

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

VIRTUAL HEARING

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA No. 55 & 56/Jodh/2023
(ASSESSMENT YEAR- 2018-19 & 2019-20)

Sh. Shyam Sunder Shyam Sadan, Sunaron Ki Badi Guwad, Bikaner	Vs	DCIT, Central Circle, Bikaner
(Appellant)		(Respondent)
PAN NO. AFCPS 1652 M		

ITA No. 57 & 58/Jodh/2023
(ASSESSMENT YEAR- 2018-19 & 2019-20)

Sh. Sandeep Soni Sandeep Kumar Soni, Sunaron Ki Badi Guwad, Bikaner	Vs	DCIT, Central Circle, Bikaner
(Appellant)		(Respondent)
PAN NO. AXRPS 5700K		

Assessee By	Sh. Amit Kothari, C.A.
Revenue By	Sh. Lovish Kumar, CIT-DR & Sh. S. M. Joshi, JCIT-DR
Date of hearing	05/07/2023
Date of Pronouncement	07/08/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are four appeals, two of each filed by the assessee for two assessment year and is directed against the order of the Id. Commissioner of Income Tax (Appeals)-Udaipur-2 [hereinafter referred to as (Id. CIT(A)] dated 07.02.2023 for the Assessment Years 2018-19 & 2019-20, which in turn arise out of an order passed by DCIT/ACIT, Central Circle, Bikaner passed u/s. 147 of the Income Tax Act, 1961 [here in after referred to act "Act"] on 29.03.2022.

2. Since, the facts of both the assessee case for two different assessment year are identical, we have heard these cases together with the consent of the parties and passing the order together. The facts and grounds are taken from the folder of Sh. Shyam Sunder Soni in ITA No. 55/Jodh/2023 for A. Y. 2018-19 and this case is taken as lead case. In this appeal the assessee has raised following grounds:-

"1. The Id. CIT(A) has erred in sustaining the order passed by Id. AO which is bad in law and bad on facts and is contrary to the principles of natural justice. The proceedings u/s 148 are bad in law and bad on facts.

2. The Id. CIT(A) has erred in sustaining the addition u/s 69B for Rs. 79,12,500/- for alleged undisclosed investment in purchase of house property.

3. The Ld. CIT(A) has erred in sustaining charging of tax u/s 115BBE of the Act.

3. *The Id. CIT(A) has erred in sustaining interest charged u/s 234A, 234B and 234C of the Act.*

4. *The appellant crave liberty to add, amend, alter or modify any of the ground of appeal on or before its hearing before your honours."*

3. The fact as culled out from the records is that in this case, Shri Shyam Sunder Soni, Karta of afore-said HUF was arriving from Mumbai to Jaipur on 16.09.2018 by flight carrying jewellery having weight around 2.4 Kilograms. He was examined at Jaipur airport by the department. The statement of Shri Shyam Sunder Soni was recorded u/s 131 of the Act wherein he claimed that the said jewellery is a part of stock of his proprietary concern M/s CS Jewells, Bikaner. He had submitted an approval Challan having value of said Jewellery to the tune of Rs. 6,31,196 and gross weight to 2116.03 grams to substantiate his claim. Whereas, the Government approved Valuer has determined the value of afore-said jewellery at Rs. 69,00,400/-. Since, the Karta of said proprietary HUF failed to satisfactorily explain the reason for said difference and discrepancy, therefore, a survey proceedings u/s 133A of the Income Tax Act, 1961 (hereinafter referred as 'the Act) was carried out at business premises of said proprietorship concern viz. M/s CS Jewells, Sunaron Ki Badi Guwad, Bikaner on 17.09.2018 by the department.

3.1 During the course of survey action u/s 133A of the Act carried out by the department on 17.09.2018 at business premises of HUF namely M/s CS Jewells, Bikaner, a diary had been found which was impounded and inventorised as Annexure AS-3. At page no 48 of said annexure AS-3 some record/details of hawala or out of books transactions were found which was made for purchase of residential property located at Begani Mohalla, Bikaner (754 Sq Yds) from Shri Rohan Begani S/o Sh Subodh Begani, Resident of Mumbai which was registered with the office of Sub Registrar-1, Bikaner on 23.04.2018 through deed for Rs 1,21,00,000/-(DLC 1.21 Crore) on joint name of assessee along with his son Shri Sandeep Kumar Soni. The assessee filed its original return on 28.09.2018 declaring total income of Rs. 33,42,720/-. The case of the assessee was re-opened after taking the required permission from the competent authority and a notice u/s. 148 of the Act was issued to the assessee on 27.01.2021 to the assessee. In response the assessee filed reply on 24.12.2021 to consider its original return as return filed in response to notice u/s. 148. Thereafter notice u/s. 143(2) was issued on 23.03.2022. The assessee is an individual and earning his income from the partnership

firm the Gold Fort KEM Road, Bikaner. The assessee also earned income from rent.

3.2 During the year under consideration, assessee has made investment in residential property located at Begani Mohalla, Bikaner (754 Sq. Yard) from Shri Rohan Bhagani son of Shri Subodh Bhagani, resident of Mumbai which was registered with the office of the sub registrar – 1 Bikaner on 23.04.2018 through deed for Rs.1,21,00,000 lakhs (DLC value Rs.1,21,00,00,000) in the joint name of assessee along with his son, Shri Sandeep Kumar Soni. During the survey proceeding Annexure AS – 3 was impounded, as per page number 48 of this Annexure various transactions, having narration as Vijay, Shivji, hawala is present. The same was analysed and it was found that the assessee has written all the amount in code language hiding last three zeros and used “/” separator before three zero. For example, if the assessee want to write 20 lacks then he has written it as 2000/000 and “/” separator is used for separation of figures, however, in some figures, assessee had wrote two zero after “/” separator which could be considered a writing mistake. The scanned copy of Annexure AS – 3 page number 48 was extracted in the assessment order.

3.3 The said page was analyzed and examined and compared with the sale deed. It was found that the cheque amount mentioned in the page wherein Rs.21,00,000 with narration cheque Rohan ji is accurately matched with the payment made through RTGS to Shri Rohan Begani, the seller of the said property and similarly, the check / banking transaction, entry of Rs.1,00,00,000 with a narration of cheque is exactly matched with the amount of bankers check bearing number 11398111139 of OBC Bank as per payment details found narrated in the said conveyance deed. Further, the entries like nagar tax, stamp, cheque Rohanji (Name of Seller) & TDS also substantiate that these entries are related to investment in said property. Total of said transactions arrived at Rs. 4.21 cr. whereas Rs.1.21 cr. was found through cheque / banking channel and is also reflected in conveyance deed, therefore, balance amount of Rs.3,00,00,000 remain undisclosed investment of the assessee and his son that is jointly and equally in the name of Shri Shamsundar Soni (assessee) and Shri Sandeep Soni (assessee's son) made in purchase of house property for assessment year 2018–19 and 2019-20.

3.4 During examination of said document, the year wise computation of undisclosed or unaccounted investment made in purchase of said Immovable property was prepared and it is found that for the year under consideration the assessee along with his son made total undisclosed investment of Rs. 1,58,25,000/- (Total investment during the year comes to Rs.1,79,25,000) minus through RTGS payment Rs.21,00,00 therefore the half part of the said investment amounting to Rs.79,12,500 stands undisclosed and unaccounted investment of the assessee.

3.5 In this regard specific query was raised by the show cause notice dated 0103.2022 to the assessee. In response, the assessee submitted a detailed reply contending that the action to make an addition of Rs.79,12,500 with reference to the loose paper of AS –3, page 48 on account of paying out of book money to the seller of the house bought by the assessee in this year. In this matter submitted it was submitted that the survey was carried out at the business premises of M/s. CS Jewellers, proprietor of which is the assessee in his capacity as Karta of HUF. All the loose papers were belonging to that firm. Surrender of income has been made in various years by the

assessee in his HUF capacity and the same has been accepted by the revenue. There was no transaction of assessee which belong to the assessee in his individual capacity. The house so purchased in this year is coincidence in nature as Shri Sandeep Soni has himself cleared in his statement recorded during survey in question number 12 to question number 14 that he has made Hawala transaction from Vijay and Shivji Pugalia only for buying the goods, he had cleared in question number 13 that this diary is yaddast diary and transaction entered in it is noted for handling over account to his father and he bought that house in 1.21,00,00,000 only and the amount has been paid to the seller by banking transaction. It is respectfully submitted by the assessee that after examining and analysing all the impounded documents found from the assessee computed by the survey team, the additional income and the same duly included in the return of income by filling revised return. This peak working of the additional income includes all the transaction either of taking loan or advanced and out of books of business profit made from this money and according year wise income of Rs. 93,10,000/- was offered by HUF. The assessee contended that the assessee and his son Sandeep Soni submitting since beginning that all the transaction involved in

those loose papers and diaries are related to business of M/s. CS Jewells Proprietor of which is Sham Sunder Soni HUF. He had admitted that the loose papers found by the survey team or out of book transaction which are not recorded and accordingly the working of the income on the basis of said documents had been worked out which is also submitted. The assessee during survey also in post survey statement stated that there are certain transactions which are not recorded and accordingly the working of the income based on said documents had been worked out which is also submitted in, the statement recorded at the time of survey. During the relevant year no fresh loans was taken or given. Income earned from that out of books sale purchase after entering all the loose paper entries of sale purchase Rs.5,00,000 has already been surrendered in the year of computation of Shri Shyam Sundar Soni, HUF and it is duly accepted by the department in the case of HUF. He also contended that these transactions were more in nature of purchase of bullion trading and profit earned has been surrendered by the assessee in his HUF capacity. It is also submitted that the purchase of property is verifiable from the registered sale deed executed between the parties. The value of the purchases also verifiable from the value adopted for

stamp duty purpose, and the consideration is same as it is adopted for stamp duty purpose. Even other party from whom the purchases has been made corroborates the consideration mentioned in sale deed. There is no adverse material collected from the seller that the consideration paid is more than what is reflected in the sale deed. Under such circumstances, such registered documents cannot be ignored. There is only a suspicious that the noting on a rough paper contains the payment made towards the property. That is only suspicion and guess work. It is submitted that such a deaf and dump document cannot replace the registered deed which has more evidentiary value in the eyes of law. There is no other adverse material found during survey proceedings to suggest any payment or any receipt of on money being paid for purchase of property. There is no verification even from the other party about the payment of the consideration. No addition on account of loose paper can be made only on surmises basis. The assessee has relied on the various decisions to support this contention that the seized paper in question could not be treated as a document or a book of account. No addition could be made merely on the basis of such paper in absence of any corroborative evidences. In support of these contentions the assessee

has made reliance on certain decisions. The assessing officer noted that the case laws cited by the assessee are not applicable in the case as each case is different from other in respect of impounded/seized documents. The facts mentioned in the document impounded during survey is having evidentiary value as the same has been represented by the fact which is clearly established that it is not a deaf and dumb document as it is supported by the other corroborative evidence is further all the transactions are having narration and dates. The assessing officer further noted that entries like Nagar, text, stamp, cheque Rohan ji, and TDS also substantiate that these entries are related to the investment in property. All the entry mentioned in that page were totaled in excel sheet and marked as annexure A1 interestingly the total of this page is also comes to 4,21,00,000 which is same amount which was written in the upper left portion of the page. The assessing officer further observed that in upper left portion of the page that has been seized, the assessee has written “421 कुल देना” and on upper right portion of this page 1 phone number i.e. 9820173683 is written. On examination of this phone number on True caller application, it was observed that it belongs to Shri Shiv Pugalia. The assessing officer further noted that on being

searched on LinkedIn website it was found that Shri Shiv Pugalia works with M/s Bengali Jewellers, Mumbai. Interestingly, the assessee purchased house from the owner of M/s Bengali Jewellers, Mumbai on 23.04.2018 and made payment during the financial year 2017–18 and 2018–19. The assessing officer to that extent also recorded the statement of the assessee and also recorded the statement of Shri Sandeep Soni. In both the statement they have stated that these transaction relates to the out of books transactions for which the peak is worked out and the same offered in the statement recorded and these transactions are included in that out of books transactions.

3.6 Based on this observation, the assessing officer noted that the reasoning given by the assessee is not acceptable because in upper left portion of the page, the assessee has written “421 कुल देना” and on upper side portion of this page, one phone number i.e. 9820173683 is written. On examination it was found that this number belongs to Shri Shiv Pugalia and on being searched on LinkedIn website and it was found that he works with M/s. Bengali Jewellers, Mumbai and interestingly, the assessee purchased property from the owner of Bengali Jewellers, Mumbai on 23.04.2018 and made payments during

the financial year 2017-18 and 2018–19 and found that the only cheque amount mentioned in this page of Rs.21 lakh (narration cheque “Rohanj Ji) and Rs.1,00,00,000 is exactly matching with the cheque amount paid as per registered deed and dates of the registry, the assessee purchase this property from Rohan Bhagani and name of Rohan ji, one narration further clarifies that these entries are related to purchase of house property. Further the entries like Nagar tax, Stamp, Cheque Rohanji & TDS also substantiate that these entries are related investment in property. All the entry mentioned in the page were totaled in excel sheet and marked as annexure -1 interestingly the total of this page also comes to Rs.4,21,00,000 which is same amount written in the upper left portion of the page.

3.7 The assessing officer further noted that the peak amount surrendered by the assessee is still outstanding. Therefore, the figure mentioned on page 48 of Annexure AS-3 are not included in the Peak because this figure is commensurate with the payments. Further as the assessee has surrendered peak for financial year 2018–19 therefore, these figures cannot be part of the surrendered pick. What is the total of this page is Rs.4.21,00,000 whereas the assessee has

surrendered peak amount only Rs.93.10 lakh. Further, the narration written in these transactions also strengthen the contention that this transaction is related to purchase of house property. Therefore, a sum of Rs.3,00,00,000 (4.21,00,00,000,-1.21,00,00,000) is undisclosed investment of the assessee, and his son Shri Sandeep Soni for assessment year 2018–19 and 2019–20.

3.8 Considering the above fact that the assessee along with his son made a total undisclosed investment of Rs.1,58,25,000 during the year under consideration (total investment during the year comes at Rs.1,79,25,000) minus through RTGS, payment is equal to Rs.21,00,000 therefore the half part of the said investment amounting to Rs.79,12,500 stands undisclosed income and unaccounted investment of the assessee for the year under consideration under section 69B of the act and added to the total income of the assessee for the year under consideration.

4. Aggrieved from the order of the assessing officer, assessee preferred an appeal before the Id. CIT(A). A propose to the grounds

so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“8.3 I have considered the submission of Ld. A/R and carefully gone through the material available on record. The Assessing Officer has treated the sum of Rs. 79,12,500/- as unexplained investment under section 69B of the Income Tax Act because the assessee was found the owner of said investment made in the house property and the said money, expenses or investment etc. were not found fully disclosed in the regular book of account of the assessee for the year under consideration and the assessee also not offered any satisfactory explanation during the course survey, post-survey and assessment proceedings. The provisions of section 115BBE of the act are accordingly applied on these additions by the AO, The arguments of the appellant in this regard are discussed hereunder-

a. There was no incriminating documents regarding to unexplained investment used to buy residential house in addition to registry amount.

This argument of the appellant is without any basis as the addition is based on impounded papers where unaccounted investment details were recorded. This argument of the appellant is found to be not acceptable.

b. The appellant has disclosed this amount as income from outside business in the case of Shyam Sunder Soni HUF.

This issue is already discussed in the earlier ground of appeal in detail wherein it was clearly established that these transactions are related to investment in House Property by the appellant and these details are not related to unaccounted business receipts surrendered in the case of Sh. Shyam Sunder Soni HUF. Since, these are not business transactions the case law relied upon by the appellant is not applicable on the facts of this case.

c. The addition is based on his self will and surmises basis therefore taxation under 115BBE in this case is bad in law.

This addition is based on correct appreciation of the facts by the AO and hence, taxation u/s 115BBE is as per law.

In view of the above discussion, the arguments raised by the appellant are found to be not acceptable.

This ground of appeal is treated as dismissed.

5. Feeling dissatisfied with the order of the Id. CIT(A) the assessee has preferred the present appeal before this tribunal on the grounds so raised in para 2 above. The Id. AR of the assessee reiterated the submission made before the Id. CIT(A) and the same related to the grounds raised is extracted in below;

Addition of Rs. 79,12,500/- made u/s 69B is bad in law and bad on facts :

- 1.1. The Id. AO has grossly erred in making addition u/s 69B of Rs. of Rs. 79,12,500/-, in ref. to loose paper of AS-3 page 48 on account of paying out of books money to the seller of the house bought by the assessee and his son jointly in this relevant year. The appellant had also submitted detailed facts in this regard in ground no. 1 also while challenging the proceedings u/s 148 and the incorrectness of the addition made in this regards which may also kindly be considered in support of our prayer challenging such addition on merits also.
- 1.2. It is submitted that the survey was carried out at the business premises of M/S C S Jewells prop of which is assessee in his HUF capacity. All the loose papers were belongs to that firm. Surrender of income has been made in various years by the assessee in his HUF karta capacity. There was no transaction of assessee which belongs to assessee in his Individual capacity. Sandeep Soni has himself cleared in his statements Q 12 To Q 14 that the transactions noted in the seized documents related to trading of goods from Vjay and Shivji Pugalia only for buying goods. During the survey itself he had further stated in response to question no 13 that this diary is a yaddast dairy and transaction entered in it is noted for handing over accounts to my father.
- 1.3. They had bought the house in 1.21 crore and that amount has been paid to the seller vide banking system. It is respectfully submitted that after examining and analyzing all the impound documents by your office the assessee computed the amount of such additional income and the same had been duly included in the returns by filing the revised return. This peak working of the additional income includes all the transaction either of taking loan or advanced and out of books business profit made from this money and accordingly the year wise income computed on the basis of such documents was as under :

Asst Year	Surrender Income
2013-2014	20,00,000

2015-2016	6,00,000
2016-2017	36,50,000
2017-2018	20,60,000
2018-2019	5,00,000
2019-2020	5,00,000
TOTAL	93,10,000

- 1.4. Your honor will appreciate the fact that the assessee and his son Sandeep Soni is saying from beginning that all the transaction involved in those loose papers and diaries are related to business of M/S C. S Jewells Prop of which is Shyam Sunder Soni HUF. He had admitted that loose papers found by department is out of books transaction.
- 1.5. The assessee during the course of survey also and in the post survey statement had stated that there are certain transactions which are not recorded, and accordingly the working of the income on the basis of said documents had been worked out which is also submitted in our preceding paras. During this relevant year no fresh loan was taken or given. Income earned from that out of books sale purchases (after entering all the loose papers entries of sale purchase) Rs. 5,00,000/- has already been surrendered in this year computation of ShShyam sunder soni HUF and it is duly accepted by Id. A.O. in HUF case.
- 1.6. The appellant had submitted the work sheet from which this additional surrender income Rs. 5,00,000/- was found out (Sale 1,74,21,000/- – Pur 1,69,22,160/-). Your honour will also appreciate that these transactions were more in the nature of bullion trading and profit earned thereon has been surrendered by the assessee in his HUF capacity.
- 1.7. The Id. AO has taxed this transaction profit Rs. 5,00,000/- in the case of Shyam Sunder Soni HUF then gain separate addition in the case of Shyam Sunder soni & Sandeep Soni on the same loose paper is double taxation on a single income.
- 1.8. There is no legal provision to take income tax twice on the same loose paper when the income earned from these loose papers has already been taxed by your office in Shyam Sunder Soni HUF then again passing the order with a separate addition based on this loose paper itself bad in law therefore the assessment proceedings U/S 147/143(3) is bad in law and deserve to be deleted.
- 1.9. Your honor will appreciate the fact that Stamp registrar (SR) is also a authority of state Govt and the registry of house was made on the amount determined by the SR Bikaner. His order is silent and the Id. AO had never rejected this registry amount. The valuation is a technical subject and if any variation was required he should have first referred this matter to the

valuation authority. In absence of the same, the valuation declared deserves to be accepted.

- 1.10. It is also submitted that the purchase of property is verifiable from the registered sale deed executed between the parties. The value of the purchase is also verifiable from the value adopted for stamp duty purposes, and the consideration is the same as is adopted for stamp duty purposes. Even the other party from whom the purchase has been made corroborates the consideration mentioned in the deed. There is no adverse material collected from the seller that the consideration paid is more than what is reflected in the sale deed. Under such circumstances such registered document cannot be ignored.
- 1.11. There is only a suspicion that the notings on a rough paper contains the payment made towards property. That is only a suspicion and guess work. It is submitted that such deaf and dumb documents cannot replace the registered public document, which has more evidentiary value in the eyes of law. There is no other adverse material found during the survey proceedings to suggest any payment or any receipt of on money being paid for purchase of property. There is no verification even from the other party about the payment of the consideration.
- 1.12. No addition u/s 69B should be made in this case as on account of loose paper can be made only on surmises basis. The seized paper in question could not be treated as a document or book of account and no addition could be made merely on the basis of such a paper in the absence of any other corroborative evidence. As I reliance is placed on the judgment of Hon'ble Delhi High Court in the case of Kabul Chawla [2016] 380 ITR 573 that the income can be assessed only in the case of incriminating documents belonging to the person. Assessing Officer is heavy depend on that piece of loose paper. The Assessing Officer has even made no verification from the seller of house who was the other party to the transaction. In absence of the any adverse material os this nature, the declared consideration as per registered sale deed deserved to be accepted.
- 1.13. Since, in this case, Assessing Officer even did not made any enquiry from seller of house or Sh Shiv Pugalia therefore, there was no martial with the AO to make addition in the hand of assessee. No evidence was found in the case of the assessee that assessee has paid any on money to buy the residential house. The Assessing Officer merely considering that paper as an evidence that the, assessee might have also paid the on money for buying the house. The above conclusion of the Assessing Officer is not supported by any material or evidence.
- 1.14. The conclusion of the Assessing Officer is purely based upon suspicion and surmises. It is settled law that suspicion howsoever may be strong could not take place of legal proof. The same view is supported by the Hon'ble

ITAT bench Ahmedabad in the case of Sheth Akshay Pushpavadan Vs DCIT Central 1, Surat, ITA No.3178 /AHD/2009.

- 1.15. The Hon'ble Supreme Court in P.R.Metrani Vs. CIT, reported in 2006 (287) ITR, dealing with the scope of Sec. 132, 132(4A), 132(5) & 132(B), held "while the statement rendered at the time of search u/s. 132(4) may be used in evidence in any proceedings, yet that by itself does not become sole material to rest the assessment when the assessee seeks to withdraw the same by producing material evidence in support of such retraction. The law declared by the Hon'ble Apex Court decision reported in 1973 (91) ITR 18 Pullankode Rubber Produce Co. Ltd., Vs. State of Kerala and another it is held it is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so, the tribunal is not justified in placing undue emphasis on the statement made by the assessee. The Hon'ble Supreme Court has laid down the Principles for Admission by the Appellant/Assessee.
- 1.16. Hon'ble Supreme Court has held in State of Kerala Vs. M.M.Mathew-18.08.1978, courts of law have to judge evidence before them applying the well-recognized test of basic human probabilities. Further held that, strong suspicion, strange coincidences and grave doubts cannot take place of legal proof and further held how to establish the handwriting for which the Hon'ble Supreme Court has given guidelines which are illustrative. Hon'ble ITAT bench Chennai in delete the demand made on loose papers in the case of Mr.A. Johnkumar Vs. The Dy. Commissioner of Income Tax ₹./ITA No.3028/Chny/2019.
- 1.17. The appellant draw your kind attention towards the case of [2018] 171 ITD 437 (MUM),[2018] 195 TTJ 900 (MUM) in which case it was held addition made was to be deleted as AO made addition on the basis of loose papers seized in course of search to assessee's income in respect of unexplained payment for purchase of flat in view of fact that said papers. The facts of the said case are very similar to the case of the appellant.
- 1.18. Reliance is also placed upon the decision in the case of CIT vs. Lavanya Land (P) Ltd. (2017) 297 CTR(Bom) 204 : (2017) 154 DTR (Bom) 244 and emphasize the findings given in para No. 20 of the order. In para No. 20 of the order, the findings of Tribunal have been reproduced in the order of Hon'ble High Court and such findings say that provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the IT Act but the broad principles of law of evidence do apply to such proceedings.
- 1.19. Further, an entry in books of account maintained in the regular course of business is relevant for the purpose of considering the nature and impact of a transaction, but noting on slip of papers or loose sheet of papers are required to be supported/corroborated by other evidence and that these findings of Tribunal have been affirmed by Hon'ble High Court. Relying on

the above decision, he argued that unless the entries in loose sheet of paper are corroborated by other evidence found during search, no addition can be made only on the basis of such entries. I also relied upon the ratio of decision in the case of CIT vs. Lavanya Land (P) Ltd. (supra) (wherein the finding of Tribunal that the entries in the loose papers found during search have to be corroborated by any other evidence and in absence of any corroborative material found, no addition can be made only on the basis of the entries in the loose papers, has been affirmed by Hon'ble High Court. Following Co-ordinate Bench decision on the similar fact, it was hold that the addition of Rs.6,37,74,442 made by the AO merely on the basis of entries in the seized documents, unsubstantiated with any corroborative evidence, is not justified. We, therefore, confirm the order of the learned CIT(A) deleting addition of Rs. 6,37,74,442 and accordingly, the grounds of Revenue are rejected. [2020] 205 TTJ 547 (RAIPUR).

- 1.20. The apex court dealt with such kind of document as involved in this case in the case of Central Bureau of Investigation vs. V.C. Shukla [1998] CrLJ 1905 known as *Jain Hawala Case* and laid down the ratio. The important findings are as follows. *"That entries in the Jain Hawala Diaries, note books and file containing loose sheets paper not in the form of "Books of Accounts" and has held that such entries in loose papers/ sheets are not relevant and not admissible u/s 34 of the Evidence Act, and that only where the entries in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible. Further as to value of the entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.*
- 1.21. It was held in the case of Smt. Harmohinder Kaur, Jalndhar Vs DCIT-II, Jalandhar ITA No.568/Asr/2018 by Amritsar Branch that "On the basis of the aforesaid judgments, we are of the view, diary seized during the survey/search operation, without corroboration, have no authenticity and therefore, cannot be relied upon. Even entry recorded in the diary qua amount of sale was not confirmed from the buyers of the property and without confirmation, question of any assumption or belief that the entry belongs to the assessee did not arise and hence entry found in diary without any corroborative evidence, cannot be made basis of addition. The authorities below in the instant case, made the addition only on the basis of surmises, suspicion and guess work. Hence, respectively following the judgments referred above we are unable to sustain the addition made by the Assessing Officer and affirmed by the Ld. CIT(A). Consequently we are inclined to delete the same."
- 1.22. The appellant further draw your kind attention towards the case of Madras High Court in case of K. R. Palanisamy & Ors. V. Union Of India

&Ors. 2008-(306)-ITR -0061 –MAD in which it has been held that it was clear that entire transactions have been made at Jantari Value which is accepted by Sub register. The AO and DVO has no right to substitute the value of purchase without bringing any other evidences of unaccounted payment.

- 1.23. Your kind attention is also invited towards decision in the case of CIT v. Sudhish Kumar [2005] 276 ITR 5631 and CIT v. Manoj Jain [2006] 200CTR 327 in which it has been held that no valuation could be ordered by the DVO, it was much less competent for the Assessing Officer, who is not even an expert, to make an estimation of the value of the property on his own, and that too in proceedings under Chapter XIV-B.
- 1.24. The appellant further submits that as far as the addition made on the basis of the notings on the loose paper is concerned the Gujarat High Court has recently in case of CIT vs. Maulik Kumar K. Shah 307 1TR 137 had held that loose papers containing rough estimates cannot be relied upon to make addition on account of undisclosed income in the absence of any independent' evidence.
- 1.25. Your kind attention is also invited towards the decision of M/s Riveria Properties Pvt Ltd vs ITO, Cir.7(2)(1), Mumbai where in this case it was held that "Considering the total facts and circumstances of the case and also applying the ratios of the judgements cited above, we are of the view that the A.O. is not correct in coming to the conclusion that on money is exchanged between the parties based on a loose sheet found in the premises of a third person. To sustain the addition, the A.O. should have conducted an independent enquiry about the value of the property and ascertain whether any under valuation is done, if so what is the correct value of the property. Further, the A.O. did not brought on record any evidence to support his contention to say that there is on-money exchanged between the parties. In the absence of proper enquiry and sufficient evidences, we find no reason to confirm addition made by the A.O towards on money. Therefore, we direct the Assessing Officer to delete addition of Rs. 3,05,00,000/- made towards on money."
- 1.26. In various judicial decisions under such facts it was held that no addition U/s 68 & 69 should be made on the base of loose papers as on the basis of the same it cannot be concluded that there is any unexplained investment, and in this regard useful reference may be made to the following judicial decisions.
- *Thiru S. Shyam Umar Vs. ACIT, Central Circle-III(3), Chennai 99 taxmann.com 39 (Madras High Court).*
 - *Solitare World Pvt. Ltd., Vs ACIT, Central Circle-25, New Delhi ITA No. 2638/Del/2018.*

- DCIT-2(1), Raipur (CG) vs Shri ChhaganlalMundra, IT(SS)A No.32/RPR/2013 (ITAT Panji)
- Shri Vishnu Kumar Garg, Faridabad Vs The DCIT, Central circle-4, New Delhi. ITA.Nos.9147, 9148, 9149, 9150, 9151 & 9152/Del./2019, ITAT F Bench Delhi
- Kantilal& Bros. vs. Asstt. CIT (1995) 51 77J (Pune) 513 : (1995) 52
- Asstt CIT vs. Karodilal Agarwal (1994) 50 M (Jab) 393;
- RamlalDayawala& Sons (P) LTD. vs. Invest Import AIR 1981 CS2085;
- Sir Mohammed Yusuf &Anr. vs. D. &Anr. AIR 1968 112 42 (Bom.)
- Criminal Petition No. 265/1995, April, 1997-L.K. Advani.

1.27. It is further submitted that un corroborative entries in the books of accounts or documents do not establish their truthfulness and in this connection he laid emphasis on the contents of the document or book of account and truthfulness of the contents. It is emphasised that jotting in diary is held neither a book nor a document. Therefore, addition cannot be justified merely on the basis of seized papers. With reference to the decision of Tribunal in the case of ITO vs. WD. Estates (P) ITD. (supra) it was submitted that no addition could be made merely on the basis of a notorious fact that on-money is involved in property deals, particularly when the AO has not made any such allegation in the present case and no evidence was found during the course of search that any transaction entered into by the assessee is not disclosed by him.

1.28. In view of this it is again requested to kindly delete the un-fare and unwanted addition made u/s 69B of the IT act Rs. 79,12,500/-/- in light of above reasons.

Ground No. 3 : Charging of tax u/s 115BBE is bad in law and bad on facts.

1.29. It is submitted that the Id. AO has erred in directing to charge tax u/s 115BBE of the Act by the treating the addition made as unexplained investment in the year under consideration.

1.30. It is submitted that there was no incriminating documents regarding to unexplained investment used to buy residential house in addition to registry amount Rs. 79,12,500/-/- in this relevant year. The appellant has disclosed this amount as income from outside business in the case of Shyam Sunder Soni HUF Prop. C.S Jewells, Bikaner. The addition is based on his self will and surmises basis therefore taxation under 115BBE in this case is bad in law.

1.31. The Hon'ble ITAT Mumbai Bench 'D' in the case of Jain Trading Co. Vs. ITO [2007] 17 SOT 574 (MUM.) held that –whether an assessee who makes an offer of additional income during course of an enquiry by income –tax authorities is not bound by his offer of additional income for all time to come,

and can retract from his offer by furnishing complete details of his trading activity and his income in course of assessment proceedings and discharge his burden. It was held in the affirmative along with the finding that in such circumstances, additional income cannot be added to income of assessee.

- 1.32. The appellant also refer to the decision of Hon'ble ITAT, Jodhpur rendered while deciding various appeals on similar issue. It is observed that in ITA No.142 to 146/Jodh/2018 for AY 2014-15, the Hon'ble ITAT vide their common order dated 25-05-2018 following decision of Hon'ble Rajasthan High Court in the case of Bajrang Traders (IT Appeal No.258/2017 dated 12-09-2017) held that where income is found to be taxed under the head 'Business and profession', there is no justification for taxing such income u/s.115BBE of the Act. In the instant case, there is no dispute that surrendered income / additional income offered by the by the assessee in his HUF capacity and accepted by the Id. AO then addition here again in this case also is double taxation. therefore, there is no justification for taxing such income u/s.115BBE.
- 1.33. In case the addition made in the assessment is deleted, consequential this ground will become of academic interest only.
- 1.34. So in view of this it is clear that Ld. AO has erred in taxing the assessee's income u/s 115BBE of the IT Act 1961.

5.1 At the out set of the hearing Id. AR of the assessee submitted that the ground no. 1, 3 and 4 is not pressed.

5.2 So effective ground is in respect of addition of Rs. 79,12,500/- sustained by the Id. CIT(A). The Id. AR of the assessee submitted that the Id. AO has simply based one page made the addition. The Id. AR of the assessee submitted that the assessee and his son Sandeep Soni is saying from the date of survey vide various questions particular on the impugned page 48 in question no. 11 & 12 (APB-47) accepted

the version of the assessee and the income so computed already taxed in the hands of his HUF as income computed based on the peak for all the transaction involved in those loose papers including page 48 and diaries are related to business of M/S C. S Jewells Prop of which is Shyam Sunder Soni HUF. He had admitted that loose papers found by department is out of books transaction. During this relevant year Income earned from that out of books sale purchases (after entering all the loose papers entries of sale purchase) Rs. 5,00,000/- has already been surrendered in this year computation of Shri Shyam sunder Soni HUF and it is duly accepted by Id. AO in HUF case. The assessee submitted the work sheet from which this additional surrender income Rs. 5,00,000/- was found out (Sale 1,74,21,000/- – Pur 1,69,22,160/-). It is not disputed by the revenue that these transactions were in the nature of bullion trading and profit earned thereon has been surrendered by the assessee in his HUF capacity. The Id. AO has already considered that loose paper and taxed this transaction profit Rs. 5,00,000/-, in the case of Shyam Sunder Soni HUF then gain separate addition in the case of Shyam Sunder Soni & Sandeep Soni on the same loose paper is double taxation on a single income. He further argued that the assessee and his son during the

assessment proceeding no confronted again and the material relied upon was gather behind back the of the assessee and without confronting the assessee. There is no legal provision to charge income tax twice on the same loose paper. When the income earned from these loose papers has already been taxed by Id. AO in Shyam Sunder Soni HUF then again passing the order with a separate addition based on this loose paper itself bad in law and against the principles of natural justice. The Id. AR of the assessee further argued that except this page there is nothing on record even the statement of the assessee submitting that these transactions are related to their bullion business is not controverted by bringing anything further on record. The fact that Stamp registrar (SR) is also an authority of state government and the registry of property / house was made on the amount determined by the SR Bikaner. The order of the AO is silent and the Id. AO had never rejected this registry amount. The valuation is a technical subject and if any variation in that value is proposed was required to be referred to the valuation authority and without referring that the valuation accepting by one of the limb of the government agency cannot be challenged without bringing anything contrary on record except this loose paper. Even the other party from whom the

purchase has been made corroborates the consideration mentioned in the deed. There is no adverse material collected from the seller that the consideration paid is more than what is reflected in the sale deed. Under such circumstances such registered document cannot be ignored. There is only a suspicion that the noting on a rough paper contains the payment made towards property. That is only a suspicion and guess work. It is submitted that such deaf and dumb documents cannot replace the registered public document, which has more evidentiary value in the eyes of law. There is no other adverse material found during the survey proceedings to suggest any payment or any receipt of money being paid for purchase of property. There is no verification even from the other party, about the payment of the consideration. Referring to the provision of section 69B the Id. AR of the assessee submitted that there is no material evidence before the Id. AO to make the addition except the dump document which is not tested with the seller of the property and even the Id. AO has not placed any material to challenge the stamp duty valuation. Based on these set of facts mere inaction on the part of the AO the assessee should not suffer and be called upon to pay the tax twice on the same set of facts/loose paper. The Id. AO on the hand in the case of HUF

accepting the turnover disclosed based on the page and on the other hand making the addition in the hands of the assessee. The Id. AO also accepted the contention of the assessee that the assessee is dealing in Bullion business out of books and Mr. Shiv Kumar Pugalia is working the Bengali Jewellers in fact support the contention of the assessee that he is engaged in the business of the Bullion may be that Bengali Jewellers or with Mr. Shiv Kumar. Without recording the statement of the parties concerned merely the addition cannot be sustained on the simply loose paper without further verifying the content of this page. Even the assessee or his sone never at the time survey or thereafter accepted that the transaction recorded related to the property that they have purchased. Based on these arguments the Id. AR of the assessee prayed to delete the addition made purely based on estimate /presumption / assumptions.

6. The Id DR is heard who has relied on the findings of the lower authorities

7. We have heard the rival contentions and perused the material placed on record. The Id. DR heavily relied upon the finding recorded

by the Id.AO in para 6.6.6 & 6.6.7, the same reiterated for the sake of clarity

“6.6.6 The reply of the assessee and reasoning given by the assessee in its statement is not acceptable as In upper left portion of the page the assessee has written "421 "कूल देना and on upper right portion of this page one phone no i.e 9820173683" is written. On examination it was found that this number belongs to Sh Shiv Pugalia and he is searched on LinkedIn website and it was found that he works with M/s Begani Jewells, Mumbai. Interestingly assessee purchased house property from the owners of M/s Begani Jewellers, Mumbai on 23.04.2018 and made payments during F.Y. 2017-18 & 2018-19 and it was found that the only cheque amount mentioned in this page of Rs 21,00,000/- (narration cheque rohan ji) and Rs 1,00,00,000/- is exactly matching with the cheque amount paid as per registered deed and dates of the registry the assessee purchase this property from rohan begani and the name of rohan ji one narration further clarifies that these entries are related to purchase of house property. Further the entries like Nagar tax, Stamp, Cheque Rohanji & TDS also substantiate that these entries are related to investment in property. All the entry mention in the page were totaled in excel sheet and marked as Annexure -1 interestingly the total of this page also comes at Rs 4,21,00,000/- which is same amount which was written in the upper left portion of the page.

6.6.7 The peak amount surrendered by the assessee is still outstanding therefore the figures mentioned on the page 48 of Annexure AS-3 are not included in the peak because these figures commensurate with the payments. Further as the assessee has surrendered peak for F.Y. 2018-19 therefore these figures cannot be part of the surrendered peak. Further total of this page is Rs 4.21 Crore whereas assessee has surrendered peak amount only Rs. 93.10 Lacs. Further the narration written in these transaction also strengthen the contention that these transaction is related to purchase of house property. Therefore a sum of Rs 3.00 Crore (4.21 Crore 1.21 Crore) is undisclosed investment of the assessee and his son Sandeep Soni for A.Y. 2018-19 & 2019-20.”

Based on these contentions recorded in detailed by the AO and confirmed by the Id. CIT(A) supported the orders of the lower authorities.

8. Heard the parties, perused the material placed on record and gone through the judicial precedence cited to drive home to the respective contentions so raised by the parties. In this case the only issue arose is to whether the page 48 of seized Annexure AS-3 referring the term Hawala and further analysed to the coded language hiding the last zeros and used"/" separator before the three zero and thereby further coincident dealing with the person or his firm from whom the assessee has purchased the property is considered the on money transaction of property or not.

8.1 The brief facts of the case is that the assessee Shri Shyam Sunder Soni, was arriving from Mumbai to Jaipur on 16.09.2018 by flight and was carrying jewellery. Since the assessee failed to satisfactorily explain the reason source of such jewellery a survey proceeding u/s. 133A of the Act was carried out at the business premises of M/s. CS Jewells, Sunaron Ki Badi Guwad, Bikaner. In the

survey a diary found and was impounded and investorised as Annexure-AS-3. On this diary at page 48 some record / details of hawala or out of books transactions were found which was considered as for purchase of residential property located at Begani Mohalla, Bikaner. The said property was purchased from Shri Rohan Begani, resident of Mumbai. The assessee has purchased house property from Shri Rohan Begani by way of sale deed executed on 23.04.2018 for a consideration of Rs. 1,21,00,000/-. The DLC rate of that property was also at Rs. 1,21,00,000/- and there is no dispute on this aspect. During the survey proceeding the assessee and his son both were confronted on this page 48 and the reply of the assessee and his son is reiterated here in below for the sake of understanding

प्रश्न 11 मैं आपको Annexure AS-3 पेज नं.48 दिखा रहा हूँ साथ ही इस पेज की Actual गणना करके दिखा रहा हूँ। इसे देख कर आप अपना स्पष्टीकरण देंगे।

उत्तर उपरोक्त Annexure AS-3 पेज नं.48 मैंने देख लिया है और साथ ही आपके द्वारा बनायी गयी गणना को भी देख लिया है तथा मैं आपका द्वारा जो गणना की गयी है उससे सहमत नहीं हूँ। मैं ये मानता हूँ कि ये पेज मेरे द्वारा ही लिखा गया है इसमें मेरी यादाश्त के हेतु बिजनेस (out of Books) से संबंधित एंट्रीज का विवरण है। ये विवरण हमारे द्वारा जो Peak बनायी गयी है उसमें ये शामिल है।

प्रश्न 12 आपके द्वारा प्रश्न 11 के जबाब में Annexure AS-3 पेज नं.48 में दर्ज एंट्री व्यवसाय से संबंधित होना बताया गया है। कृपया इसमें बताये कि इसमें लिखे गये विजय एवं शिवजी को आप जानते है। अगर हाँ, तो विवरण देवे साथ ही हवाला के सामने लिखी गयी एंट्रीयों को स्पष्ट करें।

उत्तर हां मैं अपने बेटे के बयानों से सहमत हूं। मैं विजय एवं शिवजी को नहीं जानता इस संबंध में जो मेरे बेटे संदीप ने बयान में दिया है, मैं उससे सहमत हूं।

प्रश्न 13 Annexure AS-3 पेज नं.48 इसके ऊपर एक नम्बर लिखा गया है जो कि 9820173683 है जिसे जांचने पर पता पड़ता है कि ये किसी शिव पुगलिया का है क्या यह वहीं शिवजी है जिसका नाम पेज नं.48 में कई बार आया है। साथ ही शिव पुगलिया को LinkedIn Site पर सर्च करने पर पता पड़ता है कि वह मैसर्स बैगानी ज्वैलर्स, मुम्बई के नाम से दिखा रहा है। क्या ये वहीं बैगानी ज्वैलर्स है जिनके मालिकों से आपने श्याम विला खरीदा है?

उत्तर जैसा कि मैंने पूर्व में बताया है कि ये पेज मेरे बेटे द्वारा लिखा गया है। अतः इस बारे में जो मेरे बेटे ने बयान दिया है मैं उससे सहमत हूं।

प्रश्न. 14 Annexure AS-3 पेज नं.48 इसके ऊपर 421 देना लिखा है और हमारे द्वारा जो गणना आपको दिखायी गयी थी उसका कुल योग 42100000/- आता है और इस Annexure में दिनांक 10.01.2017 को रूपये 21 लाख रोहन जी को देना बताया है और दिनांक 23.04.2018 को रूपये 1 करोड़ देना बताया है ये राशियां आपकी श्याम विला की रजिस्ट्री से मेल खाती है तो कृपया बताये उक्त मकान की खरीद में ये क्यों न मान लिया जाये कि आपने 4.21 करोड़ रूपये लगाये है जिसमें से रूपये 1.21 करोड़ चेक से तथा 3 करोड़ रूपये Out of books दिये है। इस प्रकार 3 करोड़ रूपये अघोषित स्रोतों से लगाया हुआ पैसा क्यों न मान लिया जाये।

उत्तर मैंने ये Annexure एवं आपके द्वारा बनायी गयी गणना पुनः देख ली है। मैं इससे सहमत नहीं हूँ। इस संबंध में मेरे बेटे संदीप द्वारा दिये गये बयान से पूर्णतया सहमत हूं। साथ ही मैं यहां दोबारा स्पष्ट करना चाहता हूं कि श्याम विला हमारे द्वारा 1 करोड़ 21 लाख रूपये में ही खरीदा गया है।

8.2 Even the son of the assessee was also confronted on the same page and his reply at the time of survey is also recorded and the same is also extracted here in below

प्रश्न 11: मैं आपको Annexure AS-3 पेज नं.48 दिखा रहा हूँ साथ ही इस पेज की Actual गणना करके दिखा रहा हूँ इसे देख कर अपना स्पष्टीकरण देंगे।

उत्तर उपरोक्त Annexure AS-3 पेज नं.48 मैंने देख लिया है और साथ ही आपके द्वारा बनायी गयी गणना को भी देख लिया है तथा मैं आपका द्वारा जो गणना की गयी है उससे सहमत नहीं हूँ। मैं ये मानता हूँ कि ये पेज मेरे बेटे संदीप द्वारा लिखा गया है जिसे उसने अपनी यादाश्त के हेतु बिजनेस (out of Books) से संबंधित एंट्रीज का विवरण है। ये विवरण हमारे द्वारा जो **peak** बनायी गयी हैं उसमें ये शामिल है।

प्रश्न 12 आपके बेटे द्वारा अपने बयान के प्रश्न 11 के जवाब में Annexure AS-3 पेज नं.48 में दर्ज एंट्री व्यवसाय से संबंधित होना बताया गया है। क्या आप अपने बेटे संदीप के इस बयान से सहमत हैं। साथ ही बताये कि इसमें लिखे गये विजय एवं शिवजी को आप जानते हैं। अगर हां, तो विवरण देव साथ ही हवाला के सामने लिखी गयी एंट्रीयों को स्पष्ट करें।

उत्तर हां मैं अपने बेटों के बयानों से सहमत हूँ। मैं विजय एवं शिवजी को नहीं जानता इस संबंध में जो मेरे बेटे संदीप ने बयान में दिया है, मैं उससे सहमत हूँ।

प्रश्न 13 मैं आपको Annexure AS-3 पेज नं.48 इसके ऊपर एक नम्बर लिखा गया है जो कि 9820173683 है जिसे जाँचने पर पता पड़ता है कि ये किसी शिव पुगलिया का है क्या यह वहीं शिवजी है जिसका नाम पेज नं. 48 में कई बार आया है। साथ ही शिव पुगलिया को LinkedIn Site पर सर्च करने पर पता पड़ता है कि वह मैसर्स बैगानी ज्वैलर्स, मुम्बई के नाम से दिखा रहा है। क्या ये वहीं बैगानी ज्वैलर्स है जिनके मालिकों से आपने श्याम विला खरीदा है?

उत्तर जैसा कि मैंने पूर्व में बताया है कि ये पेज मेरे बेटे द्वारा लिखा गया है। अतः इस बारे में जो मेरे बेटे ने बयान दिया है मैं उससे सहमत हूँ।

प्रश्न 14 Annexure AS-3 पेज नं.48 इसके ऊपर 421 देना लिखा है और हमारे द्वारा जो गणना आपको दिखायी गयी थी उसका कुल योग 4,21,00000/- आता है और इस Annexure में दिनांक 10.01.2017 को रूपये 21 लाख रोहन जी को देना बताया है और दिनांक 23.04.2018 को रूपये 1 करोड़ देना बताया है ये राशियां आपकी श्याम विला की रजिस्ट्री से मेल खाती है तो कृपया बताये उक्त मकान की खरीद में ये क्यों न मान लिया जाये कि आपने 4.21 करोड़ रूपये लगाये हैं जिसमें से रूपये 1.21 करोड़ चेक से तथा 3 करोड़ रूपये Out of books दिये हैं। इस प्रकार 3 करोड़ रूपये अघोषित स्रोतों से लगाया हुआ पैसा क्यों न मान लिया जाये।

उत्तर मैंने ये Annexure एवं आपके द्वारा बनायी गयी गणना पुनः देख ली है। मैं इससे सहमत नहीं हूँ। जैसा मैंने पूर्व में बताया ये एक यादाश्त डायरी है क्योंकि

मेरे द्वारा किये गये लेन-देन का व्यौरा मेरे पिताजी को देना पड़ता है। इसलिए इसमें मेरे द्वारा इन्द्राज किया गया है। मैं यहां स्पष्ट करना चाहता हूं कि ये सारे सौदे मेरे द्वारा बतायी गयी peak में सम्मिलित है। हमारे द्वारा घर 1 करोड 21 लाख में ही खरीदा गया है जिसमें 1 करोड लोन है। जो मेरे पिताजी द्वारा संयुक्त रूप से खरीदा गया है।

8.3 As the revenue since the day of search contending that the assessee has invested on money in purchase of property and at the same time the revenue also accepted the version of the of the assessee that he is doing the unaccounted transaction of bullion and based on the diary found and seized a peak amount is worked and the same was considered in the hands of the proprietor of M/s. CS Jewells, Shri Shaym Sunder Soni HUF. The assessee and his son both have pleaded that the transaction recorded in the said page 48 of the diary is also part of the working of the peak.

8.4 Even though this information was since day one available with the revenue till the final show cause notice the seller was confronted on the contention whether the seller has received any on money from the buyer or not. As argued by the Id. AR of the assessee that the Id. AO simply based one page made the addition considering the unaccounted on money for an amount of 3 cr. On this issue assessee and his son repeated denying to the contention of the revenue from

the date of survey vide various questions particular on the impugned page 48 in question no. 11 & 12 (APB-47) accepted the version of the assessee and the income so computed already taxed in the hands of his HUF as income computed based on the peak for all the transaction involved in those loose papers including page 48 and diaries are related to business of M/S C. S Jewells Prop of which is Shyam Sunder Soni HUF. The said HUF assessee offered and admitted those transactions in while filling the income based on that diary found by department and considered the transactions as out of books transaction. During this relevant year Income earned from that out of books sale purchases (after entering all the loose papers entries of sale purchase) Rs. 5,00,000/- has already been surrendered in this year computation of Shri Shyam sunder Soni HUF and it is duly accepted by Id. AO in HUF's case. The assessee submitted the work sheet from which this additional surrendered income Rs. 5,00,000/- was found out (Sale 1,74,21,000/- – Purchase 1,69,22,160/-). The said working is not disputed by the revenue that these transactions were in the nature of bullion trading and profit earned thereon has been surrendered by the assessee in his HUF capacity. The Id. AO has already considered that loose paper and taxed this transaction

profit Rs. 5,00,000/-, in the case of Shyam Sunder Soni HUF then gain separate addition in the case of Shyam Sunder Soni & Sandeep Soni on the same loose paper is double taxation on a single income. He further argued that the assessee and his son during the assessment proceeding not again confronted and the material relied upon was nothing but the same confronted to the assessee and his son in survey in question no. 11 to 14.

8.5 There is no legal provision to charge income tax twice on the same loose paper. When the income earned from these loose papers has already been taxed by Id. AO in Shyam Sunder Soni HUF then again passing the order with a separate addition based on the same loose paper itself is bad in law. Except the contention of the Id.AO about this page from the date of survey till the date of issue of show cause notice or in that case till the passing of the order against the assessee and his son nothing on record brought. Even the statement of the assessee submitting that these transactions are related to their bullion business is not controverted by bringing anything further on record and even though the seller was known to the AO he has not deemed it fit to record his statement or call for the details from him.

The fact that Stamp registrar (SR) is also an authority of state government and the registry of property / house was made on the amount determined by the SR Bikaner is no disputed by referring the matter to the DVO. The order of the AO is silent and the Id. AO had never rejected this registry amount. Thus, without referring to anything on record how value of the property which is duly executed on a signed and stamped document be challenged when the state government has also adopted the value of the property at 1.21 cr for the purpose of assessing the stamp duty. Even the other party from whom the purchase has been made corroborates the consideration mentioned in the deed. There is no adverse material collected from the seller that the consideration paid is more than what is reflected in the sale deed. Under such circumstances such registered document cannot be ignored. There is only a suspicion that the noting on a rough paper contains the payment made towards property as on money and the same cannot be considered under section 69B and to that we would like to deal the provision of section 69B and the same is reproduced here in below :

Amount of investments, etc., not fully disclosed in books of account.

69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the **amount expended on making such investments or in acquiring such bullion, jewellery or other valuable**

article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Thus, here the Id.AO did not bring any material so as to establish that the assessee has expended Rs. 4.21 cr in purchase of property. Thus, he has merely acted on suspicion and guess work. The transaction recorded in the registered sale deed cannot be replaced merely based on one page and that too the assessee has denied from the date of survey and the Id. AO from the date of survey till the completion of the assessment does not bring anything contrary to disbelieve the version of the assessee. Thus, the registered public sale documents value cannot be replaced by that of the unsigned documents for which even remotely assessee or his son who has written the said page agreed to the contention of the revenue. Thus, the registered public document, has more evidentiary value in the eyes of law in the absence of any other adverse material found during the survey proceedings to suggest any payment of on money paid for purchase of property. There is no verification even from the other party, about the payment of the consideration. Based on these set of facts mere in action on the part of the AO the assessee should not suffer and called upon to pay the tax

twice on the same set of facts/loose paper. The Id. AO on the one hand taxed the amount in the case of HUF accepting the turnover disclosed based on the page and on the other hand making the addition in the hands of the assessee as undisclosed investment in the property in his hand and in his son's case. The Id. AO also accepted the contention of the assessee that the assessee is dealing in Bullion business out of books and Mr. Shiv Kumar Pugalia is working the Bengali Jewellers in fact support the contention of the assessee that he is engaged in the business of the Bullion may be that Bengali Jewellers or with Mr. Shiv Kumar proves the nature of transaction with that parties. Without recording the statement of other parties conclusion arrived by the Id. AO cannot support the addition and we do not hesitate say that the same is pure of presumption or assumption without any support, in that case even not of the assessee or the other party and therefore, we vacate the same based on the above discussion.

In terms of this observation the ground no. 2 raised by the assessee is allowed.

9. As the Id.AR of assessee has not pressed the ground no. 1, 3 & 4 the same stands dismissed.

In the result the appeal of the assessee in ITA n. 55/Jodh/2023 is partly allowed.

10. The fact of the case in ITA Nos. 56 to 58/Jodh/2023 are similar to the case in ITA No. 55/Jodh/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 55/Jodh/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 55/Jodh/2023 for the Assessment Year 2018-19 shall apply mutatis mutandis in ITA Nos. 56 to 58/Jodh/2023 for the Assessment Year 2018-19 & 2019-20. Based on these observations the appeal of the assessee in ITA No. 56 to 58/Jodh/2023 also partly allowed.

In the result, four appeals of the assessee are partly allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules,
1963, by placing the details on the notice board.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 07/08/2023
*Ganesh Kumar, PS

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench