

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.162/Bang/2021
Assessment Year: 2013-14

M/s. R.R. Gold Palace Pvt. Ltd. #88, Between 6 th & 7 th Cross Sampige Road Malleswaram Bangalore 560 003 PAN NO : AAFCR6929K	Vs.	ACIT Central Circle-1(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Nischal B., D.R.

Date of Hearing	:	13.09.2023
Date of Pronouncement	:	20.09.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A)-11, Bangalore passed u/s 250 of the Income-tax Act,1961 [‘the Act’ for short] dated 26.3.2021. The assessee has raised following grounds:

- 1. “The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The learned CIT[A] is not justified in upholding that the addition of Rs. 62,77,583/- as the profit on sale of gold jewellery estimated by applying the gross profit rate of 6.44 % on the value of the alleged deficit stock found in course of search under the facts and in the circumstances of the appellant's case.*

2.1 *The learned CIT[A] ought to have appreciated that the stocks found in the deficit in the shops of the appellant, which is almost identical to the extent of stock found and seized in the residence of the appellant's Managing Director Sri R.Ramesh, did not warrant an inference that the appellant has made any such sales outside the books under the facts and in the circumstances of the appellant's case.*

2.2 *The learned CIT[A] ought to have appreciated that the appellant has established the practice for keeping the stocks of the shops in the residence of the Managing Director based on stock reports given to bankers much before the search and therefore, no inference of any deficit stock or sales made outside the books of accounts can be made under the facts of the case.*

2.3 *The learned CIT[A] ought to have appreciated that the stock found in the residence of the appellant's Managing Director bear the mark "RR" indicating that the same belonged to the appellant company and even the statement recorded from Sri. R.Ramesh at the time of search in his residence revealed that the stock found in his residence formed part of the stock in trade of the appellant company and therefore, no inference of sale outside the books of accounts ought to have been made under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] is not justified in sustaining the addition of a sum of Rs.1,05,359/- as unexplained investment in silver articles on the mistaken notion that there was an excess stock of silver articles to the extent of 1.804 Kgs found at the time of search without appreciating that there were more than 33,000 items weighing about 1008 kgs. Of silver articles and weighment error of an infinitesimal 0.1 gms would lead to a larger variation than the difference of 1.804 kgs under the facts and in the circumstances of the appellant's case.*

4. *The learned CIT[A] is not justified in sustaining the addition of a sum of Rs.2,33,21,157/- as unexplained expenditure u/s.69 of the Act, without appreciating the explanation of the appellant that the notings made in the seized materials were in the nature of dumb documents and there was no case to consider that the said notings made represented any unexplained*

expenditure under the facts and in the circumstances of the appellant's case.

5. *Without prejudice to the above, the alleged funds realized on the alleged sale of the stock found in deficit is large enough to telescope the other additions made towards excess stock and unexplained expenditure and therefore, the other additions ought not to have been made separately.*

6. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s.234A, 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

7. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as*

2. Facts of the case are that the assessee is a Private Limited company engaged in the business of retail trading in gold and silver articles. A search action was taken place u/s 132 of the Act in the case of M/s. R.R. Gold Palace and M/s. R.R. Gold Palace Pvt. Ltd. on 8.2.2013. Consequent to this, the case of the assessee has been centralized to Central Circle-1(2) vide order of the CIT-IV, Bangalore dated 25.3.2014. Later, the case was transferred from Central Circle 1(2) to the ACIT Central Circle-1(1), Bangalore. The assessee e-filed the return on 28.2.2014 in response to notice issued u/s 153A of the Act for the assessment year 2013-14 declaring income of Rs.5,89,84,460/- being income from business and other sources.

2.1 On 8th Feb. 2013 the department had conducted search and seizure operation at the residence of the assessee company. The department also conducted search and seizure at the residence of Sri Ramesh Ramachandra Rao at No.98:

Sathyannarayana Layout, 3r Stage, 4th Block Basaveshwar Nagar. Bangalore As pointed out in the earlier paragraph that the department had also conducted search at the residential premises of Sri R.Ramesh, Managing Director of the company. the search party there had found the same quantity of gold ornaments in a wooden cupboard in the room of Mr. Ramesh. A statement of Sri Ramesh was also recorded u/s.132[4] of the IT Act, at his residence and asked about the source of acquisition of the said jewellery / ornaments weighing approximately the same as was found to be deficient stock at the business premises. Sri Ramesh in his deposition clarified also in no uncertain terms that he had brought the said quantity of gold ornaments from his business premises for handing over to the gold smith for carrying on necessary modification / repair / polishing. Therefore, the facts found out at the residence full corroborate the statement deposited by Kumar Raj at the business premises of the company.

2.2 The learned assessing officer however declined to accept the facts that the deficit of jewellery at the business premises was actually found and seized at the residence of Sri R.Ramesh the MD. He went on to conclude the assessment on this issue as the assessee might have sold the deficit amount of jewellery and not accounted profits. To put in the language of the learned Assessee Officer "Bu presuming that the assessee company has sold gold jewellery unaccountably, the resulted profit out of such unaccounted sale is estimated into Rs.62,77,583 [9,74,78,000*6.44% of G.P. declared in the income tax return]" [Emphasis supplied].

2.3 In so far as the typed lose sheets seized at the business premises are concerned the learned Assessing Officer declined to accept the explanation provided in the statement deposited

U/s.13214] by Sri Kumar Raj accountant of the assessee company. The total indicated in the typed sheets was of the order of Rs.2,33,21 ,157/- the learned Assessee Officer presumed the said figure to be the unaccounted expenditure of the assessee company and invoked the provisions of Sec.69C of IT act to bring it to tax as income from undisclosed sources.

2.4 The assessment of the company was thus completed u/s 143(3) of the Act by making a total addition of Rs.2,97,04,099/- . The assessee is aggrieved at the findings and the decision of the learned Assessing Officer and the assessee went in appeal before Id. CIT(A) challenging the above additions.

2.5. Further, the assessee also raised additional grounds before Id. CIT(A) as follows:

1. *“The search proceedings in the case of the assessee are bad in law as much as the jewellery purported to have claimed in the search under the purported joint warrant of the assessee company and Sri R. Ramesh, the Managing Director was seized despite the fact it was claimed as belonging to him yet the proceedings have not been taken u/s.153C of the Act. for the assessment year 2003-04.*
2. *The learned A.O. is not justified in holding that the stocks found in the deficit in the shops, which is almost identical to the extent of stock found in the house warranting an inference that the stocks deficit have been sold outside the books when they were found corresponding extent of stock in the residence of Sri R.Ramesh, the Managing Director where they were seized as not belonging to-him as there was no warrant for initiating such proceedings personally u/s.132[1] of the Act and no proceedings u/s.153C was also taken on that count for the assessment year 2013-14 and only a regular assessment has been made contrary to the provisions of section 153C of the Act, which ought to have been invoked if the stock found did not belong to the assessee.*
3. *Without prejudice to the above, the alleged sale of the stock found in deficit is large enough to telescope the other additions made in the order and therefore, the other additions requires to be deleted y telescoping.*
4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the assessee denies itself liable to be charged to interest u/s.234A, 234B and 234C*

of the Act, which under the facts and in the circumstances of the assessee's case deserves to be cancelled.

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered."*

2.6. The ld. CIT(A) after calling the remand report from the ld. AO and duly considering the same the rejoinder filed by the assessee dismissed the additional grounds by observing that submissions made in the additional grounds, which are patently contrary to the records. Accordingly, rejected the same. Before us, the assessee has only challenged the estimation of the income from deficit gold jewellery and excess silver found by treating the same as sales and thereby estimating an amount of Rs.62,77,583/- with regard to gold jewellery and Rs.1,05,359/- in respect of silver articles. The assessee is also in appeal before us with regard to unexplained cash expenditure at Rs.2,33,21,157/- based on the seized material in the form of excel sheets.

3. First, we consider the ground nos.2 to 2.3 with regard to estimation of income on deficit gold jewellery treating the same as suppressed sale.

3.1 Facts of this issue are that in the course of search action, the ld. AO analyzed the stock position and found that there was a shortage of stock of gold ornaments as compared to the stock register maintained by the assessee which are as follows:

ANALYSIS OF STOCK POSITION ON THE DAY OF SEARCH - BRANCH WISE (Gross Weight)								
	MALLESHWARAM BRANCH			JAYANAGAR BRANCH				
Description	Physi-cal stock	Book stock	Diff. in kgs.	Physi-cal stock	Book stock	Diff. in kgs.	Net Diff.	REMARKS
Gold Ornaments	90.945	139.284	-48.339	92.134	81.245	10.889	-37.45	Deficit of gold jewellery found totalling to 40.01 kgs.
Gold Bar		2.56	-2.56				-2.56	

Silver Articles	528.049	524.049	4	480.859	483.055	-2.196	1.804	Excess silver articles found 1.804 kgs.
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3.2 The ld. AO computed the gross profit on account of suppression of the sale of gold ornaments at 80% of the gross weight as follows:

Gross weight of deficit gold jewellery found - 40.01kgs.
Net weight is worked out into - 30kgs.(40.01x85%)
The rate of gold jewellery as on 8.2.2013 – Rs.2867/- per gm.
Accordingly, the value of deficit stock works – Rs.9,74,78,000/-

3.3 Accordingly, he computed the gross profit on this at Rs.9,74,78,000/- at 6.4% of gross profit worked out the income at Rs.62,77,583/-. Against this assessee is in appeal before us.

4. The ld. A.R. submitted that even assuming for argument's sake that the search was valid, there was no seizure of any material belonging to the assessee by way of any undisclosed asset or assets acquired by way of any undisclosed income even in the so-called search, which was illegal and therefore, there was no justification to invoke the provisions of section 153A and make an assessment merely because of the search. There was a seizure of certain jewellery and silver items belonging to the assessee, which was taken and kept in the residence of Mr. R. Ramesh, the Managing Director, which came to be seized despite his statement that it belonged to the assessee. It was seized initially in the hands of the assessee. The assessee made a claim for release before the ADIT [Inv] and when it was negated, the assessee filed writ petition also. The Department took the view unreasonably that it did not belong to the assessee but belonged to Mr. R. Ramesh and invoked the provisions of section 153C of the Act, and or that count initiated

proceedings for assessment u/s.153C of the Act, for the assessment years 2007-08 to 2012-13 against Mr. R. Ramesh. They have not invoked the provisions of section 153C of the Act, for the assessment year 2013-14 and instead they made an assessment u/s.143[3] of the Act. If the said jewellery seized in the residence of Mr. R. Ramesh, belonging to the assessee were considered as belonging to Mr. R. Ramesh, entitling the department to invoke the provisions of section 153C of the Act, then, the value of jewellery would be assessable in the hands of Mr. R. Ramesh, for the assessment year 2015-16, in as much as, in terms of section 153A and 153C of the Act, the year in which the seized material was handed over to the A.O. to enable him to record the satisfaction would be the year in which the search was deemed to have taken place and the 6 previous years would be reckoned from the previous year in which the same was handed over. It is on record that the jurisdiction came to be transferred to the A.O. on 25/03/2013 and the notice u/s.153A of the Act, came to be issued on 17/09/2014. In all probabilities, receipt of the seized jewellery seeing the same and recording the satisfaction was on 17/09/2014 when notice u/ s.153C of the Act, was issued to Mr. R. Ramesh. From that angle, even for the assessment year 2013-14, the assessment should have been made on Mr. R. Ramesh u/s.153C of the Act. If the value of the jewellery as considered, there was no justification to hold there was deficit in the quantity of gold jewellery and silverware to warrant any addition in the hands of the assessee company on the ground such jewellery was sold and some income was earned as done by the learned A.O. On the other hand, the learned A.O. unreasonably held that the jewellery was sold away and he had estimated certain amount as profit on the sale of jewellery. The A.O. unreasonably held the jewellery found in the residence of the Mr. R. Ramesh did not belong to the assessee but belonged to Mr. R. Ramesh, overlooking the following facts and

circumstances viz., the search in the residential premises of Mr. R. Ramesh preceded the search in the shops of the assessee company. Even in the preliminary statement before the commencement of search, Mr. R. Ramesh had stated that the jewellery found in his house belonged to the assessee company, which he had brought home for several purposes like hallmarking, repairs, etc. At the time of commencement of the search, the search had not started in the shops of the assessee company. Regular stock books are maintained. It was enquired from the employees about the shortage of stock vis-à-vis the stock books of the company and the employees have categorically stated that the jewellery was taken by Mr. R.Ramesh from time to time and that the assessee should be asked about their whereabouts. During the course of search, the following books were found and were inventorised as under :-

- [1] Studs approval book - 51/RR
- [2] Rings and pendent approval and order sample book - 49/RR
- [3] Approval book -
- [4] MD approval Book - 8/RR 8/2/2013

4.1 He submitted that the above books go to show the date on which the articles were taken, the barcode number, weight etc. 'Similarly, the stock accounts were all maintained in a computer. There is one account in the computer called "Miscellaneous issues", which also indicates the article, barcode number, weight, etc. The Department has taken the back-up of the computer and the same is with them. Thus, the date on which such articles were taken out, barcode number, weight, etc., are thus forming part of the search material viz., the back-up taken from the computer which is lying with them.

4.2 He submitted that the physical stock inventory was taken of the stocks in the residence of Mr. R. Ramesh and the tags attached to the items were removed before weighing to get accurate weight of each one of the articles. Each item so seized is engraved with "RR" logo and the seized materials are in the custody of the department. Thus, the seized materials can be verified whether it belonged to R.R. Gold Place or not. If the A.O. has seen them, the A.O. could not have stated that they belonged to the assessee while recording the satisfaction on 17/09/2014.

4.3 The ld. A.R. further submitted that the assessee had filed a petition for release of the jewellery before the Hon'ble High Court of Karnataka during the course of search proceedings and in as much as assessment proceedings had started the petition became infructuous and therefore the assessee had withdrawn the petition. In other words, the assessee claimed that the jewellery seized found in the residence of the assessee belonged to it.

4.4 He further submitted that, the assessee had hypothecated the stock to the State Bank of Rajajinagar Branch, who had appointed M I B.N.Pai & Company, Chartered Accountants, to conduct a stock audit on their behalf and they have conducted a stock audit on 29/12/2012 to 06/01/2013 and an audit report was also filed with the A.O. The Auditors in the report dated 06/01/2013 have stated that in physical verification of stock at page 16] about the stock at Jayanagar shop, Malleswaram Shop and MD's residence and the dates of visit. Further at pages [4 & 5], the location of stock and quantity-wise is also indicated and the quantity of stock at MD's residence is also indicated. In other words, keeping the stock in the MD's residence, which are supported by the issue register, books, computer back-up, the hallmarking engraved on

each one of the items go to prove conclusively that the stock belonged to the assessee and therefore the invocation of section 153C for the assessment years 2007-08 to 2012-13 and not invoking section 153C of the Act for the assessment year 2013-14 in the hands of Mr. R. Ramesh, if their satisfaction were to be genuine and which lacks bonafide and requires to be cancelled.

4.5 Furthermore he submitted that upon receipt of the remand report, the assessee has submitted the following in the rejoinder filed 29/12/2017:-

*"4.While meeting point no.6 of the written submission, the learned A.O. had unfortunately stated that during the course of statement u/s 132(4) of the Act, taken from Sri R. Ramesh, at his residence, certain note books, which were inventorised in the shops showing the movement of goods from shop to residence the Managing Director, were not shown to the search party. At the **time of giving statement u/s.132[4] of the Act by the Managing Director Sri R.Ramesh, was In his residence and these books were in the shops. Sri R.Ramesh was handicapped by the absence of the books in his residence to support his statement. Broadly, he had stated at the jewellery belonged to the appelland and they were also seized as belonging to the appelland only. It is unfortunate that the A.O. goes on further to state that the entries in the books, did not exist at the time of search. When according to the learned A.O., the books were not shown, how could he say that entries therein were not in existence? The answer given to Q.No.6 at the time of recording the statement u/s.132[4] of the Act, is extracted below for your's Honour's ready reference :***

"Q.No.6. What records are maintained when you bring stock belonging to your Co. to your residence?"

Ans.The jewellery belonging to the Co. and lying at my residence is of different types. At times, new jewellery given to the counter staff gets damaged while handling. I bring the same home for giving it to dealers for repairs. For such jewellery, the concerned staff maintains rough note books where I put my signature to acknowledge receipt of such jewellery by me. Another type of jewellery is old gold purchased from customers, no acknowledgement is given to anybody for bringing such jewellery. However, such jewellery is accompanied by "URD" purchase report. I also bring home new jewellery which has been in stock for a long time, and needs

polishing. Thus, either the jewellery would be accompanied by URD purchase report or I would have acknowledged for the same in one of the note books maintained by my staff".

4.6. The learned A.O. there afterwards while making submissions point no.7 of written submissions relies on the stock audit report of M/s. Nagesh Pai, which clearly shows that the stock auditors of the bank have stated that the stock hypothecated to the bank were stocked even in the residence of the Managing Director. This goes to show the stock of the company used to be kept under some circumstances In the residence of the Managing Director also. This is cited by the A.O. only to show that the stock in the residence of the Managing Director did not have any tags or hallmarks and therefore, it belonged to Sri R.Ramesh, separately and not to the assessee company. The A.O. failed to appreciate that all the jewellery seized are with the department. The name "RR" is engraved on these jewellery consequents to hallmarking. The assessee submitted that the A.O. may examine the jewellery to find out whether the words "RR" is engraved on the jewellery or not, which would clinch the issue one way or other. That, the A.O. conveniently omitted to do and on the other hand has simply made sweeping counter allegations. Be it what it may, the stock found in deficit was in agreement with the stock found in the residence. On overall consideration of the matter, the presence of stock in the residence and contemporaneous statement made at the time of search by Sri R.Ramesh, Managing Director and the absence of the stock in the shops unmistakably point out what was found in the residence was the stock found in deficit in the shops.

4.7. He submitted that the learned A.O. has stated that the assessee could not correlate the stock found at the residence with the entries found in the stock register maintained by way of bar coding tags. The A.O. has not understood the difference

between bar coding and hallmarking. Whenever new items of jewellery are purchased or sought to be purchased, the assessee insists the supplier to bar code them and hallmark them and supply it and the supplier after hallmarking give them with the certificate and bill for such hallmarking of the hall marking center. At that stage, the name of the purchaser viz., "RR" is engraved on all the items. At that stage, each one of the items although they are hallmarked are not bar coded and the bar code is an exercise that is done by the assessee after he receives the purchases and enters them in the stick register to further to know the exact weight of Individual Items of the bulk purchases so that, at the time of sale in the shop the weight is conveniently known to explain to the customer to transact the sale. For that a plastic tag is put indicating the weight. Such tags are removed for purposes of taking the weight. Therefore, it would not be possible to correlate the purchases with the bar coding done in the shop whereas, it could be verified by way of hallmarking done by the hallmarking center, which would reveal what was the month in which hallmarking was done, which center and the purchaser, to whom it was sold. Thus, the observations made in point No.8 and no.9 of the A.O. are unfortunate especially, those which are made on the additional grounds, which are patently contrary to records.

5. The ld. D.R. submitted that there was “no one to one tally of the ornaments” in response to the shortage of ornaments and jewellery found in the shop of the assessee. Hence, telescopic benefit could not be given to the assessee. According to the ld. D.R., assessee was not able to prove by proper record that its stock belonging to the assessee was the same which was found in the house of its Managing Director, the ld. AO cannot be faulted for making addition. This discrepancy would not have come to light in the absence of a search. Further, the quantity and also the considerable value involved is substantial, which would necessarily warrant maintenance of proper books of accounts including stock register, which is being a Private

Limited company. In the absence of proper entry in the stock register showing the transfer of this stock to the Managing Director, no benefit to be given to the assessee and addition to be sustained.

6. We have heard the rival submissions and perused the materials available on record. In the present case, there is a shortage of stock to the tune of 40.01 kgs. Gold jewellery. The contention of the Id. A.R. is that same amount of jewellery was found in the residence of Managing Director of assessee during the course of search action and the same was the stock taken from the shop by Managing Director for the purpose of safe custody. Further, the contention of the Id. A.R. is that this is a normal practice to keep the portion of the stock of jewellery in the Managing Director's house for security purpose and they are not usually making any entries in the stock register as the keeping of jewellery at shop and keeping of jewellery at residence of Managing Director is the same. Further, it was submitted before us that the search was took place on 8.2.2013. At that time also, the Managing Director has taken a plea that the stock found in his house was belonging to the present assessee. It is also brought to our notice that Chartered Accountants of M/s. B.N. Pai & Company vide their audit report dated 6.1.2013 itself submitted the details of stock and receivables to State Bank of India, SME Rajaji Nagar branch, Bangalore 560 044, inter-alia stated as follows:

“CONDITION OF STORAGE: (a) ACCESSIBILITY: All its Branch cum Show Rooms are found located at prominent places in the two strategic locations, viz. Jayanagar and Malleswaram of Bangalore City to appease its Clientele which are easily accessible. Condition of all its Show Room Buildings are found to be strong enough to protect the high value Stocks held inside and Storage of Stocks is found to have been well displayed in the attractive Glass Show Cases under lock and key. We have observed that these Stocks are being kept in Safe/Strong Room overnight, after ensuring total number of items and also Weights thereof, by physical counting and through scanning Bar Coded Weights also. Closed Circuit TVs are installed at all its Show Rooms and 24 hour Watch and Ward Security is being kept. We have also visited the Managing Director's Residence to see some Gold/Silver/Diamond

Jewellery/Articles being held over there. On verification, it was noted by us that these Stock Items before Bar Coding is being held in the MD's Residence at : No.98, 3rd Stage, 4th Block, Sathyanarayana Layout, Basaveshwaranagar, Bangalore 560 079."

6.1 As seen from the above it is noted that stocks have been kept in the MD's residence No.98, 3rd Stage, 4th Block, Satyanarayana Layout, Basaveswaranagar, Bangalore 560 079 before bar coding of the same. It was also admitted that jewellery found at the residence of MD is also having bar code of the shop. In view of the matter, in our opinion, it cannot be presumed that excess stock found during the course of search action at the residence of MD is not belong to the present assessee since stock found at the residence of MD is of same quantity and it is the usual practice followed by the assessee and it has to be inferred that there was a movement of stock from assessee's shop to MD's house. Hence, there was an impugned shortage of jewellery in the hands of present assessee. It is quite natural to give telescopic benefit to the assessee by observing that the jewellery found at the residence of MD of present assessee is belong to the assessee itself and due telescoping benefit to be given. As such, the finding of lower authorities that there was suppression of sale of jewellery in the hands of assessee have no legs to stand. Accordingly, the addition is deleted and this ground of the assessee is allowed.

7. Next ground in this appeal is with regard to unexplained investment in silver articles. In the course of survey action on 8.2.20123, there was excess silver articles to the tune of 1.801 kgs. And the ld. AO valued this stock at Rs.1,05,359/- and brought to tax.

7.1 The ld. A.R. submitted in so far as the other addition made for the assessment year 2013-14 is concerned, he submitted that the learned A.O. is not justified in holding that there was excess quantity of silver items aggregating to 1.804 kg. which was erroneous in that,

it was not properly weighed since it involved about 33,000 items of silverware items weighing about 1008 kgs. approximately and Infinitival point 01 gm. of weight in each one of the items of about 33,000 silverware in all aggregating to 1.804 kg. there could be an error contributing to an apparent excess of 1.804 kg. and therefore, there is no justification in presuming that there was excess stock of Rs.63,82,942/- liable for assessment as unexplained in the hands of the assessee company and the same requires to be deleted.

7.2 Without prejudice to the above, he submitted that there is no justification to infer that there was any deficit of stock if the stock in the residence of Mr. R. Ramesh, Managing Director, is considered and on that count to hold that they were sold and GP to be estimated and further, the addition made towards GP requires to be telescoped with the other additions made for the year under appeal, as the sole proceeds giving raise to GP addition is large enough to telescope with the other additions made, which are jottings and dumb materials and no addition requires to be made.

8. The Id. D.R. relied on the order of lower authorities.

9. We have heard the rival submissions and perused the materials available on record. The contention of the Id. A.R. is that total stock of silver articles was at 1008 kgs. On weighing the same, there was excess of silver articles to the tune of 1.801 kgs., which is very minimal and which is only 0.1786%. It may be due to weighing difference in scale due to wind or due to any other reasons. This minimum difference cannot be considered as excess silver articles found during the course of search action and due margin to be given for such minimal weighing difference. This addition is deleted. This ground of appeal of the assessee is allowed.

10. Ground Nos.4 & 5 are with regard to addition towards unexplained expenditure at Rs.2,33,21,157/-.

10.1 During the course of search, the details of action cash expenditure was found which is relating to August, 2012 to January, 2013, which is as follows:

Seized Material	Month	MVM	JAY	TOTAL
A/RR/CO/03- Page Nos.116 & 117	Aug'2012	28,32,690	12,44,520	40,77,210
A/RR/CO/08 - Page Nos.446 & 447	Sept'2012	35,94,525	13,29,660	49,24,185
A/RR/CO/15 - Pge Nos.441 & 442	Oct'2012	20,74,113	4,83,370	25,57,483
A/RR/CO/09 - Page Nos.457 & 458	Nov'2012	18,82,225	5,85,218	24,67,443
A/RR/CO/11 - Page Nos.580 & 581	Dec'2012	38,55,181	12,06,270	50,61,451
A/RR/CO/14 - Page Nos.61 & 62	Jan'2013	32,96,080	9,37,305	42,33,385
Total		175,34,814	57,86,343	233,21,157

On that basis, the ld. AO has made above additions.

10.2 With regard to the addition based on the excel sheets the ld. A.R. submitted that the learned A.O. made an addition of Rs.2,33,21,57/-as unexplained cash expenditure u/s.69 of the I.T. Act. He submitted that the addition was made on the basis of typed lose sheets seized from the business premises of the assessee. He submitted that during the course of search statement u/s.132[4] of the Act, was recorded from one Sri Kumar Raj, Accountant of the assessee company, who gave explanation about the typed lose sheets. However, disbelieving the testimony of Sri Kumar Raj, the learned A.O. presumed that the figures

appearing in the loose sheets represented unaccounted expenditure of the assessee company and invoked the provisions of section 69C of the Act, and brought the same to tax as income from undisclosed source.

10.3 He submitted that the whole addition of Rs.2,33,21,157/- is based on loose slips found during the course of search in case of assessee. According to him, it is an excel sheet wherein the employees of the assessee for their own calculation purpose made various entries and it is nowhere related to the cash expenditure incurred by the assessee. As such, it was not entered in the assessee's books of accounts and when the employees prepared this computation contents for their own purpose, it was not within the knowledge of the assessee. As such, the assessee has not explained the contents therein. At the best, the authorities would have questioned the employees and their statement ought to have recorded and thereafter it must have been confronted to the assessee after giving a copy of the same to the assessee, which has not been done in this case. Hence, no importance could be given to such material collected during the course of search action as this was not supported by any specific material for evidence. He submitted that in so far as the addition of Rs.2,33,21,257/- made as unexplained cash expenditure u/s 69 of the Act is concerned the ld. AO has only stated that the addition was based on seizure of loose sheets indicating cash expenditure in respect of Malleshwaram and Jayanagar branch separately. He submitted that the loose sheets are dumb slips made by the respective staff, who are not in employment now and the addition is purely on suspicion and surmise, assumptions and presumptions and consequently, he prayed that the same may be deleted.

11. The ld. D.R. relied on the order of ld. CIT(A) and submitted that these additions by the ld. AO on the basis of loose slips found during the course of search action. The assessee has been unable to

discharge its obligation of giving a satisfactory explanation on the contents of these seized materials. The said material were in hand writing of the cashier of the assessee company. There was a submission that these entries represented information necessary for managerial and administrative purposes and it has not found place in the books of accounts of the assessee. As such, these represent the income or expenditure relating to the assessee company. In view of this, the addition to be sustained.

12. We have heard the rival submissions and perused the materials available on record. It is an admitted fact that the department has not collected any corroborative material supporting the entries in these loose slips. In our opinion, unless it is substantiated or corroborated by any material evidence in support of such notings in the loose slips or notings in diary, the addition cannot be made by the authorities. The suspicion in the minds of the revenue authorities that the assessee has made certain payments as per the loose slips cannot be reason to make an addition. In the absence of concrete evidence brought on record by the authorities concerned, the addition cannot be made. The suspicion cannot replace the material evidence brought on record. It is also be noted that the authorities have to follow the principles of natural justice and the description of the documents in the form of loose slips are not enough to make an addition without furnishing the copy of these documents to the assessee and also without giving an opportunity of cross examination of the concerned parties, who has written these loose slips. The loose slips having certain jottings are not speaking one and it cannot be basis for any inference to make an addition. Accordingly, the addition made on the basis of unsubstantiated loose slips cannot be sustained. Accordingly, the addition is deleted and this ground of appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20th Sept, 2023

**Sd/-
(Madhumita Roy)
Judicial Member**

**Sd/-
(Chandra Poojari)
Accountant Member**

Bangalore,
Dated 20th Sept, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**