+{5}	Bullion
Total qty of gold dealings: 6050gm	15709200	Page no.9, Date: (APB-108)					
		Tarun Bikaner	2500000	for (25)	Bullion		
		Total qty of settlement:4550.1	17400250				
		Less: wrongly considered	3625000				
		Add: correct amount	1300000	15075250			

Party name:KKB							
Details of deals				Details of payment			
EXIBIT-C8				EXIBIT-C15			
Page no. 10B, Date: 14-Jul (APB-112)				Page no.10, Date:22-Jul (APB-303)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
KKB	1554000	500g@ 31080 (30530)	Bullion	cash paid to kkb 950000 against 1000gm gold purchased	950000	Unaccounted purchase	Bullion
	1526500	500@ 30530		Page no.6, Date:23-Jul (APB-307)			
Page no. 19B, Date: 25-Jul (APB-125)				cash paid kkb	2050000	Unaccounted sale	Bullion

KKB	3040000	1000g @ 30400	Bullion	EXIBIT-8			
Total qty of dealings:1500gms	4594000			Page no. 20 Date: 26-Jul (APB-126)			
Less: wrong considered	1554000			KCB	3100000	for (31)	Bullion
Add: correct amount	1526500			Total qty of settlement: 1000gm	6100000		
	4566500						

Party name: Pawan

Details of deals				Details of payment			
EXIBIT-C8				EXIBIT-C15			
Page no. 10B, Date: 14-Jul (APB-112)				Page no.21, Date:27-Jul (APB-292)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Pawanji	3087000	1kg @ 30870/- (30410)	Bullion	Cash paid to pawanji and gold received 503.350gms	1000000	Unaccounted purchases in cash	Bullion
	3041000			Page no.15, Date:20-Jul (APB-298)			
Pawanji	3086200	1kg @ 30862/- (30402)	Bullion	Gold purchased (500gms)	2000000	Unaccounted sale	Bullion
	3040200			EXIBIT-C8			
Page no. 15B, Date: 20-Jul (APB-119)				Page no.1, Date:04-Jul (APB-97)			
Pawan ji	1527500	500g @ 30550/-	Bullion	Pawanji PF (500.63)	500000	For (5)	Bullion
Page no. 20B, Date: 26-Jul (APB-127)				Total qty of settlement: 1503.98gm	3500000		
Pawanji PF on 1kg-310	3050000	1kg @ 30500/-	Bullion				
Page no. 21B, Date: 27-Jul (APB-129)							



Pawanji PF on 500g-390	1516500	500g @ 30330/-	Bullion
Total qty of dealings: 4000gms	12267200		
Less: wrong considered	6173200		
Add: correct amount	6081200	12175200	

Party name: Gopalji Paragpura

Details of deals				Details of payment			
EXIBIT-C8				EXIBIT-C8			
Page no. 38, Date: 6-Jul (APB-101)				Page no.7, Date:10-Jul (APB-106)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Gopalji 100*30800	308000	100 gm @ 30800/-	Bullion	CMS	308370	Cash advance	Bullion
Total qty of dealings: 100 gms	308000			Total qty of settlement: 100.12gm	308370		

Party name: Pradeep ji

Details of deals				Details of payment			
EXIBIT-8				EXIBIT-8			
Page no. 13B, Date: (APB-116)				Page no.7, Date:10-Jul (APB-106)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Pradeep PVJ 70g*30570	213990	70g @ 30570/-	Bullion	CMS	367145	Cash Advance	Bullion
Pradeep PVJ 50g*30630	153150	50g @ 30630/-	Bullion				
Total qty of dealings: 120 gms	367140			Total qty of settlement: 120.23gm	367145		

Party name: Mahesh Dasani							
Details of deals				Details of payment			
EXIBIT-8				EXIBIT-8			
Page no. 15B, Date: (APB-118)				Page no.15, Date:20-Jul (APB-118)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Maresh 400*30520	1220800	400g @ 30520	Bullion	CMS	1220950	Cash advance	Bullion
Total qty of dealings: 400 gms	1220800			Total qty of settlement: 400.05gm	1220950		

Party name:Yuvrajji							
Details of deals				Details of payment			
EXIBIT-8				EXIBIT-8			
Page no. 10B, Date: 14-Jul (APB-112)				Page no.1, Date:4-Jul (APB-97)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Yuvraj 1kg*30870	3087000	1kg @ 30870/-		Yuvraj ji Bikaner	100000	Cash advance	
				Page no.20, Date:26-Jul			
				Yuvraj ji Bikaner	3100000	for (10)+(21)	
Total qty of dealings: 1000 gms	3087000			Total qty of settlement: 1000gm	3200000		

Party name: Rajesh Digold							
Details of deals				Details of payment			
EXIBIT-8				EXIBIT-8			
Page no. 10B, Date: 14-Jul (APB-112)				Page no.10, Date:14-Jul (APB-111)			
Description	Amount (Rs.)	Addition made under	Nature	Description	Amount (Rs.)	Addition made under	Nature
Rajesh 1Kg*30500	3050000	1kg @ 30500/-		Rajeshji	1498000	Cash advance	
				Rajeshji	1300000	for (13)	
Total qty of dealings: 1000 gms	3050000			Total qty of settlement: 1000gm	2798000		

Rajesh 1Kg*30500	3050000	1kg @ 30500/-		Rajeshji	1498000	Cash advance	
				Rajeshji	1300000	for (13)	
Total qty of dealings: 1000 gms	3050000			Total qty of settlement: 1000gm	2798000		

14.3 Ld. AR has explained these working sheets. Taking the working sheet related to Anil, it was explained that at seized document page 10B of exhibit C-8 there are two entries in the name of Anil ji for Rs. 62,16,000/- and Rs. 30,99,500/-wherein deal respectively for 2 Kg. of gold and 1 Kg. of gold was finalized @ 31,080/- and Rs. 30,995/- per 10 gms. This deal was done on 14th July as per the date mentioned on seized page 10B of Exhibit C-8. As per page 10 of Exhibit C-8 which is also having date 14th July there are entries of payment made by Anil amounting to Rs.30,50,000/-, Rs. 33,00,000/- and Rs. 2,77,600/- (these details of payments are given in the working sheet on the right half portion and these particular details are on the bottom side of right half portion). Again on page 9 of C-15 which is related to 18th July payment of Rs. 42,50,000/- is received from Anil. As per page 15B of Exhibit C-8 which is for 20th July another transaction was struck for 200 gm. and 1 Kg. of gold respectively @ 30550 and @ 30400 per 10 gms (inadvertently written in Pawan's name). The payments so made to Anil are reflected on page 10, page 15 and page 18 of exhibit C-15 which relates to 22'd July, 20th July and 21St July respectively, as mentioned on the right half portion of the working sheet. Thus from perusal of the working sheet, it is seen that Ld. AO has added both the amounts once at the time of striking the deal and twice at the time of transaction getting materialized by way of payment. These details so given in the working sheet are clearly reflecting that Ld. AO has made double addition. In such cases where there is deal and consequently the actual transaction, the addition in relation to the actual transaction need to be made as there may be sometime not exactly fulfilling the deal after mutual discussion between the parties. Accordingly I agree with the argument of Ld AR that as addition of the amount of Rs. 5,07,72,315/- is already included in the addition, accordingly the another addition which relates to deals amounting to Rs. 5,35,69,840/- is required to be deleted and same is thereby ordered to be deleted.

Rough estimates noting on exhibit C-10, C-11, C-12 & C-13

Next issue raised by the Ld. AR is that in Exhibit C-10, C-11, C-12, C-13, there are mainly many slips titled as "rough estimate", wherein weight, rate and at some places the total amount is mentioned. Again these amounts related to these slips have been recorded in the summary sheet seized in Exhibit C-15. The Ld. AR has explained that weight of the item and trade as well as the amount mentioned in the slip is clearly matching with the amount recorded in Exhibit C-15 and hence there is at all no difficulty in identifying that such amount mentioning the slips have been included in the summary of the receipt and payment made on various pages seized in Exhibit C-15. Moreover the clinching evidence of slips being entered in the summary sheet in Exhibit C-15 is that the slips are having Si. No. and these very Sl. Nos. are mentioned in the summary sheet of C-15 against the respective amount. Besides above, entries in various pages of A8, A9 and A10 are being repeated in Exhibit A1 (i.e. respective Exhibit of Annexure AS seized from 14, Sunder Nagar). For easy reference the summary sheet named as Annexure 7 is reproduced below:

Summary of duplications between notings and receipts		
Duplication amongst exhibits	Annexure	Amount (Rs.)
Receipts in Exhibit C10 noted in Exhibit C15	7A	559061
Receipts in Exhibit C11 noted in Exhibit C15	7B	922471
Receipts in Exhibit C12 noted in Exhibit C15	7C	313789
Receipts in Exhibit C13 noted in Exhibit C15	7D	213665
Receipts in Exhibit A1 noted in Exhibit A8	7E	1881781

Receipts in Exhibit A1 noted in Exhibit A9	7F	8173621
Receipts in Exhibit A1 noted in Exhibit A10	7E	887719

15. I have perused the working sheets and also the corresponding pages of Exhibit C-10, C-11, C-12 vis-à-vis the relevant pages of Exhibit C-15. I found that on each rough estimate slips Si. No. is mentioned and against the corresponding amount in Exhibit C-15 same Sl. No. is mentioned. I have also perused detailed working sheet related to common entries between Exhibit A-1 and A-8, common entries between A-1 and A-9 and A-1 and A-10 and found the explanation of the Ld. AR to be correct. Accordingly, the claim of the Ld. AR of the appellant is found correct and it is again a case of double addition by the Ld. AO, total of such amount comes to Rs. 1,29,52,107/- which is directed to be deleted. For ready reference one of the working sheet showing slip numbers and the details mentioned in the slip seized in Exhibit C-10 alongwith details of corresponding entries of the slips so recorded on page 11 of Exhibit C-15 is reproduced below;

Exhibit C15										Exhibit C10										
Sales/ Receipts					Purchase/ Payment					Nature of Item	Date	Slip No.	Gross weight as per receipts	Purity as per receipt	Weight as per SCN	Gold rate + making	Amount	Addition made under	SCN page no.	Remarks
Amount	Receipt No.	Exhibit No./ Page no.	AP B	Amount	Receipt No.	Exhibit No./ Page no.	AP B	SCN page no.												
Page no. 11 (22-Jul)																				
Opening cash bal	2644480																			
	28000	40	C10-42	2	4190	55	C10-27	17	26	22.07.16	40		8.76	2900+400	28000				Unaccounted sales	
	800	41	C10-41	3	290	59	C10-23	21	26	22.07.16	41		0.72	2900	800				Unaccounted sales	
	45500	42	C10-40	4	694524				26	22.07.16	42		22.8	2900+400	45500				Unaccounted sales	
	11350	43	C10-39	5	131000				26	22.07.16	43		3.85	2900+50	11350				Unaccounted sales	
	6800	45	C10-37	7	50400				26	22.07.16	45		1.95	2900	5655				Unaccounted sales	
	4363	48	C10-34	10	115050				26		48		1.416	3080	4363				Unaccounted sales	
	1600	49	C10-	11	950,0				26	22.07.16	49		5.5	2900	16000				Unaccounted sales	

Exhibit C15							
Sales/ Receipts				Purchase/ Payment			
Amount	Recipt No.	Exbit No./ Page no.	Nature of Item	Amount	Recipt No.	Exbit No./ Page no.	Nature of Item

Page no. 5 (23-Jul)

Opening cash bal	352652						
	1218	68	C10-14	1500	77		
	9000	89	C10-13	2,050,000		Bullion	
	12090	71	C10-11	6300			
	22900	73	C10-9	10000			
	22000	74	C10-8	885			
	4500	75	C10-7	500			
	300	76	C10-6				
	13000	78	C10-4				
	87000	79	C10-3				
	5100	80	C10-2	42			
	25400						
	30510						
	72100						
	5000	81	C10-1	48			

Exhibit C10										
Nature of Item	Date	Slip No.	Gross weight as per receipts	Purity as per receipt	Weight as per SCN	Gold rate + making	Amount	Addition made under		Remarks

	23.07.16		0.42		2900		1218			Unaccounted sale
	23.07.16		11.75		2900+400		38775			Unaccounted sale Total amount was Rs.38775/- out of which Rs.9000/- received
	23.07.16		4.17		2900		12090			Unaccounted sale
	23.07.16		7.89		2900+50		22900			Unaccounted sale
	23.07.16		7.55		2900+50		22000			Unaccounted sale
	23.07.16		1.53		2900+50		4500			Unaccounted sale
	23.07.16		0.3		2900		870			Unaccounted sale Sales of Rs.870/- Old received Rs.567. Balance Rs.300
	23.07.16		7.12		2900+400		23496			Unaccounted sale 23496-10000 (ad)-200(repair)=-13000
	23.07.16		25.72		2900+400		84876			Unaccounted sale 84876+1348-8824 (87000 received)
	23.07.16		1.06		2370+600		3148			Unaccounted sale
	23.07.16		1.72		2900		5100			Unaccounted sale
	23.07.16		32.48		2910+280		102610			Unaccounted sale 103610-92500 (ad)-11110-

15.2 Further the Ld. AR has submitted various working sheets to support the details given in summary sheet. The first working sheet related to Exhibit C-13 is reproduced below for ready reference:-

Page no.	Name of Party	Slip No.	Date	Weight(In gram)	Making rate per gram(In Rs.)	Total sale amount (in Rs.)	Type of Receipt
1	CP	71	18.07.2016	48.48	2910	141076	-
2		70	18.07.2016	0.681	3085	21000	-
3		69	18.07.2016	7.68	2910	22350	-
4		68	18.07.2016	2.98	2910+300	9600	-
5		67	18.07.2016	18.22	2910	11193	-
6		66	18.07.2016	0.867	2910	19861	-
7		65	18.07.2016	7.26	2910	21130	-
8		64	18.07.2016	0.76	3075	2340	-
9		63	18.07.2016	18.99	2910	55200	-
10		62	18.07.2016	5.01	2910	14500	-
11		61	18.07.2016	4.96	2910+50	3880	-
12	Seema Ji	60	17.07.2016	3.29	2900+300	10500	-
13		59	18.07.2016	2.85	2910	8300	-
14		58	18.07.2016	0.32	3070	982	-
15		57	18.07.2016	1.27	3070	3900	ROUGH ESTIMATE
16		56	18.07.2016	0.35	2910	1000	ROUGH ESTIMATE

17		55	18.07.2016	7.491	3040	22772	ROUGH ESTIMATE
18		54	18.07.2016	6.08	3075	17200	ROUGH ESTIMATE
19		53	18.07.2016	11.649	3075	35820	ROUGH ESTIMATE
20		52	18.07.2016	3.928	3070	12058	ROUGH ESTIMATE
21		51	18.07.2016	0.593	3070	1820	ROUGH ESTIMATE
22		50	18.07.2016	2.26	3070	6938	ROUGH ESTIMATE
23		49	18.07.2016	3.64	2900+50	10500	ROUGH ESTIMATE
24	CP	1	19.07.2016	2.94	2900	8526	APPROVAL
25	Approval slip for repairing	2	17.07.2011	0	0	0	APPROVAL
26	Kamal Ji Soni	3	19.07.2016	2.42	2900	7018	APPROVAL
27	Ajit	4	19.07.2016	12.45	2900	36105	APPROVAL
				27.27	2900	79083	APPROVAL
				16.48	2900	47792	APPROVAL
				0.86	2900	2494	APPROVAL
28	Prabhu Ji	5	20.07.2016	4.15	2900	12035	APPROVAL
29	HM	6	20.07.2016	180.21	2900	810463	APPROVAL
30	SGM though Nikhil Ji	7	20.07.2016	279.47	2900	522609	APPROVAL
31	CP	8	20.06.2016	79.11	2900	229419	APPROVAL
32	CP	9	20.07.2016	11.65	2900	33785	APPROVAL
33	Chiku Ji	10	20.07.2016	193.2	2900	560280	APPROVAL
34	J. J. Garg through Vinod ji	11	20.07.2016	170.57	2900	494653	APPROVAL
35	Approval slip for repairing	12	20.07.2016	0	0	0	APPROVAL
36	AD	13		9.67	2900	28043	APPROVAL
37	CP	14	20.07.2016	185.71	2900	538559	APPROVAL
38	CP	15	20.07.2016	40.19	2900	116551	APPROVAL
39	Approval slip for repairing	17	20.07.2016	0	0	0	APPROVAL
40	AD	16	20.07.2016	26.08	2900	75632	APPROVAL
41	CP	20	21.07.2016	50.39	2900	146131	APPROVAL
42	Jewar Salabh	19	21.07.2016	0.53	2900	1537	APPROVAL
43	CP	18	21.07.2016	31.58	2900	91582	APPROVAL

44	CP	23	22.07.2016	7.3	2900	21170	APPROVAL
45	Kamal Ji Soni	22	21.07.2016	10.24	2900	29696	APPROVAL
46		21	21.07.2016	113.31	2900	328599	APPROVAL
47	CP	27	23.07.2016	1126.95	2900	3268155	APPROVAL
48	CP	25	22.07.2016	1337.46	2900	3878634	APPROVAL
49	CP	24	22.07.2016	1445	2900	4190500	APPROVAL
50	Arun	29	23.07.2016	7.93	2900	22997	APPROVAL
51	Gaorang Ji	31	23.07.2016	33.54	2900	97266	APPROVAL
52	CP	32	23.07.2016	471.83	2900	1368307	APPROVAL
53	Raj Ratan	35	23.07.2016	506.99	2900	1470271	APPROVAL
54	Approval slip for repairing	34	23.07.2016	0	0	0	APPROVAL
55	Raj Ratan	33	23.07.2016	927.13	2900	2688677	APPROVAL
56	CP	40	25.07.2016	738.92	2900	1879403	APPROVAL
57	SIP	39	25.07.2016	648.07	2900	2142868	APPROVAL
58	Gaorang Ji	36	25.07.2016	412.556	2900	1196412	APPROVAL
59	Arun	37	25.07.2016	27.92	2900	80968	APPROVAL
60	Vishwajeet	35	23.07.2016	15.54	2900	45066	APPROVAL
61	CP	43	25.07.2016	231.48	2900	671292	APPROVAL
62	Sangam Ji	42	25.07.2016	2.32	2900	6728	APPROVAL
63	CP	41	25.07.2016	177	2900	513300	APPROVAL
64	Raj Ratan	47	25.07.2016	1236.73	2900	3586517	APPROVAL
65	CP	47	25.07.2016	1.48	2900	4292	APPROVAL
66	CP	45	25.07.2016	140.33	2900	406957	APPROVAL
67	CP	52	25.07.2016	90.22	2900	26138	APPROVAL
68	Vishwajeet	51	25.07.2016	10.97	2900	31813	APPROVAL
69	Satyam	50	25.07.2016	27.92	2900	80968	APPROVAL
70	CP	55	26.07.2016	946.24	2900	2744096	APPROVAL
71	V. K. Jain	56	26.07.2016	37.84	2900	109736	APPROVAL
72	Approval slip for repairing work	54	26.07.2016	0	0	0	APPROVAL
73	Jagat	53	25.07.2016	72.44	2900	210076	APPROVAL
74	Ajit	57	26.07.2016	4.28	2900	12412	APPROVAL
75	Vishwajeet	59	26.07.2016	6.95	2900	20155	APPROVAL
76	Lazor	60	27.07.2016	7.04	2900	20416	APPROVAL
77	BhagChandra Ji Khaniya	61	27.07.2016	404.21	2900	1172209	APPROVAL
78	SIP	63	27.07.2016	369.44	2900	1071376	APPROVAL
79	Arun	62	27.07.2016	5.02	2900	14558	APPROVAL
80	Raj Ratan	67	27.07.2016	992.85	2900	2879265	APPROVAL
81	Raj Ratan	68	27.07.2016	94.26	2900	273354	APPROVAL

82	Rodiyam	70	27.07.2016	5.02	2900	14558	APPROVAL
83	SIP	71	27.07.2016	288.48	2900	836592	APPROVAL
84	CP	72	27.07.2016	2432.71	2900	7054859	APPROVAL
			Total	16900.455		48766873	

Type	No. of slips	Amount (Rs.)
Rough estimate	9	112008
Approval	64	48312953
Other	14	341912

15.3 It was submitted by the Ld. AR that in Exhibit C-13 itself there are not only slips of 'approval' but there are other slips on which 'rough estimate' is mentioned. It was further submitted that in other exhibits namely C-17, C-18, C-19, etc. and also in exhibit A-8, A-9 and A-10, there are various slips on which 'rough estimate' is mentioned and moreover there are still other slips. It was submitted that the other slips on which nothing at the top is mentioned, has not been disputed or agitated in absence of any concrete and foolproof evidence with the appellant. Similarly the appellant is also not very seriously agitating the slips on the top of which 'rough estimate' is mentioned, though as the name suggest these are only rough estimates. However as it is difficult to furnish positive evidence regarding these not being sale, the issue is agitated on the basis of written submission only. However as regards approval slips are concerned, it is very much clear that these are not unaccounted sales and these may be excluded from sale. Moreover many of these slips are related to goods received on approval and obviously these can by no stretch of imagination be the sale and at the worst to the assessee these may be considered as purchases. I have considered the argument of the Ld. AR and also perused the relevant records. Generally it is a trade practice in the business of gold and silver jewellery that the slips having heading as "rough estimate" or "approval" are kept by the retailer and whenever the customer ask for the final weight and amount to be paid, the retailer calculates it on the aforesaid slips only and the final sales are also executed on the basis of these slips only. Moreover, on perusal of the slips marked as 'approval', it is seen that date as well weight of jewellery in gms. and also the rate and finally the total amount is mentioned. Considering these facts the claim of the Ld. AR of the appellant that these approval slips did not reflect the sale, is not having merits and is therefore rejected. Thus in brief, an amount of Rs. 18,67,67,651/- so sought to be excluded from the sale by the Ld. AR is not directed to be excluded but is considered as part and parcel of the sale to be considered for addition.

16. Next issue raised by the AR of the appellant is that besides the slips having heading as approval but without name of any person, there are other slips on which 'approval' is mentioned on the top and the slip has been issued in the name of appellant as name 'Royal' or 'M/s Royal' or 'Royal Jewellers' is mentioned as the party name. It is obvious that goods mentioned on these slips have been received on approval from the various parties. Total of such slips as per Exhibit C-16 comes to Rs. 1,11,44,666/-. Besides above, similar slips were also seized in Exhibit A-2 the total of which comes to Rs. 28,77,504/-. It was requested by Ld. AR that this total amount of Rs. 1,40,22,170/- is basically the goods received on approval by the appellant firm / group and cannot at all be considered as unaccounted sale. It was further requested that even if the argument of goods on approval is not considered by your honour to be a correct argument, then also as these slips represent incoming of the goods and therefore in any case these cannot be the sale and at worst to the assessee these can be considered as part of the purchase. I have considered the argument of the appellant and perused the relevant records. It is quite evident that these slips having heading as 'approval' are having the name of the party as of the appellant. In the earlier paragraph I had already rejected the argument of the Ld. AR that these are actually approval slips and I have

held them to be included in the sale. On the same line the argument is rejected for these slips also, however as these slips had been issued by some other party in the name of appellant, these are related to purchase made by the appellant. Accordingly the argument of Ld. AR is only partly accepted and these are excluded from the sale but included in the purchase.

16.2 Next issue raised by the AR of the appellant is that the Ld. AO has even considered the accounted sale as reflected in loose papers seized in Exhibit C- 22, as part of unaccounted sale. The Ld. AR has submitted specific details of each of these entries in Annexure 9, wherein entries of addition considered by the Ld. AO as per page 36 of the show cause notice (SCN) have been matched with the corresponding voucher no., date and particulars so mentioned in the ledger account of 'sale of gold ornaments'. Total of such six entries comes to Rs. 4,85,255/-. For ready reference, the annexure 9 is reproduced below:-

Date	Particulars	Vch Type	Vch No.	Debit	Credit	SCN Page No	RELATED PAGE	APB
28/06/2016	By CASH	Sales	56		74521.00	36	1	383
29/06/2016	By ANITA SHARMA	Sales	57		173700.00	36	2	384
07/07/2016	By SANTOSH KUMAR DADHICH	Sales	60		70924.00	36	3	385
07/07/2016	By CASH	Sales	61		135000.00	36	4	386
09/07/2016	By CASH	Sales	62		20410.00	36	5	387
25/07/2016	By CASH	Sales	69		10700.00	36	6	388
Total sales					485255.00			

17. I have considered the argument of the Ld. AR of the appellant and perused the relevant pages of the paper book and also the details. It is clear that the sales are reflected in the general books of accounts of the appellant. Accordingly amount of Rs. 4,85,255/- is held to be excluded from the unaccounted sales so estimated by the Ld. AO.

17.2 The next issue raised by the Ld. AR is regarding presumption of Ld. AO of the stock position taken on various dates as mentioned in some of the seized pages of Exhibit C-14 to be as unaccounted purchases. It was submitted by Ld. AR that these pages are page No. 15 (dt. 15/07), page No. 17 (dt. 18/07), page 20 (dt. 19/07), page 31 (dt. 20/07), page 9A (dt. 21/07), page 41 (dt. 22/07), page 40 (dt. 25/07), page 55 (dt. 27/07) and page 57. It was submitted that the bare perusal of these pages together at one go will clearly reveal that the entries so mentioned therein which have gross weight and net weight of various items, are obviously related to some memorandum stock taking and for this purpose the Ld. AR has furnished the two pages of working sheets on which four seized pages have been placed near one another on one page and similarly other five seized pages have also been placed on second page and these are reproduced below:-

Page no. 15 (Date:15/07)			Page no. 17 (Date:18/07)			Page no. 20 (Date: 19/07)			Page no. 31 (Date:20/07)		
(APB-247)			(APB-245)			(APB-239)			(APB-221)		
Item name	Gross weight	Net weight	Item name	Gross weight	Net weight	Item name	Gross weight	Net weight	Item name	Gross weight	Net weight
Ext	587.83	477.89	Ext	587.83	477.89	Ext	587.83	477.89	Ext	587.83	477.89
Set	718.38	554.17	Set	718.38	554.17	Set	718.38	554.17	Set	718.38	554.17
holo	97.69	72.21	holo	97.69	72.21	holo	97.69	72.21	holo	97.69	72.21
fox	239.83	193.32	fox	239.83	193.32	fox	239.83	193.32	fox	239.83	193.32
pfox	278.39	221.02	pfox	278.39	221.02	pfox	278.39	221.02	pfox	278.39	221.02
AB	219.54	189.45	AB	219.54	189.45	AB	219.54	189.45	AB	219.54	189.45
12LR	716.17	545.8	12LR	716.17	545.8	12LR	716.17	545.8	12LR	716.17	545.8
12GR	1009.12	650.57	12GR	1009.12	650.58	12GR	1009.12	650.58	12GR	1009.12	650.58
OM	523.2	393.32	OM	523.2	393.32	OM	523.2	393.32	OM	521.13	391.44
PS	945.99	769.55	PS	945.99	769.55	PS	945.99	769.55	PS	945.99	769.55
Bali	301.18	264.91	Bali	301.18	264.91	Bali	300.82	264.55	Bali	300.82	264.55

GR	593.48	581.44	GR	593.48	581.44	GR	593.48	581.44	GR	593.48	581.44			
LR	1405.48	1367.76	LR	1402.46	1364.5	LR	1402.46	1364.52	LR	1402.46	1364.52			
Actual total	7636.28	6281.41		7633.26	6278.16		7632.9	6277.82	Actual total	7630.83	6275.94			
Total mentioned	7635.98	6281.03		7633.22	6278.15		7632.88	6275.88	Total mentioned	7630.83	6274.41			
Diff	0.3	0.38		0.04	0.01		0.02	1.94	Diff	0	1.53			
Addition made (Weight)	7635.98+6281.03=13917.01		7633.22+6278.15=13911.37		7632.88+6275.88=13908.76		Addition made (Weight)		7630.83+6274.41=13904.74					
Rate	Rs.2900/-		Rs.2900/-		Rs.2900/-		Rate		Rs.2900/-					
Addition	40359329		40342973		40335404		Addition		40323746					
Page no. 9A (Date:21/07)			Page no. 41 (Date:22/07)			Page no. 40 (Date:25/07)			Page no. 55 (Date:27/05)			Page no. 57		
(APB -257)			(APB -204)			(APB-206)			(APB-180)			(APB-176)		
Item name	Gross weight	Net weight	Item name	Gross weight	Net weight	Item name	Gross weight	Net weight	Item name	Gross weight	Net weight	Item name	Gross weight	Net weight
Ext	581.73	471.79	Ext	581.73	471.79	Ext	581.73	471.79	Ext	581.73	471.79	Ext	581.73	471.79
Set	718.38	554.17	Set	718.38	554.17	Set	718.38	554.17	Set	718.38	554.17	Set	718.38	554.17
holo	97.69	72.21	holo	97.69	72.21	holo	97.69	72.21	holo	97.69	72.21	pfox	278.39	221.02
fox	239.83	193.32	fox	239.83	193.32	fox	239.83	193.32	fox	239.83	193.32	holo	97.69	72.21
AB	219.54	189.45	AB	218.04	187.95	AB	218.04	187.95	AB	218.04	187.95	fox	239.83	193.32
12LR	716.17	545.8	12LR	716.17	545.8	12LR	716.17	545.8	12LR	716.17	545.8	AB	218.04	187.95
12GR	1009.12	650.57	12GR	1009.12	650.58	12GR	1009.12	650.58	12GR	1009.12	650.58	12GR	991.49	633.16

OM	519.4 3	389.7 4	O M	509 .18	380 .11	OM	515.3 9	385.9 1	PS	945 .99	769 .55	12LR	709 .85	539 .18
PS	945.9 9	769.5 5	PS	945 .99	769 .55	PS	945.9 9	769.5 5	pf ox	278 .39	221 .02	PS	945 .99	769 .55
Bali	300.8 2	264.5 5	Ba li	300 .82	264 .55	Bali	299.8 9	263.6 2	Ba li	299 .89	263 .63	Bali	299 .91	263 .64
GR	593.4 8	581.4 4	GR	593 .48	581 .44	pfox	278.3 9	221.0 2	GR	593 .48	581 .44	OM	512 .79	383 .22
LR	1402. 46	1364. 5	LR	139 9.0 6	136 1.7 2	GR	593.4 8	581.4 4	LR	139 9.0 6	136 1.7 2	GR	593 .48	581 .44
pfox	278.3 9	221.0 2	pf ox	278 .39	221 .02	LR	1399. 06	1361. 72	O M	512 .7	383 .22	LR	139 2.5 2	135 5.5 9
	7623. 03	6268. 11		760 7.8 8	625 4.2 1	Actual total	7613. 16	6259. 08		761 0.4 7	625 6.4		758 0.0 9	622 6.2 4
	7623. 03	6266. 61		760 7.8 8	625 4.2	Total mentioned	7613. 16	6259. 07		761 0.4 7	625 1.2 3		757 9.7 9	622 6.2 4
	0	1.5		0	0.0 1	Diff	0	0.01		0	5.1 7		0.3	0
	7623.03+6266.61=13889.64			7607.88+6254.2=13862.08		Addition made (Weight)	7613.16+6259.07=13872.23			7610.47+6251.23=13861.86			7579.79+6226.24=13806.03	
	Rs.2900/-			Rs.2900/-		Rate	Rs.2900/-			Rs.2900/-			Rs.2900/-	
	40279956			40200032		Additio n	40229467			40199394			40037487	

The Ld. AR has also submitted summary of the different pages and named as Annexure 10 which is reproduced below for the sake of clarity:-

Page no.	APB	Count of bangles	Amount of addition (Rs.)	Addition made under	SCN Page No.
55	179	316	916,400	Unaccounted purchase	22

41B	205	317	919,300	Unaccounted purchase	22
40B	207	317	919,300	Unaccounted purchase	23
31B	222	318	922,200	Unaccounted purchase	23
19C	242	318	922,200	Unaccounted purchase	23
16	246	318	922,200	Unaccounted purchase	23
15B	248	319	925,100	Unaccounted purchase	23
9B	258	317	919,300	Unaccounted purchase	23
TOTAL (A)			7,366,000		

Page no.	APB		Addition	Addition made under	SCN Page No.
57	176		40,037,487	Unaccounted Purchase	22
55	180		40,199,394	Unaccounted Purchase	22
40	206		40,229,467	Unaccounted Purchase	22
41	204		40,200,032	Unaccounted Purchase	22
9A	257		40,279,956	Unaccounted Purchase	23
31	221		40,323,746	Unaccounted Purchase	23
20	239		40,335,404	Unaccounted Purchase	23
17	245		40,342,973	Unaccounted Purchase	23
15	247		40,359,329	Unaccounted Purchase	23
TOTAL (B)			362,307,788		
TOTAL (A+B)			369,673,788		

17.3 It is submitted that the Ld. AO has considered the detailed mentioned on each page as unaccounted purchase without realizing that details mentioned on one page is exactly tallying with the details available on second page for example on page 15 and 17 of C-14 (except slight difference of about 3 gms. in the last item named as IR' in its gross weight and also in net weight). Similarly all items of page 17 match with page 20 except difference of about 0.36 gms. in gross weight and net weight against one entry 'Bali' and even in the total gross and net weight there is just difference of 0.36 gms. between these two pages. Similar in the position vis-a-vis other pages where only slight decrease or increase in one of the item is reflected and accordingly the total memorandum stock position of certain items on that particular day is found slightly varying by about 1 to 10 gms. The Ld. AR has submitted that approach of the Ld. AO was so casual that he has considered gross weight of memorandum stock on particular date as purchase and again the net weight of the memorandum stock on that day itself has also been considered as purchase. These papers relate to 9 different dates and after adding the gross weight and net weight of memorandum stock and applying the rate of gold, the Ld. AO has presumed the purchase of around 4 crore and odd for each day and thereby considered the total unaccounted purchases to be Rs. 36,23,07,788/-. Similarly some further entries were found noted on these pages which were actually

related to number of bangles, however the Ld. AO have considered them also to be purchase and accordingly he has further added Rs. 73.66 lakhs. As seen from the details these entries are also related to the stock of number of bangle on different dates. I have perused the relevant pages from the paper book and also perused the working sheet given by the AR of the appellant. I have found the argument of the Ld. AR of the appellant to be correct. It is noticed by me that first item mentioned on all the nine seized pages is 'Ext.' and on all the four pages reproduced on first working sheet the gross weight and net weight against this item is exactly same i.e. 587.83 gms. and 477.89 gms. respectively. On the second working sheet on the seized page 9A, there is slight reduction (i.e. by 6.1 gm.) in the gross and net weight mentioned against this item i.e. Ext. i.e. 581.73 gm. and 471.79 gm. respectively and this same weight continues in the next four seized pages. Almost similar in the position with reference to other items. In view of these facts it is clear that these seized pages do not reflect the unaccounted purchases as presumed by the Ld. AO. The Ld. AR has also rightly pointed out that Ld. AO added gross weight and net weight both and then on the total of these two weights, he has applied the rate of gold and presumed the amount to be unaccounted purchase, which is clearly incorrect on facts and evidence on record. Similar in the position in relation to the other amount of Rs. 73,66,000/- considered by the Ld. AR as unaccounted purchases, which also is actually not the purchase but memorandum stock position of bangles. Accordingly the finding of the Ld. AR that these pages reflect unaccounted purchases of Rs. 36,96,73,788/- is found to be devoid of any merit and is therefore rejected. It may be mentioned that the Ld. AO has not made any separate addition on this issue.

17.4 The Ld. AR has submitted the summary chart of the various aforesaid issues taken up by him before me and the summary chart is enclosed as part of the written submission which indicate the summary of double additions, incorrect additions, incorrectly considering stock as sale, accounted sales considered as unaccounted, purchases considered as sales out of different exhibits. Thereafter in the body of the written submission the Ld. AR has given further summary, which is reproduced below:-

S. No.	Particulars/ nature of addition	Amount	Annexure to the WS
1.	Addition for duplicate entries of alleged unaccounted sales of jewellery	1,65,38,922.00	4, 5,7
2.	Addition for duplicate entries of alleged unaccounted sales of Bullions	9,86,60,399.00	4, 5, 6
3.	Addition of by taking opening balance every time	1,34,23,481.00	5
4.	Addition for recorded sales	4,85,255.00	9
5.	Purchases considered as sales	2,23,26,337.00	5
6.	Addition based on approval memos	18,67,67,651.00	8
	Total	33,82,02,045.00	

After considering various arguments of the Ld. AR and after perusing the assessment order and also the relevant records, I have deliberated upon all the aforesaid items and given my decision as mentioned in the earlier paras. In brief the explanation of the Ld. AR on items from S. No. 1 to 5 in the above table given by the Ld. AR are found to be having merits and are acceptable. Thus out of the total unaccounted

sale so considered by Ld. AO, items from S. No. 1 to 5 above are held to be not the unaccounted sale and total of these comes to Rs. 15,14,34,394/-. Accordingly sale so estimated by the Ld. AO is held to be reduced to the aforesaid extent. However explanation of the Ld. AR on the issue of unaccounted sale considered on the basis of approval memo is not accepted and accordingly an amount of Rs. 18,67,67,651/- is held to be considered as part of the sales as considered by the Ld. AO.

17.5 Ld. AR has reiterated that most of the entries relate to sale of bullion and these are easily identifiable as either the quantity is in round figure i.e. 100 gm, 200 gm, 300 gm, 150 gm etc. or the rate applied is of 24 ct gold or the purity is marked as 99.5%, 99.9% etc. The Ld. AR has submitted that such bullion is found only in Annexure C-8, C-15 and A-3. In C-8, the amount of bullion entries is Rs. 18,69,18,242/- out of which entries to the extent of Rs. 8,57,34,923/- have already been excluded in the double addition as above and the remaining amount comes to Rs. 10,11,83,319/-. In Exhibit C-15, total entries of bullion is of Rs. 5,59,47,640/-out of which amount of Rs. 3,46,53,124/- is already excluded above because of double addition, leaving a balance of Rs. 2,12,94,516/- which need to be considered in the hands of Shrinath Corporation. In Exhibit A-3, all the entries are of bullion totaling to Rs. 1,52,97,549/- and there is no duplication found here. Accordingly in brief total amount of bullion transaction of sales comes to Rs. 13,77,75,384/- and these are required to be excluded in the instant case of the appellant and need to be considered in the case of sister concern namely M/s Shrinath Corporation. I have gone through the details submitted by the Ld. AR and I found the argument of the Ld. AR to be correct. As discussed herein above in the order and also the chart submitted by the Ld. AR as copied in the order herein above, there are many instances of sales in the nature of bullion and not in the nature of jewellery which is quite clear from the nature of entry itself. I have verified these details with the show cause notice of the Ld. AO vis-à-vis the details submitted by the Ld. AR.

17.6 Thus in brief total amount of sale transactions as depicted in all the loose papers and documents in respect of the appellant gets comes to Rs. 31,20,07,946/- and accordingly the additional sale so required to be considered in the hands of appellant gets reduced to Rs. 31,20,07,946/-.

18. Now, coming to the estimation of the income out of such sales, I agree with the argument of the Ld. AR that Ld. AO has ignored the vital fact that the sales cannot as it is be added and it is only the profit earned / embedded in the sales which need to be taxed. This view is fully supported by the judgement of Hon'ble Supreme Court in the case of CIT Vs. President Industries reported in 225 ITR Page 47 and also by various other courts of the country. I have also seen that there are many unaccounted expenditure noticed / found in the seized papers. Accordingly it is clear that all the expenditure required for making these additional sales have not been booked by the appellant. In view of these facts, it is clear that on account of not-booking of all the expenditure related to these sales, it will be appropriate to apply the net profit rate on these sales pertaining to bullion as well as on jewellery.

18.2 Here it is pertinent to state that the appellant is dealing only in the jewellery and one of its sister concern M/s Shrinath Corporation is dealing in bullion wherein the partners are common. Since the entries in the seized records pertained to the transactions carried out by all the entities of the group, it would be wrong if the profits of the entire sales including of bullion is added in the hands of the appellant i.e. M/s Royal Jewellers, therefore, AO is directed to make the addition of the profits on bullion in the hands of M/s Shrinath Corporation and not in this appellant.

Summation

19. Thus it can be seen that the out of the total undisclosed sales emanating from various annexure totaling upto Rs. 60 Crores (rounded off) was added as such. The appellant did provide a rough working before the investigation wing outlining that total undisclosed sales is about Rs. 45 Crores (rounded off). Same thing was reiterated before the Ld. AO in the form of letter. This letter finds place in the order of the Ld. AO on last page no. 18 of the assessment order. Now as per the detailed working before me it is seen that the undisclosed sales of jewellery and bullion is as under;

i.	Undisclosed Sales of jewellery	= Rs. 312007946
ii.	Undisclosed sales of bullion	= Rs. 137775384
iii.	Total	= Rs. 449783330

19.2 The only difference is undisclosed income out of bullion sale is to be assessed in the hands of Shreenath corporation in AY 2017-18 as the appellant exclusively deals in jewellery. As already pointed out, the business premises of appellant and Shreenath Corporation is same as is evident from the panchnama and the return of income filed.

19.3 Thus out of the total addition of Rs. 60,12,17,723/-, quantum of undisclosed sales of Rs. 44,97,83,330/- is confirmed.

19.4 However entire sales cannot be income, thus the undisclosed income is arrived at by application of GP rate. Similarly income out of the undisclosed sales of bullion shall be assessed in the hands of Shreenath Corporation by application of GP rate of 0.5% as discussed in the respective order. Thus undisclosed income of Rs. 0.5% X Rs. 13,77,75,384 = Rs. 6,88,876 out of the undisclosed sale of Bullion is assessed in the hands of Shreenath Corporation for the AY 2017-18.

10.5 On careful perusal of the order of Id. CIT(A) it is seen that Id. AR has submitted the working in a summary of the various noting's as found noted in the seized document which already on record of AO and these very noting's 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 noting's 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 noting's from the Show Cause Notice (SCN) together and grossed them up. These comparisons or putting the noting's 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 in its strict sense. We also found force from the arguments of the Id. AR of the assessee that till the final hearing of these appeal Id. AO though CIT DR has not pin pointed any error in the finding of the Id. CIT(A) on its facts. We have also noticed 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. At para 12 and 12.2, the Id. CIT(A) 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. For the sake of clarity, both the paras are reproduced (though repeated):-

12. The Id. AR has furnished working sheet 4A, 4B to 4G wherein details of various items of particular page of exhibit 8 of Annexure AS of Telipada (referred as C-8) included in the show cause notice (hereinafter referred as SCN) have been taken and these details have been compared with the details taken in the

show cause notice from particular page of exhibit 15 of Annexure AS of Telipada (referred as C-15). In the working sheet details in first three columns have been copied from the relevant page of the show cause notice related to Exhibit C-8. The page number of SCN is marked in column 5. These details have been compared with another relevant page of Exhibit C-15 and again details in the first three columns have been copied from the relevant page of show cause notice related to Exhibit C-15 and page No. of SCN is marked in column 5 (last column).

12.2 From perusal of the details given in Annexure 4, it is seen that as per the Ld. AR total double addition as appearing in C-8 and C-15 comes to Rs. 3,40,04,923/-. For this purpose, the AR has submitted 7 working sheets named as Annexure 4A to Annexure 4G. It is verified by me that out of these 7 working sheets, the Annexure 4E has the highest amount of double addition namely Rs. 1,01,99,026/-. In this working sheet entries found page No. 13 of Exhibit C-8 has been compared with page No. 9 of Exhibit C-15. Entries related to page 13 of Exhibit C-8 are mentioned at page 12 of show cause notice (SCN). Similarly entries related to page 9 of Exhibit C-15 are mentioned at page 27 of SCN. For ready reference and clarity of the issue concerned, the scanned copy of the relevant portion of page 12 of SCN has been juxtaposed with page 27 and upper portion of page 28 of the SCN as below:-

	CMS	8450		Cash Advance
13	Tarun	1850000		for (17) & (15)
	Anil Sodi	4250000		for (27.5) & (15)
	Jitendra	4603		3070 + 1533
		58500		Cash Advance
	Chitrangvi Soni	950		Cash Advance
	Jugnu Soni	495000		Cash Advance
	CA Old	9450		Cash Advance
		276764		91.650 x 99.5% @ 3035/-
	CMP	303500		Cash Advance
	CA Old	66800		Cash Advance
	DAI	603965		200.00 x 99.5% @ 3035/-
	CMS	1284681		Cash Advance
	Jagannath Ji	182008		59.970 @ 3035/-
	Varsha	150000		Cash Advance
	Samar	667408		221.010 x 99.5% @ 3035/-
	SCM	667408		221.010 x 99.5% @ 3035/-
	Pradeep PVI 70g*30570	213990		70g @ 30570/-
	Pradeep PVI 50g*30650	153150		50g @ 30630/-
14	CMP	304000	19-Jul	Cash Advance
	Rukmani	40000		Cash Advance
	SGM	491741		162.570 x 99.5% @ 3040/-
	CMS	49735		Cash Advance
	CMS	245545		Cash Advance
	CMS	14900		Cash Advance
	CMS	200000		Cash Advance
15	Telephone etc expenses	1760	20-Jul	560+200+1000
	CMP	67527		Cash Advance
	Anil	2000000		for (20)
	CMP	122140		Cash Advance
	Dilip Ji	29100		Cash Advance
	Pawan Ji PF	29100		500.00 @ 30550/-
	Tarun Bikaner	2500000		for (15) + (5) + (5)
	CMS	1336940		Cash Advance
	Pawan Ji PF	2000000		for (20)
	Pawan Ji	1527500		500 g @ 30550/-
		3040000		1 kg @ 30400/-
	Anil Ji	611000		200 g @ 30550/-
	Monika	303000		100.00 @ 30300/-
	Mahesh 400*30520	1220800		400 g @ 30520/-

9	18.7	1000		1850000	cash recived from tarun against gold sold	Unaccounted sale
		1500.19		4250000	cash paid to anil against gold pur	Unaccounted purchases
				58500	cash recived against gold sale 8.7. rate diff	Unaccounted sale
				950	cash recived chirmji soni	Unaccounted sale
		4.2		9450	old gold purchased	Unaccounted purchases
		91.65	2900	265785	gold purchsed from varsha	Unaccounted purchases
				150000	cash paid varsha	Unaccounted sale
		100		303500	gold purchased 100*30350	Unaccounted purchases
		27.83		66800	old gold purchased	Unaccounted purchases
		200	2900	580000	gold issued daj	Unaccounted sale
		59.97	2900	173913	gold issued Jagganath kargar	Unaccounted sale
		221.1	2900	641190	gold purchsed from samar delhi	Unaccounted purchases
		420.16		1284681	cash recived 1284681 against gold sale cms	Unaccounted sale
				1100	cash recived nisha baid advance	Unaccounted sale
		48.4		760	old gold purchsed from bhawana 113000 due	Unaccounted purchases

	20.42	2900	59218	old gold purchased from bhawana 47760 due	Unaccounted purchases
	50.57	2900	146653	gold recived from vishavjeet	Unaccounted purchases
	8.81	2900	25549	old gold purchases	Unaccounted purchases
			27000	cash recived from shree kripa johari bajar	Unaccounted sale

Upper portion of page 28 of SCN

As seen above, the Id. CIT(A) 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. One of the example being para 15 of the CIT(A) order is also reproduced below:-

15. I have perused the working sheets and also the corresponding pages of Exhibit C-10, C-11, C-12 vis-à-vis the relevant pages of Exhibit C-15. I found that on each rough estimate slips Sl. No. is mentioned and against the corresponding amount in Exhibit C-15 same Sl. No. is mentioned. I have also perused detailed working sheet related to common entries between Exhibit A-1 and A-8, common entries between A-1 and A-9 and A-1 and A-10 and found the explanation of the Ld. AR to be correct. Accordingly, the claim of the Ld. AR of the appellant is found correct and it is again a case of double addition by the Ld. AO, total of such amount comes to Rs. 1,29,52,107/- which is directed to be deleted. For ready reference one of the working sheet showing slip numbers and the details

mentioned in the slip seized in Exhibit C-10 alongwith details of corresponding entries of the slips so recorded on page 11 of Exhibit C-15 is reproduced below:

[working sheet being not repeated here, as the same is already reproduced in the present order while reproducing the operative part of the order of Id. CIT(A)].

10.6 Accordingly the argument of Id. CIT DR of considering these sheets as additional evidence is hereby rejected. Without prejudice to these arguments, it is also noticed by us that in the appeal proceedings before us, Id. AO through Id. CIT DR has not been able to point any specific entry or transaction which might have been incorrectly considered by Id. CIT(A), though the detailed order of Id. CIT(A) was already available before the Id. AO since the date on which AO received the CIT(A) order and argument of Id. CIT DR that it appears to him that Id. CIT(A) has verified only some of the entries on test check basis does not hold any leg to stand, as on perusal of order of Id. CIT(A) it is seen by us that he has considered all the various entries having bearing over the income and also mentioned them elaborately in operative part of his appeal order. The Id. CIT(A) has mentioned that document seized from Sunder Nagar, Malviya Nagar residence of Shri Manoj Kumar Khandelwal has been referred as Exhibit A-1 to A-15 by Id. AR and document seized from business premises of the appellant firm i.e. Telipada, Chaura Rasta are referred as Exhibit C-1 to C-

24. It is seen by us that major duplication about the bullion amounting to Rs. 5,07,72,315/- has been discussed in detail by Id. CIT(A) at para 14.2 starting from page 65 to page 73 of his order, wherein Id. CIT(A) has even reproduced the annexure wherein details of bullion deals and consequent corresponding settlement by way of delivery and receipt of amount, noted on the different pages of the seized document, have been mentioned together and discussed as to why and how these two times of entries are same / similar. Accordingly, Id. CIT(A) has rightly reduced the sale amount by Rs. 5,07,72,315/-. Similarly, in the initial part of para 14.2 of Id. CIT(A)'s order along with para 14(ii), it has been clearly discussed as to how entries of sales within various pages of Exhibit C-15 (Exhibit No. 15 seized from 1756, Telipada) are common and thus being duplicate, sales amount has to be correspondingly reduced. It has been discussed that entries between page 8 & 9, between page 2 & 1, between page 14 & 15, between page 17 & 18, between page 10 & 11, between page 5 & 6, between page 20 & 21 are common and accordingly Id. CIT(A) has rightly reduced the addition on account of sale by Rs. 1,46,82,451/-. Further at para 11.4 onward, the Id. CIT(A) has discussed the duplication of entries between Exhibit C-8 & C-15 and has found total duplication between these pages amounting to Rs. 3,40,04,923/-. It is seen from the perusal of para 11.4, 12, 12.2, 12.3, 12.4,

12.5 & 13 of the CIT(A) order that issue related to various double entries as well as issue that some of the entries are of bullion and not of jewellery has been discussed in detail and thereafter Id. CIT(A) has held the sales to the extent of Rs. 3,40,04,923/- being double addition and same has been directed to be deleted. We do not find any infirmity on the above findings on facts made by CIT(A). Similar is the position in relation to the other items for which finding has been given by Id. CIT(A) for deletion of addition. We do not see any infirmity on these items and thereby we concur with the order of Id. CIT(A) in respect of deletion of various additions related to sales. In brief, order of Id. CIT(A) directing following addition to be deleted as mentioned in written submission of Id. AR, does not require any interference (as per details available on APB 183-184).

S.No.	Particulars/nature of addition	Amount
1.	Addition for duplicate entries of alleged unaccounted sales of jewellery	1,65,38,922.00
2.	Addition for duplicate entries of alleged unaccounted sales of Bullions	9,86,60,399.00
3.	Addition of by taking opening balance every time	1,34,23,481.00
4.	Addition for recorded sales	4,85,255.00
5.	Purchases considered as sales	2,23,26,337.00
	Total	15,14,34,394.00

10.7 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 noting's related to expenses were also found in the seized documents and accordingly the net profit may kindly be ordered to be considered as income instead of gross profit considered as income by Id. CIT(A).

10.8 We have considered the argument of the Id. AR, on this issue 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 not brought out specific details of expenses under the various heads found noticed in the seized document and not recorded in the books, to support its argument and counter the normal practice as mentioned above. Accordingly, argument of the appellant is hereby rejected.

10.9 Now coming to the ground of appeal related to reduction in the sale so taken by the Id. AR, it was submitted before us by Id. AR that the entries

on small slips marked as 'approval' have also been considered by the Id. AO as sales and Id. CIT(A) has also not appreciated his argument and confirmed the finding of Id. AO. The Id. AR of the assessee submitted that before the Id. CIT(A), there were many types of slips having some narrations. It was submitted that there were some slips on the top of which nothing was mentioned and entries mentioned in them were accepted to be considered as sale by the appellant. Moreover, there were other slips on which 'estimate' or 'rough estimate' was mentioned. It was submitted that though as the name suggest, these are only rough estimates. However, as it is difficult to furnish positive evidence regarding these not being sales, the issue is not vehemently agitated. However, there were still another types of slips on which very clearly '**approval**' was mentioned. It was submitted that these are actually the approval memos wherein details about some customer / retailer taking the goods on approval is mentioned and whenever the customer finally approves the goods, the same is entered in the books of accounts as sales or in some another slip namely 'estimate' slip is prepared. Accordingly, the amount of goods sent on approval cannot be treated as the unaccounted sales of the appellant. It was further submitted that Id. AO has taken the issue very casually and even the goods received by the appellant on approval were considered as sale. These slips

contain the name of karigar or party on the top and below is name of appellant concern being 'Royal' or 'M/s Royal' or 'Royal Jeweller' mentioned as the party's name. Thus, by no means these can be treated as goods sent on approval or sale of good but these are actually slips regarding goods received on approval. The Id. AR of the assessee drawn our attention to the statement of Shri Manoj Kumar Khandelwal, the partner of the appellant firm, so recorded at the residence on 31.07.2016 particularly the answer to question No. 29 (**APB 71**), where he was asked about the various slips including the 'approval slips' seized from the residence, wherein he has declared that the slips on which 'Approval' is mentioned on the top are the slips reflecting the goods sent through salesman for approval to the other retailer or to the customer and these goods comes back after being seen by the retailer / customer. Whenever goods are to the liking or to the requirement of the customer for confirmed buying, then slip is prepared on plain or 'rough estimate' paper. It was submitted by the Id. AR that surely the approval slips just reflect the goods sent on approval and whatever goods are finally sold, these are mentioned on plain or on 'rough estimate' slips on entered in books of account. Thus, these approval slips cannot in any way reflect the sale of the appellant firm.

10.10 We have considered the argument of the Id. AR and perused the relevant material on record. It is clear that there are various types of slips on which details are mentioned, which include plain slips, slips having 'estimate' written on the top or 'rough estimate' written or 'approval' written on the top. It is seen that appellant has grievance against only these 'approval slips' to be considered as sales and as regards other types slips are concerned, appellant has more or less not disputed. It was also noticed by us as submitted by the Id. AR of the assessee that there are various slips wherein material was received on approval from the karigar and these have also been included by the Id. AO as sales, whereas on these slips name of the karigar is clearly mentioned on top. In the statement so recorded of the partner of the firm namely Shri Manoj Kumar Khandelwal he has also stated the difference between the 'approval slips' and 'rough estimate slips' and further stated to the effect that 'approval slips' reflects the goods sent on approval and whenever goods are liked by the customer or retailer and sale is confirmed, then these are mentioned on plain / rough estimate slips. Considering these facts and in the circumstances of the case, we are of the firm opinion that these approval slips, which include some of the slips reflecting goods received on approval from karigars, cannot be considered as sale effected by the appellant firm and therefore

these approval slips totaling to Rs. 18,67,67,651/- are ordered to be reduced / excluded from the unaccounted sale. As we have already held the GP rate of 9.06% as estimated by Id. CIT(A) to be correct and not to be interfered with. Accordingly taking the aforesaid GP rate of 9.06%, the appellant will get relief of Rs. 1,69,21,149/- on this issue.

10.11 Another issue referred by Id. CIT DR is that the Id. CIT(A) has reduced the unrecorded purchases of Rs. 43.94 crore worked out by AO, quite substantially by considering the various explanatory sheets furnished during the course of appellant proceedings before the Id. CIT(A), without giving any opportunity to the AO as these were basically the additional evidence. The Id. CIT DR has also submitted that Id. CIT(A) has totally ignored about the investment in purchase of jewellery for making unrecorded sales and as the sales have been reduced by the Id. CIT(A) then amount of unrecorded purchases should have been added by the Id. CIT(A) while applying the GP rate.

10.12 We have considered the argument of the Id. CIT DR. We have already discussed in the earlier paras that these explanatory sheets so submitted before the Id. CIT(A) are basically emanating from the seized

documents and from the transactions taken note of by the Id. AO by way of his show cause notice and later on by grossing up all these transactions and making additions, which has been held to be unjustifiable. In respect of explanatory sheets related to these unrecorded purchases the Id. CIT(A) has discussed the issue from page 83 to page 89 of its order namely at para 17.2 & 17.3. The Id. CIT(A) has copied the working sheet given by the Id. AR and in first working sheet four seized pages and another working sheet five seized pages have been placed together near one another, for easy clarification and finding so given by Id. CIT(A). It has been mentioned by Id. CIT(A) that after going through the details as seen from the relevant seized documents entries in these pages are related to weight of the various items by way of memorandum stock position taken on different dates and Id. AO was not justified in first grossing up all the weight including the opening balance and then multiplying it with the rate and presuming the same to be the unaccounted purchase of the appellant firm. Thus, these explanatory sheets cannot be treated as additional evidence, in view of the detailed reasoning given in the earlier para of this order. After going through the weight of different items (having gross weight and net weight both) and quantity of item on different dates, as also seen by us from perusal of common APB Volume 1 Part 1 pages 255, 253, 247, 229

etc., the Id. CIT(A) has rightly inferred that these are not the unaccounted purchases but these are memorandum stock position on various dates as mentioned on the respective loose paper itself. We also concur with the finding of Id. CIT(A) on the basis of reasoning given by him and also considering the fact that it is highly improbable for appellant to make purchase of exactly same quantity of certain items on different consecutive or almost consecutive dates. Thus, these are not unaccounted purchases and these by total unaccounted purchases has been rightly reduced by the Id. CIT(A) by Rs. 36,96,73,788/- as per these paras of the order. The finding given by the Id. CIT(A) at other paras also regarding unaccounted purchases etc. does not require any interference.

10.13 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 assessee 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.

10.14 We have considered the argument of the Id. CIT DR and also of the Id. AR. As it is seen that unaccounted purchases so incorrectly estimated by the Id. AO at about Rs. 43.94 crores has been reduced by about Rs. 36.96 crore, leaving balance unaccounted purchases of about Rs. 6.98 crores. Further some sales so considered by Id. AO have been found to be not the sales but the purchases by the Id. CIT(A) to which we have also concurred in the present order, totaling to about Rs. 83 lacs. However, in the appeal for A.Y. 2016-17 we have sustained the addition on alleged parallel balance sheet amounting to about Rs. 1.50 crore, apart from some other additions in A.Y. 2016-17 or in earlier years. Accordingly, we are of the view that considering the addition so sustained in A.Y. 2016-17 and earlier years there is availability of excess unaccounted income for making initial investment in unaccounted purchases and no separate addition is required to be made in A.Y. 2017-18 on this account. Thus, we see no reason to interfere with the finding of Id. CIT(A) on the various issues under consideration except the issue related to 'approval slips'. Accordingly,

grounds of appeal so taken by the revenue are rejected. Moreover, grounds of appeal so taken by the appellant are partly allowed as above.

Departmental Ground No. 5 to 7:

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. 70,02,127/- made during 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. 1,16,00,000/- in its bank account with Bank of India 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, AO noticed that accumulated cash include cash from cash sales of Rs. 70,20,127/- 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 of the assessee has furnished detailed explanation on this issue. Crux of the explanation is 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, various persons having soon to be demonetized note in their possession almost flocked to the jewelers to purchase jewellery in exchange of these notes and accordingly huge sales were made by the jewelers on the 8th November 2016, which was obviously unprecedented. 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 jewelers has sold as much as 15 tons 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. 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 relevant part of order of Id. CIT(A) is reproduced below:

8. *This ground is against the addition of Rs. 70,02,127/- 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. 1,16,00,000/- in its bank account 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. 70,02,127/-. The Ld. 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 jewelers 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 given chart of cash sale of November and December, considering these to be the festive months and also marriage months, for last three years and has submitted that there was no exceptional increase in the sale of these two months taken together during the year vis-à-vis earlier two years. Naturally 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. 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 submitted 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 85 Kg. (to be precise 85529.8 gm.) and even after these sales made on 08.11.2016, the stock of as much as about 83 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 partners, 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 and accordingly Ld. AR has given the data of sales of November and December taken together of this year as well as preceding two years. On perusal of the

same it is seen that these data of cash sales during the year of both the months taken together are comparable with the cash sales of preceding two years and does not reflect unexplainably high figure. 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 jewellers 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. 70,02,127/- is hereby deleted. The ground 3 is allowed.

11.2 Apart from aforementioned facts, it is seen by us that Id. CIT(A) has also enquired about the availability of the stock with appellant firm on that day and it was found that the appellant had sufficient stock so as to make those sales as made by the appellant on 08.11.2016. The Id. CIT(A) has also observed that Id. AR has rightly pointed out that on one hand sales shown by the appellant are fully backed by vouchers and are duly recorded in the books of accounts as well as in stock register whereas on other hand Id. AO has not brought out any material on record to rebut these evidences.

11.3 Before us the Id. CIT DR has 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 good explanation, 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 some contrary information or evidences. The Id. AO has presumed these sales to be bogus only because there were 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. The CIT DR has 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. 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 cash sales were to the tune of Rs. 71.66 lakh only in the entire month of November 2016. No statement of any person has been recorded wherein they might have admitted about not purchasing 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 any cash loan have been shown; and similar is the position with other cited cases. CIT DR has referred to the case of CIT Vs. Ajay Kapoor regarding perversity. AR has explained 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 see no reason to interfere with the order of Id. CIT(A) deleting the addition of Rs. 70,02,127/- made by the AO. Accordingly, grounds related to this issue taken by revenue are rejected.

Departmental Ground No. 11:

12. In this ground of appeal, the department has challenged the action of Id. CIT(A) in deleting the addition of Rs. 1,51,18,854/- made by Id. AO on account of excess stock of gold and silver jewellery found during the search and has further opposed the action of Id. CIT(A) of giving telescoping credit of profit on unaccounted sales.

12.1 Brief facts related to this ground of appeal are that after physical verification of the stock, excess stock of gold to the extent of 4667.901 gm. and excess stock of silver of 32.35 kg. was alleged. It was submitted by the Id. AR before the Id. CIT(A) that difference in stock observed by search party was due to errors in calculating gross and net weight of the items of jewellery wherein deduction on account of beads, threads, studded stones, kundan, chapdi, etc. were not given. This fact was even explained by Shri Manoj Kumar Khandelwal to the department officers during search. Further the value of each article was to be determined based on different purity of gold i.e. 22 Ct., 20 Ct., 18 Ct., etc. Apart from it, it was also submitted before Id. CIT(A) that gold jewellery to the extent of 4667.901 gm. were received from sister concern namely M/s Garg Jewellers on approval basis and consequently shortage of jewellery was found in the business premises of M/s Garg Jewellers, which is evident from the record of M/s Garg

Jewellers. After considering the argument of Id. AR and after perusing the relevant record, Id. CIT(A) observed that M/s Garg Jewellers is also dealing in gold jewellery and ornaments. Various firms of the group are handled by main family members / partners of two families. Accordingly, explanation of the appellant of gold jewellery and ornament belonging to sister concern M/s Garg Jewellers being received on approval, cannot be brushed aside, particularly considering that there is already shortage of stock in the case of M/s Garg Jewellers. Apart from the above, Id. CIT(A) has also observed that he has upheld the profit on unaccounted sales to certain extent, as per his order and in absence of any evidence of other unaccounted investment made out of such unaccounted sales, the argument of Id. AR of giving telescoping credit of profit on unaccounted sales vis-à-vis the addition, if any, on account of excess stock is accepted. Thus, on both the grounds addition of Rs. 1,51,18,854/- was deleted by the Id. CIT(A).

12.2 Before us, Id. CIT DR has argued that in the statement recorded during the course of search Shri Manoj Kumar Khandelwal has surrendered the excess stock. Moreover, there is no evidence of stock of M/s Garg Jewellers being received on approval in the premises of the appellant and accordingly addition is required to be sustained. The Id. AR of the assessee

explained that during the course of search the appellant was under pressure as search continued from 28.07.2016 to 31.07.2016 continuously for four days. Our attention was also drawn to the statement of Shri Manoj Kumar Khandelwal recorded on 31.07.2016 in answer to Q.No. 42 wherein while surrendering he has stated that in order to get mental peace and to avoid burden of complexities of the Income Tax Law, I surrender it as undisclosed income of my firm. It was submitted by the Id. AR that from the language of the statement so recorded, it is clear that surrender so mentioned is not of assessee's own volition but is coughed with the burden of the then circumstances prevailing in such a situation. Shri Manoj Khandelwal has also stated that weight of embedded stone, beads, kundan, chapdi has also not been correctly and properly reduced, as the actual rate of sale could not have been taken. Accordingly, surrender so obtained by the search officials need to be ignored. It was further submitted that in the business concerns of the group movement of stock of one firm to the other firm is not unusual for which generally no written evidence is kept as both the firms being sister concern belong to the same group.

12.3 We have considered the arguments of both sides. It is undisputed that both the firms are dealing in gold jewellery and ornament. Moreover,

shortage of stock was noticed in the case of M/s Garg Jewellers during the course of search and on the other hand excess stock was noticed in the case of appellant firm. This excess stock has been claimed to be belonging to M/s Garg Jewellers, being the sister concern, whose stock has come to the premises of appellant firm. Movement of stock between two sister concerns of the group is generally not un-common and many a times evidence for the same is also not maintained as both the concerns being sister concern, are controlled by group family members. On the basis of these facts, we see no reason to differ with the finding of Id. CIT(A) on this issue.

12.4 Further as regard telescoping credit is concerned, in absence of evidence of other unaccounted investment out of unaccounted income, being found during the course of search, the telescoping benefit so ordered to be allowable by the Id. CIT(A) is reasoned one and does not require any interference by us.

Departmental ground No. 12:

13. 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 appellant. 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 related to cash sale during pre-demonetization period and difference in stock. 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) that these additions are not on the basis of any credit entry found in the books of accounts and accordingly provisions of section 68 so invoked by Id. AO for making these additions is not justified and accordingly provisions of section 115BBE so invoked by the Id. AO is not justified.

13.1 It has been submitted by the Id. AR before the Id. CIT(A) and also before us that provisions of section 68 are quite clear and unambiguous in this regard.

Section 68 starts with phrase “*where any sum is found credited in the books of an assessee maintained for any previous year, and assessee offers no explanation*”.

The prerequisite of making any addition u/s 68 is that the said sum should be found credited in the books of accounts of an assessee so maintained and the second condition is that assessee offers no explanation or explanation is found unsatisfactory. There have been ample number of decisions of various High Courts and also the Apex Court on this issue. It is a settled legal position. Ld. CIT DR has cited the decision in the case of Hazi Nazeer Hussain (Delhi Bench third member). The Id. AR submitted that facts of the case cited by Id. CIT DR are different in as much as that in that case money so received has been entered in the cash book but it has not been entered in the ledger account of the respective person crediting the ledger account. Accordingly, it was held that failure on the part of the assessee to make credit entry in the respective account would not entitle the assessee to claim that no account is credited. Thus *ratio-decendi* of above cited case is not applicable in the instant case of appellant.

13.2 Without prejudice to above, it was also submitted by Id. AR that in any case various additions so made by Id. AO in respect of undisclosed cash deposits related to cash sales during pre-demonetization period and addition of excess stock have been deleted and addition in respect of cash sale has been substantially 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 and if at all any additions remain, those will not be substantial and considering the legal position as submitted above, this issue may be decided against the department and consequently in favour of assessee.

13.3 We have considered the rival submissions on this issue and also gone through the facts of the case. As seen above, 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. 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 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.

Based on the above detailed finding recorded the appeal of the assessee is partly allowed and that of the revenue stands dismissed.

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

Sd/-

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/06/2023

*Ganesh Kumar

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

1. The Appellant- M/s Royal Jewellers, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, Jaipur
3. 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 Nos. 116 & 177/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar