

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1641/Del/2021 : Asstt. Year: 2015-16

ITA No. 1642/Del/2021 : Asstt. Year: 2016-17

ITA No. 1643/Del/2021 : Asstt. Year: 2017-18

Anoop Kumar Soni, 1240, First Floor, Kacha Bagh, Kucha Majajani, Chandni Chowk, New Delhi-110006	Vs	DCIT, Central Circle-07, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. BMGPS6592C		

ITA No. 156/Del/2022 : Asstt. Year: 2016-17

ITA No. 157/Del/2022 : Asstt. Year: 2017-18

DCIT, Central Circle-07, New Delhi-110055	Vs	Anoop Kumar Soni, 1240, First Floor, Kacha Bagh, Kucha Majajani, Chandni Chowk, New Delhi-110006
(APPELLANT)		(RESPONDENT)
PAN No. BMGPS6592C		

Assessee by : Sh. Hiren Mehta, CA &

Sh. Nirbhay Mehta, CA

Revenue by : Sh. P. Praveen Sidharth, CIT DR

Date of Hearing: 16.05.2023

Date of Pronouncement: 02.08.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee and the revenue against the orders of Id. CIT(A)-24, New Delhi dated 19.08.2021.

2. In ITA No. 1641/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law the order passed by CIT (A) -24, New Delhi is contrary to facts and bad in law.

2. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the Assessing Officer in treating the Ledger Account titled "AP" appearing in "Hazir Johri" software which was seized during the course of search action on a different party namely M/s Jindal Bullion Ltd. as belonging to the appellant and making an addition on the basis of such material in the hands of the appellant in assessment order passed u/s 153A of the Act.

2.1 That the CIT (A) erred in upholding the action of the Assessing Officer in making addition based upon material seized from the premises of a third party by relying upon the statement of Shri Parul Ahluwalia, Director of Jindal Bullion Ltd.

2.2 That on the facts and circumstances of the case and in law the CIT (A) erred in giving a finding in Para 4.2.18 of the order by holding that the appellant did not request for cross-examination of Shri Parul Ahluwalia at the assessment stage

2.3 That on the facts and circumstances of the case the CIT (A) was not Justified in upholding addition of Rs.11,70,000/- out of total addition of Rs.1,72,92,951/- as unexplained investments u/s 69 of the I.T. Act.

3. That on the facts and circumstances of the case and in law, the CIT (A) erred in not disposing off the objections of the appellant challenging the maintainability of the assessment order passed u/s 153A of the IT Act in which additions were made on the basis of alleged incriminating material seized during the course of search on a different party,

although the objections have been reproduced on page 73 to 75 of the impugned order.

3.1 That as per the proposition of law settled by the Delhi High Court in the case of Pr. CIT (Central) Vs. Anand Kumar Jain ITA No.23 of 2021, no addition can be made in the assessment order passed u/s 153A of the Act on the basis of material seized during the course of search of a different party."

3. In ITA No. 1642/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law the order passed by CIT (A) -24, New Delhi is contrary to facts and bad in law.

2. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the Assessing Officer in treating the Ledger Account titled "AP" appearing in "Hazir Johri" software which was seized during the course of search action on a different party namely M/s Jindal Bullion Ltd. as belonging to the appellant and making an addition on the basis of such material in the hands of the appellant in assessment order passed u/s 153A of the Act.

2.1 That the CIT (A) erred in upholding the action of the Assessing Officer in making addition based upon material seized from the premises of a third party by relying upon the statement of Shri Parul Ahluwalia, Director of Jindal Bullion Ltd.

2.2 That on the facts and circumstances of the case and in law the CIT (A) erred in giving a finding in Para 4.2.18 of the order by holding that the appellant did not request for cross-examination of Shri Parul Ahluwalia at the assessment stage

2.3 That on the facts and circumstances of the case the CIT (A) was not Justified in upholding addition of Rs.92,67,812/- out of total addition of

Rs.9,32,78,397/- as unexplained investments u/s 69 of the I.T. Act.

3. That on the facts and circumstances of the case and in law, the CIT (A) erred in not disposing off the objections of the appellant challenging the maintainability of the assessment order passed u/s 153A of the IT Act in which additions were made on the basis of alleged incriminating material seized during the course of search on a different party, although the objections have been reproduced on page 73 to 75 of the impugned order.

3.1 That as per the proposition of law settled by the Delhi High Court in the case of Pr. CIT (Central) Vs. Anand Kumar Jain ITA No.23 of 2021, no addition can be made in the assessment order passed u/s 153A of the Act on the basis of material seized during the course of search of a different party."

4. In ITA No. 1643/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law the order passed by CIT (A) -24, New Delhi is contrary to facts and bad in law.

2. That on the facts and circumstances of the case and in law the CIT (A) was not justified in upholding the action of the Assessing Officer in treating the Ledger Account titled "AP" appearing in "Hazir Johri" software which was seized during the course of search action on a different party namely M/s Jindal Bullion Ltd. as belonging to the appellant and making an addition on the basis of such material in the hands of the appellant in assessment order passed u/s 153A of the Act.

2.1 That the CIT (A) erred in upholding the action of the Assessing Officer in making addition based upon material seized from the premises of a third party by

relying upon the statement of Shri Parul Ahluwalia, Director of Jindal Bullion Ltd.

2.2 That on the facts and circumstances of the case and in law the CIT (A) erred in giving a finding in Para 4.2.18 of the order by holding that the appellant did not request for cross-examination of Shri Parul Ahluwalia at the assessment stage

2.3 That on the facts and circumstances of the case the CIT (A) was not Justified in upholding addition of Rs.44,77,077/- out of total addition of Rs.2,47,95,486/- as unexplained investments u/s 69 of the I.T. Act.

3. That on the facts and circumstances of the case and in law, the CIT (A) erred in not disposing off the objections of the appellant challenging the maintainability of the assessment order passed u/s 153A of the IT Act in which additions were made on the basis of alleged incriminating material seized during the course of search on a different party, although the objections have been reproduced on page 73 to 75 of the impugned order.

3.1 That as per the proposition of law settled by the Delhi High Court in the case of Pr. CIT (Central) Vs. Anand Kumar Jain ITA No.23 of 2021, no addition can be made in the assessment order passed u/s 153A of the Act on the basis of material seized during the course of search of a different party.

4. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in confirming the addition of Rs.6,46,505/- on the grounds of some unaccounted sale of 251.07 gms gold, only on the basis of a rough jotting seized as Annexure A-1, party JO-7.

5. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in partly confirming the addition of Rs.6,72,923/- (out of addition of Rs. 51,50,000/-) u/s 69 of the IT Act by holding that the appellant had made some

unaccounted purchase of 2Kg gold. This addition was confirmed only on the basis of a rough jotting seized as Annexure A-1, party JO-7.

6. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in confirming the addition of Rs.10,64,762/- u/s 69 by holding that the appellant had made some unexplained investment in stock of gold, only on the basis of a rough jotting seized as Annexure A-1, party JO-7.

7. That on the facts and circumstances of the case and in law, the CIT (A) was not Justified in confirming the addition of Rs.2,89,383/- u/s 69 by holding that the appellant had made some unexplained investment in stock of Silver, only on the basis of a rough jotting seized as Annexure A-1, party JO-7.

8. That on the facts and circumstances of the case and in law, the CIT (A) was not Justified in confirming the addition of Rs. 54,80,828/- by inferring seized document Annexure A-2, page-4 as a trial balance disclosing profit earned by the appellant from dabba transactions.

9. That on the facts and circumstances of the case and in law, the Id. CIT(A) was not justified in confirming the addition of Rs.1,50,000/- by holding cash and jewellery amounting to Rs.36,66,598/- seized during the course of search action as unexplained.

10. That on the facts and circumstances of the case and in law, the Id. CIT(A) was not justified in confirming the addition of Rs.44,870/- u/s 69A by holding the 1055.400 gms of silver found during the course of search action as unexplained investment.”

5. In ITA No. 156/Del/2022, following grounds have been raised by the Revenue:

"1. Ld. CIT(A) had erred in accepting request of assessee for allow 8,40,1 benefit of peak credit as assessee never accepted that entries belongs to him during assessment proceedings and appellate proceedings.

2. Ld. CIT(A) had erred in allowing peak credit to assessee as it is a settled legal position that peak credit is not applicable where deposits remain unexplained under section 68. "In the case of CIT(A) Vs. D. K. Garg [2017] 84 taxmann.com 257 (Delhi), HC held that peak credit is not applicable where deposits remain unexplained u/s 68 of the Act". As in present case, entries remained unexplained and additions were made u/s 68 if the Act, benefit of peak credit should not be allowed to assessee.

3. Ld. CIT(A) had erred in allowing peak credit to assessee as the principle of peak credit is not applicable in the cases of where deposits remain unexplained during the assessment proceedings. For adjudicating upon plea of peak credit factual foundation has to be laid by assessee, who has to own all cash credit entries in books of accounts and only thereafter question of peak credit can be raised. In this case, assessee never accepted that credit entries belongs to him. Assessee only requested as per para 4.2.20, 4.2.21 and 4.2.22 of appellate order to allow benefit of peak credit. Ld. CIT(A) in para 4.2.19 himself held that AO was justified in adding back undisclosed income arising from seized material in the hands of the appellant.

4. Ld. CIT(A) had erred in allowing peak credit to assessee as the assessee had failed to explain the source and destination of credits. In the case of CIT Vs. Vijay Agricultural Industries [2007] ITR 610 (Allahabad)', it was held by court that where an assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of 'peak credit'.

5. Ld. CIT(A) had erred in allowing peak credit to assessee as the same can be given only when the

assessee owns up all the cash credits in the books of accounts. [Bhaiyalal Shyam Bihari vs. CIT [2005] 276 ITR 38 (Allahabad)/[2006] 202 CTR 515 (Allahabad).

6. Ld. CIT(A) had erred in not charging Gross Profit (GP) on out of books transaction while given the benefit of peak credit to the assessee and accepting the fact that it is trading account of the assessee."

6. In ITA No. 157/Del/2022, following grounds have been raised by the Revenue:

"1. Ld. CIT(A) had erred in accepting request of assessee for allow benefit of peak credit as assessee never accepted that entries belongs to him during assessment proceedings and appellate proceedings.

2. Ld. CIT(A) had erred in allowing peak credit to assessee as it is a settled legal position that peak credit is not applicable where deposits remain unexplained under section 68. "In the case of CIT(A) Vs. D. K. Garg [2017] 84 taxmann.com 257 (Delhi), HC held that peak credit is not applicable where deposits remain unexplained u/s 68 of the Act". As in present case, entries remained unexplained and additions were made u/s 68 if the Act, benefit of peak credit should not be allowed to assessee.

3. Ld. CIT(A) had erred in allowing peak credit to assessee as the principle of peak credit is not applicable in the cases of where deposits remain unexplained during the assessment proceedings. For adjudicating upon plea of peak credit factual foundation has to be laid by assessee, who has to own all cash credit entries in books of accounts and only thereafter question of peak credit can be raised. In this case, assessee never accepted that credit entries belongs to him. Assessee only requested as per para 4.2.20, 4.2.21 and 4.2.22 of appellate order to allow benefit of peak credit. Ld. CIT(A) in para 4.2.19 himself held that AO was justified in adding

back undisclosed income arising from seized material in the hands of the appellant.

4. Ld. CIT(A) had erred in allowing peak credit to assessee as the assessee had failed to explain the source and destination of credits. In the case of CIT Vs. Vijay Agricultural Industries [2007] ITR 610 (Allahabad)', it was held by court that where an assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of 'peak credit'.

5. Ld. CIT(A) had erred in allowing peak credit to assessee as the same can be given only when the assessee owns up all the cash credits in the books of accounts. [Bhaiyalal Shyam Bihari vs. CIT [2005] 276 ITR 38 (Allahabad)/[2006] 202 CTR 515 (Allahabad).

6. Ld. CIT(A) had erred in not charging Gross Profit (GP) on out of books transaction while given the benefit of peak credit to the assessee and accepting the fact that it is trading account of the assessee."

ITA No. 1641/Del/2021 : A.Y. 2015-16 (Assessee Appeal)

Hazir Johri Software/Addition u/s 69:

7. The relevant facts are that a search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out on Jindal Bullion Ltd. Group of cases on 05.01.2017. A warrant of authorization u/s 132 was issued in the name of Sh. Anoop Soni, 99, Deepali Enclave, Pitampura, Delhi.

8. During the course of search on M/s Jindal Bullion Ltd. Group (JBL) on 05.01.2017, data pertaining to the F.Y. 2014-15, 2015-16, and 2016-17 in the form of digital data and loose sheets were seized. Digital data was maintained in a software named "Hazir Johri" at the residential cum business premises of

Sh. Kusharg Jindal (promoter and Director of JBL) at Plot No. 25, Vaishali Enclave, Pitampura, Delhi in a dongle. Loose sheets detailing daily pakka and kachha transactions of transfer of cash, gold and silver, found and seized as Annexure A4 at the residential premises of Sh. Parul Ahluwalia (Director of JBL) at D-70, Pundrik Vihar, Pitampura, Delhi-110034. The Assessing Officer held that on analysis of the above two sets of evidences it was found that the transactions detailed in the loose sheets have been fed into "Hazir Johri" software to create parallel books of accounts of JBL apart from those maintained in Tally Software. The Assessing Officer held that on analysis of the said data showed that JBL had been systematically engaged in cash transactions with a number of entities, mostly bullion traders and jewellers. The JBL books of accounts as maintained in the Hazir Johri software, contained both cash transactions of JBL as well as its transactions through banking channels. The transactions through banking channels are reflected in the Tally books of accounts of JBL whereas the cash transactions are not reflected in the same. The Assessing Officer held that comparison of the two accounts data viz. the one maintained in Johri-Hazir software and the one maintained in Tally software, reveals a number of discrepancies between the two sets of accounting data pertaining to JBL. It was held that most of the ledger accounts maintained in Hazir are in code names and a relation was established between the ledger account of the actual entity which was found in the tally accounts and the ledger account of the same entity as per Hazir-Johri accounts. The identification of the said Hazir accounts has been done on the basis of a number of criteria like of statements given by

Shri Parul Ahluwalia, Kusharg Jindal Directors of JBL and also on the basis of banking transactions appearing in the Hazir Johri ledger accounts. The Assessing Officer held that in the Hazir account of a particular entity, there were transactions like "cash received" and "gold paid" in lieu of the cash received. Along with these transactions there is description of amounts received by JBL from that particular entity through banking channels and the gold/silver paid in return.

9. The AO has also relied on the statement of Sh. Parul Ahluwalia, Director and former employee of JBL was recorded u/s 132(4) of the Act on 05.01.2016. In the said statement, Sh. Parul Ahluwalia was confronted with the loose sheets detailing the daily, accounted for as well as unaccounted cash, gold bullion and silver bullion transactions.

10. A scanned copy of one of such loose sheet found and seized as page 56 of Annexure A4, from the residential premises of Sh. Parul Ahluwalia during the course of Search operations on 05.01.2017, was examined in detail. The loose sheet pertains to 15.01.2015, wherein the page has been divided into three sections. Each of the three sections detail the "IN" and "OUT" transactions of gold, silver and cash, respectively, of JBL on that particular date.

11. As per the said statement of Sh. Parul Ahluwalia the above reproduced loose sheets as well as the data maintained in the Hazir Johri software contain the cash as well as transactions through banking channels, of JBL. It is pertinent to mention over here that code names of individuals appear in front of

these cash transactions in Hazir-Johri data. This is not the case in the tally data of JBL. Further, Sh. Parul Ahluwalia stated that these loose sheets which detail the "kachha" as well as "pukka" transactions of JBL were written by Ms. Ekta Soni who worked as Executive Assistant at JBL and that the said sheets had been given to him by Sh. Kusharg Jindal with instructions to destroy them. As per the same statement, the 'pukka' transactions in the said sheets were entered into the Tally software of JBL while the 'kachha' and 'pakka' transactions as detailed in these sheets and represent the true state of affairs of JBL, were entered into the Hazir-Johri software of JBL only. The statement recorded is part of the Assessment Order from page no. 4 to 9 wherein the name of the assessee has been referred at question no. 21 of the statement. Further, Ms. Ekta Soni, the Executive Assistant in JBL stated and her statement that the loose sheets contain details of cash, gold and silver intake and outgo from JBL and she has been witness to such cash transactions.

12. In this background, the pages pertaining to assessee has been examined in the Hazir Johri software. The narration recorded in the software is as under:

Date	Hajir Ledger a/c	Debit	Credit	Remarks
5-Feb-15	Ap		30001	BANK
12-Feb-15	Ap		780000	Cash
12-Feb-15	Ap	30000		Cash
12-Feb-15	Ap	1		Short
13-Feb-15	Priyanka Jewellers		- 1250000	BANK
20-Feb-15	Priyanka Jewellers	680000		Cash
20-Feb-15	Priyanka Jewellers	570000		Ap
20-Feb-15	Ap		570000	Priyanka
21-Feb-15	Ap		- 1250000	BANK
18-Mar-15	Ap		1000000	Cash
27-Mar-15	Ap		100000	Cash
27-Mar-15	Priyanka Jewellers		6500000	BANK
30-Mar-15	Ap		- 5432136	BANK
30-Mar-15	Ap	567864		Cash
30-Mar-15	Priyanka Jewellers	6012136		Cash
30-Mar-15	Priyanka Jewellers	5432136		Cash
31-Mar-15	Priyanka Jewellers		5402	Cash
31-Mar-15	Priyanka Jewellers		10	370000
31-Mar-15	Priyanka Jewellers	10,146	375402	-
Total credit for F.Y. 2014-15			17292951	
17-Apr-15	Ap	300000		Cash
2-May-15	Ap		579980	JD
8-May-15	Ap		1243350	JD
15-May-15	Ap		1858043.28	JD
26-May-15	Ap	1139052		KCX
30-May-15	Ap	175033		JD
6-Jun-15	Ap	1416282		JD
8-Jun-15	Ap		2	0
8-Jun-15	Ap	2,353	0	-
13-Jun-15	Ap		25169	JD
20-Jun-15	Ap		622117	JD
27-Jun-15	Ap	1781663		JD
2-Jul-15	Ap		35770	Cash
2-Jul-15	Ap		986.3	0
2-Jul-15	Ap	35770		13.7
2-Jul-15	Ap	1000		-
4-Jul-15	Ap	12750.36	Kgs	0.353
4-Jul-15	Ap	847161		JD
8-Jul-15	Ap	1000	0	-
11-Jul-15	Ap	664202		JD
17-Jul-15	Ap	2000	5198000	-

17-Jul-15	Ap		5198000	RVJ
18-Jul-15	Ap		1000	0
18-Jul-15	Ap	1680578		JD
24-Jul-15	Ap	5072281		JD
25-Jul-15	Ap		2760330	Cash
1-Aug-15	Ap	1279391		JD
7-Aug-15	Ap	8985		Cash
7-Aug-15	AP-SUPREME	6200000		Ap
7-Aug-15	Ap		6200000	AP-SUPREME
8-Aug-15	Ap	1510		Cash
15-Aug-15	Ap		10510	Kamty
15-Aug-15	Ap		1634755	JD
22-Aug-15	Ap		1814492	JD
28-Aug-15	Ap	2109185		JD
5-Sep-15	Ap		144336	JD
12-Sep-15	Ap	901957		JD
19-Sep-15	Ap		1480769	JD
23-Sep-15	Ap	2641000		Cash
23-Sep-15	Ap	459000		Cash
23-Sep-15	Ap	900000		Cash
23-Sep-15	Ap	2000000		Cash
24-Sep-15	Ap		5	0
24-Sep-15	Ap	7540000		01AJ
24-Sep-15	Ap		17000000	MT
25-Sep-15	Ap	3000000		Cash
25-Sep-15	Ap	699170		Cash
26-Sep-15	Ap		977008	JD
3-Oct-15	Ap	3724300		JD
10-Oct-15	Ap		1525462	JD
11-Oct-15	Ap	250000		Cash
14-Oct-15	Ap		524000	Cash
16-Oct-15	Ap	990000		KP
17-Oct-15	Ap		1153365	JD
19-Oct-15	AP-SUPREME	1095583		Profit
24-Oct-15	Ap	1320056		JD
26-Oct-15	Ap	2000000		Cash
26-Oct-15	Ap		2000000	BANK
31-Oct-15	Ap	5193625		JD
9-Nov-15	Ap		72780	Cash
9-Nov-15	Ap	2	72780	-
9-Nov-15	Ap	0.2	7320	-
9-Nov-15	Ap	0.55	20075	-
9-Nov-15	Ap	120	316500	-
9-Nov-15	Ap		7320	JBL
10-Nov-15	Ap	60	162000	-

14-Nov-15	Ap	1321770		JD
16-Nov-15	Ap		498575	Cash
17-Nov-15	Ap	238.75	0	-
19-Nov-15	Ap		238.75	0
20-Nov-15	Ap		1000	Cash
20-Nov-15	Ap		30	0
20-Nov-15	Ap	1.003	0	-
20-Nov-15	Ap	4569		labour
21-Nov-15	Ap	30.333	0	-
21-Nov-15	Ap	1102324		JD
24-Nov-15	Ap	1.504	0	-
27-Nov-15	Ap	1	0	-
27-Nov-15	Ap	2.065	0	-
28-Nov-15	Ap	353653		JD
30-Nov-15	Ap		4820000	JD
5-Dec-15	Ap		496000	01K.J
5-Dec-15	Ap	31494		0.905
5-Dec-15	Ap	13320820		JD
5-Dec-15	Ap	3601815		JD
5-Dec-15	Ap		811963	JD
5-Dec-15	Ap		500000	Profit
5-Dec-15	Ap		477.08	Profit
9-Dec-15	Ap		1000000	NSP
12-Dec-15	Ap		500000	01K.J
12-Dec-15	Ap		3562664	JD
16-Dec-15	Ap		1000000	Priyank
26-Dec-15	Ap	381299		JD
11-Jan-16	Ap		512347.75	Oppo
11-Jan-16	Ap	588281		JD
18-Jan-16	Ap		545048	JD
20-Jan-16	Ap		5000000	BANK
21-Jan-16	Ap	2000	5340000	-
1-Feb-16	Ap		13784	JD
5-Feb-16	Ap		1018904	JD
5-Feb-16	Ap		1000000	kls(jhs)
5-Feb-16	Ap		136013	Priyank
5-Feb-16	Ap		3653	Profit
6-Feb-16	Ap		2500000	Cash
8-Feb-16	Ap		1200000	Setia
9-Feb-16	Ap		1300000	Setia
11-Feb-16	Ap		1000000	kls(jhs)
15-Feb-16	Ap	7000	0	-
16-Feb-16	Ap	1000	0	-
17-Feb-16	Ap		8000	Ty
18-Feb-16	Ap	87333		Cash

20-Feb-16	Ap		3853881	JD
26-Feb-16	Ap	3000	0	-
26-Feb-16	Ap		8730000	BANK
29-Feb-16	Ap	8730000		3000
29-Feb-16	Ap	409089		JD
1-Mar-16	Ap		1320220	Cash
1-Mar-16	AP-SUPREME		1295580	Cash
5-Mar-16	Ap		595930	JD
8-Mar-16	Ap	12.75		Write
12-Mar-16	Ap	172940		JD
26-Mar-16	Ap	898815		JD
Total credit for F.Y. 2015-16			101210533	
2-Apr-16	Ap		239996	JD
23-Apr-16	Ap	1231	0	-
23-Apr-16	Ap		291036	JD
23-Apr-16	Ap		518	JD
26-Apr-16	Ap		1231	0
29-Apr-16	Ap		1000000	Cash
30-Apr-16	Ap		1053240	JD
5-May-16	Ap	3978705		BANK
9-May-16	Ap		2800000	Anshul
9-May-16	Ap	700000		ishan
9-May-16	Ap	148136		JD
11-May-16	Ap	53140		Cash
11-May-16	Ap	29400		ishan
16-May-16	Ap	358621		JD
23-May-16	Ap	388640		JD
26-May-16	Ap		747677	Anshul
27-May-16	Ap	1001064		JD
28-May-16	Ap		752323	Anshul
4-Jun-16	Ap		792392	JD
10-Jun-16	Ap		2400000	BANK
10-Jun-16	Ap		882239	JD
10-Jun-16	Ap	2400000		Vinod
17-Jun-16	Ap		515982	JD
25-Jun-16	Ap		1587580	JD
2-Jul-16	Ap		1001913	JD
8-Jul-16	Ap		993532	JD
8-Jul-16	Ap		462	Write
11-Jul-16	Ap		165000	Guddu
14-Jul-16	AP-SUPREME		3600000	Profit
14-Jul-16	AP-SUPREME		2400000	Vinod
16-Jul-16	Ap	1451061		JD
22-Jul-16	Ap	57214		JD

1-Aug-16	Ap	3200000		INTEREST
2-Aug-16	Ap		1467604	JD
2-Aug-16	AP-SUPREME		3	Write
6-Aug-16	Ap	752995		JD
13-Aug-16	Ap	198290		JD
20-Aug-16	Ap		284823	JD
22-Aug-16	Ap	68199		Bank
25-Aug-16	Ap		52110	MT
28-Aug-16	Ap	723059		JD
29-Aug-16	Ap		1044078	Cash
3-Sep-16	Ap		15485	Jd
10-Sep-16	Ap		218653	Jd
17-Sep-16	Ap	171376		Jd
26-Sep-16	Ap	10000000		1
26-Sep-16	Ap		188327	Jd
30-Sep-16	Ap		15246	Jd
3-Oct-16	Ap		15246.22	Jd
13-Oct-16	Ap	584100		KJ
24-Oct-16	Ap		115182	Jd
5-Nov-16	Ap		153608	Jd
		Total credits	24795486.2	

Date	Hajir Ledger	Dr.	Cr.	Remarks
2-Apr-16	Ap		239996	JD
23-Apr-16	Ap	1231	0	-
23-Apr-16	Ap		291036	JD
23-Apr-16	Ap		518	JD
26-Apr-16	Ap		1231	0
29-Apr-16	Ap		1000000	Cash
30-Apr-16	Ap		1053240	JD
5-May-16	Ap	3978705		BANK
9-May-16	Ap		2800000	Anshul
9-May-16	Ap	700000		ishan
9-May-16	Ap	148136		JD
11-May-16	Ap	53140		Cash
11-May-16	Ap	29400		ishan
16-May-16	Ap	358621		JD
23-May-16	Ap	388640		JD
26-May-16	Ap		747677	Anshul
27-May-16	Ap	1001064		JD
28-May-16	Ap		752323	Anshul
4-Jun-16	Ap		792392	JD
10-Jun-16	Ap		2400000	BANK
10-Jun-16	Ap		882239	JD

10-Jun-16	Ap	2400000		Vinod
17-Jun-16	Ap		515982	JD
25-Jun-16	Ap		1587580	JD
2-Jul-16	Ap		1001913	JD
8-Jul-16	Ap		993532	JD
8-Jul-16	Ap		462	Write
11-Jul-16	Ap		165000	Guddu
14-Jul-16	AP-SUPREME		3600000	Profit
14-Jul-16	AP-SUPREME		2400000	Vinod
16-Jul-16	Ap	1451061		JD
22-Jul-16	Ap	57214		JD
1-Aug-16	Ap	3200000		INTEREST
2-Aug-16	Ap		1467604	JD
2-Aug-16	AP-SUPREME		3	Write
6-Aug-16	Ap	752995		JD
13-Aug-16	Ap	198290		JD
20-Aug-16	Ap		284823	JD
22-Aug-16	Ap	68199		Bank
25-Aug-16	Ap		52110	MT
28-Aug-16	Ap	723059		JD
29-Aug-16	Ap		1044078	Cash
3-Sep-16	Ap		15485	Jd
10-Sep-16	Ap		218653	Jd
17-Sep-16	Ap	171376		Jd
26-Sep-16	Ap	10000000		1
26-Sep-16	Ap		188327	Jd
30-Sep-16	Ap		15246	Jd
3-Oct-16	Ap		15246.22	Jd
13-Oct-16	Ap	584100		KJ
24-Oct-16	Ap		115182	Jd
5-Nov-16	Ap		153608	Jd
		Total credits	24795486	

13. The AO has totaled up the entire credits in the said account for the year amounting to Rs.1,72,92,950/- and treated the same u/s 69 of the Income Tax Act, 1961. The reasons given by the AO are as under:

- Statement of Sh. Parul Ahluwalia and Ms. Ekta Soni who confessed about the cash transactions.

- Name of the assessee appearing on the account as M/s Priyanka Jewellers and as AP.
- From the said data, a summary of daily cash transactions or cash book of Jindal Bullion limited from 01.02.2015 to 28.08.2016 and further from 28.08.2016 to 05.11.2016 were available. The said summary or cash book contained chronological record of daily cash received from and cash paid to various Hazir ledger accounts say, 'A J' or 'S D', by JBL.
- From the above summary, a list of Hazir ledger accounts from whom cash was received by JBL along with the amount of cash received in the relevant period was obtained.
- Similarly, from the said summary, a list of Hazir accounts to whom cash was paid by JBL was obtained along with the amount of cash paid during the relevant period.
- The individual ledger of each of the said Hazir accounts in which said cash transactions are present, was obtained and analysed.
- With respect to cash received in Hazir ledger accounts, it is found that cash was received by JBL and bullion was sold to the entity whose account was maintained in the Hazir books of account of JBL. Some of the cash received also pertained to deposits from various persons mainly Directors/shareholders of JBL.

14. With respect to cash paid, the AO found modus operandi for application of cash so paid, was observed in different accounts which is as under:

- Cash paid to deposited in the bank account of JBL for further purchase of bullion. Retail cash sales have been reflected in the tally books of accounts to account for the cash so deposited.
- Cash paid to a bullion dealer for out of books purchase of bullion from a bullion trader.
- Cash paid to bullion trader/any other entity to obtain credit entries in the bank account of JBL of similar amounts within a span of one or two days. The funds so obtained may have been used to purchase bullion through banking channels.

15. From the statement of Sh. Parul Ahluwalia, the AO inferred that 'AP' stands for Sh. Anoop Soni and the name of M/s Priyanka Jeweller is clearly visible on the seized material. Thus, the Assessing Officer brought an amount of Rs.1,72,92,951/- u/s 69 of the Act as unexplained investments.

16. Aggrieved the assessee filed appeal before the Id. CIT(A).

17. The Id. CIT(A) held that the fact of unaccounted receipts and payments cannot be denied, since all the unaccounted transactions are in cash, the possibility of cash being rotated cannot be ruled out, hence, the benefit of peak is required to be given in the case of the assessee. Accordingly, the Id. CIT(A) computed the peak unaccounted cash involved and determined the unexplained investments to Rs.11,70,000/- against the addition of Rs.1,72,92,951/-.

18. The similar issue is involved for A.Y. 2016-17 and A.Y. 2017-18. The assessee filed appeal before the Tribunal for the

addition confirmed after determination of peak credit. For the A.Y. 2015-16, the revenue has not filed appeal. The revenue has also filed appeal for A.Y. 2016-17 and A.Y. 2017-18 against the decision of the Id. CIT(A) for determining and allowing the peak credit concept. Thus, the appeals of both the parties vis-à-vis the additions made on account of Hazir Johri software account are intertwined.

19. Before us, the Id. AR argued reiterating the submissions made before the authorities below. The submissions of the Id. AR as placed before the AO are as under:

"During the course of the search and survey at premises of the M/s Jindal Bullion Ltd., the search team found that the M/s Jindal Bullion Ltd. maintaining their accounts in software called 'Hazir Johri' for purchase / sale transaction and cash transactions by M/s Jindal Bullion Ltd. In which the investigation team found two ledgers named 'AP' and M/s Priyanka Jewellers. It has been alleged that both of these ledgers belongs to Sh. Anoop Soni (Prop. M/s. Priyanka Jewellers). Your goodself has asked for the details of transactions mentioning in the ledger account in the name of 'AP' and 'M/s Priyanka Jewellers' attached with the questionnaire. In this regard, it is submitted that:-

The entries which are reported in the above said two ledgers do not belong to the captioned assessee, except for the ones which are discussed below:-

1. On 21.02.2015 amount of Rs. 12,50,000/-. The said transaction is done from the bank account of the assessee and are duly reflected in the books of the assessee. Copy of Ledger account in the books of the assessee highlighting the said transaction with M/s Jindal Bullion Ltd is attached.

2. On 13.02.2015 amount of Rs. 12,50,000/-. The said transaction is done from the bank account of the assessee and are duly reflected in the books of the assessee. Copy of Ledger account in the books of the assessee highlighting the transaction with M/s Jindal Bullion Lid is attached.

3. On 27.03.2013 amount of Rs. 54,32,136/-. The said transaction is done from the bank account of the assessee and are duly reflected in the books of the assessee. Copy of Ledger account in the books of the assessee highlighting the transaction with M/s Jindal Bullion Lad is attached.

The assessee has a business dealing with the M/s Jindal Bullion Ltd of sale or purchase of gold, silver and other ornaments. Therefore, the above mentioned entries are appearing In the books of the assessee Furthermore, your goodself has asked as to why the transactions which are not reflected in the books of account maintained by assessee may not be added to the income of the assessee. In this regard it is submitted that, the transactions other than the ones explained above are not pertaining to the assessee. Assessee has no knowledge of the transactions appearing in the seized ledgers.

Any evidence on & statement on oath if any available with your goodself on the basis of which the transactions are treated as entries related to the assessee, has not been confronted to the assessee. There is no tangible material on record which proves assessee had earned undisclosed income from M/s Jindal Bullion Ltd."

With regard to the captioned subject matter, this has reference to show-cause notice dated 12.12.2018 vide which you have required the assessee to furnish clarification/ justification by 14.12.2018. In connection with the same, on behalf of and under instructions from

our subject client the point-wise reply to above referred show-cause notice is discussed in subsequent paragraphs.

1. It has been stated in the SCN that during the course of search action on Jindal Bullion Lad, annexure A22 and A25 were seized which contained books of accounts. It is further stated in the SCN that the ledger account maintained in the name of AP in the Hazir accounts maintained by JBL is sufficient evidence that it belongs to the assessee Sh. Anoop Soni since the banking entries in the said ledger account match with the transaction in bank account of the assessee. Thereafter, the total summation of credit entries for FY 2016-17, 2015-16 & 2014-15 has been tabulated and the assessee has been finally show-caused as to why the amount of Rs. 2,47,95,486/-, Rs. 9,32,78,397/- and Rs. 1,72,92,951/- may not be treated as unexplained investment in Jindal Bullion Ltd. for AY 2017-18, 2016-17 & 2015-16 respectively.

2 With regard to the above issue, it is submitted that upon close examination of the documents seized in search of Jindal Bullion Ltd. i.e. Ledger Account, following facts emerge:

- a) The said ledger account pertain to one Mr. A.P. There is no evidence to even remotely suggest that the term 'AP' means the name of the assessee i.e. Anoop Soni.*
- b) In respect of all entries there is an acronym used such as JD KCX RBJ Overseas, Kamty, 01 AJ, JBL Coins, Oppo Mobiles, Setia Ishan, Anshul, Vinod 8676, Guddi etc.*
- c) In certain transactions names are mentioned in the narration such as Subhash Soni, Shikhar Ji Share, Surasti Overseas Pvt. Ltd.,*
- d) In a transaction dated 22.08.2016 amount of Rs. 68, 199/- has been reflected as Anoop Soni (share). This is the only*

transaction which mentions the name of the assessee in the entire ledger account referred in the SCN.

3. On the basis of the above facts, there is no way that the transaction reflected in the ledger account, 'A.P.' pertain to the assessee in any manner. The transactions which pertain to the assessee have been explained vide earlier reply filed on 09.12.2018.

4. In case the assessing authorities are wanting to attribute the transaction in the said ledger account as pertaining to the assessee, there is no documentary evidence or material to substantiate the same. Further, the assessee has not been provided results of any inquiry conducted by the department from M/s Jindal Bullion Ltd. regarding the contents of the above referred ledger account. The assessee has also not been provided copy of any statement furnished by M/s. Jindal Bullion Ltd. explaining the contents of the above referred ledger account. In the absence of non-provision of opportunity as referred above, any adverse inference drawn on the basis of all the said ledger account would be against the principle of natural justice.

5. From the contents of the ledger account, as discussed above, it appears that this account pertains to more than one person or in fact a group of persons and individual transaction pertaining to the respective party contains the description of the said party. Therefore, to hold that the entire transactions in the said ledger account pertains to the assessee would be far-fetched and not based on any material.

6. Without prejudice, it is lastly submitted that even if it is presumed that all transactions in the said ledger account pertain to the assessee, even then the entire credit summation cannot be added and it is only the peak which can be added. This is a settled proposition of law.

7. It may also be highlighted that several transactions in the ledger account are through banking channel. Under such circumstances, it is not understandable as to how these transactions can be treated as unexplained. To illustrate for transaction dated 26.10.2015, cash paid is debited by Rs. 20,00,000/- and M/s Surasti Overseas Pvt. Ltd. has been credited by Rs. 20,00,000/-. The narration states 'Axis Bank 9130200524704'. It is not understandable as to how this transaction can be treated as unexplained and outside books of accounts. In view of the above, it is submitted that no addition is warranted on the basis of above referred ledger account."

20. On the other hand, the Id. DR relied on the order of the Assessing Officer.

21. Heard the arguments of both the parties and perused the material available on record.

22. We have examined the Assessment Orders, submissions of the assessee, paper book and the order of the Id. CIT(A) containing 111 pages, containing 95 pages of the submissions of the assessee on various pleas.

23. The Assessing Officer reproduced on a sample basis at Para 5.5, copy of a loose sheet seized from the residential premises of Sh. Parul Ahluwalia, Director of JBL. The statement of Sh. Parul Ahluwalia recorded during the course of search on Jindal Bullion Ltd. on 02.01.2017 has been reproduced at para 5.6. In Para 5.8 of the assessment order it has been stated that analysis of the Hazir Johri software revealed two accounts one named "AP" and other named "Priyanka Jewellers which pertained to the assessee i.e. Sh. Anoop Soni. The basis for identification was statement of Sh. Parul Ahluwalia and also on

the basis of banking transaction recorded in Hazir Johri ledger account. Further, Para 5.11 states that upon comparison of entries recorded in Tally account of JBL with the entries in Hazir Johri software it was revealed that the banking transactions are appearing in the books of accounts but the transactions in cash are not reflected.

24. On the basis of above discussed contents of the assessment order it emerges that the primary reason for treating the account code named "AP" in the Hazir Johri software seized during the course of search action on Jindal Bullion Ltd., is that the banking transactions between Priyanka Jewellers/ Sh. Anoop Soni and JBL group are reflected in the Hazir Johri data as well as in the Tally data. This according to the Assessing Officer alone is sufficient evidence to establish that the accounts maintained under the names "AP" in Hazir Johri software pertained to the assessee. On the basis of the above it has been held in the assessment order that while the banking transactions appearing in the account of JBL match exactly, the transaction shown in cash and other credit entries shown in Hazir Johri account do not appear in the books of accounts of the assessee.

25. The Id. CIT(A) held that from analysis of evidences in the nature of digital data maintained in software called Hazir Johari and loose sheets from during search of JBL. JBL, it is established that the transactions detailed in loose sheets have been fed into Hazir Johari software to create parallel books of accounts of JBL. Apart from those maintained in Tally software. In their case, if parallel books of accounts have been

maintained by JBL, the law mandates that the undisclosed income there from is to be taxed in the hands of JBL.

26. On the basis of analysis of Hazir Johri Software, the narration recorded in the account AP has been reproduced on page 11 to 16 of the assessment order. An examination of the same would reveal that the said ledger account nowhere shows any sale/purchase of gold/silver. Thus, the transactions reflected in the said account are not in the nature of description furnished during the course of search of JBL. With regard to the cross examination, the Id. CIT(A) held that no details have been filed during appeal proceedings to show that the assessee requested for cross-examination at assessment stage. The Id. CIT(A) held that the assessee was ex-director of JBL and the seized material was found from employees of JBL itself. In these circumstances, the witnesses were employees of the same company and cross-examination was not essential. We find that during the assessment proceedings vide reply dated 09.12.2018 the Assessing Officer was specifically requested to provide any evidence/statement on oath on the basis of which the transactions were being treated as related to the assessee (Page 18 of AO). Further, vide letter dated 14.12.2018 it was submitted that the assessee has not been provided copy of any statement furnished by JBL explaining the contents of AP ledger account. In the absence of non-provision of opportunity any adverse inference drawn on the basis of said ledger account would be against the principles of natural justice (Page 20 of AO). Anoop Soni was not the director of the JBL at the time of search. It is also an accepted position that he was neither the shareholder nor promoter of JBL and therefore it cannot be said

that the witnesses namely Shri Parul Ahluwalia whose statement is being relied upon and Shri Anoop Soni were employees of the same company. In view of the fact that the assessee did not have any relation with JBL (except for business transactions), the cross-examination was absolutely necessary.

27. The Id. CIT(A) held that Shri Parul Ahluwalia has admitted in the statement that the "pukka" transactions in the said sheets were entered into Tally software of JBL while the "kachha" and "pukka" transactions as detailed in these sheets and represent true state of affairs of JBL were entered into Hazir Johari software only. However, we find the statement of Shri Parul Ahluwalia, director of JBL (page 4 to 9 of AO), explains the modus- operandi of transactions of JBL with other parties.

28. In response to question No.17 he explained that Annexure A2 Page 46 is a hand-written note, according to which Rs. 51 Lacs cash was received from Mr. Madhur in lieu of which 2 kgs. Gold was delivered. Further, Mr. Madhur is a Trader based out of Kucha Mahajani. Similarly, he explained transactions recorded on page 40 Annexure A4 in response to question No. 19 and explained that gold was delivered to various persons such as Pankaj (Meerut), Shree Guru & Rahul (Jhansi). In question No.20 he was specifically asked for a payment of Rs.20 Lacs made by JBL to one AP recorded on Page No. 7 Annexure A4. In response to the same, it was replied by him that entire cash receipt payment was looked after by the owners and he did not have anything to do with it. Notably, he has not stated that AP stands for Anoop Soni. In response to question No.21, he

stated names of parties with whom cash dealings were there and one of the names stated by him is Priyanka Jewellers (Anoop Soni).

29. We have perused the statement of Ms. Ekta Soni (Page 10 of AO). It has been stated that Page 34 Annexure A6 was written by her on the instructions of Shri Parul Ahluwalia and Kushagra Tandon. She also made a generalized statement that the loose sheets contained detail of gold/ silver and cash in and out. Notably, nowhere it has been stated by her that AP stands for Sh. Anoop Soni. Hence, the reliance on the statement of Ms. Ms. Ekta Soni by the Id. CIT(A) cannot be accepted. Further, we find that the amounts written against M/s Priyanka Jewellers have all been reflected duly in the books of M/s Priyanka Jewellers and hence it can be said that no unaccounted income can be brought to tax.

30. The banking transactions pertaining to other entities such as Aarthav Gems & Jewels Pvt. Ltd., Surasti Overseas Pvt. Ltd., M/s Saumya Bullion & Jewellers were also recorded in the account AP whereas it had nothing to do with the assessee. In the Remand Report dated 02.08.2021 the Assessing Officer verified all these banking transactions and accepted the contentions of the assessee. In other words, it was verified by the Assessing Officer that some of the banking transactions recorded in the account AP pertain to other entities and not the assessee. Only 23% of the total banking transactions pertain to assessee and remaining 77% are between JBL and other parties. In the facts of the assessee's corroboration is missing. It is for the searched party i.e. JBL to explain the contents of material

recovered from his premises. In case the searched party states that the material belongs to a third party there has to be some connect or corroboration with the third party. On the facts of the present case there is no direct evidence to establish that the account AP belongs to Anoop Soni. The entire action is based on presumptions made by the A.O. Notably, simultaneous search action on 05.01.2017 on Anoop Soni did not detect any material or evidence to establish or even suggest that he was engaged in unaccounted and undisclosed transactions involving sale/purchase of gold in cash outside books of accounts.

31. The entire addition by treating the account AP as belonging to Anoop Soni has been made on the basis of presumption drawn and the statement of Shri Parul Ahluwalia. However, statement of the assessee has not been recorded on this issue either at the time of search, post search inquiries or even during the assessment proceedings. A careful examination of the account AP as reproduced in the assessment order would reveal that in the remarks column various acronyms have been used against different transactions such as JD, KCX, RBG Overseas, KMTY, Oven AJ, JBL Coins, Oppo Mobile, Satia, Ishaan, Anshul, Vinod 8676, Guddu etc. These abbreviations show that the transaction recorded is neither through bank nor cash because since specific acronyms have been used, these transactions cannot be inferred to be pertaining to the assessee even if it is presumed with account AP belongs to the assessee.

32. Hence, keeping in view, the entire factual matrix of the case, we hold that no addition is warranted in the case of the assessee. In the result, the peak credit theory set out by the Id.

CIT(A) would also become infructuous. The appeals of the assessee on this ground are allowed and accordingly the appeals of the revenue are liable to be dismissed.

ITA No. 1643/Del/2021 : A.Y. 2017-18

Addition of Rs.6,46,500/- - unaccounted Sale:

33. During the search & survey operations at the premises of the assessee certain documents have been found which have been marked as Annexure A-1. The page no. 28 of the Annexure shows out gold 120 gms, 30.780 gms and 100.290 gms. The AO held that the assessee has sold 251 gms of gold @ 2575 per gms (rate as on 02.12.2016). The Id. CIT(A) confirmed the addition on the grounds that the out gold is logically gold sold.

34. Before us, it was argued that notwithstanding anything, if the gold is considered to be sold, the same ought to have been purchased by the assessee. Hence, only the profit needs to be taxed. The argument of the Id. AR is in tune with the regular business practice. Hence, the AO is directed to compute 2% on the said sale of gold.

Addition of Rs.6,72,900/- u/s 69:

35. The AO made addition of Rs.51,50,000/- based on the same page as discussed above. The Id. CIT(A) determined amount of unaccounted receipts also and accorded benefit of unaccounted receipts of Rs.44,77,000/-. Hence, we decline to interfere with the order of the Id. CIT(A).

Addition of Rs.10,64,700/- u/s 69:

36. The AO made addition on account of 2 kg of gold mentioned at impounded page no. 28 discussed above. Before us, it was argued that notwithstanding anything, if the gold is considered to be sold, the same ought to have been purchased by the assessee. Hence, only the profit needs to be taxed. The argument of the Id. AR is in tune with the regular business practice. Hence, the AO is directed to compute 2% on the said sale of gold.

Addition of Rs.2,89,300/- u/s 69:

37. This addition has been made based on the nothings on the impounded page no. 28 discussed above against the column stock of silver. Before us, it was argued that notwithstanding anything, if the silver is considered to be sold, the same ought to have been purchased by the assessee. Hence, only the profit needs to be taxed. The argument of the Id. AR is in tune with the regular business practice. Hence, the AO is directed to compute 2% on the said sale of silver.

Addition of Rs.54,80,800/- - Trail Balance Profit:

38. Pages 1 to 64 of Annexure A-2 impounded from 507, Katra Ashurfi, Chandni Chowk, Delhi, revealed that the assessee had made transactions on account private MCX popularly known as Daba transactions during the period 26.12.2016 to 03.01.2017. Besides, the transactions are recorded in code names. The documents reflect day by trades and trail balances on various dates. As per trail balance dated 03.01.2017 on page 4 of Annexure A-2, the credit appearing against the self account is

Rs. 54,80,828/- The trail balance is reproduced on pages 35 & 36 of the assessment order. The Assessing Officer rejected the explanation of the assessee that the documents do not belong to him. Since the assessee was not able to prove that the documents pertained to someone else, therefore, the Assessing Officer held that the documents belonged to the assessee. The Assessing Officer held that these documents show "dabba" transactions (private MCX) for the period 26.12.2016 to 03.01.2017. At the end of the period a trial balance has also been drawn, which reflects credit of Rs 54,80,828/- in the self account. The AO held that the "credit" is actually profit of the assessee as on 03.01.2017. The AO held that the assessee has not been able to show that the said profit earned by him has been disclosed in the books of account and accordingly the "credit" balance added back Rs.54,80,828/- as income of the assessee.

39. The Id. CIT(A) confirmed the addition holding that the examination of the seized document would reveal that it is a single page of the printout, it is a part of the trial balance as on 03.01.2017 of multiple accounts which are named in the first column. The Id. CIT(A) held that *the above seized documents were impounded from the premises of the appellant. In view of provisions of section 132(4A) and 292C of Income Tax Act, the contents of the seized papers are presumed to be true. The argument of the appellant that they do not belong to him cannot be accepted. The onus is upon the appellant to prove to whom these seized papers belonged to. In the absence of any logical explanation, the only inference which can be drawn is that these papers belonged to the appellant and 'Self Account' refers to account of the appellant as on 03.01.2017 in carrying out 'Dabba' trading on MCX.*

The appellant has failed to reconcile entries in the seized paper with his books of account.

40. Before us, the Id. AR argued that,

- a. the examination of the trial balance would reveal that it is a single page print out which is a trial balance as on 03.01.2017 of multiple accounts which are named in the first column.
- b. simple examination of the seized document would reveal that the various transactions in the form of future and options in gold, silver, crude oil have been mentioned.
- c. the names of various individuals/entities are not discernible.
- d. there is no title at the top of the trial balance, therefore, it is not clear that the said trial balance belongs to which individual or entity or to the assessee.
- e. there needs to be corroborative evidence to link the assessee being involved in doing MCX transactions outside books of accounts on Dabba trading platform. No papers or materials have been found to corroborate settlement of such transactions outside book of accounts. The person allegedly running "dabba" transactions is also not known.
- f. the said trial balance would also reveal that there is a specific line item appearing with the title "Anoop Ji' (cash) Rs.1,16,365/- (Dr.). Therefore, even if, it is presumed that the document belongs to the assessee then

at the highest the amount Rs.1,16,365/- can be presumed to be pertaining to the assessee. In this regard, it is important to note that in case "self account" pertains to the assessee then there is no need to separately have a different account in the name of the assessee.

41. Having gone through the entire factum, we hold that the credit balance on a single page without bringing any primary or corroborative evidence of conducting the business of "dabba" trading such as broker, terminal, computer back up, running account or any other evidence cannot be treated as profit earned by the assessee. Since, the document proves payment of cash, the addition is sustained to the tune of Rs.1,16,365/-.

Addition of Rs.1,50,000/- - Cash - Jewellery:

42. During the search proceedings at the residence of Sh. Anoop Soni cash of Rs.1,85,010/- was found out of which Rs.1,50,000/- has been seized. The assessee explains the source as under:

- Cash withdrawal by father-in-law – Rs.50,000/-
- Exchange from the Bank – Rs.89,000/-

43. Hence, an amount of Rs.46,010/- is hereby confirmed.

Addition of Rs.44,870/- u/s 69A – Silver:

44. The Id. AR submitted that this ground is not being pressed purely owing to low quantum of the addition, hence dismissed.

45. In the result, the appeals of the assessee are partly allowed and the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 02/08/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 02/08/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR