

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

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 9615/Del/2019 : Asstt. Year: 2010-11

ITA No. 9616/Del/2019 : Asstt. Year: 2011-12

ITA No. 9617/Del/2019 : Asstt. Year: 2012-13

ITA No. 9618/Del/2019 : Asstt. Year: 2013-14

ITA No. 1026/Del/2021 : Asstt. Year: 2017-18

Neha Jewellers Pvt. Ltd., 1170, Kucha Nahajani, Chandni Chowk, New Delhi-110006 (APPELLANT)	Vs.	ACIT, Central Circle-6, New Delhi (RESPONDENT)
PAN No. AAACN7129G		

ITA No. 883/Del/2020 : Asstt. Year: 2010-11

ITA No. 884/Del/2020 : Asstt. Year: 2013-14

ITA No. 1949/Del/2021 : Asstt. Year: 2017-18

ACIT, Central Circle-14, New Delhi (APPELLANT)	Vs.	Neha Jewellers Pvt. Ltd., 1170, Kucha Nahajani, Chandni Chowk, New Delhi-110006 (RESPONDENT)
PAN No. AAACN7129G		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. Arvind K. Bansal, Sr. DR

Date of Hearing: 08.06.2023

Date of Pronouncement: 09.08.2023

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 19.11.2019 and the orders of Id. CIT(A)-26, New Delhi dated 26.07.2021.

2. Since, the issues involved in ITA Nos. 9615 to 9618/Del/2019 are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 9615/Del/2019, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AD rejecting the contention of the assessee that reopening the assessment under Section 147 of the Act and consequent reassessment without complying with the statutory conditions and the procedure prescribed under the law are bad and liable to be quashed.

3. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the order of the AO rejecting the contention of the assessee that the reasons recorded for reopening the assessment does not meet the requirements under section 147 of the Act, bad in law and are contrary to the facts.

4. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening ignoring the fact that there is no live nexus between the reasons recorded and the belief formed by the assessing officer. 5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming action of the AO despite that assessment order having been framed on the basis of material collected at the back of the assessee, without providing adequate opportunity to the assessee to rebut the same in

violation of statutory provision of section 142(3) of the Act.

6 (i) On the facts and circumstances of the case, the order passed by learned A.O. is bad both in the eye of law and on facts as the same has been reopened without there being any whisper that the income has escaped due to the failure on part of the assessee to disclose fully and truly all material facts, as the same has been reopened after a period of four years from the end of relevant assessment year.

(ii) On the facts and circumstances of the case, the order passed by learned A.O. is bad bath in the eye of law and on facts, despite that assessee had already disclosed fully and truly all material facts necessary for the assessment.

7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the order passed by the AO despite the fact that reopening the assessment proceedings as well as re-assessment order passed under section 148 of the Act are illegal, as the same have been made without assumption of valid jurisdiction.

8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the action of the AO despite that reassessment proceedings Initiated by the learned AO without valid approval of the prescribed authority under the Act is bad in law and liable to be quashed.

9 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.42,46,330/- made by the AO on account of purchases made by the assessee treating the same as not genuine/bogus.

(i) That the addition has been confirmed at an arbitrary rate of 20% of purchases made without there being any basis for the same.

(iii) That the addition has been confirmed rejecting the explanation and evidences brought on record by the assessee.

10. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the action of the AO ignoring the fact that the quantity purchased and sold being completely tallying, the allegation that the assessee has not made purchases cannot be sustained.

11. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the addition on account of bogus purchases, despite their being adequate material and evidences brought on record by the assessee before the AO to show that the purchases and sales were made in the regular course of business.

12. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that AO has erred in not taking the allegation to the logical conclusion after having held that purchases are not genuine it's the obvious implication would have been made that sales are also not genuine.

13. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that reasons recorded by the AO are contrary to the report received by it whereby it was clearly stated that purchases made by the assessee are actual purchases and hence there was no reason to believe that income has escaped assessment.

14. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs 2,12,316/- made on account of commission expenses.

(ii) That the addition has been made arbitrarily at the rate of 1% of purchases made by the assessee without there being any basis for the same.

15. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition despite the fact that the addition is made by the AO relying on the report of the investigation wing without application of his own mind.

16. On the facts and circumstances of the case learned CIT(A) has erred both on facts and in law in confirming the above addition despite that the same has been made by the AO without concluding the enquiry conducting during the course of assessment proceedings, to the logical end.

17. On the facts and circumstances of the case learned CIT(A) has erred both on facts and in law in confirming the above addition despite the same having been made on the basis of statement recorded without giving assessee an opportunity to cross examine.

16. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above addition by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.

19. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order has been passed by the AO without affording adequate opportunity of being heard to the assessee."

4. In ITA No. 1026/Del/2021, following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income

Tax (Appeals) {CIT(A)} is bad both in the eye of law and on facts.

2. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the addition of Rs. 1,39,57,341/- made by the AO on account of cash deposit in the bank account treating the same as unexplained invoking section 68 read with section 115BBE of the Income Tax Act.

(ii) That the abovesaid addition has been confirmed ignoring the detailed submissions and explanations along with the evidences brought on record by the assessee explaining that the cash has been deposited out of the cash sales made by the assessee during the normal course of business.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition, despite the fact that the assessee has regularly maintained complete stock records, books of accounts are audited as per law and nothing adverse were pointed out both by the AO as well as CIT(A)

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition, despite the fact that the amount has already declared by the assessee as cash sales and the action of the learned AO will tantamount to double taxation of the same amount.

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the learned AO in charging the income of Rs. 1,23,77,599/- already offered by the assessee as discrepancy in stock under section 68 read with section 115BBE of the Act.

(ii) That the above action of the learned CIT(A) is invalid in total disregard to the fact that the additional income was on account of discrepancy in stock found during the course of survey and is the business income of the assessee and hence cannot be charge to

tax under section 68 read with section 115BBE of the Act.

(iii) That the learned CIT(A) has erred in ignoring the detailed submissions and explanations and evidences brought on record by the assessee in this regard.

6. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above additions by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption."

5. In ITA No. 883/Del/2020, following grounds have been raised by the Revenue:

"1. That the Id. CIT(A) has erred in facts and in law in restricting the addition on account of inflated/bogus purchases to only 20% of the bogus bills without any basis and only on presumptions.

2. That the Id. CIT(A) has erred in facts and in law in passing a contradictory order i.e. on one hand holding the entities as well as the entire purchases from these entities as bogus but at the same time restricting the addition on account of inflated/bogus purchases to only 20% of the bogus bills without any basis."

6. In ITA No. 1949/Del/2021, following grounds have been raised by the Revenue:

"That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,94,95,060/- made by the AO on account of unexplained money being cash deposited in the form of demonetized currency despite the fact that during assessment proceedings the assessee had failed to offer any valid explanation with supporting documentary evidences about the nature and source of cash deposits in the manner required by the A.O.

ii. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,43,37,500/- overlooking the facts of the case that during the month of October and November, 2016 huge amount of cash sales running into crores of rupees has been shown by the assessee in the book of accounts in contrast to the fact that during the month of April to September 2016, there was no cash sales.

iii. The Ld. CIT(A) has erred in law and on facts in deleting the addition overlooking the facts of the case that the average monthly balance of cash-in-hand during immediately preceding year was about Rs. 75 Lakhs only which was equal to the total of about 4 days cash sales, whereas, in the current year, even though the total yearly cash sale had decreased, the cash in hand as on 8th November, 2016 was shown at an abnormal increase of about Rs.3.40 Crores which was equal to cash sales of about 18 days'

iv. The Ld. CIT(A) has erred on facts and in law in deleting the addition ignoring the facts of the case that the assessee has shown big increase in sales on 8th November 2016 in a single day resulting into increase in the cash-in-hand whereas it could not submit complete copy of cash account with narration of entries and details of persons from whom the cash had been received in the required format.

v. The Ld. CIT(A) was not justify in law in overlooking the modus operandi adopted by the assessee to take benefit of the situation and circumstances arised due to demonetization wherein the assessee just managed artificial entries of cash sales which is nothing but part of a colorable device, as held by Hon'ble Supreme Court in the case of Mc Dowell & Co. Ltd. Vs CTO 154 ITR 148(SC), to bring the unaccounted cash into the books of account."

7. With regard to the reopening u/s 147, we affirm the order of the Id. CIT(A).

8. The assessee filed its return of income u/s 139(1) on 23.09.2010 declaring an income of Rs. 30,41,790/-. Thereafter on 16.10.2014, a search and seizure operation was conducted on assessee along with Brijwasi Jewellers. Consequent to the search action, notice u/s 153A with respect to A.Y. 2009-10 to 2014-15 were issued. The assessee during the above mentioned proceedings via reply dated 24.10.2016 submitted the details of purchases. Thereafter, the AO vide assessment order dated 21.12.2016 u/s 153A of the Income Tax Act, 1961 accepted the returned income filed by the assessee.

9. Thereafter, the case of assessee was again reopened by the AO on the basis of information received from Director of Income Tax Investigation-II, Mumbai alleging the assessee to be a beneficiary who had obtained bogus purchase entries from various shell concerns controlled by the entry operator Sh. Bhanwarlal Jain. Accordingly, a notice u/s 148 was issued in the case of the assessee on 30.03.2017. Thereafter, the assessee vide reply dated 21.04.2017 stated that its return of income filed u/s 153A on 02.02.2016 may please be treated as return in response to notice u/s 148. The AO was also requested to provide the reason for reopening the case. Further, in the said reply the assessee also raised its objections with respect to issuance of notice under section 148 of the Act. The assessee submitted before the AO that the notice issued is vague and its assessment has already been completed under section 153A of the Act wherein no adverse inference has been drawn with respect to the business operation of the assessee.

10. The reasons for reopening provided by the AO are as under:

"Reasons for reopening assessment u/s 147 of the Income Tax Act for the A.Y. 2007-08 in the case of M/s Neha Jewellers Pvt. Ltd., 1170, Kucha Mahajani, Chandni Chowk, Delhi-110006

The assessee filed return of income on 22.10.2007 declaring loss of Rs.17,00,902/-. Assessment in the case was completed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 24.12.2009 at a total income of Rs.36,565/- after making addition of Rs.17,37,467/-.

A search and seizure operation was conducted in the case of Bhanwarilal Jain Group on 03.10.2013 by the Investigation Wing, Mumbai. During the course of search, the statement of Bhanwarilal Jain was recorded u/s 132(4) of the Act on 12.10.2013. In his statement, Bhanwarilal Jain has mentioned the names of the 68 firms/companies which are engaged in the business of providing accommodation entries and bogus purchase bills. The statements of Sh. Lunkaran Parasmal Kothari, Sh. Anil Khichda and Sh. Ritesh Siroya were recorded u/s 131 of the Act on 06.10.2013, 06.10.2013 and 04.10.2013 respectively. They all concurred in the whole modus operandi of issuing bogus purchase bills to parties. It was also revealed that Bhanwarilal Jain Group comprises of about 70 companies who are engaged in booking bogus sales in their books, thereby providing bogus purchase entries to its customers. The firms mentioned below viz., M/s Rajan Diamonds, M/s Mayur Exports and M/s Mukti Exports figure in the list of group firms/companies of Bhanwarilal Jain Group.

Consequent upon the search operation, information was received from the Director of Income Tax (Investigation)-II, Mumbai regarding bogus purchase entries provided by Bhanwarilal Jain Group to M/s Neha Jewellers Pvt. Ltd., 1170, Kucha Mahajani, Chandni Chowk, Delhi.

As per the information, the bogus purchase entries provided to M/s Neha Jewellers Pvt. Ltd. by the group concerns of Bhanwarilal Jain Group for the

Financial Year 2006-07, relevant to the Assessment Year 2007-08 is as under:

<i>S. No.</i>	<i>Name of the Entry Provider</i>	<i>Amount</i>
<i>1.</i>	<i>M/s Rajan Diamonds</i>	<i>Rs.44,77,511/-</i>
<i>2.</i>	<i>M/s Mayur Exports</i>	<i>Rs.49,94,900/-</i>
	<i>Total</i>	<i>Rs.94,72,411/-</i>

Perusal of the audited balance sheet of the assessee company, it is noticed that, in the schedule of Sundry Creditors, the names of M/a Rajan Diamonds and M/a Mayur Exports are present. Further, it is also noticed from the schedule of Sundry Creditors that the name of one more concern viz., M/s Mukti Exports, which forms part of the group concerns of Bhanwarilal Jain Group is also present.

The transactions of the assessee company with these concerns belonging to Bhanwarilal Jain Group can be summarized as under:

<i>S. No.</i>	<i>Name of the Entry Provider</i>	<i>Amount</i>
<i>1.</i>	<i>M/s Rajan Diamonds</i>	<i>Rs.44,77,511/-</i>
<i>2.</i>	<i>M/s Mayur Exports</i>	<i>Rs.49,94,900/-</i>
<i>3.</i>	<i>M/s Mukti Exports</i>	<i>Rs.42,21,903/-</i>
	<i>Total</i>	<i>Rs.1,36,94,314/-</i>

This implies that the assessee company has booked bogus purchases from the aforementioned parties to the tune of Rs.1,36,94,314/- as they form part of the 70 companies of Bhanwarilal Jain Group, providing bogus purchase entries to various persons. Therefore, these bogus purchases amounting to Rs.1,36,94,314/- should have been disallowed.

In view of the above, I have reasons to believe that income amounting to Rs.1,36,94,314/- chargeable to tax has escaped assessment by reason of failure on the part of the assessee company to disclose fully and truly all material facts necessary for its assessment.

Accordingly, in my opinion it is a fit case for issue of notice u/s 148 of the Act."

11. The crux of the reopening is that,

- Information was received from the office of Director of Income Tax (Investigation)-II, Mumbai.
- As per the statement of Mr. Bhanwarlal Jain, assessee was also a beneficiary among others with regard to bogus purchase of diamonds.

12. Thereafter, the AO issued statutory notice u/s 143(2) dated 26.05.2017. The AO issued notice u/s 142(1), wherein the Ld. AO has asked the assessee to submit the details in respect of purchase made from following parties:

- Megha Gems
- Navkar India

13. The assessee vide reply dated 10.08.2017 submitted the details of the above 2 parties from whom the purchases were made by the assessee. The assessee stated that it was not aware about any of those statements and asked for the copy of the statement of Bhanwar Lal. Thereafter, the AO vide notice u/s 142(1) dated 10.10.2017 asked to file various details in respect of these 2 parties to whom assessee has purchased the material during the year under consideration. The assessee vide reply dated 06.11.2017 also submitted the following documentary evidences to prove the genuineness of the transaction:

- i. Ledger A/c in the books of the assessee.
- ii. Copy of purchase Bill and Purchase Account.
- iii. Stock Ledger in the books of assessee.

- iv. Bank statement of the assessee highlighting the payment made for purchase.
- v. Sales Ledger of the assessee showing sales of the goods purchased from the alleged parties.
- vi. Confirmation of Accounts from the parties from whom purchases have been made.
- vii. Copy of PAN Card of the alleged parties.
- viii. Copy of VAT/CST Registration of the parties.
- ix. Copy of ITR of the alleged parties.
- x. Bank statement of the parties from whom purchases have been made.
- xi. Copy of stock Ledger of the parties from whom purchases have been made.
- xii. Copy of Audited Financial Statements of the above alleged parties.

14. On 05.12.2017, the assessee has provided the sales, purchase and inventory analysis to establish the genuineness of purchases. The assessee vide reply dated 18.12.2017 has also submitted the affidavit from the directors of the above mentioned parties in which they have affirmed the transaction with the assessee. The assessee also contended that the payment for purchases have been duly made by the assessee in the subsequent financial years and there is no outstanding balance in the books of the assessee in respect to these parties. Copy of ledger A/cs of the parties in books of the assessee for the AY 2010-11 to AY 2015-16 was submitted before the Assessing Officer. The assessee in its reply dated 18.12.2017 maintained that Sh. Bhanwar Lai Jain, Sh. Lunkaran Parasmal

Kothari, Sh. Anil Khicha & Ritesh Siroya are not known to them and they have not done any business transaction with them. The assessee further submitted that before relying upon their statements opportunity of cross examination must be given. The assessee also placed reliance on the judgment of ITAT pronounced in the case of Indo Unique Trading Pvt. Ltd. and Reliance Corporation wherein it was held that no addition could be sustained in respect of purchased made if addition was merely based on the statement of Sh. Bhanwarlal Jain wherein he stated that he arranged accommodation entries in the form of bogus purchase. The assessee in the above reply also submitted that the similar to present case, cases of the assessee for the AY 2007-08 and AY 2008-09 were also reopened on the basis of statement recorded of Sh. Bhanwarlal Jain. However, no adverse inference was drawn, as assessee had submitted all the required documents at the time of assessment.

15. The assessee submitted that the diamonds purchased from these entities have been sold and are part of stock ledger and sales in respect of the same has been duly recorded in the books of accounts of the assessee. Further, as the payment for purchase has been made through proper banking channels.

16. The AO after considering the entire facts and the statement of Sh. Bhanwarlal made addition of Rs.2,12,31,648/- by the treating the purchases made by the assessee from Megha Jems and Navkar India as bogus purchases. The AO also made an addition Rs.2,12,316/- i.e. 1% of Rs.2,12,31,648/- as commission paid.

17. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A).

18. The Id. CIT(A) in his order at PB Pg 46 para 5.5.10 observed that assessee has demonstrated beyond doubt that it has indeed made purchases and therefore the genuineness of purchases cannot be doubted, however the Ld. CIT(A) assumed that purchases has been made from grey market and the assessee has obtained bogus purchase bill from Bhanwarlal Jain and therefore the Ld. CIT (A) confirmed the addition of Rs.42,46,330/- i.e. 20% of Rs. 2,12,31,648/-.

19. Aggrieved, both the Revenue and the assessee are in appeal before the Tribunal against the order of CIT(A). The revenue filed appeal against the deletion made by the Id. CIT(A) on account of bogus purchases and the assessee is in appeal against the determination of 20% of the purchases as undisclosed income. Since, the issue is inter-connected, it is being dealt by common adjudication.

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

21. At the outset, it is relevant to mention the following pertinent points:

- The AO has re-opened the assessment solely on the basis of information received from the investigation wing.
- The AO has not rejected the evidences submitted by the assessee to prove the genuineness of the purchases.

- The AO has not rejected the books of account of assessee.
- The AO and the Ld. CIT(A) has not doubted the sales made by the assessee.
- The AO and the Ld.CIT(A) has not pointed out any discrepancy in the stock of assessee.
- The AO has made the addition bases on the statement of Bhanwarlal & his associated and these statement has been retracted by the aforesaid persons.
- The AO and the Ld. CIT(A) has accepted the fact that Bhanwarlal Jain is engaged in the business of import and sale of sale of rough diamonds.
- The AO has failed to provide opportunity of cross which was asked by assessee during the course of assessment proceedings via reply dated 18.12.2017.
- The assessee has made payment of purchase made from Megha Gems and Navika India in subsequent years also.
- The AO issued notice to the above mentioned parties us/133(6) of the Act.

22. The various factors considered by the Id. CIT(A) are as under:

- Sh. Bhanwarlal Jain and his associates/employee has nowhere admitted in their respective statements that have given any accommodation entry to the assessee company. Further, the evidences found do not contain the name of the assessee.
- The name of the assessee is also nowhere mentioned in these documents.

- Neither of the transaction mentioned on the documents pertains to the assessee.
- The seized material contains database of 944 clients along with their codes and full names but the name of the assessee is nowhere mentioned on the said list of 944 clients.
- Sh. Bhanwarlal also, nowhere taken name of the assessee company nor the same is appearing in any seized material confronted to them.
- AO issued notices under 133(6) to the alleged parties on 31.10.2017 on the addresses given by the assessee company & all the parties replied to the Assessing Officer and submitted all the details required by the Assessing Officer.
- The Assessing Officer has not raised any concern whatsoever regarding the identities of parties or about the authenticity of the documents submitted by the parties directly to the AO in the response to the notice under section 133(6) of the Act. the Id.AO did not make any further enquiry and just passed the adverse order against the assessee.
- The assessee has made purchases from M/s Megha Gems which is the proprietorship concern of Sh, Mitesh Pamecha and M/s Navkar India which is the proprietorship concern of Sh. Abhishek Lodha who have not given any such statement where they would have admitted being employees of Sh. Bhanwarlal Jain and providing accommodation entry.

- Infact, Sh. Mitesh Pamecha and Sh. Abhishek Lodha, have provided confirmations and affidavit to the assessee confirming that the purchases were actually made and are totally genuine.
- During the course of search operation in the case of assessee in the year 2014, the business operation of the assessee company were verified by the search party. The block period covered in said search included the year under consideration. However, no incriminating material was found during the course of search for the year under consideration.
- During the said search action physical stock taking was done of each and every item of stock and reconciled with the books of accounts.

23. The Id. CIT(A) having after held that the genuineness of the parties from whom purchases were claimed to have been made has been doubted, he also held that genuineness of the purchase as a whole cannot be doubted as the assessee has made corresponding sales. Observing thus, the Id. CIT(A) confirmed the addition @ 20% on the alleged purchases as bogus.

24. We find the decision of the Id. CIT(A) is oxymoronic as the Id. CIT(A) having given categorical observation that the diamonds have been indeed purchased, sold, the profit is offered to tax, the name of the assessee has not been mentioned by the so-called bogus bill provider namely, Sh. Bhanwarlal Jain, but went on to disallow 20% of the purchases as bogus. It is an undisputed fact that Sh. Nitesh Pamecha and

Sh. Abshisek Lodha who are the proprietors of Megha Gems and Navkar India have not given any statement as to the bogus sale to the assessee rather they have filed affidavit confirming the purchases. The Assessing Officer has made enquiries by issuing notice u/s 133(6) of the Income Tax Act, 1961 which have been duly complied by the purchase parties. Having satisfied with the reply, the AO has not made any further enquiries but made addition solely based on the information received from the Investigation Wing. Even, the statement given by the Sh. Bhanwarlal Jain has not pointed out any transactions with the assessee company. Hence, keeping in view, the entire facts and circumstances, we hold that the Id. CIT(A) has rightly deleted 80% of the addition made on account of alleged bogus purchases and wrongly confirmed 20% of the same purchases without any basis.

25. We find that the assessee has duly discharged the onus placed upon the assessee regarding proving genuineness of the purchase. Similar issue came up for consideration before the Co-ordinate Bench of Tribunal, Mumbai in the case of Indo Unique Trading Pvt. Ltd. Vs. DCIT-5 (2)(1), Mumbai, 2017 (8) TMI 1302 dated August 16, 2017, wherein the Tribunal deleted the addition made by AO holding as under:

"11. On the contrary, we notice that the assessee has proved the genuineness of purchases by obtaining confirmation letters in the form of affidavits from all the suppliers. The AO has done independent enquiry during the course of assessment proceedings by issuing notices u/s 133(6) of the Act to all the suppliers. We notice that the notices were duly served upon the

suppliers and they have also responded by filing their replies duly confirming the transactions. The AO has rejected the replies by observing that the replies lacked details and they did not mention about the nature of transactions. In our view, the said observations are vague in nature. On the contrary, a perusal of the affidavits furnished by the suppliers would show that they have confirmed the sales affected by them to the assessee. Further they have also verified and signed the ledger account copies as available in the books of account. When the suppliers confirm that the transactions of sales made by them to the assessee are genuine, that too, in response to the notices issued by the AO u/s 133(6) of the Act during the course of assessment proceedings, in our view, the said replies cannot be rejected without bringing on record any material to show that they are not true. We notice that the AO did not bring any material on record and he simply relied upon the report given by the investigation wing. As per Ld. A.R., the statement given by Shri Bhanwarlal Jain is a general statement only. The assessee, as stated earlier, has furnished confirmation of ledger accounts and also affidavits to prove the genuineness of transactions. We notice that the AO could not controvert those documents.

12. In view of the foregoing discussions, we are of the view that the assessee has duly discharged the burden to prove the genuineness of purchases. On the contrary, the AO has simply relied upon the report given by the investigation wing. In this view of the matter, we are of the view that no addition is called for on account of alleged bogus purchases. Accordingly we set

aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned addition.”

26. This contention of the assessee is also supported by the following judicial pronouncements:

- M/s. Simoni Gems Vs. DCIT, 2019 (3) TMI 1652 dated march 13, 2019 (ITAT Mum.)
- M/s. Ariha Diamond Jewellery Pvt. Ltd. Vs. DCIT, 2018 (8) TMI 1181 dated July 4, 2018 (ITAT Mum.)
- M/s. Vama International Vs. ITO, 2018 (2) TMI 1760 dated February 15, 2018 (ITAT Mum.)
- PCIT Vs. Tejua Rohitkumar Kapadia, 2018 (7) TMI 590 dated May 4, 2018 (SC)

27. Hence, in the view of above mentioned submissions and judicial pronouncements, it evident that assessee has duly discharged the onus casted upon him to prove the genuineness of the purchases. Consequently, no addition is warranted as the purchases were genuine and made during the course of regular business. Therefore, the Revenue appeal is dismissed and that of the assessee appeal is allowed.

AY 2011-12 to AY 2013-14

The facts and circumstances for A.Y. 2011-12 to A.Y. 2013-14 are similar to the facts and circumstances involved in the A.Y. 2010-11. Hence, considering the above mentioned facts, the assessee's appeals for all these years are hereby allowed and consequently the revenue's appeals are dismissed.

ITA No. 1026/Del/2021 : A.Y. 2017-18 (Assessee Appeal)

ITA No. 1949/Del/2021 : A.Y. 2017-18 (Revenue Appeal)

Cash Sales/Cash Deposits:

28. The AO noticed that the assessee has deposited cash of Rs.4,58,30,000/- during the period of demonetization and held that the assessee has not able to substantiate with cogent reasons and documentary evidence about the source of cash.

29. The Id. CIT(A) restricted the addition of Rs.4,58,30,000/- to Rs.2,63,34,940/-. Aggrieved with the order of the Id. CIT(A), the assessee filed appeal against the confirmation of Rs.2,63,34,940/- and the revenue came in appeal against the deletion of Rs.1,94,95,000/-.

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

31. Before us, the Id. AR argued that where assessee has filed its submissions and placed evidence on record, then it is the duty of AO to act fairly as a reasonable person and examine the fact of the case in the light evidence available and should not come to a conclusion on the basis of surmises and conjectures.

32. It is a fact on record that out of the total cash deposits, an amount of Rs.48,35,500/- pertains to deposit of new currency note on various dates from 06.12.2016 to 30.12.2016 in State Bank of India A/c No. 31021809029 and in A/c No. 000026426830019 Deutsche Bank. The deposit on 10.11.2016

of specified currency note was to the tune of Rs.4,10,00,000/- in the State Bank of India A/c No. 34355670650.

33. It is a fact that cash deposits during the demonetization period was made in 3 bank accounts of the assessee company. Out of the total cash deposits of Rs.4,58,30,000/- the old currency notes were amounting to Rs.4,10,00,000/-which was deposited on 10.11.2016 in SBI Bank account no.34355670650 and the remaining cash deposits of Rs.48,34,500/- was made in new currency over the period of 06.12.2016 to 30.12.2016 in the other two bank accounts SBI Account no.31021809029 and Deutsche Bank Account no.26426830019. Further, in this regard the assessee had also filed details wherein the assessee had submitted the copy of Form 'Cash Transaction 2016' filed on Income Tax E-filing Portal with respect to the cash deposits made during demonetization period. The copy of said forms with respect to the cash deposits made in all the three bank accounts of the assessee is placed in the paper book. It was submitted that on perusal of the form pertaining to SBI bank account no.31021809029, it can be noticed that the assessee has clearly mentioned that deposits of Rs.36,30,000/- made in the said bank account during demonetization period was made in new currency which pertains to the cash sales made from 15.11.2016 to 03.12.2016. Further on perusal of the complete form it can be noticed that the assessee had submitted all the details pertaining to the cash sales made in the new currency including name and address of the buyer, amount received in new currency alongwith invoice number against which said amount was received. Further, from 'Cash Transaction 2016'

pertaining to Deutsche Bank Account no. 26426830019, it can be noticed that the assessee has clearly mentioned that deposits of Rs.12,00,000/- made in the said bank account during demonetization period was made in new currency which pertains to the cash sales made from 10.12.2016 to 28.12.2016. Further on perusal of the complete form it can be noticed that the assessee had submitted all the details pertaining to the cash sales made in the new currency including name and address of the buyer, amount received in new currency alongwith invoice number against which said amount was received. It was argued that the AO has ignored the above facts before him while passing the assessment order and accordingly the AO was not justified in treating the cash deposits made in new currency amounting to Rs.48,34,500/- as unexplained deposits made in old currency. It was argued that on perusal of the above facts it can be clearly noticed that the deposits made in new currency was nowhere unexplained, since assessee had submitted all the details pertaining to the same including name and address of the buyer, amount received in new currency alongwith invoice number against which said amount was received, it cannot be treated as undisclosed income.

34. It was further argued that vide note no. 28- Disclosures on Specified Bank Notes, of audited financial statement of the assessee wherein the details of specified bank notes and new currency notes held and transacted during the period from 08.11.2016 to 30.12.2016 is given. On perusal of the same, it can be found that the assessee has deposited Rs. 4,10,00,000

only in demonetized currency and balance amount of Rs. 48,34,500/- was deposited in new currency. Therefore, it was argued that addition to the extent of cash deposited in new currency notes amounting to Rs. 48,34,500/- is liable to be deleted.

35. The Id. AR argued that the cash sales have been made to the extent of Rs.8,14,975/- on 08.11.2016 to identified parties having PAN and assessee has given including name, address, PAN of the buyer alongwith the amount of sales and the invoice details against which the said sales were made. Further, cash deposits to the extent of Rs. 97,27,528/- pertains to sales made to identified parties and the assessee has given name, address of the buyer alongwith the amount of sales and the invoice details against which the said sales were made. It was argued that, in view of the same it can be said that the total cash sales made to he identified parties, amounts to Rs. 1,05,69,503/- and the cash deposit cannot be treated as unexplained deposits from unknown sources. Thus, the Id. AR argued that the amount of Rs.1,05,69,503/- for which the complete sources have been proved and an amount Rs.48,34,500/- which is deposited in the form of new notes cannot be treated u/s 68 of the Income Tax Act, 1961 under any imagination.

36. With regard to the cash deposits of Rs.3,04,30,497/- made on 08.11.2016, the Id. AR argued that of 11th November, 2016 there was 'Dev UthaniGyaras' which is considered to be auspicious day for the purpose of marriages which led to huge demand of gold and gold jewellery in the market. Further, after the demonetization was announced at 8 PM on 08.11.2016,

there was huge rush/panic in the market to buy gold and jewellery items either due to the wedding season following in the month of November, 2016 or on account of people coming out in the market to convert their cash in hand of the old currency notes in gold/jewellery items, since the old currency was a legal tender till 11:59 PM of 08.11.2016 and the assessee being a renowned/reputed jeweler in the Chandani Chowk (Kucha Mahajani) jewellery market have a huge customer base to which the cash sales were made on 8th Nov, 2016. To buttress his point, the Id. AR submitted the details of cash sales and the cash deposits in the following months:

Month	Total sales	Credit Sales	Cash sales	Cash deposits
December, 2016	25,560,755	22,342,137	3,218,618	4,834,500
January, 2017	50,553,979	32,859,826	17,694,153	16,000,000
February, 2017	45,356,208	21,902,299	23,453,909	20,600,000
March, 2017	79,895,800	60,342,902	19,552,898	22,600,000
Total	201,366,742	137,447,164	63,919,578	64,034,500
Average of four months	50,341,686	34,361,791	15,979,894	16,008,625

37. Based on the factual presentation of the business affairs, the Id. AR argued that even after demonetization the assessee had made total sales of Rs.20.13 Crores which includes credit sales of Rs.13.74 crores and cash sales of Rs.6.39 cores in the months of December, 2016 to March, 2017. The Id. AR also submitted the details of sales and cash deposits of the pre demonetization period of the assessee company which is as under:

Month	Total Sales	Credit sales	Cash Sales	Cash Deposits
Apr-16	5,380,720	1,802,233	3,578,487	15,000,000
May-16	32,979,075	19,845,550	13,133,525	12,000,000
Jun-16	25,063,109	1,875,662	23,187,447	3,600,000
Jul-16	19,080,896	2,183,136	16,897,760	11,050,000
Aug-16	21,839,490	4,981,748	16,857,742	43,800,000
Sep-16	44,663,884	17,723,595	26,940,289	26,000,000
Oct-16	82,179,512	29,859,787	52,319,725	54,000,000
Total	231,186,686	78,271,711	152,914,975	165,450,000
Average of Seven Months	33,026,669	11,181,673	21,844,996	23,635,714

38. The Id. AR argued that if the monthly average data of first seven months (pre demonetization period) is compared with the last four months (post demonetization period), then it clearly evident that average monthly turnover of the assessee in the post demonetization period is much better than the pre demonetization period. There could be slender variation in the cash sales and deposits. The Id. AR also submitted the details of cash sales for a period of four years to prove that the huge cash sales and cash deposits are a norm in the regular business of the assessee. Hence, the deposits made during the year should not be looked with suspicion for no reason. To prove the normality of cash cash deposits, the month wise details of the cash sales for the F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17 and F.Y. 2017-18 have been submitted by the assessee which is as under:

	F.Y. 2014-15		F.Y. 2015-16		F.Y. 2016-17		F.Y. 2017-18	
Month	Cash Sales (Ind. Tax)	Cash Deposits	Cash sales (Ind. Tax)	Cash Deposits	Cash Sales (Ind. Tax)	Cash Deposits	Cash Sales (Ind. Tax)	Cash Deposits
April	17670400	19000000	29244092	27100000	3578487	15000000	23885405	21500000
May	9911408	8600000	21225517	17500000	13133525	12000000	21128693	23900000
June	14944316	14600000	15986339	19300000	23187447	3600000	53265768	51150000
July	22806590	18250000	26203657	25200000	16897760	11050000	24412886	26705000
August	24303509	21550000	29494804	33000000	16857742	43800000	24095760	24700000
September	35666106	33600000	31158370	28200000	26940289	26000000	24587342	18480000
October	29178669	31450000	41934126	44000000	52319725	54000000	24863625	28200000
November	36451737	34300000	54898674	54000000	52876149	51000000	34848954	36100000
December	26268495	33620000	50598828	46500000	3218618	4834500	28902635	26477500
January	31967732	26200000	66549719	63100000	17694153	16000000	37849774	38610000
February	20213052	26500000	46844714	37100000	23453909	20600000	32536882	34500000
March	40897333	42000000	1315572	7500000	19552898	22600000	27096081	24700000

39. Rebutting the arguments of the Assessing Officer that the assessee was engaged in same jewellery business in the earlier year also wherein cash sales made were of Rs.41.54 Crores and in the year under consideration there was decline in cash sales to Rs.26.97 Crores, but the cash deposits made during the course of demonetization had increased was Rs.4.58 Crores as against Rs.93,00,000/- in the preceding year during the corresponding period which shows the abnormal pattern of cash sales as well as cash deposits in the year under consideration vis-a-vis last year, the Id. AR argued that AO is trying to compare the decline in cash sales in the year under consideration with the abnormal rise in the cash deposit during the demonetization period and the argument of the Assessing Officer is factually incorrect. It was argued that the main reason for decline of cash sale in the year under consideration is mainly on account of cash/new currency crunch in the market during the post demonetization period. the cash sales made in the pre demonetization i.e. April, 2016 to October, 2016 is Rs.15.29 Crores in comparison to Rs. 19.52 crores in the

preceding year (April, 2015 to October, 2015) did not have much variation, the variation was only 21.67%. However, if we look at the post demonetization period cash sales i.e. from December, 2016 to March, 2017 the same was Rs.6.39 Crores in comparison to Rs.16.53 Crores in the preceding year in the same period (December, 2015 to March, 2016) the variation was 61.34%. Accordingly, it can be said that it was the post demonetization period which has contributed to the decline in overall cash sales in the year under consideration in comparison to the preceding year. It can further be derived from this analysis that at the time of demonetization i.e. on 08.11.2016 there was not much variation in the cash sales/turnover of the assessee company in comparison to the preceding years.

40. Rebutting the arguments of the AO that the average monthly cash in hand balance in the preceding year was Rs.75,00,000/- however, as on 08.11.2016 the assessee had abnormal cash in hand balance of Rs.3.40 Crores, the Id. AR submitted that the AO was trying to compare average of cash in hand balance of the assessee company as on last day of every month of financial year 2015-16 with the cash in hand balance as on 08.11.2016. It was argued that the AO has conveniently chosen 12 specific dates last day of each month of financial year 2015-16 and compared with the cash balance as on 08.11.2016. It was argued that the cash in hand balance can never have similar pattern on specific date of different years. Explaining the fluctuations, the Id. AR submitted that the assessee company had cash in hand balance as low as Rs.11,16,165/- as on 06.05.2016 and as high as Rs.2.97 crores

as on 10.08.2016 and Rs.1.74 Crores as on 24.09.2016. Based on these amounts, it was argued that it was not for the first time that the assessee had held cash in hand balance of Rs. 3 Crore or Rs.4 Crores. In fact, in the year under consideration there were many occasions evident from the cash book which proves that assessee company has held such huge cash in hand balances in past also.

41. Countering the arguments of the AO, the assessee has shown big increase in sales on 08.11.2016 in a single day which lead to increase in cash in hand which was done because VAT returns had not been filed for the said month, the Id. AR argued that the logic given by the AO to doubt the genuineness of cash sales made on 08.11.2016 is again illogical and without any basis. It was submitted that the reason why the VAT return for the month of November, 2016 was not filed as on 08.11.2016 is simply because of the fact that the same was not due for filing on the said date. As per the VAT legislation the VAT returns are filed quarterly i.e. the end of each quarter of the financial year. Meaning thereby the VAT return for the month of November, 2016 was due for filing in the month of January, 2017 i.e. at the end of 3rd quarter of the financial year. Hence, the observation of the AO in the assessment order has no legal standing, accordingly liable to be rejected. The Id. AR also submitted the details of the availability of the stock for the said sales which has been duly perused by the Id. CIT(A).

42. In conclusion, the Id. AR has also submitted the cash deposits for the F.Y. 2015-16 and F.Y. 2016-17 are as under:

F.Y.	Diwali Month	Cash Sales in Diwali Month	Cash Deposit in Diwali Month	Total Cash Deposits in FY
2015-16	November	5,48,98,674	5,40,00,000	40,25,00,000
2016-17	October	5,23,19,725	5,40,00,000	28,04,84,500

43. We also find that the Id. CIT(A) has rightly deleted the amount of Rs.1,94,00,000/- owing to proving the details of all the parties with name and PAN number. On going through the cash sales and cash deposits in the month of December 2016, January 2017, February 2017, March 2017 which has reflected cash sales of Rs.32 lacs, Rs.1.76 Cr., Rs.2.3 Cr., Rs.1.9 Cr. totaling to Rs.6.39 Cr. in a period of four months which has been accepted by the Revenue. Further, the comparison of cash sales from the month of April 2016 to October 2016 reflected total cash sales of Rs.15.29 Cr. which was also accepted by the Revenue. Further, the total cash deposits in the F.Y. 2014-15 was Rs.27.53 Cr., F.Y. 2015-16 was Rs.40.50 Cr., F.Y. 2016-17 was Rs.32.39 Cr. and F.Y. 2017-18 was Rs.32.90 Cr. approximately. Hence, keeping in view the entire cash deposits of the assessee were a period of four years including the period before us, the cash deposits of Rs.2.63 Cr. as confirmed by the Id. CIT(A) cannot be upheld.

44. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 09/08/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

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

Dated: 09/08/2023

Subodh Kumar, Sr. PS